

THIS TRADEMARK CO-EXISTENCE AGREEMENT ("Co-Existence Agreement") is made by and between:

Jeff Meyer ("Meyer")
OPENHISTORICALMAP.ORG
[REDACTED]
United States
www.openhistoricalmap.org

OpenStreetMap Foundation ("OSMF")
OpenStreetMap Foundation
St John's Innovation Centre
Cowley Road
Cambridge CB4 0WS
United Kingdom
<https://www.openstreetmap.org>
https://wiki.osmfoundation.org/wiki/Main_Page
trademarks@osmfoundation.org
legal@osmfoundation.org

all of whom are collectively referred to hereafter as the "Parties." For the purpose of this Co-Existence Agreement, each Party's agents, shareholders, officers, directors, employees, promoters, incorporators, partners, members, subsidiaries, predecessors, successors, heirs, representatives, insurers, attorneys, and affiliates shall be referred to collectively as that Party's "Affiliates."

This Co-Existence Agreement is in reference to the following trademarks:

- 1 Meyer's Trademark Application OPENHISTORICALMAP, US Ser. No. 90019364 and WIPO Reg. No 1560522 ("OHM"); and
- 2 OSMF's Trademark OPENSTREETMAP, U.S. Registration No. 4566302 ("OSM"), **[LIST OF ALL OSM REGISTRATIONS]** and other relevant trademarks and service marks.

WHEREAS, the OpenStreetMap Project (<https://www.openstreetmap.org/>) ("OSM") is an initiative to create and provide free geographic data, such as street maps, to anyone. The OpenStreetMap Foundation is an international not-for-profit organization supporting, but not controlling, the OpenStreetMap Project. It is dedicated to encouraging the growth, development, and distribution of free geospatial data and to providing geospatial data for anyone to use and share and has used the OPENSTREETMAP AND OSM marks in commerce in connection with that business since 2008, and as a result, OSMF's OSM Mark is known throughout the world as identifying OSMF and its services and products;

WHEREAS, Meyer, in collaboration with an informal OpenHistoricalMap community, operates www.openhistoricalmap.org, a project designed to collaboratively store and display map data throughout the history of the world using OSM open data and OSMF open-source software as its base and has used OPENHISTORICALMAP in commerce in connection with that business since 2012, and as a result, Meyer's OHM Marks are known throughout the world as identifying the OPENHISTORICALMAP project and its services and products; and

WHEREAS, historically there have been several OSMF projects that have used the pattern of “openBLANKmap” in their names and consumers seeing that pattern in a company or project name are likely to believe that project has a connection with OSMF; and

WHEREAS, OSMF has entered into co-existence agreements with such projects so long as a project is based on OSM open data and OSMF open-source software and has an authentic connection with OSMF,

WHEREAS, Meyer and the OPENHISTORICALMAP project desire to be good citizens in accord with [OSMF’s Trademark Policy](#); and

WHEREAS, both Meyer and OSMF desire to enter into this Co-existence Agreement so as to make reasonable efforts to avoid any likelihood of confusion between the services offered under the OHM mark and OSMF’s marks, and neither hereby should be construed to have made any admission that there actually is any likelihood of confusion; and

WHEREAS, neither Party is using any of the other Party’s trademarks, has not asked to use any of the other Party’s trademarks, and is not hereby entering into a license agreement of any kind with the other Party (such license being the separate [OSMF Project and Domainname Quick License](#) which is not hereby modified), and neither Party has any authority over or say in any of the other Party’s business practices or other policies or the other Party’s legal compliance, such practices and compliance being entirely and solely each Party’s own and sole business; and

WHEREAS, the Parties desire to move forward amicably and collaboratively and without unwarranted legal expense;

NOW THEREFORE, Meyer and OSMF agree to the following:

