

This agreement (“**Agreement**”) is between ESRI (UK) Limited (“**Esri UK**”) and you (as an individual using the software, data, or platform, and also, where applicable, the organisation on whose behalf the individual is acting) (“**Customer**”).

IMPORTANT: BY ELECTING TO USE OR ACCESS THE SOFTWARE, DATA, AND/OR PLATFORM, THE CUSTOMER AGREES TO BE BOUND BY THE THEN CURRENT TERMS OF THIS AGREEMENT, AS MAY BE AMENDED FROM TIME TO TIME BY ESRI UK. IF THE CUSTOMER DOES NOT WISH TO ACCEPT THE TERMS OF THIS AGREEMENT AS STATED, THEN ESRI UK IS UNWILLING TO PROVIDE THE SOFTWARE, DATA, AND/OR PLATFORM. IF THE CUSTOMER IS REQUIRED TO AGREE TO THIS AGREEMENT AS PART OF THE ACCESS PROCESS TO THE SOFTWARE, DATA, AND/OR PLATFORM, AND THE CUSTOMER DOES NOT ACCEPT THE TERMS OF THE AGREEMENT, THE CUSTOMER MUST SELECT THE "I DISAGREE" OPTION AND/OR CLICK THE "CANCEL" BUTTON AND MUST NOT USE THE SOFTWARE, DATA, AND/OR PLATFORM. 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.

Any Software, Data, or Platform provided under this Agreement is provided subject to a licence, and not an agreement for sale. This Agreement gives the Customer certain limited rights to use or benefit from the applicable Software, Data, or Platform (“**Software**”, “**Data**” and/or “**Platform**” respectively) made available to the Customer through a third party infrastructure provider via a Managed Cloud Service (the “**Managed Cloud Service**”) or as an online service (the “**Online Service**”) (together “**the Service**”) along with any online or hard copy technical documentation supplied with such Service), only for the Customer’s internal use and (unless otherwise stated) only for use within the United Kingdom and subject to the terms of this Agreement (the “**Purpose**”) including, where applicable, the special terms in clause 13 (“**Special Terms**”). All rights not specifically granted in this Agreement are reserved to Esri UK and its third party licensor(s).

Details of the Services, Data, Software, and/or Platform will be specified within the Esri UK quotation or proposal documentation.

1. Reservation of ownership and grant of licence

- 1.1 The Service, Data, Software and Platform 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 Service, Data, Software, and Platform.
- 1.2 In consideration of the payment of the applicable charges in accordance with clause 7 below, Esri UK hereby grants to the Customer, a personal non-exclusive non-transferable license to use the Service solely for the Purpose subject to the terms and conditions of this Agreement and any Special Terms. The Customer shall use its best endeavours to protect the Service, Data, Software and/or Platform (as applicable) 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.
- 1.3 During the term of this Agreement and subject to any restriction in the Special Terms, the Customer may only permit third party consultants and contractors access and use of the Service for the Purpose. 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.
- 1.4 The Customer warrants that it will provide full and accurate contact details during the registration process for access to the Service, and in addition the Customer agrees to allow Esri UK to access the Customer’s Online Service account. This is necessary to enable Esri UK to administer the Customer’s account and 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 change to such contact details.
- 1.5 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 individual has left the Customer organisation, Esri UK, at its sole discretion, shall have the right to immediately terminate such individual’s account.

2. Service

- 2.1 In order to use the Service the Customer must ensure that it has in place any pre-requisite licences required to use the Service (as may be notified by Esri UK from time to time) prior to such use. 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.
- 2.2 The Customer shall 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 Service (save that, subject to the Special Terms, the Customer may make output of the Service publicly available), regardless of whether revenue is generated by the Customer; or
 - 2.2.2 without prejudice to clause 2.2.1, 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;
 - 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 Managed Cloud Service:
 - 2.3.1 Any solution set-up or on-boarding required for the purposes of the Managed Cloud Service will be provided by Esri UK subject solely to and governed exclusively by the Esri UK General Terms available at www.esriuk.com/legal/terms-and-conditions.
 - 2.3.2 Details of service management activities for Managed Cloud Services will be detailed within the the Esri UK quotation or proposal documentation. Other than those components (eg Software or Data) supplied as part of the Managed Cloud Service as detailed within the the Esri UK quotation or proposal documentation, Esri UK is not responsible for any content, data or software used by the Customer on, or in connection with, the Managed Cloud Service. Customer shall be responsible for its own hardware and infrastructure that it uses to access the Managed Cloud Service
- 2.4 Any additional services outside of this Agreement required by the Customer in relation to the Service may be provided by Esri UK by separate agreement between the parties.

