



Information Fair Trader Scheme

Verification of commitment to information fair trading

Ordnance Survey

November 2007

Unlocking the potential of public sector information



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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. IFTS is also the mechanism by which the Controller of HMSO regulates those Crown bodies with a delegation of authority to administer their own licensing. All such bodies with a delegation must remain accredited to the Scheme. Ordnance Survey has a delegation.

First verification

3. Ordnance Survey was first verified in April 2003 and was accredited to the Scheme.

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. Ordnance Survey was last verified in October 2005 and was re-accredited to the Scheme, subject to progress on the recommendations in our report. The recommendations made at this verification and the progress Ordnance Survey has made in meeting them can be found in Part Four.
5. 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 with recommendations from the previous verification. Taking these factors into account, together with the significance of the licensing revenue to Ordnance Survey, it is assessed as being high risk.
6. OPSI is grateful for the high level of co-operation that it received during the site visit. All the requests that we made for further documentation were responded to promptly.

Licensing Activity

7. Licensing is a core activity for Ordnance Survey. While some revenue is derived from the sale of traditional paper maps, the organisation derives most of its revenue from licensing material electronically.
8. Ordnance Survey maintains a comprehensive and up-to-date national mapping database as required by its Executive Agency Framework. At the same time it is required to meet the financial targets set for it as part of its status as a Trading Fund. It is required to recover its costs and to generate a return on capital employed. Ordnance Survey's

business strategy is designed to grow the market for the use of geographic data. Future growth is mainly predicated on the licensing of data to business partners, allowing them to add value to the original material and provide applications to end-users. These partners range in scale from small businesses to multinational companies.

9. Ordnance Survey has a number of main channels for the distribution of its data including:

- **Collective Purchasing Agreements** – This is the direct licensing of data to major users. The agreements are typically centrally negotiated with significant classes of similar users, such as Central Government, Local Government, the NHS and the utilities. The data licence is developed around Standard Licensed Use terms and the agreements are usually for a period of three years.
- **Data supply to Direct Customers** – This is the direct licensing of data to business users. Typically these are businesses using the data for Standard Licensed Use, a range of rights defined around their own internal purposes. They pay an annual licence, variable according to parameters such as the dataset(s) chosen, the area of coverage required and the intensity of use planned.
- **Partner Agreements** – This is the provision of data to Licensed Partners. The partners are expected to add significant value to the data by incorporating it into applications and services for end-users. Partner Agreements cover commercial exploitation of specified Ordnance Survey datasets for specified uses. Supported by a Specific Use Framework Agreement, and the required number of Specific Use Agreements.
- **Ordnance Survey Mapping and Data Centres** – These outlets stock the full range of Ordnance Survey branded products; offer customised mapping, solutions, technical information for business and professional use.
- **Distribution Agreements** – These agreements permit the distribution or resale of specific Ordnance Survey datasets to end users for their standard licensed use. Supported by a Distribution Framework Agreement, and by a Data Distribution Agreement.
- **Retailer/Wholesaler Agreements** – These agreements cover Ordnance Survey consumer mapping products for Wholesalers and Retailers.
- **Copyright Licences** – These are a number of different licences for customers continuing to use paper mapping or who otherwise have re-use requirements not covered by framework licences. Including, for example, Paper Map Copying, Publishing Licence, student and academic publication rules and internet licences.
- **Licensing of data to Developers** - This allows access to Ordnance Survey data and, with support, to enable development of new

applications. If and when the application reaches the point of commercial exploitation, the licensee is required to take out the appropriate commercial licence.

10. Ordnance Survey expects the licensed partners to provide the major share of its revenue growth in the future. Ordnance Survey's preferred business model is to deal with major customers and partners directly. It has set up the Partner, Ordnance Survey Options and Distribution networks primarily to reduce the number of customers with which Ordnance Survey has to deal directly. This also contributes to the creation of a marketplace for partners to provide solutions for a wide range of businesses, government bodies and individuals. Ordnance Survey has a policy of setting a minimum royalty for its licensed partners which is designed to reflect the investment put in by Ordnance Survey to any such partnership and also to encourage recognition by the partners of the commitment required.

Action Since Last Verification

11. One of OPSI's previous recommendations was that Ordnance Survey and OPSI should work more closely together. Since then, a number of meetings have taken place to update OPSI on actions taken to address recommendations arising from the last report, culminating in the recommendations being signed off in March 2007 as documented in Part Four of this report. This was consistent with the timetable set for implementation. During this process, Ordnance Survey supplied OPSI with extensive documentation in order to demonstrate that it was addressing the points raised. Regular monitoring meetings have continued.

Overall Assessment

12. Overall, noting the progress that has been made since the last verification, we continue to find that some licensing documentation is opaque and the requirement of partners to navigate their way through the various stages of the licensing process is a potential barrier to re-use. We do, however, recognise that Ordnance Survey account managers play a valuable role in guiding people through the system. Noting the fact that its existing approach can lead to delays, we have made a recommendation that the organisation reviews its internal processes, for example escalation procedures and workflow, and considers publishing its key licensing performance indicators. We have also suggested that it reviews elements of its exceptions document to tackle the impression that it is inclined to be restrictive. Our previous report had asked that Ordnance Survey thoroughly review the clarity of its licences. Recognising that this exercise has been on hold until the full outcome of the Office of Fair Trading's (OFT) Commercial Use of Public Information (CUPI) report has been established, we have made recommendations accordingly.
13. On a positive note, we found that, with the recent launch of the OS OpenSpace™ project, the number of avenues for re-using Ordnance

Survey data are increasing. We also found a high degree of professionalism on the part of Ordnance Survey staff, with a commitment to apply its policies diligently and fairly. This is allied with strong corporate governance which reinforces a consistency of approach.

