

Licensing Terms of Use

Documented Changes



Document Updated: E204 – Master Agreement

Date of Update Implementation: August 14, 2017

Overview: The Master Agreement (E204), including Addendum 1, have been updated to reflect changes due to updated Esri policies, and clarification language derived from Esri Product Management and customer requests.

Sections(s) Impacted: Sections impacted due to contextual, clarification, grammar or Terms & Conditions changes, which will impact future version use. All impacted sections are listed below.

General Changes:

What: Section 1.1 Grant of Rights. (pg 2)

Change: 1.1 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri ~~grants to Customer a personal, nonexclusive, nontransferable right to~~

- a. ~~Provides Services and grants to Customer a~~—Use personal, nonexclusive, nontransferable right to use the Esri Offerings as set forth in the ~~Documentation~~Specifications and applicable Ordering Documents; and
- b. ~~Copyb. Authorizes Customer to copy~~ and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of ~~Products~~Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

"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 (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this Agreement including Attachment B.

Why: Revision for clarification to cover both Services and COTS items.

What: Section 1.2 Consultant or Contractor Access (pg 2)

Change: 1.32 Consultant or Contractor Access. Customer may authorize its consultants or contractors to (i) host ~~Software and Data~~Esri Offerings for ~~Customer~~Customer's benefit and (ii) use Esri Offerings 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 the Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

Why: Correction to expand this right to all Esri offerings.

What: Section 1.4 Trial, Evaluation and Beta Licenses (pg 2)

Change: **1.54 Trial, Evaluation, and Beta Licenses.** Products acquired under a trial or evaluation license or subscription or under a Beta program are intended for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the evaluation term, Customer may lose any ~~content~~Customer Content and customizations made during the evaluation term. If Customer does not wish to purchase a license or subscription, Customer should export such ~~content~~Customer Content before the end of Customer's evaluation period.

Why: Correction to use defined term.

What: Section 2.1 License Types (pg 3)

Change: Esri licenses Software under the following license types; the Documentation and Ordering Documents identify which license type(s) applies to the ordered Software.

Why: Clarification of language.

What: Section 3.1 Definitions (pg 4)

Change: a. **"Anonymous Users"** means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Value-Added Applications. Customer may enable Anonymous Users to access ~~its~~Customer Content or Value-Added Applications by publishing them through the use of the Sharing Tools, included with Customer's authorized use of the Online Services.

Why: Correction to use defined term.

What: Section 4.3 Use Restrictions (pg 7)

Change: e. *Business Analyst Data.* Customer may cache Data provided with ArcGIS Business Analyst ~~Server~~Mobile App on a mobile device for use in conjunction with its use of Business Analyst Server. Customer may not otherwise cache or download such Data.

Why: Clarification of language.

ATTACHMENT A GLOSSARY OF TERMS

What: Attachment A Glossary of Terms. (pg 17-20)

Change:

"Affiliate" means any entity that directly or indirectly (i) Controls; (ii) is Controlled by; or (iii) is under common Control with a party; where "Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity. Esri's distributors are not Affiliates.

Why: To support use in Attachment B

"Customer Content" means any Content that Customer, ~~Customer's end users, or any other user provides to Esri, uses, or develops~~ in connection with Customer's use of Esri Offerings; ~~any results derived from the use of Customer Content with Esri Offerings; and any or Services, including Value-Added Applications Customer builds and deploys with Products.~~ Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

Why: Redlines are to simplify the definition.

"Data" means any commercially available digital dataset(s); including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes, that Esri bundles with other Esri Offerings or delivers independently. ~~Data excludes any Content that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.~~

Why: Correction in conjunction with changes to definitions of Esri Offerings and Third Party Content.

"Deliverables" means anything that Esri delivers to a Customer as a result of performance of Professional Services other than Products, Training, or ~~Maintenance. Deliverables may include, but are not limited to, consulting services, customized training curriculums, software code, dynamic link libraries (DLLs), and programs delivered on any media provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies; methods, techniques, or know-how; technical assistance, processes, formulas, or algorithms; designs; data dictionaries and models; compilations; schematics; documentation; specifications; drawings; flowcharts; briefings; or test or quality control procedures.~~ Services performed under EEAP.

Why: Clarification of EEAP services outputs to simplify the definition.

"Esri Managed Cloud Services" or "EMCS" means a ~~single tenant hardware~~ Customer-specific cloud infrastructure, Software, Data, and network platform, ~~and related system monitoring and support services~~ that Esri ~~provides to house and make Customer Content~~ hosts, manages, and makes available to Customer or ~~Customer's~~ Customer's end users via the Internet.

Why: Clarification of language.

