

Data Use Agreement HOWAS 21

between

Helmholtz Centre Potsdam
GFZ German Research Centre for Geosciences
Telegrafenberg, 144473 Potsdam

- hereinafter referred to as "GFZ" -
and

the Contracting party/Data provider

(Please indicate the organisation/legal entity including its authorised representatives, the responsible person (contact person) and the complete address including telephone number and e-mail)

- Hereinafter referred to as "Contracting Party"-

Preamble

The GFZ has developed the database HOWAS 21 for object-specified flood loss data within the research project *MEDIS - Methods for the recording of direct and indirect damages*, which was funded by the German Ministry of Education and Research. The concept of use of HOWAS 21 provides for three different user groups, which have access to the database in different degrees: 1) "User group I" feeds own damage data into HOWAS 21 and gets full access to the entire data stock; 2) "User group II" doesn't provide own flood loss data and can get limited rights of use for scientific or non-commercial projects; projects for public flood risk management (e.g. development of flood protection concepts) are, unless scientific, considered non-commercial; 3) User group "World", the interested public can get information about the contained data stock via the website. The HOWAS 21 database is of considerable benefit to the entire expert community, through the continuous input of new damage data. In the past years several partners have already fed in data.

The contracting partner would like to access the HOWAS 21 database as a user of "User Group I". With the present contract, the GFZ therefore grants the contractual partner the right to use the database and all data contained therein under the following conditions. In return, the contracting partner enters the data set described in more detail in §1 (3) into the HOWAS 21 database and grants the GFZ an unrestricted right of use and transfer within the scope of HOWAS 21.

§1

Subject of the contract

- (1) GFZ provides the Contracting party with the rights of use as specified under §2 for the flood loss data contained in the database HOWAS 21.
- (2) The Contracting party receives the required login credentials for the database HOWAS 21 from GFZ, for the use of the database and the contained data after signing this contract.
- (3) The Contracting party grants GFZ the rights of use according to § 2 concerning the flood loss data "...Description of Data..." for the integration and use in HOWAS 21 and distribution and usage by other users of the database according to the concept of use of HOWAS 21.
- (4) GFZ receives the data (see §1 (3) for more information) and the associated metadata in a structured format that allows direct integration into the database HOWAS 21, after signing of this contract by both parties.
- (5) The Contracting party warrants to GFZ, that he is entitled to integrate the data into HOWAS 21 in accordance with § 1 (3) and that the data can be used by GFZ in accordance with the usage concept and that no third-party rights are infringed by this. If third parties assert enforceable claims against GFZ in this respect, the Contracting party will release GFZ from these claims. A further warranty is not assumed, see § 3.

§2

Rights of use

- (1) GFZ grants to the Contracting party a non-exclusive, free of charge, non-transferable right of use concerning the flood loss data contained in HOWAS 21. It is not allowed to publish data sets (in whole or in part) or transmit data sets (in whole or in part) to a third party. Third parties in this sense are also affiliated companies of the Contracting party according to §§ 15 German Stock Corporation Act (Aktiengesetz).
- (2) The Contracting party grants GFZ a non-exclusive, free of charge, transferable, sublicensable, perpetual right of use of the data described in §1 (3). In particular, the GFZ is entitled to enter this data into the database HOWAS 21, to keep it there permanently available and to make it available to other users for download and usage. The GFZ is obliged to use the data exclusively within the framework of the concept of use of the HOWAS 21 database project. Any use beyond this requires the separate written permission of the Contracting party.
- (3) Results derived from using HOWAS 21 data may only be published with reference to the following source:
Source: HOWAS 21 Flood loss data base, German Research Centre for Geosciences GFZ, DOI 10.1594/GFZ.SDBB.HOWAS 21, Date of the data download.
Choose the following citation for publications in German:
Source: HOWAS 21 Hochwasserschadendatenbank, Deutsches GeoForschungsZentrum GFZ, DOI 10.1594/GFZ.SDBB.HOWAS 21, Date of the download
- (4) Providing detailed information about the data contained in HOWAS 21 to third parties requires the prior written permission of GFZ.

§3 Warranty/ Liability

- (1) The GFZ and the Contracting party, each assume no warranty or guarantee and no liability for the accuracy, quality and completeness of the data.
- (2) The GFZ does not warrant or guarantee and does not assume liability that the data sets contained in HOWAS 21 are free of third party property rights, which would prevent a transfer to and use by the Contracting party for the above mentioned project. However, as soon as the GFZ should become aware of such property rights, the GFZ will inform the Contracting party immediately; the Contracting Party must then delete the relevant data immediately.
- (3) Furthermore, the GFZ assumes no warranty or guarantee and liability for the permanent and uninterrupted availability and functionality of the HOWAS 21 database. The GFZ reserves the right to make changes to the HOWAS 21 database and will inform the Contracting party accordingly. The GFZ also reserves the right to discontinue the database without giving reasons. The GFZ will inform about this in time.
- (4) Claims of the GFZ and the Contracting party for compensation of damages are excluded, unless they are based on intent or gross negligence. The liability for consequential damages and financial losses is excluded, except in case of intent and legally binding liability.

§4 Confidentiality

- (1) The parties undertake to treat any confidential information acquired in connection with this Agreement as well as any confidential documents made accessible as confidential for an unlimited period of time and to keep them secret vis-à-vis third parties, insofar and for as long as they have not
 - become part of the state of the art in science and technology accessible to the public,
 - have been made available to one party by third parties without any obligation of confidentiality,
 - were already known to the other party prior to notification by one party or
 - have otherwise become generally known without fault of the receiving party or have been developed independently by the receiving party.
- (2) The information or documents shall be marked as confidential. Even without such marking, the data records in HOWAS 21 as well as the login data to the HOWAS 21 database provided to the Contracting Party are considered confidential.
- (3) The login data must be kept secret and in particular may not be passed on to third parties. A reverse engineering of database information is excluded.

§ 5

Applicable Law, Mediation, Jurisdiction

- (1) This Agreement shall be construed and interpreted in accordance with the laws of Germany under exclusion of the UN Sales Law.
- (2) The parties shall attempt to settle any differences on the interpretation and execution of this Agreement amicably. If this does not succeed, mediation shall be attempted before recourse to legal action. If the mediation fails, for whatever reason, the parties reserve the right to take legal action before the courts. Place of jurisdiction for legal disputes arising from this Agreement shall be Potsdam, Germany.

§ 6

Final Provisions

- (1) Amendments and supplements to this Agreement must be in writing.
- (2) If a provision of the present agreement is or becomes ineffective, this shall not affect the effectivity of the remaining provisions of the present agreement. Instead, the provisions shall be replaced retroactively by a regulation which is legally admissible and the content of which comes closest to the original provision. The same shall apply for all and any loopholes in the agreement.
- (3) This Agreement shall enter into force upon signature.

Potsdam, *date*

Place, *date*

GFZ

Contracting Party / Data Provider