

Date: 28.01.2019

Reference: RFQ19/003

Development of Data License (Sharing) Agreements between SPC and Pacific Island National Statistics Offices

1. PURPOSE OF CONSULTANCY

The Statistics for Development Division (SDD) of the Pacific Community (SPC) wishes to recruit a Statistical Legal Advisor (Data Governance) to review and revise Data License/Sharing Agreements, including standards and procedures and data related privacy policies, between SPC and Pacific Island National Statistics Offices (NSO) that are being developed to facilitate improved data dissemination and use in Pacific Islands countries.

2. BACKGROUND

SPC is the Pacific Island region's principal technical and scientific organisation. It delivers technical, scientific, research, policy and training in agriculture, disaster risk management, education, energy, fisheries, forestry, gender, geoscience, human rights, public health, statistics, transport, water resources, youth and culture, and in cross-cutting areas such as climate change. SPC was established as an international organisation in 1947 and its working languages are English and French. Additional information is available at: www.spc.int.

Microdata are the units of data that aggregate statistics are compiled from. Microdata is data about individual people, households, or organisations and consist of sets of records containing information on individual respondents or other entities. In some cases, Microdata may also be data about other characteristics of Pacific Island countries such as geographical data. As part of SDD's Trust Fund for Statistical Capacity Building (TFSCB) project entitled "*Improving Data Dissemination and use in the Pacific Islands*" SPC aims to provide safe access to Pacific Island microdata via the establishment of a Pacific Data Library www.pdl.spc.int to enable research and analysis that benefits Pacific Island people and to improve SDD's capacity to manage, use and disseminate development data effectively. The Pacific Data Library aims to provide a systematic approach for capturing, curating, cataloguing and disseminating data in compliance with international standards and best practices.

An increasing amount of data on persons and establishments are collected by National Statistics Offices (NSO) in the Pacific. Also, the demand for microdata for researchers and other users is increasing. This, however, comes with a variety of legal, ethical, and technical challenges. Microdata is a level of data that creates a risk of recognition/identification of individual people, households or organisations and as such must be managed carefully to protect against this risk. Privacy protection principles and regulations impose restrictions on access to, and use of, individual-level data. Statistical producers are also faced with the challenge of ensuring respondents' confidentiality when making unit-record microdata accessible. Not only are data producers obligated to protect confidentiality, but also confidentiality is crucial for maintaining the trust of respondents and ensuring the honesty and validity of their responses.

Proper and secure microdata dissemination require National Statistical Offices (NSO) to establish policies and procedures that formally define the conditions for accessing microdata in the form of data sharing or license agreements and a MoU. Transparent licensing of datasets is necessary for SPC to protect both the data owner and potential users. Releasing data with clearly stated licensing and terms of use reduces uncertainty and thus increases accessibility for new users.

The legal context for release of microdata

Statistical legislation has generally been clear about the obligation to protect the confidentiality of information provided by individuals, households or other entities to produce official statistics. With statistical offices seeking to meet the increasing demand for microdata, modern statistical legislation normally makes some

provision for the release of microdata. Legislation which explicitly authorises the release of microdata ensures public confidence in the release arrangements as well as clarity, consistency and a basis for dealing with breaches of confidentiality (see for example United Nations, 2007 Managing Statistical Confidentiality and Microdata Access - Principles and Guidelines of Good Practice (2007 Edition)).

Many Pacific Island statistics acts have similar wording and are clear about NSO's obligation to prevent the disclosure of any information which can be identified as belonging to an "individual, undertaking or business." However, many Pacific Island statistics acts are outdated and make little mention of microdata. They in no way prohibit its release, but they do not provide a legislative framework governing release.

National Statistical offices (NSO) have tended to be extremely conservative in assessing the risks of disclosure and to err on the side of not releasing the data. Faced with the difficulty of making an accurate assessment of the real risk of a breach of confidentiality, the simplest and easiest way to avoid any disclosure risk is not to release any microdata. Yet in reality, instances of disclosure arising from the release of census microdata are almost unheard of.

One of the values of updating statistical legislation in the Pacific is that the balance, or trade-off, between protecting confidentiality and facilitating access to microdata is recognised in legislation. This encourages NSO's to approach the issue in a more balanced way rather than adopting an extremely conservative approach or a presumption against the release of microdata should there be possibility of disclosure. New legislation would certainly help to encourage and facilitate release of microdata to researchers in the Pacific. However, steps to expand access to microdata need not wait for new legislation.

