

# Eduserv/Esri UK Agreement 2011 – Schedule 4 Part 2 – General Licence Conditions

## 1 Authority

The Licensor warrants that it has the authority to grant the Licence granted hereunder.

## 2 Grant of Rights

2.1 The Licensor hereby grants to the Licensee a personal, non-exclusive, non-transferable and non-commercial Licence to use Product in the United Kingdom and the Republic of Ireland on the terms and conditions stated herein and for the period specified in the Schedule from the date of delivery.

2.2 Licensee shall have access to Web Services for (i) which the appropriate licence fees have been paid, (ii) Licensee's own internal use only and (iii) in accordance with Part 5 to Schedule 4 of the Agreement (entitled "Exhibit 1 – Scope of Use (E300 3/29/2011)) and the licensed configuration on file as authorized by Licensor.

2.3 Software keycodes are required to run concurrent-use Programs. Licensee may be provided the capability of generating term licence keycodes using Esri's Web-based keycode generation system for the duration of the Term. If Licensee is provided this capability for version 9.3.1, Licensor will supply the Primary Contact with an account number and password to access the keycode generation system and will provide complete written instructions on proper use of the keycode generator.

For Version 10 and onward of the Esri Software, Licensor may authorize Licensed Institutions to download the Esri Software licensed under this Agreement from an Esri Website. Delivery of updates or new versions of the Esri Software (version 10 or higher) will be made on the same manner. If requested, Licensor will provide backup media for an additional fee.

## 3 Use

3.1 The control and distribution of Product is to be the responsibility of nominated systems administrators of the Licensed Site for the Licensee.

3.2 With the exception of EDN Subscriptions, and subject to clause 3.3 in Schedule 4 Part 2, Product may be used by any employee working at or student registered at any of the Institutions listed in Schedule 2 for the purposes of the normal academic activities of the Licensee's organisation, whether or not they are located on the Licensee's premises as long as they are located in the UK or the Republic of Ireland. (Esri Software may be temporarily exported from the UK or Republic of Ireland by academic staff, students and the operational staff of other Eligible Institutions, subject to the export compliance as detailed in Clause 3.3 of Part 2 to Schedule 4, and with the prior written permission of the Supplier, which shall not unreasonably be withheld. Requests to export Esri Software shall be submitted in writing to the Supplier in accordance with the Supplier's guidelines (available upon request) and will be considered on a case by case basis. Such requests and permission shall indicate the period of export, within which period the Esri Software shall be returned to the UK or the Republic of Ireland.) (Please see Condition 2, above.) Such use of Product is as follows:

3.2.1 teaching;

3.2.2 research;

3.2.3 education and learning;

3.2.4 administration and management of the business of the Licensee's organisation (excluding the Products ArcPad, TomTom Data for ArcLogistics, ArcGIS Data Interoperability Extension and ArcGIS Server Data Interoperability Extension;

3.2.5 preparation of course materials is for instruction only.

3.3 No person shall be excluded from use of the Product for reasons of nationality or citizenship. Esri Products (as listed in Schedule 3 – Products and Services Provided) are subject to United States export controls. You are responsible for complying with all United States export control regulations, including the Export Administration Regulations ("EAR") and sanction programs administered by the United States Treasury Department's Office of Foreign Assets Controls ("OFAC"), and all other applicable international trade regulations. Esri Products may not be exported or reexported to any

U.S. embargoed country (currently, Sudan, Syria, Iran, Cuba, and North Korea, except as authorized and in compliance with applicable U.S. export control regulations.

Subject to the terms of this Agreement, an Institution may authorize teaching and research staff, coterminous with this Agreement and with each individual's tenure at the Institution to install one (1) copy of the Esri Software included in the specific option licensed by the Institution to use on the individual's personal computer only for academic related purposes including teaching and research activities.

Students currently registered at that particular Institution may install and use a version 10.x of the Esri Software Concurrent Use of the Desktop Software identified in the option purchased by its Institution on the student personal computer while the student is connected to the Institution's secured network. In addition, students may borrow a concurrent use licence for use on a personal computer while disconnected from the Institution's secure network.

No other individuals shall be authorized by the Institutions to download the Esri Software directly from an Esri Website or borrow a copy of the Esri Software.

Teaching and research staff and registered students who take advantage of this offering shall not take the Esri Software outside of the United Kingdom or the Republic of Ireland, unless specifically authorized in writing by Licensor.

