



Information Fair Trader Scheme

Re-verification Report

Environment Agency

May 2006



PART ONE: INTRODUCTION	3
PART TWO: KEY CHANGES	6
PART THREE: HIGHLIGHTS AND AREAS FOR IMPROVEMENT	7
PART FOUR: PROGRESS	10
SUMMARY OF RECOMMENDED ACTIONS	15
APPENDIX 1	16
APPENDIX 2	19

PART ONE: INTRODUCTION

Information Fair Trader Scheme

1. The Information fair Trader Scheme (IFTS) is the best practice model for public sector bodies wishing to demonstrate compliance with the Re-use of Public Sector information Regulations 2005. IFTS ensures that re-users of public sector information can be confident that they will be treated reasonably and fairly by public sector information providers.
2. As the Environment Agency (EA) is not a Crown body, the data it holds is not subject to Crown copyright. The EA has joined the IFTS on a voluntary basis and has chosen to apply for re-accreditation.

First verification

3. The Environment Agency (EA) was the first voluntary member of IFTS and was accredited to the Scheme in November 2004. At its first verification, the EA had made good progress towards setting up a framework for the sale and exchange of agency data. There were some issues that caused concern during the verification, in particular the policy regarding public sector data exchange and the need for a comprehensive pricing policy. However it was noted that information trading was a new activity for the EA, and the agency was actively seeking to improve standards in information trading. The recommendations made at the first verification and the progress EA has made in meeting them can be found in Part Four.

Re-verification

4. Re-verification is important as organisations change and staff move on. It is also an opportunity for OPSI to ensure that the recommendations of the last verification have been fully implemented. The frequency of re-verification is based on several risk factors including the complexity of the licensing system, how critical the information is and the standard of compliance at the first verification. The EA has been assessed as a medium risk organisation.
5. Re-verification is based on the IFTS methodology and includes a review of current licence files, interviews with key staff, a standard licence review and a web review. It also includes a review of progress towards meeting the recommendations of the first verification. It is not the intention to verify aspects that were found to be satisfactory at first verification, although inevitably some areas may be revisited. Re-verification concentrates on the organisation's progress towards meeting the recommendations of the last verification and any significant changes which have occurred since, such as policy shifts or organisational change.

Licensing Activity at the Environment Agency

5. The Data and Information Exploitation Unit (DIEU) is responsible for developing policy and managing agreements in relation to EA intellectual property rights (IPR), including copyright. It is committed to making data resources and products more widely available. It licenses the commercial use of data and information in the private sector and forms data partnerships with other government organisations. Income from royalties and charges is used to support further data quality and access initiatives.
6. The EA divides its licensing activity into several categories and has developed several different types of licence agreements based on these categories:
 - Copyright permission to use extracts;
 - Standard data licences;
 - Value Added reseller agreement (VARs);
 - Memoranda of Understanding (MoUs);
 - Service level agreements (SLAs); and,
 - Variations on the above to deal with the requirements of the different partnership organisations.

Licence Review

7. The licences were generally very good. The key points raised are outlined below; full reviews are available in Appendix 3.
 - Terms are generally fair and unrestrictive
 - Licences are mostly written in plain English and are easy to follow
 - The Value Added Reseller licence gave greater concern as it is legalistic and difficult to follow
 - Definitions need to be reviewed, as some are omitted and others are unclear
 - Most licences lack provisions for termination of the agreement
 - In some cases fees and the length of the agreement has been omitted. This may lead to unfairness if these are not standard
 - Some of the licences need to be proofread for errors

Overall Assessment

8. The EA demonstrated a good level of compliance with the IFTS principles. OPSI is therefore able to re-accredit the EA to IFTS. The EA is openly committed to IFTS and this was evident both during the interviews and on inspecting the licensing files. Of particular note were the EA's fair treatment of customers, its clear and simple website and its

internal compliance with the principles of IFTS, which are all examples of good practice. Some recommendations have been made in the report in respect of a more proactive approach to opening up information for re-use, licensing timescales and more transparent pricing policy and these should be implemented within the next six months to ensure the high level of commitment is maintained.

