

Revised November 15, 2024
IMPORTANT—READ CAREFULLY

Unless superseded by a signed license agreement between you and Esri, Esri is willing to provide ArcGIS Location Platform to you only if you accept all terms and conditions contained in this Agreement as the sole and final agreement of the parties regarding your acquisition of ArcGIS Location Platform. Please read the terms and conditions carefully. You may not use ArcGIS Location Platform unless you agree to the terms and conditions of the Agreement. Your access and use of ArcGIS Location Platform constitutes your acceptance of the terms and conditions of this Agreement. If you do not agree, contact your local sales representative prior to making your purchase.

This ArcGIS Location Platform Agreement (“**Agreement**”) is between you and **Environmental Systems Research Institute, Inc. (“Esri”)**, a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

ARTICLE 1.0—GLOSSARY OF TERMS

The following glossary of terms applies to this Agreement:

“**Application Users**” means users who have access to Customer Applications as either Customer’s end users or clients of Customer. Application Users must not include persons or entities ineligible to receive or have access to Esri products or services by operation of law, including US export control and trade sanctions laws, decrees, orders, rules, regulations, policies, riders, conditions, or provisos.

“**ArcGIS Location Platform**” means Location Services, Documentation, developer tools, applications and associated SDKs and APIs. ArcGIS Location Platform excludes Customer Content and Third-Party Content.

“**Authentication**” means using any Esri provided mechanism that enables access to Location Services. (See <https://developers.arcgis.com/documentation/mapping-apis-and-services/security/> for current list of Authentication mechanisms).

“**Claim**” means any claim, action, or demand by a third party.

“**Customer**” means you. For avoidance of doubt, the definition of “Customer” does not include affiliates, subsidiaries, consultants or contractors. Customer must not include persons or entities ineligible to receive or have access to Esri products or services by operation of law, including US export control and trade sanctions laws, decrees, orders, rules, regulations, policies, riders, conditions, or provisos.

“**Customer Application(s)**” means an application or solution that is integrated or developed by Customer in conjunction with the authorized use of ArcGIS Location Platform. Customer Application(s) shall add substantial and independent functionality and value such that Customer Applications are not a substitute for Location Services.

“**Customer Content**” means any content that Customer or Application Users provide, use, or develop in connection with Customer’s use of ArcGIS Location Platform, including Customer Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

“**Documentation**” means all user reference documentation that Esri provides with ArcGIS Location Platform.

“**Infringement Claim(s)**” means any Claim alleging that Customer’s use of or access to ArcGIS Location Platform infringes a patent, copyright, trademark, or trade secret.

“**Location Services**” means the location services described in the ArcGIS Location Platform Documentation.

“**Loss(es)**” means expenditure, damage award, settlement amount, cost, or expense, including awarded attorneys’ fees.

“**Malicious Code**” means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

“**Ordering Document(s)**” means a sales quotation, purchase order, proposal, online purchase, or other document for ArcGIS Location Platform.

“**Resultant Output**” means any result received from an ArcGIS Location Platform API request, excluding Customer Content.

“**Third-Party Content**” means any data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri’s website. The terms of use accompanying Third-Party Content and not the terms of this Agreement shall govern the use of Third-Party Content.

ARTICLE 2.0—GENERAL GRANT OF RIGHTS AND RESTRICTIONS

2.1 Grant of Rights. In consideration of Customer’s payment of all applicable fees and in accordance with this Agreement, Esri

- a. Grants to Customer a nonexclusive, nontransferable right and subscription to access and use ArcGIS Location Platform and Resultant Output as set forth in the Documentation and applicable Ordering Documents;
- b. Authorizes Customer to use ArcGIS Location Platform for development, testing and demonstration of a prototype and deploying a Customer Application as described in the Documentation; and
- c. Authorizes Customer to copy and make derivative works of the Documentation for Customer’s and Application User’s permitted use of ArcGIS Location Platform. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work of the Documentation:

“Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright © [*Customer will insert the actual copyright date(s) from the source materials.*] Esri and its licensors. All rights reserved.”