3. OBJECTIVES OF THE WORK

- Based on international best practise and current methods used in Pacific Island countries, finalise legal instruments including Data License Agreement (DLA) and Terms of Use (ToU) that govern the relationship, responsibilities, rights and duties of SPC vis a vis data producers and users.
- Review and make contributions where needed to finalise SPC developed procedures and protocols for all processes associated with the acquisition, management, curation, storage, anonymization and dissemination of microdata.
- Review national statistical policies to ensure that the above procedures and protocols are developed and implemented within national legal frameworks specifically for validity of Data License Agreement and Terms of Use.
- Develop a Pacific Islands "Model" Statistical Act or Legislation specific clause allowing NSO to release 'anonymized microdata for the purpose of research and secondary analysis.'
- Provide professional consultancy services in relation to data access and dissemination on an "as needed" basis.

4. TERMS OF REFERENCE:

In consultation with the SPC's Statistics for Development Division (SDD), and SPC's Legal and Risk Officer, the consultant will:

- Finalise Data License Agreement (template) for data sharing between SPC and Pacific Island data producers. The Data License Agreement specifies the procedure for data acquisition, archiving and dissemination of microdata. The template should be a standard legal agreement consistent with principles contained in the NSO's enabling legislation and include scope of license rights, representations, warranties, and indemnification and exclusivity. The template and associated data access arrangements should respect the legal rights and legitimate interests of all stakeholders. The Data License Agreement shall also include as an optional module, provisions for:

- sharing of microdata with SDG custodians,
 - using the microdata to populate indicator platforms (.stat; popGIS; SDD website), and
 - using the microdata for thematic analysis, such as population projections, food security analysis, CPI, mortality, migration, and disaster risk management.
- Review country-specific legislation and policies relevant to data sharing, specifically National Statistics Acts, but also privacy policy and other legislation where relevant in 10 Pacific Island countries¹. Review any other relevant Data License Agreements/MoU of other regional and international organisations (e.g., Stats NZ, SPREP, IPUMS) with the view to helping SPC learn best practices and develop the optimal guidelines.
 - Review and finalise SPC’s Pacific Data Library Terms of Use (ToU) template which specify the terms and conditions of microdata access for users and usually takes the form of an agreement detailing the scope of work, approach and methodology, deliverables and timelines and duties and responsibilities of the user, the class of user (for example different users may have different levels of access and these can be defined), any disclaimer, citation requirements and publication. The Terms of Use will be in accordance with international standards and good practices including data use policy and Data License Agreement template used by the World Bank Microdata Library.
 - Develop a Pacific Islands “Model” Statistical Act or Legislation specific clause allowing NSO to release ‘anonymized microdata for the purpose of research.’
 - Review and update relevant data related privacy policies, protocol, standards and procedures for data acquisition, archiving and dissemination of Pacific Island Microdata.
 - Produce a short summary report of recommendations for the project and the critical pathway in terms of improving data dissemination and use in the Pacific region.

Deliverables:

Activity: Approximate Time Frame (days)	Task	Location
2	<ul style="list-style-type: none"> - Develop SPC-SDD Data License Agreement (DLA) and Terms of Use (ToU) for data sharing between SPC and Pacific Island government agencies. Incorporate as an optional module in the DLA: <ul style="list-style-type: none"> ○ sharing of microdata with SDG custodians ○ using the microdata to populate indicator platforms (.stat; popGIS; SDD website). ○ using the microdata for thematic analysis, such as population projections, food security, CPI, mortality, 	Home-based

¹ Cook Islands, Fiji, FSM, Kiribati, Nauru, Samoa, Tokelau, Tonga, Tuvalu, Vanuatu

	migration, and disaster risk management.	
2	<ul style="list-style-type: none"> - Review country-specific legislation and policies relevant to data sharing, specifically Pacific Island Statistics Acts in 10 PICs to ensure that Data License Agreements and Terms of Use do not specifically conflict with any provisions. List any potential issues or conflict. - Develop a Pacific Islands “Model” Statistical Act or Legislation specific clause allowing NSO to release ‘anonymized microdata for the purpose of research and secondary analysis.’ 	Home-based
5	<ul style="list-style-type: none"> - Review and update relevant data related privacy policies, protocol, standards and procedures for data acquisition, archiving and dissemination of Pacific Island microdata. 	Home-based
6	<ul style="list-style-type: none"> - Provide ongoing professional consultancy services on a need’s basis particularly in relation to statistical confidentiality issues related to microdata access/dissemination, ethical provisions around terms of use for microdata access and more broadly provide advocacy for the TFSCB project within the Pacific Islands statistical and research community. Produce a short summary report of recommendations for the project and the critical pathway in terms of improving data dissemination and use in the Pacific region. 	Home-based

Place of Assignment: Home based

Duration of assignment:

This short-term consultancy contract will be completed by August 2019 and will be undertaken for a maximum of 15 paid working days

Institutional Arrangement

The consultant will be responsible to Mr Michael Sharp, Economic Statistics and Microdata Specialist, of the Statistics for Development Division.