9. Subject to any significant policy or organisational changes, the EA should be re-verified in the next 2-3 years.

PART TWO: KEY CHANGES

10. One key area of change was the internal structure of the team dealing with re-use, which took place in April 2005. Three new teams were created focusing on the areas of Policy, Process and Delivery. The teams do not work in isolation; the Policy and Process teams in particular work together to ensure that the department runs smoothly and that policy and process are aligned.
11. Since the last verification, the EA has developed policies and procedures and is following these. It has also improved its website. The EA is currently developing further policies and procedures covering many aspects of licensing, and this will shape the EA's future business activities.
12. In addition, the EA has made a large number of staff changes since the last verification, although many of the key staff are still in position, ensuring some continuity.

PART THREE: HIGHLIGHTS AND AREAS FOR IMPROVEMENT

Openness

13. Generally, the EA is open with its information and allows re-use of a large proportion of its information. If information cannot be made available, it is often due to third party copyright being included in the information, which is stated clearly in its list of exceptions. Another reason for not allowing re-use is if the data is not fit for purpose. It does not appear, however, to seek to use this as a reason to restrict re-use. Instead, it acts responsibly and tries work with the applicant to make the information available. The EA is currently developing policies on this and when complete, these should be published on the EA website. **Recommendation: EA publish policies on reasons for refusal, particularly information which is not fit for purpose or quality controlled, when complete. OPSI can provide advice and guidance if required.**
14. The EA currently takes a reactive approach to openness. Although its policy is to allow re-use where appropriate, it does not seek to actively promote its information and encourage re-use. A number of people interviewed mentioned this, and one of the EA's key tasks for the coming year is to take a more proactive approach to licensing. This is a positive step. **Recommendation: EA should begin to take a more proactive approach to licensing and re-use.**

Fairness

15. Evidence obtained through licensing file reviews and interviews showed that the EA treats its customers fairly. The EA uses standard terms and conditions and there was no evidence to suggest that there would be any negotiation of terms or prices. The EA also has its own Property Search product, which it licences with the same terms and conditions as it would offer to external re-users, which is positive as it demonstrates that the EA is committed to treating its own internal business the same as its external customers. **Recommendation: The EA should continue to treat all customers fairly.**

Transparency

16. During the licensing file reviews, the team found that some of the licences could be more detailed, for example there was often no explanation of why there had been no charge. It is important that licensees are aware of what they can and cannot do with the information provided to them under the licence, what charges have been applied and why charges do not apply in some circumstances. **Recommendation: The EA should ensure licences are sufficiently detailed to ensure clarity for applicants.**

17. It is important that the process to obtain a licence to re-use information is transparent and that internal processes allow for a speedy response. In some cases, it took some time from initial request until the licence was granted, especially if a new type of contract is required. **Recommendation: EA should review its procedures to ensure that it can grant licences in reasonable timescales.**
18. The EA has a quarterly Data Quality Forum. Although the primary aim of this is to ensure that EA data is of a sufficiently high standard for re-use by VARs, it also allows the VARs to build a good working relationship with the EA and raise any issues it has. The Forum provides VARs with the opportunity to give feedback on the EA's data, licences and general relationship. This is positive and shows that the EA takes data quality and customer feedback seriously.
19. Costs and the way that an organisation has arrived at its prices should also be transparent, and these were not always clear. Some people interviewed cited pricing as a current issue facing the EA, and it is good that this is recognised. The EA also finds it difficult to determine what is paid for as part of its 'public task'. Although it is not easy to determine the cost of the various data sets, the EA should attempt to do this to ensure a 'reasonable return'. **Recommendation: The EA should attempt to define its costs and ensure a transparent pricing policy allowing a reasonable return on investment.**

Website review

20. A website review was carried out prior to the verification. The main findings are below, with the full review contained in Annex A of this report.
21. The main findings of the website review were:
- While some pages were several clicks from the home page, the site has a logical layout so they were easy to find
 - The site was user friendly and simple
 - The IAR was in a Word format and was quite comprehensive.
 - Each licence was outlined and explained on the site which was good, but it would be beneficial to publish copies of the licences
Recommendation: EA should publish licences in full on their website
 - The charging policy was well explained, clear and available for potential re-users to view
 - The IFTS commitment was available, although it should be a personal commitment and currently no individual is named
Recommendation: An individual, preferably the Chief Executive, should personally sign the IFTS commitment
 - It is clear how to apply for a licence and it is possible to apply online

