

TERMS AND CONDITIONS FOR GOODS AND SERVICES

1. INTERPRETATION

- 1.1. "Agreement" means the agreement between ESRI Australia and the Supplier for the supply of the Deliverables which, by virtue of clause 2.1, includes these terms.
- 1.2. "Deliverables" means goods and/or services supplied to ESRI Australia under an Order.
- 1.3. "Goods" means goods comprised in Deliverables.
- 1.4. "Services" means services comprised in Deliverables.
- 1.5. "GST" has the same meaning as in section 195-1 of *A New Tax System (Goods and Services Tax Act 1999)*, as amended from time to time.
- 1.6. "Order" means an offer to acquire Deliverables, constituted by a written purchase Order from ESRI Australia approved by an authorised representative of ESRI Australia and issued by ESRI Australia's Purchasing Department.
- 1.7. "Order Number" means the identifying number shown on an Order.
- 1.8. "Prices" means the prices, fees, costs and charges quoted or charged by the Supplier to ESRI Australia for the supply of Deliverables.
- 1.9. "Supplier" means the person who supplies Deliverables to ESRI Australia. Where the Supplier comprises more than one person, these Terms bind each person comprising the Supplier collectively and individually. In these Terms a person includes an individual, company, body corporate, body politic, partnership, joint venture, association or any other entity (whether or not incorporated).
- 1.10. "Tax Invoice" has the same meaning as in section 195-1 of *A New Tax System (Goods and Services Tax Act 1999)*, as amended from time to time.
- 1.11. "Terms" means these terms and conditions as varied in accordance with clause 2.2.

2. TERMS

- 2.1. These Terms are incorporated in the Agreement and apply to the exclusion of any other terms and conditions, including any quotation made to ESRI Australia, or the standard terms of supply of the Supplier.
- 2.2. These Terms may only be varied by additional terms specified in writing by ESRI Australia on an Order or by written agreement signed by both ESRI Australia and the Supplier.
- 2.3. An Order constitutes an offer to the Supplier to supply Deliverables to ESRI Australia on these Terms. The offer may only be accepted by the Supplier unconditionally and without variation to these Terms.

3. CONFIDENTIALITY

- 3.1. The Supplier is not to disclose or otherwise make available any information provided by or obtained from ESRI Australia in relation to this Agreement except:
 - i. to its employees on a need-to-know basis;
 - ii. with ESRI Australia's written consent;
 - iii. if required by law; or
 - iv. if it is in the public domain, except as a result of a breach of this Agreement.
- 3.2. The Supplier is to deal with personal information provided by or collected on behalf of ESRI Australia as if it were ESRI Australia for the purpose of the *Privacy Act 1988* (Cth). The Supplier is to do all things that a reasonable and prudent person would do to ensure that all ESRI Australia's systems and information are protected at all times from

unauthorised access or use by a third party or misuse, damage or destruction by any person and report any such incident to ESRI Australia's immediately.

4. QUOTATIONS AND ORDERS

- 4.1. A quotation to ESRI Australia from the Supplier does not bind ESRI Australia to accept supply of the Deliverables specified in the quotation unless ESRI Australia accepts the quotation by issuing an Order to the Supplier.
- 4.2. An Order is not deemed to have been issued and is not capable of acceptance by a Supplier unless the Order bears an Order Number.
- 4.3. ESRI Australia has no liability to any Supplier if the Deliverables are supplied contrary to these Terms, and the supply of such Deliverables is entirely at the Supplier's risk.
- 4.4. If an Order issued to the Supplier cannot be performed by the Supplier in accordance with the Agreement, the Supplier must advise ESRI Australia within one (1) business day after the Order is sent by ESRI Australia to the Supplier. On receipt of that notice, ESRI Australia may, by written notice to the Supplier, cancel the Order or confirm the Order with such varied terms as may be agreed between the parties.

5. SUITABILITY OF DELIVERABLES

- 5.1. Deliverables described in an Order to the Supplier must be supplied in accordance with the Agreement.
- 5.2. Deliverables which are not supplied in accordance with the Agreement will not be accepted by ESRI Australia unless the Supplier notifies ESRI Australia's Purchasing Department prior to the supply of the Deliverables and supplier has received prior written approval from ESRI Australia to supply the Deliverables.
- 5.3. The Supplier must comply with all laws and regulations applicable to the supply of the Deliverables.
- 5.4. Without limiting ESRI Australia's other rights and remedies, where in the opinion of ESRI Australia, Deliverables are not supplied in accordance with the Agreement, ESRI Australia may require the Supplier to:
 - i. supply the Deliverables again;
 - ii. supply other Deliverables to ESRI Australia to the value expressed in the Order;
 - iii. otherwise rectify the deficiency in the Deliverables; or
 - iv. pay to ESRI Australia upon demand any costs and expenses incurred by ESRI Australia in engaging another person to supply the Deliverables.

