

Draft - Example

[DN: Please note these terms are intended to be between the public sector end users and the supplier, and not between the contracting authority and the supplier]

Example Aerial Photography and Height Data Licensing Agreement

This Agreement is made between:

- (1) The *Contractor* (pending contract award). [Insert Company Name, Company Registration Number, Company Address]; and
- (2) Licensee (**Licensee**) [Insert Public Sector Organisation Name, Address].

Whereas:

- A The *Contractor* has entered into an agreement (the Agreement) with the *Cabinet Office* in connection with the licensing of data and supply of services to the public sector in England, and Wales, and Scotland.
- B The Licensee is a public sector body and, under the terms of the Agreement, is entitled to receive the data from the *Contractor* on the terms of this Licence.
- C This Licence sets out the terms on which the Licensee may use the Datasets provided by the *Contractor*.

Agreed Terms:

1 Definitions & interpretations

The Agreement	has the meaning ascribed thereto in Recital (A) at the front of this Licence.
Ancillary Rights	means the rights set out in Clauses 2.4, 2.7 and 8.4.1 c).
Cabinet Office	has the meaning ascribed thereto in Recital (A) at the front of this Licence.
Commencement Date	means the later of: <ol style="list-style-type: none">a) the date on which the Licensee:<ol style="list-style-type: none">i) first receives a signed hard copy of the Licensee's validly completed Member Licence Acceptance Form; orii) confirms receipt of the Licensee's validly completed on-line Member Licence Acceptance Form (where the Licensee completes such form via any on-line acceptance system operated by the Licensee); andb) XXXX
Competing Activity	has the meaning given to such term in Appendix 1.
Confidential Information	means 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 this Licence.

Draft - Example

Contractor	means any contractor engaged by the Licensee or tendering to provide goods or services to the Licensee in connection with Licensed Data.
Contractor Licence	means a formal written agreement entered into between the Licensee and a Contractor in accordance with Clause 2.7.
Data	means any text, graphic, image, audio and/or visual material, software, data, database content or other multimedia content, information and material.
Dataset	means any one of the products in digital form listed in Part A of Appendix 2.
Disclosure Requests	means requests for information relating to this Licence pursuant to FOIA or the Environmental Information Regulations.
Eligible Body	means a Public Body excluding the Excluded Bodies.
End Users	means Public Sector End Users, INSPIRE End Users, INSPIRE Relevant Body End Users and Public Sector Innovation End Users.
Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.
Excluded Bodies	means: <ul style="list-style-type: none">a) any body whose geographic remit is wholly or mainly in Northern Ireland,b) save where Cabinet Office and the Licensee otherwise agree, any public or private limited company (including whether limited by shares or guarantee),c) any Private Registered Provider of Social Housing, which shall have the meaning ascribed thereto in section 80 of the <i>Housing and Regeneration Act 2008</i>, andd) any other body as may be agreed by the Licensee and Cabinet Office from time to time.
Feature	means any feature represented in a Height Dataset, including without limitation any pixel of imagery or height data, line, polygon, symbol or text.
Height Data Feature Attribution	means the height characteristics associated with a Feature in the Height Datasets.
FOIA	means the <i>Freedom of Information Act 2000</i> , the <i>Freedom of Information (Scotland) Act 2002</i> and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioners in relation to such legislation.
Free to Use Data	means Data created by the Licensee: <ul style="list-style-type: none">a) using an Imagery Product or Height Product as a source to infer the position of the Data the Licensee creates; orb) which copies in part a Feature (copying in part meaning where the Data created partially coincides with a Feature in the source Imagery Product or Height Product), in each case provided that the Data: <ul style="list-style-type: none">i) does not copy a Feature in whole, and does not copy a Feature Attribution in whole or in part;ii) does not represent a Feature or Feature Attribution in the source Imagery Product or Height Product Dataset;

Draft - Example

iii) is not a substitute for a Feature or Feature Attribution in the source Imagery Product or Height Product; and

iv) can be used independently of the Supplier Data,

and in each case only to the extent that the Data created incorporates IPR owned by the Supplier. For information purposes only, examples of Free to Use Data are published on the Supplier's Website.

Infrastructure Body

means:

a) a body which falls within the definition of 'utility' in Regulation 2 of the *Utilities Contracts Regulations 2006* or Regulation 2 of the *Utilities Contracts (Scotland) Regulations 2006*;

b) a body which is a provider of a 'Public Electronic Communications Network' as defined in the General Conditions of Entitlement set by the Office of Communications under section 45 of the *Communications Act 2003*; or

c) any other entity as may be agreed by the Supplier and Cabinet Office from time to time as being an infrastructure body, as published on the Supplier's Website.

Independent Advisory Group

means the group to be established, and which will act, in accordance with terms of reference to be agreed between Cabinet Office and the Supplier and the Licensee, which group will, for the avoidance of doubt, include one representative from and appointed by each Party, provided that the Licensee representative shall sit in an advisory capacity only

INSPIRE End User

has the meaning ascribed thereto in Appendix 1.

INSPIRE Relevant Body End User

has the meaning ascribed thereto in Appendix 1.

IPR

means intellectual property rights, including copyright, patent, trade mark, design right, database rights, trade secrets, know how, rights of confidence and all other similar rights anywhere in the world whether or not registered and including applications for registration of any of them.

Licensed Data

means products in digital form listed in Part A of Appendix 2 as amended from time to time (and associated documentation), including, subject to Clauses 2.3 and 2.4, Data created by the Licensee using or in conjunction with Licensed Data.

Licensed Use

means the Licensee's permitted use of Licensed Data in accordance with Clause 2.2.

Login Details

means any unique login details (such as user names and passwords) as are notified to the Licensee by the Supplier from time to time, for the purpose of the Licensee accessing any on-line ordering system, including for the avoidance of doubt the login credential described in Clause 4.3.2.

Member

means any Eligible Body which has entered into a licence with the Supplier on the same terms as this Licence, and whose licence has not expired, nor been terminated or suspended.

Member Licence Acceptance Form

means the confirmation of membership in the form issued by the Supplier.

Draft - Example

Open Derived Data	means any data released by the Licensee in accordance with Clause 2.5.
Open Government Licence or OGL	means the terms set out at http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/ .
the Supplier's Data	means Data which the Supplier owns or which the Supplier licenses from a third party including, without limitation, Licensed Data.
the Supplier Licence Manager	means the Supplier's Licence Manager, who is identified in Clause 15.1.1, or as otherwise notified to the Licensee from time to time.
the Supplier's Website	means the website [insert URL] or such other website as the Supplier determines, in agreement with Cabinet Office, from time to time.
Pricing and Licensing Team	means a business unit within the Supplier organisation comprising experts in relation to the Supplier's pricing and licensing framework.
Principal Contact	means the Member's Supplier Principal Contact, as notified to the Licensee from time to time.
Public Body	means: <ul style="list-style-type: none">a) a body which falls within the definition of 'contracting authority' in Regulation 2(1) of the <i>Public Contracts Regulations 2015</i> or Regulation 2(1) of the <i>Public Contracts (Scotland) Regulations 2015</i>, excluding any Infrastructure Body; and/orb) a Council constituted pursuant to section 2 of the <i>Local Government etc. (Scotland) Act 1994</i>; and/orc) any other entity as may be agreed by the Supplier and CO from time to time as being a public body, as published on the Supplier's Website.
Public Sector Innovation Licence	has the meaning ascribed thereto in Appendix 1.
Public Sector Innovation End User	means a person entering into a Public Sector Innovation Licence with the Licensee.
Public Sector End User	has the meaning ascribed thereto in Appendix 1.
Public Sector Licensing Guidance	means the area of the Supplier's Website that provides support to the public sector community on public sector licensing, as may be amended by the Supplier from time to time.
Specification	means, subject to any exceptions set out in Schedule X to the Contract, the specification of any Licensed Data made available via the Supplier Website as may be updated from time to time in accordance with the Contract.
Standard Form Contractor Licence	means the suggested form of Contractor Licence available on the the Supplier Website and applicable to this Licence.
Style Guide	means the then current version of the style guide available on the the Supplier Website including electronic artwork and requirements as to the use of acknowledgements of copyright and database right ownership.
Term	means the period between the Commencement Date and the expiry or earlier termination of the Contract, subject to earlier termination of this Licence.

Draft - Example

Imagery Product	means any of the Supplier Imagery Data licensed by the Licensee. excluding any IPR in such Supplier Data which the Supplier licenses from a third party.
Height Product	means any of the Supplier Height Data licensed by the Licensee: excluding any IPR in such Supplier Data which the Supplier licenses from a third party.
Trade Mark	means the trade marks (both registered and unregistered) of the Supplier, specified in Part A of Appendix 2 of this Licence and/or the Style Guide.
Updates	means updates, revisions and modifications to Licensed Data that the Supplier may provide (or provide access to) from time to time.
WMS	means the serving of Imagery Product or Height Product to Licensees via Web Mapping Services (for raster datasets)
WFS	means the serving of Height Product to Licensees via Web Feature Services (for Vector datasets).
Working Day	means any day other than a Saturday, Sunday, public holiday in England or Wales.