ESRI (UK) LTD's MANAGED CLOUD AND ONLINE SERVICE TERMS

ESRI (UK) Ltd, company number 1288342. Registered Office: Millennium House, 65 Walton Street, Aylesbury, Buckinghamshire, England, HP21 7QG Tel: 01296 745 500 Fax: 01296 745 544

- 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 share with any third party any url, web address, usernames, passwords or access codes in relation to the Service 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 Service.
- 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 Service from time to time (for example, to improve functionality or undertake emergency repair). 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.
- 2.10 During the term of the Agreement, unless otherwise stated, the Service shall be subject to Esri UK's then current Managed Cloud and Online Service – Service Level Agreement (“**SLA**”) available at <http://www.esriuk.com/legal/terms-and-conditions>. In accordance with the SLA, service credits shall be the Customer's sole remedy relating to availability of the applicable Service.

3. Data

- 3.1 Access to the Data through the Service is offered either on an organisational basis (where the Data can be accessed by all employees of such organisation) or on a per user basis (where the Data can only be accessed by a named user within an organisation).
- 3.2 The Customer acknowledges that the Data (which is provided as part of the Service) is owned by the relevant third party licensor and the use of such Data shall be subject to any applicable third party licensing terms or other terms detailed within the Special Terms.
- 3.3 In addition, the Customer agrees to 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 shall not be liable for any inaccuracies, faults or omissions in the Data.
- 3.5 During the term of the Agreement, unless otherwise stated in the Special Terms, technical support for the Data is provided subject to the then current Esri UK Support Policy available at <http://www.esriuk.com/legal/terms-and-conditions> (“**Esri UK Support Policy**”).
- 3.6 Data purchased and/or accessed by Customer via Esri Inc's ArcGIS Marketplace: Data obtained via the ArcGIS Marketplace is also subject to Esri Inc's ArcGIS Marketplace terms on the ArcGIS Marketplace website and the applicable terms detailed in sections 13.1 and/or 13.2 (as applicable) below. Customer is responsible for ensuring that it has a valid Esri ArcGIS Online (“**AGOL**”) subscription for the duration of its use of such Data. Customer will not be reimbursed for any period when Customer cannot use the Data due to an expired AGOL subscription.

4. Software

- 4.1 The Customer acknowledges that the Software (which is provided as part of the Service) is owned by Esri UK and its third party licensors and the use of such Software shall be subject to any applicable Special Terms.
- 4.2 Where Customer has subscribed to Software as part of the Service, the Customer shall also be bound by these additional terms:
 - 4.2.1 The Customer may use the Software on a subscription licence basis during the term for which the subscription fees have been paid.
 - 4.2.2 The Customer may permit access and use of the Software by multiple Customer end-users from multiple machines at the Customer's location.
 - 4.2.3 Software content published 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.”
 - 4.2.4 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.
 - 4.2.5 The Customer shall not use the Software to publish content on behalf of any third party.
- 4.3 During the term of the Agreement, unless otherwise stated in the Special Terms, technical support for the Software is provided subject to the then current Esri UK Support Policy.
- 4.4 Software may include
 - 4.4.1 Software proprietary to Environmental Systems Research Institute, Inc's (“**Esri Inc**”), the use of which will be subject to the Esri Inc License Agreement available at www.esriuk.com/legal/terms-and-conditions;
 - 4.4.2 Esri UK Software application(s) purchased by Customer via Esri Inc's ArcGIS Marketplace (“**Marketplace Application(s)**”). Marketplace Applications obtained via the ArcGIS Marketplace are also subject to Esri Inc's ArcGIS Marketplace terms on the ArcGIS Marketplace website and the applicable terms detailed in sections 5.3-5.5 below. Customer is responsible for ensuring that it has a valid Esri ArcGIS Online (“**AGOL**”) subscription for the duration of its use of any Marketplace Application(s). Customer will not be reimbursed for any period when Customer cannot use the Marketplace Application(s) due to an expired AGOL subscription. Marketplace Applications may be accessed from outside of the United Kingdom.
- 4.5 Other than as specifically provided with the Esri UK quotation or proposal documentation for Managed Cloud Services, Software does not include bespoke software application(s) which are developed and written by Esri UK for the Customer and made available by Esri UK on AppHub (“**Bespoke Application(s)**”) The professional services used to create the Bespoke Applications, and the use of the Bespoke Applications by Customers, are subject solely to and governed exclusively by the Esri UK General Terms available at www.esriuk.com/legal/terms-and-conditions.

