



ArcGIS ONLINE PREMIUM SERVICES USE AGREEMENT

ESRI, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

UNLESS OTHERWISE SUPERSEDED BY A SIGNED ArcGIS ONLINE PREMIUM SERVICES USE AGREEMENT ("USE AGREEMENT") BETWEEN THE USER ("USER") AND ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. ("ESRI"), ESRI IS WILLING TO GRANT USER A LICENSE TO ACCESS AND CONSUME THE ArcGIS ONLINE PREMIUM SERVICES DESCRIBED IN THIS USE AGREEMENT ONLY ON THE CONDITION THAT USER ACCEPT ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN. PLEASE READ THIS USE AGREEMENT FOR ArcGIS ONLINE PREMIUM SERVICES CAREFULLY BEFORE USER ACCEPTS THIS USE AGREEMENT. USER'S ACCESS TO THE ArcGIS ONLINE PREMIUM SERVICES WILL NOT BEGIN UNTIL USER HAS MANIFESTED ITS ASSENT TO ALL OF THE TERMS AND CONDITIONS IN THIS USE AGREEMENT BY CLICKING THE "I ACCEPT" BUTTON BELOW. IF USER DOES NOT AGREE TO THE TERMS AND CONDITIONS AS STATED, THEN ESRI IS UNWILLING TO LICENSE THE ArcGIS ONLINE PREMIUM SERVICE(S) TO USER, AND USER SHOULD CLICK THE "I DO NOT ACCEPT" BUTTON BELOW, IN WHICH EVENT, USER WILL NOT GAIN ACCESS TO THE ArcGIS ONLINE PREMIUM SERVICES.

SECTION A—GENERAL TERMS AND CONDITIONS

This Use Agreement is entered into by and between ESRI and User. ESRI is making available to User certain premium data and/or imagery services provided hereunder (hereinafter individually or collectively referred to as the "Service(s)") through the Service(s) Web site. ESRI provides the Service(s) to User subject to the User's payment of applicable license or subscription fees, the terms and conditions of this Use Agreement, and any other operative Addendum(s), that may apply for the respective Service(s). Unless explicitly stated to the contrary, these terms and conditions, and the terms and conditions of any operative Addendum, shall govern User's use of any new feature(s) that augment or enhance the current Service(s), including the release of any new Service(s). If User is using any of the Service(s) on behalf of User's employer, User represents that User is authorized to accept these terms and conditions on behalf of User's employer.

ARTICLE 1—CONFIDENTIAL INFORMATION

To gain access to the Service(s), the parties hereby agree to these confidentiality provisions.

1.1 User acknowledges that User will obtain direct access via ESRI's Web site to certain ESRI confidential information including any and all password or controlled access information provided by ESRI and ESRI databases containing confidential information of ESRI and its licensors. ESRI acknowledges that ESRI may receive User's confidential information, data, business, product, or application marketing strategies and other valuable technical or personal information. The receiving party shall hold such confidential information ("Information"), which Information has been clearly marked as "Confidential" or "Proprietary" by the disclosing party, in strict confidence and may provide Information to employees within its organization only on a need-to-know basis. User shall maintain and safeguard the confidential nature of usernames, passwords, or registration information received from ESRI or its third party suppliers with the same degree of care as it safeguards its own confidential information of similar nature, but in no case less than reasonable care. When applicable, ESRI may also distribute Information to ESRI distributors and affiliates who have a need to know and actively participate in the delivery of ArcGIS Online Services or corresponding support to User. User may use the Information obtained from ESRI's Web site, or by any other means of disclosure, solely for the purpose of developing, maintaining, and supporting User's Web-enabled applications subject to the respective grant of license in Section B, Article 2, to license additional ESRI software, data, or Service(s), or to support any other activities in furtherance of this Use Agreement.

1.2 The receiving party shall not acquire any rights, title, or ownership to the disclosing party and/or its licensor's Information, except the limited rights to use the Information as described above.

1.3 The receiving party's obligations to maintain the confidentiality of the disclosing party's Information shall continue for three (3) years after the date of first receipt of any Information hereunder. Upon termination of this Use Agreement or upon the disclosing party's written request, the receiving party must cease use of Information and return or destroy all Information.