1.1 In this Licence, unless the context otherwise requires:

1.1.1 words in the singular include the plural and vice versa;

1.1.2 references to: a) a Clause or Appendix are to a clause or appendix of this Licence; b) a party are to a party to this Licence; and c) a statute or statutory provision include any amendment, extension or re-enactment of such statute or provision.

2 Grant of licence

2.1 Licence

2.1.1 This Licence shall come into force on the Commencement Date. In consideration for the mutual covenants and obligations in this Licence and the payment and licensing obligations between the Supplier and Cabinet Office in the contract together with the payment of £1 by the Licensee to the Supplier (receipt of which is hereby acknowledged), the Supplier grants the Licensee a non-exclusive, non-transferable, licence for Licensed Data for the Term solely for and to the extent permitted by:

- a) the Licensed Use; and
- b) the Ancillary Rights.

2.1.2 The Licensee may not use Licensed Data in any way or for any purpose other than as set out in this Clause 2.

2.1.3 Apart from the Licensee, no person, firm, or organisation (including without limitation any group company or affiliate) is granted any rights under this Licence.

2.1.4 This Licence does not give the Licensee any right to sublicense, distribute, sell or otherwise make Licensed Data available to third parties other than as permitted by the Licensee's Licensed Use and Ancillary Rights.

2.2 Licensed Use

The Licensee's Licensed Use shall be the use in accordance with Appendix 1.

2.3 Licensee's Data

2.3.1 Where the Licensee creates Data using or in conjunction with Licensed Data and such Data:

Draft - Example

- a) does not incorporate or infringe any IPR in the Licensed Data; and
- b) can be used independently of the Licensed Data;

such Data shall not be subject to the terms of this Licence. Examples of Data that this Clause applies to may be found in the Public Sector Licensing Guidance.

2.4 Free to Use Data

- 2.4.1 Subject to Clauses 2.4.2 to 2.4.5, the Supplier grants the Licensee a non-exclusive, royalty-free, perpetual licence to use and sub-license IPR in Free to Use Data that are owned by the Supplier.
- 2.4.2 Notwithstanding anything within this Licence to the contrary, the Licensee's use of the Free to Use Data shall not be subject to the terms of this Licence other than the terms contained in this Clause 2.4.
- 2.4.3 The licence granted in Clause 2.4.1 shall entitle neither the Licensee nor the Licensee's sub-licensees to (and the Licensee shall procure that no sub-licensee shall) re-create, reproduce or represent any pixel in any Imagery Product or Feature Attribution or any Feature in any Height Product (or any substitution of such Feature Attribution or Feature).
- 2.4.4 The Licensee must acknowledge the copyright and the source of the Free to Use Data by including the following attribution statement:

[Insert supplier copyright attribution]

The Licensee shall include the same acknowledgement requirement in any sub-licences of the Free to Use Data that it grants, and a requirement that any further sub-licences do the same.
- 2.4.5 Where the Licensee is in doubt as to whether or not something constitutes Free to Use Data, the Licensee shall contact the Supplier for guidance.

2.5 Open Release of Derived Data

- 2.5.1 In order to support the Government's Transparency Agenda, the Supplier agrees that the Licensee may openly release certain Data derived by the Licensee from Licensed Data (for the purposes of this Clause 2.5 and 2.6, 'Derived Data') provided that such release meets the following conditions:
 - a) the Derived Data has been created in order to deliver the Licensee's Core Business, and its release does not constitute a Competing Activity or Commercial Activity;
 - b) whilst the Derived Data may incorporate IPR in the Licensed Data by copying pixels from the Imagery Product or Features and/or Feature Attribution from the Height Product in part or whole, the Derived Data shall not include a substantial quantity of Imagery Product pixels or Height Product Features or Feature Attribution from the Licensed Data used to create it;
 - c) the Derived Data is released independently of the Licensed Data used to create it or any other Licensed Data (for example, the Derived Data must not be released with Licensed Data as a contextual backdrop);
 - d) the Derived Data is openly released on the terms of the OGL and published via data.gov.uk; and
 - e) the Licensee notifies the Supplier of such release in the manner described in the Public Sector Licensing Guidance.
- 2.5.2 In relation to Clause 2.5.1 b), in considering the meaning of 'substantial quantity', the following factors may be relevant:

Draft - Example

- a) the total quantity of the relevant Features or Feature Attribution in the underlying Licensed Data, by reference to Great Britain as a whole or any of England, Scotland or Wales, and
- b) whether the Derived Data is capable of forming part of a series of connected datasets, whether created by the Licensee or other agreement Members, using Licensed Data.

Examples of Derived Datasets that include (and do not include) a substantial quantity of Features or Feature Attribution may be found in the Public Sector Licensing Guidance.

2.5.3 NOT USED

2.5.4 Where the Licensee is in doubt as to whether or not the provisions of Clause 2.5.1 will apply to the release of any Derived Data, the Licensee shall contact the Supplier for guidance.

2.5.5 In the event that the Supplier considers that the provisions of Clause 2.5.1 have not been met in relation to particular Derived Data, and/or in the reasonable opinion of the Supplier the release may constitute a Competing Activity, the Supplier may require the Licensee not to release the Derived Data under this Clause 2.5, or to cease any such release with immediate effect.

2.5.6 In the event that the Supplier considers that the provisions of Clause 2.5.1 have not been met in relation to particular Derived Data or the Licensee does not agree with (i) guidance provided under Clause 2.5.4 or (ii) the Supplier requesting the Derived Data not be released under Clause 2.5.5, either party may notify the other in writing that it intends to refer the matter to the Independent Advisory Group and the parties shall then discuss how to resolve the matter. Where a resolution cannot be agreed within 20 Working Days of notification or, in cases where the Licensee refuses to cease release under Clause 2.5.5, immediately, either the Supplier or the Licensee may then refer the matter to the Independent Advisory Group for review and recommendation, and the relevant provisions of Clause 2.6.2 c) will apply.

2.6 Exemptions Process

2.6.1 Where none of Clauses 2.3, 2.4 or 2.5 applies, and where the Licensee considers it is unable to achieve its objectives in accordance with its Licensed Use under Appendix 1, the Licensee may request that Derived Data be licensed on the terms of the OGL or as if it were Free to Use Data. Each request must:

- a) be made in writing and delivered to the Supplier by email to [email address] or in writing to [address] in each case marked 'Derived Data Exemption Request';
- c) be made in the manner described in the Public Sector Licensing Guidance, and shall include:
 - i) the name of the relevant Licensed Data product from which the Derived Data has been produced;
 - ii) the area of coverage of the Derived Data and of the relevant Licensed Data product from which the Derived Data has been produced;
 - iii) a representative sample of the Derived Data in question, in an industry standard format as is reasonably specified by the Supplier from time to time; and

Draft - Example

- iv) a detailed description, to the Supplier's reasonable satisfaction, of the precise purpose for which the Derived Data has been and is expected to be used, and by whom.

2.6.2 Where the Licensee's request complies with the conditions set out at Clause 2.6.1 a) and b) above (a 'Compliant Request'), the Supplier shall determine whether or not to approve the request in accordance with the process set out below.

- a) Where there is clear precedent the Supplier shall inform the Licensee as to whether it has approved (either with or without conditions) or declined the request within 15 Working Days. The Licensee may appeal the decision in writing (detailing its reasons) within 15 Working Days of receipt of the decision.
- b) Where there is not clear precedent, or where an appeal is made in accordance with Clause 2.6.2 a), the Supplier will refer the request to its Managing Directors. Following such consideration, and within 20 Working Days of receiving a Compliant Request or an appeal pursuant to Clause 2.6.2 a), the Supplier shall inform the Licensee that it has either:
 - i) approved (either with or without conditions) the request, or
 - ii) declined the request.

The Licensee shall be entitled, within 20 Working Days of being informed of the above decision, to inform the Supplier that it wishes to appeal the decision, in which case the Supplier shall, within 5 Working Days, refer the Compliant Request to the Independent Advisory Group for consideration.

- c) Within 20 Working Days of receiving a Compliant Request further to Clause 2.6.2 b) ii), or a referral under Clause 2.5.6, the Independent Advisory Group shall make a written recommendation as to (i) whether, in relation a referral further to Clause 2.6.2 b) ii), the request should be approved (either with or without conditions) or declined, or (ii) the issue referred to it under Clause 2.5.6, in each case containing details justifying such recommendation, to the Supplier's Chief Executives.
- d) Within 20 Working Days of receiving a recommendation pursuant to Clause 2.6.2 c) above, the Supplier's Chief Executives shall, having given due consideration to such recommendation, decide in their absolute discretion whether to approve (either with or without conditions) or decline the request, and inform the Licensee of the decision. The Licensee acknowledges and agrees that the Supplier Chief Executives shall have sole discretion in relation to the decision under this Clause 2.6.2 d), which shall not be subject to the Dispute Resolution Procedure set out in Clause 18.
- e) Where, at the relevant stage in the process set out in Clause 2.6.2 a) to d) above, the Supplier or the Independent Advisory Group reasonably considers that it requires further information in relation to the request (or an appeal pursuant to Clause 2.6.2 a) or 2.5.5), the Supplier shall forthwith request (whether on its own behalf or on behalf of the Independent Advisory Group) such further information in writing from the Licensee (a 'Further Information Request'), and the relevant timescale shall be extended by the period of time commencing on the date of the Further Information Request and ending on the date of receipt by the Supplier of the further information requested.

