

# Open Data Commons – Database Licence (draft)

## Preamble

The Open Data Commons is a licence agreement intended to allow you to freely share, modify, and use this database while maintaining this same freedom for others. Many databases are covered by copyright, and therefore this document licenses these rights. Some jurisdictions, mainly in Europe, have specific rights that cover databases, and so the Open Data Commons addresses these rights too. Finally for circumstances and territories in which copyright and database rights do not apply, the Open Data Commons is also an agreement in contract for you to act in certain ways in return for accessing this database.

Because databases can have a wide variety of types of contents, this document only governs the rights over the database, and not the contents of the database individually. You should use the Open Data Commons together with another licence for the contents, if the contents have a single set of rights that governs all of them. If the contents have multiple sets of different rights, you should describe what rights govern what contents together in the individual record.

Sometimes the contents of a database, or the database itself, can be covered by other rights not addressed here, and so you advised that you may have to consult other documents or clear other rights before doing activities not covered by this licence.

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**"The Licensor"** (the Person offering the Database under the terms and conditions of this Licence)

and

**"You"** (the Person acquiring rights under this Licence)

agree as follows:

## 1.0 Definitions of Capitalised Words

**"Collective Databases"** – Means this Database in unmodified form as part of a collection of independent works in themselves that together are assembled into a collective whole. A work that constitutes a Collective Database will not be considered a Derivative Database.

**"Data"** – The contents of this Database, which includes the information, independent works, or other material collected into the Database.

**"Database"** – A collection of Data arranged in a systematic or methodical way and individually accessible by electronic or other means offered under the terms of this Licence. This includes the Database as protected by Database Rights or by copyright and neighbouring rights law.

### Annotation

The first sentence is taken from the Database Directive, with "independent works, data or other materials" replaced by "Data", which is defined above to include these areas.

**"Database Directive"** – Means Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.

**"Database Right"** – Means rights over Data resulting from the Chapter III ("sui generis") rights in the Database Directive (as applied in national law) as well as any similar rights available in the relevant jurisdiction under **Section 10.5**.

**"Derivative Database"** – Any translation, adaptation, arrangement, or any other alteration of the Database or of a Substantial part of the Data. This includes, but is not limited to, Extracting or Re-utilising the whole or a Substantial part of the Data in a new Database.

**"Extraction"** – Means the permanent or temporary transfer of all or a Substantial part of the Data to another medium by any means or in any form.

#### **Annotation**

Taken directly from Article 7 2.(a) of the Database Directive, with a substitution of "Data" for "contents of a database".

**"Licence"** – Means this licence agreement.

**"Licensor"** – Means the Person that offers the Database under the terms of this Licence.

**"Person"** – Means a natural or legal person or a body of persons corporate or incorporate.

**"Re-utilisation"** – means any form of making available to the public all or a Substantial part of the Data by the distribution of copies, by renting, by online or other forms of transmission.

#### **Annotation**

Taken directly from Article 7 2.(b) of the Database Directive, with a substitution of "Data" for "contents of a database".

**"Substantial"** – Means substantial in terms of quantity or quality or a combination of both. The repeated and systematic Extraction or Re-utilisation of insubstantial parts of the Data may amount to the Extraction or Re-utilisation of a Substantial part of the Data.

#### **Annotation**

Taken directly from the Copyright and Rights in Databases Regulations 1997. s.12(1) and s.16(2) with a substitution of "Data" for "contents of a database".

**"You"** – Means a Person exercising rights under this Licence who has not previously violated the terms of this Licence with respect to the Database, or who has received express permission from the Licensor to exercise rights under this Licence despite a previous violation.

**Words in the singular include the plural and vice versa.**

## **2.0 What this Licence covers**

**2.1. Legal effect of this document.** This Licence agreement is:

- a. A licence of the Database Right;
- b. A licence of applicable copyright and neighbouring rights; and
- c. An agreement in contract between You and the Licensor.