- The EA aims to respond to requests within 20 days, although the term 'respond' should be clarified
- Unavailable information and licensing exceptions are documented and explained
- The website could have made more mention of OPSI and APPSI and provided contact details for both bodies
- The search facility on the website was excellent
- While the website had a great deal of information regarding IFTS, the EA should consider including the IFTS logo and a link to the OPSI web page

Compliance

22. The EA is particularly strong with regards to the principle of compliance. The Data Quality Forum mentioned above is a good way of ensuring compliance. In addition, the EA runs in-house training on various aspects of re-use. These seminars are run jointly by the Legal team and DIEU. This is a positive way of ensuring compliance.

23. The EA has a large number of documented policies and procedures that are easily accessible by its staff. Again, these ensure that staff across the organisation are aware of how to deal with requests for re-use of information, and that everyone follows the same procedures. It is also clear to staff where to go for advice, and there is a good level of cooperation between DIEU and the legal team. Staff interviewed were very aware of the PSI Regulations, as well as various aspects of competition law. More information on policies and procedures could, however, be published on the EA website. **Recommendation: The EA should publish further information on policies and procedures for re-use on its website.**

Challenge

24. The EA has a published complaints procedure, but it is yet to be tested. It is a general complaints procedure, but it would be best practice to have a specific complaints procedure to deal with licensing issues, mentioning that applicants can raise their complaint with OPSI and APPSI if they are unsatisfied with the internal procedure. It is unclear whether staff are aware of the applicant's right of appeal, as the EA has not received any complaints in this field. **Recommendation: Ensure staff are aware of the published complaints procedure, and consider having a complaints procedure specific to Licensing/IFTS.**

PART FOUR: PROGRESS

Ref	Para No.	Recommendation	Action	Comment	Status
Openness					
	31	Consider developing a publicly accessible information asset list, showing what information is held by the EA and what is available for re-use.	The EA has given serious thought to how the IAR can be further developed and has set up a meeting with OPSI to discuss IAR development further.	The EA should take a more proactive approach to informing people about what information it has available, and one way of doing this is further developing its IAR.	Part Complete
	34	Ensure that policy guidance on the licensing of information includes exceptions to the principle of openness, for example restrictions in order to protect the environment	The EA has drafted policy guidance, which is available on the EA Intranet.	The EA should consider publishing policy guidance where appropriate.	Complete
Fairness					
	36	The DIEU should continue to ensure that all staff are aware that there are certain channels for handling requests and the implications if these are not followed.	The DIEU has drafted work instructions which are available on the EA Intranet and accessible by all staff.		Complete

	36	Ad hoc discretion should be avoided as it leads to unfairness. Habitual discretion should be justified and included in policy guidance. In particular this applies to the practice of waiving charges for individual cases, and using a case by case approach to deciding royalty payments.	The charging policy regarding media in a work instruction has been clarified and there is no discretion. The only decision to be made is who qualifies as media.	It is clear in the policy guidance who should make the decision about media usage and what procedures should be followed. The EA should consider putting at least an abridged version of this on its website.	Complete
	41	Consider consolidating the data licence and the VAR licence as there is considerable overlap.	The data licence and VAR licences have not been consolidated, as they serve different purposes. The VAR relationship has progressed and there are now processes and documents in place with regards to VARs.	As the VAR relationship has developed since the previous verification, this recommendation is no longer applicable.	n/a
	44	The definition of permitted commercial activity within the SLA should be justified.	The wording has been simplified.		Complete

	46	There needs to be strong justification for the current practice of distinguishing between the public sector and the private sector. This should also be incorporated into a pricing policy which can demonstrate that both sectors are treated fairly.	There is a distinction between use for a statutory purpose and use within a public body for non commercial uses.	The justification should be published on the website where possible.	Complete
Transparency					
	49	Files should give a clear audit trail of decision making processes, such as how charges were calculated and what policy was being applied.		There is still some scope to make the files clearer which will lead to a better audit trail.	Complete
	53	Exceptions to normal practice should be logged, reviewed and publicised.	The procedure allows for exception to occur in the case of 'not for profit' organisations. Students are covered by the standard notice. The exception is awarded based on the usage rather than the requester.		Complete
	57	The website does need to include more information about copyright and licensing. It could also be located in a more logical part of the website.	The website has been improved.		Complete