1.4 This Article 1, Confidential Information, shall impose no obligation upon the receiving party with respect to Information that the receiving party can establish by legally sufficient evidence that (a) it possessed, or knew, prior to its receipt hereunder, or received from the disclosing party without an obligation to maintain its confidentiality; (b) Information is or

has become generally known to the public through no act or omission by the receiving party, or otherwise without violation of this Use Agreement; (c) Information was obtained from a third party that had the right to disclose it without an obligation to keep such information confidential; (d) Information was independently developed without the use of Information and without the participation of individuals who have had access to Information; or (e) Information is obtained in response to a valid order by a court or other governmental body, as otherwise required by law or as necessary to establish the rights of either party under this Use Agreement and as disclosed after adequate prior notice to the disclosing party, to afford the disclosing party the opportunity to object to or seek a protective order against the disclosure.

ARTICLE 2—USER'S CONDUCT REGARDING THE USE OF ESRI WEB SITE AND SERVICE(S)

2.1 User agrees not to use the Service(s) in any way for spamming or to transmit chain letters, junk e-mail, or bulk communications. Without liability, ESRI reserves the right to block, filter, or delete any such unsolicited communications described above. User agrees not to transmit through the Service(s) any content that is objectionable or upload such content onto ESRI's Web site or its servers. User agrees not to use any ESRI domain name as a pseudonymous return e-mail address for any communications that User transmits from another location or through another service. User agrees not to pretend to be someone else or spoof their identity when using the Service(s).

2.2 User agrees not to use the Service(s) for any unlawful activities not otherwise covered above, including without limitation, attempting to compromise the security of any networked account or site, operating an illegal lottery or gambling operation, or making direct threats of physical harm. In addition to the foregoing, User's use of the Service(s) shall not (a) impersonate any person or entity, including, but not limited to, an ESRI official or employee, ESRI's Web site or Service(s), or falsely state or otherwise misrepresent User's affiliation with an ESRI person or entity; (b) upload, post, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment; (c) intentionally or unintentionally violate any applicable local, state, or federal law or any regulations having the force of law including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission or any national securities exchanges; or (d) stalk or otherwise harass another. Without liability, ESRI reserves the right to terminate this Use Agreement and to discontinue User's access to the Service(s) immediately upon ESRI's determination that User has engaged in any of the foregoing. Additional restrictions, or terms of use, concerning the use of ESRI's third party licensor(s) of data and/or imagery contained in the Service(s) are set forth in Section C below.

ARTICLE 3—NOTICES; MODIFICATION AND TERMINATION OF SERVICE(S)

ESRI may send notices to User via e-mail, regular mail, and/or through available on-line documentation. The Service(s) may also provide notices of changes to the terms and conditions of this Use Agreement or other matters by displaying notices or links to notices to User generally about the Service(s). ESRI reserves the right, at any time and from time to time, to modify change, restrict, or discontinue, temporarily or permanently, the Service(s) (or any part thereof) with or without notice. ESRI may make changes to the Service(s), including those regarding products, services, programs, Use terms and conditions, and prices, at any time. For Users accessing Services that contain data and/or imagery from Microsoft, ESRI reserves the right at its sole discretion or at such time User has exceeded the then current cumulative annual transaction level, to convert the User's license to a subscription based license upon electronic mail notice to the registered User. User can review the most current version of the Service(s) or this Use Agreement, and/or any operative Addendum that may apply, at any time at www.esri.com/legal/. If a modification of the Service(s) or the terms of the Use Agreement is unacceptable to the User, the User may cancel the Use upon written notice to ESRI. If User continues to use the Service(s), the User will be deemed to have accepted the modifications. Any termination of User's access to the Service(s) due to the breach of any provision of this Use Agreement may be effected without prior notice, and ESRI may immediately deactivate or delete User's Service(s) site account and/or bar any further access to such files or the Service(s). Furthermore, ESRI will not be liable to User or any third party for any termination, modification, or suspension of the Service(s).

