



Commonwealth of Virginia
Virginia Information Technologies Agency

SOFTWARE AND SERVICES

Optional Use Contract

Date: April 5, 2016

Contract #: VA-090403-ESRI

Authorized User: All Public Bodies to include VITA as defined by §2.2-4301 and referenced by §2.2-4304 of the *Code of Virginia*

Contractor: Environmental Systems Research Institute, Inc. (ESRI)
380 New York Street
Redlands, CA 92373

FIN: 95-2775732

Contact Person: Nhi Russell
Phone: (888) 377-4575 Ext. 1-6117
Fax: (909) 307-3083
Email: nrussell@esri.com

Pricing: see eVA catalog or contact ESRI for quote

FOB: Destination

Delivery: 30 Days ARO

Term: April 6, 2016 – April 5, 2017

Payment: Net 30 days
For Additional Information, Please Contact:

Contract Information:
Supply Chain Management
Virginia Information Technologies Agency
John Tackley
Phone: 804-416-6165
Email: john.tackley@vita.virginia.gov
Fax: 804-416-6361

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

**MODIFICATION #8
TO
VITA CONTRACT NUMBER VA-090403-ESRI / ESRI CONTRACT NO. 2009MPA2064
BETWEEN
THE VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.**

This MODIFICATION #8 is an agreement between the **Virginia Information Technologies Agency (VITA)**, hereinafter referred to as "State" or "Commonwealth" or "VITA", and **Environmental Systems Research Institute, Inc.** hereinafter referred to as "Contractor" or "ESRI" relating to the modification of the above Contract. This Modification #8 is hereby incorporated into and made part of Contract VA-090403-ESRI, as revised.

The purpose of this Modification #8 is to modify the Agreement as follows:

The parties agree to the following:

1. Contract VA-090403-ESRI will automatically renew annually on April 4th, unless cancelled by either party by written notice at least 45 days in advance of the annual renewal date of April 4th.
2. The term of contract VA-090403-ESRI is hereby extended for a period of one (1) year and will automatically renew in one (1) year increments, not to exceed five (5) years, or until cancelled by either party, whichever occurs first.
3. Notwithstanding anything to the contrary in the Contract, including the License Agreement Addendum, VITA acknowledges and agrees that Contractor has the unilateral right to update its pricing by either modification to the Contract, or by updating ESRI's eVA catalog.
4. Any updates or modifications to the terms of the Contract require a written modification to the Contract other than (i) pricing, (ii) Articles 1 through 4 including E300 Scope of Use terms pursuant to Section 9.1 of the Contract, and (iii) new terms for Contractor offerings not covered under the Contract.

The term of this modification #8 shall begin on April 6, 2016.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090403-ESRI and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED. PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT. ELECTRONIC SIGNATURES WILL BE CONSIDERED AS ORIGINAL SIGNATURES.

ESRI

BY:

NAME:

TITLE:

DATE:



CHRIS JOHNSON

mgr, commercial - EAST COAST PARTS

3/29/16

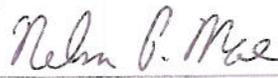
VITA

BY:

NAME:

TITLE:

DATE:



NEILSON P. MOORE

CIO

4/9/16

**Virginia State Contract No. VA-090403-ESRI /
ESRI Master Purchase Agreement No. 2009MPA2064
Abstract**

| | |
|--------------------|--|
| Date: | April 6, 2009 |
| Contract #: | VA-090403-ESRI / ESRI Agreement No. 2009MPA2064 |
| Authorized User: | Virginia State Agencies, Institutions and Governmental Subdivisions |
| Contractor: | Environmental Systems Research Institute, Inc. (ESRI) Charlotte Regional Office 3325 Springbank Lane, Suite 200 Charlotte, NC 28226-3343 |
| FIN: | 95-2775732 |
| Contact Person(S): | <u>See page 2</u> |
| Pricing: | see eVA catalog or <u>contact ESRI</u> for Quote |
| FOB: | Origin with freight charges prepaid and added to the invoice |
| Delivery: | 30 days from receipt of order |
| Term: | April 6, 2009 – April 5, 2012 |
| Payment: | 30 Days after receipt of order/invoice, whichever later |
| Orders: | P.O. eVa |
| Order Process: | <p>Request for Quote (RFQ) process: Request quotes from ESRI through the <u>Account Executive</u> or <u>Inside Sales</u> if assistance identifying an appropriate solution is needed or <u>TeleBusiness</u> for a simple Quote. The ESRI Quote will reference the Virginia Contract and reflect contract pricing.</p> <p>To place the order, sign and return the quote along with a Purchase Order which containing the following information:</p> <ol style="list-style-type: none"> a. Name or identification of Licensee, place of delivery (street address), and the end user name and contact information b. Purchase order number c. Date delivery is requested (minimum thirty [30] days after ESRI receipt of order) d. Primary site for maintenance if primary maintenance is <i>not</i> ordered e. Quantity, description, and unit price based on the ESRI Quote f. On the face of the purchase order, print the following statement: "Subject to Master Purchase Agreement No. 2009MPA2064/VITA Contract No. VA-090403-ESRI" g. Authorized signature approving the order |

For Additional Information, Please Contact:

Supply Chain Management , Virginia Information Technologies Agency
John Tackley
Phone: 804-416-6165
Email: john.tackley@vita.virginia.gov
Fax: 804-416-6361

ESRI POINTS OF CONTACT

Environmental Systems Research Institute, Inc. (ESRI) provides a full range of integrated and scalable Geographic Information System (GIS) software products and solutions with complete, single, integrated systems for geographic data creation, management, integration and analysis on the desktop, server or on the web. See ESRI catalog on the Commonwealth's [eVA site](#) for pricing.

ESRI-Virginia Territory Manager

Robert Rike, ESRI Account Executive
Tel: (804) 737-0112
Fax: (804) 737-0112
Email: rrike@esri.com
Web: <http://www.esri.com/>

ESRI-Charlotte Regional Office

Environmental Systems Research Institute
ATTN: Mike Dyer, Regional Manager
3325 Springbank Lane, Suite 200
Charlotte, NC 28226-3343
Tel: (704) 541-9810
Fax: (704) 541-7620
Hours: 8am to 5pm (Eastern) M-F

ESRI Inside Sales

Susan James, ESRI Account Manager
Tel: (704) 541-9810 ext. 8641
Fax: (704) 541-7620
Email: sjames@esri.com

ESRI TeleBusiness

Geoffrey Walker, Sales Associate
Tel: (800) 447-9778 ext. 2931
Fax: (909) 307-3049
Email: gwalker@esri.com

ESRI Customer Support

Tel: (888) 377-4575
Fax: (909) 307-3082
Hours: 8am to 5pm (PST) M-F
Email: info@esri.com

ESRI Technical Support

Tel: (909) 793-3774
Fax: (909) 792-0960
Hours: 6am to 5pm (PST) M-F

ESRI Corporate Headquarters

ESRI
380 New York Street
Redlands, CA 92373-8100
Tel: (909) 793-2853
Fax: (909) 793-5953
Web: <http://www.esri.com/>



COMMONWEALTH of VIRGINIA

VIRGINIA INFORMATION TECHNOLOGIES AGENCY
SUPPLY CHAIN MANAGEMENT
11751 Meadowville Lane
Chester, VA 23836

VITA STATEWIDE TERM CONTRACT: [VA-090403-ESRI](#)

(ESRI Master Purchase Agreement No. 2009MPA2064)

SUPPLIER / PARTNER

COMPANY NAME: Environmental Systems Research Institute, Inc. (ESRI)
SALES CONTACT: Robert Rike
TITLE: VA Territory Manager
ADDRESS: 3325 Springbank Lane, Suite 200
CITY/STATE/ZIP: Charlotte, NC 28226-3343
E-MAIL ADDRESS: rrike@esri.com
PHONE NO: 804-737-0112
FAX: 804-737-0112
FEIN: 95-2775732
WEBSITE URL: <http://www.esri.com>

[The following is for informational purposes only.]

Products/Services: ALL ESRI Products and Services
Brands: ESRI
Authorized Contract Users: VA Agencies, Institutions and other public bodies
Contract Term: Three (3) years, with three optional one (1) year renewals
Pricing: See ESRI's eVA catalog
Orders: Request for Quote (RFQ)/eVA order process, or Purchase Order
Delivery: 30 days After Receipt of Order (ARO)
Shipping Costs: FOB Origin with freight charges prepaid and added to invoice
Installation Services: Optional, Available
Training Services: Optional, Available
Web Services: Optional, Available
Warranty: 90 Days for software products
Maintenance: Annual maintenance available

VITA SCM Contacts:

Contract Information

John J. Tackley, VCO

Voice: (804) 416-6165

Fax: (804) 416-6361

E-mail Address john.tackley@vita.virginia.gov

Contract Administration/Compliance

SCM Contracts Administration

(804) 416-6317

(804) 416-6361

contracts@vita.virginia.gov

[The above is for informational purposes only.]