2.7 Contractor Use

Draft - Example

- 2.7.1 The Licensee may permit its Contractors, for the purposes of providing, or tendering to provide, the Licensee with goods or services, to use Licensed Data for the Licensee's Licensed Use (and/or to use the Licensee's Login Details for the purpose of accessing the Licensed Data via any on-line ordering system), provided that the Licensee ensures, in a Contractor Licence that:
- a) the applicable restrictions included in this Licence are applied to the Contractor;
 - b) any applicable rights reserved in this Licence in relation to Licensed Data for the benefit of the Licensee are reserved;
 - c) any applicable obligations imposed on the Licensee in this Licence are imposed on the Contractor;
 - d) save as provided in this Licence, any right for the Contractor to use Licensed Data shall terminate automatically on termination or expiry of this Licence;
 - e) the Supplier shall have no liability to any Contractor in respect of Licensed Data or this Licence; and
 - f) the Supplier has rights to enforce directly the terms of the agreement between the Licensee and the Contractor pursuant to the *Contracts (Rights of Third Parties) Act 1999*.
- 2.7.2 Subject to provisions equivalent to Clauses 8.4.1 c), 8.4.2 and 8.4.3, the Licensee may permit its Contractors to retain Licensed Data in an archive for the sole purpose described in Clause 8.4.1 c).
- 2.7.3 The Standard Form Contractor Licence fulfils the requirements of Clauses 2.7.1 and 2.7.2. Where the Licensee ensures that the Contractor executes a licence in such form before the Contractor has access to any Licensed Data (and the Licensee maintains it in force), the Licensee will be deemed to have complied with Clause 2.7.1.
- 2.7.4 The Licensee may grant its Contractors the right to supply and receive copies of the Licensed Data in a digital form to and from its other Contractors provided that:
- a) both Contractors are licensed by the Licensee for the Licensed Data being supplied and/or received;
 - b) the goods or services which each Contractor is providing, or tendering to provide to the Licensee shall each form part of a larger project or related series of works required by the Licensee;
 - c) each Contractor uses copies of Licensed Data supplied by another Contractor solely for the purpose of providing or tendering to provide goods or services to the Licensee as part of the Licensee's Licensed Use;
 - d) the use by a Contractor of Licensed Data supplied by another Contractor shall be governed by its Contractor Licence with the Licensee;
 - e) a Contractor shall not receive any direct or indirect payment, credit or money's worth for the supply of the Licensed Data to another Contractor; and
 - f) a Contractor shall, prior to supplying any Licensed Data to another Contractor, obtain the Licensee's written confirmation that i) the other Contractor is licensed by the Licensee for the Licensed Data being supplied, and ii) the goods or services which each Contractor is providing, or tendering to provide, to the Licensee each forms part of a larger project or related series of works required by the Licensee.

Draft - Example

- 2.7.5 The Licensee may provide Licensed Data in paper form only (referred to in this Clause 2.7 as **Paper Copies**) to a Contractor, without the requirement to enter into a Contractor Licence with such Contractor, provided that the Licensee ensures that:
- a) the Contractor uses the Paper Copies solely for the purposes of providing, or tendering to provide, the Licensee with goods or services for the Licensee's Licensed Use;
 - b) the Paper Copies only cover an area that is proportionate to the goods or services that the Contractor is engaged to provide;
 - c) subject to Clause 2.7.6, the Contractor is not permitted to and shall not copy, sub-license, distribute, sell or otherwise make available the Paper Copies to third parties in any form;
 - d) the Contractor destroys or returns to the Licensee all such Paper Copies immediately upon i) its completion of the tender or provision of goods or services referred to in Clause 2.7.5 a) or ii) expiry or termination of this Licence, whichever is the sooner, and provides, at the Licensee's request, a sworn statement by a duly authorised person that it no longer holds any such Paper Copies;
- e) neither the Licensee nor the Contractor shall receive any direct or indirect payment, credit or money's worth for the supply of Paper Copies; and
- f) the Paper Copies are clearly marked in accordance with Clause 5.1 and contain a statement stipulating that the Contractor is permitted to use the Paper Copies solely for the purpose of assisting it with the delivery to the Licensee of the goods or services it is engaged to provide.
- 2.7.6 The Licensee shall be entitled to permit its Contractor to supply Paper Copies to any third party provided that the Contractor ensures that:
- a) such third party is engaged to provide:
 - i) all or part of the works that the Contractor is engaged to provide to the Licensee (referred to in this Clause 2.7.6 as the **Works**);
 - ii) part of a larger project (which also includes the Works); or
 - iii) works which, together with the Works, are part of a series of works required by the Licensee,and uses the Paper Copies solely for the purpose of providing i), ii) or iii) above to the Licensee for the Licensee's Licensed Use;
 - b) such third party agrees to comply with terms no less onerous than those set out in Clause 2.7.5 b) to f) with respect to its use of Paper Copies under paragraph a) above. For the purposes of this Clause, references in Clause 2.7.5 b) to f) to:
 - i) **Licensee** shall mean 'Licensee's Contractor';
 - ii) **Contractor** shall mean the third party to whom Paper Copies are supplied under this Clause; and
 - iii) **Licence** shall mean the Contractor Licence.
- 2.7.7 The Licensee shall be jointly and severally liable with any third party to whom the Licensee is entitled to disclose Licensed Data under this Licence, including, without limitation, any Contractor, for the act or omission of that third party and the Supplier shall enforce the terms of any relevant agreement, including, without limitation, any Contractor Licence, up to and including obtaining judgment in court and taking such other action as the Supplier may request in respect of any breach.

Draft - Example

3 Perpetual Rights

3.1 Licensee's will have perpetual rights to all of the Imagery Products and Heights Products providing that on the expiry date of the contract they:

Have continuously held a Member License for longer than one year before contract expiry.

3.2 Perpetual Rights will be provided for all the data sets.

3.3 For the purposes of clarity, perpetual rights will not be provided to the following services

WMS and WFS services beyond the expiry of this agreement.

3.4 The Licensee recognises that all of the restrictions on usage contained in this Member License (including but not limited to business use, Public Sector Use, release of derived data, Contractor Licenses, INSPIRE End Users and Innovation Licenses) shall continue in force in perpetuity beyond 31st March 2020.

4 Licensee's obligations

4.1 The Licensee shall:

4.1.1 not use Licensed Data for any illegal, deceptive, misleading or unethical purpose or otherwise in any manner which may be detrimental to the reputation of Licensed Data or any person;

4.1.2 use its best endeavours to use adequate technological and security measures, including measures the Supplier may reasonably recommend from time to time, to ensure that all Licensed Data and Login Details which the Supplier provides to the Licensee and/or which the Licensee holds or is responsible for are secure from unauthorised use or access; and

4.1.3 notify the Supplier as soon as the Licensee suspects any infringement of the Supplier's IPR or any unauthorised use of the Licensee's Login Details and give the Supplier all reasonably required assistance in pursuing any potential infringement or remedying any unauthorised use.

4.2 The Supplier reserves the right to charge the Licensee, and the Licensee shall pay within 30 days of receipt of invoice, a reasonable amount (to be determined in the Supplier's reasonable discretion) for data supply:

where the data is supplied further to a Member's request for a duplicate supply of data (which includes supply of data already supplied to such Member, whether in the same or a different format) on a physical medium.

4.3 Access to Licensed Data

4.3.1 The Licensee may only request delivery of Licensed Data by placing an order through the on-line ordering system as described in Clause 4.3.2, or any replacement of such systems from time to time.

Draft - Example

- 4.3.2 The Licensee's registered users will have access to an on-line ordering system. Each Licensee will nominate a 'Principal Contact' who will receive a login 'credential' (email_address/password combination). Principal Contacts will be able to administer the user community for their organisation, including adding, blocking, unblocking and deleting individual user accounts and the assignment of rights. In addition to registered users from within a Licensee's own organisation, each Licensee will be entitled to nominate one email address from outside of the Licensee's organisation to receive electronic delivery of data via the on-line ordering system, provided that such email address is the email address of a third party which has been appointed as a Contractor under Clause 2.7 of this Licence.
- 4.3.3 the Supplier shall be entitled to assume that where the on-line ordering system or a WMS or WFS feed is accessed using the Licensee's Login Details, such access is authorised by the Licensee.
- 4.3.4 The Licensee may request delivery of Licensed Data via the options made available to the Licensee at the point of order, subject to the following restriction:
- a) Licensed Data may be delivered on hard disk where the size of the order is greater than 50GB.
- 4.3.5 the Supplier cannot be held responsible for any postal service delays in delivering any physical media.
- 4.4 If the Licensee has also entered into a License with the Supplier to provide the Imagery Products and Height Products in whole or in part via WMS and/or WFS, then all obligations and restrictions on the Licensee set out in this License shall also apply to the use of WMS and/or WFS services.