14. Based on the team's risk analysis, Ordnance Survey is re-accredited to IFTS and should be re-verified in 1-2 years.

PART TWO: KEY CHANGES AND CONTEXT

15. Ordnance Survey's strategic approach has not changed significantly since our last verification visit and many of the staff, including the Chief Executive, have been in post for some time. As such, internally, its licensing policies are well established.
16. Externally, there have been a number of developments which Ordnance Survey has had to consider. These include the OFT CUIP report and the Power of Information Review which was sponsored by the Cabinet Office, together with a Treasury-commissioned study on pricing models and their application to the activities of Trading Funds. It has also had cause to look at how it defines its "public task" and prepare for the implementation of the INSPIRE Directive.
17. Ordnance Survey has responded to the CUIP report, including expressing some concerns about the distinction between "unrefined" and "refined" information, arguing that when it collects data it does so to a high specification and often finds itself carrying out work to simplify its base data for non-specialist mapping. As such, the journey from "unrefined" to "refined" is not always linear.
18. Ordnance Survey is very conscious of the legislative context in which it operates. It is aware of the provisions of the Competition Act. For example, with a view to pricing its material fairly, it takes Long Run Incremental Costs (LRICs) into account. It has sought legal advice on pricing and prices its material on the basis of use so that it can charge differentially while being compliant with the Competition Act.

PART THREE: HIGHLIGHTS AND AREAS FOR IMPROVEMENT

Openness

19. Ordnance Survey operates in a complex policy and legislative environment. For example, it is encouraged to make information as freely available as possible as part of the general government policy to encourage the re-use of public sector information. At the same time, it is a Trading Fund with an obligation to make a return on investment. As such, it could be regarded as an organisation that carries out a delicate balancing act. Because it is trying to be rigorous in its compliance with various pieces of legislation and policy objectives, and, arguably, some of these are in tension, it can sometimes appear to err on the side of caution. There is a tendency to support the status quo which could act as a barrier to new developments in the marketplace.
20. It is therefore important to address the question of to what extent Ordnance Survey is promoting the re-use agenda and providing a variety of avenues to the timely, widespread and innovative re-use of public sector information.
21. To become a full-scale partner or data distributor, the “entry level” to achieve this is typically to be able to guarantee a minimum royalty of £5000 per annum. Despite the option being available to end the arrangement after one year should that figure not be reached, this could be seen as a deterrent to innovation or experimentation and consequently growth within the information industry. However, there are a number of ways in which people can explore the use of Ordnance Survey data before committing themselves to a partner or distributor arrangement. First, there is sample data available for a small part of the country (Port Talbot) available on its website. Secondly, developer licences are available. Thirdly, in line with a recommendation in the Power of Information review, Ordnance Survey has recently announced the launch of its OS OpenSpace project.
22. Ordnance Survey’s licensing model is a complex one, particularly in relation to partner activity. Prospective partners are required to lodge details of their organisation and business proposals, seek product approval, sign a framework partner agreement and take out an appropriate number of specific use licences. Ordnance Survey gathers information from partners in order to gauge which specific use licences are most suitable for their business needs. Nevertheless, potential licensees could regard the process as a whole as cumbersome, perhaps feeling that there is the potential to be pigeonholed or required to adapt to a rigid structure. Having said that, OPSI acknowledges the role of Ordnance Survey’s account managers in helping prospective and recently established partners understand the process and notes that interviewees felt that there is now widespread understanding of the licensing model amongst its customers. We are also aware of the organisation’s attempts to align its product approval paperwork more closely with the licences that it offers.

23. Ordnance Survey considers requests for new licences or amendments to existing ones carefully. Taking the case of Specific Use Contracts (SUCs) as an example, the process of creating a new one, amending an existing one, or issuing a special condition can be quite time-consuming. An exhaustive analysis of the ramifications is required and this can act as a disincentive to change. While we recognise the benefits of good corporate governance in involving the appropriate departments in the licensing process - getting change approved by the Pricing and Trading Group (PTG) or referred for a board-level decision - Ordnance Survey should review its escalation process and workflow to determine whether this activity can be streamlined in any way.
24. The view of those we spoke to about the issue was that the Pricing and Licensing Team is sufficiently resourced, taking into account its current recruitment plans, to play its full part in the above process, as is the Intellectual Property and Legal department. It was also noted that the Pricing and Licensing Team works effectively to filter requests from the business and has the necessary knowledge to deal with requests at source or refer them to the legal department as appropriate. We also recognise that the majority of straightforward licence requests are processed within the standard 20 working days expected by the PSI Regulations. More complex requests sometimes take longer and the Regulations do make provision for such cases. However, **we recommend that Ordnance Survey reviews its internal processes with a view to shortening the average time taken to issue a licence.**
25. It has been acknowledged by Ordnance Survey that receiving a licence can sometimes take too long and it has developed a suite of performance indicators to track the licensing process. This is a welcome development as it allows the organisation to identify potential bottlenecks. **We recommend that Ordnance Survey considers publishing a digest of its key licensing performance indicators on a quarterly basis.** This will demonstrate transparently that it is tackling an issue that continues to generate comment and unease amongst stakeholders.
26. The organisation exhibits good practice in the significant amount of material about licensing that it publishes on the internet and the comprehensive guidance available to employees on its intranet. It is to its credit that Ordnance Survey publishes its standard licences. However, there continue to be some concerns about fairness and transparency.