6. PRICES

- 6.1. All prices quoted to ESRI Australia by the Supplier are fixed and all must separately state the GST payable.
- 6.2. Unless otherwise expressly stated in an Order, prices include all taxes, duties and insurances.
- 6.3. In relation to any GST payable for a taxable supply (as defined under GST law) by the Supplier to ESRI Australia under this agreement the Supplier:
 - i. Must only increase the Prices in accordance with the GST payable, where the Prices are GST exclusive; and
 - ii. Where the Prices are GST inclusive, warrants that they were calculated in accordance with subparagraph (i).

- 6.4. If GST is payable, the Supplier must provide ESRI Australia with a Tax Invoice, if applicable, an adjustment note (as defined under GST law) and any other document or assistance required by law for ESRI Australia to claim any available Input Tax Credit.

7. INVOICES AND PAYMENT

- 7.1. The Supplier may render an invoice to ESRI Australia at the time of, or after the supply of, Deliverables. ESRI Australia will not process invoices until all requirements of the Agreement have been complied with. Invoices must be completed to the satisfaction of ESRI Australia and must state the following:
- i. the applicable Purchase Order Number;
 - ii. full particulars of the Deliverables supplied, the nature of the Deliverables and each date on which they were supplied;
 - iii. for Goods, the quantity of Goods delivered; and
 - iv. the name and telephone number of a contact person of the Supplier.
- 7.2. Invoices rendered to ESRI Australia at the time of provision of the Deliverables must be countersigned by an authorised representative of ESRI Australia or be accompanied by a delivery docket countersigned by an authorised representative of ESRI Australia as evidence that the Deliverables have been supplied. Invoices must be forwarded to ESRI Australia to the attention of ESRI Australia's Accounts Department.
- 7.3. Subject to this clause and unless otherwise expressly provided in the Agreement, ESRI Australia will pay properly rendered invoices within 30 days after receipt.
- 7.4. Payment will be made to the Supplier by Electronic Fund Transfer (EFT). The Supplier shall provide ESRI Australia with all the information required to enable EFT to be made to the Supplier by ESRI Australia. Such information includes bank name and branch, account name, BSB number, account number and type. Alternative methods of payment including cheque, cash or credit card will only be accepted as specified by written agreement signed by both ESRI Australia and the Supplier.
- 7.5. If ESRI Australia, acting reasonably, disputes an invoice, it is not obliged to pay the disputed portion of the invoice until the dispute is resolved to ESRI Australia's satisfaction.
- 7.6. ESRI Australia may set off against any amounts ESRI Australia is due to pay the Supplier all or any part of any monies due or which may become due by the Supplier to ESRI Australia by way of guarantee, indemnity or otherwise.

8. PACKING AND LABELLING

- 8.1. The Supplier must package Goods in accordance with any requirement specified in the Order, and if none are specified, in such a way and by such means as will ensure that:
- i. Goods are delivered to ESRI Australia in good order and condition and free from damage; and
 - ii. Goods may be conveniently and properly inspected on delivery.
- 8.2. The Supplier must, at all times, comply with the requirements of any carrier in packing and packaging Goods.

9. DELIVERY AND ACCEPTANCE

- 9.1. All Deliverables specified in the Order must be supplied by the supplier within the time and in accordance with any instructions specified in the Order or, if none are specified, within 5 business days after the Supplier received the Order. If Deliverables are not supplied in accordance with

the Agreement, ESRI Australia may, at its discretion, cancel the Order without liability to the Supplier.

- 9.2. A delivery docket(s) must be provided with Deliverables which are not accompanied by an invoice. The delivery docket must state the following:

- i. the applicable Order Number;
- ii. the name of the contact stated in the Order;
- iii. full particulars of the Deliverables supplied, the nature of the Deliverables and each date on which they were supplied;
- iv. For Goods, the quantity of Goods delivered; and
- v. The name and telephone number of a contact person of the Supplier.

- 9.3. Goods will not be taken to have been delivered to ESRI Australia unless acknowledged by signature of an authorised representative of ESRI Australia on the delivery docket or invoice.