Modification No. 7
TO
CONTRACT NO. VA-090403-ESRI
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

This Modification No. 7 is an agreement between the Commonwealth of Virginia, herein referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., herein referred to as "Contractor". This Modification is hereby incorporated into and made an integral part of Contract No. VA-090403-ESRI (the Agreement).

The purpose of this Modification is to document both parties' agreement to modify the Contract as follows:

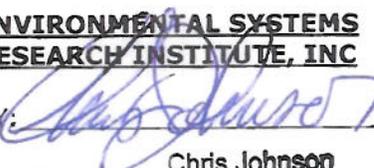
- The term of the agreement is to renew the contract from 4/6/2015 – 4/5/2016;
- The Commonwealth of Virginia MPA Price List, E417M—2Q15, (updated) incorporated by reference, attached;
- Exhibit 1, Scope of Use (E300 02/25/2014), [updated] is incorporated by reference, attached

The foregoing is the complete and final expression of the parties' agreement to modify Contract No. VA-090403-ESRI and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

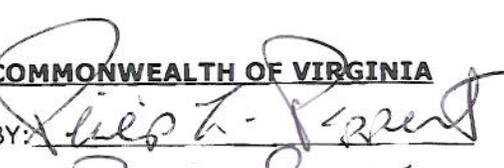
ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

**ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC**

BY: 
NAME: Chris Johnson
Manager, Commercial & Government Contracts
TITLE: _____
DATE: 3/12/15

COMMONWEALTH OF VIRGINIA

BY: 
NAME: Philip L. Pippert
TITLE: DIRECTOR, SCM
DATE: 3/18/15

**MODIFICATION NO. 6
TO
CONTRACT NUMBER VA-090403-ESRI
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
Esri Agreement No. 2009MPA2064**

This MODIFICATION No. 6 is hereby incorporated into and made an integral part of the LICENSE AGREEMENT ADDENDUM for Contract VA-090403-ESRI.

The purpose of this Modification is to add the clause(s) and clarifications listed below:

1. Add to Paragraph 57 in the "LICENSE AGREEMENT ADDENDUM" on LICENSE AGREEMENT ADDENDUM Page 8 of 11.
"Authorized Users also include private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code. A list of the private institutions eligible to use this contract can be found at <http://www.cicv.org/our-Colleges/Profiles.aspX>"
2. Add to Paragraph 22 in the "LICENSE AGREEMENT ADDENDUM" in Paragraph 22 on LICENSE AGREEMENT ADDENDUM Page 3.
"If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body. If Authorized User is a private institution, the license shall be held by that private institution." Ownership and License rights for all Deliverables created as a result of Professional Services, or the Enterprise Advantage Program shall be governed by the applicable provisions in the G363D, and/ or E125 documents, respectively.
3. Add to Paragraph 29 in the "LICENSE AGREEMENT ADDENDUM" in Paragraph 29 on LICENSE AGREEMENT ADDENDUM Page 4.
"If Authorized User is a private institution of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with that institution." IP ownership for Deliverables and or Services Output created as part of a Services Engagement or EEAP shall be governed by the applicable provisions in the G363D and or/ E125 documents respectively.
4. Add to Paragraph 37 in the "LICENSE AGREEMENT ADDENDUM" in Paragraph 37 on LICENSE AGREEMENT ADDENDUM Page 5.
"In the event of settlement between Supplier and privative institution of higher education who is an Authorized User of this contract, the settlement shall be satisfactory to such institution and the Supplier."

5. Add to Paragraph 4I in the "LICENSE AGREEMENT ADDENDUM" in Paragraph 4I on LICENSE AGREEMENT ADDENDUM Page 5.

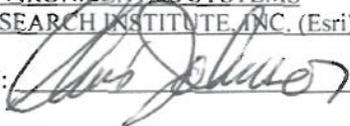
"If the authorized User is a private institution chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, such private institution may have its own per diem amounts applicable to Supplier's pre-approved travel expenses. If the authorized user is a private institution of higher education, Supplier agrees to bill all travel expenses in accordance with such private institution's travel policies."

The foregoing is the complete and final expression of the parties' agreement to modify LICENSE AGREEMENT ADDENDUM for Contract VA-090403-ESRI by this Modification No. 6.

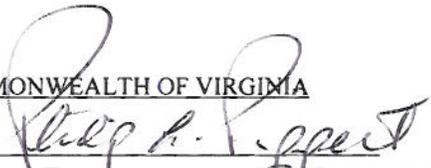
ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC. (Esri)

BY: 
NAME: Chris Johnson
TITLE: Manager, Commercial & Government Contracts
DATE: 3/9/15

COMMONWEALTH OF VIRGINIA

BY: 
NAME: PHILIP L. PIPPER
TITLE: DIRECTOR, SCM
DATE: 3/19/15

MODIFICATION #5
TO
VITA CONTRACT NUMBER VA-090403-ESRI / Esri CONTRACT NO. 2009MPA2064
BETWEEN
THE VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

This MODIFICATION #5 is an agreement between the Virginia Information Technologies Agency (VITA), herein referred to as "State" or "Commonwealth" or "VITA", and Environmental Systems Research Institute, Inc., hereinafter referred to as "Contractor" or "ESRI" relating to the modification of the above Contract. This Modification #5 is hereby incorporated into and made part of Contract VA-090403-ESRI, as revised.

The purpose of this Modification #5 is to extend the Term of the Agreement, and to update various existing documents.

The parties agree to the following:

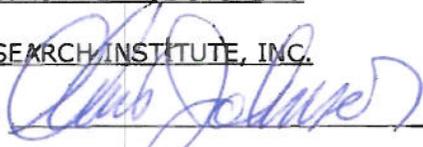
- The Term of the Agreement is extended through April 5, 2015;
- The Commonwealth of Virginia MPA Price List, E417M—1Q14, (updated) incorporated by reference, attached;
- Exhibit 1, Scope of Use (E300 02/21/2014), [updated] is incorporated by reference, attached;

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090403-ESRI and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED. PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT. ELECTRONIC SIGNATURES WILL BE CONSIDERED AS ORIGINAL SIGNATURES.

ENVIRONMENTAL SYSTEMS

RESEARCH INSTITUTE, INC.

BY:  _____

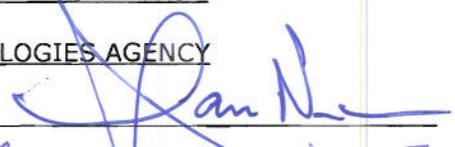
NAME: Chris Johnson

TITLE: Manager, Domestic Contracts

DATE: MAR 17 2014

VIRGINIA INFORMATION

TECHNOLOGIES AGENCY

BY:  _____

NAME: SAMUEL A. NIXON, JR.

TITLE: CIO of the Commonwealth

DATE: 3/20/14



**EXHIBIT 1
SCOPE OF USE
(E300 02/21/2014)**

**ADDENDUM 1
SOFTWARE TERMS OF USE
(E300-1)**

This Software Terms of Use Addendum ("Addendum 1") sets forth the terms of Licensee's use of Software and includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 1 takes precedence over conflicting General License Terms and Conditions of the License Agreement.

SECTION 1—DEFINITIONS

Software may be offered under the following license types as set forth in the applicable sales quotation, purchase order, or other document identifying the Products that Licensee orders:

1. "Concurrent Use License" means a license to install and use the Product on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
2. "Deployment Server License" means a full use license that authorizes Licensee to install and use the Software for all uses permitted in the License Agreement and as described in the Documentation.
3. "Development Server License" means a license that authorizes Licensee to install and use the Software to build and test Value-Added Applications as described in the Documentation.
4. "Esri Client Software" means ArcGIS Runtime apps, ArcGIS for Desktop, and ArcGIS API for Flex apps.
5. "Esri Content Package" means a digital file containing ArcGIS Online basemap content (e.g., raster map tiles, images, vector data) extracted from the ArcGIS Online Basemap Services.
6. "Single Use License" means a license that allows Licensee to permit a single authorized end user to install and use the Product on a single computer for use by that end user on the computer on which the Product is installed. Licensee may permit the single authorized end user to install a second copy for end user's exclusive use on a second computer as long as only one (1) copy of Product is in use at any time. No other end user may use Product under the same license at the same time for any other purpose.
7. "Staging Server License" means a license that authorizes Licensee to install and use the Software for the following purposes: building and testing Value-Added Applications and map caches; conducting user acceptance testing, performance testing, and load testing of other third-party software; staging new commercial data updates; and training activities as described in the Documentation. Value-Added Applications and map caches can be used with Development and Deployment Servers.
8. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or transaction basis.
9. "Perpetual License" means a license to use a version of the Product, for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Licensee as authorized under this Agreement.

