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- 1.1 The Software is protected by applicable United Kingdom and international laws, treaties and conventions regarding intellectual property or proprietary rights. Licensor and its third party licensor(s) retain exclusive title and ownership of the Software.
- 1.2 In consideration of the mutual promises and covenants provided herein and for other good and valuable consideration, Licensor hereby grants to the Licensee a personal non-exclusive non-transferable license to use the Software in the Territory as a single package on the terms and conditions of this Licence.
- 1.3 From the date of receipt of the Software, the Licensee shall use its best endeavours to protect the Software from any use, reproduction, exploitation, distribution, or publication not specifically permitted under this Licence.
- 1.4 Unless otherwise expressly agreed in writing, Licensee is responsible for the installation of the Software and Licensor accepts no liability therefor.

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- 2.1 This clause 2 shall apply if the Software has been made available to Licensee free of charge by Licensor as an evaluation or beta (pre-release) licence. In the event of conflict, the terms and conditions contained in this clause 2 shall override the terms and conditions of the rest of this Licence.
- 2.2 Licensor hereby grants Licensee a non-exclusive, non-transferable licence for a period of 90 days (save where a different period is set out in the Special Terms or notified to you in writing, in which case that different period shall apply) only from the date of installation (“**Evaluation Period**”) for Licensee to internally evaluate and test the Software to determine whether or not to purchase the Software and for no other purpose.
- 2.3 Licensee expressly agrees and acknowledges that given that the evaluation or beta licence is provided free of charge, it is fair and reasonable for it to be provided by Licensor “as is”, 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.
- 2.4 At the end of the Evaluation Period, Licensee must stop using the Software, delete it from Licensee’s computer systems and destroy any media on which the Software was provided. Licensee shall not disclose to any third party or publish (including via the internet or social media) details of any evaluation or testing (including any results, screenshots, questions, or workflows) of Licensor’s Software without Licensor’s prior written consent.

3. Permitted uses

During the term of this Licence, Licensee may:

- 3.1 use strictly for the Purpose only, within the Territory, the number of copies of the Software for which licence fees have been paid to Licensor in accordance with the Licence Type or as otherwise expressly permitted hereunder;
- 3.2 install the licensed number of copies of the Software on Licensee’s own permanent computer storage device(s), computer system(s), or computer network(s) (together “**Machine**”) and may not transfer the Software except for temporary CPU transfer in the event of computer malfunction;
- 3.3 make reasonable routine computer backups of the Software but, unless otherwise permitted by the Licence Type, only one (1) copy thereof, and only for archival purposes and during the term of this Licence. Any and all copies of the Software and any Software content published in accordance with this Licence shall continue to be subject to this Licence and shall include the following copyright attribution notice acknowledging Licensor’s and its third party licensor(s) proprietary rights in the Software: “Copyright [insert the actual copyright date(s) from the source materials] ESRI (UK) Ltd and its third party licensors. All rights reserved.”;
- 3.4 permit third party consultants and contractors to access and use the Software (i) solely for the benefit of the Licensee; (ii) solely for the Purpose; and (iii) strictly in accordance with this Licence. Licensee shall be responsible for compliance by such consultants or contractors with the terms and conditions of this Licence and shall be liable to Licensor for breach of these licence terms by such third party consultants and contractors. Licensee shall require such consultants and contractors to discontinue use of, and access to, the Software, Data and Related Materials upon completion of the work for Licensee;
- 3.5 For a period of no more than six (6) months, install and use a newer version of the Software concurrently with an old version of the Software for testing and transitional purposes when upgrading between versions of the Software, provided that the total number of licences does not exceed the number for which Licensee is licensed; and
- 3.6 move the Software in the licensed configuration to a replacement computer.

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- 4.1 Unless otherwise expressly provided herein, the Licensee shall not:
 - 4.1.1 either directly or indirectly engage in any form of commercial exploitation of the Software unless specifically agreed with Licensor in writing together with additional terms, such terms to cover without limitation the additional licensing conditions and additional licence fees. “Commercial exploitation” for the purposes of this clause 4.1.1 means allowing third parties access to the Software (save as provided under clause 3.4) and/or to services provided through use of the Software, regardless of whether revenue is generated by the Licensee; or
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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:
 - “**ASP Software**” is Software that has been identified by Licensor as being licensed to the Licensee for Licensee's use for ASP Services and for which the appropriate licensee fees have been paid as specified by Licensor;
 - “**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.
 - 5.5.2 Subject to any other specific restrictions within this Licence, clauses 4.1.1 and 4.1.2 are amended such that ASP Software may be used by Licensee to provide ASP Services.
 - 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. Licensor shall have the right to review and approve terms and conditions of Licensee's subscription or service agreement with end users.
 - 5.5.4 The Licensee's right to use ASP Software shall remain in effect for a term to be agreed between the parties from the date of delivery, provided Licensee pays all maintenance fees when due, unless terminated earlier as prescribed herein. At the end of such term, the parties may negotiate a new term and fees based on their mutual agreement including modification and update of any terms and conditions of this Licence. Licensee shall notify Licensor in writing sixty (60) days prior to the expiry of such term of its desire to negotiate a new term to the ASP Licence. Upon expiry of the agreed term, Licensee may choose to cease its ASP Services and use the ASP Software for its own internal use under this Licence (excluding the provisions of this clause 5.5).
 - 5.5.5 Licensee shall provide Licensor with full details of all end users of the ASP Services within 14 days of such end users accessing the ASP Services. Licensor shall have the right to audit such records at its own expense and at reasonable times upon no less than two (2) weeks' advance notice to Licensee.

