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5.5 ASP Licence is a licence for the ASP Software or ASP Service as defined below. In the event of conflict, the terms and conditions contained in this clause 5.5 shall override the terms and conditions of the rest of this Licence.

5.5.1 The following definitions shall apply to this clause 5.5:
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“ASP Services” are services provided by the Licensee via a Web site or Internet site that provides third parties with access to the Software where revenue is generated directly or indirectly by, but not limited to, subscription, service fee, advertising or revenue generation model associated with the use of the Software.

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5.5.3 As a condition of this grant of license use for ASP Services, if Licensee provides direct end-user access to ASP Software, Licensee shall require its end users to comply with the terms and conditions that protect the intellectual property rights of Licensor. Licensee shall have the right to review and approve terms and conditions of Licensee’s subscription or service agreement with end users.

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6.1.1 the Licensee elects to discontinue use of the Software and terminates this Licence upon written notice to Licensor; or
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6.1.3 expiry of any finite term detailed in this Licence notified separately by Licensor in writing.

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9.1 Provided always that Licensee shall mitigate such damages, costs and expenses to the fullest extent possible, Licensor shall indemnify Licensee against all damages, costs and expenses arising from or incurred by reason of any actual infringement in the United Kingdom of intellectual property rights in consequence of the possession or use in accordance with this Licence of any parts of the Software the intellectual property rights of which are owned by Licensor ("Proprietary Material"), subject to the following:
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9.2.3 if neither clause 9.2.1 or 9.2.2 is commercially practical, and provided the infringing Proprietary Material is returned to Licensor in good condition, fair wear and tear excepted, Licensee’s sole liability shall be to refund a proportionate proportion of the licence fees paid by the Licensee, calculated either (i) in relation to annual licence fees, as a proportion of the licence fee paid for the licence period; or (ii) in relation to one-off licence fees, as a proportion based on a five (5) year term beginning with delivery of the infringing Proprietary Material.

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Except for Licensor’s obligation to pay the licence fees, neither party shall be liable to the other party for a failure to perform its obligations under the Licence 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.

14 Assignment
Licensee may not assign any of its rights under this Licence without the prior written consent of Licensor.

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

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This Licence shall be subject to and construed and interpreted in accordance with the Laws of England and Wales and shall be subject to the non-exclusive jurisdiction of the Courts of England.

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17.4.2 Clause 6.1.3 shall be replaced with “one (1) year from delivery”.

18 Special terms for specific Software
In the event of conflict, the terms and conditions contained in this clause 18 shall overide the terms and conditions of the rest of this Licence.

18.1 CHEST

a. These special terms apply to licensed educational institutions that have procured the Software through Eduserv.

b. Educational use: Licensee may only use the Software for teaching, research, education and learning, administration and management of the business of the Licensee's organisation, and the preparation of course materials is for instruction only. This shall exclude (a) consultancy work or services leading to commercial exploitation of the Software and (b) work and benefit significant to the employer of students on industrial placement or part-time courses. Commercial exploitation is the use of the Software for monetary gain either by Licensee or an individual.

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a. 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 on-premise 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.

b. These special terms apply to the on-premise deployment (including where the on-premise deployment version is installed as part of a hosted or managed service) of the Software application ‘Sweet’ and, where purchased in addition to the standard Sweet application, the Sweet Builder and/or any pre-configured Deployed Apps.

c. 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. Clause 6.1.3 shall be replaced with “one (1) year from delivery”, or in the case of a renewed annual subscription “one (1) year from renewal” (as applicable).

d. You are responsible for ensuring that You have a valid Esri Portal for ArcGIS (“Portal for ArcGIS”) licence during the term of this Agreement. You will not be reimbursed for any period when You cannot use the Software due to not having the required Portal for ArcGIS licence.

e. Only standard Software (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.

f. 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).

g. Where You purchase the Software via a third party (including Licensor’s authorised distributor), then (i) the applicable licence fees shall be payable by You to that third party; and (ii) clause 18.2 (c) shall not apply: any support shall be subject to the arrangements between You and the third party from whom You purchased the Software.

For Evaluation licences of the Software: Licensee hereby grants Licensee a non-exclusive, non-transferable licence for up to the number of named users notified to you in writing to evaluate the Software for the sole purpose of determining whether to purchase the Software, subject to the following:

i. The provisions in Clause 2 of this Licence;

ii. You should be provided with access to any Sweet templates and/or third party OpenData through ArcGIS Online or Portal for ArcGIS, such access will be provided subject to the Esri UK ‘Standard Support Policy’ available at www.esriuk.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);

iii. Where we have granted you a demonstration licence, You may additionally demonstrate the Software to Your customers during the Evaluation Period, provided that access to the Software itself is not provided to such customer, and the Software is demonstrated to such customers always residing on Your 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 Licensor.