**2.2 Legal rights covered.** This Licence covers the legal rights in the Database, including:

a. **Database Rights.** Database Rights only extend to the Extraction and Re-utilisation of the whole or a Substantial part of the Data. Database Rights can apply even when there is no copyright over the Database. Database Rights can also apply when the Data is selected and arranged in a way that would not infringe applicable copyright.

b. **Copyright.** Any copyright or neighbouring rights in the Database. The copyright licensed includes any individual elements of the Database, but does not cover the copyright over the Data independent of this Database. See **Section 2.4** for details. Copyright law varies between jurisdictions, but is likely to cover: the *Database model or schema*, which is the structure, arrangement, and organisation of the Database, and can also include the Database tables and table indexes; the *data entry and output sheets*; and the *Field names* of Data stored in the Database.

#### **Annotation**

This clarifies that there are two sets of rights that govern the Database, and that one covers the structure and arrangement of the Data into a Database (copyright) and the other covers situations where all or a Substantial part of the Data is taken and rearranged in a manner that (possibly) would not infringe copyright.

### **2.3 Rights not covered.**

- a. This Licence does not apply to computer programs used in the making or operation of the Database;
- b. This Licence does not cover any patents over the Data or the Database; and
- c. This Licence does not cover any trademarks associated with the Database.

Users of this Database are cautioned that they may have to clear other rights or consult other licences when attempting to make use of this Data or Database.

#### **Annotation**

This is to clarify that the Licence does not cover the software used to access the Database, or those used to create the Database. It also explicitly states that it does not cover patents. Subsection c. is meant to clarify that using the database or data does not automatically give rights to the name of the database itself.

**2.4 Relationship to Data in the Database.** The individual items of the Data contained in this Database may be covered by other rights, including copyright, patent, data protection, privacy, or personality rights, and this Licence does not cover any rights (other than Database Rights or in contract) in individual items of Data contained in the Database. For example, if used on a Database of images (the "Data"), this Licence would not apply to copyright over individual images, which could have their own separate licences, or one licence covering all of the images.

Users of this Database are cautioned that they may have to clear other rights or consult other licences when attempting to make use of this Data or Database.

#### **Annotation**

We could include a Section 2.5 explaining that You should license the copyright over the Data itself if You think that there is a question as to whether it has copyright – in other words, content that You

are not sure meets the level of originality applicable in Your jurisdiction. This would be a caution to Licensors (and Contributors) rather than to users however, and would be covered in the any explanatory material as well as the Data Only licence.

### 3.0 Rights granted

3.1 Subject to the terms and conditions of this Licence, Licensor grants You a worldwide, royalty-free, non-exclusive, perpetual (for the duration of the applicable copyright and Database Rights) licence to exercise the rights in the Database as stated below:

- a. Extraction and Re-utilisation of the whole or a Substantial part of the Data;
- b. Creation of Derivative Databases;
- c. Creation of Collective Databases;
- d. Creation of temporary or permanent reproductions by any means and in any form, in whole or in part, including of any Derivative Databases or as a part of Collective Databases;
- e. Distribution, communication, display, lending, or performance to the public by any means and in any form, in whole or in part, including of any Derivative Database or as a part of Collective Databases.
- f. For the avoidance of doubt:
  - i. **Non-waivable Compulsory Licence Schemes.** In those jurisdictions in which the right to collect royalties through any statutory or compulsory licensing scheme cannot be waived, the Licensor reserves the exclusive right to collect such royalties for any exercise by You of the rights granted under this Licence;
  - ii. **Waivable Compulsory Licence Schemes.** In those jurisdictions in which the right to collect royalties through any statutory or compulsory licensing scheme can be waived, the Licensor waives the exclusive right to collect such royalties for any exercise by You of the rights granted under this Licence; and,
  - iii. **Voluntary Licence Schemes.** The Licensor waives the right to collect royalties, whether individually or, in the event that the Licensor is a member of a collecting society that administers voluntary licensing schemes, via that society, from any exercise by You of the rights granted under this Licence.

The above rights include the right to make such modifications as are technically necessary to exercise the rights in other media and formats. The above rights explicitly include commercial use, and do not exclude any field of endeavour. To the extent possible in the relevant jurisdiction, the above rights may be exercised in all media and formats whether now known or created in the future.