- 3.4 Licensee shall not sell; rent; lease; sublicense; lend; assign; time-share; or act as a service bureau or Application Service Provider (ASP) that allows third party access to the Software, Data, and Documentation except as provided herein; or transfer, in whole or in part, access to prior or present versions of the Software, Data, or Documentation, any updates, or Licensee's rights under this Agreement.
- 3.5 Licensee shall not reverse engineer, decompile, or disassemble the Software, Data, or Documentation, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction in order to protect the Supplier and its licensor(s) trade secrets and proprietary information contained in the Software, Data, or Documentation.
- 3.6 Licensee shall not make any attempt to circumvent the technological measure(s) (e.g., Licence Manager, etc.) that controls access to or use of the Software, Data, and Documentation, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
- 3.7 After a reasonable transition period for updating to the most current version of the Software, Licensee shall cease using all prior version(s) of the Software that Licensee has elected to update to the most current version(s) of the Software. When the transition to the most current version(s) of the Software is complete, the quantity of Software licences in use by Licensee at any given time shall not exceed the total quantity licensed by the Supplier in accordance with the licensed configuration on file with Esri Customer Service or on file with the Supplier.
- 3.8 Except as authorized herein, Licensee shall not redistribute the Software developer licence authorization file(s), or the Software, in whole or in part, including, but not limited to, extensions, components, or DLLs without the prior written approval of the Supplier as set forth in an appropriate redistribution licence agreement.
- 3.9 All persons who are provided by the Licensee with copies of Product must have signed a declaration based on that shown in Part 4 to Schedule 4 whereby they have agreed to abide by the terms of this Site Licence.
- 3.10 "Authorised Users" are those individuals, who must be a currently registered student, faculty member or employee of the licensed institution, who are authorised by the licensee to access the licensee's information services whether from a computer or terminal on the licensee's secure network.
- 3.11 The Licensee will provide a single named technical contact and deputy. All technical enquiries, support and information requests will be made through the single named technical contact or the deputy. The single named technical contact and deputy are as shown in Schedule of Particulars, Item 11b and c.
- 3.12 Licensee may use the Data only as described in the Distribution Rights section of the Help or metadata files delivered with the Software, Data, and Documentation.

- 3.13 Licensee's users shall not redistribute the Software, in whole or in part, including, but not limited to, extensions, components, or DLLs, in any work, program, article, or in any other means without the prior written approval of the Supplier as set forth in an appropriate redistribution licence agreement.
- 3.14 Use of the Products is also subject to the Scope of Use (E300 3/29/2011) attached at Part 5 to this Schedule 4. Products ArcPad, TomTom Data for ArcLogistics, ArcGIS Data Interoperability Extension and ArcGIS Server Data Interoperability Extension shall not be used for the administration and management of the business of the Licensee's organisation. Software, Data, Web Services, and Documentation acquired under this Agreement shall be governed by the terms and conditions contained in this Agreement, except that any revisions or changes defined in the then-current Scope of Use- E300, shall also apply to new or updated Software, Data, Web Services or Documentation, without the requirement for a written amendment. The then-current license terms may be found on ESRI's Web site, provided with the quote for new licenses, or included with the deliverable/updated Software, Data, Web Services or Documentation.
- 3.15 Subject to the terms of this Agreement, an Institution may authorize teaching and research staff, coterminous with this Agreement and with each individual's tenure at the Institution to install one (1) copy of the Esri Software included in the specific option licensed by the Institution to use on the individual's personal computer only for academic related purposes including teaching and research activities.

Students currently registered at that particular Institution may install and use a version 10.x of the Esri Software Concurrent Use of the Desktop Software identified in the option purchased by its Institution on the student personal computer while the student is connected to the Institution's secured network. In addition, students may borrow a concurrent use licence for use on a personal computer while disconnected from the Institution's secure network.

No other individuals shall be authorized by the Institutions to download the Esri Software directly from an Esri Website or borrow a copy of the Esri Software.

Teaching and research staff and registered students who take advantage of this offering shall not take the Esri Software outside of the United Kingdom or the Republic of Ireland, unless specifically authorized in writing by Licensor.

- 3.16 The use of Supplier's Productivity Suite is subject to the following additional terms:

Productivity Suite is provided with restricted functionality and for internal evaluation purpose only. If Licensee wishes to increase the functionality of Productivity Suite and extend the licence to use Productivity Suite pursuant to this Agreement, Licensee should contact [info@esriuk.com](mailto:info@esriuk.com).