ARTICLE 4—INTELLECTUAL PROPERTY RIGHTS

4.1 "ESRI Trademarks" means all names, marks, brands, logos, designs, trade dress, and other designations ESRI uses in connection with the Service(s), software, data, or Information. User may not use or co-brand User's applications, products, or material associated with User's applications or services with any ESRI Trademarks. User agrees not to incorporate any ESRI Trademarks into User's trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

4.2 As a condition of ESRI's grant of license to use the Service(s), User shall not remove any intellectual property notices, proprietary legends, and/or U.S. Government Limited/Restrictive Rights legend contained in the Service(s), the metadata files of any of the Service(s), and any online and/or hard-copy attribution page of any data or documentation delivered hereunder and shall affix any attribution notices as may be specified therein.

4.3 Except as specifically set forth in Section B, Article 2, in no event shall this Use Agreement confer any license under any of ESRI's or any third-party provider's intellectual property rights, whether by estoppel, implication, or otherwise. User acknowledges sole responsibility for obtaining any other use licenses.

4.4 Copyright Policy. ESRI's copyright policy is to respond to notices of alleged copyright infringement that comply with applicable international intellectual property law (including, in the United States, the Digital Millennium Copyright Act) and to take down allegedly infringing materials and/or terminate the accounts of repeat infringers, as applicable. Further details of ESRI's copyright policy can be found at http://www.esri.com/legal/licensing/dmca_policy.html.

ARTICLE 5—DISCLAIMER OF WARRANTIES

5.1 USER'S USE OF THE SERVICE(S) IS AT USER'S SOLE RISK. THE SERVICE(S) AND CONTENT ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. UNLESS OTHERWISE EXPLICITLY STATED, THE SERVICE(S) OR CONTENT ON ESRI'S WEB SITE IS NOT INTENDED FOR USE IN ANY MISSION-CRITICAL APPLICATIONS. ESRI DISCLAIMS ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES OF ANY KIND INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. ESRI MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTIES AS TO THE QUALITY, SUITABILITY, TRUTH, ACCURACY, OR COMPLETENESS OF ANY OF THE SERVICE(S) OR CONTENT CONTAINED ON ESRI'S WEB SITE.

5.2 THE SERVICE(S) OR CONTENT HAS BEEN OBTAINED FROM SOURCES BELIEVED TO BE RELIABLE, BUT ITS ACCURACY AND COMPLETENESS ARE NOT GUARANTEED. THE SERVICE(S) AND CONTENT MAY CONTAIN SOME NONCONFORMITIES, DEFECTS, INACCURACIES, ERRORS, OR OMISSIONS. ESRI MAKES NO WARRANTY OR CONDITION THAT (a) THE SERVICE(S) WILL MEET USER'S REQUIREMENTS; (b) THE SERVICE(S) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE(S) WILL BE ACCURATE OR RELIABLE; (d) THE QUALITY OF ANY SERVICE(S), DATA OR INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY USER THROUGH THE SERVICE(S) WILL MEET USER'S EXPECTATIONS; OR THAT (e) ANY ERRORS IN THE SERVICE(S), SOFTWARE, DATA, OR INFORMATION WILL BE CORRECTED.

5.3 ANY SOFTWARE, DATA, OR INFORMATION DELIVERED PURSUANT TO THIS USE AGREEMENT OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE(S) IS DONE AT USER'S OWN DISCRETION AND RISK, AND USER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO USER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH SOFTWARE, DATA, OR INFORMATION INCLUDING ANY DAMAGES RESULTING FROM COMPUTER VIRUSES OR OTHER MALICIOUS COMPUTER CODE.

5.4 BOTH PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (a) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (b) NEITHER PARTY HAS CONTROL OVER THE INTERNET, AND (c) 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 SERVICE(S).

5.5 THE SERVICE(S) OR CONTENT DELIVERED HEREUNDER ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE FOR INSURANCE UNDERWRITING, OR WITH CRITICAL HEALTH AND SAFETY OR ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS THAT REQUIRE FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, EMERGENCY RESPONSE, TERRORISM PREVENTION OR RESPONSE, LIFE SUPPORT, OR WEAPONS SYSTEMS ("HIGH-RISK ACTIVITIES"). ESRI SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF FITNESS OR HIGH-RISK ACTIVITIES.

5.6 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY USER FROM ESRI OR THROUGH OR FROM THE SERVICE(S) WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THE TERMS OF THIS USE AGREEMENT.