	60	The EA should consider consolidating some of the licences and agreements into fewer framework agreements to which different schedules can be attached.			Complete
		The EA should consider redesigning some of the licence forms and reviewing the language used in order to make it more easily understood.	All new licences have been written in Plain English.		Complete
Compliance					
	66	The EA should develop a clear pricing policy which covers all licensing and partnership arrangements.	Covered above		Complete
	67	Some guidance for staff on the application of competition law should also be drafted.	There has been extensive training in areas of IPR and competition law.		Complete
Challenge					

	70	Establish a licensing complaints process which will either sit on its own or within the main EA complaints policy.	There is a generic complaints procedure as there are so many departments within the EA. This ensures a guaranteed level of consistency.	Best practice would be to have a separate licensing complaints process. If this is not possible, it is essential to ensure that staff handling complaints understand the OPSI/APPSI complaints procedures.	Complete
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SUMMARY OF RECOMMENDED ACTIONS

This is a summary of the recommended action to:

- remedy the weakness identified; and,
- strengthen the commitment to Information Fair Trading.

It is recommended that the Environment Agency should:

Principle	Ref	Recommendation	Priority
Openness	13	EA publish policies on reasons for refusal, particularly information which is not fit for purpose or quality controlled, when complete. OPSI can provide advice and guidance if required.	
	14	EA should begin to take a more proactive approach to licensing and re-use.	
Fairness	15	The EA should continue to treat all customers fairly.	
Transparency	16	EA should ensure licences are sufficiently detailed to ensure clarity for applicants.	
	17	EA should review its procedures to ensure that it can grant licences in reasonable timescales.	
	19	The EA should attempt to define its costs and ensure a transparent pricing policy allowing a reasonable return on investment	
	21	EA should publish licences in full on their website	
	21	An individual, preferably the Chief Executive, should personally sign the IFTS commitment	
Compliance	23	The EA should publish further information on policies and procedures for re-use on its website.	
Challenge	24	Ensure staff are aware of the published complaints procedure, and consider having a complaints procedure specific to Licensing/IFTS.	

Appendix 1

Website Assessment

- 1.1 Does the website have an Information Asset Register? (Yes)
- 1.2 If yes, how many clicks is it from the homepage? (4+)
- 1.3 How long did it take to find? (1-2 mins)
- 1.4 If there is no IAR, is there other guidance on what information is available? (N/A)
Please provide a link for the IAR page, along with comments on how easy it was to use.

http://www.environment-agency.gov.uk/commondata/103599/iar_1320833.doc

In Word format, comprehensive details of what is contained.

Despite being several clicks from the homepage, the logical layout of the site assisted in finding it quickly.

- 2.1 Does the PSB use standard licences? (Yes)
- 2.2 Are these published in full on the website (No)
- 2.3 If yes, how many clicks are they from the homepage? (N/A)
- 2.4 How long does it take to find? (N/A)
- 2.5 How many standard licences are there? (6+)
- 2.6 Is there an explanation of what different licences are for and is it clearly understood? (Yes)
Please provide a link to the standard licences here. If there are a large number of standard licences, are they proportionate to the volume of licensing carried out?

<http://www.environment-agency.gov.uk/aboutus/1105530/310151/1317601/1319645/1319924/?version=1&lang=e>

The licences are not lengthy so could easily be published online.

- 3.1 Is there any charge made for licences? (Yes)
- 3.2 Is there an explanation of the charges? (Yes)
- 3.3 Is there an explanation of how charges are drawn up? (Yes)
Please provide a link to the charges here, along with any explanation of the way they are drawn up.

<http://www.environment-agency.gov.uk/aboutus/1105530/310151/1317601/1319645/1319940/?lang=e>

http://www.environment-agency.gov.uk/commondata/103599/384_04_1340870.doc

- 4.1 Is there an IFTS commitment on the website? (Yes)
- 4.2 How many clicks is it from the homepage? (4+)
- 4.3 How long does it take to find? (1-2 mins)
Please provide a link to the IFTS commitment

http://www.environment-agency.gov.uk/aboutus/1105530/310151/1317601/1319823/?version=1&lang=_e

Again the logical layout of the site allowed this to be found relatively quickly despite it sitting far from the homepage.