Productivity Suite is designed to work with various gazetteer and web services. Demonstrations of such functionality may be available within the media containing Productivity Suite, however Licensor shall have no obligations to maintain or support such functionality and may disable it at any time. If Licensee wishes to subscribe to any such gazetteer or web services, it should contact [info@esriuk.com](mailto:info@esriuk.com).

Note: Attention is drawn to the specific terms under which the ArcIMS product and deployments created by such software are licensed. The licence covers the use of these products for INTRANET and non-commercial INTERNET use only. An example of non-commercial internet use would be where a site is promoting the university through location maps and examples of research work. The Supplier requires sites using the Internet Map Server products on their Internet to acknowledge, on the home page or other relevant page that the mapping is provided using Esri and/or the Supplier Products, and to provide a link to the Esri and the Supplier Home Web Pages. Sites should be aware that the Supplier may, from time to time, audit licensed sites' web sites to ensure that these conditions are being adhered to, and are advised to contact the Supplier before making any data available on the Internet to ensure that the licence conditions are not contravened.

Licensee shall not act as a service bureau or Application Service Provider (ASP) that allows third party access to the Software, Data and Documentation except as provided herein.

#### **4 Extent of Permitted Reproduction**

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## **5 Payment terms**

The Licensee shall pay to Eduserv Chest the charges shown in Schedule 4 Part 1, Item 5 "Product(s)" and in accordance with the specifics of Item 10 "Licence Support and Update Changes", or otherwise due under this Licence.

## **6 Proprietary Rights**

- 6.1 The Licensee shall not acquire any title, copyright or other proprietary rights in the Product.
- 6.2 The Licensee agrees not to remove or in any way modify any proprietary marking including any trade mark or copyright notices on or in Product or its carrier medium. The Licensee shall incorporate such proprietary markings in any derivative material.
- 6.3 The Licensee shall not make any modifications, additions or enhancements to Product.

## **7 Confidentiality**

- 7.1 The Licensee hereby acknowledges that Product contain confidential information of the Licensor or of third parties. The Licensee undertakes to keep confidential Product and shall not divulge the same to any third parties without the prior written consent of the Licensor.
- 7.2 The Licensor and Licensee shall keep confidential the contents of this Licence and all information of the other party designated as confidential and obtained under or in connection with the Licence and shall not divulge the same to any third party without the prior written consent of the disclosing party.
- 7.3 Confidential Information:
  - 7.3.1 Subject to 7.3.3 below, Licensor may divulge confidential information only to its employees, professional advisers and Esri;
  - 7.3.2 Subject to 7.3.3, Licensee may divulge confidential information only to its employees, registered students and professional advisers;
  - 7.3.3 Any disclosure of confidential information pursuant to 7.3.1 or 7.3.2 shall be subject to ensuring that such persons are aware of and undertake to comply with these obligations of confidentiality.
- 7.4 The provisions of this Clause shall not apply to any information which:
  - 7.4.1 is or becomes public knowledge other than by breach of this Clause;
  - 7.4.2 is in the possession of the receiving party without restriction before the date of receipt from the disclosing party;
  - 7.4.3 is obtained from a third party who is lawfully authorised to disclose the same.
- 7.5 The obligations of both parties as to disclosure and confidentiality shall continue in force notwithstanding the termination of this Licence for any reason whatsoever.

## **8. Inspection Rights**

The Licensor may upon reasonable notice send a representative to the Site to verify compliance with this Licence Agreement.

## **9. Warranty**

- 9.1 The Licensor warrants that the unmodified Software will substantially conform to the published Documentation and media on which the Software, Data, and Documentation are provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt.
- 9.2 The Licensee acknowledges that Product has not been developed, manufactured or prepared to meet the Licensee's individual requirements
- 9.3 The Licensor shall not be liable for any failure of Product to provide any facility or function not described in the Documentation or for any failure of Product if alterations to Product have been made by any person other than the Licensor unless such alterations have been made with the Licensor's prior written consent.
- 9.4 The Licensee shall notify the Licensor in writing and provide documented examples of any defects or errors in Product. The Licensor undertakes to correct or replace at the Licensor's option and expense within a reasonable period of time Product which is demonstrated to fail to perform in accordance with the warranty given in Sub-clause 9.1.
- 9.5 The Licensee's sole and exclusive remedy under the warranty given in this Clause shall be limited to the correction or replacement of Product in whole or in part during the Term of this Licence.
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- 9.9 BOTH PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (1) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (2) NEITHER PARTY HAS CONTROL OVER THE INTERNET, AND (3) NEITHER PARTY IS LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE WEB SERVICE.
- 9.10 SAMPLE CODE, SAMPLE APPLICATIONS, SAMPLE EXTENSION, HOT FIXES, EVALUATION SOFTWARE, AND BETA ARE DELIVERED "AS OS" WITHOUT ANY WARRANTY OF ANY KIND. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SAMPLE CODE, SAMPLE APPLICATION, SAMPLE EXTENSION, HOT FIXES, EVALUATION SOFTWARE, AND BETA.