5. QUALIFICATIONS OF THE SUCCESSFUL CONTRACTOR

The consultant will have:

- Experience delivering policy advice regarding data governance, statistical confidentiality, microdata access and dissemination.
- Hands-on experience in development of data sharing policies.

- Experience working with national statistical agencies in the Pacific Islands region.
- Able to work with stakeholders and must have good communication skills.
- Knowledge of standards like Dublin Core, DDI, SDMX is preferred.
- Minimum of 10 years work experience with statistics.

6. EXPECTED OUTCOMES:

<u>Milestones/outputs</u>	<u>Deadline</u>	<u>Payment</u>
<ul style="list-style-type: none"> - Final SPC-SDD Data License Agreement and Terms of Use for data sharing between SPC and Pacific Island government agencies and between SPC and users of the Pacific Data Library. 	29.03.2019	2 working days
<ul style="list-style-type: none"> - 2-3-page report documenting review of country-specific legislation and policies relevant to data sharing, specifically Pacific Island Statistics Acts in 10 PICs to ensure that Data License Agreements and Terms of Use do not specifically conflict with any provisions. Report will review existing materials to better understand current landscape and should list any potential issues or conflict and include consultations with Pacific Island NSO Government Statisticians and/or technical staff. - Develop a Pacific Islands "Model" Statistical Act or Legislation specific clause allowing NSO to release 'anonymized microdata for the purpose of research and secondary analysis.' 	29.03.2019	2 working days
<ul style="list-style-type: none"> - Provide high level review and contribution to relevant data related privacy policies, protocol, standards and procedures for data acquisition, archiving and dissemination of Pacific Island Microdata. 	10.05.2019	5 working days
<ul style="list-style-type: none"> - Provide ongoing professional consultancy services on a need's basis particularly in relation to statistical confidentiality issues relating to microdata access/dissemination, ethical provisions around terms of use for microdata access and more broadly provide advocacy for the TFSCB project within the Pacific Islands statistical and research community. - Provide short summary report of recommendations for the project and the critical pathway in terms of improving data dissemination and use in the Pacific region. 	15.08.2019	6 working days

Professional remuneration

If you are interested in this assignment, please send in a proposal to procurement@spc.int with the heading RfQ 19/003 with copy to Michael Sharp, Economic Statistics and Microdata Specialist, MichaelS@spc.int as soon as possible but before 4.00 pm Noumea time on the 10.02.2019. Include a daily rate for consultancy services.

NOTE: If required, economy class travel via the most economical route and a daily per-diem will be provided in accordance to SPC's Travel Policy and arranged on your behalf.

SPC GENERAL CONTRACT CONDITIONS

1. LEGAL STATUS

The Contractor has the legal status of an independent contractor. The Contractor's personnel and sub-contractors are not to be considered in any respect employees or agents of SPC.

2. SOURCE OF INSTRUCTIONS

The Contractor will only accept instructions from SPC in the performance of this contract. The Contractor will refrain from any action that may adversely affect SPC and will fulfil its commitments with the fullest regard to the interests of SPC.

3. CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

The contractor shall not discriminate against any person because of race, medical condition, religious creed, ancestry, national origin, age, sex or handicap.

4. SPECIFIED PERSONNEL

The Contractor must ensure that the services are performed in accordance with this contract. Where personnel have been specified, they must provide those services. SPC may remove any personnel (including Specified Personnel) from work in respect of this Contract. If it does so, or if Specified Personnel are unable or unwilling to perform the contract, the Contractor will provide replacement personnel (acceptable to SPC) of suitable ability and qualifications at no additional cost and at the earliest opportunity.

5. ASSIGNMENT

The Contractor may not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of SPC.

6. SUB-CONTRACTING

In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of SPC for all sub-contractors. The approval of SPC of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform with the provisions of this Contract.

7. OFFICIALS NOT TO BENEFIT

The Contractor warrants that no official of SPC has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

8. INDEMNIFICATION

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, SPC, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

9. INSURANCE AND LIABILITIES TO THIRD PARTIES

9.1 The Contractor will hold insurance against all risks in respect of its employees, sub-contractors, property and equipment used for the execution of this Contract, including appropriate worker's compensation for personal injury or death.

9.2 The Contractor will also hold liability insurance in an adequate amount to cover third party claims for any claims arising from or in connection with the provision of services under this contract.

