

Crown Rights Agreement

(to make provision for the licensing of Crown copyright and database rights to Ordnance Survey Limited and the assignment to the Crown of copyright and database rights)

BETWEEN

THE KEEPER OF PUBLIC RECORDS

AND

ORDNANCE SURVEY LIMITED

DATE: 24 August 2017

This Crown Rights Agreement is made on the 24 day of August 2017

Between:

- (1) The Keeper of Public Records, whose principal office is at The National Archives, Kew, Richmond, Surrey TW9 4DU (**The Keeper**); and
- (2) Ordnance Survey Limited, a company registered in England (company registration number 09121572), whose registered office is at Explorer House, Adanac Drive, Nursling, Southampton, Hampshire, SO16 0AS (**Ordnance Survey Limited**).

Background

- A In 2015, the Secretary of State for Business, Innovation and Skills determined that it would be beneficial to restructure the organisation known as Ordnance Survey, by converting it from a non-Ministerial government department operating as a trading fund within the Department for Business Innovation and Skills (**Ordnance Survey Trading Fund**) into a wholly owned government company limited by shares.
- B Ordnance Survey Limited, a private company limited by shares, was therefore incorporated under the Companies Act 2006. The entire issued share capital of Ordnance Survey Limited is owned by the Department for Business, Energy and Industrial Strategy (BEIS). All of the functions (including the role of national mapping agency of Great Britain and the delivery of the Public Task) and assets of Ordnance Survey Trading Fund were transferred to Ordnance Survey Limited on the Transfer Date (as defined below).
- C Under legislation, Her Majesty the Queen is the first owner of all copyright and database rights held by the Crown. As at the Transfer Date, HMSO (as defined below) had been appointed by Her Majesty by Letters Patent to hold and administer copyright and database rights belonging to the Crown on Her behalf.
- D Prior to the Transfer Date, HMSO delegated to Ordnance Survey Trading Fund, under the Delegation of Authority (as defined below), the authority to use, re-use and license Crown copyright and database rights in all material produced or commissioned by Ordnance Survey Trading Fund.
- E On the Transfer Date, as a result of the transfer referred to in B above, the Delegation of Authority was revoked, but such copyright and database rights remain vested in the Crown. The First Crown Rights Agreement (as defined below) set out the terms under which Ordnance Survey Limited was licensed to use and re-use the Material, and the terms on which Ordnance Survey Limited would assign certain copyright and database rights to the Crown.
- F Her Majesty has now revoked the Letters Patent previously granted to HMSO, and has appointed the Keeper by Letters Patent dated 1 July 2017 to hold and administer copyright and database rights belonging to the Crown on Her behalf. This Agreement therefore makes provision for the handover from HMSO to the Keeper and replaces the First Crown Rights Agreement with effect from the Effective Date (as defined below).

Definitions and interpretation

1. The following terms have the following meanings:

Agreement:	This Crown Rights Agreement.
BEIS:	The Secretary of State for Business, Energy and Industrial Strategy or, as appropriate, any public body (including the Secretary of State for Business, Innovation and Skills) whose properties, rights, liabilities or functions are now held by the Secretary of State for Business, Energy and Industrial Strategy.
Business Transfer Agreement:	The agreement dated 31 March 2015 between Ordnance Survey Trading Fund and Ordnance Survey Limited, for the transfer of the entire business of the former to the latter.
Confidential Information:	Any information that is marked or identified as confidential, or that would reasonably be considered to be confidential in nature, that relates to the affairs of a party and is acquired by the other party in anticipation of or as a result of the Agreement.
Delegation of Authority:	The document known as the Delegation of Authority between HMSO and Ordnance Survey Trading Fund dated 18 October 2007.
Effective Date:	1 July 2017.
First Crown Rights Agreement	The Crown Rights Agreement dated 31 March 2015 between HMSO and Ordnance Survey Limited.
HMSO:	The former Controller of Her Majesty's Stationery Office, Mrs Carol Tullo, who was previously appointed by Her Majesty under Letters Patent dated 1 September 1997 and 20 August 2001 respectively to hold and administer copyright and database rights belonging to the Crown on Her behalf.
IFTS:	The Information Fair Trader Scheme which sets and assesses standards for public sector bodies licensing the use and re-use of public sector information.
The Keeper	The Keeper of Public Records, a statutory office defined under the Public Records Act 1958 who is also the Chief Executive of the entity known as The National Archives. The Keeper's functions may in practice be exercised by his staff except where the Keeper's personal involvement is specified in this Agreement.
Licensees:	Individuals or organisations licensed by Ordnance Survey Limited to use or re-use the Material.
Material:	The material identified in the Schedule.
New Material:	The material identified in Part B of the Schedule.
Ordnance Survey Trading Fund:	Has the meaning ascribed thereto in paragraph A above.
Public Task:	Ordnance Survey Limited's statement of Public Task (including the obligation to create and maintain the National Geographic