- 9.4. An authorised representative of ESRI Australia signing a delivery docket or invoice does not infer acceptance of the quality or quantity of the Goods received.

- 9.5. Goods must be delivered and unloaded from vehicles by the Supplier during normal site hours on the delivery date specified in the Order, unless alternative arrangements have been made in writing by ESRI Australia.

- 9.6. Risk of loss in the Goods passes to ESRI Australia on acceptance by ESRI Australia in accordance with the Agreement. Title to the Goods passes to ESRI Australia on delivery.

- 9.7. The Supplier is responsible for making good and rectifying shortages or damage to Goods caused by the Supplier, the carrier or other causes and, without limiting ESRI Australia's other rights and remedies, must, at the option of ESRI Australia, make good or replace Goods or refund the consideration agreed to by ESRI Australia.

- 9.8. The Supplier is responsible for all costs or charges incurred in returning Goods to the Supplier.

10. WARRANTIES

- 10.1. The Supplier:

- i. warrants that the Supplier will supply Services with due care and skill and in a proper and workmanlike manner and according to the Agreement; and
- ii. must ensure that at all times while representing the interest of ESRI Australia or on ESRI Australia's premises, its employees, agents and contractors conduct themselves in a manner that will not bring discredit upon ESRI Australia or cause nuisance to ESRI Australia, its employees or other persons dealing with ESRI Australia from time to time.

- 10.2. The Supplier warrants that it is competent and has the necessary skills and experience and staff to promptly and efficiently supply the Deliverables and that its employees, agents and contractors are competent and has the necessary skills and experience to support the Supplier to promptly and efficiently supply the Deliverables.

- 10.3. All express and implied warranties under statute or general law as to merchantability, description, quality, suitability or fitness of any goods or services apply to the Deliverables and are not excluded or limited.

- 10.4. The Supplier warrants that Goods:

- i. are of merchantable quality;
- ii. are fit for the purposes for which the Goods are ordinarily used or those stated in the Order;
- iii. are free from any defects in materials or workmanship; and