5. Platform

- 5.1 The Platform provided by Esri UK consists of Esri UK's hosted platform (“**AppHub**”) which is used to host Marketplace Applications and Bespoke Applications.

- 5.2 Other than Marketplace Applications and Bespoke Applications supplied by Esri UK with the Platform, Esri UK is not responsible for any content, data or software used by the Customer in connection with, the Platform. Customer shall be responsible for its own hardware and infrastructure that it uses to access the Platform.
- 5.3 AppHub, integration software components that integrate AppHub with the underlying hosting infrastructure, and components of certain Marketplace Applications (including any derived Customer sub-application(s)) contain open source software components (“OSSC”). The OSSC are subject to the relevant open source license; full details (including copyright attribution and license terms) are set out in either the relevant AppHub or Marketplace Application ‘Application Documentation’, or are available on (or linked via) the AppHub or Marketplace Application page, or will be provided upon request.
- 5.4 AppHub, integration software components that integrate AppHub with the underlying hosting infrastructure and components of Marketplace Applications are not a contribution to any OSSC and are licensed solely on the terms of this Agreement.
- 5.5 AppHub, integration software components that integrate AppHub with the underlying hosting infrastructure and components of Marketplace Applications (including any sub-application(s) created using the Marketplace Application) may use Google Analytics. For further information please refer to Esri UK’s Privacy Notice and/or Cookies Policy available at www.esriuk.com.

6. Warranty

- 6.1 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 Service.
- 6.2 If access to the Service has been provided to the Customer free of charge or for evaluation purposes only, 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.
- 6.3 Subject to clauses 3 and 4, if access to the Service has been provided to the Customer for a charge, Esri UK shall provide the Service using reasonable skill and care.
- 6.4 All other warranties express or implied are hereby excluded by Esri UK to the fullest extent permitted by law.

7. Charges

- 7.1 The Customer shall pay Esri UK the applicable charges as advised by Esri UK.
- 7.2 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 Service is purchased.
- 7.3 If the Customer fails to pay such 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.

8. Term and Termination

- 8.1 This Agreement shall commence on the latter of (i) the date of acceptance of this Agreement; or (ii) the date that the Customer is provided access to the Service (“**Commencement Date**”), and shall continue on a monthly or annual basis (as applicable) until the earlier of the following events:
 - 8.1.1 Esri UK terminates for the Customer’s breach of this Agreement; or
 - 8.1.2 Esri UK provides 4 (four) weeks’ notice in writing (including by email) to the Customer; or
 - 8.1.3 Expiry of the Customer’s relevant subscription licence; or
 - 8.1.4 The Customer elects to discontinue use of the Service.
- 8.2 The Customer’s subscription shall automatically renew either monthly, quarterly, bi-annually or annually (as applicable) unless the Customer provides Esri UK with (for an annual subscription) 30 days’ written notice to terminate prior to the expiry of the then current annual period or (for a monthly, quarterly or bi-annual subscription) 30 days’ written notice to terminate at the end of the next applicable monthly, quarterly or bi-annual period. Failure to notify Esri UK of termination within these time periods will result in continued charges for the Service.
- 8.3 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. For Managed Cloud Services, Customer’s data will be held for 30 days beyond the termination date should the Customer choose to renew the Service. During this period, Customer may request that Esri UK extract Customer’s data from the Managed Cloud Service and provide it back to the Customer, for which Esri UK may charge its then standard professional services fees.
- 8.4 In the event of termination by Esri UK pursuant to Clause 8.1.2, Esri UK shall repay to the Customer a prorated portion of any unused subscription charges prepaid by the Customer.
- 8.5 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, at which point the Customer must stop using the Software or Data.