	Database) as published on the Website and as amended from time to time in accordance with the Shareholder Framework Document.
Regulations:	The Re-use of Public Sector Information Regulations 2015 (SI 2015/1415) as amended or re-enacted from time to time.
Shareholder Framework Document:	The document of the same name entered into between Ordnance Survey Limited and BEIS, which took effect on the Transfer Date, and sets out the core responsibilities of Ordnance Survey Limited, and describes the governance framework that applies between Ordnance Survey Limited and BEIS.
Term	The period from the Effective Date until expiry, termination or replacement of this Agreement.
Transfer Date:	1 April 2015, being the date on which all of the functions and assets of Ordnance Survey Trading Fund were transferred to Ordnance Survey Limited, as specified in the Business Transfer Agreement.
The National Archives:	The organisation which is the official archive and publisher for the UK government, and for England and Wales, whose principal place of business is at Kew, Richmond, Surrey TW9 4DU.
Website:	The website http://www.os.uk or such other website as determined by Ordnance Survey Limited from time to time.

2. In this Agreement, unless the context otherwise requires:
- 2.1 words in the singular include the plural and vice versa;
 - 2.2 references to:
 - a) a Clause or Schedule are to a clause or schedule of this Agreement;
 - b) a party are to a party to the Agreement; and
 - c) a statute or statutory provision including any amendment, extension or re-enactment of such statute or provision.

Replacement of First Crown Rights Agreement

3. The parties hereby acknowledge and agree that this Agreement:
- 3.1 has effect from the Effective Date;
 - 3.2 replaces and supersedes the First Crown Rights Agreement; and
 - 3.3 has no effect on the validity of the First Crown Rights Agreement, or any rights or licences granted thereunder or acts carried out pursuant thereto, prior to the Effective Date.

Assignment to the Crown

4. Ordnance Survey Limited hereby assigns to the Crown all copyright and database rights in the New Material and any amendments to the Material which are, during the Term, created by Ordnance Survey Limited (including by Ordnance Survey Limited's employees and contractors), provided, in the case of contractors, that such intellectual property has been assigned to Ordnance Survey Limited further to Clause 13.

Licence to Ordnance Survey Limited

5. Subject to Clause 6 and the other terms of this Agreement, the Keeper hereby grants to Ordnance Survey Limited an exclusive, royalty free, worldwide right to use and re-use the Crown copyright and Crown database rights in the Material, including to enable Ordnance Survey Limited to:
 - 5.1 fulfil its Public Task, including the creation and maintenance of the National Geographic Database, made up of geographic information datasets with coverage of all of Great Britain to a consistent specification; and including the development of products which can be used by customers of all types for a wide range of purposes; and
 - 5.2 grant licences pursuant to Clause 8 below.
6. For the avoidance of doubt, it is acknowledged that the exclusive nature of the above licence is to enable the provision of a service in the public interest under regulation 14(2) of the Regulations.
7. This Agreement shall not affect the terms and conditions of any existing licences (including those assigned or novated to Ordnance Survey Limited on or following the Transfer Date) that were granted by Ordnance Survey Trading Fund under the Delegation of Authority or by Ordnance Survey Limited under the First Crown Rights Agreement. The terms and conditions of such licences shall continue for the period of the relevant licence or until such licence is renewed or terminated.