9.3 The Contractor shall, upon request, provide SPC with satisfactory evidence of insurance cover as required under this Article.

10. ENCUMBRANCES/LIENS

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with SPC against any monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

11. TITLE TO EQUIPMENT

Title to any equipment and supplies that may be provided by SPC rests with SPC. Such equipment shall be returned to SPC at the conclusion of this Contract or when no longer needed by the Contractor. On return, the equipment shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate SPC for equipment determined to be damaged or degraded beyond normal wear and tear.

12. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS

SPC is entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to products, or documents and other materials which bear a direct

relation to or are produced or prepared or collected in consequence of or in the course of the execution of this Contract. At SPC's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to SPC in compliance with the requirements of the applicable law.

13. USE OF NAME, EMBLEM OR OFFICIAL SEAL OF SPC

The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with SPC, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of SPC, or any abbreviation of the name of SPC in connection with its business or otherwise.

14. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION

14.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of SPC, shall be treated as confidential and shall be delivered only to SPC authorised officials on completion of work under this Contract.

14.2 The Contractor may not communicate at any time to any other person, Government or authority external to SPC, any information known to it by reason of its association with SPC which has not been made public except with the authorisation of SPC; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

15. FORCE MAJEURE AND OTHER CHANGES IN CONDITIONS

15.1 Force majeure, as used in this Article, means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force which are beyond the control of the Parties.

15.2 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to SPC, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify SPC of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Contract. The notice shall include steps proposed by the Contractor to be taken, including any reasonable alternative means for performance that is not prevented by force majeure. On receipt of the notice required under this Article, SPC shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

15.3 If the Contractor is rendered permanently unable, wholly or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, SPC shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 16, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

16. TERMINATION

16.1 Either party may terminate this contract for cause, in whole or in part, with thirty days' written notice to the other party. The initiation of arbitral proceedings in accordance with Article 17 "Settlement of Disputes" below shall not be deemed a termination of this Contract.

16.2 SPC reserves the right to terminate without cause this Contract, at any time with fifteen days written notice to the Contractor, in which case SPC shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

16.3 In the event of any termination by SPC under this Article, no payment shall be due from SPC to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract. The Contractor shall take immediate steps to terminate the work and services in a prompt and orderly manner and to minimise losses and further expenditure.

16.4 Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a receiver be appointed on account of the insolvency of the Contractor, SPC may, without prejudice to any other right or remedy it may have, terminate this Contract forthwith. The Contractor shall immediately inform SPC of the occurrence of any of the above events.

17. SETTLEMENT OF DISPUTES

17.1 The Parties will use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to this Contract or the breach, termination or invalidity thereof.

17.2 If a dispute is not settled within sixty days of one Party notifying the other of a request for amicable settlement, the dispute can be referred by either Party to arbitration in accordance with the general principles of international law. The arbitration will be governed by the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as at present in force. The arbitral tribunal shall have no authority to award punitive damages. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

18. PRIVILEGES AND IMMUNITIES

Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of SPC, including its subsidiary organs.

19. TAX EXEMPTION

19.1 Under the 'Host Country Agreement' with the Country hosting SPC Offices, SPC, being an International Organisation, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognise SPC's exemption from such taxes, duties or charges, the Contractor shall immediately consult with SPC to determine a mutually acceptable procedure.

19.2 Accordingly, the Contractor authorises SPC to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with SPC before the payment thereof and SPC has, in each instance, specifically authorised the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide SPC with written evidence that payment of such taxes, duties or charges has been made and appropriately authorised.

20. CHILD LABOUR

20.1 The Contractor represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.

20.2 Any breach of this representation and warranty shall entitle SPC to terminate this Contract immediately upon notice to the Contractor, at no cost to SPC.

21. HUMAN RIGHTS

21.1 The Contractor recognises, respects and upholds the human rights of every individual, being a minimum those protected by the Universal Declaration of Human Rights. The Contractor will actively seek to ensure he is not complicit in human rights abuses committed by others.

21.2 The Contractor is committed to respecting, and acting in a manner which avoids infringing on, human rights. In this regard the Contractor acknowledges the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect Respect and Remedy' framework (2011).

21.3 To meet these commitments, the Contractor will not accept modern slavery, forced labour and human trafficking in his supply chain.

21.4 Any breach of this representation and warranty shall entitle SPC to terminate this Contract immediately upon notice to the Contractor, at no cost to SPC.

22. OBSERVANCE OF THE LAW

The Contractor must comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

23. AUTHORITY TO MODIFY

No modification or change, nor waiver of any of this contract's provisions will be valid and enforceable against SPC unless provided by an amendment to this contract signed by the authorised official of SPC.



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