- 5.1 Is there clear and precise information on how to apply for a re-use licence? (Yes)
 - 5.2 Are there a variety of methods for applying for licences? (Yes)
 - 5.3 Is it possible to apply online for a licence? (Including emailing a form) (Yes)
 - 5.4 Does it specify a timescale to grant licences? (Yes)
 - 5.5 If yes, what is that timescale (in working days)? (20+ days)
- EA aim to provide the information in 20 working days.

- 6.1 Does the PSB have a procedure for complaints regarding licensing decisions? (Yes)
 - 6.2 How many clicks is it from the homepage? (4+)
 - 6.3 How long does it take to find? (<1 minute)
 - 6.4 Does it mention that if the complainant is unhappy they can refer to OPSI or APPSI? (No)
- Please provide a link to the complaints page. If there is no separate licensing complaints page, please link to the general complaints section.*

The only place OPSI is mentioned in regards to complaints is on the IFTS commitment. The complaints leaflet does not mention re-use, and the refusal to allow re-use section does not mention the possibility of an appeal.

- 7.1 Does the website explain what information is not available? (Yes)
 - 7.2 If Yes, does it explain why? (Yes)
 - 7.3 How many items are listed? (5-6)
- Please provide a link to the page with this explanation. What is the nature of the unavailable items? Please comment if the nature of the PSB's activity would require a larger/smaller number of exceptions than would be expected. Are the exceptions listed specific, or cover a category?*

http://www.environment-agency.gov.uk/aboutus/1105530/310151/1317601/1319645/1319932/?lang=_e

- 8.1 Does the website outline any exceptions to normal licensing policy? (Yes)
 - 8.2 If Yes, does it explain why that exception has been made? (Yes)
 - 8.3 How many exceptions are there? (9)
- What is the nature of the exceptions? Are the exceptions specific? Please provide a link to the page*
- 9.1 Does the website have a Crown Copyright notice? (N/A)

- 9.2 Is it linked to from every page? (N/A)
- 9.3 How many clicks is it from the homepage? (N/A)
- 9.4 How long does it take to find? (N/A)
- 9.5 Is OPSI/HMSO mentioned, with contact details? (No)

- 10.1 Does the website have an electronic search facility? (Yes)
- 10.2 If yes, how many clicks is it from the homepage? (0-1)
- 10.3 How long did it take to find? (<1 minute)
Please provide a link for the search page, along with comments on how easy it was to use. If it is not present, does it say why? (Yes) (No)

Search facility was excellent.

- 11.1 Is the material available by electronic means? (Yes)
- 11.2 Is it possible to download direct from the website? (Yes)
- 11.3 If data is not available electronically, is there an explanation of how to obtain it? (N/A)
- 11.4 If data is sent via email, is there a specified timescale for delivery? (Yes)
11.5 If yes, what is the timescale (In working days)? (5+ days)
Please state any other methods of receiving data. If a timescale is published, to what extent do they meet that commitment?

- 12.1 Does the PSB outline its responsibilities under IFTS on their website? (Yes – all)
- 12.2 Does the website explain what IFTS is aiming to achieve? (Yes)
- 12.3 Are the benefits of IFTS explained? (Yes)
- 12.4 Is the PSB using IFTS logos on their website and actively mentioning they are a member of the scheme? (No)

- 13.1 Does the PSB outline its policy towards its trading of PSI? (Yes)
- 13.2 Does the PSB explain how it arrives at decisions? (Yes)
- 13.3 Does the website have an explanation of what re-use is? (Yes)
- 13.4 Does the website explain what Crown Copyright is? (N/A)
- 13.5 Does the website explain why licences are sometimes needed to re-use information? (Yes)
- 13.6 Does the website explain the difference between FOI and re-use? (Yes)
- 13.7 Does the website explain what a trading fund and delegated authority is? (No)
Please provide a link to any explanations here.