Fairness

27. Ordnance Survey's IFTS Commitment states that its standard exceptions are "designed to meet a specific defined risk to Ordnance Survey's agreed business model" and that it "will strictly follow them." This, together with the number and level of detail of standard exceptions that Ordnance Survey lists, could create the perception that the organisation is inclined to behave in a restrictive manner. One

possible solution to this perception, could be to revise the preamble to the exceptions document, making it clear that these exceptions will not be invoked lightly or disproportionately. **We therefore recommend that Ordnance Survey reviews the introductory text of its standard exceptions document.**

28. While section 7 of the exceptions list regarding its “production flowline” may warrant review once ministers have concluded their deliberations on the CUIP report, the one part of the exceptions list that we wanted to see re-worded was the first bullet of section 4: “We may refuse certain customers a licence if they: are currently in dispute with us or have previously been in dispute with us and the dispute was not resolved to our satisfaction;”
29. The way it was worded could have acted as a deterrent to complainants. Ordnance Survey should be creating an environment where complaints are not discouraged as they can lead to service improvements. During the drafting of this report, Ordnance Survey amended this standard exception so that it is now less of a disincentive to complainants. It now reads: “We may refuse certain customers a licence if they: are currently in dispute with us or have previously been in dispute with us, about a very serious issue such as non-payment of licence fees, unlicensed use of our data or a material and persistent breach of any of our agreements and that dispute was not satisfactorily resolved;”
30. For Collective Purchasing Agreements (CPAs), Ordnance Survey has advised OPSI that it has undertaken some work to attempt to create a more level playing field in the tendering processes. It provides partners or prospective partners with information to help them participate in bids for CPA “lots”. As the practice of parcelling up large public sector CPAs is likely to increase in the coming years and is an important issue for the private sector, OPSI would expect to look at this issue in more detail at the next verification.
31. Even when dealing with major retailers, Ordnance Survey resists individual requests to adopt terms and conditions favoured by prospective licensees, insisting that those of Ordnance Survey apply. This demonstrates an approach which is consistent with the fairness principle.
32. Ordnance Survey has made substantial progress over the last few years in migrating the bulk of its accounts to standard terms and conditions. However, there remain some legacy licences in existence and OPSI would wish to be kept informed of Ordnance Survey’s progress in dealing with those contracts that have yet to be migrated.

Transparency

33. Our previous report referred to the complexity of the suite of standard licences that is offered by Ordnance Survey, including the possibility of using plainer English. Ordnance Survey has acknowledged that there is scope for simplifying its licences while making sure that they are

legally sound. We understand that a budget has been earmarked for such an exercise, but Ordnance Survey has been reluctant to conduct a thoroughgoing review of its licence terms until such time as potential changes arising from the CUIP report are known. This related specifically to where it was in dialogue with OFT about references to the organisation within the report and where the Treasury had commissioned a study of pricing models and their application to the activities of Trading Funds. OPSI will be working closely with Ordnance Survey and OFT on questions of upstream/downstream activity and terms and conditions during 2008. The Treasury-commissioned study has now been published. Following on from this, the Government has stated that it will look closely at the public sector information held by trading funds to distinguish what is required by Government for public tasks and will ensure that public sector information is priced appropriately in the run-up to the next spending review.

34. At the time of our visit, Ordnance Survey was intending to commission a feasibility study, led by Jan Hutchinson, Director of Human Resources and Corporate Services, to identify straightforward changes to the wording of licences that could be made relatively quickly. However, in order that its licensees are not subjected to incremental amendments, Ordnance Survey now prefers to wait until it has carried out a fundamental review of its licensing model before effecting any changes.
35. **We recommend that Ordnance Survey carries out a full review of its licences for linguistic clarity, appropriate length and ease of use. This review should finish within 12 months of Ordnance Survey's work with OPSI and OFT being concluded. The review should include an action plan and a timetable for implementation and OPSI should be supplied with interim progress reports.**
36. OPSI has carried out a review of a sample of the standard licences that Ordnance Survey offers. This can be found at Appendix 2 to this report. The review was conducted by licensing and copyright experts, taking IFTS principles into account. It seeks to incorporate the perspective of a potential licensee approaching the licences for the first time. It is not intended to constitute legal advice, nor is it a substitute for the fully-fledged review that Ordnance Survey itself intends to undertake.
37. **We recommend that Ordnance Survey studies the comments in the standard licence review and considers them as part of its full review of its licences.**
38. The issue of derived data is a complex one. Our previous report expressed concerns that Ordnance Survey's pricing of derived data did not reflect what was, arguably, something that could diminish in value as a result of
 - repeated onward licensing

- being a small proportion of an overall data product.
39. Subsequently, Ordnance Survey reviewed its approach internally and presented its analysis of a number of different scenarios involving derived data which concluded that, in most cases, the value of their data did not diminish and therefore no price reduction was warranted. We accepted that they had analysed the matter and that derived data issues would be kept under review. On this visit, we were informed that Ordnance Survey continues to be willing to explore the subject of derived data, having, for example, participated in a workshop on the matter hosted by the trade association, “Locus”. **We recommend that Ordnance Survey continues to keep us informed of any developments in its analysis of the issue of derived data.**

Compliance

40. OPSI has also carried out a website assessment at Appendix 3 to this report. **Ordnance Survey should include a statement about target timescales in the information that it publishes on the PSI Regulations.**
41. Things are progressing well in the area of archive licensing. Archive licences are ready to be offered to those customers who need to retrieve data in response to a legal challenge or complaint and a residual rights licence is in place to deal with the withdrawal of updates to the Land-Line[®] product.
42. Ordnance Survey’s file management is generally good, with one or two instances of files being out of sequence or not entirely complete. It is in the process of implementing an electronic records management system – TRIM. There is a project – “Indigo” – underway to co-ordinate the migration of documents and the training of staff to a precise timetable.

Challenge

43. Ordnance Survey has a comprehensive complaints procedure in place. In respect of licensing, customer service staff are in possession of the knowledge to deal those issues that can be dealt with at first point of contact and are aware of when to refer on queries that need to be dealt with by the Pricing and Licensing Team. There are target times for responding to complaints and there is a clear process for escalating them. Its published procedure alerts complainants to the possibility of approaching OPSI should Ordnance Survey not be able to resolve a complaint to the complainant’s satisfaction.

