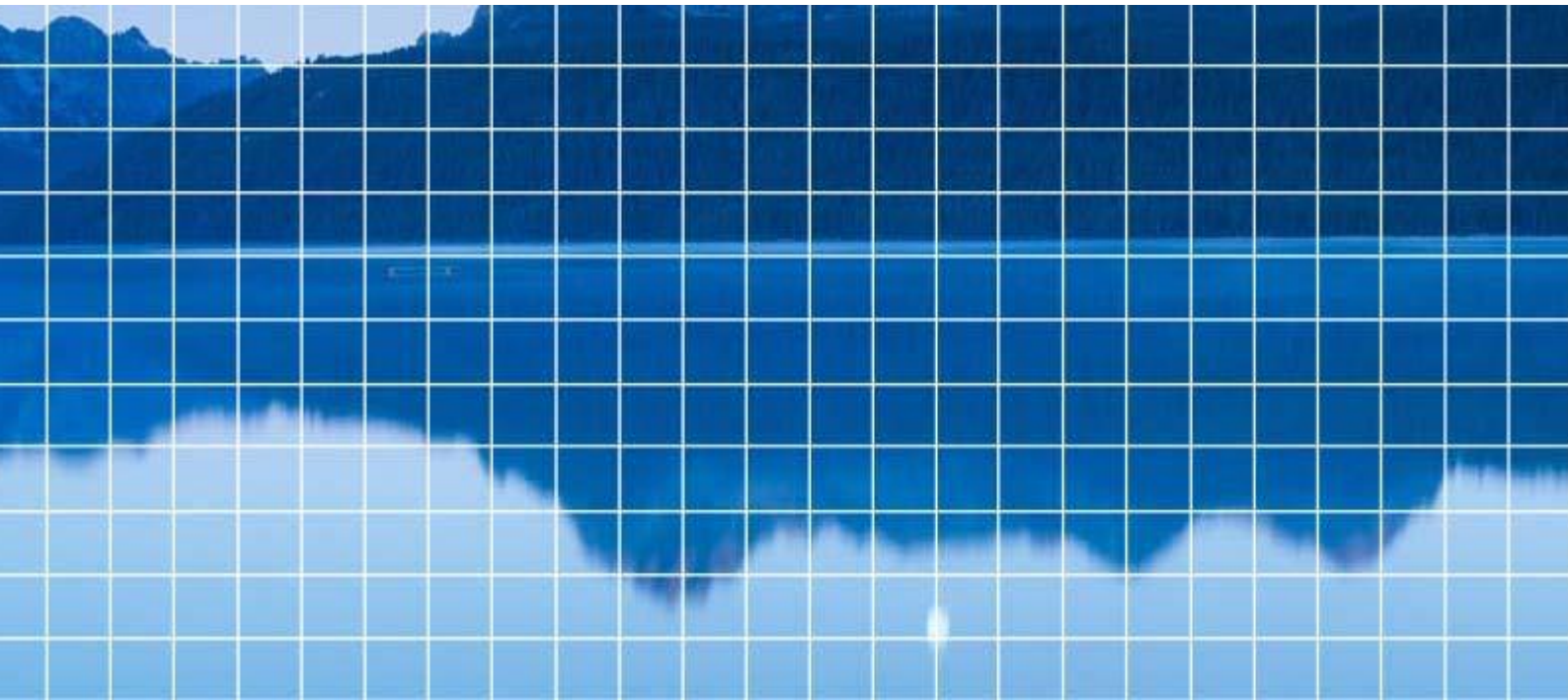




ArcGIS in the Cloud

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 Esri UK ArcGIS in the Cloud is provided under the **Esri UK Operational Services Terms** at Appendix 1 hereto.

The Esri UK Operational Services Terms make reference, and provide hyperlink access, 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
 - Esri Inc's privacy notices
- **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 Terms
- 3.14 Financial Recompense Model

Appendix 1 – 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.