ARTICLE 6—LIMITATION OF LIABILITY

6.1 IN NO EVENT SHALL ESRI OR ITS THIRD-PARTY LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL, USE, DATA, ELECTRONICALLY TRANSMITTED ORDERS, OR OTHER ECONOMIC ADVANTAGE (EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR RELATED TO THE FOLLOWING: (a) THE USE OF, OR THE INABILITY TO USE, THE SERVICE(S); (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICE(S) RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICE(S) PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE(S); (c) UNAUTHORIZED ACCESS TO, OR ALTERATION OF, USER'S TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE(S); OR (e) ANY OTHER MATTER RELATING TO THE SERVICE(S) INCLUDING CONTENT USER MAY DOWNLOAD, USE, MODIFY, OR DISTRIBUTE FROM ESRI'S WEB SITE.

6.2 USER HAS SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF ANY DATA AND/OR ANY EQUIPMENT USED IN CONNECTION WITH THE SERVICE(S) AND WILL NOT MAKE A CLAIM AGAINST ESRI FOR LOST DATA, RERUN TIME, INACCURATE OUTPUT, WORK DELAYS, OR LOST PROFITS RESULTING FROM THE USE OF THE SERVICE(S).

6.3 USER AGREES TO HOLD ESRI HARMLESS FROM, AND USER COVENANTS NOT TO SUE ESRI FOR, ANY CLAIMS BASED ON USING THE SERVICE(S) AS INTEGRATED AS PART OF USER'S VALUE-ADDED APPLICATION, WHETHER IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE, INFRINGEMENT), OR OTHERWISE.

6.4 User agrees that the limitation of liability and disclaimers set forth in this Use Agreement will apply regardless of whether User has accepted any Service(s), software, data, or documents delivered by ESRI. User agrees that ESRI sets its prices and entered into this Use Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of bargain between the parties.

ARTICLE 7—INDEMNITY

ESRI is committed to respecting others' intellectual property rights and asks that User do the same. To the extent permitted by law, User agrees to defend, indemnify, and hold harmless ESRI and its subsidiaries; affiliates; officers; agents; cobranders; alliance members or other partners, employees, or agents from any claim or demand, including reasonable attorneys' fees, made by any third party due to, or arising out of, User's use of the Service(s) including any use by User's employees or agents (including uses as described in Article 1.1), User's connection to the Service(s), User's violation of the terms and conditions of this Use Agreement, or User's violation of any rights of a third party. ESRI may, at its sole discretion, terminate the accounts or access rights of Users who misappropriate, infringe, or otherwise violate a third party's intellectual property rights.

ARTICLE 8—ESRI'S PRIVACY POLICY

ESRI respects User's desire for privacy. ESRI's Privacy Policy can be found at www.esri.com/privacy. By using the ESRI Web site, User is consenting to the processing of User's registration Information by ESRI, by the data and/or service provider, and, if applicable, by any authorized ESRI distributor responsible for providing technical support to User and consenting to the terms of ESRI's Privacy Policy. If ESRI decides to change that policy, it will post the revised policy prominently on ESRI's Web site or otherwise bring it to User's attention, so that User is always aware of what ESRI does with User's registration Information.

ARTICLE 9—GENERAL INFORMATION

9.1 This Use Agreement constitutes the entire agreement between User and ESRI and governs User's use of the Service(s), superseding any prior agreements between User and ESRI (including, but not limited to, any prior versions of the Use Agreement). Also, User may be subject to additional specific terms and conditions that may apply when User accesses and uses other Service(s), ESRI software, third-party content, or third-party software. User may not assign or otherwise transfer the terms and conditions nor any rights granted herein. Articles 1, 4, 5, 6, 7, and 9 shall survive termination of this Use Agreement.

9.2 This Use Agreement shall be construed and enforced in accordance with, and be governed by, the laws of the United States of America and the State of California without reference to conflict of laws principles. User and ESRI agree to submit to the personal and exclusive jurisdiction of the courts located within the county of San Bernardino, California. The parties specifically disclaim the U.N. Convention on Contracts for the International Sale of Goods.