PART FOUR: PROGRESS AS AT MARCH 2007

Reference	Recommendation	Priority	Summary of action	Status
Commitment				
Para 20	Ordnance Survey carry out a re-assessment of its understanding of these objectives of IFTS, and whether its current culture and practices are effective in delivering them.	High	Ordnance Survey has carried out an assessment of its understanding of the IFTS principles and discussed these with OPSI.	Complete
Openness				
Para 41	Ordnance Survey review the interpretation of its 'specific use' policy to ensure that it is not restrictive.	Medium	Ordnance Survey has shared numerous documents with OPSI demonstrating that the 'specific use' policy has been and continues to be reviewed at Board level.	Complete
Para 43	Ordnance Survey draft new policies on sub-licensing in conjunction with OPSI, and seek to reach a conclusion which is equitable to all parties, and is in accordance with the principles of IFTS.	Medium	Progress has been made on developing terms for sub-licensing and these are in the process of being implemented.	Ongoing
Para 44	Ordnance Survey introduce an archive licence as soon as possible which does not cost the licensee the full licence fee.	Medium	This has been implemented.	Complete
Para 45	Ordnance Survey consider very carefully how it can reduce the time taken from initial enquiry to completion of the contract, and set demanding targets in this area.	Medium	Monitoring systems are now in place and key performance indicators have been introduced. These are monitored closely by the Board.	Complete
Para 46	Ordnance Survey consider revising its contract terms to remove restrictive terms and conditions.	Medium	Several changes have been made to the Standard Use Contracts (SUCs). In addition, a licence review project has been initiated and will continue once the impact of the recommendations of the OFT CUIP report on Ordnance Survey's licensing model are fully understood by Ordnance Survey following	Pending

			clarification discussions between the OFT and Ordnance Survey.	
Fairness				
Para 48	Ordnance Survey explain the reasons for the distinctions in the amounts charged to different types of education institution. If there are no good reasons for the distinction then all educational establishments should be subject to the same terms.	Medium	Ordnance Survey has revised its website to give more detailed information in this area.	Complete
Para 49	Ordnance Survey review its terms and conditions to ensure that obligations on licensees are not onerous, and that there is a balance between the respective obligations of Ordnance Survey and the licensee.	High	Ordnance Survey has conducted a high level review of its licence terms, and amended these to remove unnecessarily onerous obligations	Complete
Transparency				
Para 31	The standard licences should be reviewed to address the following: <ul style="list-style-type: none"> • clarification and explanation of the structure of licences • a 'Plain English' review of all licences • the imbalance of liabilities and responsibilities between Ordnance Survey and licensees • unfairness where arrangements are not reciprocated. 	Medium	Changes have been made to licence terms, and a more detailed licence review is pending.	Complete
Para 50	Ordnance Survey revise the standard licences to make clear their structure and relationship.	Medium	Ordnance Survey's website has been updated to make the structure and relationship clearer.	Complete
Para 51	There is a thorough review of all standard licences to make them as clear and comprehensible as possible, taking a 'Plain English' stance.	Medium	A licence review is pending.	Ongoing
Paras 52-53	Files should be maintained in as complete a form as possible, including correspondence and the basis for pricing.	Medium	Ordnance Survey has reinforced the importance of maintaining up to date files and in addition is currently	Complete

			implementing an electronic records management system, which will ensure that files are maintained fully.	
Para 56	Ordnance Survey to consider what information it would be useful to make available externally from its intranet site.	Low	Ordnance Survey worked closely with OPSI to work through the intranet and decide what information it would be useful to make available externally.	Complete
Compliance				
Para 58	The degree of implementation of the recommendations of the first verification should be reviewed.	Medium	Recommendations from the first verification have been implemented.	Complete
Para 60	There be a closer working relationship between Ordnance Survey and OPSI.	High	Ordnance Survey has worked very closely with OPSI since the verification on many aspects and OPSI welcome this.	Complete
Challenge				
Para 61	There should be a revision of the website to include direct and clear links to the complaints process.	High	This has been implemented	Complete
Para 62	There should be inclusion of a clear description of OPSI, describing its roles and activities, and a direct link to its site.	Medium	This has been implemented	Complete

APPENDIX 1: SUMMARY OF RECOMMENDED ACTIONS

This is a summary of recommendations to:

- remedy any identified weaknesses
- strengthen the commitment to Information Fair Trading.

Principle	Ref	Recommendation	Priority
Openness	24	We recommend that Ordnance Survey reviews its internal processes with a view to shortening the average time taken to issue a licence.	M
	25	We recommend that Ordnance Survey considers publishing a digest of its key licensing performance indicators on a quarterly basis.	H
Fairness	27	We therefore recommend that Ordnance Survey reviews the introductory text of its standard exceptions document.	M
Transparency	35	We recommend that Ordnance Survey carries out a full review of its licences for linguistic clarity, appropriate length and ease of use. This review should finish within 12 months of Ordnance Survey's work with OPSI and OFT being concluded. The review should include an action plan and a timetable for implementation and OPSI should be supplied with interim progress reports.	M
	37	We recommend that Ordnance Survey studies the comments in the standard licence review and considers them as part of its full review of its licences.	M
	39	We recommend that Ordnance Survey continues to keep us informed of any developments in its analysis of the issue of derived data.	M
Compliance	40	Ordnance Survey should include a statement about target timescales in the information that it publishes on the PSI Regulations.	H

