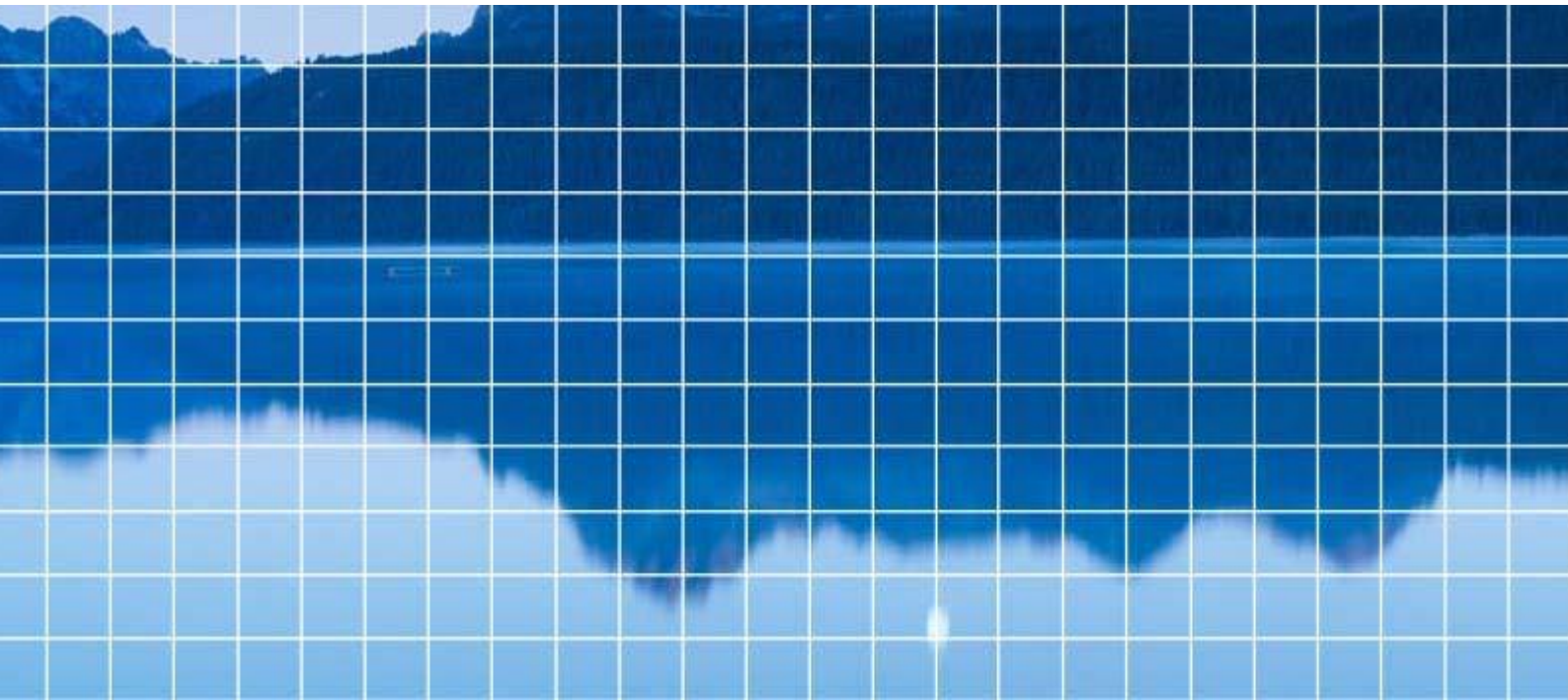




ArcGIS Online

G-Cloud Services – RM1557.15

Terms and Conditions – Esri UK G-Cloud 15 – Cloud Software

Crown Commercial Service

Acknowledgement

Esri and ArcGIS are trademarks, registered trademarks, or service marks of Environmental Systems Research Institute Inc in the United States, the European Community, or certain other jurisdictions.

Other companies and products mentioned herein may be trademarks or registered trademarks of their respective trademark owners.

1. Terms and Conditions

1.1. Applicable Terms

The ArcGIS Online - Geographic Information System (GIS) Service is provided under the **Esri UK General Terms**, which are attached at Appendix 1 hereto.

The Esri UK General Terms make reference, and provide access via hyperlink, to the following additional relevant documents:

- **Esri Inc License Agreement:** The Contracting Body will enter into the Esri Inc License Agreement directly with Esri Inc for the Esri Inc products and services, which additionally provides hyperlink access to:
 - Esri Inc's Product-Specific Terms of Use
 - Esri Inc's Supplemental Terms and Conditions for Data
 - Esri Inc's security capabilities; and
 - Esri Inc's privacy notices

ArcGIS Online also benefits from the **ArcGIS Online Service Level Agreement** which is available [here](#).

- **Esri UK Standard Support Policy:** This service includes access to Esri UK's support desk, which operates in accordance with the published policy.

The **Esri UK Operational Services Terms**, attached at Appendix 2 hereto, apply to the Contracting Body's use of Esri UK's Sweet for ArcGIS, Report Builder for ArcGIS and Esri UK's Data for ArcGIS, as well as the additional service-specific terms and conditions contained within the Esri UK-published service definitions on its website at [Services Catalogue | Esri UK](#).

The Esri UK Operational Services Terms make reference, and provide access via hyperlink, to the following additional relevant documents:

- **Esri UK Standard Support Policy:** This service includes access to Esri UK's support desk, which operates in accordance with the published policy.

1.2. Service Definition Correlation

The terms and conditions referenced in this document provide the detail for the following sections of the Service Definition for this service:

- 3.6 Customer Responsibilities
- 3.7 Service Constraints
- 3.10 Service Levels
- 3.13 Termination Terms3.14 Financial Recompense Model

Appendix 1 – Esri UK General Terms

ESRI (UK) LTD GENERAL TERMS

If a separate agreement is signed between Esri UK and the Customer in relation to the provision of the Software or Services, that agreement shall apply instead of these General Terms.