<http://www.environment-agency.gov.uk/aboutus/1105530/310151/1317601/1317957/?version=1&lang=e>

<http://www.environment-agency.gov.uk/aboutus/1105530/310151/1317601/1319754/1319986/?version=1&lang=e>

Appendix 2

Licences reviewed:

Notice for the supply of Environmental Agency Information (Standard Notice)

[Version October 2005. Standard Notice.doc]

Notice for the supply of Environmental Agency Information (Standard Notice)

[Version 4 April 2006 New Standard Notice.doc]

Comments are restricted to the April 2006 version of the document.

Evaluation Criteria

1. Clarity of licence terms

Check for clarity of language, jargon, legalistic language, plain English

Although the document is written in plain English it needs to be set out more clearly. The paragraphs that set out the permitted use of Agency Data (paragraphs 9, 10 and 11) cover the following categories of use: “*non-commercial as-is internal use*”, “*non-commercial as-is external use*”, “*non-commercial derivative internal use*”, “*commercial as-is internal use*” and “*professional use*”. The user of the data has to visit the EA website, or phone the EA, to find out what the EA regard as “commercial”!

2. Comprehensiveness of licence terms

Are there any significant omissions? Does the licence contain terms that you would not expect to find in a licence?

There is no specified time period for use of the data.
It does not contain provisions for termination i.e. for breach.
The requirement to feature the copyright statement needs to be made clearer.

3. Fairness

Does the licence contain terms that are unfair or unnecessarily discriminates between different user groups?

The Notice does not permit the Data to be used for any commercial derivate purposes. It is unclear if such use would be licensed and on what terms.

4. Consistency

Does the licence contain any terms which are inconsistent and contradictory?

As already stated, the Notice needs to set out more clearly the permitted uses of the data.

5. Practical Arrangements

Is it clear what the process is for making payments, amending terms for example?

Paragraphs 10 and 11 of the Notice refer “standard charges” and “internal commercial usage charge” but does not give details of the charges, how they are calculated and the arrangements for making the payments

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

The Notice carries the following statement, “*It is important that you also read any additional information or warning we give you about specific Data*”. These additional documents may contain terms that are unnecessarily restrictive.

Service Level Agreement Information Exchange

Evaluation Criteria

1. Clarity of licence terms

Check for clarity of language, jargon, legalistic language, plain English

This document is written plain English. There is an avoidance of legalistic language. The use of “We” for both parties could lead to confusion. It is probably appropriate in this agreement as it covers the exchange of information.

2. Comprehensiveness of licence terms

Are there any significant omissions? Does the licence contain terms that you would not expect to find in a licence?

The Agreement does not set out what happens to information that has been exchanged if the Agreement is terminated for a breach. Does the data need to be removed from computer systems, returned to other party?

3. Fairness

Does the licence contain terms that are unfair or unnecessarily discriminates between different user groups?

The terms of the Agreement are fair; both parties have the same rights to use each other's information.

If there is dispute relating to the interpretation/performance that cannot be resolved by negotiation, both parties can agree to the appointment of an external mediator. If they cannot agree to that arrangement they allow the Centre for Effective Dispute Resolution to appoint an external mediator.

4. Consistency

Does the licence contain any terms which are inconsistent and contradictory?

In paragraph 2 of the preamble to the agreement the term "Information" is defined as covering "information, data, records and documents of any kind". The term "Information" is used throughout the conditions except for Clause 3 which is headed Use of Data. A more consistent heading would be "Use of Information".

Clause 3.2 allows either party to supply information to "*a third party who is working on a project which is 100% funded by either Partner.*" I do think that it is correct to use "Partner" in this context. It is not a defined term and the agreement is not for a legal partnership. Suggest that "Partner" is replaced by "party".

The heading of clause 6 (Duration) is in lower case letters after the initial capital, all the other headings are in upper case letters.

5. Practical Arrangements

Is it clear what the process is for making payments, amending terms for example?

The Agreement states that no charges will be made for the supply of information.

There is a footnote to clause 6 Duration which states that the period of the agreement can be extended by mutual agreement, either by means of a variation or by making a new agreement.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

There are no unnecessarily restrictive terms in the agreement.

Information Exchange Memorandum of Understanding

The purpose of this document is to make a Memorandum of Understanding that will be supported by separate service level agreements or agreements.

