



#### **4. Intellectual Property rights**

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- 4.1 Historical Data is protected under the Copyright, Designs and Patents Act 1988 and by International Treaty provisions. The Licensee shall not and shall not authorise any third person to copy, adapt, distribute, perform, broadcast, communicate and make available, extract or reutilise (including in a cable programme service) or alter the Historical Data nor shall it create or attempt to create any new intellectual property rights (including any database rights).
- 4.2 The Licensee acknowledges that Historical Data detailed in Clause 10 and supplied to the Licensee under the terms of this Agreement remains the property of the Copyright Owners.
- 4.3 The Licensee may permit "Fair Dealing" of the Historical Data, but only in accordance with the provisions of Schedule Three.
- 4.4 In the event the Licensee becomes aware of any unauthorised use or infringement of the intellectual property rights in the Historical Data ("the IPRs") the Licensee shall forthwith notify Landmark and shall give Landmark all reasonable assistance (at the Copyright Owners' joint expense) in bringing or defending any claim in connection with the IPRs.
- 4.5 The Licensee shall not be authorised to take any action in connection with any claim detailed in Clause 4.4 including without limitation settling any claim, and shall refer all such matters to Landmark.

#### **5. Duration and Termination**

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- 5.1 Without prejudice to Landmark's accrued rights and remedies, Landmark may, upon notice in writing, immediately terminate this Agreement:
- If the Licensee is in material breach of any term in this Agreement and such breach being capable of remedy is not remedied within seven (7) days of receipt of written notice from Landmark;
  - if there is any infringement or alleged infringement of intellectual property rights in the Historical Data;
  - if any fees payable to Landmark pursuant to this Agreement are not paid within thirty (30) days of their due date;
  - if the Licensee becomes insolvent or insolvency proceedings are commenced.
- 5.2 Subject to the provisions of Schedule Two of this Agreement, if the Licensee transfers or seeks to transfer possession of Historical Data or any copy, partial copy, modification or merged portion of Historical Data to another party, this Agreement is automatically terminated without prejudice to Landmark's accrued rights and remedies.
- 5.3 Upon termination of this Agreement the Licensee will immediately cease use of Historical Data and will destroy all copies of Historical Data held including any security or back-up copies.
- 5.4 The Licensee shall, at any reasonable time, grant to an accredited representative of Landmark the access required to ensure the observance of the conditions of this Agreement.

## 6. Warranties and Liabilities

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- 6.1 With respect to the physical CD-ROM and documentation herein enclosed Landmark hereby warrants the same to be free of material defects in materials and workmanship for a period of 60 days from the date of purchase. In the event of notification to Landmark within this warranty period of defects in the material or workmanship, the supplying party will replace the defective CD-ROM or documentation. The remedy for breach of this warranty shall be limited to replacement. This shall be the Licensee's sole and exclusive remedy and Landmark's sole and exclusive liability for breach of this warranty.
- 6.2 Landmark warrants that it has used reasonable skill and care in compiling the Historical Data and that it has used reasonable skill and care in replicating physical copies of original mapping data.
- 6.3 The Licensee is solely responsible for ensuring that Historical Data is suitable for its use.
- 6.4 Except as specified in this Agreement, Landmark gives no warranties or representations, whether express or implied by statute, or common law, or otherwise howsoever relating to the fitness, suitability, performance, use, or quality of the Historical Data. The Licensee acknowledges and it is agreed that, due to the age of the historical maps, upon which the Historical Data is based, that distortions or other defects may exist in the Historical Data. Accordingly Landmark can give no warranty as to the condition or accuracy of the Historical Data, nor shall Landmark accept any liability whatsoever in relation thereto.
- 6.5 All other representations or warranties, whether written or oral, express or implied by statute, common law, or otherwise are hereby excluded to the fullest extent permitted by law.
- 6.6 Landmark and the Licensee do not seek to exclude liability under this Agreement for fraud or for personal injury or death caused by its negligence and the negligence of its employees, authorised sub-contractors and agents.
- 6.7 Without prejudice to 6.6 above, Landmark hereby excludes all liability of any kind whatsoever arising from the use of the Historical Data for the following irrespective of whether it has been notified in advance of the risk of such loss being incurred:
- loss of profits, loss of business, loss of revenue, loss of management time, loss of goodwill, wasted expenses, loss of anticipated savings or liability arising from loss of data;
  - any increased costs or expenses; and/or
  - any indirect or consequential loss or damage of any nature whatsoever.
- 6.8 Subject to 6.6 and 6.7 above, the total and aggregate liability of Landmark in connection with this Agreement will not at any time exceed an amount equal to the licence fee due.
- 6.9 In the *event* that any exclusion or other provision contained in this Agreement shall be held invalid or unenforceable that shall not affect the other provisions of this licence.
- 6.10 If the Licensee is deemed to be a 'consumer' under the *Consumer Transactions (Restrictions on Statements) Order 1976* item, the terms of this Agreement do not affect the Licensee's statutory rights.
- 6.11 The Licensee shall indemnify Landmark for any loss caused to them as a result of the Licensee *breaching* any of its obligations under this Agreement, or taking any action that infringes or may infringe Landmark's title to the Historical Data.
- 6.12 No waiver of any provision of this Agreement by either party shall prejudice or restrict the rights of that party *and* no waiver by either party of any term or condition of this Agreement shall be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof.
- 6.13 This Agreement together with the Schedules to it represents the entire agreement and understanding
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between the parties with respect to the specific subject matter herein and supersedes any other agreements, understandings, representations or warranties, written or verbal that the parties may have had or given with respect to the specific subject matter of this Agreement and each party warrants to the other that it has not relied on any such representation or warranty in entering into this Agreement, including any representation as to ownership or right to use any intellectual property rights. This clause shall not apply to fraudulent misrepresentation.