3.2 The right to release the Database under different terms, or to stop distributing or making available the Database, is reserved. Note that this Database may be multiple-licensed, and so You may have the choice of using alternative licences for this Database. Subject to [Section 10.5](#), all other rights not expressly granted by Licensor are reserved.

#### Annotation

The first two sentences refer to the MySQL model of licensing. Note however that it is my

understanding that MySQL do not (and could not) dual license (with a commercial licence) the additions to the MySQL code that contributors make under the GPL. So You can only do this with, for example, Licensor-produced data or data that the Licensor has the right to commercially license.

## 4.0 Restrictions

4.1 The rights granted in [Section 3](#) above are expressly made subject to and limited by the following restrictions. These are important conditions of this Licence and if You fail to follow them You will be in material breach of its terms.

4.2 **Notices.** You must, if You publicly distribute, make available, communicate, display, lend, or perform by any means and in any form, this Database, any Derivative Database, or the Database as part of a Collective Database:

- a. Include a copy of this Licence or its Uniform Resource Identifier (URI) with the Database, including both in the Database and in any documentation for the Database; and
- b. Keep intact any copyright or Database Right notices for the Database and notices that refer to this Licence.
- c. If it is not possible to put the required notice in a particular file due to its structure, then You must include the notice in a location (such as a relevant directory) where a user would be likely to look for it.

### Annotation

This requires that the Licence be included in distributions of the Database. The above though is really written in terms of copyright and not in terms of the Database Right, which covers Extraction and Re-utilisation of Data. Therefore the following Section is included.

4.3 **Notice for using output (Data) with other information.** Using this Database, a Derivative Database, or this Database as part of a Collective Database to produce a Substantial part of the Data (via a search or other query) that is then combined with information from more than one source into an integrated experience does not require the notice in [Section 4.2](#). However, You must include a notice reasonably calculated to make users of the integrated experience aware that content was obtained from the Database and that the Database is available under this Licence.

- a. **Example notice.** Use of the following notice will satisfy notice under [Section 4.3](#):

This DOCUMENT TYPE contains information from DATABASE NAME and is made available here under the Open Data Commons Licence.

DOCUMENT TYPE should be substituted with the type of resource, such as "page" for a webpage. DATABASE NAME should be replaced with the name of the Database and a hyperlink to the URI of the Database. "Open Data Commons Licence" should contain a hyperlink to the URI of the text of this Licence. If hyperlinks are not possible, You must include the plain text of the required URI's with the above notice.

### Annotation

This is an attempt to clarify the notice requirements of 'mash ups' with data from sources other than one licensed under this Licence. It is drafted in favour of allowing these mash ups with a minimal amount of notice.

4.4 **Share alike.**

a. Any Derivative Database You publicly distribute, make available, communicate, display, lend, or perform by any means and in any form, must be only under the terms of:

i. This Licence;

ii. A later version of this Licence ~~with the same Licence Elements as this Licence;~~

~~iii. A compatible licence.~~

~~If You Licence the Derivative Database under one of the licences mentioned in (iii), You must comply with the terms of that licence.~~

b. For the avoidance of doubt, Extraction or Re-utilisation of the whole or a Substantial part of the Data into a new database is a Derivative Database and must comply with **Section 4.4**.

c. **Share Alike and additional Data.** For the avoidance of doubt, You must not add Data to Derivative Databases under **Section 4.4a** that is incompatible with the rights granted under this Licence.

#### Annotation

4.4 and 4.5 are the Share Alike element. The “same Licence Elements” language in **4.4 b** has been removed, but is shown if there is a need to create different versions along with this licence

About compatible licences in **4.4 c**, there is an issue in trying to list compatibility with CC, as all of the current licences include Attribution (the BY element), and the policy of CC for future versions of the licences in Europe, will be to waive any Database Rights. The maintainer of this licence however may wish to maintain a list of compatible licences and so this element is included but crossed out.