APPENDIX 2: LICENCE REVIEW

Licence Review 1

Licence: Specific Use Framework Partner Licence

Date of review: 21 December 2007

Evaluation Criteria

1. Clarity of licence terms

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

- a) The language in recital C is complex and the relationships between the various agreements is difficult to follow.
- b) The definition of confidential information is too legalistic. It would be sufficient to state that anything relating to this licence shall be treated as commercial in confidence. There is no issue with the inclusion of the term but rather of the language in which it is defined.
- c) The definition of consumer is unclear. It hinders understanding and is an example of arcane legal language. This is epitomised in the distinctions between a 'natural person' and legal entities, this should be reviewed in the interest of clarity.
- d) Overall, there is scope for plain English simplification. For example, the definition of Ordnance Survey Representative needs to be clear to the licensee, for sending legal notices to the correct person. This would be clearer if there was a direct reference to the 'Head of Partner team at Ordnance Survey'.
- e) Clauses 1.2, 1.3, 1.4, 1.6 and 1.7 appear in many contracts and are very legalistic. As these are frequently occurring clauses, the use of plain English would add clarity.
- f) The language of the section Order of precedence seems unduly bureaucratic and legalistic.
- g) The meaning of the terms end user and a consumer is confusing and scope for simplification.
- h) Clause 18. The construction of agreement is overly legalistic. Clauses 20, 21 and 24 are legalistic also. These could be reviewed to promote greater

clarity in the licence. In reviewing it should be considered whether all the clauses are absolutely necessary.

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?

This licence is comprehensive with no significant omissions.

3. Fairness

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

a) The termination of this agreement under 2.5 automatically terminates all contracts. This needs to be explicitly stated in the interests of fairness and clarity.

b) Clause 3.3 reserves the right of Ordnance Survey to exploit its data as it thinks fit. This broadly defined statement does not acknowledge the potential fairness issues that could arise if Ordnance Survey was to compete in the same value added market as the partner. For example, it does not address the question of whether, if Ordnance Survey was to re-use the same material as the partner, it would be subject to the same terms.

c) Clause 3.4. There appears to be no provision for Ordnance Survey to explain why the materials are being withdrawn, nor does the partner have a right of appeal. This could be unfair and this clause ought to be reviewed.

d) Clause 4.2 covers the provision of data in a variety of forms. It is not clear who decides which format the data will be supplied in. This needs to be stated.

e) Clause 4.4.1 reserves the right for Ordnance Survey to request all supporting information and documents as it may reasonably request. Examples of what such requests could consist of would help to allay fears of excessive demands being placed on licensees.

f) Clause 4.4.5 there could be a reciprocal commitment here to deal with applications and the production of the contracts.

g) Clause 4.4.6. A contract becomes binding on all the parties, not just the partner. This should be reflected in the wording of this clause.

h) Clause 6.1.10 and Clause 14. In the interests of fairness, the warranties and indemnities should be reviewed to ensure that there is a balance between the obligations placed on the two parties.

l) Clause 6.4.4. It is recommended in such cases that provision is made for Ordnance Survey to have the right to contact sub-licensees with a view to offering partners from whom a sub-licence can be obtained.

j) Clause 10, Imposing minimum royalties could have the effect of deterring potential licensees from entering the market, especially as the threshold is high. OPSI appreciates that Ordnance Survey is subject to trading fund obligations. However, it may wish to review whether its minimum royalty requirements could be more closely allied with the costs of contract set-up and maintenance.

k) Clause 17.2. To be fairer, this warranty could be reciprocated.

4. Consistency

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

No.

5. Practical Arrangements

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

a) Clause 6.1.8. The meaning of this clause may be unclear to a layperson.

b) Clause 6.7. A simpler and less prescriptive framework could be used particularly with reference to obligation enforcement.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

a) The fact that the licences are described as revocable in clauses 5.1 and 5.2 suggests that Ordnance Survey can revoke at any time which could be interpreted as restrictive. This should be reviewed to reflect the actual situation to avoid ambiguity.

b) Clause 6.1.9 could be reworded to avoid any possible restrictive interpretation.

c) The auditing processes as set out at clause 12 could be considered to be onerous and restrictive. This could be a perception created by the wording rather than reflecting the actual situation.

d) Clause 13.1.1. It is more customary to terminate for material breach and the present wording could be interpreted as restrictive.

7. Additional Comments

The Framework Partner Licence is unnecessarily complex and legalistic. Some of the issues identified in the above comments apply equally to the Contractor Licence, although by and large it is a much simpler and more transparent document. It is also considerably shorter. It would be beneficial to align the two documents in terms of format and language.

Licence Review 2

Licence: Specific Use Contract under Specific Use Framework Partner Licence – Navigation Products

Date of Review: 7 January 2008

Evaluation Criteria

1. Clarity of licence terms

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

- a) This contract is very wordy and it is difficult to follow the cross-referencing to other sections. It includes arcane, legalistic language, such as the use of “notwithstanding” in sections 2.4 and 2.4.4.
- b) The contract includes a further set of definitions (25 more) at Schedule 1. There are already 37 definitions included in the Specific Use Framework Partner Licence (SUFPL). Some of the definitions are complicated. It may be useful to review the necessity of all of these defined terms and consider only defining those which are most frequently used or significant.
- c) The definition of Licensee covers a “Consumer” and an “End-User”. This is confusing. The definition section includes “Nominated Use” and “User”, the latter being defined as “a human being operating a device”. This is an example of when plain English could replace unnecessarily complex language.
- d) The contract includes a Schedule 2 which lists the licensed material and the Trade Marks. The titles are clearly set out. There may be scope to look at the definitions of “Licensed Data”, “Derived Data” and “Ordnance Survey Data”, as much cross-referring to the SUFPL is required when reading the contract. This is another example of where the terms need to be expressed in more accessible language.

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?

- a) There are no significant omissions from the contract. The SUFPL contains extensive terms. In this case, the concern is that some terms included in the Contract add a further layer of complexity to the arrangements with the Partner.

b) Paragraph A of the Background section of the Contract could be deleted as this is included in the SUFPL.