Licences from Ordnance Survey Limited

8. Ordnance Survey Limited may grant to Licensees the non-exclusive right to use and / or re-use the Material (which for the avoidance of doubt, may include Ordnance Survey Limited using or re-using the Material itself for purposes outside of its Public Task).
9. Any licences granted by Ordnance Survey Limited pursuant to 5.2 or 8 above will be on the condition that such use and/or re-use is in accordance with (i) IFTS, and (ii) to the extent that they are applicable, the Regulations.
10. Ordnance Survey Limited will comply with the Regulations¹.

¹ Notwithstanding whether or not Ordnance Survey Limited falls within the definition of "public sector body" as set out in the Regulations, it will comply with the Regulations as if it did fall within such definition.

Ordnance Survey Limited obligations

11. Ordnance Survey Limited will comply with the terms of this Agreement by:
 - 11.1 including appropriate attribution statements in all its published Material and, where appropriate, details of how the Material may be used and / or re-used and how to apply for a licence;
 - 11.2 maintaining an up to date list of the Material that Ordnance Survey Limited has made available for licensing, in accordance with any guidance issued by The National Archives on producing Information Asset Lists;
 - 11.3 in relation to the Material that Ordnance Survey Limited makes available for licensing, providing details on the Website of: (i) how to apply for a licence, (ii) standard licensing terms and conditions, and (iii) price lists;
 - 11.4 responding to an application for re-use of the Material within 20 working days. In most cases responding means making an offer of a licence;
 - 11.5 maintaining membership of IFTS;
 - 11.6 requiring Licensees to identify the source of the Material they are using or re-using and its copyright or database right status and to give a clear attribution statement. One of the following attribution statements will meet most circumstances:

“© Crown copyright Ordnance Survey”
“Crown database rights Ordnance Survey”
 - Where the above statements are inappropriate, Ordnance Survey Limited may permit the use of alternative statements, which have been agreed by The National Archives and Ordnance Survey Limited from time to time;
 - 11.7 notifying the Keeper in advance of any significant new developments which are associated with or have an impact upon the Keeper's responsibilities for Crown copyright, so that the Keeper has the opportunity to comment and is able to prepare for any public response;
 - 11.8 reviewing all existing licences on a regular basis; and
 - 11.9 having a complaints procedure, details of which will be published on the Website.
12. Ordnance Survey Limited will not, without obtaining specific prior consent from the Keeper, grant exclusive or sole licences of Crown copyright or database rights in the Material. Ordnance Survey Limited acknowledges that such consent will be given only in exceptional circumstances and that the Keeper may require publication of any sole or exclusive licences on the Website.
 13. Ordnance Survey Limited will ensure that all relevant contracts between Ordnance Survey Limited and its contractors, shall assign all copyright and database rights in any amendments to the Material to Ordnance Survey Limited, where appropriate

and practicable. It is acknowledged that, pursuant to section 11(2) of the Copyright, Design and Patents Act 1988 and regulation 14(2) of the Copyright and Rights in Databases Regulations 1997, any copyright or database rights created by any of Ordnance Survey Limited's employees will vest automatically in Ordnance Survey Limited as the employer, subject to any agreement to the contrary; Ordnance Survey agrees that it will not enter into any such agreement to the contrary with any employees.

The Keeper's obligations

14. The Keeper (where appropriate via The National Archives) will provide Ordnance Survey Limited with guidance, advice and support to assist Ordnance Survey Limited to comply with this Agreement, IFTS and the relevant terms of the Regulations.

Charging Policy

15. All fees and charges in relation to the Material that is available for licensing will be set by Ordnance Survey Limited in accordance with IFTS and, subject to Clause 9 above, with relevant terms of the Regulations.
16. Ordnance Survey Limited will continue to set, review and publish prices in accordance with the terms of this Agreement.