Evaluation Criteria

1. Clarity of licence terms

Check for clarity of language, jargon, legalistic language, plain English

This document is written plain English. There is an avoidance of legalistic language. It is short (2 sides of A4) because it is intended to set out the intentions and objectives of the parties. The specifics are set out in SLAs or agreements.

2. Comprehensiveness of licence terms

Are there any significant omissions? Does the licence contain terms that you would not expect to find in a licence?

It contains the essential elements for a MOU.

3. Fairness

Does the licence contain terms that are unfair or unnecessarily discriminates between different user groups?

It is not clear who the MoUs will be made with. It is likely that they will only be made with other public sector organisations as clause 3 (vii) refers to the information being “used solely for the statutory, regulatory or not for profit functions” of the parties.

4. Consistency

Does the licence contain any terms which are inconsistent and contradictory?

There are a number of typing errors in the MoU. In the Introduction there is a number 1.2 but no accompanying text. In the second sentence of 1.1 the sixth word “the” seems superfluous.

At 3.2 (ii), in the last line, the word “by” should be inserted between “parties” and “appropriate”.

5. Practical Arrangements

Is it clear what the process is for making payments, amending terms for example?

These are subject to separate arrangements.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

There are no unnecessarily restrictive terms in the MOU.

Data Licence Agreement

Evaluation Criteria

1. Clarity of licence terms

Check for clarity of language, jargon, legalistic language, plain English

This document is written plain English. There is an avoidance of legalistic language. The general terms set out on the reverse apply to all users of the data.

2. Comprehensiveness of licence terms

Are there any significant omissions? Does the licence contain terms that you would not expect to find in a licence?

The General Conditions contain all of the terms that you would expect to find in a licence.

The permitted usage of the Data as set out at 3.1 of the General Conditions could be made clearer.

3. Fairness

Does the licence contain terms that are unfair or unnecessarily discriminates between different user groups?

It is not possible to say if the fees payable are fair because this section is blank and there is no indication as to how the fee is calculated and if there are different charges for different user groups.

As the period of the agreement is left blank it is possible that one licensee may get longer terms than another licensee.

4. Consistency

Does the licence contain any terms which are inconsistent and contradictory?

In the front of the Agreement the EA is defined as “The Agency” and the recipient of the data as “The User”. Throughout the rest of the special conditions and the general conditions “we” is used for the EA and “you” for the user.

5. Practical Arrangements

Is it clear what the process is for making payments, amending terms for example?

There is a section to insert details of the fee payable. There are no details of how and when to make the payment. VAT is required for some payments but there is no mention of the VAT reference number.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

The general conditions allow the EA to give one month’s notice of termination of the agreement. There does not seem to be similar scope for the User to terminate the agreement.

Contactors Data Licence

Evaluation Criteria

1. Clarity of licence terms

Check for clarity of language, jargon, legalistic language, plain English

This document is written plain English. There is an avoidance of legalistic language. It sets out the terms on which a contractor working for the EA can use data supplied by the EA.

2. Comprehensiveness of licence terms

Are there any significant omissions? Does the licence contain terms that you would not expect to find in a licence?

The terms contained in the document are appropriate for this type of arrangement. It also sets out terms for use of third party data such as Ordnance Survey data.

3. Fairness

Does the licence contain terms that are unfair or unnecessarily discriminates between different user groups?

The licence terms are fair for the type of arrangement covered by the agreement.

4. Consistency

Does the licence contain any terms which are inconsistent and contradictory?

As the agreement is to only to allow the contractor to use the data for work being done for the EA the document does not contain any terms are inconsistent or contradictory.

5. Practical Arrangements

Is it clear what the process is for making payments, amending terms for example?

These will be set out in the main contract which will be referenced in the Schedule.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

The terms have to restrictive as the Contractor is only being granted rights to use the data for a specific purpose. It does make clear that the EA will own the IPR in output/work created in the course of the contract. This is fair if the EA are paying the contractor to undertake the work.

Copyright Licence Agreement

Evaluation Criteria

1. Clarity of licence terms

Check for clarity of language, jargon, legalistic language, plain English

This licence agreement is written plain English. There is an avoidance of legalistic language. The general terms set out on the reverse apply to all users of the Documents (a defined term) covered by the licence.