- 1 **OHM to be Used Consistent with OSMF’s Policies and License**. Meyer shall use the OHM mark in a manner that is consistent with [OSMF’s Trademark Policy](#) and the OSMF’s [OpenStreetMap License](#), and shall make his best reasonable efforts to attempt to avoid consumer confusion between the OHM mark and the OSM mark, while acknowledging that openhistoricalmap.org is based in OSM open data and OSMF open-source software.
- 2 **OSMF Consent to Registration**. Provided Meyer complies with the terms of this Co-Existence Agreement, OSMF will not challenge, directly or indirectly, the registration, renewal, or use of any Meyer marks containing or comprising OPENHISTORICALMAP and hereby **consents to Meyer’s registration of US Ser. No. 90019364 and WIPO Reg. No 1560522**. Provided Meyer complies with the terms of this Co-Existence Agreement, OSMF agrees that it shall not oppose, seek to cancel, or assert trademark infringement claims against Meyer’s OHM mark, nor will OSMF aid a third party in doing so, acknowledging that Meyer expressly denies the merits of such action. In particular, OSMF authorizes Meyer to submit this Co-Existence Agreement to the USPTO and any other national or international trademark in support of his application for registration of OPENHISTORICALMAP.
- 3 **Term**. This Co-Existence Agreement shall last only so long as OHM remains related to OSM and uses OSM data as its base. Additionally, OSMF may re-evaluate and terminate

this Co-Existence immediately if there is a change of ownership of or control over the OHM mark.

- 4 **Enforcement.** OHM shall seek OSMF's consent before pursuing any enforcement action related to the OHM mark, such as but not limited to sending a cease-and-desist letter or filing an opposition, cancellation, or infringement action against another user of OHM or a similar Open[History]Map name and will cooperate with OSMF in the event that OSMF desires to pursue joint action. In the event of such joint action, each may retain its own counsel and shall be responsible for all attorneys' fees and costs that each incurs, but not for the other Party's attorneys' fees or costs, unless both Parties agree otherwise.
- 5 **Actual Confusion.** In the event actual confusion should occur between OSMF's OSM Mark and the OHM mark, despite Meyer's use of the applied-for mark in accordance with these terms, Meyer will work cooperatively with OSMF to dispel such confusion and prevent it from occurring in the future.
- 6 **Cooperation.** Provided Meyer complies with the terms of this Co-Existence Agreement, if the OSM mark or other OpenBLANKMap mark owned by OSMF or its authorized licensees is ever cited by any national or international Trademark Office as a barrier to registration or renewal of Meyer's OHM mark or by an opposing party in connection with an opposition, cancellation, or civil suit, then OSMF will work with counsel for Meyer to provide any needed Letters of Consent, affidavits, or testimony truthfully supportive of Meyer's position.
- 7 **No Admission of Liability.** Neither the execution of this Co-Existence Agreement nor the provision of any consideration required in this Co-Existence Agreement is intended as an admission of any liability, of insurance coverage, or responsibility of one Party to the other at any time for any purpose whatsoever, such liability being expressly disputed and denied by both Parties.
- 8 **Execution.** The Parties agree to execute any and all documents reasonably necessary to effectuate this Co-Existence Agreement.
- 9 **Disputes Arising from Co-Existence Agreement & Remedies in the Event of Breach.**
 - 9.a **Notice to Cure.** No action of any type of kind shall be taken to enforce the terms of this Co-Existence Agreement or to allege violation or breach of this Co-Existence Agreement unless such breach or violation remains uncured thirty (30) days after written notice of said breach or violation is delivered to the party against whom the breach is claimed.
 - 9.b **Mediation.** Disputes that are not resolved by meeting and conferring about how to resolve an allegation of breach of this Co-Existence Agreement shall be submitted to mediation in as quickly as a mediator is available but not longer than forty-five days after one party's written mediation demand to the other. Mediation shall be held before a certified mediator agreed by the parties or in the absence of agreement appointed by the Centre for Effective Dispute Resolution . Each party shall bear its own costs of mediation. Each may have counsel present and shall bear their own attorneys' fees, if any, unless otherwise agreed.
 - 9.c **Subsequent Action.** If an amicable resolution is not reached through mediation, nothing in this Co-Existence Agreement will be construed so as to impair any legal or equitable

right of any Party hereto to enforce any of the terms of this Co-Existence Agreement by any means, including, without limitation, an action for damages, an action for specific performance, and/or an action for injunctive relief, or a suit to obtain specific performance of any or all of the terms of this Co-Existence Agreement.