1. DEFINITIONS AND INTERPRETATION

- 1.1. **"Agreement"** is these General Terms, the Licence Terms (if applicable), the Order, the Service Definition (if applicable) and the Support Policy (if applicable).
- 1.2. **"Charges"** is the charges payable by the Customer for the Software and/or Third Party Data and/or Services, including the daily rates for professional Services (**"Daily Rates"**) chargeable for each day or part day, with a day being 7 ½ man hours including preparation and travel time, as set out in the Order or otherwise agreed in writing by the parties, all of which may be reviewed by Esri UK from time to time.
- 1.3. **"Confidential Information"** is confidential or proprietary information including without limitation ideas, concepts, know-how, intellectual property, plans, customer details and other technical, financial or commercial information, and all notes, records and copies of such information, (whether disclosed before, on or after the date of this Agreement and whether in oral, documentary or whatever form or on whatever media or by way of models or by demonstrations) which is disclosed by or on behalf of one party to the other pursuant to this Agreement.
- 1.4. **"Customer"** or **"You/Your"** is the Customer so named in the Order.
- 1.5. **"Customer Data"** is all data, information and documentation belonging to the Customer or its licensors to which Esri UK is granted access and provided a license to use for the purposes of this Agreement.
- 1.6. **"Customer Equipment"** is any hardware and software not provided by Esri UK.
- 1.7. **"Customer Location"** is the location/s at which the Software and/or Third Party Data is to be delivered and/or the Services are to be provided as detailed in the Order or otherwise agreed in writing by Esri UK and the Customer.
- 1.8. **"Customized Software"** is any customised code or software delivered by Esri UK to the Customer in the provision of the Services as set out in the Order.
- 1.9. **"Deliverables"** is those items prepared by or on behalf of Esri UK for the Customer as a part of the Services and as specified in the Order (including, where applicable, Customised Software).
- 1.10. **"End-User"** means the end-user of the Software and/or Third Party Data and/or Deliverables procured by the Customer from Esri UK in accordance with this Agreement.
- 1.11. **"Esri UK Licence Terms"** means the licence terms which apply to the licensing of Esri UK Software, which are available at www.esriuk.com/legal/terms-and-conditions and on the media as a click-use license on which the Esri UK Software is supplied.
- 1.12. **"Esri UK"** or **"We/Our"** is ESRI (UK) Ltd, registered in England under company number 1288342, registered office: Millennium House, 65 Walton Street, Aylesbury, HP21 7QG.
- 1.13. **"Esri UK Managed Cloud and Online Services"** are services, software and data that are provided by Esri UK online via the Amazon cloud infrastructure, or other third party infrastructure provider.
- 1.14. **"Expenses"** are expenses incurred by Esri UK in performance of the Services.
- 1.15. **"Export/Import Controls"** are applicable domestic and/or foreign government export and/or import laws, rules, policies, procedures, restrictions and regulations.
- 1.16. **"Intellectual Property Rights"** are all existing and future rights in inventions, patents, copyrights, design rights, semiconductor topography and chip design rights, trademarks and trade names, databases rights, domain names, service marks, trade secrets, know-how and other intellectual property rights (whether registered or unregistered) and all applications and registrations for any extensions and renewals of such rights or any of them, anywhere in the world.
- 1.17. **"Licence Terms"** means the Esri UK Licence Terms and the Third Party Licence Terms.
- 1.18. **"Order"** is the Customer's order as accepted by Esri UK incorporating the relevant elements of the corresponding Esri UK quotation/proposal (if any).
- 1.19. **"Services"** are the professional services, installation, annual software support and maintenance and/or other services specified in the Order and further detailed in the relevant Service Definition (if applicable).
- 1.20. **"Software"** is the Esri UK proprietary software (**"Esri UK Software"**) and/or the software manufactured by, or proprietary to, a third party and supplied by Esri UK hereunder on behalf of such third party (**"Third Party Software"**).
- 1.21. **"Service Definition"**, if applicable, is the description of the standard Services to be provided by Esri UK under this Agreement available at www.esriuk.com/legal/terms-and-conditions, and will be detailed within the Order;
- 1.22. **"Support Policy"** means the then current annual software support and maintenance services offered by Esri UK in relation to the Software available at www.esriuk.com/legal/terms-and-conditions.
- 1.23. **"Third Party Data"** is data manufactured by, or proprietary to, a third party and supplied and/or licensed as a dataset by Esri UK hereunder on behalf of such third party.
- 1.24. **"Third Party Licence Terms"** means the applicable end user licence terms that apply to the Third Party Software and/or Third Party Data, which terms may be provided in writing, in third party software packaging, or on media as a click-use license on which the relevant software is supplied, or in a licence file accompanying the Third Party Data, or available on request from Esri UK, including the relevant Environmental Systems Research Institute, Inc. (**"Esri Inc"**) 'license agreement' that applies to Esri Inc proprietary software, data and online services (**"Esri Inc Software"**) which is available at www.esriuk.com/legal/terms-and-conditions.
- 1.25. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.
- 1.26. The headings used in this Agreement are for ease of reference only and shall have no bearing on the legal construction or enforceability of this Agreement.

2. IF SOFTWARE OR THIRD PARTY DATA IS PROVIDED

- 2.1. Esri UK Software is licensed in accordance with the Esri UK Licence Terms.
 - 2.2. Third Party Software is licensed in accordance with the Third Party Licence Terms.
 - 2.3. Third Party Data is licensed in accordance with the Third Party Licence Terms.
 - 2.4. The Customer acknowledges the terms under which the Software and/or Third Party Data is supplied and shall ensure that it complies with the applicable Licence Terms. If the Customer is not willing to agree to the relevant Licence Terms it must not use the Software and/or Third Party Data, and it shall return the Software and/or Third Party Data unused and in the original packaging as soon as reasonably practicable. The Customer is deemed to have accepted the relevant Licence Terms if the applicable Software and/or Third Party Data is installed or otherwise used (by Customer or otherwise).
- 3. IF SERVICES ARE PROVIDED**
- 3.1. Esri UK shall provide the Services at the Customer Location using the reasonable skill and care expected of a competent provider of the Services.
 - 3.2. Where Customer has paid the annual software support and maintenance Charges, Esri UK shall provide the annual software support and maintenance Services for the Software in accordance with the Support Policy (and in relation to Esri Inc Software, subject to the Esri Inc Product Lifecycle Policy available at <http://help.arcgis.com/en/shared/product-life-cycle/ProductLifeCycle.pdf>).
 - 3.3. If the Customer cancels any professional Services less than 1 week before the agreed date, or Esri UK is unable to provide the Services due to an act or omission of the Customer, the Customer shall be liable for 100% of the Charges and Expenses therefor.
 - 3.4. If the Customer orders and pays for a number of professional Services days up front, the Customer must "call off" such days, in units of two or more days, for projects that are agreed with Esri UK from time to time, within a period of 12 months from the date of such order. No refund for unused days will be provided.
 - 3.5. Any days stated for professional Services are only an estimate of the days required to carry out the professional Services. Where the professional Services are achieved using less than the estimated days and assuming that no further use is identified by the Customer for any unused days, such days will, in this instance, be cancelled without penalty. If further days are required above the number of days estimated, these will be agreed with the Customer and charged at the then appropriate Daily Rates.
 - 3.6. These General Terms do not apply to learning services, which are governed by the current Esri UK Learning Services Terms. Such Learning Services Terms are available at www.esriuk.com/legal/terms-and-conditions.
 - 3.7. These General Terms do not apply to Operational Services, which are governed by the current Esri UK Operational Services Terms, which are available at www.esriuk.com/legal/terms-and-conditions.
- 4. CUSTOMER OBLIGATIONS**
- 4.1. The Customer will:
 - 4.1.1. provide Esri UK with all information, cooperation, consents and licenses reasonably necessary for Esri UK to supply the Software and/or Third Party Data and perform the Services;
 - 4.1.2. provide Esri UK with access to authorised and competent personnel, computer systems, software and premises, within normal business hours, ensure that such systems and software are utilised in accordance with the terms under which they were procured, and ensure that the Customer Location complies with all health and safety laws and regulations, each to enable Esri UK to supply the Software and/or Third Party Data and perform the Services;
 - 4.1.3. use the Software and/or Third Party Data or Services in accordance with the terms of this Agreement (including the Licence Terms), all applicable laws and regulations and any reasonable instructions given by Esri UK to the Customer from time to time;
 - 4.1.4. ensure the adequacy, integrity, security, virus checking and accuracy of the Customer Data and its computer systems and operate all necessary back-up procedures to ensure the same are maintained in the event of loss for any reason;
 - 4.1.5. comply with Export/Import Controls in relation to any item (whether tangible or intangible) provided to the Customer by Esri UK under this Agreement;
 - 4.1.6. comply with all applicable laws and regulations (including legislation relating to bribery, such as the Bribery Act 2010, and legislation relating to slavery and human trafficking);
 - 4.1.7. use in accordance with all applicable laws and regulations, and be solely responsible for, Customer Equipment; and
 - 4.1.8. not solicit for employment any employees of Esri UK for a period not exceeding six months after such employees leave the employment of Esri UK except with the written permission of Esri UK unless such employment arises as a result of a properly placed public advertisement.
 - 4.2. If the Customer is to procure the Software and/or the Third Party Data and/or Services for the benefit of an End-User, it shall ensure that such End-User is bound by the terms of this Agreement and complies with all obligations (save for the obligation to pay) of the Customer including executing the applicable Licence Terms (pursuant to Clause 2).
 - 4.3. If the Customer is provided physical or remote access to Esri UK's offices or systems, Customer will comply with any health and safety and physical and technological security requirements, measures or policies notified to it by Esri UK.
- 5. DELIVERY/TITLE/RISK**
- 5.1. Esri UK shall deliver the Software and/or Third Party Data to the Customer Location, and may do so earlier than any estimated delivery date and in instalments.
 - 5.2. Any Software, Third Party Data or Services delivery dates are estimates only and Esri UK shall not be liable for any loss, cost, expenses or damages suffered by the Customer or a third party howsoever arising whether directly or indirectly from the failure of Esri UK to comply with a particular date.