9.3 User acknowledges and agrees that the Service(s) are subject to the U.S. Export Administration Laws and Regulations. Diversion of such Service(s) contrary to U.S. law is prohibited. User agrees that none of the Service(s), software, data, or Information, or any direct product there from, are being, nor will be, acquired for shipping, transferring, or reexporting, directly or indirectly, to proscribed or embargoed countries or their nationals, nor will it be used for nuclear activities, chemical biological weapons, or missile projects unless authorized by the U.S. government. User certifies that User is not on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of the Treasury's Specially Designated Nationals List. User agrees to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or reexport as may be required. User further agrees to comply with all import laws, restrictions, and regulations applicable to the location where the Service(s) are received by the User.

9.4 Any breach of this Use Agreement will result in the irreparable harm to ESRI or its third-party licensors for which damages would be an inadequate remedy and, therefore, in addition to its rights and remedies otherwise available at law, ESRI shall have the right to an injunction, specific performance, or other equitable relief in any court of competent jurisdiction to prevent violation of these terms and without the requirement of posting a bond or undertaking or proving injury as a condition for relief.

9.5 The failure of ESRI to exercise or enforce any right or provision of the terms and conditions of this Use Agreement does not constitute a waiver of such right or provision. If a court of competent jurisdiction finds any provision of the terms of this Use Agreement to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the terms and conditions of this Use Agreement remain in full force and effect. Regardless of any statute or law to the contrary, any claim or cause of action arising out of, or related to use of, the Service(s) or the terms and conditions of this Use Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

9.6 Fees quoted to User are exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

SECTION B—SPECIAL TERMS AND CONDITIONS FOR USE WITH ArcGIS ONLINE SERVICES

ARTICLE 1—DESCRIPTION OF SERVICE

1.1 ArcGIS Online Services. ESRI, through its Web site, provides User with certain premium data and/or imagery Services. For details on premium services, see <http://www.esri.com/software/arcgis/arcgisonline/map-services.html>.

1.2 ESRI may make improvements and/or changes in its offerings of the Service(s), or prices described in this ESRI Web site at any time without notice. Changes are periodically made to the Web site and to the Service(s). ESRI may amend the ArcGIS Online Services Use Agreement or this or any other operative Addendum(s) at any time by posting the amended terms on this site.

1.3 Updates to the Service(s) described in Article 1.2 above are immediately made available to User upon their release for commercial availability as described in the online documentation and are provided to User at no additional charge.