3. Fairness

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

a) Section 4.2 refers to the requirement to make payment of a Minimum Royalty for each Contract Year. Imposing minimum royalties could have the effect of deterring potential licensees from entering the market, especially as the threshold is high. OPSI appreciates that Ordnance Survey is subject to trading fund obligations. However, it may wish to review whether its minimum royalty requirements could be more closely allied with the costs of contract set-up and maintenance. .

4. Consistency

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

The contract does not seem to include any terms that are inconsistent and contradictory.

5. Practical Arrangements

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

a) Schedule 3 of the Contract contains detailed information about the payment of royalties. The schedule is divided into a Part 1 and Part 2.

b) To someone unfamiliar with the different types of material being licensed, the calculation of royalties are unduly complex. The Schedule contains 6 Tables: Tables 1 and 3 (discounts) relate to the “perpetual” licences; Tables 2 and 4 (discounts) relate to the “annual subscription licences”. Tables 5 and 6 relate to part 2 and only cover the “annual subscription licences”. There is no discount arrangement for this product. While OPSI is aware that there are technical considerations here, reviewing this section to make it more comprehensible could be beneficial.

c) Paragraphs 3.8 and 3.16 state that Ordnance Survey will invoice the Partner for the Royalties for each quarter. The Contract does not give any indication of how long it will usually take Ordnance Survey to issue the invoice.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

a) Section 2 of the Contract sets out Conditions of Use for the Licensed Data. Section 2.2 is for “any On-Demand Service” and Section 2.3 for any Navigation Product which “is not an On-Demand Service”. Some of the conditions place restrictions on how the Licensed Data can be displayed (e.g. 2.2.3) and printed (2.4.1). The Partner is required to ensure that these conditions are brought to the attention of Resellers and Nominated Users.

b) Section 2.7 says that the Partner may use the Licensed Data for the promotion of Navigation Products and refers to Schedule 4 (Conditions of use for promotional purposes). The Schedule sets out seven conditions that apply to promotional purposes. These conditions are not overly restrictive but some are unclear, for example section 2.6 which requires the written agreement of Ordnance Survey. It does not set out the process for obtaining clearance or give an indication of the time that it would take for Ordnance Survey to give its approval. An explanation here could increase transparency.

c) Section 4.2.1 of Schedule 4 requires the Partner to use appropriate acknowledgements but does not refer to the relevant clause in the SUFPL which covers acknowledgements. This should be reviewed.

7. Additional Comments

a) The main concern is the length, complexity and the number of licence documents that have to be completed in order to re-use the data. This could deter potential licensees.

b) Including a contents list in the Specific Use Contract would be helpful.

Licence Review 3

**Licence: Special Condition to the Navigation
Products Specific Use Contract relating
to OSCAR Traffic-Manager®**

Date of Review: 7 January 2008

Evaluation Criteria

1. Clarity of licence terms

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

a) This is a one page formal amendment to the Specific Use Framework Partner Licence (SUFPL) and the Specific Use Contract (SUC) which is issued to those that have entered into a licensing arrangement with Ordnance Survey that relates to OSCAR Traffic Manager®.

b) This document uses the same sort of legalistic language as the SUFPL and SUC. Paragraph number 3 uses “therein”, paragraph number 4 “thenceforth” and paragraphs numbers 5 and 6 “pursuant”. Previous comments on arcane legal phrasing apply here also.

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?

a) No. As this is an amendment setting out changes being made to the SUFPL and SUC for OSCAR Traffic Manager®, it only relates to the sections of those documents that apply to that product.

3. Fairness

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

a) There do not appear to be any obvious concerns about unfairness or discrimination if the amendment is applicable to all existing re-users of OSCAR Traffic Manager®.

b) It would, however, be unfair if Ordnance Survey had decided to stop supplying and licensing OSCAR Traffic Manager® without giving an explanation or due notice. There is no reason to suppose that this is the case.

4. Consistency

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

- a) The changes which are set out in the amendment all seem to logically apply to specific clauses/sections in the SUFPL and relevant SUC.

5. Practical Arrangements

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

- a) The amendment sets out what changes are required and these are related to the specific clauses/sections in the SUFPL and SUC. The relevant date is also stated.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

- a) The terms of the amendment do not appear unnecessarily restrictive.
- b) It is not apparent what prior notice partners had about the change and whether the period of notice about the change was reasonable.

7. Additional Comments

- a) The amendment document does not include any specific references to the dates and identity numbers of the SUFPL and the SUC.
- b) In the first line of the first paragraph a space could be added after “executed” for inserting the actual date of the amendment agreement.

Licence Review 4

Licence: Ordnance Survey Distributor Framework Agreement

Date of Review: 2 January 2008

Evaluation Criteria

1. Clarity of licence terms

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

- a) Background, C. This is unclear. It would read properly if “provide for the licence” were replaced by “provide for the licensing”.
- b) Clause 1.1. Intellectual property rights. To avoid confusion, Ordnance Survey could make clear on what basis it holds a topography right as distinct, for example, from a semiconductor topography right.
- c) Clause 7.6. The cross-references and types of licensee referred to in the first few lines do not match the relevant paragraphs in 7.2-7.5. In the penultimate sentence, the distributor cannot give access to “intellectual property rights” but could give access to “intellectual property”. This should be reviewed for clarity.
- d) Clause 12.3. The word “anticipation” should be reviewed. As “anticipation” means doing something before the proper time, the word “expectation” or “prediction” might be more appropriate in the interest of clarity.
- e) Clause 12.6. It may not be clear to that the 30 days specified here are in addition to the 12 months specified in 12.1.

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?