The grants of rights in this section continue for the duration of this Agreement and are subject to additional rights and restrictions in this Agreement.

2.2 Consultant or Contractor Access. Customer may authorize its consultants or contractors to use ArcGIS Location Platform and Resultant Output exclusively for Customer’s benefit. Customer will be solely responsible for its consultants’ and contractors’ compliance with this Agreement and will ensure that each consultant or contractor discontinues use of ArcGIS Location Platform and Resultant Output upon completion of work for Customer. Access to or use of ArcGIS Location Platform or Resultant Output by consultants or contractors that is not exclusively for Customer’s benefit is prohibited.

2.3 Reservation of Rights. ArcGIS Location Platform and Resultant Output are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.

ARTICLE 3.0—USE TERMS

3.1 Permitted Uses and Restrictions. The following terms of use apply to ArcGIS Location Platform, Customer Applications, and Resultant Output, as may be applicable, except that any restrictions will not apply to the extent that they conflict with applicable law or regulation:

a. General Use Terms

1. Neither Customer nor Application Users may store, cache, use, upload, distribute, or sublicense Resultant Output in violation of Esri's or a third party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export control and trade sanctions laws, or any other applicable law or regulation.
2. Neither Customer nor Application User may use ArcGIS Location Platform in violation of Esri's or a third party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export control and trade sanctions laws, or any other applicable law or regulation.
3. Neither Customer nor Application Users may remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to ArcGIS Location Platform or any Resultant Output, metadata file, or online or hard-copy attribution page of any Documentation.
4. Neither Customer nor Application Users may use, incorporate, modify, distribute, provide access to, or combine any ArcGIS Location Platform or Resultant Output in a manner that would subject ArcGIS Location Platform or Resultant Output to open-source or open-database use or license terms (e.g. GPL) that require any part of ArcGIS Location Platform or Resultant Output to be subject to additional terms, for example:
 - A. Disclosed in source code form to third parties;
 - B. Licensed to third parties for the purpose of making derivative works; or
 - C. Redistributable to third parties at no charge.

b. ArcGIS Location Platform

1. Login credentials are for designated users only and may not be shared with other individuals. Customer may not attempt to circumvent the technological measure(s) that controls access to or use of ArcGIS Location Platform.
2. Customer may not sell, rent, lease, sublicense, redistribute, lend, time-share, provide direct access to, or assign ArcGIS Location Platform.
3. Customer may not reverse engineer, decompile, or disassemble any ArcGIS Location Platform.
4. Customer may not unbundle or independently use individual or component parts of ArcGIS Location Platform.
5. Customer may not incorporate any portion of ArcGIS Location Platform into a product or service for third-party use that competes with Esri products.
6. Customer may not publish or in any other way publicly communicate the results of benchmark tests run on versions of ArcGIS Location Platform without the prior written permission of Esri and its licensors.

c. Customer Applications

1. Customer may create and distribute both non-revenue generating and revenue-generating Customer Applications to Application Users.
2. Customer is responsible for the development, operation, and technical support of Customer Content and Customer Applications.
3. Customer may provide Application Users access to Location Services or Customer Content only through Customer Applications.
4. Application Users may not redistribute Customer Applications to third parties.
5. Customer shall include terms in its subscription service or a license agreement with Application Users for the use of the Customer Application that requires Application Users to comply with the applicable terms and conditions of this Agreement ("Terms of Use").

6. Customer shall not create a Customer Application that provides Customer Content or otherwise accesses or uses ArcGIS Location Platform in a manner that:
 - A. Creates or transmits spam, spoofings, or phishing email or offensive, hate-related or defamatory material; or stalks or makes threats of physical harm;
 - B. Stores or transmits any Malicious Code;
 - C. Violates any law or regulation;
 - D. Infringes or misappropriates the rights of any third party;
 - E. Probes, scans, or tests the vulnerability of ArcGIS Location Platform or breach any security or Authentication measures used by ArcGIS Location Platform without written approval from Esri's Product Security Officer; or
 - F. Benchmarks the availability, performance, or functionality of ArcGIS Location Platform without the prior written permission of Esri and its licensors.