9. Data Protection

Definitions for this clause 9:

“**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 EU General Data Protection Regulation and the Privacy and Electronic Communications Directive (2002/58/EC) (as implemented in the United Kingdom as the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2003/2426), as amended or replaced.

“**GDPR**” means the EU General Data Protection Regulation.

“**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.

- 9.1 For the purpose of any Personal Data processing under this Agreement, the Data Processor and the Data Controller shall be as defined in the Applicable Data Protection Law. The Data Controller and the Data Processor shall comply with their respective obligations as prescribed by Applicable Data Protection Law.
- 9.2 The Data Processor shall implement and maintain appropriate technical and organisational measures in order to meet the requirements of the 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.
- 9.3 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 this Agreement:
- 9.3.1 Customer hereby grants to Esri UK its written authorisation for Esri UK to use sub-processors to provide the Service, including: (i) Esri Inc (for the purpose of licensing Esri Inc Software and to facilitate this Service); (ii) the hosting service providers which Esri UK uses for its back office systems; (iii) the hosting, monitoring and back up service providers which Esri UK uses for the Services (or Esri UK managed/hosted services); and (iv) the third party owner or licensor of any third party software and/or third party data (for the purpose of licensing and administering access, use and support of the third party software and/or third party data).
- 9.3.2 Customer shall seek Esri UK’s written authorisation to engage 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 9.3 shall be bound by obligations no less onerous than those set out in this clause 9.
- 9.4 The subject-matter of the processing shall be as set out in writing, including in the Order, any corresponding proposal and/or quotation, or in any other form. The subject-matter includes the provision of the Service to Customer by Esri UK. 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 in the ordinary course of business, 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 includes: the names of the parties’ employees or contractors or representatives, their respective business email and business postal addresses, and business telephone numbers), and/or their IP addresses. Where there are categories of data subject not covered by this clause, for example, data subjects whom are children, the parties shall enter into a supplemental written agreement detailing additional rights and obligations.
- 9.5 The Data Processor shall:
- 9.5.1 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);
- 9.5.2 ensure that any person processing the Personal Data is bound by obligations of confidentiality;
- 9.5.3 take the measures detailed in 9.2 (technical and organisational measures);
- 9.5.4 abide by the process and obligations in 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;
- 9.5.5 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);
- 9.5.6 assist the Data Controller in ensuring compliance with 9.2 (technical and organisational measures);
- 9.5.7 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;
- 9.5.8 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;
- 9.5.9 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 the GDPR. Upon the Data Controller’s request the Data Processor shall allow for and contribute to audits, including inspections, conducted by the Data Controller or the Data Controller’s approved auditor;
- 9.5.10 notify the Data Controller without undue delay after becoming aware of a Personal Data breach, and in any event within 24 hours
- 9.5.11 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 the GDPR and make the record available to supervisory authority on request. Such records for the purposes of this Agreement 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 9.2 (technical and organisational measures);
- 9.5.12 cooperate, on request, with the supervisory authority in the performance of its tasks.
- 9.6 Where the Data Processor transfers Personal Data to a third country / international organisation in accordance with 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. Specifically, such safeguards include one or more of the following: binding corporate rules; approved standard data protection clauses adopted by the EU Commission; or an approved certification mechanism (for example the EU-US Privacy Shield) 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, the appropriate safeguards comprise (i) Esri Inc’s certification under the EU-US Privacy Shield; (ii) Esri Inc’s data processing addendum, available at www.esri.com/legal/privacy-gdpr; and (iii) the security measures which are detailed at <https://doc.arcgis.com/en/trust/>.
- 9.7 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 9.

10. Limitation of liability

- 10.1 Except in respect of death or personal injury caused by Esri UK, or for Esri UK’s fraudulent misrepresentation, Esri UK’s total aggregate liability (whether in contract, tort 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.
- 10.2 Except in respect of death or personal injury caused by Esri UK, or for Esri UK’s fraudulent misrepresentation, Esri UK shall not have any liability to the Customer in contract, tort (including negligence) or otherwise arising out of or in connection with this Agreement for any:
- 10.2.1 Loss of goodwill, profits, revenue, business, contracts or anticipated savings;
- 10.2.2 Special, indirect or consequential loss or damage (not falling within 10.2.1); and
- 10.2.3 Loss of data.