ESRI (UK) LTD GENERAL TERMS

If a separate agreement is signed between Esri UK and the Customer in relation to the provision of the Software or Services, that agreement shall apply instead of these General Terms.

- 5.3. Where title in any Deliverables (including Software media) is expressly agreed in writing to pass to the Customer, it shall only do so upon full payment of all Charges and subject to the Customer complying in all materials respects with this Agreement.
- 5.4. Risk shall pass to the Customer on physical delivery of the Deliverables to the Customer Location.

6. TERM AND TERMINATION

- 6.1. This Agreement shall terminate when the obligations of both parties have been performed under the Agreement.
- 6.2. Either party may terminate this Agreement with immediate effect if any of the following occur in respect of the other party:
- 6.2.1. It enters into any compromise or arrangement with its creditors;
- 6.2.2. An order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company);
- 6.2.3. A receiver, manager, or administrator is appointed in respect of the whole or any part of its undertaking or assets;
- 6.2.4. Any similar or analogous event to those described in 6.2.1-6.2.3 affects that party in the jurisdiction in which it is domiciled or incorporated.
- 6.3. If either party is in material breach of this Agreement, then the other may terminate this Agreement on written notice with immediate effect, provided that if the breach is capable of remedy, the breaching party has not remedied that breach within 30 days of the other party giving it notice to do so.
- 6.4. Esri UK may suspend or terminate the Agreement with immediate effect if the Customer fails to pay any amount due to Esri UK within 30 days of being informed in writing by Esri UK that the amount is overdue.
- 6.5. Without prejudice to Esri UK's other remedies, the Customer will pay all Charges accrued up to and including the effective date of termination.
- 6.6. Any clauses that are intended to survive termination will survive termination of this Agreement and will continue in full force and effect, including without limitation, Clauses 2, 4, 7, 8, 9, 11 and 14.

7. CHARGES

- 7.1. All Charges are quoted at current rates and are exclusive of VAT (which, where applicable, shall be paid by the Customer together with other applicable tax in the manner prescribed by law from time to time).
- 7.2. Subject to 7.3, the Customer shall pay all Charges and Expenses due within 30 days from the date of invoice. Software and Third Party Data Charges may be invoiced on or after delivery (and on or after first delivery for data delivery services). Charges for annual Software support and maintenance Services and/or Third Party Data licence renewal may be invoiced annually in advance. Charges for professional Services may be invoiced (i) on the earlier of completion of the Services or (monthly in arrears for the Services performed during such month or (ii) for "call off" professional Services described in 3.4, on placement of Order.
- 7.3. New customers may be subject to a credit check. If the credit check is satisfactory, 7.2 shall apply. Otherwise, the Customer must pay any Charges and Expenses before provision of any Software, Third Party Data or Services.
- 7.4. If the Customer fails to pay Charges or Expenses by the due date, Esri UK shall be entitled to charge interest on the overdue amount. Any such interest shall be paid by the Customer to Esri UK on demand, from the due date up to the date of actual payment, after as well as before judgement, at the rate of 4% per annum above the base rate from time to time of the National Westminster Bank Plc. Any interest shall accrue on a daily basis and be compounded quarterly.

8. LIMITATION OF LIABILITY

- 8.1. The warranties provided by Esri UK are as expressly set out in this Agreement and Esri UK excludes all other warranties and conditions (whether implied by statute, common law or otherwise and including any warranty as to fitness for purpose and satisfactory quality) to the extent permitted by law.
- 8.2. Subject to 8.4, neither party shall have any liability to the other in contract, tort (including negligence) or otherwise arising out of or in connection with this Agreement for any:
- 8.2.1. Loss of goodwill, profits, revenue, business, contracts or anticipated savings;
- 8.2.2. Special, indirect or consequential loss or damage (not falling within 8.2.1); and
- 8.2.3. Loss of data, including without limitation Customer Data.
- 8.3. Subject to 8.2, 8.4 and 8.5, each party's total aggregate liability to the other in contract, tort (including negligence) or otherwise under an Order will be limited to a sum equal to 110 % of the Charges payable by the Customer pursuant to such Order.
- 8.4. Nothing in this Agreement will apply so as to restrict either party's liability for death or personal injury resulting from the negligence of that party, fraud or breach of 2, 4.1.6, 4.2, 9 or 11.
- 8.5. The Customer acknowledges and agrees that any claims in respect of Third Party Software or Third Party Data shall, if applicable, be against the relevant party pursuant to the Third Party Licence Terms.
- 8.6. Esri UK shall not be required to carry out its obligations if at any time it is prevented or delayed from doing so by the Customer's breach of this Agreement, or the acts or omissions of the Customer or Customer's employees, agents or subcontractors. The Customer shall reimburse Esri UK for any additional costs it incurs due to such breach, acts or omissions.

9. CONFIDENTIALITY

- 9.1. The recipient of any Confidential Information will:
- 9.1.1. keep Confidential Information in strict confidence and use a reasonable standard of care in protecting it, which will not be less than the standard of care it uses to protect its own confidential information;

- 9.1.2. only use Confidential Information to perform its obligations under the Agreement;
- 9.1.3. not disclose Confidential Information to any third party;
- 9.1.4. when requested by the disclosing party, return or destroy the Confidential Information (and certify the same to the disclosing party).
- 9.2. Information is not Confidential Information if it is:
- 9.2.1. in or enters the public domain other than by breach of 9.1 or 9.2;
- 9.2.2. already in the recipient's lawful possession or obtained by the recipient through a third party who is free to disclose it without confidentiality restrictions;
- 9.2.3. authorised for release by the disclosing party's written consent; or
- 9.2.4. required to be disclosed by law or competent court or regulatory body, provided that a reasonable opportunity is given to the disclosing party to lawfully restrict such disclosure.
- 9.3. Esri UK may use Customer's name and logo to indicate that they are an Esri UK Customer. Esri UK may also issue a press release concerning this Agreement and may also propose further public relations/marketing activities, such as case studies, to carry out with the Customer. The wording of any such press releases, case studies and public relations/marketing activities is subject to the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed).

10. DATA PROTECTION**Definitions:**

"Applicable Data Protection Law" means all applicable and relevant laws and regulations relating to Personal Data which are implemented in or are binding on the United Kingdom, or which otherwise govern the processing and use of Personal Data, and which include but are not limited to the Data Protection Act 2018, the UK GDPR and (where applicable) the EU GDPR and the Privacy and Electronic Communications Regulations, as amended or replaced.

"GDPR" means the UK and/or the EU 'General Data Protection Regulation', as applicable.

"Personal Data" is information defined as such in the Applicable Data Protection Law and/or information treated as such under any other law or regulation applicable to it. "Privacy Notice" means the Esri UK privacy notice which sets out how and why we process Personal Data, which is available via: <https://www.esriuk.com/en-gb/legal/uk/notices/privacy>.