**4.5 Share Alike does not apply.** The requirements of **Section 4.4** do not apply in the following:

a. For the avoidance of doubt, You are not required to license Collective Databases under this Licence if You incorporate this Database in the collection, but **Section 4.4** applies to this Database or a Derivative Database as a part of the Collective Database;

b. Using this Database or a Derivative Database to produce a Substantial part of the Data (via a search or other query) that is then combined with information from more than one source into an integrated experience does not create a Derivative Database (out of the integrated experience) for purposes of **Section 4.4**; and

c. Use of a Derivative Database wholly internally to an organisation is not to the public and therefore does not fall under the requirements of **Section 4.4**.

#### Annotation

Section **4.5 b** allows mash ups not to be SA.

## 4.6 Technological measures and additional terms

a. This Licence does not allow You to (except subject to **Section 4.6 b.**) impose any terms or any technological measures on the Database, a Derivative Database, or the whole or a Substantial part of the Data that alter or restrict the terms of this Licence, or any rights granted under it, or have the effect or intent of restricting the ability of any person to exercise those rights.

b. **Parallel distribution.** You may impose terms or technological measures on the Database, a Derivative Database, or the whole or a Substantial part of the Data (a "restricted Database") in contravention of **Section 4.6 a.** only if You also make a copy of the Database available to the recipient of the restricted Database:

- i. That is available without additional fee;
- ii. That is available in a medium that does not alter or restrict the terms of this Licence, or any rights granted under it, or have the effect or intent of restricting the ability of any person to exercise those rights (an "unrestricted Database"); and
- iii. The unrestricted Database is at least as accessible to the recipient as a practical matter as the restricted Database.

#### **Annotation**

NOTE – Could also leave TPM section out altogether, or not allow parallel distribution. Because Databases often operate in the background, it may make this licence more broadly useful to allow parallel distribution.

c. For the avoidance of doubt, You may place this Database in an authenticated environment, behind a password, or within a similar access control scheme provided that You do not alter or restrict the terms of this Licence or any rights granted under it or have the effect or intent of restricting the ability of any person to exercise those rights.

#### **Annotation**

This clarification is to avoid any confusion about whether the Database can be used in such places as a virtual learning environment at a University.

**4.7 Licensing of others.** You may not sublicense the Database. Each time You communicate the Database, the whole or Substantial part of the Data, or any Derivative Database to anyone else in any way, the Licensor offers to the recipient a licence to the Database on the same terms and conditions as this Licence. You are not responsible for enforcing compliance by third parties with this Licence, but You may enforce any rights that You have over a Derivative Database. You may not impose any further restrictions on the exercise of the rights granted or affirmed under this Licence.

#### **Annotation**

Direct licensing rather than sub-licensing.

## **5.0 Moral rights**

5.1 To the extent possible, Licensor waives all moral rights that Licensor may have in the Database, including the right to be identified as the author of the Database or to object to treatment that would otherwise prejudice the author's honour and reputation, or any other derogatory treatment. If waiver

is not possible, Licensor agrees not to assert any moral rights mentioned above over the Database.

#### **Annotation**

Copyright in a database would attract moral rights. In order to keep the use of the database as open as possible, any moral rights are waived, or in jurisdictions where there can be no waiver, the Licensor agrees to not assert these rights.

## **6.0 Fair dealing, Database exceptions, and other rights not affected**

6.1 This Licence does not affect any rights that You or anyone else may independently have under any applicable law to make any use of this Database, including exceptions to the Database Right, fair dealing, fair use, or any other legally recognised limitation or exception to infringement of Database Rights, copyright infringement, or other applicable laws.

#### **Annotation**

While perhaps not strictly necessary in some jurisdictions, it is important to point out that this licence does not affect other rights such as fair dealing and fair use of the copyright in the Database.

6.2 This Licence does not affect any rights of lawful users to Extract and Re-utilise insubstantial parts of the Data, evaluated quantitatively or qualitatively, for any purposes whatsoever, including creating a Derivative Database (subject to other rights over the Data, see [Section 2.4](#)). The repeated and systematic Extraction or Re-utilisation of insubstantial parts of the Data may however amount to the Extraction or Re-utilisation of a Substantial part of the Data.