SECTION 2—TERMS OF USE FOR SPECIFIC SOFTWARE

The following table is a list of Esri Products that have specific Terms of Use in addition to the general Terms of Use as set forth in the General License Terms and Conditions of the License Agreement. Additional Terms of Use are listed immediately below this table and are referenced by number(s), shown in parentheses, immediately following each Product name in the following table (in some cases, the Additional Terms of Use referenced may be found in a separate Addendum, as noted):

| | |
|---|--|
| <p>Desktop Products</p> <ul style="list-style-type: none"> ▪ Address Coder (22; Addendum 2, Note 7) ▪ ArcExplorer—Java and Windows Editions (20; Addendum 2, Note 1) ▪ ArcGIS for Desktop (Advanced, Standard, or Basic) (26; Addendum 2, Note 1; Addendum 2, Note 6) ▪ ArcGIS Explorer Desktop (20; Addendum 2, Note 1) ▪ ArcGIS for AutoCAD (20) ▪ ArcPad (12; 13; Addendum 2, Note 1; Addendum 2, Note 2) ▪ ArcReader (20; Addendum 2, Note 1) ▪ Esri Business Analyst (Addendum 2, Note 1; Addendum 2, Note 4) ▪ Esri Maps for IBM Cognos, MicroStrategy, Microsoft Dynamics CRM, Office, SharePoint, Salesforce, or SAP BusinessObjects (2; Addendum 2, Note 1) ▪ Esri Navigator (formerly ArcLogistics Navigator) (Addendum 2, Note 2) ▪ Sourcebook•America (Addendum 2, Note 8) ▪ ArcGIS for Windows Mobile (15; 54; Addendum 2, Note 1) ▪ ArcGIS for iOS; ArcGIS for Windows Phone; ArcGIS for Android (Addendum 2, Note 1) <p>Server Products</p> <ul style="list-style-type: none"> ▪ ArcGIS for Server <ul style="list-style-type: none"> – Workgroup (28; 29; 30; 32; 38; 39; Addendum 2, Note 1; Addendum 2, Note 6) – Enterprise (31; 38; 39; Addendum 2, Note 1; Addendum 2, Note 6) – with Virtual Cloud Infrastructure (10; Addendum 3—Common Terms) ▪ ArcGIS for Server Extension <ul style="list-style-type: none"> – ArcGIS for INSPIRE (Addendum 2, Note 1) | <ul style="list-style-type: none"> ▪ Esri Business Analyst for Server <ul style="list-style-type: none"> – Workgroup (28; 29; 30; 31; 39; Addendum 2, Note 1; Addendum 2, Note 4) – Enterprise (31; 39; Addendum 2, Note 1; Addendum 2, Note 4) ▪ Portal for ArcGIS (31; Addendum 2, Note 1) ▪ Esri Tracking Server (31) <p>Developer Tools</p> <ul style="list-style-type: none"> ▪ ArcGIS Runtime SDK for Android, iOS, Java, Mac OS X, Microsoft .NET Framework (Windows [desktop], Windows Phone, Windows Store), Qt, or WPF (16; 19; Addendum 2, Note 1) ▪ ArcGIS Runtime Standard Level for Android, iOS, Java, Mac OS X, Microsoft .NET Framework (Windows [desktop], Windows Phone, Windows Store), Qt, or WPF (15; 18; Addendum 2, Note 1) ▪ ArcGIS Engine Developer Kit and Extensions (16, 19; 22, 26) ▪ ArcGIS Engine for Windows/Linux and Extensions (15; 22; 26; Addendum 2, Note 1; Addendum 2, Note 6) ▪ ArcGIS Web Mapping (including ArcGIS API for JavaScript/HTML5, ArcGIS API for Flex, ArcGIS API for Microsoft Silverlight) (15; 16; 64; 66; Addendum 2, Note 1) ▪ Esri Business Analyst Server Developer (Addendum 2, Note 1; Addendum 2, Note 4) ▪ Esri Developer Network (EDN) Software and Data (24; 26; Addendum 2, Note 6) ▪ Esri File Geodatabase API (47) <p>Bundled Products</p> <ul style="list-style-type: none"> ▪ ArcGIS for Transportation Analytics (1; Addendum 2, Note 1; Addendum 2, Note 2; Addendum 2, Note 11) |
|---|--|

Notes:

- If you do not license any of the Products in the table above, these Additional Terms of Use do not apply to you.
- Additional Terms of Use for Products ONLY APPLY to the Products that reference them by number in the table above.
- Unless otherwise noted in the applicable Ordering Document, extensions to Software follow the same scope of use as that granted for the corresponding Software.

Additional Terms of Use for Products listed above:

1. Licensee may use the Software, Data, and Online Services included in ArcGIS for Transportation Analytics solely for direct support of fleet operations. No other use of ArcGIS for Transportation Analytics or the individual components that are part of ArcGIS for Transportation Analytics is permitted. This restriction does not apply to the

ArcGIS Online for Organizations account included with ArcGIS for Transportation Analytics. The ArcGIS Online for Organizations account can be used for any purpose subject to the terms of this License Agreement.

2. Information created with Esri Maps products is for use only by Licensee's Named Users of ArcGIS Online or Portal for ArcGIS.
- 3–9. Reserved.
10. Licensee will provide information or other materials related to its content (including copies of any client-side applications) as reasonably requested to verify Licensee's compliance with this License Agreement. Esri may monitor the external interfaces (e.g., ports) of Licensee's content to verify Licensee's compliance with this License Agreement. Licensee will not block or interfere with such monitoring, but Licensee may use encryption technology or firewalls to help keep its content confidential. Licensee will reasonably cooperate with Esri to identify the source of any problem with the ArcGIS for Server with Virtual Cloud Infrastructure services that may reasonably be attributed to Licensee's content or any end-user materials that Licensee controls.
11. Reserved.
12. Software is licensed for navigational use only when used in conjunction with ArcLogistics.
13. "Dual Use License" means the Software may be installed on a desktop computer and used simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any one (1) time.
14. Reserved.
15. Licensed as a Deployment License, subject to Article 3, Section 3.1 of the General License Terms and Conditions.
16. Licensee may use the SDKs or APIs to create Value-Added Applications and distribute and license those Value-Added Applications to its end users to use the Value-Added Applications anywhere not prohibited under export regulation subject to Article 3, Section 3.1 of the General License Terms and Conditions.
17. Reserved.
18. The Deployment License is per Value-Added Application per computer.
19. License may not be used to develop Internet or server-based Value-Added Applications.
20. Licensee may reproduce and distribute the Software provided all the following occur:
 - a. The Software is reproduced and distributed in its entirety;
 - b. A license agreement accompanies each copy of the Software that protects the Software to the same extent as this License Agreement, and the recipient agrees to be bound by the terms and conditions of the license agreement;
 - c. All copyright and trademark attributions/notices are reproduced; and
 - d. There is no charge or fee attributable to the use of the Software.
21. Reserved.
22.
 - a. An end user must license either ArcGIS Engine for Windows/Linux Software or other ArcGIS for Desktop Software (Basic, Standard, or Advanced) to obtain the right to run an ArcGIS Engine application on one (1) computer; and
 - b. The ArcGIS Engine for Windows/Linux extensions shall not be used in combination with ArcGIS for Desktop Software to run ArcGIS Engine Value-Added Applications. A single user can have multiple ArcGIS Engine Value-Added Applications installed on one (1) computer for use only by that end user.
23. Reserved.
24. EDN Software may be used only for the purposes of development, testing, and demonstration of a prototype Value-Added Application and creating map caches. Value-Added Applications and map caches can be used with Staging and Deployment Servers. EDN server Software and Data may be installed on multiple computers for use by any Licensee EDN developer; all other EDN Software is licensed as a Single Use License.
25. Reserved.
26. An ArcSDE Personal Edition geodatabase is restricted to ten (10) gigabytes of Licensee's data.
27. Reserved.
28. Use is limited to ten (10) concurrent end users of applications other than ArcGIS for Server applications. This restriction includes use of ArcGIS for Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS for Server geodatabase. There are no limitations on the number of connections from web applications.
29. Software can only be used with a supported version of SQL Server Express. Supported versions are listed with the system requirements for the product on the Esri website.
30. Use is restricted to a maximum of ten (10) gigabytes of Licensee's data.