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## **10. Limitations of Liability**

10.1 The Licensor shall indemnify the Licensee in respect of any liability for death or personal injury to any person or loss of or damage to the Licensee's tangible property caused by the Licensor's negligence, provided that the Licensor's liability in respect of loss or damage to property shall not exceed the amount of £100,000 (one hundred thousand pounds) (or such greater sum as may be agreed between the Licensor and Licensee) in respect of any one incident or series of incidents attributable to the same cause.

10.2 The Licensor's liability under Condition 9 shall be in lieu of any condition or warranty of any kind whatsoever, express or implied, statutory or otherwise, including as to the quality or fitness for any particular purpose of Product.

10.3 The Licensor shall not in any circumstances be liable whether in contract, tort or otherwise for any consequential or indirect loss or damage howsoever arising and of whatsoever nature suffered or incurred by the Licensee including (without limitation) loss of profits, loss of contracts, loss of data, loss of operation time or loss of use of any equipment or process suffered indirectly by the Licensee and loss of anticipated savings.

10.4 Save as provided in Condition 10.1 (and excluding negligence resulting in death or injury for which no limit applies) the liability of the Licensor to the Licensee for direct loss or damage whether in contract, tort or otherwise arising out of or in connection with its performance or its total or partial failure to perform in accordance with the terms of this Licence, shall in respect of any one incident or series of incidents attributable to the same cause be limited to and shall not in any circumstances exceed the sum of £25,000 (twenty five thousand pounds) or the charges shown in Schedule 4 Part 1, Item 5, whichever is the greater.

10.5 Save as provided in Conditions 9, 10.1 and 10.4, the Licensor shall not be liable to the Licensee either in tort, contract or otherwise whatsoever for any loss, damage, injury or expense howsoever arising out of or in connection with the supply or use of Product or the manner of performance of this Licence.

10.6 The Licensee will indemnify the Licensor in respect of any claim for loss, damage or injury of any person or property occasioned by the act, neglect or default of the Licensee except, and insofar as the Licensor is liable as aforesaid.

## **11. Copyright Indemnity**

11.1 The Licensor shall indemnify the Licensee against any damages, costs, claims or expenditure incurred by the Licensee as a result of any infringement or alleged infringement of copyright or any intellectual property rights in the United Kingdom and the Republic of Ireland of a third party when Product is used by the Licensee for the purposes licensed hereunder provided that:

11.1.1 the Licensor shall be promptly notified by the Licensee upon the Licensee becoming aware of any such alleged infringement and, at its own expense, the Licensor shall conduct all negotiations for settlement of such allegations and any litigation that may arise there from;

11.1.2 the Licensee shall, at the request of the Licensor, give all reasonable assistance for the purposes of courtesy and defending such claims or demand or action and shall be indemnified against all costs and expenses in so doing;

11.1.3 the Licensee shall not make any admissions which may be prejudicial to the defence of such claim or demand or action.

11.2 If at any time an allegation of infringement of copyright is made in respect of Product the Licensor may at its own expense modify or replace Product with a product of equivalent performance so as to avoid infringement.

11.3 The Licensor shall have no liability for any claim of infringement based on

11.3.1 use of other than an unaltered release of Product; or

11.3.2 use of a combination of Product supplied with programs or data not supplied by the Licensor;  
or

11.2. 11.3.3 the Licensee's refusal to use a modified or replaced Product supplied pursuant to Sub-clause

11.4 The foregoing states the entire liability of the Licensor with respect to infringement or alleged infringement of any third party proprietary rights by Product.

## **12. Publicity**

Both the Licensee and Licensor may use the name of the other in advertising or publicity relating to Product subject to prior written consent having been obtained. Such consent shall not be unreasonably withheld.

