

Licensing Terms of Use

Documented Changes



Document Updated: E204 – Master Agreement

Date of Update Implementation: February 9, 2024

Overview: The Master Agreement (E204), 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: Impacted due to contextual, clarification, grammar or Terms & Conditions changes, which will impact future version use.

General Changes: *Most changes are grammatical changes or updates to wording to allow for better flow of what the statement is supposed to imply. Major changes described below.*

Where: [Article B.1 General Use Restrictions](#)

Change:

- b. Distribute or provide direct access to Services or Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or **Dynamic Link Libraries**.

Why: We are spelling the abbreviations out for clarity.

Where: [Section B.4 Limitation of Liability](#)

Change:

B.4.1 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; ~~or~~ (b) Neither Customer, Esri nor any Esri authorized distributor or third-party licensor will be liable for any direct damages exceeding the applicable license fees, or current subscription fees, or Services fees paid or owed to Esri ~~for the Esri Offerings or Services giving rise to the cause of action during the twelve (12) month period prior to the date upon which the related claim arose.~~

Why: This Article was split up to more clearly distinguish between the a) indirect and b) direct damages and also to follow the industry standard practice of the direct damages being bound by a time period.

Where: Section B.4 Limitation of Liability

Change:

B.4.2 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 ~~or any applicable law or regulation.~~

Why: We are eliminating this broad carve out to give greater effect to our limitation of liability.

Where: Section B.5.4 Conditions of Indemnification

Change:

B.5.4 Conditions for Indemnification. As conditions for indemnification, ~~but for those defined as Infringement Claims (see B.5.2.c)~~ 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.

Why: B.5.2c describes cases when Esri does not have an infringement indemnification obligation. Thus, to simplify this section, we do not need to clarify that the conditions for indemnification do not need to be met in those cases. This is a simplification of the clause.

Where: Section B.9.4 Restriction of Solicitation

Change: ~~**Reserved. Restrictions on Solicitation.** Neither party will solicit for hire any employee of the other party who is associated with the performance of Services during the performance of the Services and for a period of 1 year thereafter. This does not restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.~~

Why: We are eliminating this clause. While we believe it is narrowly drawn so as to be enforceable, prevailing law is ambiguous concerning business-to-business non-solicitation clauses and are increasingly out of favor in certain jurisdictions where Esri does business.

Where: Section B.9.11 US Government Customer

Change:

B.9.11 US Government Customer. 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 Products under applicable public procurement law, such rights will extend only to the portions affected. ~~ArcGIS Online has been granted FedRAMP tailored low authorization but does not meet higher security requirements including those found in DFARS 252.239-7010.~~

Why: Removing this last sentence of this paragraph now that ArcGIS Online is in the final stages of FedRAMP Moderate authorization, which allows federal customers to use ArcGIS Online for uses that require higher security.