11. Indemnity to Esri UK by the Customer

- 11.1 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 Service (or its constituent parts (including Data and Software)) by the Customer (or its authorised third party consultants and contractors in accordance with clause 1.3) not permitted by this Agreement; and (b) any violation by the Customer of this Agreement; and (c) any violation of laws or regulations.
- 11.2 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.

12. General

- 12.1 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, provided the party seeking to claim force majeure 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.
- 12.2 The Customer may not assign, novate, or otherwise transfer any of its rights under this Agreement without the prior written consent of Esri UK.
- 12.3 This Agreement, any Special Terms, the SLA (where applicable), and the then current Esri UK Support Policy (where applicable) constitute the whole understanding between Esri UK and the Customer in relation to the subject matter of this Agreement and shall supersede any prior promises, representations, undertakings or implications made orally or in writing.
- 12.4 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.
- 12.5 Any clauses that are intended to survive termination including clauses 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, and 13 will survive termination of this Agreement and will continue in full force and effect.
- 12.6 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.
- 12.7 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.

13. Special Terms

These additional terms apply to particular Software, Data and/or Platform provided as part of the Service. In the event of conflict the terms and conditions of these Special Terms shall override the remaining terms of this Agreement.

- 13.1 Free OS and ONS data provided by Esri UK's Online Service to the Customer's AGOL (defined above) account ("**Free Service**"):
- 13.1.1 OS OpenData™ is provided subject to the current OS OpenData™ terms (as detailed on the Ordnance Survey website and amended by Ordnance Survey from time to time).
- 13.1.2 ONS Census Data is provided subject to the terms of the Open Government License (available at <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/1/open-government-licence.htm>). When reproducing ONS content, Customer must also comply with the copyright acknowledgement requirements on the ONS website as updated by ONS from time to time.
- 13.1.3 The Customer's use of AGOL is subject to the Esri Inc License Agreement available at www.esriuk.com/legal/terms-and-conditions.
- 13.2 OS premium data provided by Esri UK's Online Service to the Customer's AGOL (defined above) account ("**Premium Service**"):
- 13.2.1 The Customer's use of the OS premium Data is subject to the Customer's agreement with Ordnance Survey ("**OS Agreement**"), this Agreement and, in particular, the following additional obligations:
- 13.2.1.1 The Customer warrants that it is licensed to use the OS premium Data pursuant to the OS Agreement. Customer further warrants that it will only use the Data in the territory for which it is licensed (and in any case only within the UK), and only upon the number of terminals for which it is licensed to use the Data, pursuant to the OS Agreement. Where Customer's OS Agreement only permits it to access specific OS premium Data, certain geographical areas or a defined area of interest, Customer warrants that it will only access and/or use the OS premium Data to which Customer's OS Agreement relates and that it will not access and/or use OS premium Data for which it is not licensed.
- 13.2.1.2 The Customer agrees to inform Esri UK (and keep Esri UK informed) of any restriction on its use of the Data as detailed in the OS Agreement.
- 13.2.2 Any charges specifically for the Customer's use of any OS premium Data as part of the Premium Service are payable in accordance with its OS Agreement.
- 13.2.3 The Customer's use of AGOL is subject to the Esri Inc License Agreement available at www.esriuk.com/legal/terms-and-conditions.
- 13.3 Esri UK Locators ("**Esri UK Locators**")
- 13.3.1 Esri UK Locators are geocoding services that contain both Software and Data. The terms relating to both Software and Data apply accordingly. This may include OS OpenData or ONS Census Data in which case the applicable sections of 13.1 will apply.
- 13.3.2 The Customer expressly agrees and acknowledges that it is fair and reasonable for the Esri UK Locators 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.
- 13.4 InstantAtlas for ArcGIS via Esri Inc's Marketplace ("**InstantAtlas for ArcGIS**")
- 13.4.1 The Customer may permit access and use of InstantAtlas for ArcGIS by a named Customer end-user at the Customer's location.
- 13.4.2 Software content published in accordance with this Agreement shall continue to be subject to this Agreement and shall include the following copyright attribution notice acknowledging Geowise's and its third party licensor(s) proprietary rights in the Software: "Copyright [insert the actual copyright

date(s) from the source materials] Geowise and its third party licensors. All rights reserved.”