6 Term of Licence

- 6.1 This Licence shall commence upon installation of the Software and shall continue until the earlier of the following events:
 - 6.1.1 the Licensee elects to discontinue use of the Software and terminates this Licence upon written notice to Licensor; or
 - 6.1.2 Licensor terminates for Licensee's breach of this Licence including but not limited to Licensee's failure to pay applicable licence fees by their due date, or breach of clause 3 or 4; or
 - 6.1.3 expiry of any finite term detailed in this Licence notified separately by Licensor in writing.
- 6.2 Upon termination of this Licence, Licensee shall immediately discontinue use of the Software and shall return to Licensor or destroy the Software (including any embedded third party software code) and any whole or partial copies, codes, modifications, and merged portions thereof in any form, and if Licensor so requests shall certify such in writing. The parties agree that all provisions of this Licence that operate to protect the rights of Licensor and its third party licensor(s) shall remain in force following termination.

7 Limited warranty

- 7.1 Licensor warrants that for a period of ninety (90) days from the date of receipt that the unmodified Software will substantially conform to the Technical Documentation.
- 7.2 Except to the limited extent provided by clauses 7.1 and 9, Licensee expressly agrees and acknowledges that given the amount payable by Licensee for the Software, it is fair and reasonable for the Software to be provided “as is”, 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.
- 7.3 Should the Software be provided with Data, Licensee acknowledges that such Data is owned by Licensor's third-party licensor(s) and the use of such Data with the Software shall be subject to the relevant third party licence terms and conditions, the details of which can be obtained from info@esriuk.com. Licensor cannot control the accuracy or completeness of the Data and nor is it able to check the source information of the Data concerned. Accordingly, Licensor shall not be liable for any inaccuracies, faults or omissions in the Data. Licensee is advised to use the Data with caution and not to base its business decisions solely on the Data itself which may be subject to periodic changes and as such the Data may not reflect the latest available release of the Data.

8 Limitation of liability

- 8.1 To the extent permitted by law, Licensor's entire liability and Licensee's exclusive remedy for Licensor's breach of the limited warranty in clause 7 shall at Licensor's sole option be either:
 - 8.1.1 the replacement of the Software to the extent necessary to comply with the warranty, when such replacement shall have the benefit of the balance of the warranty period; or
 - 8.1.2 the return of the licence fees paid for the Software provided it is returned to Licensor in good condition, fair wear and tear excepted.
- 8.2 Licensor's total cumulative liability to the Licensee under this Licence, shall in no event exceed 110% of the amount paid by to Licensor for the Software, provided that Licensor, where held legally responsible, does not exclude or seek to limit liability for:
 - 8.2.1 death or personal injury arising from its negligence; or
 - 8.2.2 any other liability that cannot be excluded by applicable law.
- 8.3 Licensor shall not be liable for:
 - 8.3.1 indirect, special, incidental, or consequential damages; or
 - 8.3.2 actual or anticipated loss of profits; or
 - 8.3.3 loss of goodwill; or

- 8.3.4 loss of business; or
 - 8.3.5 loss of revenue or of the use of money; or
 - 8.3.6 loss of contracts; or
 - 8.3.7 loss of anticipated savings; or
 - 8.3.8 losses arising from the use of the Software in high-risk activities; or
 - 8.3.9 loss of data and/or undertaking the restoration of data or software restoration; or
 - 8.3.10 any damages relating to the procurement by Licensee of any substitute software, materials or services
- and all such liabilities are excluded whether they are foreseeable, known, foreseen or otherwise. For the avoidance of doubt, clauses 8.3.2 to 8.3.10 shall apply whether such losses are direct, indirect, special, incidental, consequential or otherwise.

8.4 In the event that any part of clause 8.3 is found to be illegal, invalid or unenforceable, the remaining sub-clauses of 8.3 shall remain in force to the maximum extent permitted by law.