"Esri Offering(s)" means any Product, ~~Maintenance~~, or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include ~~Training Materials and Deliverables~~ Deliverables provided on a firm-fixed price basis and Training Materials. Esri Offerings exclude Services and Third-Party Content.

Why: Clarification that maintenance is a Service and categorization of other Service offerings.

~~"Online Content" means Content that Esri hosts or provides as part of Online Services, including any map services, task services, image services, SDKs, APIs, software libraries, code samples, and other resources, but excluding Content provided by third parties that Customer accesses through Online Services.~~

Why: This was a redundant term with the Data term.

~~"Specification(s)" means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.~~

Why: Added as new term to enable standardizing warranty language.

~~"Task Order(s)" means an Ordering Document for Services.~~

Why: Additional definition for Service related items.

~~"Third-Party Content" means any Content 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.~~

Why: To distinguish Customers Content from Esri provided Data.

ATTACHMENT B GENERAL TERMS AND CONDITIONS

What: Article 2- Term and Termination (pg 21)

Change: This Agreement is effective upon acceptance. Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid ~~or~~. Any right to terminate pending Services engagements without further liability for convenience is set forth in the applicable section in the body of this Agreement. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

Why: Clarification of language.

What: 3.1- Limited Warranties (pg 22)

Change: ~~Esri warrants:~~ Except as disclaimed below, Esri warrants to Customer that (i) Esri Offerings will substantially comply with the applicable Specifications and (ii) Services will substantially conform to the professional and technical standards of the industry. The warranty period for Esri Offerings and Services offered under a Perpetual License runs for 90 days from the date of delivery, or the date of acceptance if this Agreement provides an acceptance period. The warranty period for Esri Offerings and Services offered under a subscription or term license basis runs for the duration of the subscription or term.

~~a. For a period of 90 days,~~

- ~~1. Software will substantially conform to the Documentation under normal use and all media will be free from defects in materials and workmanship from the date of delivery;~~
- ~~2. Training Materials will substantially conform to Esri's published course descriptions from the date of delivery;~~
- ~~3. Services will substantially conform to the professional and technical standards of the software industry from the date of performance; and~~
- ~~4. Deliverables provided on a firm fixed price basis will substantially conform to the specifications set forth in the agreed upon Ordering Document from the date of acceptance.~~

~~b. During the applicable term,~~

- ~~1. Online Services will substantially conform to the Documentation under normal use;~~
- ~~2. Maintenance will substantially conform to the professional and technical standards of the software industry; and~~
- ~~3. EMCS will conform to the scope, descriptions, and assumptions for EMCS set forth in the Ordering Document.~~

Why: Restructured to simplify and standardize warranties.

What: 5.5 Infringement Indemnity (pg 24)

Change: **This Section sets forth the entire obligation of Esri, its authorized distributor, and its licensors regarding any ~~Infringement Claim~~ Claim for which Esri must indemnify Customer.**

Why: To cover all indemnifications under Article 5.

What: 7.1 Security (pg 24-25)

Change: Esri publishes its security capabilities at <http://doc.arcgis.com/en/trust/security/security-overview.htm>. 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 Services 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 ~~controlled~~ Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. ~~For US federal government customers, Online Services are FISMA Low authorized but do not meet higher security requirements including those found in DFARS 252.239-7010. Alternative solutions that meet these or similar requirements are available. 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.~~

DFARS moved to Section 9.11

Why: Facilitate Esri's ability to properly protect Customer Content.

What: 8.1 Prohibited Uses (pg 25)

Change: Customer ~~may~~ shall not provide Customer Content or otherwise access or use Cloud Services ~~to~~ in a manner that

- a. ~~Spam, spoof~~ Spams, spoofs, or ~~phish~~ phishes email; ~~transmit~~ transmits junk email or offensive or defamatory material; or ~~stalk~~ stalks or ~~make~~ makes threats of physical harm;
- b. ~~Store~~ Stores or ~~transmit~~ transmits any Malicious Code;
- c. ~~Violate~~ Violates any law or regulation;
- d. ~~Infringe~~ Infringes or ~~misappropriate~~ misappropriates the rights of any third party;
- e. ~~Probe, scan~~ Probes, scans, or ~~test~~ tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services; or
- f. ~~Benchmark~~ Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

Why: Expands prohibitions to cover Customer Content.

What: 9.9 Successor and Assigns (pg 26)

Change: 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 Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement. Upon mutual agreement, Esri's Affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services.

Why: Enable Esri's Affiliates to also perform Services under this agreement.

What: 9.11 US Government Customer (pg 27)

Change: The Products are commercial items, 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. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of the Products under applicable public procurement law, such rights will extend only to the portions affected. Online Services are FISMA-Low authorized but do not meet higher security requirements including those found in DFARS 252.239-7010.

Was moved from Security Section 7.1

Why: Clarification of language.