13.4.3 InstantAtlas for ArcGIS may be used only to prepare and publish web application(s) through ArcGIS Online (“**WebApplication(s)**”) for which access to the user interface of the application can be made in accordance with this Agreement, and the Customer shall ensure that (i) it protects access to such Web Application 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 and (iv) such Web Applications are used for Customer’s internal business use only (which may include the public display of Web Applications but provided that such public display is not for commercial gain).

13.4.4 The Customer shall not use InstantAtlas for ArcGIS to publish content on behalf of any third party.

13.4.5 The SLA shall not apply to InstantAtlas for ArcGIS.

13.5 Sweet

13.5.1 Definitions:

“Deployed Apps” are applications and/or templates created and/or configured using the Sweet Builder which can be deployed for use in conjunction with Sweet. Deployed Apps, can be purchased as ready to use applications which do not require configuration.

“Sweet” is the online configurable application which can or which may need to be provided as part of a consultancy services engagement and which may also include, where purchased in addition to the standard Sweet application, the Sweet Builder and/or any pre-configured Deployed Apps.

“Sweet Builder” means the tool which enables the creation and/or configuration of Deployed Apps.

13.5.2 These special terms apply to the online deployment of the application Sweet and, where purchased in addition to the standard Sweet application, the Sweet Builder and/or any pre-configured Deployed Apps.

13.5.3 The Software is licensed as an annual term licence. All other details relating to the licence (such as number of users) shall be as detailed in the relevant quotation / order documents.

13.5.4 Only the unconfigured Sweet, unconfigured Sweet Builder, and Esri UK pre-configured Deployed Apps shall be supported. Such support is provided subject to the Esri UK ‘Standard Support Policy’ available at www.esriuk.com/legal/. Configured Sweet, configured Sweet Builder and/or Deployed Apps are not supported; where support is required, such support may be procured either through an application specific ‘Technical Support Agreement’, or via time and materials based consultancy services, or via such other arrangement as may be mutually agreed.

13.5.5 Sweet is provided ‘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.

13.5.6 Customer is responsible for ensuring that it has a valid Esri ArcGIS Online (“AGOL”) subscription during the term of its Sweet licence. Customer will not be reimbursed for any period when it cannot use Sweet due to an expired AGOL subscription.

13.5.7 Use of any third party OpenData is subject to the relevant third party terms (as referred to in either the terms and conditions referenced below or the applicable Sweet template).

13.5.8 Where Customer purchases Sweet via a third party (including Esri UK’s authorised distributor), then (i) the applicable charges referred to in clause 7 shall be payable by Customer to that third party; and (ii) technical support (including clause 4.3 and 13.5.4) shall not apply, with any technical support being subject to the arrangements between Customer and the third party from whom Customer purchased Sweet.

13.5.9 For evaluation licences: Customer’s licence is limited to a non-exclusive, non-transferable licence for up to the number of named users notified to Customer in writing to evaluate the application for the sole purpose of determining whether to purchase Sweet, subject to the following:

13.5.9.1. The applicable Evaluation Period is 30 days (save where a longer period is agreed between Esri UK and Customer in writing, in which case that longer period shall apply).

13.5.9.2. Should Customer be provided with access to any Sweet templates and/or to third party OpenData through ArcGIS Online or Portal for ArcGIS, such access will be provided subject to the Esri Inc License Agreement available at www.esri.com/legal. Use of any third party OpenData is subject to the relevant third party terms (as referred to in either the terms and conditions referenced above or the applicable Sweet template);

13.5.9.3. Where Customer is granted a demonstration licence, Customer may additionally demonstrate Sweet to its customers during the Evaluation Period, provided that access to Sweet is not provided to such customer, and Sweet is demonstrated to such customers always via Customer’s equipment and infrastructure, and on a view only basis. Any direct access or use by such customers would require a direct evaluation licence between such customer and Esri UK.