- 10.1. For the purposes of this clause, the Data Processor and the Data Controller shall be as defined in Applicable Data Protection Law. The Data Controller and the Data Processor shall comply with their respective obligations as prescribed by Applicable Data Protection Law.
- 10.2. The Data Processor shall implement and maintain appropriate technical and organisational measures in order to meet the requirements of GDPR and to ensure the rights of data subjects. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, to ensure a level of security appropriate to the risk, the Data Processor shall take the following measures: the pseudonymisation and/or encryption of the Personal Data; the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident; a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 10.3. The Data Processor shall not engage another data processor (a "sub-processor") without the Data Controller's written authorisation. So far as is necessary for the purposes and/or performance of these terms:
- 10.3.1. Where Esri UK is the Data Processor: Esri UK will process Personal Data in accordance with its Privacy Notice. The Data Controller hereby grants the Data Processor written authorisation to use sub-processors. Details of Esri UK's sub-processors are set out in its Privacy Notice.
- 10.3.2. Where you are the Data Processor: the Data Processor shall seek Esri UK's written authorisation to use any sub-processors.
- Where a party wishes to make any changes to its use of sub-processors, including any additional or replacement sub-processors, it shall notify the other party so that the other party may object to such change. All sub-processors engaged pursuant to this Clause 10.3 shall be bound by obligations no less onerous than those set out in this Clause 10 (Data Protection).
- 10.4. The subject-matter of the processing shall be the provision of services and/or deliverables (as applicable) under this agreement, or as otherwise set out or supplemented in writing. The duration of the processing shall be for the term of this agreement. The nature and purpose of the processing is the exchange, storage, transmission and use of Personal Data for the purpose of contract performance in relation to the subject-matter. The type of Personal Data and applicable categories of data subjects that will be processed shall be the names of the parties' employees or contractors or representatives, their respective business email and business postal addresses, and business telephone numbers, or as otherwise set out in writing. Certain categories of data subject, for example data subjects whom are children, shall be subject to a supplemental written agreement detailing additional rights and obligations.
- 10.5. The Data Processor shall:
- 10.5.1. process the Personal Data in accordance with the Data Controller's documented instructions, including with regard to transfers to international organisations or to a third country, unless required to do so by law (in which case the Data Processor will inform the Data Controller of such legal requirement prior to the processing, unless prohibited from doing so on legal grounds);

- 10.5.2. ensure that any person processing the Personal Data is bound by obligations of confidentiality;
- 10.5.3. take the measures detailed in Clause 10.2 (technical and organisational measures);
- 10.5.4. abide by the process and obligations in Clause 10.3 (engagement of sub-processors); and shall be responsible and liable to the Data Controller for the performance of such sub-processor's obligations;
- 10.5.5. taking into account the nature of the processing, assist the Data Controller in its obligations to respond to data subject requests to exercise their rights (including transparency, information and access, rectification, erasure, restriction, data portability, to object and automated individual decision-making; all subject to any of the restrictions provided by Applicable Data Protection Law);
- 10.5.6. assist the Data Controller in ensuring compliance with Clause 10.2 (technical and organisational measures);
- 10.5.7. where a data protection impact assessment has indicated that the processing will result in high risk, assist the Data Controller in undertaking prior consultation with the supervisory authority;
- 10.5.8. at the choice of the Data Controller, delete or return to the Data Controller all of the Personal Data after the end of the provision of services relating to processing, and delete existing copies unless the law requires storage of the Personal Data;
- 10.5.9. make available to the Data Controller all information necessary to demonstrate compliance with the obligations detailed in this Clause 10, and shall immediately inform the Data Controller if, in the Data Processor's opinion, an instruction infringes GDPR. Upon the Data Controller's request the Data Processor shall and allow for and contribute to audits, including inspections, conducted by the Data Controller or the Data Controller's approved auditor;
- 10.5.10. notify the Data Controller without undue delay after becoming aware of a Personal Data breach, and in any event within 24 hours;
- 10.5.11. where required, maintain a written record of all categories of processing activities that it carries out on behalf of the Data Controller in accordance with GDPR and make the record available to supervisory authority on request. Such records for the purposes of these terms should include: (i) the name and contact details of the Data Processor (including any relevant sub-processors) and of the Data Controller, together with details of their representatives and any data protection officer; (ii) the categories of processing being carried out; (iii) any transfers of Personal Data to a third country or international organisation, including identifying the third country or international organisation and the suitable safeguards; and (iv) the measures detailed in Clause 10.2 (technical / organisational measures);
- 10.5.12. cooperate, on request, with the supervisory authority in the performance of its tasks.
- 10.6. Where the Data Processor transfers Personal Data to a third country / international organisation in accordance with Clause 10.3 (engagement of sub-processors) it shall ensure that appropriate safeguards are in place and that enforceable data subject rights and effective legal remedies for data subjects are available. Such safeguards may include one or more of the following: binding corporate rules; approved standard data protection clauses adopted by the applicable data protection authority; or an approved certification mechanism; together with binding and enforceable commitments of the sub-processor in the third country to apply the safeguards (including data subjects rights). Where Personal Data is transferred to Esri Inc (located in the United States of America) pursuant to Clause 10.3 above, the appropriate safeguards and other relevant information can be found at: <https://www.esri.com/en-us/privacy/overview> and <https://trust.arcgis.com/en/>.
- 10.7. The Data Controller will ensure that it has a sufficient and valid lawful basis for providing any Personal Data to and authorising the Data Processor to perform its obligations, activities and exercise its rights under this Clause 10.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. This Agreement will not operate to transfer any Intellectual Property Rights owned by Esri UK, its affiliates and/or any third parties to the Customer.
- 11.2. The Intellectual Property Rights in any Deliverables and any other items provided to the Customer pursuant to this Agreement shall be and remain the property of Esri UK and/or its licensors, save that, on full payment by the Customer of Charges and Expenses, the Customer is granted a non-exclusive and non-transferable licence to use the Deliverables for its internal business use only or in the circumstances referred to under 4.2, for the sole purpose of providing the Deliverables to an End-User, for use by such End-User for its internal business use only.
- 11.3. Subject to 11.2, the Customer shall not be entitled to sell, rent, sublicense, lend, assign, timeshare, allow third party access to, reproduce, modify, adapt, translate, create derivative works, reverse engineer, disassemble or otherwise derive source code from or otherwise use the Intellectual Property Rights of Esri UK.
- 11.4. Notwithstanding anything to the contrary in this Agreement, Esri UK shall not be prohibited or enjoined at any time from utilising any skills or knowledge of a general nature acquired during the course of providing the Services, including (but not limited to) information publicly known or available or information that could reasonably be acquired during similar work for another customer of Esri UK.

12. WAIVER

A failure by either party to enforce any of its rights under the Agreement is not a waiver of those rights or any other rights it has under this Agreement.

13. FORCE MAJEURE

A party shall not be liable to the other if it is prevented from the performance of its obligations under this Agreement (except payment obligations) by an event that arises from or is attributable to acts, events, omissions or accidents beyond its reasonable control. A party that claims to be affected by such matters will promptly notify the other party.

14. ASSIGNMENT/RIGHTS OF THIRD PARTIES

- 14.1. Either party may assign or transfer this Agreement to a third party with the written consent of the other party and that consent will not be unreasonably withheld or delayed. Esri UK may subcontract the Services without consent but shall be liable for the acts and omissions of its subcontractors.
- 14.2. Other than as specifically detailed within the Licence Terms, no provision of this Agreement is enforceable by, or intended to benefit, any other person who is not a party to the Agreement.

15. ENTIRE AGREEMENT

- 15.1. Notwithstanding any other terms and conditions which the Customer has proposed or may seek to impose on Esri UK, this Agreement constitutes the whole understanding between Esri UK and the Customer and shall supersede any prior promises, representations, undertakings or implications made orally or in writing.
- 15.2. In the event of inconsistency between the documents comprising the Agreement, the following shall be the order of precedence (highest first): the Licence Terms, the General Terms, the Support Policy and the Order.