2. Comprehensiveness of licence terms

Are there any significant omissions? Does the licence contain terms that you would not expect to find in a licence?

The General Conditions contain all of the terms that you would expect to find in a licence.

The permitted usage of the Documents is set out at 3.1 of the General Conditions. These could be made clearer. In essence it is restricted to internal use only.

3. Fairness

Does the licence contain terms that are unfair or unnecessarily discriminates between different user groups?

As the period of the agreement is left blank it is not possible to say if one licensee may get offered a longer licence period than another licensee.

4. Consistency

Does the licence contain any terms which are inconsistent and contradictory?

In the front of the Agreement, the EA is defined as “The Agency” and recipient of the data as “The User”. Throughout the rest of the special conditions and the general conditions “we” is used for the EA and “you” for the user.

5. Practical Arrangements

Is it clear what the process is for making payments, amending terms for example?

There is a section to insert details of the fee payable. There are no details of how and when to make the payment. VAT is required for some payments but there is no mention of the VAT ref number.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

The general conditions allow the EA to give one month’s notice of termination of the agreement. There does not seem to be similar scope for the User to terminate the agreement.

Data VAR standard terms & conditions

Evaluation Criteria

1. Clarity of licence terms

Check for clarity of language, jargon, legalistic language, plain English

This is a long and complex document (34.5 A4 pages) containing 24 separate sections and 4 Schedules (not provided). It is written in legalistic language and is difficult to follow. The cramped layout also makes it difficult to follow.

The meaning of the words “hold itself out”, included in clauses 5.2, 5.5 and 6.1.4, is unclear. More precise wording should be used.

2. Comprehensiveness of licence terms

Are there any significant omissions? Does the licence contain terms that you would not expect to find in a licence?

There are no significant omissions. It contains the terms and conditions you would expect to find in a licence but they are written in an elaborate and wordy manner.

The range of definitions set out in clause 1 could confuse, there are 35 and some of the words are similar.

Some of the terms that are used in the licence are not included in the definitions. These include Commencement Date, Agency's National Customer Care Centre, follow up questions, and Public Register.

3. Fairness

Does the licence contain terms that are unfair or unnecessarily discriminates between different user groups?

The licence makes clear at 4.4 and 4.5 that the updates to the data will be supplied to Resellers at the same time and frequency. Clause 6.2.3 also states that the EA will offer new datasets to all Value Added Resellers and that the arrangements will be "made on commercially equivalent terms". Clause 6.2.8 states that the Agency will notify the Reseller if it offers different terms and conditions to another Value Added Reseller for similar products to enable the Reseller to choose the revised terms and conditions.

4. Consistency

Does the licence contain any terms which are inconsistent and contradictory?

As with some of the other licences, the EA is also granting the Reseller the right to use third party data which is included in the data it supplies to the Reseller. Clause 5.1 states, "*In addition, the Agency hereby grants to the Reseller so far as the Agency is able and at the reseller's own risk a non-transferable, non-exclusive licence to use Third Party Data in accordance with statutory rights in Approved Products and Development Products.*" It is questionable whether there is a statutory right which allows EA to licence the use of third party copyright material in products that are being made available on a commercial basis.

In most of the other licences the data is being used on a non-commercial basis.

5. Practical Arrangements

Is it clear what the process is for making payments, amending terms for example?

Clause 7 of the licence covers payment arrangements. It sets out in great detail what payments are due and when they should be paid. However, no address is given for sending statements or the payments; this information is probably included in the Schedule that sets out the royalties and other payments to be made by the Reseller.

There arrangements for data supply are clearly set out in clause 4. There are also arrangements for examining and re-evaluating Data by the Agency. Timescales are given in clause 6.2.6.

Clause 24 clearly sets out the Dispute Resolution process for the parties to the Agreement.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

Clause 14.4 says that the Agency shall not be liable for any delays caused by the Agency needing to comply with its “Operating Requirements” [“the requirements of the Agency (which may change from time to time) to comply with its statutory duties”]. The clause allows such a delay to be for a period of “no greater than three months”. This could be seen as being restrictive and unfair.