## **7. Law**

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- 7.1 This Agreement shall be governed by English law and is subject to the exclusive jurisdiction of the English courts.
- 7.2 The Licensee acknowledges that these terms of this Agreement are not intended to be enforceable by any third party as provided by the Contracts (Rights of Third Parties) Act 1999 except for Ordnance Survey.

## **8. Assignments**

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- 8.1 The Licensee shall not be entitled to assign the whole or any part of the benefit of this Agreement, (whether by trust device or otherwise) or any obligation under it, without the prior written consent of Landmark, which shall not be unreasonably withheld. The Licensee shall not be entitled to grant sub-licences under this Agreement.
- 8.2 Landmark shall be at liberty to assign its rights and obligations under this Agreement at any time without having to notify the Licensee.

## **9. Contact Details**

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If the Licensee has any questions please contact either:

**Copyright Licensing  
Landmark Information Group Ltd  
7 Abbey Court  
Eagle Way  
EXETER  
EX2 7HY**

**Phone 01392 44 1738  
Fax 01392 44 1709**

**Ordnance Survey  
Romsey Road  
SOUTHAMPTON  
SO16 4GU**

**Phone 023 8079 2706  
Fax 023 8079 2535**





## Schedule Two

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For onward selling of plots or prints

- 1.1 Schedule Two of this Agreement is an extension to Schedule One and permits the Licensee to produce, reproduce and sell A5 and A4 size prints and printed copies, subject to the terms and conditions stated below.
- 1.2 At all times (whether during the lifetime of this Agreement or otherwise) the Licensee shall:
  - ensure that Landmark shall be acknowledged as owner of the Historical Data in the customer's promotional material. Prints and printed copies must acknowledge "© and database right Crown Copyright and Landmark Information Group Ltd (All rights reserved *and the date included*)".
  - be responsible for marketing and selling the prints and printed copies from the Historical Data including all associated costs;
  - ensure that it supplies Landmark with an example of any promotional material, handbooks or other documentation to be supplied with or in respect of the prints and printed copies, in order to obtain the approval prior to production or publication of same. Landmark shall not unreasonably withhold or delay its approval and shall in any event provide the Licensee with a response to a request for approval in a timely manner;
  - not do anything which might adversely affect the reputation of Landmark or the Copyright Owners' products, trade marks or logos and shall use its reasonable endeavours not to produce or sell plots and prints in a way which tarnishes Copyright Owners' reputation or standing;
  - sell and market prints and printed copies in compliance with all applicable laws, regulations and codes of practice;
  - not make any promises or representations or give any warranties or guarantees in respect of prints and printed copies unless expressly authorised by Landmark in writing;
  - not sell, sub-license, lend, transfer, dispose or otherwise deal with Historical Data, unless expressly permitted to do so under the terms of this Agreement.
- 2.1 The Licensee shall without set off or deduction, pay to the supplier Royalties set out in Annex A in respect of each print and printed copy sold.
- 2.2 Within fourteen working days of the end of each Quarter Day (being 31 March, 30 June, 30 September, and 31 December) during the subsistence of this Agreement, the Licensee shall provide Landmark with complete and detailed financial statements setting out the information detailed below together with any further information specified in Annex A (such information to be supplied via Landmark Information Group Ltd):
  - Unit sales of prints and printed copies (sorted by size: A5 and A4 )
  - Royalties due to Landmark as set out in Annex A.
- 2.3 At the end of each Royalty Year, (provided the licence is a continuing licence) Landmark may at its sole discretion increase the Unit Royalty Payments set out in Annex A by a percentage equal to the annual Retail Price Index ("RPI") (meaning the index of retail prices (all items) published by the office for National Statistics) applicable to the previous 12 months. Should Landmark decide not to increase the Unit Royalty Payments at the end of any one Royalty Year, it may roll up this increase into the next year.
- 2.4 Landmark shall invoice the Licensee for all sums due under Clause 2.2 in accordance with the statement previously submitted by the Licensee. Landmark' invoice shall be paid within 30 days of the date of the invoice (payment to be made to Landmark, who shall give good receipt on behalf of Landmark).