31. Licensee may have redundant Esri Server Software installation(s) for failover operations, but the redundant Software can only be operational during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
32. Redundant Software installation for failover operations is not permitted.
- 33–37. Reserved.
38. The ArcGIS 3D Analyst for Server extension included with ArcGIS for Server Standard (Workgroup or Enterprise) may be used only for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS 3D Analyst for Server extension Software is permitted with ArcGIS for Server Standard.
39. Any editing functionality included with ArcGIS for Server is not permitted for use with ArcGIS for Server Basic (Workgroup or Enterprise).
- 40–46. Reserved.
47. Licensee may develop and distribute Value-Added Applications that use Esri File Geodatabase API to Licensee's end users.
- 48–53. Reserved.
54. ArcGIS for Windows Mobile Deployments are licensed for use with ArcGIS for Server Enterprise (Advanced or Standard), ArcGIS for Server Workgroup (Advanced), ArcGIS for Desktop (Advanced, Standard, Basic), and ArcGIS Engine Value-Added Applications.
- 55–63. Reserved.
64. Value-Added Application(s) for web deployment must be used in conjunction with other Esri Product(s). Third-party technologies may also be used in conjunction with Value-Added Application(s) as long as the Value-Added Application(s) is always used in conjunction with other Esri Product(s).
65. Reserved.
66. For desktop applications, each license is per organization. For the purposes of this license, *organization* is equivalent to a principal registered unique domain identifier. *Domain* is the Internet domain name registered with a domain name registrar. For instance, in example.com, example.com is the registered unique domain identifier. Similarly, in example.com.xx, where xx is a registered country code, example.com.xx is the registered unique domain identifier. Desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.

**ADDENDUM 2
DATA TERMS OF USE
(E300-2)**

This Data Terms of Use Addendum ("Addendum 2") sets forth the terms of Licensee's use of Data and includes Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 2 takes precedence over conflicting General License Terms and Conditions of the License Agreement. Esri reserves the right to modify the Data terms of use referenced below at any time. For Data licensed through a subscription, Licensee may cancel the subscription upon written notice to Esri or discontinue use of the Data, as applicable. If Licensee continues to use the Data, Licensee will be deemed to have accepted the modification. Data terms of use are set forth in the notes referenced below:

SECTION 1—GENERAL RESTRICTIONS ON USE OF DATA

In addition to the restrictions set forth in Article 4.2 of the License Agreement, the following restrictions apply to use of Data by Licensee and Licensee's end users (collectively, "Users"). Any use of Data that is not expressly authorized in Section 2 or elsewhere in the License Agreement is strictly prohibited. Without limiting the generality of the foregoing, Licensee shall ensure Users are prohibited from (i) cobranding Data, (ii) using the Data in any unauthorized service or product, or (iii) offering Data through or on behalf of any third party.

SECTION 2—SPECIFIC TERMS OF USE FOR DATA

The following table is a list of Esri Products that have specific Terms of Use in addition to the general Terms of Use as set forth in the General License Terms and Conditions of the License Agreement. Additional Terms of Use are listed immediately below this table and are referenced by number(s), shown in parenthesis, immediately following each Product name in the following table:

| | |
|--|--|
| <ul style="list-style-type: none"> ▪ ArcGIS Online Data (1) ▪ StreetMap Premium for ArcGIS (2) ▪ StreetMap for Windows Mobile (2) ▪ StreetMap for ArcPad (2) ▪ StreetMap Premium for ArcGIS for Transportation Analytics (2; Addendum 1, Note 1) ▪ HERE Traffic Data (11; Addendum 1, Note 1) ▪ Data Appliance for ArcGIS (3) | <ul style="list-style-type: none"> ▪ Business Analyst/Location Analytics Data (4, 10) ▪ Demographic, Consumer, and Business Data ("Esri Data") (5, 10) ▪ Data and Maps for ArcGIS (6) ▪ Address Coder Data (7, 10) ▪ Sourcebook•America Data (8, 10) ▪ Esri MapStudio Data (9) |
|--|--|

Notes:

- If you do not license any of the Products in the table above, these Additional Terms of Use do not apply to you.
- Additional Terms of Use for Products ONLY APPLY to the Products that reference them, by number, in the table above.

Additional Terms of Use for Products listed above:

1. *ArcGIS Online Data:* Software and Online Services that reference this note enable access to ArcGIS Online Data. ArcGIS Online Data is provided for use solely in conjunction with Licensee's authorized use of Esri Software and Online Services. Use of ArcGIS Online Data that is accessible through non-fee-based ArcGIS Online accounts may be subject to usage limits.

ArcGIS Online Basemap Data:

- a. ArcGIS Online basemap data can be taken offline through Esri Content Packages and subsequently delivered (transferred) to any device for use exclusively with licensed Esri Client Software.
- b. ArcGIS Online basemap data is subject to an aggregate limit of fifty million (50,000,000) transactions during any twelve (12)-month period. Transactions include both basemap and geospatial Transactions. "Transaction" is defined in the Documentation at ArcGIS Resources at <http://links.esri.com/agol/transactiondef>.

Licensee may use Data accessed through ArcGIS Online as permitted under the terms of the URLs referenced below:

- a. HERE data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
 - c. Data from i-cubed is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9946-icubed.pdf>.
 - d. Microsoft Bing Maps data is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/e-802-bing-mapsvcs.pdf>.
 - e. BODC bathymetry data is subject to the terms of use found at https://www.bodc.ac.uk/data/online_delivery/gebco/terms_of_use/.
 - f. MB-Research GmbH (MBR) Data: Users are prohibited from (i) using MBR Data, including, without limitation, European demographic data, consumer demand data, and postal and geographic boundaries, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from any database or other compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party or (ii) modifying or otherwise altering MBR Data without MBR's prior written consent, such consent to be granted or withheld at MBR's sole discretion.
 - g. D&B Data: May not be used for direct mailing or direct marketing purposes.
2. *StreetMap Premium for ArcGIS: StreetMap for ArcGIS for Windows Mobile; StreetMap for ArcPad; StreetMap Premium for ArcGIS for Transportation Analytics:* These Products, collectively referred to as "StreetMap Data," may be used for mapping, geocoding, and point-to-point routing purposes but is not licensed for dynamic, real-time routing guidance. For instance, StreetMap Data may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed. StreetMap Data may not be used to perform synchronized multivehicle routing or route optimization. StreetMap Data acquired for use with ArcGIS for Desktop, ArcGIS for Server, ArcPad, or ArcGIS for Transportation Analytics may only be used with the Product for which the StreetMap Data was acquired, and may not be used with any other Product. StreetMap for Windows Mobile Data is licensed for use solely on mobile devices or in conjunction with ArcGIS for Mobile applications. StreetMap Data may include data from either of the following sources:
- a. HERE data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html. HERE data, when licensed for use in StreetMap Premium for ArcGIS for Transportation Analytics, permits tracking, synchronized multivehicle routing, and route optimization.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
3. *Data Appliance for ArcGIS:* Data provided with Data Appliance is subject to the following additional terms of use:
- a. HERE data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
 - c. Data from i-cubed is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9946-icubed.pdf>.
 - d. BODC bathymetry data is subject to the terms of use found at https://www.bodc.ac.uk/data/online_delivery/gebco/terms_of_use/.
4. *Business Analyst Data; Location Analytics Data:* Business Analyst Data is provided with Esri Business Analyst (Server, Desktop) or accessed through Business Analyst Online and Community Analyst. Location Analytics Data is accessed through Business Analyst Online API, Community Analyst API, and Location Analytics API. The Data is subject to the following additional terms of use:
- a. The Data is provided for Licensee's internal business use solely in connection with Licensee's authorized use of Software. Subject to Addendum 2, Note 10, Business Analyst Data, including derivative products (e.g., geocodes), are restricted for use only in conjunction with the respective Business Analyst extension. Location Analytics Data is restricted for use only in conjunction with Business Analyst Online API, Community Analyst API, and Location Analytics API. If Licensee orders a license for Esri Business Analyst or Business Analyst

(Canadian Edition), or for Business Analyst Online API, Community Analyst API, and Location Analytics API, with a subset of the national dataset (i.e., Region, State, Local), Licensee may use only the licensed subset, not any other portion of the national dataset.

- b. Business Analyst Data provided with Business Analyst for Server may not be cached or downloaded by client applications and devices.
- c. Infogroup data is subject to the following terms of use: "Users" means end users of Esri Software. Any use of the Infogroup database not expressly authorized in this License Agreement is strictly prohibited. Without limiting the generality of the foregoing, Users are expressly prohibited from (i) sublicensing or reselling the Infogroup database; (ii) using or allowing third parties to use the Infogroup database for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from any mailing list, geographic or trade directories, business directories, classified directories, classified advertising, or other compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party; (iii) using the Infogroup database in any service or product not specifically authorized in this License Agreement or offering it through any third party; (iv) disassembling, decompiling, reverse engineering, modifying, or otherwise altering the Infogroup database or any part thereof without Infogroup's prior written consent, such consent to be granted or withheld at Infogroup's sole discretion; or (v) using the Infogroup database for any direct marketing purposes.
- d. HERE data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html.
- e. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
- f. MBR Data: Users are prohibited from (i) using MBR Data, including, without limitation, European demographic data, consumer demand data, and postal and geographic boundaries, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from any database or other compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party or (ii) modifying, or otherwise altering MBR Data without MBR's prior written consent, such consent to be granted or withheld at MBR's sole discretion.
- g. D&B Data: May not be used for direct mailing or direct marketing purposes.