d. Location Services

1. Neither Customer nor Application User may use routing for:
 - A. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
 - B. Synchronized multivehicle routing—a system automation coordinating more than one vehicle; or
 - C. Synchronized route optimization—a system automation where one asset is dynamically re-routed, has its route recalculated, or the asset's position is calculated as it travels the route and a maneuver is communicated to the navigator as the asset approaches the location where a maneuver is required.

e. Resultant Output

1. Customer may not act directly or authorize Application Users to rebrand or cobrand Resultant Output, use Resultant Output in any unauthorized service or product, offer Resultant Output through or on behalf of any third party, or redistribute Resultant Output to third parties.
2. Customer and Application Users may only use Resultant Output from a single request to serve a single Application User within the Customer Application. A single request for Resultant Output may not be used to serve multiple users.
3. Customer and Application Users may only use Resultant Output for visualization purposes and only within Customer Applications.
4. Customer must affix an attribution statement to Resultant Output from the Basemap location service, acknowledging Esri and, or its applicable licensor(s) as the source of the Resultant Output.
5. Neither Customer nor Application Users may use Resultant Output from the GeoEnrichment Service for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
6. Neither Customer nor Application Users may scrape, download, or extract Resultant Output, nor cache or store Resultant Output except as outlined herein:
 - A. Customer may allow pre-caching of Resultant Output as permitted by the caching headers (HTTP/1.1 standard or future standard) returned by Location Services to the extent necessary for enabling or optimizing the use of the Customer Application;
 - B. Customers and Application Users may use Resultant Output in a static format (i.e. PDF, GIF, JPEG, HTML), in an unalterable final form;
 - C. Customer may store Resultant Output from the Geocode (stored) location service for internal business use. Additionally, Customer may use stored geocodes to (i) display on a map in connection with Customer's public, non-revenue generating website(s), (ii) permit access to third parties for the purposes of Customer's internal business, (iii) deliver stored geocodes to third parties, on a noncommercial/non-revenue generating basis, static results, static output or static base map renderings, or (iv) use in a Customer Application;
 - D. Customer may store Resultant Output from the Routing Location Services for personal and internal business use only; and
 - E. Customer and Application User may store Demographic Reports Resultant Output from the GeoEnrichment Service for personal and internal business use only.

3.2 Supplemental Terms and Conditions for Resultant Output. Certain data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These terms supplement and amend the terms of this Agreement and are available at www.esri.com/legal/third-party-data.

3.3 ArcGIS Location Platform Descriptions. Esri publishes ArcGIS Location Platform-specific terms of use at <https://www.esri.com/legal/scope-of-use>.

ARTICLE 4.0—ARCGIS LOCATION PLATFORM SERVICE AVAILABILITY

4.1 Modifications of Location Services. Esri may change ArcGIS Location Platform at any time. Esri will provide Customer 90 days' notice for deprecations to SDKs, APIs, and Location Services. If any modification, discontinuation, or deprecation of Location Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Location Services. If a viable solution is not commercially reasonable, Esri will notify Customer and Customer may cancel its subscription and, when applicable, Esri will issue a prorated refund of unused prepaid fees.

4.2 Service Interruption. System failures or other events beyond Esri's reasonable control may interrupt Customer's access to Location Services. Esri may not be able to provide advance notice of such interruptions. Esri's Service Level Agreement for ArcGIS Location Platform can be found at <https://trust.arcgis.com/en/documents/>.

4.3 Service Suspension. Esri may suspend Customer's access to ArcGIS Location Platform (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of ArcGIS Location Platform will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of ArcGIS Location Platform; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Location Services; or (v) if ArcGIS Location Platform become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Esri will notify Customer of any ArcGIS Location Platform suspension beforehand and give Customer reasonable opportunity to take remedial action. Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of ArcGIS Location Platform or removal of Customer Content as described above.