5 Trade Marks and rights acknowledgement

- 5.1 The Licensee must ensure that acknowledgements of copyright and database right ownership are included in copies of Licensed Data in the manner described in the Public Sector Licensing Guidance.
- 5.2 The Licensee may not use any Trade Marks except where it wishes to acknowledge the Supplier or particular Licensed Data when exercising Public Sector Use rights under Appendix 1.
- 5.3 The Licensee has no right to sub-license the right to use Trade Marks.
- 5.4 If the Licensee is entitled to use a Trade Mark, it shall apply it in accordance with the Style Guide.
- 5.5 The Licensee will not tamper with or remove any Trade Mark symbols or notices.

6 Variation

- 6.1 Subject to Clause 6.2, no variation or purported variation of any provision of this Licence shall be effective unless it is in writing, refers specifically to this Licence and is duly executed by each party.
- 6.2 The Supplier shall be entitled at any time to amend this Licence where such amendments have been agreed between the Supplier and Cabinet Office or where the Supplier has given Cabinet Office notice of any such amendments in accordance with the contract. All such amendments shall become incorporated into this Licence on the date which the Supplier shall specify in a written notice to the Licensee.

Draft - Example

6.3 Any amendments which may be made to the form of the Contractor Licence or the Public Sector End User Licence or Public Sector End User Licence – INSPIRE Relevant Body or the Public Sector Innovation Licence shall be incorporated by the Licensee without delay into any Contractor Licence or Public Sector End User Licence or Public Sector End User Licence – INSPIRE Relevant Body or Public Sector Innovation Licence executed by the Licensee’s Contractors and end users and shall be enforced by the Licensee.

7 **Auditing**

7.1 The Licensee shall provide evidence of compliance with its obligations under this Licence, if so requested by the Supplier.

7.2 Subject to any express contrary provision in Appendix 1, the Licensee will maintain accurate and complete records of its Licensed Use and, in particular, those instances where Licensed Data is provided to a third party as permitted by the Licensee’s Licensed Use (such records to include the names and addresses of such third parties, the Licensed Data supplied and the date of each such supply). the Supplier and/or its representatives have the right on reasonable notice during business hours to enter the Licensee’s premises to inspect and audit the Licensee’s systems, operations and all supporting documentation to ensure the Licensee’s compliance with this Licence and to take copies of any necessary records. The Licensee shall, at its expense, make appropriate employees and facilities available to provide the Supplier with all reasonable assistance to enable such inspection, auditing and copying to take place.

7.3 The Licensee will comply with reasonable measures stipulated by the Supplier as a result of any audit.

8 **Suspension, termination and expiry**

8.1 Suspension

8.1.1 In the event the Licensee is in breach of this Licence, the Supplier may on notice to the Licensee with immediate effect suspend:

- a) the Licensee’s Login Details and access to any on-line or other ordering service and WMS/WFS feeds which may be made available by the Supplier from time to time for the purpose of providing access to Licensed Data;
- b) the provision and licensing of Updates;
- c) any resupply of Licensed Data; and/or
- d) the Licensee’s access to any other services provided by the Supplier under or in relation to this Licence or the Contract,
in each case until such breach has been remedied to the satisfaction of the Supplier. This right is without prejudice to any other rights the Supplier has under this Licence or at law.

8.2 General termination rights

The Supplier may terminate this Licence with immediate effect by giving the Licensee notice in writing in the event that:

- 8.2.1 the Licensee is in material breach of any term of this Licence (which, for the avoidance of doubt, shall include the Licensee’s failure to comply with paragraph 14.3 of Appendix 1) and such breach is either incapable of being remedied or is not remedied within 30 days of a written request to do so;
- 8.2.2 the Licensee is in persistent breach of this Licence;
- 8.2.3 the Licensee ceases to carry on business or to be an Eligible Body;

Draft - Example

- 8.2.4 the Licensee discloses Confidential Information of the Supplier or uses or authorises use of the Supplier's IPR (or IPR licensed by the Supplier) outside the scope permitted by this Licence;
- 8.2.5 ; or
- 8.2.6 the Supplier's cap on liability referred to in Clause 9.3 is exceeded.
- 8.3 Automatic expiry of this Licence
- Save as set out in Clause 3, this Licence shall expire automatically without notice in the event that the Contract is terminated or expires.
- 8.4 Effects of termination or expiry of this Licence
- 8.3.1 In the event of termination or expiry of this Licence:
- a) any accrued rights and remedies will not be affected i.e. Licensed Data that has accrued Perpetual Rights as set out in Clause 3;
 - b) the Licensee shall within 30 days of such termination or expiry destroy (or at the Supplier's option return) all Licensed Data under this Licence, in any media, which the Licensee holds or for which the Licensee is responsible (including any Licensed Data embedded in any other material) and provide, at the request of the Supplier, a sworn statement by a duly authorised person that the Licensee no longer holds any Licensed Data (or Login Details) other than in accordance with Clause 8.4.1 c);
 - c) except in the event of termination by the Supplier under any of Clauses 8.2.1 to 8.2.6 and subject to Clauses 8.4.2 and 8.4.3, the Licensee may retain Licensed Data in an archive following termination or expiry of this Licence for the sole purpose of addressing a complaint or challenge from a regulator or other third party, to comply with National Audit Office requirements or to respond to a parliamentary question (or a question in the National Assembly for Wales), in each case regarding the Licensee's use of such Licensed Data during the term of this Licence;
 - d) the Licensee shall cease to be entitled to use any Login Details in order to access the on-line ordering service or WMS/WFS feeds; and
 - e) the Licensee shall terminate any Contractor Licence or Public Sector End User Licence – INSPIRE Relevant Body or Public Sector Innovation Licence with immediate effect (except in the case of Licensed Data that has earned Perpetual Rights status as set out in Clause 3).
- 8.3.2 The Licensee's rights under Clause 8.4.1 c) are on condition that:
- a) the Licensee shall not disclose Licensed Data retained under Clause 8.4.1 c) to any regulator or other third party except to the extent necessary for the relevant purpose and in paper or read-only electronic format only;
 - b) the Licensee must store such Licensed Data separately from any other the Supplier Data which the Licensee holds; and
 - c) subject to Clause 9.1, the Supplier shall have no liability in respect of the Licensee's use of such Licensed Data following termination or expiry of this Licence.
- 8.3.3 the Supplier may terminate the Licensee's right under Clause 8.4.1 c) at any time in the event that:
- a) the Licensee uses or disclose the relevant Licensed Data other than strictly in accordance with Clause 8.4.1 c);
 - d) the Licensee breaches any surviving term of this Licence; and
 - e) one of the events in Clauses 8.2.3 to 8.2.5 occurs,

Draft - Example

in which event the Licensee shall comply with an obligation equivalent to Clause 8.4.1 b) in respect of such Licensed Data.

8.3.4 The provisions of this Licence intended to survive termination or expiry, including without limitation, Clauses 1, 2.4, 2.7.7, 3, 4.1, 6.2, 7, 8.4, 9, 11, 12.2, 13, 14, 16, 17 and 18 shall continue in full force and effect, notwithstanding such termination or expiry.

9 Liabilities

9.1 Nothing in this Licence shall exclude or limit either party's liability for:

9.1.1 death or personal injury to the extent it results from its negligence, or that of its employees or agents; or

9.1.2 fraud or fraudulent misrepresentation.

9.2 Neither party will be liable to the other in contract, tort (including negligence) or otherwise for any loss of profits, loss of business or loss of contracts or for any special, indirect or consequential losses or damages, provided that neither this Clause 9.2 nor any other provision of this Licence shall:

a) prevent the Supplier from recovering from the Licensee i) all amounts lawfully due in respect of all infringements and breaches of IPR by the Licensee, and/or ii) all liabilities, damages, penalties, costs, expenses or other loss suffered or incurred by the Supplier in relation to any breach by the Licensee of competition law to the extent such loss results from the Licensee's breach of paragraph 14 of Appendix 1,

b) prevent either party recovering from the other in respect of breaches of the other party's Confidential Information, or

c) limit the amount the Supplier is entitled to recover under Clause 9.6.

9.3 Subject to Clauses 9.1 and 9.2, where a claim arises under or in connection with the terms of this Licence, the total and aggregate liability of each party for all claims made (whether in contract, tort (including negligence) or otherwise) during the Term under or in connection with this Licence will not at any time exceed XXXXX.

9.4 The Supplier excludes to the fullest extent permissible by law all warranties, conditions, representations or terms, whether implied by, or expressed in, common law or statute including, but not limited to, any regarding the accuracy, compatibility, fitness for purpose, performance, satisfactory quality or use of the Licensed Data.