5. *Demographic, Consumer, and Business Data ("Esri Data")*: This Data category includes the Updated Demographic Database, Census Data, American Community Survey (ACS) Data, Consumer Spending, Business Summary, Business Locations, Retail MarketPlace, and Tapestry Segmentation datasets. Esri Data may be used independently of Software or Online Services. Each dataset is available under one or more of the following license types:

- **Single Use**: Permits access by a single user to access the data for development or internal use on a desktop computer or server. No Internet access is permitted.
- **Internal Site/Server—Known User**: Permits access by named (known) users for Licensee's internal use. Web access by those named users is permitted.
- **Public website (noncommercial)—Constituent-Served Model**: Permits a municipal government Licensee to use the Data in an externally facing Value-Added Application serving a defined population, provided Licensee does not generate revenue from such use.
- **Public website (commercial) Known User**: Permits Licensee to use the Data in an externally facing Value-Added Application for use by named users and to generate revenue from such Value-Added Application.
- **Public website (commercial) Anonymous User**: Permits Licensee to use the Data in an externally facing Value-Added Application for general use and to generate revenue from such Value-Added Application.

6. *Data and Maps for ArcGIS*: The Data is available to licensed users of ArcGIS for Desktop, ArcGIS for Server, and ArcGIS Online. Data and Maps for ArcGIS is provided for use solely in conjunction with authorized use of ArcGIS for Desktop, ArcGIS for Server, and ArcGIS Online.

- a. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at <http://www.esri.com/legal/redistribution-rights>, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
- b. StreetMap Data may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.

7. *Address Coder Data*: This Data is included with Address Coder and is provided for Licensee's internal business use solely in connection with Licensee's authorized use of Address Coder.
8. *Sourcebook•America Data*: This Data is included with Sourcebook•America and provided for Licensee's internal business use solely in connection with Licensee's authorized use of Sourcebook•America.
9. *MapStudio Data*: Use of this Data is subject to the following terms and conditions:
 - a. HERE data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
 - c. Data from i-cubed is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9946-icubed.pdf>.
 - d. D&B Data: May not be used for direct mailing or direct marketing purposes.
10. Licensee may include Data in hard-copy or read-only format ("Outputs") in presentation packages, marketing studies, or other reports or documents prepared for third parties. Licensee shall not resell or otherwise externally distribute Outputs in stand-alone form.
11. *ArcGIS for Transportation Analytics—HERE traffic data option*: This online data service is available as an option for use exclusively with ArcGIS for Transportation Analytics. Use of this data is subject to the following terms and conditions:
 - a. HERE traffic data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html.
 - b. No automatic routing or rerouting based on traffic conditions is permitted without the Navigation add-on.
 - c. HERE traffic data may not be archived and may be delivered only for end users' personal, near-term use, not to exceed one (1) twenty-four (24)-hour period.
 - d. HERE traffic data may not be used to display or broadcast in any FM/AM/HD radio broadcast or television broadcast **or through any RDS delivery method**.
 - e. HERE traffic data may not be used with or incorporated into any traffic system that provides voice traffic reports to inbound callers.
 - f. HERE traffic data may not be used to develop or commercially make available a text-to-voice e-mail alert or message or voice mail application using any portion of HERE traffic data.

ADDENDUM 3
ONLINE SERVICES ADDENDUM
(E300-3)

This Online Services Addendum ("Addendum 3") sets forth the terms of Licensee's use of Online Services and includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 3 takes precedence over conflicting General License Terms and Conditions of the License Agreement. Esri reserves the right to update the terms from time to time. [Section 1](#) of this Addendum 3 contains terms applicable to all Online Services; [Section 2](#) contains common terms applicable to specific Online Services.

SECTION 1—COMMON TERMS OF USE OF ONLINE SERVICES

ARTICLE 1—DEFINITIONS

In addition to the definitions provided in the License Agreement, the following definitions apply to this Addendum 3:

- a. "Anonymous Users" refers to anyone who has public access to any part of the Licensee's Content or Value-Added Applications, which Licensee has published through the use of the Sharing Tools, included with Licensee's licensed use of the Software or Online Services, as further described in Section 2 of this Addendum.
- b. "API" means application programming interface.
- c. "ArcGIS Website" means <http://www.arcgis.com> and any related or successor websites.
- d. "Content" means Data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, software applications, and Developer Tools.
- e. "Developer Tools" means software development kits (SDKs), APIs, software libraries, code samples, and other resources.
- f. "Licensee's Content" means any Content that Licensee or Licensee's Named Users submit to Esri in connection with Licensee's use of the Online Services, any results derived from the use of Licensee's Content with Online Services, and any Value-Added Applications Licensee builds with Developer Tools and deploys with Online Services. Licensee's Content excludes any feedback, suggestions, or requests for Product improvements that Licensee provides to Esri.
- g. "Named User(s)" means individuals to whom Licensee specifically enables private access to Online Services and Value-Added Applications through Licensee's Online Services account. Named Users can be anyone whom Licensee authorizes to access Online Services, but only for the exclusive benefit of Licensee, for example, Licensee's employees, agents, consultants, or contractors. For Education Plan accounts, Named Users may include registered students. No other third parties may be Named Users. Named Users have private access to features of Online Services that are not publicly accessible to Anonymous Users. Named Users have unique, individual login credentials.
- h. "Online Content" means Content hosted or provided by Esri as part of Online Services, including any Map Services, Task Services, Image Services, and Developer Tools and excluding Content provided by third parties that Licensee accesses through Online Services.
- i. "Service Components" means each of the following: Online Services, Online Content, ArcGIS Website, Developer Tools, Documentation, or related materials.
- j. "Sharing Tools" means publishing capabilities included with Online Services and ArcGIS Website that allow Licensee to make Licensee's Content and Value-Added Applications available to third parties and/or Anonymous Users.
- k. "Value-Added Application" means an application developed by Licensee for use in conjunction with the authorized use of any Software, Data, or Online Services.
- l. "Web Services" as used under Licensee's existing signed license agreement, if any, means Online Services and any Content delivered by such Online Services.

ARTICLE 2—USE OF ONLINE SERVICES

2.1 License to Online Services. Esri grants Licensee a personal, nonexclusive, nontransferable, worldwide license to access and use Online Services as set forth in the applicable Ordering Documents (i) for which the applicable license fees have been

paid (if required), (ii) for Licensee's own internal use by Licensee and Licensee's Named Users or Anonymous Users (if applicable), and (iii) in accordance with this License Agreement and the licensed configuration on file as authorized by Esri.

2.2 Provision of Subscription Online Services. For subscription Online Services, Esri will

- a. Provide Online Services to Licensee in accordance with the Documentation;
- b. Provide customer support in accordance with Esri's standard customer support policies and any additional support Licensee may purchase; and
- c. Use commercially reasonable efforts to ensure that Online Services will not transmit to Licensee any Malicious Code, provided Esri is not responsible for Malicious Code that was introduced to Online Services through Licensee's account or through third-party Content.

2.3 Licensee's Responsibilities. Licensee shall be responsible for Named Users' compliance with this Agreement. Licensee and Licensee's Named Users or Anonymous Users (if applicable) are the only persons authorized to access Online Services through Licensee's accounts. Named Users' login credentials are for designated Named Users only and may not be shared among multiple individuals. Named Users' login credentials may be reassigned to new Named Users if the former users no longer require access to Online Services. Licensee and Licensee's Named Users are responsible for maintaining the confidentiality of Authorization Codes, Access Codes, Named Users' login credentials, or any other method that is provided that enables access to Online Services and for ensuring that unauthorized third parties do not access Licensee's account. Licensee will immediately notify Esri if Licensee becomes aware of any unauthorized use of Licensee's account or any other breach of security.

2.4 Prohibited Uses of the Online Services. In addition to the prohibited uses or except as provided under the License Agreement, Licensee shall not (i) attempt to gain unauthorized access to the Online Services or assist others to do so; (ii) use Online Services for spamming, to transmit junk e-mail or offensive or defamatory material, or for stalking or making threats of physical harm; (iii) use Online Services to store or transmit software viruses, worms, time bombs, Trojan horses, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment ("Malicious Code"); (iv) mirror, reformat, or display Online Services in an attempt to mirror and/or make commercial use of Online Services except to the degree that Online Services directly enable such functionality; (v) share the client-side data cache derived from Online Services with other licensed end users or third parties; (vi) distribute the client-side data cache derived from Online Services to third parties; (vii) manually or systematically collect or scrape (screen or web scraping) Content from Online Services; (viii) use ArcGIS Online Map Services, Geocoding Services, or Routing Services in communication with any in-vehicle navigation system installed in a vehicle (this does not include portable navigation devices) or that provides real-time, dynamic routing to any device. For instance, these Services may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed; (ix) incorporate any portion of Online Services into a commercial product or service unless the commercial product adds material functionality to Online Services; (x) use Online Services to process, store, or transmit any information, data, or technology controlled for export under the International Traffic in Arms (ITAR) regulations; or (xi) use Online Services to store or process Content online that is unclassified controlled technical information (UCTI) under DFARS 204.73, or is protected health information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA).