- a) Clause 6. This is intended to relate to conditions of use. None are stated, meaning that the paragraph could be considered redundant. If the conditions are intended to be added later and will vary from one agreement to another, the possible conditions that could apply or at least their parameters should be stated.

3. Fairness

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

- a) Clause 1.1, “Special condition”. This could be construed as meaning that any special condition must exist in a single copy only. The definition should be revised to make this clear.
- b) Clause 6. See comment under 2 “Comprehensiveness” above, relating to stating conditions in the licence.
- c) Clause 7. If responsibilities are imposed upon the distributor, perhaps some should be imposed on Ordnance Survey also. This could be the purpose of parts of 15, but this is not clear, in which case there should be a cross-reference. In this clause, a reference to up-to-date, accurate and timely supply of data would be of benefit.
- d) Clause 7.1.2. This recognises the rights of people supplying information to the distributor but does not appear to recognise any rights on the part of the distributor. As such, this clause could be deemed unfair.
- e) Clause 8.3. The distributor is required irrevocably to permit Ordnance Survey to deduct such amounts as it chooses to and pay any amounts which it decides are owing to it. Such an all-embracing grant appears excessive without stating under what circumstances this clause would be invoked and should be reviewed to clarify this.
- f) Clause 8.4. Ordnance Survey states it is entitled to demand more than one royalty statement in any format it chooses. It would be fairer to specify the format in advance and change it by agreement and with due notice.
- g) Clause 12.6. There may be circumstances where the distributor has expended money and effort in creating new products incorporating Ordnance Survey data. It could be regarded as unfair that such investment by the distributor would be wasted if Ordnance Survey decides to withdraw a dataset. However, OPSI acknowledges that this clause is only invoked after a 12 month period of notice of withdrawal has expired and OPSI finds this to be reasonable.

4. Consistency

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

- a) Clause 1.1 The terms “consumer” and “end-user” as distinct kinds of user are inconsistent, particularly as a consumer could be a type of end-user. Issues with this definition have been raised in both Licence Review 1 and 2.

b) Clause 1.1, “Contractor licence” and “permitted sub-contractor”, together with the licence in Schedule 1. These definitions could perhaps be reviewed to make it clearer that the intention of separate definitions is to prevent the sub-contractor from using the data for their own purposes.

c) Clause 6. See comment under 2 “Comprehensiveness” above which also applies here.

d) Clauses 7.4 and 7.5. OPSI acknowledges, in the terms of this Agreement, the distinction between an end-user and a consumer. However, as the provisions applying to them are significantly different, it may be worth setting out more fully why this is.

5. Practical Arrangements

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

There are no concerns expressed about the practical arrangements for this licence.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

a) Clause 1.1 The definition of confidential information is too legalistic. There is no issue with the inclusion of the term but rather of the language in which it is defined.

b) Clause 12.7 It should be explicitly stated that the Distributor has the right to end the agreement, subject to meeting all obligations, if Ordnance Survey offers a variation of royalty terms beyond increases in line with the RPIX.

c) Clause 15.8. The limitation of Ordnance Survey’s liability seems to be quite generous to the organisation.

7. Additional Comments

As this licence is intended to be part of a suite of licences, small-scale users of Ordnance Survey data may find these arrangements overly complex and steps should be taken to make these documents more user-friendly in format and language.

Licence Review 5

Licence: Ordnance Survey Data Distribution Agreement for Reformulated Licensed Data Products

Date of Review: 2 January 2008

Evaluation Criteria

1. Clarity of licence terms

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

- a) Clause 5.1, in the 4th line, “sub-licence” should read “sublicense” and in schedule 1, paragraph 1.11 3rd line, “licence” should be “license”.
- b) Clause 10.1.1. It is unclear whether the “bilingual corporate mark” is simply both marks together and the “corporate mark” is just the left hand one. This could be reworded for greater clarity.

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?

Clause 1.5, “Standard licensed use”, clause 8, and Schedule 2. This document usually applies the definitions contained in the Distributor Framework Agreement, but in this case appears to arbitrarily rename an end-user as a customer. The reason for this is unclear. Clause 8 makes a number of references to “End-user”, while “Customer” is mentioned frequently in schedule 2.

3. Fairness

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

There are no particular concerns noted here over and above those recorded against the parent document in Licence Review 4.

4. Consistency

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

There are no particular concerns noted here over and above those recorded against the parent document in Licence Review 4.

5. Practical Arrangements

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

Schedule 1 - To someone unfamiliar with the different types of material being licensed, the calculation of royalties are unduly complex. While OPSI is aware that there are technical considerations here, reviewing this section to make it more comprehensible could be beneficial.

6. Restrictiveness of terms

Are any of the terms unnecessarily restrictive?

There are no particular concerns noted here over and above those recorded against the parent document in Licence Review 4.

7. Additional Comments

There are no additional comments for this licence.