9.5 The Licensee is responsible for all use of Licensed Data obtained using the Licensee's Login Details.

9.6 Subject to Clause 9.1, the Supplier shall have no liability in respect of the Licensee's or any of the Licensee's sub-licensees' use of Free to Use Data or Open Derived Data and the Licensee will indemnify the Supplier and keep the Supplier indemnified from and against all costs, expenses, damages, losses or liabilities incurred or suffered by the Supplier arising out of any third party dispute or claim in connection with the Free to Use Data or Open Derived Data (including, without limitation, and product liability claim).

10 Events outside a party's control

Save for any obligation to make payment, neither party will be responsible for any delay or failure in carrying out obligations under this Licence 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.

Draft - Example

11 **Confidentiality and FOI**

11.1 The parties agree:

- 11.1.1 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 this Licence;
- 11.1.2 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 11;
- 11.1.3 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
- 11.1.4 except as required by law or by governmental or regulatory requirements (which, for the avoidance of doubt, shall include any requirements for disclosure under the FOIA and/or the Environmental Information Regulations), not to disclose Confidential Information to any third parties unless expressly permitted under this Clause 11 or with the other's prior written consent.

11.2 The obligations in this Clause 11 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.

11.3 Both parties acknowledge that the other may receive Disclosure Requests.

11.4 Subject to the application of any relevant exemption(s) and, where applicable, the public interest test, both parties further acknowledge that the other may be obliged to disclose information pursuant to such a Disclosure Request. Where a party consults the other in accordance with section IV (consultation with third parties) of the code of practice issued under section 45 of the FOIA (or, as the case may be, any code of practice issued under powers contained in the Environmental Information Regulations), each party hereby agrees to respond to any such consultation promptly and within any reasonable deadline set by the other party. Each party acknowledges that it is for the party receiving the Disclosure Request to determine whether or not such information should be disclosed.

12 **Assignment, subcontracting and sublicensing**

12.1 Except as provided in this Licence, or as otherwise agreed from time to time, neither party may assign, subcontract or sublicense their rights and obligations under this Licence without the prior written consent of the other party, such consent not to be unreasonably withheld.

12.2 the Licensee is entitled to assign, transfer, novate, subcontract or sublicense the benefits and obligations of this Licence to any government body or nominated subcontractor or, in the event of the transfer of all or any of the activities or functions of the Licensee to any other entity, to the entity to which such activities or functions have been transferred. The Licensee agrees to the assumption of the obligations of the Licensee under this Licence by that entity and, if required, shall enter into an agreement to this effect.

13 **Entire agreement**

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

Draft - Example

14 **Waiver**

14.1 The waiver on a particular occasion by either party of rights under this Licence does not imply that other rights will be waived.

14.2 No delay in exercising any right under this Licence shall constitute a waiver of such right.

15 **Notices**

15.1 Any notice under this Licence shall be given by prepaid first class post, recorded delivery, email, fax or by hand to the following contact details:

15.1.1 for the Supplier: [insert named contact, address and email address]

15.1.2 for the Licensee: to the Principal Contact, at the address, email and fax details which the Licensee has submitted to the Supplier (or in the absence of such details to the Licensee at the address of the Licensee's registered office or principal place of business),

15.1.3 or such other contact details as either party shall notify to the other in writing.

15.2 Any notice sent by prepaid first class post or recorded delivery shall be deemed to have been served 2 business days after posting. Any notice sent by fax shall be deemed to have been served on the next business day following sending, provided that electronic confirmation of transmission has been received. Any notice sent by email shall be deemed to have been served on the next business day following sending, provided that it is not returned to the sender undelivered. Any notice delivered by hand shall be deemed to have been served on the same day if received before 4 00 pm on a business day, or on the next business day if received after 4 00 pm.

16 **Contracts (Rights of Third Parties) Act 1999**

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

17 **Jurisdiction and governing law**

17.1 This Licence will be governed by and construed in accordance with the law of England and Wales. Subject to Clause 18, both parties submit to the exclusive jurisdiction of the English courts in respect of any proceedings issued by either party in connection with this Licence.

18 **Dispute resolution procedure**

18.1 Nothing in this Dispute Resolution Procedure shall relieve the Licensee or the Supplier from any obligation arising under or in connection with this Licence or affect the resolution of any dispute, difference or question between the Licensee and the Supplier arising out of or in connection with this Licence (a **Matter**) and as to which either party's decision is under this Licence to be final and conclusive (a **Reserved Matter**). Reserved Matters shall specifically include i) all disputes relating to Competing Activities which are to be determined under paragraph 14.2 of Appendix 1, and ii) decisions under the Open Release provisions or the Exemptions process (set out in Clauses 2.5 and 2.6) which are to be made by the Chief Executives of the Supplier under Clause 2.6.2 d). For the avoidance of doubt, this Clause 18.1 shall not restrict either party's ability to commence court proceedings in respect of any Matter (save for any Reserved Matters specified above).

18.2 Subject to Clause 18.1, where any Matter cannot be resolved between the Licensee and the Supplier either of them shall be entitled, by written notice to the other, to refer the Matter to a senior representative of the Licensee and of the Supplier in accordance with Clause 18.4 below.

18.3 Except as strictly required to preserve the legal rights of the Licensee or of the Supplier (as the case may be), neither the Licensee nor the Supplier shall commence court proceedings until the process set out in Clauses 18.2 to 18.9 has been concluded, provided nothing in this Clause shall prevent either party seeking interim relief or other judicial relief at any time if in its judgment such action is necessary to prevent irreparable damage.

Draft - Example

- 18.4 Where a notice of referral has been given pursuant to Clause 18.2, a senior representative of the Licensee (Senior Civil Servant or a person of equivalent authority) and a senior representative of the Supplier (a director) (each a **Senior Representative**) shall meet within 15 Working Days from, but excluding, the date when the recipient receives the notice of referral, to endeavour to resolve the Matter. Each Senior Representative may be accompanied to such meeting by such other person or persons (not to exceed three, unless otherwise agreed by the parties) as that Senior Representative considers appropriate. Where agreed between the Licensee and the Supplier, the Senior Representatives shall have had neither direct operational involvement in the Matter nor direct involvement in any previous negotiations in relation to the Matter.
- 18.5 Where the Senior Representatives agree a resolution to the Matter, the Senior Representatives shall record such agreement in writing and the agreed written resolution shall be treated as binding upon the Licensee and the Supplier.
- 18.6 Where the Senior Representatives are unable to agree a resolution to the Matter either party (the 'Requestor') may request that the other Party (the **Recipient**) enter into a process of mediation or early neutral evaluation in a further effort to resolve the Matter (a **Request**). Any Request shall:
- 18.6.1 be made in writing;
 - 18.6.2 specify which of the two processes the Requestor wishes to use; and
 - 18.6.3 propose in outline the procedure to be adopted for the specified process, including provision as to timing, sharing of costs and volume of documentation, having regard to the sum in issue and the complexity of the Matter.
- 18.7 The Recipient shall, within 15 Working Days from, but excluding, the date it receives the Request:
- 18.7.1 determine whether it considers it appropriate to use the specified process in an effort to resolve the Matter; and
 - 18.7.2 send written notice of its determination to the Requestor. If the Recipient's determination is that it does not consider it appropriate to use the specified process, the Recipient shall give in its written notice brief reasons for that determination.
- 18.8 If the Recipient's determination pursuant to Clause 18.7 is that it is appropriate to use the specified process, the written notice sent pursuant to Clause 18.7 shall:
- 18.8.1 state which, if any, of the Requestor's outline proposals for the procedure are acceptable to the Recipient; and
 - 18.8.2 to the extent that the Recipient is unable to agree to such outline proposals, state its outline proposals in respect of the procedure, having regard to the sum in issue and the complexity of the Matter. Such written notice may also contain proposals as to any matter that the Recipient considers ought to have been dealt with in the outline proposals in the Request, but that were not so dealt with.
- 18.9 Where the Recipient's determination under Clause 18.7 is that it is appropriate to use the specified process, the Licensee and the Supplier shall use reasonable endeavours to conclude an agreement to operate the specified process.
- 19 **Electronic Commerce (EC Directive) Regulations 2002**
- It is agreed that the provisions of Regulations 9 and 11 of the *Electronic Commerce (EC Directive) Regulations 2002*, relating to contracts made online, shall not apply to this Licence.

Appendix 1

Licensed Use Public Body

1 Licensed Use

1.1 The Licensee's Licensed Use of Licensed Data is:

1.2 Business Use (as set out in paragraph 3); and

1.3 Public Sector Use as set out in paragraph 4.

2 Definitions

2.1 In this Appendix 1:

2.1.1 **Commercial Activity** means any activity which involves or is intended to involve Financial Gain.

2.1.2 **Competing Activity** means where the Licensee uses Licensed Data under this Licence in an activity which:

a) competes with or substitutes an activity of a third party that is licensed for Licensed Data;

b) is reasonably likely to compete with or substitute an activity of a third party that is licensed or to be licensed for Licensed Data; or

c) competes with or substitutes or is reasonably likely to compete with or substitute the products and/or services of the Supplier (such products and/or services to be notified by the Supplier to the Licensee from time to time).