16. NOTICES

Any notice required to be given under this Agreement will be in writing and may be delivered by post or by hand. A notice will be deemed given when delivered. The Customer will send notices to Esri UK to the Legal Department at the address in Clause 1 above. Esri UK will send all notices to the Customer at the Customer Location. Either party may change its address and person to be notified by notifying the other party in writing of that change.

17. LAW AND JURISDICTION

- 17.1. This Agreement is made in and governed by the laws of England & Wales.
- 17.2. The parties irrevocably submit to the exclusive jurisdiction of the English Courts.

Appendix 2 – Esri UK Operational Services Terms

This agreement ("**Agreement**") is between ESRI (UK) Limited ("**Esri UK**" or "**Us/We**") and you (as an individual using the services, and also, where applicable, the organisation on whose behalf the individual is acting) ("**Customer**" or "**You/Your**"). If you are accepting this Agreement on behalf of the Customer, you warrant and represent to Esri UK that you have the Customer's authority to do so. If you are not so authorised, you assume sole personal liability for the Customer's obligations and compliance with the terms of this Agreement. If you do not agree to the terms of this Agreement, Esri UK is not able to provide the Services to you.

All Services provided under this Agreement are provided as a licensed subscription, and not an agreement for sale. This Agreement may also give the Customer certain limited rights to use or benefit from the applicable software ("**Software**") or data ("**Data**") made available to the Customer, along with any online or hard copy technical documentation, supplied with such Service, for the Customer's internal use and subject to the terms of this Agreement and any licensing terms that apply to the Software or Data. All rights not specifically granted in this Agreement are reserved to Esri UK and its third party licensor(s).

The Services to be purchased will be specified within the Esri UK quotation or proposal documentation ("**Quotation**") and the description of the Services will be in the Services definitions which are available at www.esriuk.com/legal/terms-and-conditions ("**Service Definitions**")

This Agreement comprises (i) the Quotation (ii) these Operational Services terms (iii) the Service Definitions and (iv) other documents referenced or linked via a url.

The Operational Services terms:

1. Reservation of ownership and grant of licence

- 1.1 The Services, Software and Data are protected by applicable United Kingdom and international laws, treaties and conventions regarding intellectual property or proprietary rights. Esri UK and its third party licensor(s) retain exclusive title and ownership of the Services, Software and Data.
- 1.2 In consideration of the payment of the applicable charges in accordance with clause 5 below, Esri UK hereby grants to the Customer, a personal non-exclusive non-transferable license to use the

Service subject to the terms and conditions of this Agreement.

- 1.3 The Customer shall use its best endeavours to protect the Services from any use, reproduction, exploitation, distribution, or publication not specifically permitted under this Agreement and shall, upon the request of Esri UK, provide feedback on the Customer's user experiences of the Service.
- 1.4 During the term of this Agreement and subject to any restriction in the Service Definitions, the Customer may only permit third party consultants and contractors' access and use of the Service for the sole benefit of the Customer. The Customer shall ensure that such consultants and contractors discontinue use of, and access to, the Service upon completion of the work for the Customer.
- 1.5 The Customer warrants that it will provide full and accurate contact and invoicing details prior to accessing the Service, and in addition the Customer agrees to allow Esri UK to access the Customers' Service in order to provide Customer support where applicable and as further detailed herein. Esri UK reserves the right to suspend or terminate any account created by a Customer where valid contact details cannot be verified with the Customer. The Customer will promptly notify Esri UK of any changes to such contact details.
- 1.6 In the event that the individual who registered to use the Service leaves the Customer's organisation, the Customer and individual shall promptly notify Esri UK and appropriate arrangements for the transfer, amendment or termination of the relevant account (as determined solely by Esri UK) will be made by Esri UK. Where Esri UK is not informed and subsequently discovers that an individual has left the Customer organisation, Esri UK, at its sole discretion, shall have the right to immediately terminate such individual's account.

2. Use of the Services

- 2.1 In order to use the Services, the Customer must ensure that it has in place any pre-requisite licences required to use the Services as detailed within the applicable Service Definitions or as may be notified by Esri UK from time to time. Unless otherwise stated to the contrary, the procurement of any such licences are the sole responsibility of the Customer. The Customer shall be responsible for obtaining, maintaining for the term of the Agreement, and

directly entering into such relevant licences with the appropriate third parties for any service, data, software, infrastructure or platform not supplied by Esri UK. Customer will not be reimbursed for Charges for any period when Customer cannot use the Software or Data for Customer's failure to renew such Software or Data licenses in good time.

2.2 The Customer will not:

- 2.2.1 either directly or indirectly engage in any form of commercial exploitation of the Service or any constituent part of the Service (including any Data or Software). "Commercial exploitation" for the purposes of this clause 2.2.1 means allowing third parties access to the Services, regardless of whether revenue is generated by the Customer; or
 - 2.2.2 sell, rent, lease, sublicense, lend, assign, time-share, or transfer, in whole or in part, or provide third parties access to the Service or any constituent part of the Service (including any Data or Software); or
 - 2.2.3 decompile, reverse engineer, disassemble or otherwise reduce any part of the Service or any constituent part of the Service (including any Data or Software) to human-readable form nor permit any third party to do so, save as permitted by law and in such circumstances on 30 (thirty) days prior written notice to Esri UK; or
 - 2.2.4 copy, make error corrections to or otherwise modify or alter or tamper with or repair or adapt or translate, or create derivative works based upon, the Service or any constituent part of the Service (including any Data or Software), nor permit a third party to do so; or
 - 2.2.5 remove or obscure any copyright, trademark notice, or restrictive legend of Esri UK or its third party licensor(s) nor permit a third party to do so; or
 - 2.2.6 access or use the Service in a way intended to avoid incurring fees or exceeding usage limits or quotas.
- 2.3 Other than the Software or Data supplied as part of the Service as detailed within the Esri UK Quotation, Esri UK is not responsible for any content, data or software used by the Customer on, or in connection with, the Services. Customer shall be responsible for its own hardware and infrastructure that it uses to access the Services.
- 2.4 Any additional services outside of this Agreement

required by the Customer in relation to the Services may be provided by Esri UK by separate agreement between the parties.

- 2.5 The Customer is responsible for ensuring that it has appropriate hardware and bandwidth to access and use the Service.
- 2.6 The Customer shall not (other than as provided in 1.3) share with any third party any URL, web address, usernames, passwords or access codes in relation to the Services provided by Esri UK to the Customer. The Customer shall ensure that it has in place sufficient and no less than reasonable technological security measures to prevent unauthorised disclosure of access and/or login details, and unauthorised access to and use of the Services.
- 2.7 The Customer acknowledges and accepts that Esri UK may need to change or update features or functionality or the aesthetic appearance of the Services from time to time (for example, to improve functionality or undertake emergency repair) including where the Services, Software or Data are upgraded, Esri UK will try to provide prior written notice where this is the case.
- 2.8 Export Control Regulations: The Customer agrees to comply with all applicable laws and regulations, including United Kingdom and United States export control laws and regulations. In particular, the Customer agrees not to export, re-export, provide or make available the Service to any person or entity located in a U.S. embargoed country or to any person or entity on the U.S. Treasury Department's Specially Designated National List or the U.S. Commerce Department's Denied Persons List, Entity List, or Unverified List. By use of the Service, the Customer represents and warrants that it (a) is not located in or under the control of a U.S. embargoed country; (b) is not identified on any U.S. Treasury or U.S. Commerce Department restricted list; and (c) will not use the Service for nuclear, missile, chemical or biological weapon end use.
- 2.9 The Customer shall ensure that it and its third party contractors and consultants do not use the Service:
 - 2.9.1 to upload any illegal, harmful, fraudulent, offensive or infringing material and/or content; or
 - 2.9.2 for any illegal, harmful, fraudulent activities; or
 - 2.9.3 to violate the security or integrity of any network, computer or communications system.