## **13. Liquidation**

If the Licensor shall make an arrangement with its creditors or shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction where the emergent company assumed the obligations of the Licensor) or if a receiver shall be appointed for the whole or any part of the Licensor's assets or undertaking then the Licensee shall have the right to continue to use Product in accordance with and subject only to Conditions 3.1, 3.2 and 3.3, in perpetuity.

## **14. Termination**

14.1 Either party may terminate this Licence by written notice to the other if the other party is in breach of its obligations under the Licence, and in the event of a breach capable of being remedied, fails to remedy the breach within 30 days of receipt of notice in writing specifying the nature of the breach.

14.2 Further, the Licensee may terminate this Licence on written notice if the Licensor shall make an arrangement with or assignment in favour of its creditors or shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or have a receiver appointed of its property or assets or any part thereof. If termination is invoked by the Licensee under the provisions of this Condition 14.2 then the Licensor will provide the Licensee with a copy of the source coding of Product for the purpose only of enabling the Licensee to maintain Product. Upon termination or expiry of the Term of the Licence, such source code shall be returned to Esri.

## **15. Post Termination**

15.1 The Licensee agrees that it will not at any time recreate or attempt to recreate Product.

15.2 Upon termination of a licence, Licensee shall cease access and use of Web Services and clear Web Services client-side data cache and uninstall, remove, and destroy all Software, Data, and Documentation, and any whole or partial copies, modifications, or merged portions in any form, return the hardware keys (dongles) and execute and deliver evidence of such actions to the Supplier by issuing a Certificate of Uninstallation/Removal and Destruction (see Part 6 to Schedule 4),

15.3 Termination of this licence howsoever caused shall not affect the rights of either party under this Licence which may have accrued up to the date of termination.

## **16. Force Majeure**

Neither party hereto shall be liable for any delay or failure to perform its obligations caused by any industrial dispute or other circumstances beyond its reasonable control.

## **17. Assignment**

The Licence is personal to the Licensee and the Licensee may not assign or otherwise transfer its rights or obligations under this Licence without the prior written consent of the Licensor.

## **18. Notices**

Any notice to be served hereunder shall be in writing and sent by hand or registered post to the address of the recipient as set out in Schedule 4, or as otherwise notified from time to time.

## **19. Severability**

If any provision of this Licence shall finally be held illegal or unenforceable such provisions shall be severed and the remainder of the Licence shall remain in full force and effect unless the business purpose of the Licence is substantially frustrated thereby.

**20. Waiver**

No waiver of any breach of this Licence shall constitute a waiver of any other breach of the same or other provision of this Licence and no waiver shall be effective unless made in writing.

**21. Licensor's Personnel**

21.1 The Licensee reserves the right to refuse (save in respect to professional independent auditors properly appointed by the Licensor) to admit to premises occupied by or on behalf of the Licensee a person employed by the Licensor, or by a sub-contractor, whose admission would be, in the opinion of the Licensee, undesirable.

21.2 If and when directed by the Licensee, the Licensor shall provide a list of names and addresses of all the persons who may at any time require admission in connection with the performance of the contract, to any premises occupied by or on behalf of the Licensee, specifying the capacities in which they are concerned with the contract and giving such other particulars as the Licensee may reasonably require.

21.3 The decision of the Licensee as to whether any person is to be refused admission to the Licensee's premises and as to whether the Licensor has failed to comply with the provisions in 21.2 of this Condition shall be final and conclusive.

**22. Arbitration**

All disputes, differences or questions between the parties to the Licence with respect to any matter or thing arising out of or relating to the Licence, except those for which the decision of the Licensee or any other person is by the Licence expressed to be final and conclusive, shall, after written notice by either party to the Licence, to the other, be referred to a single arbitrator agreed for the purpose, or in default of such agreement to be appointed at the request of either party by the President of the British Computer Society. Such reference shall be deemed to be a submission to arbitration under the Arbitration Act 1950 and 1979 or any statutory modification or enactment thereof.

**23. Law**

This Licence shall be considered as a contract made in England and subject to English law and to the exclusive jurisdiction of English courts.

**24. Entire Agreement**

This Licence together with the Agreement constitutes the entire contract between the Licensor and the Licensee as to the subject matter hereof and supersedes all previous communications, representations and arrangements, either written or oral, and the Licensee hereby acknowledges that no reliance is placed on any representation made but not embodied in this Licence or the Agreement.