ARTICLE 5.0—CUSTOMER CONTENT

5.1 Customer Content. Esri does not acquire any rights in Customer Content under this Agreement other than as needed to provide ArcGIS Location Platform and Resultant Output.

- a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and backup Customer Content as needed to provide Location Services and Resultant Output to Customer and Application Users. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support (i) Customer's use of ArcGIS Location Platform and Resultant Output; or (ii) Application Users' use of Customer Applications and Resultant Output. Except for the limited rights granted to Esri under this Agreement, Customer and Application Users retain all rights, title, and interest in their respective Customer Content.
- b. Customer will obtain all necessary rights from Application Users for Esri and its subcontractors to host, run, modify, and reproduce Customer Content as needed to provide ArcGIS Location Platform to Customer and to enable interoperation between the Customer Application, Location Services, and Customer Content.
- c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.
- d. Customer is responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from Customer's or Application Users' misuse of ArcGIS Location Platform.

5.3 Removal of Customer Content. Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with ArcGIS Location Platform materially violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at www.esri.com/legal/dmca_policy.

ARTICLE 6—ARCGIS LOCATION PLATFORM TECHNICAL SUPPORT

6.1 US Customers. If Customer is in the United States and procures technical support for ArcGIS Location Platform, Esri will provide technical support in accordance with Esri's then-current Maintenance and Support Program.

6.2 Use Outside of the United States. If Customer is located outside of the United States, Customer may obtain technical support services from their local Esri authorized distributor under the authorized distributor's own standard support policy and in accordance with the Esri Product Life Cycle Support Policy.

ARTICLE 7—TERM AND TERMINATION

7.1 This Agreement shall govern the use of ArcGIS Location Platform until (a) the ArcGIS Location Platform subscription expires or is terminated; or (b) this Agreement is terminated earlier as provided herein.

7.2 Customer may terminate this Agreement and the ArcGIS Location Platform subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Either party may terminate this Agreement and any subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Esri may terminate this Agreement and any subscription immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under this Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

7.3 Upon any termination or expiration of a subscription or this Agreement, Customer will and will require Application Users to

- a. Stop accessing and using the terminated or expired ArcGIS Location Platform subscription;
- b. Clear any client-side data cache derived from the terminated or expired ArcGIS Location Platform subscription;
- c. Use Resultant Output only in accordance with the applicable terms and conditions of this Agreement; and
- d. Stop using and uninstall, remove, and destroy all copies of ArcGIS Location Platform in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

7.4 Upon any termination or expiration of a subscription or this Agreement, Esri will make Customer Content available to Customer for download for a period of 30 days, unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so.

ARTICLE 8—LIMITED WARRANTIES AND DISCLAIMERS

8.1 Limited Warranties. Except as disclaimed below, Esri warrants to Customer that ArcGIS Location Platform will substantially comply with the applicable Documentation for the duration of the ArcGIS Location Platform subscription.

8.2 Special Disclaimer. Third-Party Content; Resultant Output, sample code, sample applications, add-ons, or sample extensions of ArcGIS Location Platform; ArcGIS Location Platform provided at no charge; and trial, evaluation, and beta versions are delivered "as-is" and without warranty of any kind.

8.3 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities with Documentation or loss, deletion, modification, or disclosure of Customer Content caused by the Customer Application or Customer's modification of any ArcGIS Location Platform other than as specified in the Documentation. Esri does not warrant that ArcGIS Location Platform, or Customer's

operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected, or will result in Customer's compliance with any applicable law. ArcGIS Location Platform is not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

8.4 Disclaimers.

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of ArcGIS Location Platform.
- b. **Third-Party Websites; Third-Party Content.** Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by ArcGIS Location Platform or Esri websites, including www.esri.com, developers.arcgis.com, <https://livingatlas.arcgis.com> and www.arcgis.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.
- c. **Artificial Intelligence (AI)/Machine Learning (ML) Disclaimer.** As specified in the Documentation, certain Esri Offerings may integrate third-party AI/ML software libraries and third-party or Esri created pre-trained AI/ML models for various tasks including, but not limited to, object detection, image obfuscation, image classification, or text or speech recognition. Customer may use these capabilities at its option and such AI/ML capabilities are delivered "as is" and without warranty of any kind. In certain cases, the Esri Offering may provide Customers the ability to configure their own custom AI/ML models to meet Customer's unique requirements, which except for the express warranties contained in this Agreement, shall be at Customer's own risk.