3. Software and Data

- 3.1 Access to Software or Data through the Services is offered as a subscription licence during the term for which the subscription is paid for, either on an organisational basis (for access by all employees of such organisation) or on a per user basis (for access by a named user within an organisation) as specified in the Quotation or in the Service Definitions.
- 3.2 The Customer acknowledges that the Software and Data (which is provided as part of the Service) is owned by either Esri UK or the relevant third party licensor and the use of the Software or Data shall be subject to Esri UK's or any applicable third party licensing terms detailed in the Service Definitions.
- 3.3 The Customer will ensure that any relevant copyright and database right attribution statements are reproduced on every copy of the Data made or used by the Customer.
- 3.4 Esri UK cannot control the accuracy or completeness of the Data and nor is it able to check the source information of the Data concerned. Accordingly, Esri UK will not be liable for any inaccuracies, faults or omissions in the Data.
- 3.5 Content published using Esri UK Software in accordance with this Agreement shall continue to be subject to this Agreement and shall include the following copyright attribution notice acknowledging Esri UK's and its third party licensor(s) proprietary rights in the Software: "Copyright [insert the actual copyright date(s) from the source materials] ESRI (UK) Ltd and its third party licensors. All rights reserved." If using the Software to publish a website or webpage, the Customer shall ensure that (i) it protects such website or webpage by using reasonable technological security measures and (ii) it complies with all applicable laws and (iii) it complies with any obligations relating to third party intellectual property rights.
- 3.6 If the Software (including Esri Inc's ArcGIS Online) provided is proprietary to Environmental Systems Research Institute, Inc's ("**Esri Inc**"), use of it will be subject to the Esri Inc License Agreement available at www.esriuk.com/legal/terms-and-conditions. If the Software is proprietary to a third party, use of it will be subject to the third party's standard license terms for that software.
- 3.7 Where Software or Data is purchased and/or accessed by Customer via Esri Inc's ArcGIS Marketplace, or any replacement online store, the Customer is also subject to Esri Inc's ArcGIS Marketplace terms on the ArcGIS Marketplace website, or the terms of the replacement online store.
- 3.8 Customer is responsible for ensuring that it has a valid Esri ArcGIS Online subscription for the duration of its use of the Software or Data. Customer will not be reimbursed for any period when Customer cannot use the Software or Data due to an expired ArcGIS Online subscription.
- 3.9 During the term of the Agreement, unless otherwise stated in the Service Definitions, technical support for the Software and Data is provided subject to the then current Esri UK Support Policy available at www.esriuk.com/legal/terms-and-conditions ("**Esri UK Support Policy**"). Where the Customer purchases Software via a third party, including an Esri UK authorized distributor, technical support will not apply and any technical support will be subject to arrangements between the Customer and the third party.
- 3.10 Evaluation licenses are provided on a non-exclusive, non-transferable basis for the number of users notified to Customer in writing to evaluate the Software or Data for the sole purpose of determining whether to purchase the Software or Data. Where Customer is granted a demonstration license, Customer may demonstrate the Software or Data to its customers during the period of the evaluation, provided that access to the Software or Data is not provided to such customer, is on a view-only basis and resides on the Customer's equipment. Any direct access or use by such customers requires a direct evaluation license between such customer and Esri UK

4. Warranties

- 4.1 The Customer represents and warrants that the Customer or the Customer's third party licensors own all right, title and interest in and to any content and data it uploads to the Services.
- 4.2 Esri UK will provide the Services using reasonable skill and care. If access to the Services have been provided to the Customer free of charge, or for evaluation purposes only, or as a beta service, the Customer expressly agrees and acknowledges that it is fair and reasonable for it to be provided by Esri UK "as is", without warranty or condition of any

kind, either express or implied, including, but not limited to, warranties of non-infringement, merchantability, satisfactory quality, use of reasonable skill and care or fitness for any particular purpose.

4.3 If Esri UK is providing the Services through the Customer's infrastructure, then Esri UK will not be responsible should Customer's infrastructure be the cause of Customer not being able to access the Services, Software or Data.

4.4 All other warranties express or implied are hereby excluded by Esri UK to the fullest extent permitted by law.

5. Charges

5.1 The Customer shall pay Esri UK the applicable charges as detailed on the Quotation ("**Charges**")

5.2 All Charges are exclusive of VAT (which, where applicable, shall be paid by the Customer together with other applicable tax in the manner prescribed by law from time to time) and shall be due and payable by the Customer in advance in respect of the relevant period for which the Services are purchased.

5.3 If the Customer fails to pay the Charges by the due date, Esri UK shall be entitled to charge interest on the overdue amount. Any such interest shall be paid by the Customer to Esri UK on demand, from the due date up to the date of actual payment, after as well as before judgement, at the rate of 4% per annum above the base rate from time to time of the National Westminster Bank PLC. Any interest shall accrue on a daily basis and be compounded quarterly. Esri UK reserves the right to suspend the use of the Service by the Customer until any such overdue Charges are paid.

5.4 Where customer purchases Esri UK Software via a third party, including an Esri UK's authorised distributor, then charges will be payable to that third party.

6. Term and Termination

6.1 This Agreement shall commence on either (i) the date of the Order ; (ii) if earlier, the date that the Customer is provided access to the Service; or (iii) if a Service renewal, the date after which the applicable Service expired; or (iv) as may be detailed within the applicable Service Definition; or (v) if applicable, the date that the parties agree in writing, and if not so agreed, the date Esri UK determines at its discretion acting reasonably

("Service Commencement Date"), and shall continue on an annual basis (or other periodic or prorated basis as detailed in the Quotation) until the earlier of the following events:

6.1.1 Esri UK terminates for the Customer's breach of this Agreement; or

6.1.2 Esri UK provides 12 (twelve) weeks' notice in writing (including by email) to the Customer; or

6.1.3 Esri UK provides notice in writing (including by email) to the Customer should a third party supplier provide a termination notice to Esri UK affecting part or all of the Customer's Services and such notice period from Esri UK will be as long as reasonably practicable; or

6.1.4 Expiry of the Customer's relevant subscription licence; or

6.1.5 The Customer elects to discontinue use of the Service (in which case no refund will be provided for prepaid Services).

6.2 Esri UK will issue a renewal quotation to Customer prior to the Service expiry date and Customer must advise Esri UK if it wishes to renew the Service at least 30 calendar days prior to such expiry date (or, if the renewal quotation is issued by Esri UK less than 30 calendar days prior to the expiry date) within 7 calendar days of receipt of the renewal quotation.

6.3 Upon termination or expiry of this Agreement, all Customer's rights under this Agreement (including those detailed in clause 1) terminate and Esri UK reserves the right to delete the Customer's data and any content from the Service. Where using Esri UK's infrastructure, Customer's data will be held for 30 days beyond the termination date should the Customer choose to renew the Services. During this period, Customer may request that Esri UK extract Customer's data from the Services and provide it back to the Customer, for which Esri UK may charge its then standard professional services fees.

6.4 In the event of termination by Esri UK pursuant to Clause 6.1.2, Esri UK shall repay to the Customer a prorated portion of any unused subscription Charges prepaid by the Customer.

6.5 If the Service is provided for evaluation purposes only, access to the Service shall expire 30 days after access is made available by Esri UK, or such other period as may be agreed by Esri UK in writing, at which point the Customer must stop using the Services, Software or Data.