#### **Annotation**

The Database Directive expressly prohibits contracting around the rights of lawful users to Extract and Re-utilise insubstantial parts of the Database in Article 8(1), which is in s.19 of the UK legislation. The second sentence is a reminder however that repeatedly taking insubstantial parts may amount to a Substantial taking for purposes of the Database right. The language of the second sentence is taken directly from s.16(2) of the Copyright and Rights in Databases Regulations 1997.

6.3 This Licence does not affect any rights of lawful users to exercise any applicable exceptions to the Database Right, including: the Extraction for private purposes of Data from non-electronic Databases; the Extraction for the purposes of illustration for teaching or scientific research; and the Extraction or Re-utilisation for public security or an administrative or judicial procedure.

## **7.0 Warranties and Disclaimer**

7.1 The Database is licensed by the Licensor "as is" and without any warranty of any kind, either express or implied, whether of title, of accuracy, of the presence of absence of errors, of fitness for purpose, or otherwise. Some jurisdictions do not allow the exclusion of implied warranties, so this exclusion may not apply to You.

#### **Annotation**

This is a standard disclaimer of warranty and liability.

## 8.0 Limitation of liability

8.1 Subject to any liability that may not be excluded or limited by law, the Licensor is not liable for, and expressly excludes, all liability for loss or damage however and whenever caused to anyone by any use under this Licence, whether by You or by anyone else, and whether caused by any fault on the part of the Licensor or not. This exclusion of liability includes, but is not limited to, any special, incidental, consequential, punitive, or exemplary damages. This exclusion applies even if the Licensor has been advised of the possibility of such damages.

8.2 If liability may not be excluded by law, it is limited to actual and direct financial loss to the extent it is caused by proved negligence on the part of the Licensor.

### Annotation

This is a standard disclaimer of warranty and liability.

## 9.0 Termination of Your rights under this Licence

9.1 Any breach by You of the terms of this Licence entitles the Licensor to terminate this Licence with immediate effect and without notice to You. For the avoidance of doubt, Persons who have received the Database, the whole or a Substantial part of the Data, Derivative Databases, or the Database as part of a Collective Database from You under this Licence will not have their licences terminated provided their use is in full compliance with this Licence or a licence granted under [Section 4.7](#) of this Licence. [Sections 1, 2, 7, 8, 9 and 10](#) will survive any termination of this Licence.

9.2 If You are not in breach of the terms of this Licence, the Licensor may not terminate Your rights under it.

9.3 Unless terminated under [Section 9.1](#), this Licence is granted to You for the duration of applicable rights in the Database.

9.4 Notwithstanding the above, Licensor reserves the right to release the Database under different licence terms or to stop distributing or making available the Database. Releasing the Database under different licence terms or stopping the distribution of the Database will not withdraw this Licence (or any other licence that has been, or is required to be, granted under the terms of this Licence), and this Licence will continue in full force and effect unless terminated as stated above.

## 10.0 General

10.1 If any provision of this Licence is held to be invalid or unenforceable, that must not affect the validity or enforceability of the remainder of the terms of this Licence.

10.2 This Licence is the entire agreement between the parties with respect to the Database licensed here. It replaces any earlier understandings, agreements or representations with respect to the Database not specified here.

10.3 If You are in breach of the terms of this Licence, You will not be entitled to rely on the terms of this Licence or to complain of any breach by the Licensor.

10.5 This Licence takes effect in the relevant jurisdiction in which the Licence terms are sought to be enforced. If the standard suite of rights granted under applicable copyright law and Database Rights in the relevant jurisdiction includes additional rights not granted under this Licence, these

additional rights are included in this Licence in order to meet the terms of this Licence.

#### **Annotation**

This section, rather than having a choice of law clause, allows the law of the jurisdiction where rights are being enforced to supply applicable law. Though this may mean that the effect is to give less rights over the Data (because of a lack of Database Rights in most jurisdictions), it does allow for the highest degree of openness generally by trying only to protect the rights to the limits of national law.