

## **Terms and Conditions of Licensing and Use of *con terra service.monitor***

Legal purchase of the *con terra service.monitor* entitles the Licensee to use the *con terra service.monitor* in accordance and compliance with the Terms and Conditions of Licensing and Use (the "Terms and Conditions") set forth below. By installing and taking the *con terra service.monitor* into use, the Licensee recognises and agrees to be bound by the following Terms and Conditions.

### **Art. 1 Subject Matter of Licence**

*con terra* - Gesellschaft für Angewandte Informationstechnologie mbH (the "Licensor") is the owner and holder of all the rights to the *con terra service.monitor*. The Licensor agrees to grant the Licensee, subject to these Terms and Conditions, a non-exclusive, non-transferrable and temporally defined right of use (licence) to this software and the appurtenant documentation.

For the components of any third-party suppliers used, only the terms and conditions of licensing and use of the producer of the relevant component which can be found on this data carrier shall apply.

The Licensor has the right to update and/or revise the design and content of the product at any time. Updated or revised products shall likewise be subject to the provisions of this agreement.

### **Art. 2 Rights of Use, Misuse**

The Licensee recognises the rights of the Licensor to the product (patents, copyrights, trade marks, business secrets) without reservation. This also applies to the exclusive copyright to all analogue and digital documentation. Copies of the product and the appurtenant documentation may be made to the extent needed for backup purposes.

The right of use to the *con terra service.monitor* encompasses the operation of one Web server application and includes the right to deploy the end-user application on the Internet or an intranet. The right of use also includes the installation on dedicated failover servers within an Active-Passive cluster.

Each standard license contains an additional stage license for *con terra service.monitor*. This entitles the licensee to install for the purpose of developing and / or testing the *con terra service.monitor* application on another computer, where it is operated as a non-operational, staging server.

The following are not permitted:

- Use of the software beyond the right of use as set forth in Art. 2.
- Making the software or appurtenant materials available to third parties in any form or manner (e.g. sale, letting, leasing, or circulation free of charge).
- The resale of license rights or the use of such rights by unauthorized parties is prohibited.
- Use as an application service provider (ASP). Special ASP licenses are available for this purpose

Any unlicensed use constitutes a violation of the Licensor's propriety rights and may result in criminal prosecution. The Licensee undertakes to take all necessary measures to protect the rights of the Licensor and in particular to prevent the unauthorised use, reproduction, circulation or publication of the software.

The use of product component service.monitor Analytics shall be admissible only in connection with the simultaneous use of specified Esri standard software products<sup>1</sup>; the licensor reserves the right to change the scope of such (Esri) products at any time.

### **Art. 3 Material Defects**

The product has been tried and tested for proper functioning in the case of proper application and use. No warranty is given for its suitability for the use intended by the Licensee. Any defects which occur must be notified to the Licensor without delay. In the case of justified claims, remedy will be effected by repair or replacement. A claim to redhibition of contract or a reduction in the purchase price shall only exist where attempts at repair or replacement within a reasonable time (at least 4 weeks) fail. All warranty claims shall lapse 12 months after delivery.

### **Art. 4 External software – open source software**

The software may contain components of external software and/or open source software for which special licence conditions are to be observed. Insofar as this is necessary for the lawful use of the software, the respective applicable external or open source software licence conditions will be provided in the folder „license\third-party“ of this software. The licensee undertakes only to install the software when he also agrees with these external software or open source software licence conditions, which primarily have priority over these conditions of use. If the licensee does not agree to them, he will refrain from installing and using the software.

### **Art. 5 Defects of Title**

If Licensee is subject to any demand or claim, or held liable by any third party on grounds of lack of original software or other intellectual property rights infringement arising from any parts of the *con terra service.monitor*, Licensee must inform Licensor accordingly without delay and consult and agree with Licensor on the future mode of proceeding.

If so requested, Licensee will allow Licensor to take the lead in settling the matter with the third party, if need be also through legal action.

Licensor hereby indemnifies Licensee against all damages, costs and expenses arising from or incurred by reason of any actual or alleged infringement of intellectual property rights in consequence of the possession or use in accordance with these Terms and Conditions of any parts of the *con terra service.monitor*, subject to the following:

- Licensee shall promptly notify Licensor in writing of any infringement or alleged infringement of which Licensee has notice;
- Licensee must make no admissions without Licensor's prior written consent.

Without prejudice to any other remedies available to Licensee in law or under this agreement, if at any time an allegation of infringement of intellectual property rights is made in respect of any parts of the *con terra service.monitor*, or if such an allegation is likely to be made, Licensor may at its own expense, either:

- obtain a right for Licensee to continue using the infringing parts of the *con terra service.monitor*; or

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<sup>1</sup> Currently, Esri JavaScript Web API

- modify or replace the infringing parts of the *con terra service.monitor* so as to avoid the infringement, without detracting from the overall performance of the *con terra service.monitor*.

#### **Art. 6 Limitation of Liability**

Licensor's liability for damages in case of minor negligence (so-called "leichte Fahrlässigkeit") of Licensor, its statutory representatives and Vicarious Agents shall be excluded, provided the liability does not concern any material contractual obligations (so called "Kardinalspflichten"), damages arising from injury to life, limb or health or from violation of a guarantee and as far as there are no claims under the Product Liability Act.

To the extent Licensor is liable in accordance with the provisions above, Licensor's liability shall be further limited as follows: Licensor shall not be liable for non-foreseeable damages which are not typical for Grant of Licenses and which are neither based upon a violation of a guarantee, nor upon malicious or willful acts (or upon malicious or willful acts of Licensor's statutory representatives or its Vicarious Agents), nor are caused by injury to life, limb or health, nor are damages to be compensated in accordance with the Product Liability Act.

#### **Art. 7 Term of Validity**

The right of use shall come into force on payment of the licence fee to the Licensor.

- (a) When buying the software the licence is granted for an indefinite term. If the right of use is no longer exercised by the Licensee or is revoked, the Licensee has a duty to destroy all product software, together with documentation, which is in his/her possession or to return the same at his/her expense to the Licensor. The Licensee has a duty to protect the proprietary rights of the Licensor even beyond the period of use.
- (b) When subscribing the software the terms of use are limited to one treaty year, beginning from the 1st calendar day of the month following the delivery of the software. The term of use shall be extended automatically for one further treaty year, unless notice of termination is given in writing by the licensee or the licensor three months prior to the expiration of the treaty year.

This shall not affect the right of extraordinary termination (without notice). The term of use shall end through termination by the licensor if, among other things, the licensee, (i) after a second reminder does not settle the yearly license fee, (ii) uses the software in an inadmissible manner or infringes the copyright or right of use, or (iii) a court order for the opening of insolvency proceedings concerning licensee's assets is filed.

At the end of the term of use, the licensee shall be obligated to return to the licensor all original data media and to uninstall/delete or irrecoverably destroy all copies of the software, including the documentation. The licensor may demand the receipt of a written confirmation of such uninstallation/deletion and irrecoverable destruction.

#### **Art. 8 Final Provisions**

Amendments or additions to these Terms and Conditions shall only be valid if made in writing. Should any of the provisions of these Terms and Conditions be or become invalid, this shall not affect the validity of the other provisions. Any invalid provision shall be replaced by a valid provision whose effect enables the economic purpose intended by these Terms and Conditions to be fulfilled. This Agreement shall be governed by the laws

of the Federal Republic of Germany without reference to its conflict of laws principles. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG), the application of which is expressly excluded. The place of jurisdiction for all disputes arising from and in connection with these Terms and Conditions is Münster (Germany).

Münster, 11/27/2015

con terra GmbH