7. Data Protection

Definitions:

"Applicable Data Protection Law" means all applicable and relevant laws and regulations relating to Personal Data which are implemented in or are binding on the United Kingdom, or which otherwise govern the processing and use of Personal Data, and which include but are not limited to the Data Protection Act 2018, the UK GDPR and (where applicable) the EU GDPR and the Privacy and Electronic Communications Regulations, as amended or replaced. "GDPR" means the UK and/or the EU 'General Data Protection Regulation', as applicable.

"Order" is the Customer's order as accepted by Esri UK incorporating the relevant elements of the corresponding Esri UK quotation/proposal (if any).

"Personal Data" is information defined as such in the Applicable Data Protection Law and/or information treated as such under any other law or regulation applicable to it.

"Privacy Notice" means the Esri UK privacy notice which sets out how and why we process Personal Data, which is available via: <https://www.esriuk.com/en-gb/legal/uk/notices/privacy>.

For the purposes of this clause, the Data Processor and the Data Controller shall be as defined in Applicable Data Protection Law. The Data Controller and the Data Processor shall comply with their respective obligations as prescribed by Applicable Data Protection Law

- 7.1 The Data Processor shall implement and maintain appropriate technical and organisational measures in order to meet the requirements of GDPR and to ensure the rights of data subjects. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, to ensure a level of security appropriate to the risk, the Data Processor shall take the following measures: the pseudonymisation and/ or encryption of the Personal Data; the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; the

ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident; a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

- 7.2 The Data Processor shall not engage another data processor (a "sub-processor") without the Data Controller's written authorisation. So far as is necessary for the purposes and/or performance of these terms:

7.2.1 Where Esri UK is the Data Processor: Esri UK will process Personal Data in accordance with its Privacy Notice. The Data Controller hereby grants the Data Processor written authorisation to use sub-processors. Details of Esri UK's sub-processors are set out in its Privacy Notice.

7.2.2 Where you are the Data Processor: the Data Processor shall seek Esri UK's written authorisation to use any sub-processors.

7.2.3 Where a party wishes to make any changes to its use of sub-processors, including any additional or replacement sub-processors, it shall notify the other party so that the other party may object to such change. All sub-processors engaged pursuant to this Clause 9.3 shall be bound by obligations no less onerous than those set out in this Clause 9 (Data Protection).

7.2.4 The subject-matter of the processing shall be the provision of services and/ or deliverables (as applicable) under this agreement, or as otherwise set out or supplemented in writing. The duration of the processing shall be for the term of this agreement. The nature and purpose of the processing is the exchange, storage, transmission and use of Personal Data for the purpose of contract performance in relation to the subject-matter. The type of Personal Data and applicable categories of data subjects that will be processed shall be the names of the parties' employees or contractors or representatives, their respective business email and business postal addresses, and business telephone numbers, or as otherwise set out in writing. Certain categories of data subject, for example data subjects whom are

children, shall be subject to a supplemental written agreement detailing additional rights and obligations.

7.3 The Data Processor shall:

- 7.3.1 process the Personal Data in accordance with the Data Controller's documented instructions, including with regard to transfers to international organisations or to a third country, unless required to do so by law (in which case the Data Processor will inform the Data Controller of such legal requirement prior to the processing, unless prohibited from doing so on legal grounds);
- 7.3.2 ensure that any person processing the Personal Data is bound by obligations of confidentiality;
- 7.3.3 take the measures detailed in Clause 9.2 (technical and organisational measures);
- 7.3.4 abide by the process and obligations in Clause 9.3 (engagement of sub-processors); and shall be responsible and liable to the Data Controller for the performance of such sub-processor's obligations;
- 7.3.5 taking into account the nature of the processing, assist the Data Controller in its obligations to respond to data subject requests to exercise their rights (including transparency, information and access, rectification, erasure, restriction, data portability, to object and automated individual decision- making; all subject to any of the restrictions provided by Applicable Data Protection Law);
- 7.3.6 assist the Data Controller in ensuring compliance with Clause 9.2 (technical and organisational measures);
- 7.3.7 where a data protection impact assessment has indicated that the processing will result in high risk, assist the Data Controller in undertaking prior consultation with the supervisory authority;
- 7.3.8 at the choice of the Data Controller, delete or return to the Data Controller all of the Personal Data after the end of the provision of services relating to processing, and delete existing copies unless the law requires storage of the Personal Data;
- 7.3.9 make available to the Data Controller all information necessary to demonstrate compliance with the obligations detailed in this Clause 9, and shall immediately inform

the Data Controller if, in the Data Processor's opinion, an instruction infringes GDPR. Upon the Data Controller's request the Data Processor shall and allow for and contribute to audits, including inspections, conducted by the Data Controller or the Data Controller's approved auditor;

- 7.3.10 notify the Data Controller without undue delay after becoming aware of a Personal Data breach, and in any event within 24 hours;
- 7.3.11 where required, maintain a written record of all categories of processing activities that it carries out on behalf of the Data Controller in accordance with GDPR and make the record available to supervisory authority on request. Such records for the purposes of these terms should include: (i) the name and contact details of the Data Processor (including any relevant sub-processors) and of the Data Controller, together with details of their representatives and any data protection officer; (ii) the categories of processing being carried out; (iii) any transfers of Personal Data to a third country or international organisation, including identifying the third country or international organisation and the suitable safeguards; and (iv) the measures detailed in Clause 9.2 (technical/ organisational measures);
- 7.3.12 cooperate, on request, with the supervisory authority in the performance of its tasks.

- 7.4 Where the Data Processor transfers Personal Data to a third country / international organisation in accordance with Clause 9.3 (engagement of sub- processors) it shall ensure that appropriate safeguards are in place and that enforceable data subject rights and effective legal remedies for data subjects are available. Such safeguards may include one or more of the following: binding corporate rules; approved standard data protection clauses adopted by the applicable data protection authority; or an approved certification mechanism; together with binding and enforceable commitments of the sub-processor in the third country to apply the safeguards (including data subjects rights). Where Personal Data is transferred to Esri Inc

(located in the United States of America) pursuant to Clause 9.3 above, the appropriate safeguards and other relevant information can be found at: <https://www.esri.com/en-us/privacy/overview> and <https://trust.arcgis.com/en/>.

7.5 The Data Controller will ensure that it has a sufficient and valid lawful basis for providing any Personal Data to and authorising the Data Processor to perform its obligations, activities and exercise its rights under this Clause 9.

8. Limitation of liability

8.1 Except in respect of death or personal injury, fraudulent misrepresentation, breach of laws, breach of Clause 11.7, payment of the Charges by the Customer, third party claims made against Esri UK or breach of Clause 2 or any other license terms by the Customer, Esri UK and Customer's total aggregate liability (whether in contract, tort (including negligence) or howsoever arising) in relation to this Agreement shall be limited to the lesser of (i) the subscription fees paid by the Customer for the Service or (ii) 12 (twelve) months subscription fees for the Service.

8.2 Except in respect of death or personal injury, fraudulent misrepresentation, breach of laws, breach of Clause 11.7, payment of the Charges by the Customer, third party claims made against Esri UK or breach of Clause 2 or any other license terms by the Customer,, neither Esri UK nor the Customer shall have any liability to the other in contract, tort (including negligence) or otherwise arising out of or in connection with this Agreement for any:

8.2.1 Loss of goodwill, profits, revenue, business, contracts or anticipated savings;

8.2.2 Special, indirect or consequential loss or damage (not falling within 8.2.1); and

8.2.3 Loss of data.

9. Indemnity to Esri UK by the Customer

9.1 The Customer shall fully indemnify and hold harmless Esri UK and its third-party licensor(s) from and against all liabilities, claims, suits, losses or damages (including, but not limited to, legal fees, costs, judgements and reasonable expenses incurred) arising out of (a) any use of the Services (or the Software or Data) by the Customer (or its authorised third party consultants and contractors in accordance with clause 1.3) not permitted by this Agreement or by the applicable license terms

for the Software or Data; (b) its violation of laws or regulations; or (c) breach of clause 11.7..