ARTICLE 2—LICENSE

- a. Grant for ArcGIS Online Premium Services for ArcGIS Users.** Upon the User's payment of the applicable subscription fee, User is granted a nonexclusive, nontransferable, limited license to access the Service(s), whether through a desktop application or a server application interface, to which User subscribes. Such license includes the right to access the Service(s) made available on the Web site and to use the Service(s) to develop and integrate Service(s)-generated functionality into Web-enabled applications. The Service(s) shall be used solely by User for User's own internal business purposes, including Internet and extranet access and solely in conjunction with ESRI software or applications. User shall include the applicable ArcGIS Online Premium Services copyright attribution notice as set forth in the relevant data source. In the event User should (i) create a Web-enabled application using the Service(s) and, (ii) intend to deploy such application to third parties as an Application Service Provider (ASP), as defined below, then additional license or subscription fees will be due and payable to ESRI, and (iii) the User agrees to have an enforceable agreement in place with any customer or end user of such Web-enabled application that contains terms and conditions substantially similar to the terms and conditions of this Use Agreement and any operative Addendum(s) that may apply. For the purposes of this Article 2, an ASP shall mean any individual, business, government, or educational Users that intends to operate or use an application created that uses the Service(s) (i) outside of their business or organization, and (ii) in a commercial environment that generates income or is used to promote the generation of income. Additional ESRI software, data, or information not included in the Service(s) is available to User for use in conjunction with the Service(s), subject to a separate ESRI license agreement. User may require third-party owned and provided data that will require additional third-party terms and conditions that are set forth in Section C hereto. User shall maintain accurate business records, including accurate transactions records of its use of the Service(s) under this section. ESRI reserves the right to monitor User's accounts and transactions, and may audit upon reasonable written notice to User.
- b. Grant for ArcGIS Online Premium Services for API Users.** User is granted a nonexclusive, nontransferable, limited license to access the Service(s), and updates, to which User subscribes. Such license includes the right to access the Service(s) made available on the Web via alternative server application interfaces, and to use the Service(s) to develop and integrate Service(s) generated functionality into Web-enabled applications. The Service(s) shall be used solely by User and for User's own business purposes only. In the event User should (i) create a Web-enabled application using the Service(s) and, (ii) intends to deploy such application to third parties acting as an ASP as defined in (a) above, then additional license or subscription fees will be due and payable to ESRI. The User agrees to have an enforceable agreement in place with any customer or end user of such Web-enabled ASP application that contains terms and conditions substantially similar to the terms and conditions of this Use Agreement and any operative Addendum(s) that may apply. User may require third-party owned and provided data that will require additional terms and conditions that are set forth in Section C hereto. ESRI software, data, or documentation not included in the Service(s) is available to User for use solely in conjunction with the Service(s), or with ESRI Software, subject to a separate ESRI license agreement. User shall maintain accurate business records, including accurate transactions records of its use of the Service(s) under this section. ESRI reserves the right to monitor User's accounts and transactions, and may audit upon reasonable written notice to User.
- c. Commercial Use of Services.** Upon User's payment to ESRI of the applicable license fee(s) and the execution of this Use Agreement, User may access, download, view, copy, and print Services available on ESRI Web sites, for User's Commercial Use. As a condition of this grant of Commercial Use license, User agrees to have in place a license agreement with all of User's third party customers the terms of which protect the Intellectual Property rights of ESRI and its licensor(s) substantially similar to the terms and conditions herein. User shall maintain accurate business records, including accurate transactions records, of any such Commercial Use licenses which ESRI may audit upon reasonable written notice to User. On or before the renewal date of the authorized Commercial Use, User shall provide such written transaction records to ESRI. For the purposes of this Article 2 c, Commercial Use means User's authorized use of the Services wherein User provides the Services to third parties through authorized transactions that User and/or its third party customers generate income, or promote the generation of income from use.
- d. Limitations.** Except as may be expressly provided for elsewhere herein, User may not copy, download, store, cache, or otherwise distribute, publish, transmit, transfer, sell, or otherwise use the Service(s). User may not sell, rent, lease, lend, time-share, assign, or transfer any right to use the Service(s) to any third party without the prior express written permission of ESRI. Except for User's use of the Service(s) in conjunction with ArcGIS when User may download and store the results derived from User's use of the Service(s), User may not store the results derived from User's use of the Service(s) for the purpose of creating a value-added Web-enabled application that User intends to resell, license, or otherwise distribute to third parties. User may not reverse engineer, decompile, or disassemble the Service(s), except to the extent that such activity is permitted by applicable law notwithstanding this restriction, in order to protect ESRI or its suppliers' trade secrets and proprietary information contained in the Service(s). User may not create derivative Service(s) or add value to the Service(s) and thereafter resell or otherwise distribute the Service(s) as User's own services. User may

not use the Service(s) and reformat and display the Service(s) in an attempt to mirror and/or make commercial use of the ESRI Web site. All rights not specifically granted in this Article 2, License are reserved to ESRI.

- e. **Evaluation License—Bing Maps.** User may access and utilize data and/or imagery provided by Microsoft for the limited purpose of its own internal evaluation of Bing Maps subject to the terms of this Use License and (i) the period of User's evaluation shall not exceed one (1) consecutive ninety (90) day period only, (ii) use of the Service(s) are limited to evaluation, development and testing of applications, (iii) use of the Service(s) is limited to no more than 30,000 transactions per month, (iv) user may not download more than 250 points of interest at any one time, and (v) user may only access the Service(s) via the staging environment only.

ARTICLE 3—MISCELLANEOUS OR SPECIAL TERMS

None

SECTION C—TERMS AND CONDITIONS REQUIRED FOR USE OF THIRD-PARTY DATA AND/OR IMAGERY IN CONJUNCTION WITH ESRI ArcGIS ONLINE PREMIUM SERVICES

ESRI agrees to make available to the User certain Premium ArcGIS Online Services(s) that may include datasets and/or imagery owned by certain third-party suppliers ("Third-Party Data"). In the event User accesses or utilizes such Third-Party Data, User's use of such Third-Party Data will be governed, in addition to the terms and conditions of this Use Agreement, by the terms and conditions set forth in the Use of Data Restrictions page found at www.esri.com/legal/.