2.1.3 **Core Business** means any public sector activity in central and local government and health services, excluding Commercial Activities and/or Competing Activities.

2.1.4 **Educational Body** means any School, HFE Institution or Teachers' Training Establishment.

2.1.5 **Educational Funding Authority** means any of the following, or their successors: Higher Education Funding Council for England; Higher Education Funding Council for Wales; Scottish Funding Council; Department for Employment and Learning; Skills Funding Agency and Young People's Learning Agency; and Department for Children, Education, Lifelong Learning and Skills within the Welsh Assembly Government.

2.1.6 **Educational Use** means use for the purposes of teaching, learning, research or study by a School, Teachers' Training Establishment or an HFE institution.

2.1.7 **Emergency Service** means any person, body or entity (other than the Licensee) involved in responding immediately to an Emergency Situation.

2.1.8 **Emergency Situations** means unforeseen acts or events (beyond the Licensee's reasonable control) requiring the Licensee to respond urgently, including but not limited to any of the following: war; acts of god (including but not limited to fire, flood, earthquake, windstorm or other natural disaster); terrorist attacks; civil war; civil commotion; nuclear, chemical or biological contamination; interruption of utilities; and fire, explosion or accidental damage.

2.1.9 **Emergency Use** means use of Licensed Data by an Emergency Service to enable the Emergency Service to respond immediately to an Emergency Situation.

2.1.10 **Financial Gain** means any revenue or credit received which exceeds the Licensee's incremental costs of supplying or making available to a recipient any copy of any Licensed Data. Financial Gain does not include any receipts from Statutory Charges.

Draft - Example

- 2.1.11 **HFE Institution** means a higher or further education institution or research council, in each case located in Great Britain and eligible to receive support from an Educational Funding Authority.
- 2.1.12 **INSPIRE End User** means a person entering into an INSPIRE End User Licence with the Licensee for the INSPIRE End User Purpose.
- 2.1.13 **INSPIRE End User Licence** means the licence of the same name (the term of which shall not exceed the Term) available on the the Supplier Website and applicable to this Licence.
- 2.1.14 **INSPIRE End User Purpose** means the INSPIRE End User using the data for personal, non-commercial use.
- 2.1.15 **INSPIRE Regulations** means the INSPIRE Regulations 2009/3157.
- 2.1.16 **INSPIRE Relevant Body End User** means an institution or body of the European Union which requires Licensed Data for the purpose of its public tasks that may have an impact on the environment.
- 2.1.17 **INSPIRE Relevant Body End User Purpose** means a specific project or activity required to deliver or support the delivery of the INSPIRE Relevant Body End User's public tasks that may have an impact on the environment, and that has been specified in and which is permitted by the Public Sector End User Licence – INSPIRE Relevant Body. This INSPIRE Relevant Body End User Purpose shall not permit the INSPIRE Relevant Body End User to sub-license, distribute, sell or otherwise make available the Supplied Data to third parties, save where expressly permitted in writing by the Supplier.
- 2.1.18 **Joint Initiative** means a specific project whereby two or more public authorities co-operate to achieve the successful completion of an initiative, which directly results in each authority fulfilling its own statutory obligations.
- 2.1.19 **Public Sector End User** means a person entering into a Public Sector End User Licence with the Supplier.
- 2.1.20 **Public Sector End User Licence** means the licence of the same name (the term of which shall not exceed the Term (except for Imagery Product or Height Product Topographic data granted perpetual rights as set out in Clause 3 of the Member License) applicable to this Licence.
- 2.1.21 **Public Sector End User Licence – INSPIRE Relevant Body** means the bespoke licence of the same name (the term of which shall not exceed the Term) available, where appropriate on a case by case basis, on request from the Supplier.
- 2.1.22 **Public Sector Innovation Licence** means the licence of the same name (the term of which shall not exceed the Term) available on the Supplier Website and applicable to this Licence.
- 2.1.23 **Qualifying Licensed Data** means Licensed Data which is as set out in Appendix 2 of this Member License:
- 2.1.24 Not Used
- 2.1.254 **School** means a state, public or independent school in Great Britain which is properly authorised as a School by the Department for Education or the Scottish Government Education Department (or their successors) and has a unique DCSF Reference Number (or its Department for Education equivalent) or Scottish SEED number, and excludes European schools.

- 2.1.256 **Statutory Charge** means charges which the Licensee is expressly permitted to charge pursuant to a formal written enactment of a legislative authority that governs the United Kingdom of Great Britain and Northern Ireland, Scotland, Wales, and/or Northern Ireland to which the Licensee is subject.
- 2.1.267 **Teachers' Training Establishment** means an institution in Great Britain accredited as a provider of teacher training courses by the Training and Development Agency for Schools or by the Higher Education Funding Council for Wales, or their successors.
- 2.1.2827 **WFS** means a service provided by the Supplier or by a service created by the Licensee themselves for internal use, in accordance with the standard protocol for serving over the internet georeferenced data that is generated by a map server using data from a GIS database or server.
- 2.1.2928 **WMS** means a service provided by the Supplier or by a service created by the Licensee themselves for internal use in accordance with the standard protocol for serving over the internet georeferenced map images that are generated by a map server using data from a GIS database or server.

2.2 For the avoidance of doubt, references to Licensed Data in paragraphs 4 to 14 shall include Data created using Licensed Data, to the extent that the Data created incorporates IPR owned by the Supplier or licensed to the Supplier provided that this paragraph is subject to paragraph 2.3.

2.3 Where paragraphs 8, 10, 11 and 13 refer to Licensed Data, such reference is limited to Data created using Licensed Data to the extent that the Data created incorporates IPR owned by the Supplier or licensed to the Supplier

3 Business Use

3.1 Business Use is the use of Licensed Data solely for the internal administration and operation of the Licensee's business.

3.2 Business Use does not entitle the Licensee to make available or to provide Licensed Data to third parties.

4 Public Sector Use

4.1 Public Sector Use is the use of Licensed Data to support delivery of or to deliver the Licensee's Core Business.

4.2 Public Sector Use does not entitle the Licensee to make available or to provide Licensed Data to third parties, save as follows:

- 4.2.1 in accordance with the Public Sector Data Sharing provisions in paragraph 5;
- 4.2.2 in accordance with the Joint Initiative Data Sharing provisions in paragraph 6;
- 4.2.3 in accordance with the End User Licensing provisions in paragraph 7;
- 4.2.4 in accordance with the INSPIRE End User Licensing provisions in paragraph 8;
- 4.2.5 in accordance with the Emergency Situations Licensing provisions in paragraph 9;
- 4.2.6 in accordance with the Pre-approved Supply to Licensed Third Party provisions in paragraph 10;
- 4.2.7 in accordance with the INSPIRE Relevant Body End User Licensing provisions in paragraph 11;
- 4.2.8 where the Licensee makes Licensed Data available for public viewing (whether by way of the internet or otherwise), in either hard copy form and/or as a raster file, or as a copy protected vector file, where such display forms part of the Licensee's Core Business and the Licensee complies with the obligations in paragraph 12; and
- 4.2.9 in accordance with the Innovation End User Licensing provisions in paragraph 13.

5 Public Sector Data Sharing

5.1 Public Sector Data Sharing is the supply to any third party (including Infrastructure Bodies and Public Bodies) and receipt from Infrastructure Bodies, Public Bodies, Educational Bodies and (solely to the extent the Licensed Data concerned is Qualifying Licensed Data) other non-Public Body third parties of copies of any Licensed Data. (For the avoidance of doubt, in this paragraph 5, Public Body means an organisation which is licensed for Public Sector Use.)

5.2 Public Sector Data Sharing is subject to the following conditions:

5.2.1 Sharing Party means the third party to whom Licensed Data is supplied or Infrastructure Body, Public Body, Educational Body or non-Public Body third party from whom Licensed Data is received pursuant to this paragraph 5;

5.2.2 subject to paragraphs 1.5, 2.5, 3.5, 4.8 and 5.7 of Part B of Appendix 2, both the Licensee and the Sharing Party must be licensed for Business Use, Public Sector Use or Educational Use for the same area of coverage of the same Licensed Data being supplied and/or received;

5.2.3 save where the Sharing Party is a Member, the Licensee shall obtain written confirmation from the third party to whom the Licensee supplies Licensed Data that the third party is licensed for Business Use, Public Sector Use or Educational Use for the same area of coverage of the same Licensed Data being supplied;

5.2.4 the use of the Licensed Data the Licensee receives from an Infrastructure Body, Public Body, Educational Body or non-Public Body third party shall be governed by the terms of this Licence;

5.2.5 the supply by the Licensee to a third party is to support delivery of or to deliver the Licensee's Core Business;

5.2.6 save where both the Licensee and the Sharing Party are licensed for the relevant Licensed Data under this Licence, the Licensee shall maintain a written record of:

- a) the names and addresses of Sharing Parties from whom the Licensee receives or to whom the Licensee supplies Licensed Data;
- b) the Licensed Data which was received by the Licensee from and/or supplied by the Licensee to the Sharing Parties; and
- c) when the Licensed Data was received by the Licensee from and/or supplied by the Licensee to the Sharing Parties,

and the Licensee shall retain the written record for a period of not less than three years from the date at which the data was first shared or until it ceases to use the Licensed Data and no longer retains an archive of it in accordance with Clause 8.4.1(c), whichever is the later. Upon the written request of the Supplier the Licensee shall provide a copy of that written record to the Supplier; and

5.2.7 subject to Clause 9.1, the Supplier shall have no liability to the Licensee or the Sharing Party in respect of the Licensed Data received from and/or supplied to a Sharing Party.