2.5 Evaluations. Esri may provide licenses to use certain Services for Licensee's internal evaluation purposes. Such licenses continue until the stated evaluation period expires or until Licensee purchases a subscription, whichever occurs first. **IF LICENSEE DOES NOT CONVERT LICENSEE'S EVALUATION LICENSE TO A SUBSCRIPTION PRIOR TO EXPIRATION OF THE EVALUATION TERM, ANY CONTENT AND CUSTOMIZATIONS THAT LICENSEE UPLOADED OR MADE DURING THE EVALUATION TERM WILL BE PERMANENTLY LOST. IF LICENSEE DOES NOT WISH TO PURCHASE A SUBSCRIPTION, LICENSEE MUST EXPORT SUCH CONTENT BEFORE THE END OF LICENSEE'S EVALUATION PERIOD.**

2.6 Modifications of Online Services. Esri reserves the right to alter or modify Online Service(s) and related APIs at any time. If reasonable under the circumstances, Esri will provide thirty (30) days' prior notice of any material alterations.

2.7 Discontinuation or Deprecation of Online Services. Esri reserves the right to discontinue or deprecate an Online Service(s) and related API(s) at any time. If reasonable under the circumstances, Esri will provide ninety (90) days' prior

notice of any Online Service discontinuation or deprecation. Esri will attempt to support any deprecated APIs for up to six (6) months, unless there are legal, financial, or technological reasons not to support them.

2.8 If any modification, discontinuation, or deprecation of Online Service(s) causes a material, adverse impact to Licensee's operations, Esri may at its sole discretion attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Licensee may cancel its subscription to Online Services, and Esri will issue a prorated refund.

2.9 Attributions. Licensee is not permitted to remove any Esri or Esri's licensors' logos or other attribution associated with any use of ArcGIS Online Services.

ARTICLE 3—TERM AND TERMINATION

The following supplements Article 5—Term and Termination of the License Agreement:

3.1 Term of Subscriptions. The term of any subscription will be provided in the Ordering Document under which it is purchased or in the Online Services description referenced therein.

3.2 Subscription Rate Changes. Monthly subscription rates may be increased upon thirty (30) days' notice. Esri may increase rates for subscriptions with a term greater than one (1) month by notifying Licensee at least sixty (60) days prior to expiration of the then-current subscription term.

3.3 Service Interruption. Licensee's access (including access on behalf of Licensee's customers) to and use of Online Service(s) may be temporarily unavailable, without prior notice, for any unanticipated or unscheduled downtime or unavailability of all or any portion of Online Services, including system failure or other events beyond the reasonable control of Esri or its affiliates.

3.4 Service Suspension. Esri and its affiliates shall be entitled, without any liability to Licensee, to suspend access to any portion or all of Online Services at any time on a service-wide basis (a) if Licensee breaches the License Agreement; (b) if Licensee exceeds usage limits and fails to purchase additional license capacity sufficient to support Licensee's continued use of Online Services as described in Article 5 of this Addendum; (c) if there is reason to believe that Licensee's use of Online Service(s) will adversely affect the integrity, functionality, or usability of the Online Service(s); (d) if Esri and its licensors may incur liability by not suspending Licensee's account; (e) for scheduled downtime to conduct maintenance or make modifications to Online Service(s); (f) in the event of a threat or attack on Online Service(s) (including a denial-of-service attack) or other event that may create a risk to the applicable part of Online Services; or (g) in the event that Esri or its affiliates determine that Online Services (or portions thereof) are prohibited by law or otherwise that it is necessary or prudent to do so for legal or regulatory reasons. If feasible under these circumstances, Licensee will be notified of any Service Suspension beforehand and allowed reasonable opportunity to take remedial action.

3.5 Esri is not responsible for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Licensee or any Licensee customer may incur as a result of any Service Interruption or Service Suspension.

ARTICLE 4—LICENSEE'S CONTENT, FEEDBACK

4.1 Licensee's Content. Licensee is solely responsible for the development, operation, and maintenance of Licensee's Content and for all materials that appear on or in any of Licensee's Content. Licensee retains all right, title, and interest in Licensee's Content. Licensee hereby grants Esri and Esri's licensors a nonexclusive, nontransferable, worldwide right to host, run, and reproduce Licensee's Content solely for the purpose of enabling Licensee's use of Online Services. Without Licensee's permission, Esri will not access, use, or disclose Licensee's Content except as reasonably necessary to support Licensee's use of Online Services, respond to Licensee's requests for customer support, or troubleshoot Licensee's account or for any other purpose authorized by Licensee in writing. If Licensee accesses Online Services with an application provided by a third party, Esri may disclose Licensee's Content to such third party as necessary to enable interoperation between the application, Online Services, and Licensee's Content. Esri may disclose Licensee's Content if required to do so by law or pursuant to the order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure. It is Licensee's sole responsibility to ensure that Licensee's Content is suitable for use with Online Services and for maintaining regular offline backups using the Online Services export and download capabilities.

4.2 Removal of Licensee's Content. Licensee will provide information and/or other materials related to Licensee's Content as reasonably requested by Esri to verify Licensee's compliance with this License Agreement. Esri may remove or delete any portions of Licensee's Content if there is reason to believe that uploading it to, or using it with, Online Services violates this License Agreement. If reasonable under these circumstances, Esri will notify Licensee before Licensee's Content is removed. Esri will respond to any Digital Millennium Copyright Act take-down notices in accordance with Esri's Copyright Policy, available at http://www.esri.com/legal/dmca_policy.

4.3 Sharing Licensee's Content. Licensee hereby grants to any third parties with whom Licensee elects to share Licensee's Content using Sharing Tools the right and license to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Licensee's Content through Online Services subject to any terms of use and access restrictions that Licensee provides with Licensee's Content. ESRI IS NOT RESPONSIBLE FOR ANY LOSS, DELETION, MODIFICATION, OR DISCLOSURE OF LICENSEE'S CONTENT RESULTING FROM LICENSEE'S NAMED USERS' MISUSE OF SHARING TOOLS OR ANY OTHER SERVICE COMPONENTS. LICENSEE'S USE OF SHARING TOOLS IS AT LICENSEE'S SOLE RISK.

4.4 Retrieving Licensee's Content upon Termination. Upon termination of the License Agreement or any trial, evaluation, or subscription, Esri will make Licensee's Content available to Licensee for download for a period of thirty (30) days unless Licensee requests a shorter window of availability or Esri is legally prohibited from doing so. Thereafter, Licensee's right to access or use Licensee's Content with Online Services will end, and Esri will have no further obligations to store or return Licensee's Content.

ARTICLE 5—LIMITS ON USE OF ONLINE SERVICES; SERVICE CREDITS

Esri may establish limits on the Online Services available to Licensee. These limits may be controlled through Service Credits. Service Credits are used to measure the consumption of ArcGIS Online services made available through Licensee's account. The maximum Service Credits provided with Licensee's ArcGIS Online account will be addressed in the applicable Ordering Document. Esri will notify Licensee's account administrator when Licensee's Service consumption reaches approximately seventy-five percent (75%) of the Service Credits allocated to Licensee through Licensee's subscription. Esri reserves the right to suspend Licensee's account when consumption reaches one hundred percent (100%) of the Service Credits allocated to Licensee's subscription. Licensee's access to the account will be restored immediately upon the completion of Licensee's purchase transaction for additional Service Credits for the subscription account.

ARTICLE 6—ONLINE CONTENT; THIRD-PARTY CONTENT AND WEBSITES

6.1 Online Content. ArcGIS Online Data is included as a component of Online Services and is licensed under the terms of the License Agreement.

