

If a separate agreement is signed between Esri Ireland 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 Software Licence Terms (if applicable), the Order and the Support Policy (if applicable).
- 1.2 “**Applicable Data Protection Law**” is the EU Data Protection Directive (95/46/EC) (as implemented in the Republic of Ireland as the Data Protection Acts 1988 and 2003).
- 1.3 “**Charges**” is the charges payable by the Customer for the Software 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 Ireland from time to time.
- 1.4 “**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.
- 1.5 “**Customer**” is the customer so named in the Order.
- 1.6 “**Customer Data**” is all data, information and documentation belonging to the Customer or its licensors to which Esri Ireland is granted access and provided a licence to use for the purposes of this Agreement.
- 1.7 “**Customer Equipment**” is any hardware and software not provided by Esri Ireland.
- 1.8 “**Customer Location**” is the location/s at which the Software is to be delivered and/or the Services are to be provided as detailed in the Order or otherwise agreed in writing by Esri Ireland and the Customer.
- 1.9 “**Customized Software**” is any customised code or software delivered by Esri Ireland to the Customer in the provision of the Services as set out in the Order.
- 1.10 “**Deliverables**” is those items prepared by or on behalf of Esri Ireland for the Customer as a part of the Services and as specified in the Order (including, where applicable, Customised Software).
- 1.11 “**End-User**” means the end-user of the Software and/or Deliverables procured by the Customer from Esri Ireland in accordance with this Agreement.
- 1.12 “**Esri Ireland Licence Terms**” means the licence terms which apply to the licensing of Esri Ireland Software, which are provided in writing or on the media as a click-use licence on which the Esri Ireland Software is supplied, and are available on request from Esri Ireland.
- 1.13 “**Esri Ireland**” is Environmental Systems Research Institute Ireland Limited, registered in the Republic of Ireland under company number 353903, whose administrative office is at Block B, 2nd Floor, Ashtown Gate, Navan Road, Dublin 15.
- 1.14 “**Expenses**” are expenses incurred by Esri Ireland 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 “**Esri UK Online Services**” are services, software and data that are provided by ESRI (UK) Limited (“**Esri UK**”) online via the Amazon cloud infrastructure, or other third party infrastructure provider. Esri UK is Esri Ireland’s parent company.
- 1.18 “**Order**” is the Customer’s order as accepted by Esri Ireland incorporating the relevant elements of the corresponding Esri Ireland quotation/proposal (if any).
- 1.19 “**Personal Data**” is information defined as such in the Data Protection Acts 1988 and 2003 and/or information treated as such under any other law or regulation applicable to it.
- 1.20 “**Services**” are the professional services, installation, annual software support and maintenance and/or other services specified in the Order.
- 1.21 “**Software**” is the Esri Ireland proprietary software (“**Esri Ireland Software**”) and/or the software or data manufactured by, or proprietary to, a third party and supplied by Esri Ireland hereunder on behalf of such third party (“**Third Party Software**”).
- 1.22 “**Software Licence Terms**” means the Esri Ireland Licence Terms and the Third Party Licence Terms.
- 1.23 “**Support Policy**” means the then current annual software support and maintenance services offered by Esri Ireland in relation to the Software.
- 1.24 “**Third Party Licence Terms**” is the applicable end user licence terms that apply to the Third Party Software, which terms may be provided in writing, in third party software packaging, or on media as a click-use licence on which the relevant software is supplied or available on request from Esri Ireland, including the relevant Environmental Systems Research Institute, Inc. (“**ESRI Inc**”) master licence agreement (“**ESRI Inc Licence Terms**”) that applies to ESRI Inc proprietary software (“**ESRI Inc Software**”).
- 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 IS PROVIDED

- 2.1 Esri Ireland Software is licensed in accordance with the applicable Esri Ireland Licence Terms.
- 2.2 Third Party Software is licensed in accordance with the applicable Third Party Licence Terms. If ESRI Inc Software is to be supplied then, prior to delivery, the Customer shall have executed and delivered to Esri Ireland, the applicable ESRI Inc Licence

Terms (as advised by Esri Ireland) which shall solely govern the terms under which the ESRI Inc Software is licensed.

- 2.3 The Customer acknowledges the terms under which the Software is supplied and shall ensure that it complies with the applicable Software Licence Terms. If the Customer is not willing to agree to the relevant licence terms it must not use the Software, and it shall return the Software 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 is installed or otherwise used (by Customer or otherwise).