6 NOT USED

67 End User Licensing

67.1 The Licensee may supply copies of Licensed Data to Public Sector End Users solely to enable such Public Sector End Users to use the data to respond to, or interact with the Licensee to deliver or support the delivery of the Licensee's Core Business.

67.2 Subject to paragraph 7.7, where the Licensee supplies copies of Licensed Data under paragraph 7.1, it shall do so on the terms of the Public Sector End User Licence.

67.3 The Public Sector End User Licence shall be click accepted by a Public Sector End User prior to accessing the Licensed Data.

67.4 In making Licensed Data available under this paragraph 7, the Licensee shall comply with the watermarking obligation in paragraph 12.1.2 b) and shall ensure the Licensed Data includes the Licensee's licence number pre-fixed or suffixed with the letters 'EUL'.

76.5 In the event of any infringement or breach of the IPR of the Supplier (or IPR licensed to the Supplier) by any party which the Supplier reasonably believes may have accessed such IPR from the Licensee's End User Licensing, the Licensee will, on request from the Supplier, use its best endeavours to assist the Supplier with investigating, pursuing and/or remedying any such infringement or breach, including, in particular, identifying relevant Internet Protocol addresses, details of what Licensed Data has been supplied, dates of supply, identity of Public Sector End User, whether a Public Sector End User Licence has been click accepted or deemed accepted, and terminating any relevant Public Sector End User Licence where requested by the Supplier.

76.6 The Licensee agrees:

76.6.1 only to make available Licensed Data under this paragraph 7 6 where there is a specific requirement to do so, and where that requirement cannot be reasonably met by an alternative, such as public data viewing under paragraph 4.2.8 or through alternative data . For the avoidance of doubt, where the Licensee wishes to make data available solely to comply with the transparency agenda, such compliance is not of itself considered to be a specific requirement;

76.6.2 that any Licensed Data made available under this paragraph 6 shall not cover a larger geographical extent than is reasonable for it to fulfil its function;

76.6.3 to monitor its End User Licensing activities and to report the same to the Supplier, in accordance with any guidelines issued by the Supplier from time to time;

76.6.4 to use reasonable endeavours to terminate all Public Sector End User Licences with effect from the date of expiry or termination of this Licence.

76.7 Where the Licensee is supplying hard copies of Licensed Data to Public Sector End Users solely for the purpose set out in paragraph 76.1, paragraphs 76.2 and 76.3 shall not apply and, instead, the Licensee shall ensure that the following licence condition is set out in legible font and in a conspicuous position on the hard copy:

'You are permitted to use this data solely to enable you to respond to, or interact with, the organisation which has provided you with the data. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.'

87 INSPIRE End User Licensing

87.1 Licensees are not be required to make available any of the Imagery Products or Height Products to End Users in order to comply with its obligations under INSPIRE Regulation the Licensee may only be required to provide Derived Data as part of its INSPIRE obligations. The following clauses therefore only apply to data that is derived from the Imagery and Height datasets provided under this licence, which do not class as free to use data or able to be released under and OGL as set out in clause 2.5 of this licence.

87.2 Where the Licensee supplies copies of Derived Data under paragraph 87.1, it shall do so on the terms of the INSPIRE End User Licence.

87.3 Save where the Derived Data is made available by way of a WMS or WFS, the INSPIRE End User Licence shall either be click accepted by or deemed to have been accepted an INSPIRE End User prior to accessing the Derived Data, or deemed to have been accepted by an INSPIRE End User. Where not made available via click acceptance the Licensee shall ensure that the INSPIRE End User Licence terms are clearly drawn to the INSPIRE End User's attention prior to being given access to the Derived Data, by means of a link to the INSPIRE End User Licence together with a statement in legible font in a conspicuous position that by using or accessing the Derived Data the INSPIRE End User is deemed to have accepted the INSPIRE End User Licence. In addition, the Licensee will ensure that a link to the INSPIRE End User Licence is contained in the metadata , and that the metadata is made available with the Derived Data.

87.4 Save where the LicensedDerived Data is made available (i) by way of a WMS or WFS, and/or (ii) in vector format, the Licensee will:

8.4.1 include a background watermark to identify the source of the LicensedDerived Data at scales of 1:10 000 or larger. The watermark must appear at least once and cover at least 10% of the map image reproduced; and

87.4.2 ensure that the Derived Data includes (i) the acknowledgement(s) required by paragraph 1211.1.1, and (ii) the Licensee's licence number pre-fixed or suffixed with the letters 'EUL'.

87.5 Where the LicensedDerived Data is made available in vector format, other than via WFS, the Licensee shall ensure that copy protection measures are used.

87.6 As stated in paragraph 2.3 above, in this paragraph 87, references to LicensedDerived Data are limited to Data created by the Licensee using Licensed Data and, for the avoidance of doubt, Licensed Data which has not been so created may not be supplied under this paragraph 8 7 as 'background' or otherwise.

87.7 Where the Licensee, under this paragraph 87, makes the LicensedDerived Data available within a WMS and/or WFS:

87.7.1 the url containing the INSPIRE End User Licence must be included within the WMS and/or WFS metadata, and must also be returned by GetCapabilities; and

87.7.2 where practicable, the Licensee shall ensure that the INSPIRE End User Licence terms are clearly drawn to the end user's attention prior to or at the same time as being given access to the LicensedDerived Data, by means of a link to the INSPIRE End User Licence together with a statement in legible font in a conspicuous position that by using or accessing the LicensedDerived Data the end user is deemed to have accepted the INSPIRE End User Licence.

87.8 The Licensee's obligation in clause 76.2 to maintain accurate and complete records of those instances where LicensedDerived Data is provided to a third party shall, in the case of any supplies made pursuant to this paragraph 87, not require the Licensee to capture and collect the names and contact details of INSPIRE End Users.

Paragraphs 7.5 to 7.6 above shall apply to any supply under this paragraph 8, with any necessary changes.

98 Emergency Situations Licensing

98.1 In Emergency Situations, the Licensee may provide Licensed Data to Emergency Services who are not licensed to use the same, to the extent required for, and for the purposes only of, Emergency Use.

98.2 Where the Licensee has provided Licensed Data to Emergency Services for Emergency Use, the Licensee shall within 60 days of such provision, provide the Supplier with:

98.2.1 a description of the precise Licensed Data that has been provided (including area of coverage);

Draft - Example

- 98.2.2 the format in which it was provided;
- 98.2.3 the full correct name, address and contact details of the recipient Emergency Service;
- 98.2.4 the date on which the Licensed Data was provided to the recipient Emergency Service; and
- 98.2.5 a description of the particular Emergency Situation and the particular purpose for which the Emergency Use was required.

98.3 In the event that the recipient Emergency Service does not agree to license, return or destroy the data provided to it by the Licensee for Emergency Use, the Licensee agrees to use its reasonable endeavours to assist the Supplier in procuring that the Emergency Service concerned either destroys the data or returns it to the Licensee and/or the Supplier.

109 Pre-approved Supply to Third Parties licensed under a Framework Contract (Partner)

109.1 The Licensee may supply Licensed Data to a third party in accordance with paragraph 109.2, provided that the following conditions are fulfilled:

- 109.1.1 the third party must be licensed by the Licensee the Supplier under a Contract (as defined in the Framework Contract (Partners) (the **FC(P)**)) entered into pursuant to the FC(P) with a Member of the Supplier for the same area of coverage of the same Licensed Data being supplied;
- 109.1.2 the Licensee must not charge any licensing or other fees or charges to the third party in relation to the Licensed Data, save for a one-off upfront payment in respect of administration expenses;
- 109.1.3 the supply must be to support delivery of or to deliver the Licensee's Core Business (and the parties agree that supply of Licensed Data pursuant to this paragraph 10 9 shall be deemed not to be a Competing Activity or Commercial Activity); and
- 109.1.4 the supply shall be subject to a licence (whether express or implied) of any of the Supplier's IPR in the Licensed Data, granted on a worldwide, perpetual, royalty free, irrevocable, non-exclusive basis, and not containing any restrictions, including as to copying, distribution, transmission, adaptation or commercial exploitation (whether by sub-licensing, combining it with other data, or by including it in products or applications).