6.2 Third-Party Content and Websites. Online Services and ArcGIS Website may reference or link to third-party websites or enable Licensee to access, view, use, and download third-party Content. This Agreement does not address Licensee's use of third-party Content, and Licensee may be required to agree to different or additional terms in order to use third-party Content. Esri does not control these websites and is not responsible for their operation, content, or availability; Licensee's use of any third-party websites and third-party Content is *as is*, without warranty, and at Licensee's sole risk. The presence of any links or references in Online Services to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

ARTICLE 7—LICENSEE'S WARRANTIES

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SECTION 2—TERMS OF USE FOR SPECIFIC ONLINE SERVICES

The following table is a list of Esri Products that have specific Terms of Use in addition to the general Terms of Use as set forth in the General License Terms and Conditions of the License Agreement. Additional Terms of Use are listed immediately below this table and are referenced by number(s), shown in parentheses, immediately following each Product name in the following table (in some cases, the Additional Terms of Use referenced may be found in a separate Addendum, as noted):

| | |
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| <ul style="list-style-type: none">▪ ArcGIS Online (1; 2; Addendum 2, Note 1; Addendum 2, Note 6)▪ Esri Business Analyst Online (3; Addendum 2, Note 1; Addendum 2, Note 4)▪ Business Analyst Online Mobile (3; Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Business Analyst Online API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (5; Addendum 2, Note 1; Addendum 2, Note 4)▪ Community Analyst (3; Addendum 2, Note 1; Addendum 2, Note 4) | <ul style="list-style-type: none">▪ Esri Community Analyst API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (5; Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Location Analytics API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (5; Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Redistricting Online (Addendum 2, Note 1)▪ Esri MapStudio (4; Addendum 2, Note 1; Addendum 2, Note 9) |
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Notes:

- If you do not license any of the Products in the table above, these Additional Terms of Use do not apply to you.
- Additional Terms of Use for Products ONLY APPLY to the Products that reference them by number in the table above.

Additional Terms of Use for Products listed above:

1. In addition to the common terms of use of Online Services:
 - a. Licensee may use Licensee's Esri Online Services account to build a Value-Added Application(s) for Licensee's internal use.
 - b. Licensee may also provide access to Licensee's Value-Added Application(s) to third parties, subject to the following terms:
 - i. Licensee may allow Anonymous Users to access Licensee's Value-Added Application(s).
 - ii. Licensee shall not add third parties as Named Users to Licensee's ArcGIS Online account for the purpose of allowing third parties to access Licensee's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
 - iii. Licensee shall not provide a third party with access to ArcGIS Online Services enabled through Licensee's ArcGIS Online account other than through Licensee's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
 - iv. Licensee is responsible for any fees accrued through the use of Licensee's ArcGIS Online account by third parties accessing Licensee's Value-Added Application(s). This includes Service Credits required to support third-party Online Services usage and any additional subscription fees for Online Services as required.
 - v. Licensee is solely responsible for providing technical support for Licensee's Value-Added Application(s).
 - vi. Licensee will restrict third-party use of Online Services as required by the terms of this Agreement.
 - vii. Licensee may not remove or obscure any trademarks or logos that would normally be displayed through the use of the Online Services without written permission.
 - c. For ArcGIS Online ELA, ArcGIS Online for Organizations, and paid Developer Plan accounts:
 - i. Licensee is also permitted to:
 - (1) Charge an additional fee to third parties to access Licensee's Value-Added Application(s), subject to the terms of this License Agreement; or

- (2) Transfer Licensee's Value-Added Application(s) to a third party's ArcGIS Online account, subject to the following:
- (a) Licensee may charge third parties a fee for Licensee's Value-Added Application(s).
 - (b) Licensee is not obligated to provide technical support for the third party's general use of its ArcGIS Online account not related to Licensee's Value-Added Application(s).
 - (c) Licensee is not responsible for any fees accrued through the third party's use of Licensee's Value-Added Application(s) that have been transferred to or implemented on the third party's ArcGIS Online account.
 - (d) Licensee is not permitted to invite licensees of an ArcGIS Online Public Plan to participate in private groups. This restriction also applies to licensees of Education Plan accounts and NPO/NGO Plan accounts.
- d. For ArcGIS Online Public Plan accounts, Development and Testing Plan accounts, Education Plan accounts, and NPO/NGO use of ArcGIS Online for Organizations accounts: Licensee is not permitted to charge an additional fee to third parties to access Licensee's Value-Added Application(s) or generate more than incidental advertising revenue as a consequence of the deployment or use of the Value-Added Application(s). Charging a fee to access Licensee's Value-Added Application(s) or generating more than incidental advertising revenue requires an ArcGIS Online ELA, ArcGIS Online for Organizations, or paid Developer Plan account.
- e. For ArcGIS Online Public Plan accounts:
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 - This restriction does not apply to educational institutions when used for teaching purposes only, qualified NGO/NPO organizations, and press or media organizations. Individuals affiliated with these specific types of organization are permitted to use ArcGIS Online Public Plan accounts for the benefit of their affiliated organization(s).
 - ii. Public Plan account licensees are not permitted to create private groups or participate in any private group created by licensees of ArcGIS Online for Organizations, Education, NGO/NPO, or ELA Plans.
- f. For ArcGIS Online Development and Testing Plan accounts:
- i. Subject to the terms of this License Agreement, Licensee is permitted to:
 - (1) Allow third parties to access Licensee's Value-Added Application(s) powered by their Development and Testing Plan account, but only if the Value-Added Application(s) is published for public access and is not used for the benefit of a for-profit business or government agency.
 - This restriction does not apply to educational institutions when used for teaching purposes only, qualified NGO/NPO organizations, and press or media organizations. Individuals affiliated with these specific types of organizations are permitted to use ArcGIS Online Development and Testing Plan accounts for the benefit of their affiliated organization(s).
 - ii. Development and Testing Plan account licensees are not permitted to create private groups or participate in any private group created by licensees of ArcGIS Online for Organizations, Education, NGO/NPO, or ELA Plans.
- g. For ArcGIS Online paid Developer Plan accounts or Development and Testing Plan accounts:
- i. Licensee is limited to one million (1,000,000) basemap and one million (1,000,000) geospatial Transactions per month in conjunction with Licensee's account. "Transaction" is defined in the Documentation at ArcGIS Resources at <http://links.esri.com/agol/transactiondef>.

- h. Licensee is not permitted to be the licensee of an ArcGIS Online account for or on behalf of a third party.
 - This restriction does not apply to education institutions that are permitted to be licensees of ArcGIS Online Public Plan accounts on behalf of registered students of the education institution for teaching purposes only. Education institutions are also permitted to provide access to a single ArcGIS Online Public Plan account to more than one (1) registered student when used for teaching purposes only.
- i. The terms "Online ELA account," "Organizations Plan account," "Developer Plan account," "Public Plan account," "Development and Testing Plan account," and "Education Plan account" refer to different types of ArcGIS Online accounts.

2. Terms of Use for ArcGIS Online Services:

- a. World Geocoding Service: Licensee may not store the geocoded results generated by the service without an ArcGIS Online account.
 - b. Infographics Service: Licensee may use the data accessible through this service for display purposes only. Licensee is prohibited from saving any data accessible through this service.
3. Licensee may not display or post any combination of more than one hundred (100) Esri Business Analyst Online or Community Analyst Reports and maps on Licensee's external websites.
4. Licensee may create, publicly display, and distribute maps in hard copy and static electronic format for news-reporting purposes, subject to any restrictions for ArcGIS Online Data set forth in [Addendum 2, Note 1](#).
5. Licensee may develop Value-Added Applications that use Business Analyst Online API, Community Analyst API, or Location Analytics API to access, query, create, display, and redistribute Reports and resultant static, electronic maps to end user(s) of Licensee's Value-Added Applications. If Licensee has an anonymous user subscription, Licensee may provide access to Licensee's Value-Added Application(s) to anonymous end users, limited to the number of Reports Licensee has paid for. End user(s) of Licensee's Value-Added Applications may use Reports and maps for internal purposes only and not for further redistribution. "Report(s)" means any formatted output created by the Business Analyst Online API, Community Analyst API, or Location Analytics API Products, which includes PDF, CSV, Excel, HTML, and XML formats. Licensee shall not redistribute any Data in vector formats. Licensee and Licensee's end users are prohibited from using Reports or other output generated by Business Analyst Online API, Community Analyst API, or Location Analytics API as a substitute for Business Analyst Online API, Community Analyst API, or Location Analytics API, including, but not limited to, (i) combining and including such output in one or more files or databases and (ii) making such output available through a multiuser computer application. For clarity, end users may save Reports locally for their own internal use. For publicly facing Value-Added Applications developed with Business Analyst Online API (Canadian Edition), Reports and Data may be produced or exported in static formats only (e.g., JPEG, PDF); Licensee must ensure that Licensee's Value-Added Application does not allow Canadian Edition Reports to be exported as CSV, XML, HTML, or XLS files or in any other format that readily enables extraction or manipulation of the file's contents. Licensee is solely responsible for providing technical support for Licensee's Value-Added Application(s).

ADDENDUM 4
LIMITED USE PROGRAMS
(E300-4)

This Limited Use Programs Addendum ("Addendum 4") applies to any Licensee that has been qualified by Esri or its authorized distributor to participate in any of the programs described herein. This Addendum 4 includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 4 takes precedence over conflicting terms of the License Agreement. Esri reserves the right to update the terms from time to time.