9 Intellectual property rights indemnity

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:

- 9.1.1 Licensee shall promptly notify Licensor in writing of any infringement or alleged infringement of which Licensee has notice or reasonably should have notice;
- 9.1.2 Licensee must make no admissions without Licensor’s prior written consent; and
- 9.1.3 Licensee, at Licensor’s request and expense, shall allow Licensor to conduct any negotiations or litigation and settle any claim. Licensee shall give Licensor all reasonable assistance in respect thereof. The costs incurred or recovered in such negotiations or settled claim shall be for Licensor’s account.

9.2 If at any time an allegation of infringement of intellectual property rights is made in respect of the Proprietary Material, or if in Licensor’s reasonable opinion such an allegation is likely to be made, Licensor may at Licensor’s own expense and sole option, either:

- 9.2.1 obtain a right for Licensee to continue using the infringing Proprietary Material; or
- 9.2.2 modify or replace the infringing Proprietary Material so as to avoid the infringement, without detracting from the overall performance of the infringing Proprietary Material; or
- 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, Licensor’s sole liability shall be to refund a prorated 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.

10 Indemnity to Licensor by the Licensee

Licensee shall fully indemnify and hold harmless Licensor and its third-party licensor(s) from and against all liabilities, claims, suits or damages (including, but not limited to, legal fees, costs, judgements and reasonable expenses incurred) arising out of any use of the Software by the Licensee or its third party consultants and contractors not permitted by this Licence.

11 Equitable relief

Licensee agrees that, if the Licensee breaches this Licence, Licensor may not adequately be compensated by money damages alone and therefore Licensor shall be entitled without proof of special damage, in addition to any other right or remedy available to it (including, but not limited to, an action for damages), to the remedies of injunction, specific performance and other equitable relief in any court of competent jurisdiction for any actual, threatened or potential breach.

12 Export regulations

- 12.1 The Licensee acknowledges that this Licence and the performance thereof are subject to compliance with any and all applicable United Kingdom and international laws, regulations, or orders relating to the export of computer software or know-how relating thereto (“**Export Laws**”).
- 12.2 The Licensee agrees that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the Export Laws. In addition, if the Software is identified as export controlled items under the Export Laws, the Licensee represents and warrants that it is not a citizen of, or otherwise located within, an embargoed nation and that it is not otherwise prohibited under the Export Laws from receiving the Software.
- 12.3 All rights to use the Software are granted on condition that such rights are forfeited if the Licensee fails to comply with the terms of this Licence and this clause 12 in particular.

13 Force Majeure

Except for Licensee’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.

16 Governing Law

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.

17 International grant of Licence

- 17.1 This clause 17 applies where the Software is made available to Licensee outside of the Territory. In the event of conflict, the terms and conditions contained in this clause 17 shall override the terms of the rest of this Licence.
- 17.2 The Software may be provided to a Licensee outside of the Territory by Licensor or Licensor’s authorised distributor. The Licence shall be between Licensor and Licensee and shall only be used in the relevant country, state or territory within which Licensee acquired the Software from Licensor or Licensor’s authorised distributor. The Licence shall be governed by the Laws of England and Wales without reference to any conflict of laws principles.
- 17.3 It is hereby agreed that the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded if and to the extent that it applies to the Licence.
- 17.4 Where Licensee is outside of the Territory and categorised by Licensor as a higher education, further education or research institution (“**Educational Institutions**”) and where such Educational Institution has acquired the Licence from Licensor or Licensor’s authorised distributor:
 - 17.4.1 Licensee may only use the Software for teaching, research, education and learning and the preparation of course materials for instruction only. Without prejudice to clause 4, this excludes use relating to (a) consultancy work or services leading to the commercial exploitation (for the purposes of this clause 17.4.1 this means use of the Software for monetary gain either by the Educational Institution, employee, student or other individual) and (b) work of significant benefit to the employer of students on industrial placements or part-time courses;
 - 17.4.2 Clause 6.1.3 shall be replaced with “one (1) year from delivery”.

18 Special terms for specific Software

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In the event of conflict, the terms and conditions contained in this clause 18 shall override 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 of significant benefit 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.
- c. Term: the Software is licensed on a term (non-perpetual) basis. The applicable 'Term' of the Software shall commence upon the applicable date of Licence grant under the CHEST arrangements and shall, unless terminated earlier, expire on the date of the applicable CHEST arrangements expiry, whereupon the Licence shall terminate.

18.2 Sweet; and Sweet Deployed Apps

- 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.
 - "Sweet Builder" means the tool which enables the creation and/or configuration of 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 (e) shall not apply: any support shall be subject to the arrangements between You and the third party from whom You purchased the Software.
- h. 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. Should You be provided with access to any Sweet templates and/or to third party OpenData through ArcGIS Online or Portal for ArcGIS, such access will be provided subject to the Esri Inc License Agreement available at www.esri.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.
- f. 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:
 - iv. The provisions in Clause 2 of this Licence;
 - v. 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 licences, 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*
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