109.2 Subject to paragraph 109.1 above, the Licensee may, as an alternative to entering into an FCP with the Supplier and sub-licensing the relevant data to the third party in accordance with the FCP, request in writing that the Supplier license the Licensed Data direct to the third party. Within 30 Working Days of receipt of such request, the Supplier shall use reasonable endeavours to provide a side agreement to the Licensee, between the Supplier, the Licensee and the third party. The Licensee shall arrange signature of the side agreement by the Supplier and the third party, and shall return the side agreement to the Supplier. Following confirmation by the Supplier of receipt of such signed side agreement, the Licensee shall be entitled to supply the relevant Licensed Data to the third party.

1110 INSPIRE Relevant Body End User Licensing

1110.1 INSPIRE Relevant Body End User Licensing is the supply by the Licensee, in accordance with its obligations under the INSPIRE Regulations 2009, of copies of Licensed Derived Data to an INSPIRE Relevant Body End User which has entered into and adheres to the terms of a Public Sector End User Licence – INSPIRE Relevant Body for the INSPIRE Relevant Body End User Purpose.

1110.2 In making Licensed Derived Data available under this paragraph 1110, the Licensee shall comply with the watermarking obligation in paragraph 1211.1.2 b).

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110.3 As stated in paragraph 2.3 above, in this paragraph 1110, references to Licensed Derived Data are limited to Data created by the Licensee using Licensed Data and, for the avoidance of doubt, Licensed Data which has not been so created may not be licensed under a Public Sector End User Licence – INSPIRE Relevant Body as ‘background’ or otherwise.

110.4 The Licensee will ensure that all Public Sector End User Licences – INSPIRE Relevant Body are terminated with effect from the date of expiry or termination of this Licence.

1211 Licensee’s Obligations

1211.1 In addition to the Licensee’s other obligations set out in the Licence, the Licensee shall ensure that:

1211.1.1 for the avoidance of doubt, copyright, database right and trade mark acknowledgements (in accordance with Clause 5 of the Licence) are included on the Licensed Data and on any copies the Licensee or any Public Sector End User or INSPIRE End User produces;

1211.1.2 where the Licensee makes Licensed Data publicly available in accordance with paragraph 4.2.8 above:

- a) in relation to Licensed Data made available as a raster file or a copy protected vector file only, the Licensee shall ensure that the phrase ‘Use of this data is subject to terms and conditions’ is set out (in legible font and in a conspicuous position) on the electronic copy of each mapping image presented on screen, and such phrase provides a clear hyperlink to a copy of the conditions set out in i) to iii) below:
 - i) *‘You are granted a non-exclusive, royalty free, revocable licence solely to view the Licensed Data for non-commercial purposes for the period during which [insert name of Licensee] makes it available;*
 - ii) *you are not permitted to copy, sub-license, distribute, sell or otherwise make available the Licensed Data to third parties in any form; and*
 - iii) *third party rights to enforce the terms of this licence shall be reserved to the Supplier’;*
- b) where the Licensee the Supplier makes Licensed Data available by way of a WMS or WFS, the Licensee will contact the Supplier for guidance on watermarking requirements. Where a watermark is required, it must appear at least once and cover at least 10% of the map image reproduced. For the avoidance of doubt, no watermarking is required where the Licensee makes Licensed Data available via electronic documents (e.g. a pdf), static internet image (i.e. a ‘read only’ raster format image which cannot be edited, manipulated, interrogated, geo-referenced or customised in any way or used within any geographical information system or comparable database or software system) or hard copy.;
- c) in relation to Licensed Data made available in hard copy form for members of the public to take away, the Licensee shall ensure that the following licence condition is set out in legible font and in a conspicuous position on the hard copy:

‘You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form’; and
- d) for the avoidance of doubt, in relation to Licensed Data made available in hard copy form for members of the public to view, but not to take away, the obligation set out in paragraph 1211.1.2 c) above shall not apply; and

1211.1.3 where the Licensee makes Licensed Data available, either under this Appendix 1 or Clause 2.7, by way of a WMS or WFS, the Licensee will comply with the guidance set out by the Supplier and as amended by the Supplier from time to time. This guidance can be found at [insert supplier website].

1312 Innovation End User Licensing

1312.1 The Licensee is permitted to license Licensed Data to third parties, provided that:

1312.1.1 where the Licensee makes available Licensed Data under this paragraph 1312, it shall do so on the terms of the Public Sector Innovation Licence;

1312.1.2 prior to making available Licensed Data to any third party under the Public Sector Innovation Licence, the Licensee will obtain (and retain records of) the names, addresses and email addresses of such third parties, together with the date of supply and details of the relevant Licensed Data;

1312.1.3 in making Licensed Data available under this paragraph 13, the Licensee shall comply with the acknowledgement and watermarking obligations in paragraphs 1211.1.1 and 1211.1.2 b);

1312.1.4 any Licensed Data made available under this paragraph 13 12 shall not be of a larger scale or area and shall not contain a larger number of features than is reasonable for it to fulfil its function;

1312.1.5 the Licensee will monitor its Innovation End User Licensing activities and report the same to the Supplier, in accordance with reasonable guidelines issued by the Supplier from time to time;

1312.2 As stated in paragraph 2.3 above, in this paragraph 1312, references to Licensed Data are limited to Data created by the Licensee using Licensed Data and, for the avoidance of doubt, Licensed Data which has not been so created may not be licensed under a Public Sector Innovation Licence, as 'background' or otherwise.

1413 Competing Activities and Commercial Activities

1413.1 Nothing in this Appendix permits the Licensee or any person to use the Licensed Data for any Commercial Activities or Competing Activities.

1413.2 Where the Supplier reasonably considers that the Licensee's proposed or current use of the Licensed Data is or is likely to be a Competing Activity or Commercial Activity, the Supplier may take such steps as it reasonably considers are necessary in relation to the Competing Activity or Commercial Activity. Such steps may include the action set out in paragraph 1413.3 below and/or suspending the licence granted under this Licence to the minimum extent necessary to prevent the Competing Activity or Commercial Activity. Where there is any dispute as to the existence of a Competing Activity, the decision of the Chief Executives of the Supplier as to the existence of a Competing Activity shall be final and conclusive.

1413.3 Where the Licensee's use of Licensed Data is or is likely to constitute a Competing Activity or a Commercial Activity, the Licensee shall either:

1413.3.1 enter into a separate appropriate licence; or

1413.3.2 amend its planned or current use of the relevant Licensed Data so as to resolve the problem identified to the reasonable satisfaction of the Supplier.

1413.4 The Licensee shall indemnify the Supplier against all liabilities, damages, penalties, costs, expenses or other loss suffered or incurred by the Supplier in relation to any breach or alleged breach by the Licensee of competition law to the extent such loss results from the Licensee's breach of paragraph 1413. Nothing in this Licence shall limit or exclude the Licensee's liability to the Supplier under this indemnity.

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1514 Public Libraries

Notwithstanding any other provision of this Appendix 1, a public library which is licensed under this Licence shall be entitled to act in accordance with the guidance (as may be amended by the Supplier from time to time) supplied by the Supplier.

Licensed Data

Part A – Licensed Data

25cm GSD Aerial Photography RGB (GB coverage): Standard resolution (25cm) imagery is available for all of Great Britain. The imagery is captured and processed to RICS specification and ortho-rectified to produce high levels of geometric accuracy. From 2016 onwards, England and Wales imagery is provided as a “true-ortho” product whereby the images are not only corrected for terrain variations (ortho-rectification) but for the effect of other features such as buildings, trees etc. Imagery is supplied as a seamless, edge-matched dataset.

12.5cm GSD Aerial Photography RGB (where available): High resolution (12.5cm) imagery is available for most of England and South Wales. The imagery is captured and processed to RICS specification and ortho-rectified to produce high levels of geometric accuracy. From 2016 onwards, imagery is provided as a “true-ortho” product whereby the images are not only corrected for terrain variations (ortho-rectification) but for the effect of other features such as buildings, trees etc. Imagery is supplied as a seamless, edge-matched dataset. 12.5cm imagery allows the delineation of a wider range of features such as road markings, street furniture etc.

50cm GSD Aerial Photography CIR (GB coverage): Colour Infra-red (CIR) imagery is available at 50cm resolution for the whole of Great Britain and is provided as an ortho-rectified product. CIRs provide a composite image comprising near infra-red, visible red and visible green imagery, displayed as red, green and blue channels respectively. Infrared imagery can be used for a range of applications including crop stress management, environmental monitoring and coastal management projects.

2m GSD Digital Surface Model (GB coverage): The Digital Surface Model (DSM) is available for the whole of Great Britain and provides a representation of the Earth’s surface including natural and built features such as trees and buildings. The data is provided as a regular grid of postings at 2 metre spacing. DSMs are used for a variety of applications including line of sight work for planning and telecoms applications

5m GSD Digital Terrain Model (GB coverage): The Digital Terrain Model (DTM) is available for the whole of Great Britain and provides a representation of the “bald earth” surface (i.e. excluding natural and built features such as trees and buildings). The data is provided as a regular grid of postings at 5 metre spacing. DTMs are used for a variety of applications including flood modelling and civil engineering projects.