APPENDIX 3: IFTS WEBSITE ASSESSMENT

Organisation: **Ordnance Survey**

Site available at: www.ordnancesurvey.co.uk

Date assessed: **14th November 2007**

- 1.1 Does the website have an Information Asset Register? **Yes**
Gives you link to OPSI web page (www.opsi.gov.uk/iar/search.aspx), at which point Ordnance Survey entries can be searched for.
- 1.2 If yes, how many clicks is it from the homepage? **3**
- 1.3 How long did it take to find? **<1 minute**
- 1.4 If there is no IAR, is there other guidance on what information is available? **Not applicable**
- 2.1 Does the PSB use standard licences? **Yes**
<http://www.ordnancesurvey.co.uk/oswebsite/business/licences/>
- 2.2 Are these published in full on the website? **Yes**
- 2.3 If yes, how many clicks are they from the homepage? **2**
- 2.4 How long does it take to find? **Less than 1 minute**
- 2.5 How many standard licences are there? **10 categories**
- 2.6 Is there an explanation of what different licences are for and is it clearly understood? **Yes, although for the Pilot Data Licence, you are instructed to contact the account manager for further details.**
- 3.1 Is there any charge made for licences?
Yes, often on annual royalty fee basis.
- 3.2 Is there an explanation of the charges? **Yes**
- 3.3 Is there an explanation of how charges are drawn up? **Yes**
- 4.1 Is there an IFTS commitment on the website? **Yes**
- 4.2 How many clicks is it from the homepage? **1**
- 4.3 How long does it take to find? **Less than 1 minute**
www.ordnancesurvey.co.uk/oswebsite/aboutus/fairtrader/index.html
- 5.1 Is there clear and precise information on how to apply for a re-use licence? **Yes, applications can be made by completing an application form or approaching an account manager according to category of licence involved.**
- 5.2 Are there a variety of methods for applying for licences? **Yes**
- 5.3 Is it possible to apply online for a licence? **No**
- 5.4 Does it specify a timescale to grant licences? **No, information is provided about the PSI Regulations <http://www.ordnancesurvey.co.uk/oswebsite/aboutus/yourinforigh/ropsi.html>, but this does not state that an application for re-use should normally be dealt with within 20 working days.**

- 5.5 If yes, what is that timescale (in working days)? **N/A**
- 6.1 Does the PSB have a procedure for complaints regarding licensing decisions? **Yes. This is part of the web page mentioned in 5.1**
- 6.2 How many clicks is it from the homepage? **1**
- 6.3 How long does it take to find? **Less than 1 minute**
- 6.4 Does it mention that if the complainant is unhappy they can refer to OPSI or APPSI? **Yes**

<http://www.ordnancesurvey.co.uk/oswebsite/aboutus/servingyou/complaint.html>

- 7.1 Does the website explain what information is not available? **Yes**
www.ordnancesurvey.co.uk/oswebsite/aboutus/foi/coiindex.html
- 7.2 If Yes, does it explain why? **Yes**
- 7.3 How many items are listed? **4**
Exceptions listed as genres rather than specific items.
- 8.1 Does the website outline any exceptions to normal licensing policy? **Yes**
www.ordnancesurvey.co.uk/oswebsite/business/copyright/docs/D03800.pdf
- 8.2 If Yes, does it explain why that exception has been made? **Yes**
However, some of these could be contentious. In particular, section 4 clause 1 (...the dispute was not resolved to our satisfaction) seems to be somewhat at odds with the commitment to accept and investigate complaints from potential partners.
- 8.3 How many exceptions are there? **9**
Again, the high nature of this figure in document D03800 may be a cause for concern.
- 9.1 Does the website have a Crown Copyright notice? **Yes, each web page is marked as Crown Copyright. There is a fuller explanation at**
<http://www.ordnancesurvey.co.uk/oswebsite/aboutus/yourinforigh ts/copyright/index.html>
- 9.2 Is it linked to from every page? **Yes**
- 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? **Yes, on the copyright page.**
- 10.1 Does the website have an electronic search facility? **Yes**
- 10.2 If yes, how many clicks is it from the homepage? **0**
- 10.3 How long did it take to find? **<1 minute**
Present on homepage and all subsequent pages. Very easy to use and proved to be a very useful tool.
- 11.1 Is the material available by electronic means? **Yes - some**
- 11.2 Is it possible to download direct from the website? **Yes – some**

- 11.3 If data is not available electronically, is there an explanation of how to obtain it? **Yes, especially in the area of re-use licences.**
- 11.4 If data is sent via email, is there a specified timescale for delivery? **N/A**
- 11.5 If yes, what is the timescale (In working days)? **N/A**
A number of documents on the website explain how to obtain data. These mention email addresses for enquiries, although no timescales are quoted.
- 12.1 Does the PSB outline its responsibilities under IFTS on their website? **Yes – available at**
www.ordnancesurvey.co.uk/oswebsite/aboutus/fairtrader/index.html
- 12.2 Does the website explain what IFTS is aiming to achieve? **Yes – in addition to the Director General/Chief Executive’s statement**
<http://www.ordnancesurvey.co.uk/oswebsite/aboutus/fairtrader/index.html>, **there is also a link to the OPSI site.**
- 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? **Yes**
- 13.1 Does the PSB outline its policy towards its trading of PSI? **Yes**
www.ordnancesurvey.co.uk/oswebsite/aboutus/reports/annualreport/03-04/docs/006-Trading-Fund.pdf
- 13.2 Does the PSB explain how it arrives at decisions? **Yes, through a variety of the pages already mentioned.**
- 13.3 Does the website have an explanation of what re-use is? **Yes**
www.ordnancesurvey.co.uk/oswebsite/aboutus/yourinforights/rop si.html
- 13.4 Does the website explain what Crown Copyright is? **Yes**
www.ordnancesurvey.co.uk/oswebsite/aboutus/yourinforights/copyright/index.html
- 13.5 Does the website explain why licences are sometimes needed to re-use information? **Yes**
www.ordnancesurvey.co.uk/oswebsite/aboutus/yourinforights/rop si.html
- 13.6 Does the website explain the difference between FOI and re-use? **Yes. Separate pages on each with the distinction made fairly clear.**
- 13.7 Does the website explain what a trading fund and delegated authority is? **Yes**
www.ordnancesurvey.co.uk/oswebsite/aboutus/reports/annualreport/03-04/docs/006-Trading-Fund.pdf

Overall, a good website which comfortably passes the minimum standard for this part of the re-verification process. Ordnance Survey should include a statement about target timescales in the information that it publishes on the PSI Regulations. The regulations state that an application for re-use should normally be dealt with within 20 working days. There were some concerns about the exceptions list which are dealt with in the body of this report.