3 IF SERVICES ARE PROVIDED

- 3.1 Esri Ireland 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 Ireland 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, it 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 Ireland from time to time, within a period of 12 months from the date of such order. No refund of 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 training services, which are governed by the current Esri Ireland’s General Terms and Conditions and Registration Form for Training. Such training Services terms are available from Esri Ireland or at www.esri-ireland.ie.
- 3.7 These General Terms do not apply to Esri UK Online Services, which are governed by the current Esri UK Online Service Terms. Such Online Service Terms are available at [Esri UK Online Service Terms](http://www.esri-uk.com/online-service-terms) and need accepting prior to accessing such Esri UK Online Services.

4 CUSTOMER OBLIGATIONS

- 4.1 The Customer will:
 - 4.1.1 provide Esri Ireland with all information, cooperation, consents and licenses reasonably necessary for Esri Ireland to supply the Software and perform the Services;
 - 4.1.2 provide Esri Ireland with access to authorised and competent personnel, computer systems and 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 Ireland to supply the Software and perform the Services;
 - 4.1.3 use the Software and Services in accordance with the terms of this Agreement (including the Software Licence Terms), all applicable laws and regulations and any reasonable instructions given by Esri Ireland 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 Ireland under this Agreement;
 - 4.1.6 comply with all applicable laws and regulations (including legislation relating to bribery, such as The Prevention of Corruption (Amendment) Act 2010);
 - 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 Ireland for a period not exceeding six months after such employees leave the employment of Esri Ireland except with the written permission of Esri Ireland 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 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 Software Licence Terms (as directed by Esri Ireland pursuant to Clause 2).

5 DELIVERY/TITLE/RISK

- 5.1 Esri Ireland shall deliver the Software to the Customer Location, and may do so earlier than any estimated delivery date and in instalments.
- 5.2 Any Software and Services delivery dates are estimates only and Esri Ireland 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 Ireland to comply with a particular date.
- 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 and final 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.

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- 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 Ireland may suspend or terminate the Agreement with immediate effect if the Customer fails to pay any amount due to Esri Ireland within 30 days of being informed in writing by Esri Ireland that the amount is overdue.
- 6.5 Without prejudice to Esri Ireland'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 of the date of receipt of a correct invoice. Software Charges may be invoiced on or after delivery. Charges for annual software support and maintenance Services 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 and Services.
- 7.4 If the Customer fails to pay Charges or Expenses by the due date, Esri Ireland shall be entitled to charge interest on the overdue amount. Any such interest shall be paid by the Customer to Esri Ireland 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 Ireland are as expressly set out in this Agreement and Esri Ireland 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 Esri Ireland 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:
- 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, Esri Ireland's total aggregate liability to the Customer 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 or for fraud.
- 8.5 The Customer acknowledges and agrees that any claims in respect of Third Party Software shall be against the relevant third party under the Third Party Licence Terms and not against Esri Ireland.
- 8.6 Esri Ireland 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 Ireland 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 Ireland may 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

- 10.1 Esri Ireland is the Data Processor and the Customer the Data Controller (both terms as defined in the Data Protection Acts 1988 and 2003) of Personal Data received by Esri Ireland from the Customer which is held or processed under this Agreement.
- 10.2 Esri Ireland will process Personal Data in accordance with the Customer's instructions. The Customer acknowledges that Esri Ireland will act on such instructions as reasonably necessary for the provision of the Software and Services.
- 10.3 The Customer agrees that Esri Ireland may (a) use Personal Data under the Agreement to direct market to the Customer and (b) transfer Personal Data provided under the Agreement outside of the European Economic Area or to third parties to the extent permissible under Applicable Data Protection Law.
- 10.4 The Customer will ensure that adequate consents are obtained in order to enable Esri Ireland to undertake these activities and indemnifies and will hold Esri Ireland harmless against all costs, claims, demands, expenses and liabilities of whatever nature that arise from the processing of Personal Data under this Clause 10.
- 10.5 The Customer will have in place adequate technical and organisational security measures so that the confidentiality of processing under this Clause 10 complies with the Applicable Data Protection Law.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 This Agreement will not operate to transfer any Intellectual Property Rights owned by Esri Ireland, 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 Ireland 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 Ireland.
- 11.4 Notwithstanding anything to the contrary in this Agreement, Esri Ireland 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 Ireland.

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 Ireland 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 Software 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 Ireland, this Agreement constitutes the whole understanding between Esri Ireland 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 Software 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, by hand, or by facsimile transmission (which must be electronically confirmed and immediately followed up by a copy of the notice sent by post). A notice will be deemed given when delivered. The Customer will send notices to Esri Ireland to the Country Manager at the address in Clause 1 above. Esri Ireland 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 the Republic of Ireland.
- 17.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of the Republic of Ireland.