The Information Fair Trader Scheme (IFTS)

17. The National Archives is responsible for monitoring licensing activities through the IFTS. It is a condition of this Agreement that Ordnance Survey Limited remains accredited to the IFTS and complies with the IFTS principles in relation to the Material that is available for licensing. Ordnance Survey Limited acknowledges that this will require IFTS assessment of Ordnance Survey Limited by The National Archives periodically.

Infringements

18. Ordnance Survey Limited will advise the Keeper in advance when an actionable infringement is identified where Ordnance Survey Limited intends to commence litigation. Each infringement case shall be considered individually in order to establish in whose name action will be initiated.
19. The parties agree that the Keeper will determine in whose name an action will be initiated, although in the event that the Keeper does not wish to be joined or where the Keeper does not consider that legal action is necessary or appropriate, Ordnance Survey Limited will be entitled to commence litigation in its own name where this is solely to protect the commercial rights of Ordnance Survey Limited. The Keeper shall bear the costs of obtaining any legal advice that is required by the Keeper, but all other costs of the action will be the responsibility of Ordnance Survey Limited unless the Keeper agrees otherwise. Ordnance Survey Limited will keep the Keeper informed of the progress of any litigation where the Keeper is not joined.

Variation

20. No variation to this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by the parties.

Termination

21. The Keeper may terminate this Agreement if Ordnance Survey Limited breaches this Agreement to the extent that The National Archives are unable to accredit Ordnance Survey Limited to the IFTS (a **Material Breach**). The Keeper shall not terminate this Agreement for such a Material Breach unless such breach is either incapable of being remedied or is not remedied within 6 months of a written request to do so, informing Ordnance Survey Limited that failure to remedy will lead to a termination.
22. The Keeper may terminate this Agreement in the event that Ordnance Survey Limited ceases to be wholly owned by Government.
23. Any licence properly issued by Ordnance Survey Limited prior to termination will remain in force until it expires or is terminated.

Events outside a party's control

24. Neither party will be responsible for any delay or failure in carrying out obligations under the Agreement if the delay or failure is caused by circumstances beyond the reasonable control of the affected party. In such circumstances the affected party will notify the other of any such likelihood as soon as possible. The affected party shall be allowed a reasonable extension of time to carry out its obligations in these circumstances.

Confidentiality

25. The parties agree:
 - 25.1 to use Confidential Information of the other only for the purposes of discussions between the parties relating to their business relationship, and for performing obligations and exercising rights granted under the Agreement;
 - 25.2 to keep all Confidential Information secure, and to disclose it only to those employees, consultants, directors and professional advisers who need to know such Confidential Information and who are subject to at least the same obligations of confidentiality as those set out in this Clause;
 - 25.3 to notify the other without delay of any unauthorised use, copying or disclosure of the other's Confidential Information of which it becomes aware and provide all reasonable assistance to the other to stop such unauthorised use, copying and/or disclosure; and
 - 25.4 except as required by law or by governmental or regulatory requirements (which, for the avoidance of doubt, shall include any requirements for disclosure under information access legislation), not to disclose Confidential

Information to any third parties unless expressly permitted under this Clause or with the other's prior written consent.

26. The obligations in Clause 25 do not apply to any information which is in the public domain (other than through the breach of any obligation of confidentiality) or which a party can demonstrate was previously known to it (unless acquired directly from the other party or in breach of any obligation of confidentiality) or was independently developed by it without the use of any Confidential Information.

Assignment, subcontracting and sublicensing

27. Neither party may assign, subcontract or sub-license their rights and obligations under the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

Entire agreement

28. This Agreement and any documents referred to in it constitute the entire agreement and understanding between the parties concerning its subject matter.


Contracts (Rights of Third Parties) Act 1999

29. A person who is not a party to the Agreement has no right under the *Contracts (Rights of Third Parties) Act 1999* to enforce or enjoy the benefit of any term of the Agreement.