- 2.5 Without prejudice to Landmark's other rights and remedies Landmark reserves the right to:
- charge for its reasonable administration costs in pursuing payment of any outstanding amount, such sums to cover and include the cost of sending debt letters and general administration charges;
  - charge interest at the rate of 2% above the base rate of National Westminster Bank plc on any overdue amounts whether before or after judgement. Interest shall be calculated on a daily basis on all overdue amounts from the date payment fell due until the date that full payment is received and shall be payable on demand.
  - For the avoidance of doubt Royalties are payable to Landmark even though monies payable by the Licensee's customer may not have been received.
- 2.6 Throughout the duration of this Agreement the Licensee shall keep and maintain accurate complete and detailed financial records relating to all the transactions arising out of this Agreement.
- 2.7 Upon giving fourteen (14) days written notice, Landmark, its advisors or representatives shall have the right to inspect (and where necessary take copies of) the financial records referred to in 2.6. If upon inspection there is an underpayment in the amount properly payable to Landmark under the terms of this Agreement, the underpayment shall be paid to Landmark forthwith together with interest. The interest will be charged at 2% above the base rate of National Westminster Bank plc from the date payment was due until full payment whether before or after judgment. If there is an underpayment of 5% or more of the amount properly payable at any time to Landmark under the terms of this Agreement, the Licensee shall be responsible for reasonable auditing costs incurred by Landmark (including the fees of any third party used for such purposes).
- 2.8 The Licensee shall give Landmark (or their advisers and Representatives) reasonable access to its premises and use of its facilities to enable Landmark to fulfill their rights under Clause 2.7 and upon notice grant to Landmark, access and facilities for checking the observance of the terms and conditions of this Agreement.
- 2.9 The Licensee shall promptly notify Landmark as soon as it becomes aware of any infringement or suspected infringement by any person of the copyright and other intellectual property rights embodied in or relating to the prints and printed copies. At Landmark's request the Licensee shall give reasonable assistance to Landmark in connection with any claims or proceedings made or instituted against the Licensee.

### Schedule Three

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Notwithstanding the provisions of Schedules One and Two of this Agreement, the Licensee is permitted (but strictly in accordance with the provisions below) to make copies of extracts of Historical Data as constitutes Fair Dealing. The Fair Dealing exemption covers copies made for an individual for their own use for private study, research, criticism or review. This exemption does not cover the copying for use in schools, colleges, universities or further education establishments.