Third Party Data and/or Imagery Use Terms. The authorized use of any Third Party Data contained in the Service(s) accessed by User shall be governed by the following terms and conditions:

- A. If User utilizes Third Party Data and/or Imagery owned and provided by I-cubed as part of User's access to the Service(s), then such use will be subject to the following terms and conditions:
 - 1. User may use any data and/or imagery for User's own internal business purposes, and solely in conjunction with any ESRI ArcGIS product.
 - 2. User may cache the data and/or imagery on the client side for improved performance of the web-enabled application, or may delete the cache and access the image tiles from the server on an as needed basis.
 - 3. Data and/or any imagery downloads are not permitted, without the express prior written permission of ESRI. Additional terms and license fees will apply to any such use permission.
 - 4. In no event shall user resale any data and/or imagery provided by I-cubed.
- B. If User utilized Third Party Data and/or Imagery owned and provided by Microsoft as part of User's access to the Service(s), then such use will be governed by the following terms and conditions:
 - 1. Upon User's consent to this ArcGIS Online Premium Services Use Agreement, User expressly agrees that use of the any data and/or imagery provided by Microsoft as part of the Service(s) shall be governed by the terms and conditions of the Microsoft Terms of Use and Privacy Statement.
 - 2. Microsoft's Terms of Use are found at the following link: <http://go.microsoft.com/fwlink/?LinkId=21969>
 - 3. Microsoft's Privacy Statement is found at the following link: <http://go.microsoft.com/fwlink/?LinkId=21970>

Additional use restrictions and terms of use for any data and/or imagery provided by Microsoft as part of the Services are specified in Attachment No. 1 to this Use Agreement which is incorporated by reference herein and made part of this Use Agreement.

**ATTACHMENT NO. 1
TO THE
ArcGIS ONLINE PREMIUM SERVICES USE AGREEMENT**

As a condition of User's access and use of any imagery and/or data provided by Microsoft, User agrees to the following terms:

- a. User's access and use of the Services containing Microsoft data and/or imagery may only be used in applications developed in conjunction with ESRI software.
- b. User's access and use of the Services in a staging environment shall be for development, testing, and maintenance purposes only and not for commercial release product.
- c. User must prominently display or hypertext link the Microsoft "Privacy Statement" and the "Microsoft MapPoint Terms of Use" on the bottom of each web page containing Microsoft data and/or imagery, in the "About" section for desktop applications, or in the end user's terms and conditions for mobile applications, as set forth in Section C above.
- d. User and its end user may not use the Services: (a) to copy, store, archive, and create a database of the Service generated content, except that geocodes may be stored locally when used in conjunction with the Company Applications; (b) in violation of local, state, federal, or equivalent privacy or other laws or regulations; (c) to create routes by optimizing the order waypoints for multiple vehicles at the same time; (d) to deliver individual maneuvers of a calculated route such that the maneuvers are presented to the end-user, or the end-user is alerted to the maneuvers, in any manner synchronized with the end-user's sensor-based position along such route, including, for example, calculating the end-user's position as the end-user traverses the route and communicating a maneuver to the end-user as the end-user approaches the location pertaining to such maneuver; or (e) in any manner that threatens the integrity, performance, or availability of the Service.
- e. Users is prohibited from using or providing access to any bird's-eye imagery (or associated metadata).
- f. Road traffic data in the Service (the "Road Traffic Data") may only be used to calculate and/or derive Traffic Transactions (defined in this Section below) in order to deliver and display such Traffic Transactions on Internet-based web pages (or WAP or substantially similar wireless protocol-based pages, excluding messaging protocols such as email, SMS, MMS or other plain text or rich test messaging), subject to the following restrictions:
 - Road Traffic Data may only be used in combination with the Service and not separately. Users may not deconstruct or mix and match the Road Traffic Data with traffic data from another supplier or associate or add any traffic data to or in combination with the Road Traffic Data. Users may only make available the Road Traffic Data for free, and only for the personal use of end users
 - Road Traffic Data may not be licensed to or used by: (i) radio/television stations; (ii) newspaper services;
 - (iii) any websites owned by (i) and (ii); or, (iv) any government-sponsored traveler information services, including, without limitation 511 services, consumer websites, or variable message signs on roads.
 - Road Traffic Data may not be licensed or used: (i) for television or radio broadcast; (ii) as part of or in conjunction with weather related services; (iii) for animation; (iv) for storing or the provision of continuously updated traffic data or alerts to end users, or (v) to develop a standalone (traffic only) traffic application.
 - Road Traffic Data may not be used by Company, Known Users or made available by Company or Known Users to its end users for use, on an Accurate Positioning Device. "Accurate Positioning Device" means a device or system with the capability to determine its physical location within a positioning accuracy of 200 meters or less. If a device which is not an Accurate Positioning Device based on the foregoing definition has the capability to transmit the Data to an Accurate Positioning Device, then such device will be considered an Accurate Positioning Device. "Traffic Transaction" means the provision of any one of the following: (i) presentation of the Road Traffic Data on or related to a map which is presented through icon(s), text or voice; (ii) presentation of the Road Traffic Data in connection with driving directions, direct or indirect use of the Road Traffic Data to determine travel time for all or any portion of a route, and presentation of available traffic information along a route, all through icon(s), text or voice; (iii) direct or indirect use of the Road Traffic Data to calculate or create routes or alternate routes; and (iv) audio or textual presentation of the Road Traffic Data in a manner that does not involve use of a map or map information and which does not include (i)–(iii) above.
- g. Company and Known Users shall not use the Service to monitor or track the location or movement of Asset(s). "Asset" means one of any of the following classes: person, vehicle, device, or other mobile objects.