Jurisdiction and Governing Law

30. The parties agree to use all reasonable endeavours to settle any disputes by discussion between them.
31. This Agreement shall be governed by and construed in accordance with the law of England and Wales, and both parties submit to the exclusive jurisdiction of the English courts.


Signed by the Keeper of Public Records:

.....  Date: 11 August 2017

Name in capital letters: 

Signed by:  Date: 24 August 2017

Name in capital letters: 

Job Title: 

for and on behalf of Ordnance Survey Limited

SCHEDULE

The Crown copyright and Crown database right Material covered by this Agreement

The Material includes:

- the Existing Material (as set out in Part A below);
- the New Material (as described in Part B below); and
- any amendments to any Material assigned to the Crown by Ordnance Survey Limited further to Clause 4.

To avoid any doubt:

- in relation to products and datasets which have been commissioned by Ordnance Survey Limited, these will only be included in the definition of Material to the extent that the copyright and/or database right has been assigned to Ordnance Survey Limited further to Clause 13;
- to the extent that intellectual property rights in any Material are owned by a party other than the Crown, such rights are outside the scope of this Agreement, save for Clause 4; and
- this Agreement, the IFTS and the relevant terms of the Regulations will only apply to copyright and database rights in the Material, and will not apply to:
 - any other type of intellectual property right created by Ordnance Survey Limited (or by employees and contractors of Ordnance Survey Limited), including but not limited to Trade Marks, device marks, Registered Community Designs and Patents; or
 - copyright or database rights in any materials (including software code and domain names) other than those specifically falling within the definition of Material.

Part A - Existing Material

All of the following, as at the date of the first Crown Rights Agreement:

- National Geographic Database datasets;
- products currently produced from the datasets (including all current premium datasets and OS OpenData, and including all symbols); and

- any past products which Ordnance Survey Limited continues to hold (even if in unmaintained format) which were covered by the Delegation of Authority.

Part B - New Material

Unless otherwise agreed on a case-specific basis, New Material will comprise:

- new datasets and/or products created on or after the Transfer Date which are listed in the Annex to the Public Task from time to time; and / or
- new datasets / products created on or after the Transfer Date which are not listed in the Annex to the Public Task from time to time, to the extent they are created using the Materials. For the avoidance of doubt, such datasets / products may comprise elements of Crown intellectual property rights and Ordnance Survey Limited intellectual property rights where the products are not created wholly from the Materials.

Illustrative examples

The following six scenarios are provided for illustrative purposes:

1. With the exception of third party intellectual property rights (e.g. Royal Mail intellectual property rights) all existing and past Ordnance Survey products and datasets fall within the description of Existing Material, are Crown copyright and Crown database rights and are therefore covered by this Agreement. By way of specific example, this includes OS MasterMap Topography Layer.
2. Copyright and database rights in all amendments made by Ordnance Survey Limited to the Materials are assigned to the Crown pursuant to Clause 3 of this Agreement. By way of specific example, this includes amendments made by Ordnance Survey Limited to OS MasterMap Topography Layer.
3. New products and datasets which are listed in the Public Task will be Crown copyright and database rights and covered by this Agreement (see first bullet point under Part B above) from the date of their inclusion in the Public Task (although unless otherwise agreed, such materials will be covered by this Agreement to the extent they have been created using the Material (see examples 4 to 6 below)).

4. New products and datasets which are not listed in the Public Task, but created solely using Material will be Crown copyright and database rights and covered by this Agreement (see second bullet point under Part B above).
5. New products and datasets, which are not listed in the Public Task, and created partly using Material will be mixed Crown and Ordnance Survey Limited copyright and database right, and will be covered by this Agreement to the extent of Crown copyright and database used in the creation (see second bullet point under Part B above).
6. New products and datasets, which are not listed in the Public Task, and not created using the Material will be Ordnance Survey Limited owned copyright and database right and not covered by this Agreement.