9.2 The Customer agrees that, if the Customer breaches this Agreement, Esri UK may not adequately be compensated by money damages alone and therefore Esri UK shall be entitled without proof of special damage, in addition to any other right or remedy available to it (including, but not limited to, an action for damages), to the remedies of injunction, specific performance and other equitable relief in any court of competent jurisdiction for any actual, threatened or potential breach.

10. Service Level Agreement

10.1 Where a Service Definition specifically provides that the Service Level Agreement applies to that Service, unless otherwise stated, the Service Level Agreement will be as specified at Appendix 1.

11. General

11.1 Neither party shall be liable to the other party for a failure to perform its obligations under this Agreement if such failure results from circumstances beyond the party's reasonable control, including third party infrastructure failure ("**Force Majeure Event**") provided the party seeking to claim a Force Majeure Event informs the other party as soon as practical and shall use reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which the obligation may be performed despite the continuance of the Force Majeure Event.

11.2 The Customer may not assign, novate, or otherwise transfer any of its rights under this Agreement without the prior written consent of Esri UK.

11.3 This Agreement shall supersede any prior promises, representations, undertakings or implications made orally or in writing.

11.4 No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of the Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Agreement.

11.5 Any clauses that are intended to survive termination including (but not limited to) clauses 1.1, 6, 7, 8, 9 and 11 will survive termination of this Agreement and will continue in full force and effect.

11.6 Any notice required to be given under this

Agreement will be in writing and may be delivered by post, by hand, by email, or by facsimile transmission. A notice will be deemed given when delivered. The Customer will send all notices to Esri UK for the attention of the Legal Department at Esri UK's registered address. Esri UK will send all notices to the Customer at one or more of the addresses provided in accordance with clause 1.4. Either party may change its address and person to be notified by notifying the other party in writing of that change.

11.7 The recipient of any confidential or proprietary information including without limitation ideas, concepts, know-how, intellectual property, plans, customer details and other technical, financial or commercial information, and all notes, records and copies of such information, (whether disclosed before, on or after the date of this Agreement and whether in oral, documentary or whatever form or on whatever media or by way of models or by demonstrations) which is disclosed by or on behalf of one party to the other pursuant to this Agreement ("Confidential Information") will:

11.7.1 keep Confidential Information in strict confidence and use a reasonable standard of care in protecting it, which will not be less than the standard of care it uses to protect its own confidential information;

11.7.2 only use Confidential Information to perform its obligations under the Agreement;

11.7.3 not disclose Confidential Information to any third party;

11.7.4 when requested by the disclosing party, return or destroy the Confidential Information (and certify the same to the disclosing party).

11.7.5 Information is not Confidential Information if it is:

11.7.6 in or enters the public domain other than by breach of 11.7.1 or 11.7.2;

11.7.7 already in the recipient's lawful possession or obtained by the recipient through a third party who is free to disclose it without confidentiality restrictions;

11.7.8 authorised for release by the disclosing party's written consent; or

11.7.9 required to be disclosed by law or competent court or regulatory body, provided that a reasonable opportunity is given to the disclosing party to lawfully restrict such disclosure.

11.8 This Agreement shall be subject to and construed

and interpreted in accordance with the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England.

Appendix 1: Service Level Agreement

1. The following definitions shall apply:

"**Access Hours**" are the hours during which Esri UK will provide the Customer with access to the Service, as detailed in the Service Definition.

"**Availability**" or "**A**" is the availability of the Service to the Customer during Service Hours and monitored by third party monitoring tools and is calculated in respect to a Reporting Period. Availability is assessed using the following calculation:

$$A = \frac{TM - U}{TM} \times 100$$

"**Excluded Events**" means where the Service is not available due to:

- 3rd party infrastructure provider planned or emergency maintenance. This is a planned service carried out on the underlying infrastructure provider which can involve updates to the underlying hardware and other essential activities to ensure that the service is operating correctly, and to mitigate, and avoid, any unscheduled breakdown or downtime. Esri UK will use reasonable endeavors to notify Customers of any such scheduled maintenance;
- Esri UK scheduled maintenance for upgrades, patches or other activities agreed with the Customer in advance;
- Failure of features and/or functions of the Esri UK software, defects in the Esri UK software, data issues and other problems relating to the Esri UK software that is made available as part of the Service. Such queries are subject to the Esri UK Support Policy and should be referred to Esri UK Technical Support ([Contact Support | Esri UK & Ireland](#));
- A Force Majeure Event. In such circumstances Esri UK shall use reasonable endeavors to bring the Force Majeure Event to a close or to find a solution by which availability can be restored despite the continuance of the Force Majeure Event. In the event of a Force Majeure Event, customers will be notified of the circumstances;
- Suspension or termination of the service arising through Customer's breach of this Agreement;
- Where the Service is not available due to Customer's own computers, systems, software, data and/or infrastructure;
- Denial of service attacks or other actions of a

third party

- Any actions or configuration changes carried out by the Customer on the server after it has been provisioned, that renders it unavailable;
- Unavailability caused by excess demand for server resources or exceeding the capacity of the server;
- The stopping, shutting down or rebooting of a server instance as the result of any action carried out by the Customer;
- If no fault can be found.

“**Reporting Period**” is the applicable complete calendar month (e.g. May).

“**Service Charges**” means, in order to calculate the Service Credits, the Charges paid by the Customer to Esri UK for the relevant Service as stated on the Quotation. Where an annual fee is paid, for the purposes of calculating Service Credits, such fee shall be pro-rata (1/12 of the annual fee). Service Charges will be based on their value at the start of a calendar month. Service Charges do not include any set up or professional services charges. If the relevant Service Charges are not identifiable, Esri UK shall (on Customer request) notify the Customer as to what proportion of the total fees that the customer is paying for the Services constitute the Service Charges.

“**Service Credit**” means a payment that can be claimed by the Customer in accordance with this Service Level Agreement should the Service not meet the Availability stated within a Service Definition, or any other criteria within a Service Definition, where the Service Definition states that a Service Credit is payable,

“**Service Hours**” are the hours during which Service Availability is calculated, as detailed in the Service Definition

“**Target Availability**” is the target level of Availability as defined in the Service Definition.

“**Total Minutes**” or “**TM**”: is the total number of whole minutes during Service Hours in the relevant Reporting Period not including Excluded Events.

“**Unavailability**” or “**U**”: the number of whole minutes that the Customer is unable to access the Service during Service Hours within a Reporting Period, not including Excluded Events. Only incidents that last for a consecutive period of five (5) minutes or more where the Customer is unable to access the relevant Service shall be included in the calculation of Unavailability.

2. Esri UK will use reasonable efforts to ensure that the Services are available for use during the Service Hours defined in the Service Definition.

3. In the event that Availability does not meet Target Availability in the relevant Reporting Period for a Service, the Customer may make a claim in writing for a Service Credit equal to 10% of the Service Charges

for the applicable Service during the relevant Reporting Period.

4. Any Service Credits due will be applied to the next regular payment. If the Agreement expires or is terminated prior to the application of a Service Credit, the sum of any Service Credits due will be credited to a Customer nominated account.

5. Award of Service Credits to the Customer shall be the Customer’s sole remedy for Availability falling below the Target Availability. Service Credits shall not exceed the percentage amount of the Service Charges for the relevant Reporting Period stated above. To benefit from Service Credits the Customer must be claimed in writing within 30 days of the end of the month in which the Availability was not met.