- h. Microsoft data and/or imagery is provided AS-IS without warranty and use of such data and/or imagery accessed by the User shall be at user's sole risk.
- i. If User or its end user licenses any application that contains any Microsoft data and/or imagery accessed as part of the Services to the U. S. Government, the following terms shall apply:
 - a) *Cost or Pricing Data/Commercial Item.* Microsoft represents that the Service is a "Commercial Item" as defined in FAR Part 2.101. Company acknowledges that Microsoft will not, under any circumstances, accept Service Orders under this Use Agreement that would require the submission of cost or pricing data as defined by 48 CFR 15.4 or the submission of noncommercial items.
 - b) *Clauses Incorporated by Reference.* The following FAR clauses are incorporated by reference into this Use Agreement for any orders which are placed on behalf of the United States Federal Government. The version of each clause shall be that version incorporated into Company's prime contract with a United States Federal Government customer.

FAR Clause	Title
52.219-8	Utilization of Small Business Concerns
52.222-26	Equal Opportunity
52.222-35	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.
52.222-36	Affirmative Action for Workers with Disabilities.
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees
52.222-41	Service Contract Act of 1965
52.222-50	Combating Trafficking in Persons
52.222-51	Exemption from Application of Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements
52.222-53	Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels

- c) *Disputes under a Government Contract.* Regarding any claims, controversies or disputes concerning matters which are subject to the Contract Disputes Act applicable to the prime contract between you and a United States Federal Government customer, the Parties' rights shall be determined in accordance with that Act. In the event that Microsoft is affected by a decision of the U.S. Government under the prime contract, and you do not elect to take Microsoft's claim forward on your own, Microsoft will have a right of indirect claim and appeal to include your reasonable cooperation in filing and sponsoring a claim against the United States Federal Government customer, which right may be exercised within fifteen (15) business days of your notice Microsoft that the you will not proceed with a claim. Any election by Microsoft to pursue a claim shall be at Microsoft's sole expense, and Microsoft will be responsible for all activities associated with prosecution of Microsoft's appeal.
- d) *Disclosure of Confidential Information.* You may disclose Microsoft confidential information contained in this Use Agreement or Addendum to a United States Federal Government customer solely as required under your prime contract with United States Federal Government Customer, provided you identify such confidential information in writing as being subject to 18 U.S.C. Section 1905 (Trade Secrets Act) and 5 U.S.C. Section 552 (Freedom of Information Act).