- iv. conform to any applicable Australian Standards.
- 10.5. The Supplier must provide to ESRI Australia or hold for the benefit of ESRI Australia, any warranty offered by a manufacturer in respect of the Goods and, if ESRI Australia requires, produce written evidence of any such manufacturer's warranty and ESRI Australia's entitlement under it.
- 10.6. In performing its obligations under the Agreement:
- i. The Supplier represents and warrants that neither the Supplier nor any of its personnel has been convicted of any offence involving slavery and human trafficking; and having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
 - ii. The Supplier must notify ESRI Australia as soon as it becomes aware of any actual or suspected slavery or human trafficking in its operations or supply chain.
 - iii. The Supplier shall provide information and an attestation on its operations and supply chain on request for the purpose of ESRI Australia's modern slavery statement.
 - iv. ESRI Australia may terminate this Agreement with immediate effect by giving written notice to the Supplier if the Supplier breaches this clause 10.
- 11. INDEMNITY**
- 11.1. The Supplier acknowledges that a breach of the Agreement by the Supplier may result in loss or damage to ESRI Australia.
- 11.2. The Supplier releases and discharges ESRI Australia from all liability, of whatever kind, from damage or injury suffered by the Supplier, its employees, agents and contractors as a result or as a consequence of, or which might arise from supply of the Deliverables under the Agreement.
- 11.3. The Supplier indemnifies ESRI Australia against all actions, claims, demands expenses and liabilities (including full legal costs) suffered or incurred by ESRI Australia as a result of or in connection with any breach of the Agreement by the Supplier, its employees, agents or contractors.
- 12. GRATUITY**
- 12.1. The Supplier must not make any offer of payment in any forms by way of payment, discount, rebate offer, gift, intangible benefit or other benefit to any employee, agent, contractor or other person associated with ESRI Australia or any related body corporate (as defined in the *Corporations Act 2001*) of ESRI Australia.
- 13. INSURANCE**
- 13.1. The Supplier must maintain such insurance cover as ESRI Australia may, from time to time, reasonably require, including third party motor vehicle insurance and, where services are being supplied, professional indemnity insurance.
- 13.2. In relation to any public liability insurance required by ESRI Australia, the Supplier must ensure that the policy includes:
- i. a clause enabling one insured person to claim against the insurer where another insured person would have been entitled to claim but is precluded from doing so for any reason; and
 - ii. a cross liability clause enabling one insured person to claim against the insurer even if the party making the claim against the insured person is also insured under the policy.
- 13.3. The Supplier:
- i. must effect and maintain statutory workers' compensation insurance;
 - ii. irrevocably waives all rights it may (but for this clause) have had from time to time against ESRI Australia in relation to or in connection with any claim by any employee of the Supplier.
- 13.4. The Supplier must maintain product liability insurance policy in respect of Goods for their full value.
- 13.5. While risk in the Goods remains with the Supplier, the Supplier must insure the Goods with a reputable insurer for their full replacement value in respect of any loss and damage of any kind however caused.
- 13.6. At the request of ESRI Australia, the Supplier must provide certificates of currency of its insurance policies or such other documentary evidence as may be required by ESRI Australia.
- 14. WORKPLACE HEALTH AND SAFETY ISSUES**
- 14.1. The Supplier must comply with all obligations imposed on it by law including any relevant Workplace Health and Safety legislation.
- 14.2. The Supplier must, when using ESRI Australia's premises or any facilities occupied by ESRI Australia, comply with all ESRI Australia directions, procedures and policies from time to time relating to occupational health and safety, security or otherwise in relation to the use of and access to ESRI Australia's premise or in regard to any facility on ESRI Australia premises.
- 14.3. The Supplier must ensure that:
- i. no injury or damage is caused to persons or property; and
 - ii. no trespass to property is committed, arising out of or in connection with the Agreement, by it or any of its employees, agents or contractors.
- 14.4. Where chemicals are included in or used in connection with the supply of Deliverables, the Supplier must provide ESRI Australia in respect of each chemical product, a current material safety data sheet.
- 14.5. The Supplier must, where appropriate, supply adequate health and safety information concerning any goods included in or used in connection with the Deliverables and ensure that the goods will be safe when properly used, supplied, maintained and stored. The Supplier must, at all times, keep ESRI Australia informed of all relevant information which becomes known to the Supplier concerning the use, supply, maintenance and storing of any such goods.
- 14.6. All information required to be provided to ESRI Australia in accordance with paragraphs 15.1 and 15.2 must be provided by the Supplier to ESRI Australia's nominated contact.
- 15. INTELLECTUAL PROPERTY**
- 15.1. ESRI Australia grants the Supplier a non-exclusive, global, revocable licence to the end of the Warranty Period (excluding the right to sublicense) to use ESRI Australia intellectual property for the purpose of fulfilling this Agreement.
- 15.2. For intellectual property provided by the Supplier, the Supplier grants ESRI Australia a perpetual, global, royalty-free, non-exclusive, irrevocable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that intellectual property.
- 15.3. Rights to all intellectual property created for the purpose of, or as a result of, this Agreement vest in ESRI Australia.



16. TERMINATION

- 16.1. Without limiting ESRI Australia's other rights and remedies, ESRI Australia may terminate the Agreement if the Supplier:
 - i. breaches a clause of this Agreement which is not capable of remedy;
 - ii. breaches a clause of this Agreement that is capable of remedy but the Supplier fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
 - iii. commits an Act of Insolvency, subject to the *Corporations Act 2001* (Cth) and any relevant Court order;
- 16.2. Esri Australia may terminate this Agreement by convenience and provide the Supplier with reasonable written notice of such termination.
- 16.3. Should ESRI Australia exercise the above termination rights the Supplier must (where the Supplier has been paid upfront) repay the proportion of any such payment that applies to unperformed services.

17. GENERAL

- 17.1. The Agreement is governed by and must be construed in accordance with the laws of the State of Queensland.
- 17.2. All rights given to ESRI Australia by the Agreement may be exercised by any related body corporate (as defined in the *Corporations Act 2001* (Cth)) of ESRI Australia.
- 17.3. The Agreement is personal to the Supplier and the rights and obligations under it cannot be transferred or assigned.
- 17.4. This Agreement does not create a partnership, joint venture, agency or employment arrangement and the Supplier is not to represent otherwise.
- 17.5. If any part of this Agreement is or becomes illegal, void or unenforceable, this does not invalidate the rest of this Agreement.
- 17.6. Clauses 10, 11, 13, 14 and 15 survive the termination or expiration of this Agreement.
- 17.7. No waiver of any breach of the Agreement by the Supplier is binding on ESRI Australia unless it is in writing and signed by ESRI Australia and any such waiver is not a waiver of any other breach.

Signed for and on behalf of: ABN:
(Company Name) (Australian Business Number)

Of:
(Address)