1. Fair Dealing for the purposes of this Agreement shall be defined as follows: a maximum of four copies of any one plain Ordnance Survey hard copy map extract not exceeding A4 (625cm<sup>2</sup>).
2. Fair Dealing may only be carried out by public libraries of the Licensee and the Licensee shall not be permitted to carry out Fair Dealing in any other manner.
3. In making copies available under the Fair Dealing provisions the library staff of the Licensee shall draw the end user's attention to these provisions and those of the Copyright Designs and Patents Act 1988 which relate to Fair Dealing.
4. This section sets out the rules the Licensee needs to follow in order to provide statutory map extracts. Any request for plain Ordnance Survey material must be referred to a library who are already able to provide access under fair dealing
5. Within the Copyright, Designs and Patents Act 1988, the law allows for some copying of documents as specified in statute. However, this right to copy is limited and copying beyond this is unlawful without the permission of Landmark.
6. In addition, before providing any copy under this section, the Licensee has a duty to establish that the person making the request has a right to receive the copy. This is especially true if the request has been made by email.
7. The Licensee is expected to take all reasonable precautions to prevent any unauthorised copying by others. In taking these 'reasonable precautions', the Licensee will make a judgement in each case as to whether or not the reason for the access to the documents is reasonable. If the Licensee is not satisfied that the request is reasonable, then they have both the right and the duty to refuse the request.
8. If and when the Licensee gives access to the information, it is also required to notify the recipients of the limits to their rights to use that information. However, as long as notice of the restrictions on the use has been given, the Licensee cannot be held accountable for the behaviour of those who receive information under false pretences. This will also apply to any illicit copying undertaken by parties using the information that they had previously received for legitimate reasons.

Checklist of issues Licensees will consider when giving access to information under Fair Dealing:

- A The purpose of access must be defined. It must:
- be able to determine the current status of a specific feature, location, or action;
  - not be for determining the status of that information for the future even though it may be for a clearly determined point in time; and
  - not be for any use other than for the inspection of the information.
- B The material being supplied must:
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- be appropriate for the type of access being given;
  - relate only to the specific item of concern; and
  - be limited to the number of copies appropriate for the type of access (subject to the limit imposed above).
- C Notice on the limitations of use must be given by:
- marking all material with the appropriate standard acknowledgement and imprint, together with any additional stamp required; and
  - raising the awareness in the person and/or organisation being given access by reminding them of the limits to their right to use the material supplied.

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### Supplying copies of material from a statutory register

Under section 47 of the Copyright, Designs and Patents Act 1988, the copyright in an artistic work, including maps, is not infringed by reproducing already prepared material which is open to public inspection under the law, or is on a statutory register.

This means that the participant can supply an applicant, on demand, with a single reference copy of the relevant area of interest for viewing at a more convenient time and place. If a charge is made for the supply, this is only an administrative cost and not a copyright royalty fee. If asked, the participant must make clear this distinction.

Once the participant is satisfied about the legitimacy of the request, then the applicant may be provided with material which:

- is limited to the actual area of the request; and
- comply with the terms of Statutory Instrument 1989 No 1099, The Copyright (Material Open to Public Inspection) (Marking of Copies of Maps) Order 1989 by having the following additional notation added:

This copy has been made by or with the authority of [put in the name of the person who must make the map open to public inspection or the person keeping the register] pursuant to section 47 of the Copyright, Designs and Patents Act 1988 (the Act). Unless the Act provides a relevant exception to copyright, the copy must not be copied without the prior written permission of Landmark.

[Gwnaed y copi hwn gan neu gydag awdurdod (rhowch enw'r sawl sy'n sicrhau bod y map argael i'w archwilio gan y cyhoedd neu'r sawl sy'n cadw'r gofrestr) yn unol ag adran 47 o Ddeddf Hawlfraint, Dyluniadau a Phatentau 1988 (y Ddeddf). Oni bai fod y Ddeddf yn darparu eithriad perthnasol i'r hawlfraint, ni ddylid copio'r copi heb gael caniatâd perchennog yr hawlfraint ymlaen llaw.]

If the applicant requires further copies then they must ask the officer issuing them. The officer will need to satisfy themselves that the request for further copies is legitimate. Alternatively, the applicant will need to get separate written permission from Landmark. The applicant must be made aware of this by the officer issuing the copies.

When material is provided under this section a declaration form must be signed by the applicant. The copy must also have the following additional notation added:

**This copy is supplied under the *Copyright, Designs and Patents Act 1988* sections 45 or 46 provisions.  
[Darperir y copi hwn dan adrannau 45 neu 46 *Ddeddf Hawlfraint, Dyluniadau a Phatentau 1988*.]**

The participant is advised that this exemption does not apply in the preparation activities leading up to any formal legal proceedings and therefore copies may not be made for this purpose. However, the participant may make copies for their own use.

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**Annex A**

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*Royalties payable to Landmark*

For each A5 print or printed copy sold the Licensee will pay the supplier £1.50 Sterling plus VAT  
For each A4 print or printed copy sold the Licensee will pay the supplier £3.00 Sterling plus VAT