18.3 Utility Network Editor

a. These special terms apply to the on-premise deployment (including where the on-premise deployment version is installed as part of a hosted or managed service) of the Software application ‘Utility Network Editor’.

b. 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. Clause 6.1.3 shall be replaced with “one (1) year from delivery”, or in the case of a renewed annual subscription “one (1) year from renewal” (as applicable).

c. You are responsible for ensuring that You have a valid Esri Portal for ArcGIS (“Portal for ArcGIS”) licence during the term of this Agreement. You will not be reimbursed for any period when You cannot use the Software due to not having the required Portal for ArcGIS licence.

d. Only standard Software (default configuration of Utility Network Editor and configurable functionality) shall be supported. Such support is provided subject to the Esri UK ‘Standard Support Policy’ available at www.esriuk.com/legal/. Utility Network Editor which has been configured, for example with custom commands, is 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.

e. Where You purchase the Software via a third party (including Licensor’s authorised distributor or a US based reseller of Licensor), then: (i) the applicable licence fees shall be payable by You to that third party; and, in the case of purchases via Licensor’s authorised distributor (but not a US based reseller of Licensor) (ii) clause 18.3 (d) shall not apply: any support shall be subject to the arrangements between You and the applicable authorised distributor from whom You purchased the Software.

For Evaluation licences of the Software: Licensor hereby grants Licensee a non-exclusive, non-transferable licence for up to the number of named users notified to you in writing to evaluate the Software for the sole purpose of determining whether to purchase the Software, subject to the following:

i. The provisions in Clause 2 of this Licence;

ii. Where we have granted you a demonstration licence, You may additionally demonstrate the Software to Your customers during the Evaluation Period, provided that access to the Software itself is not provided to such customer, and the Software is demonstrated to such customers always residing on Your 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 Licensor.

g. Your use of Utility Network Editor is restricted to use in relation to utility networks.

18.4 LocatorHub

a. LocatorHub Core (Standard)

Unless Licensee has purchased the relevant licence, Licensee is not permitted to use the editable web services, functions to create the editable gazetteers, or the client applications of LocatorHub Editor or LocatorHub LTS which may be included in the LocatorHub Core Software.

b. LocatorHub Core – Subscription

LocatorHub Core – Subscription is licensed as an annual term licence. In addition to restrictions set out in subclause a. above (LocatorHub Core), the following terms shall apply. Clause 6.1.3 shall be replaced with “one (1) year from delivery”, or in the case of a renewed annual subscription “one (1) year from renewal” (as applicable). LocatorHub Core – Subscription may only be used by Esri Inc’s ArcGIS platform; use with, or as part of, any third party technology solution(s) is not permitted. No less than one (1) month prior to the relevant subscription renewal date, Licensee shall provide Licensee with a renewal quotation. If Licensee chooses not to renew its subscription, clause 6.2 (obligation to return or destroy the software) shall apply.

c. LocatorHub Location Transformation Suite (LocatorHub LTS)

i. Unless Licensee has purchased a separate licence for LocatorHub LTS, Licensee is not permitted to use the LocatorHub LTS or any LocatorHub LTSShared functionality which may be included in the LocatorHub LTS Software.

ii. Licensee’s use of LocatorHub LTS is subject to the Licensee maintaining a current licence for LocatorHub Core for the duration of its LocatorHub LTS Licence.

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i. Unless Licensee has purchased a separate licence for LocatorHub Editor, Licensee is not permitted to use the any LocatorHub Editor functionality which may be...
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e. LocatorHub Corporate

LocatorHub Corporate includes an unlimited number of licences for LocatorHub Core, LocatorHub LTS and LocatorHub Editor, across multiple environments. Licensee may use LocatorHub Corporate within its own organisation for the Purpose only.

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LocatorHub Application Service Provider includes a licence for LocatorHub Core. The Licensee may use LocatorHub Application Service Provider for commercial purposes outside of its own organisation, such as to provide geocoding functions to its customers. Licensee’s use of LocatorHub Application Service Provider is subject to the provisions of clause 5.5.

g. All LocatorHub software options

i. Batch Geocoding Licensee shall be responsible for ensuring that if it uses the LocatorHub for batch geocoding of data, it is permitted to do so under the relevant licence terms for such data. In particular, Licensee acknowledges that it is not permitted to batch geocode with or against Esri Inc’s Geosearch services unless it purchases an applicable subscription to such services.

ii. The Oracle Data Provider for .NET tool (“Oracle Program”) is included in all LocatorHub software. The Oracle Program is proprietary to Oracle America Inc, who retain all ownership and intellectual property rights in the Oracle Program. Licensee grants Licensee a non-exclusive, non-transferable limited license to use the Oracle Program solely in conjunction with Licensee’s copy of LocatorHub and to run LocatorHub for Licensee’s own business operations. Licensee may not (i) use the Oracle Program for any purpose other than as provided above (ii) further distribute the Oracle Program (iii) remove or modify any program markings or any notice of Oracle America Inc proprietary rights or (iv) disclose results of any program benchmark tests without Licensee’s prior written consent.

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b. The Services add-in is provided with access to the gazetteers within ESRI (UK)’s Online Services only. Licensee is not permitted to use the Services add-in to connect to a LocatorHub instance unless the party providing the LocatorHub instance has a minimum LocatorHub Core licence.

c. The Services add-in is provided 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. No support and maintenance is provided by Licensor in relation to the add-in. All other terms of this Licence shall apply.

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