- 10 **Governing Law.** This agreement is subject to English law, without regard to conflict of law rules. The courts of England have exclusive jurisdiction over any dispute arising out of this agreement. The Foundation and Chapter agree that in the event of litigation, venue shall be proper only in the courts of competent jurisdiction for England. The Foundation and Chapter agree to be subject to the jurisdiction of said courts for purposes of any action brought pursuant to this agreement. The Parties agree not to assert any defense to said action on the ground of lack of personal jurisdiction or move for a transfer of the venue of said action.
- 11 **Integration & Severability.** This Co-Existence Agreement is the Parties' entire agreement and understanding with respect to the matters referred to herein. It supersedes any and all prior agreements, whether written or oral, and may be amended only by a separate writing, except for the OSMF's [OpenStreetMap License](#) and its [OSMF's Trademark Policy](#), which remain in full force and effect. If any provision of this Co-Existence Agreement shall be adjudged by a court to be void, unlawful, or unenforceable, that provision shall be severed, and the remaining portions of this Co-Existence Agreement shall continue in full force and effect.
- 12 **Construction.** The language in all parts of this Co-Existence Agreement shall be construed as a whole in accordance with its fair meaning. It is acknowledged by the Parties that each has participated in the drafting of this Co-Existence Agreement and that any ambiguities herein shall not be construed for or against any Party on account of such drafting, without regard to any laws that provide for the language of an agreement to be construed against the drafter. The Parties further acknowledge that the obligations and releases herein described are in good faith and are reasonable in context of the subject dispute.
- 13 **Waiver & Assignment.** No waiver or amendment, including those by custom, usage of trade or course of dealing, of any provision of this Co-Existence Agreement will be effective unless in writing. One party's waiver of any default or breach under this Co-Existence Agreement by the other shall not constitute a waiver of any subsequent default or breach. The failure of either Party at any time or times to demand strict performance by the other Party of any of the terms or conditions of this Co-Existence Agreement shall not be construed as a continuing waiver or relinquishment thereof and each may at any time demand strict and complete performance by the other of said terms and conditions. This Co-Existence Agreement shall bind and be for the benefit of the Parties and their heirs, fiduciaries, successors, and assigns.
- 14 **Attorneys' Fees & Costs.** Each Party to this Co-Existence Agreement fully understands and agrees to bear their own costs and attorney's fees with respect to the investigation, prosecution, defense, and settlement of their differences concerning the marks identified herein and with respect to the negotiation and drafting of this Co-Existence Agreement. However, in the event that either Party commences an action in court to enforce this Co-Existence Agreement, the prevailing party shall recover that party's reasonable, incurred attorneys' fees and reasonable costs.

15 **Counterparts and Digital Signatures.** This Co-Existence Agreement may be executed in one or more counterpart originals which together shall have the same force and effect as though the same document had been executed by all the Parties. Signature provided by facsimile, DocuSign, or by electronic .pdf scan shall be deemed enforceable and shall be given the same force and effect as an original signature.

16 **Authority.** Each of the undersigned declare and represent that s/he is competent to execute this Co-Existence Agreement and has the full right and authority to bind the Party or Parties on whose behalf the Co-Existence Agreement is signed.

IN WITNESS WHEREOF, the Parties understand, agree to, and have executed this Co-Existence Agreement, in San Francisco, California on the dates below.

FOR JEFF MEYER

FOR OPENSTREETMAP FOUNDATION

Dated: _____

Dated: _____

By: _____

By: _____

Jeff Meyer, Openhistoricalmap.org
Project Coordinator

Name,
Its Position/Title