8.5 Exclusive Remedy. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be to (i) repair, correct, or provide a workaround or (ii) at Esri's election, terminate Customer's right to use ArcGIS Location Platform and refund any pre-paid, unused fees for ArcGIS Location Platform.

ARTICLE 9—LIMITATION OF LIABILITY

9.1 Disclaimer of Liability.

- (a) Neither Customer, Esri, nor any Esri authorized distributor or third-party licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; or costs of procurement of substitute goods or services.
- (b) Neither Customer, Esri nor any Esri authorized distributor or third-party licensor will be liable for any direct damages exceeding the fees paid or owed to Esri during the twelve (12) month period prior to the date upon which the related claim arose.

9.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement.

9.3 Applicability of Disclaimers and Limitations. Esri or its authorized distributor has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

9.4 The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Customer's jurisdiction. Customer may have additional rights that may not be waived or disclaimed. Esri does not seek to limit Customer's warranty or remedies to any extent not permitted by law.

ARTICLE 10—INDEMNIFICATIONS

10.1 Customer Indemnity.

- a. Customer shall defend, indemnify, and hold harmless Esri and its directors, officers, and employees from and against any Loss that may be incurred by Esri against (i) any Claim that the Customer Application misappropriates a trade secret or know-how, and/or infringes a patent, copyright, trademark, proprietary data right, sui generis right, or other intellectual property right; (ii) any willful misconduct or gross negligence of Customer or its respective officers, directors, employees, affiliates, and/or agents; or (iii) any error, omission, and/or defect in Customer Application.
- b. Esri shall (i) promptly notify Customer in writing of the Claim seeking indemnification, (ii) give Customer sole control of the defense of any actions and negotiations related to the defense or settlement of the Claim, and (iii) reasonably cooperate in the defense of the Claim at Customer's request and expense.

10.2 Esri Indemnity.

- a. Esri will defend, hold Customer and its directors, officers, and employees harmless from, and indemnify any Loss arising out of an Infringement Claim.
- b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the ArcGIS Location Platform or (ii) modify ArcGIS Location Platform while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use ArcGIS Location Platform and will refund any unused portion of fees paid for ArcGIS Location Platform.
- c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises solely out of (i) the Customer's Application, (ii) the combination or integration of ArcGIS Location Platform with a product, process, system, or element that Esri has not supplied or specified in the Documentation; (iii) alteration of ArcGIS Location Platform by anyone other than Esri or its subcontractors; (iv) compliance with Customer's specifications; or (v) use of ArcGIS Location Platform after Esri either provides a modified version to avoid infringement or terminates Customer's right to use ArcGIS Location Platform.

10.3 Conditions for Indemnification. As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Claim, and (iv) reasonably cooperate in the defense of the Claim at Esri's request and expense.

10.4 This Article 10 sets forth the entire obligation of Esri, its authorized distributor, and its third-party licensors regarding any Claim for which Esri must indemnify Customer.

ARTICLE 11—SECURITY AND COMPLIANCE

11.1 Security. Esri publishes its security capabilities at <https://trust.arcgis.com>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of technical support and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through ArcGIS Location Platform only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at securesupport@esri.com for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

11.2 Malicious Code. Esri will use commercially reasonable efforts to ensure that ArcGIS Location Platform will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer or Application Users introduces to ArcGIS Location Platform or that is introduced through Third-Party Content.

11.3 Notice to Esri. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of ArcGIS Location Platform or Resultant Output or any other breach of security regarding Location Services.

11.4 Export Compliance. Customer will and Customer will cause the Customer's Application Users to comply with all applicable export and trade sanctions laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), the US Department of Treasury, Office of Foreign Assets Control (OFAC) Regulations, and other applicable export and trade sanctions laws. Customer will not, and Customer will cause the Customer's Application Users to not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or permit the use of ArcGIS Location Platform to, by or from any United States embargoed countries currently including Iran, Syria, North Korea, Cuba, Crimea region of Ukraine, the Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR), or to or by denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Additionally, Customer will not export, reexport, transfer, provide access or release any Esri Offerings to Russia or Belarus. Customer will not, and Customer will cause the Application Users to not, export, reexport, transfer, or use ArcGIS Location Platform for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not, and Customer will cause Application Users to not, upload, store, or process in Location Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's provision of ArcGIS Location Platform is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.31, 120.32, and/or 120.33, respectively.

11.5 Privacy. Esri will process personal data according to the terms of the Data Processing Addendum available at <https://www.esri.com/en-us/privacy/overview>.

ARTICLE 12—GENERAL PROVISIONS

12.1 Payment. Customer will pay each undisputed invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the United States will pay the authorized distributor's invoices in accordance with the authorized distributor's payment terms.

12.2 Feedback. Esri may freely use any feedback, suggestions, or requests for ArcGIS Location Platform improvement that Customer provides to Esri.

12.3 Publicity. During the term of this Agreement, Esri may publicize that Customer uses Location Services and use Customer as a reference. Customer hereby grants Esri a worldwide, non-exclusive, royalty-free, fully paid-up, transferable and sublicensable right to use and display Customer trademarks, service marks, and logos for the purpose of identifying, promoting, and marketing Customer as a user of Location Services.

12.4 Patents. Customer may not seek, and may not permit any other user including Application Users to seek, a patent or similar right worldwide that is based on or incorporates any portion of ArcGIS Location Platform. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that ArcGIS Location Platform, or any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

12.5 Taxes and Fees; Shipping Charges. Pricing of ArcGIS Location Platform that Esri quotes to Customer is exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; shipping and handling charges; and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing. For Customers outside the United States, the authorized distributor may quote taxes or fees in accordance with its own policies.

12.6 Compliance Review. Customer shall not offer Customer Application(s) that include ArcGIS Location Platform functionality to Application Users for a noncancelable term or for a term that exceeds the duration of this Agreement. Esri shall have the right to review and approve the Terms of Use or any other license agreement with Application Users applicable to the use of Location Services to ensure its compliance with this Agreement.

12.7 No Implied Waivers. The failure of either party to enforce any provision of this Agreement is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

12.8 Severability. If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

12.9 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver ArcGIS Location Platform may assign this Agreement and ArcGIS Location Platform acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement.

12.10 Survival of Terms. To the extent necessary to carry out the intentions of the parties under this Agreement, the respective rights and obligations of the parties will survive the expiration or termination of this Agreement (including the Glossary of Terms, "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications," and "General Provisions").

12.11 US Government Customer. ArcGIS Location Platform is a commercial item, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Resultant Output and ArcGIS Location Platform are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. ArcGIS Location Platform is subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of ArcGIS Location Platform. Agreement provisions that are inconsistent with federal law regulation will not apply. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of ArcGIS Location Platform under applicable public procurement law, such rights will extend only to the portions affected.

12.12 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- a. **Government Entities.** If Customer is a government entity, the applicable laws of Customer's jurisdiction govern this Agreement.
- b. **Nongovernment Entities.** US federal law and the law of the State of California exclusively govern this Agreement, excluding their respective choice of law principles.

12.13 Dispute Resolution. The parties will use the following dispute resolution processes:

- a. **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
- c. **Other Government Entities.** Esri will comply with mandatory dispute resolutions under applicable law.
- d. **Arbitration.** Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of

Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

12.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

12.15 Independent Contractor. Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

12.16 Notice. Customer may send notices required under this Agreement to Esri at the following address:

Environmental Systems Research Institute, Inc.
Attn.: Contracts and Legal Department
380 New York Street
Redlands, CA 92373-8100
USA
Tel.: 909-793-2853
Email: LegalNotices@esri.com