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| <ul style="list-style-type: none">▪ Educational Programs (1)▪ Grant Programs (2) | <ul style="list-style-type: none">▪ Home Use Program (3)▪ Other Esri Limited Use Programs (4) |
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Notes

1. *Educational Programs:* Licensee agrees to use Products solely for educational purposes during the educational use Term. Licensee shall not use Products for any administrative use unless Licensee has acquired an administrative use Term License. Licensee shall not use Products for revenue-generating or for-profit purposes.
2. *Grant Programs:* Licensee may use Products only for Noncommercial purposes as specified in the Esri grant document. Licensee shall not use Products for revenue-generating or for-profit purposes.
3. *ArcGIS for Home Use Program:*
 - a. All ArcGIS for Home Use Program Products are provided as Term Licenses and are identified on Esri's Home Use Program website found at <http://www.esri.com/software/arcgis/arcgis-for-home> or Licensee's authorized distributor's website.
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 - c. **Installation Support.** Installation Support for a period of ninety (90) days is included with ArcGIS for Home Use. As discussed further on the Esri or authorized distributor's website, Esri provides technical support in response to specific inquiries. Installation Support will apply only to unmodified Software. Software is provided only for standard hardware platforms and operating systems supported by Esri as described in the Software Documentation. Esri is not responsible for making or arranging for updates to interfaces for nonstandard devices or custom applications.

Esri Installation Support will be provided in compliance with the Esri ArcGIS for Home Use Installation Support document on the Esri website at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/home-use-installation-support.pdf>. Esri supports users solely with the installation of Esri Software. Esri's Support website is at <http://support.esri.com/en/support>. Support provided by an authorized distributor will be in accordance with the distributor's technical support program terms and conditions.
4. *Other Esri Limited Use Programs:* If Licensee acquires Products under any limited use program not listed above, Licensee's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Addendum 4. All such program terms are incorporated herein by reference.

MODIFICATION #4
TO
VITA CONTRACT NUMBER VA-090403-ESRI / Esri CONTRACT NO. 2009MPA2064
BETWEEN
THE VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

This MODIFICATION #4 is an agreement between the Virginia Information Technologies Agency (VITA), herein referred to as "State" or "Commonwealth" or "VITA", and Environmental Systems Research Institute, Inc., hereinafter referred to as "Contractor" or "ESRI" relating to the modification of the above Contract. This Modification #4 is hereby incorporated into and made part of Contract VA-090403-ESRI, as revised.

The purpose of this Modification #4 is to extend the Term of the Agreement, to update various existing documents, and to incorporate one new document for software installation services.

The parties agree to the following:

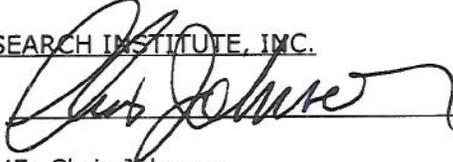
- The Term of the Agreement is extended through April 5, 2014;
- The Commonwealth of Virginia MPA Price List, E417M-1Q13, (updated) incorporated by reference, attached;
- Exhibit 1, Scope of Use (E300 12/07/2012), [updated] is incorporated by reference, attached;
- Implementation Services Addendum For Services Packages (G363DM 02/03/2012), [new] incorporated by reference, attached;
- Training Terms and Conditions (E207CWM 12/06/2012), [updated] incorporated by reference, attached;
- Enterprise Advantage Program Agreement (E125M-MPA 09/20/2012), [updated] incorporated by reference, attached.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090403-ESRI and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED. PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT. ELECTRONIC SIGNATURES WILL BE CONSIDERED AS ORIGINAL SIGNATURES.

ENVIRONMENTAL SYSTEMS

RESEARCH INSTITUTE, INC.

BY: 

NAME: Chris Johnson

TITLE: Manager, Domestic Contracts

DATE: April 3, 2013

VIRGINIA INFORMATION

TECHNOLOGIES AGENCY

BY: 

NAME: SAM NIXON

TITLE: CIO

DATE: April 4, 2013



**EXHIBIT 1
SCOPE OF USE
(E300 12/07/2012)**

**ADDENDUM 1
SOFTWARE TERMS OF USE
(E300-1)**

This Software Terms of Use Addendum ("Addendum 1") sets forth the terms of Licensee's use of Software and includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 1 takes precedence over conflicting terms of the License Agreement.

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Software may be offered under the following license types as set forth in the applicable sales quotation, purchase order, or other document identifying the Products that Licensee orders:

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2. "Deployment Server License" means a license that, in addition to providing Staging Server License rights, authorizes Licensee to install and use the Software or Data to provide services to multiple users on the same or other computer(s).
3. "Development Server License" means a license that authorizes Licensee to install and use the Software on a single computer to design and build applications that interface with or utilize server Software as described in the Documentation.
4. "Single Use License" means a license that allows Licensee to permit a single authorized end user to install and use the Software, Data, and Documentation on a single computer for use by that end user on the computer on which the Software is installed. Licensee may permit the single authorized end user to install a second copy for end user's exclusive use on a second computer as long as only one (1) copy of Product is in use at any time. No other end user may use Product under the same license at the same time for any other purpose.
5. "Staging Server License" means a license that, in addition to providing Development Server License rights, enables Licensee to use and install the Software for the following purposes: user acceptance testing, performance testing, load testing of other third-party software, staging new commercial data updates, and training activities.
6. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or transaction basis.

SECTION 2—TERMS OF USE FOR SPECIFIC SOFTWARE

Unless otherwise noted in the applicable Ordering Document, extensions to Software follow the same scope of use as that granted for the corresponding Software. Specific Software is subject to the terms of use set forth in the notes referenced below:

| | |
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| <p>Desktop</p> <ul style="list-style-type: none">▪ Address Coder (22; Addendum 2, Note 7)▪ ArcExplorer—Java and Windows Editions (20; Addendum 2, Note 1)▪ ArcGIS for Desktop (Advanced, Standard, or Basic) (26; Addendum 2, Note 1; Addendum 2, Note 6)▪ ArcGIS Explorer Desktop (20; Addendum 2, Note 1)▪ ArcGIS for AutoCAD (20)▪ ArcLogistics<ul style="list-style-type: none">– Desktop (Addendum 2, Note 1; Addendum 2, Note 2)– Using ArcGIS Online (20; 46; Addendum 2, Note 1)– Using ArcGIS for Server (20; 46; Addendum 2, Note 1)– Navigator (46; Addendum 2, Note 1; Addendum 2, Note 2)▪ ArcPad (12; 13; Addendum 2, Note 1; Addendum 2, Note 2)▪ ArcReader (20; Addendum 2, Note 1)▪ ArcView 3.x and Extensions (17)▪ Esri Business Analyst (Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Maps for Office (Addendum 2, Note 1)▪ Sourcebook•America (20; Addendum 2, Note 8)▪ ArcGIS for Windows Mobile (15; 54; Addendum 2, Note 1)▪ ArcGIS for iOS; ArcGIS for Windows Phone; ArcGIS for Android (Addendum 2, Note 1) <p>Server</p> <ul style="list-style-type: none">▪ ArcGIS for Server<ul style="list-style-type: none">– Workgroup (8; 9; 28; 29; 30; 32; 38; 39; Addendum 2, Note 1; Addendum 2, Note 6)– Enterprise (8; 9; 27; 31; 38; 39; Addendum 2, Note 1; Addendum 2, Note 6)– Cloud Bundle (10; Addendum 3—Common Terms)▪ ArcGIS for Server Extensions<ul style="list-style-type: none">– ArcGIS for INSPIRE (8; Addendum 2, Note 1) | <ul style="list-style-type: none">▪ Esri Business Analyst Server<ul style="list-style-type: none">– Workgroup (8; 9; 28; 29; 30; 31; 39; Addendum 2, Note 1; Addendum 2, Note 4)– Enterprise (8; 9; 27; 31; 39; Addendum 2, Note 1; Addendum 2, Note 4)▪ Portal for ArcGIS (31; 61; 62; Addendum 2, Note 1)▪ Esri Tracking Server (31)▪ Esri Maps for IBM Cognos (53)▪ Esri Maps for SharePoint (Addendum 2, Note 1) <p>Developer Tools</p> <ul style="list-style-type: none">▪ ArcGIS Runtime SDK for iOS, Windows Phone, Windows Mobile, or Android (16; Addendum 2, Note 1)▪ ArcGIS Engine Developer Kit and Extensions (16, 22, 26)▪ ArcGIS Engine for Windows/Linux and Extensions (15; 22; 26; Addendum 2, Note 1; Addendum 2, Note 6)▪ ArcGIS for Windows Mobile Deployments (15; 54; Addendum 2, Note 1)▪ ArcGIS Runtime (18; 59; Addendum 2, Note 1)▪ ArcGIS Runtime SDK (16; 60; Addendum 2, Note 1)▪ ArcGIS Web Mapping (including ArcGIS API for JavaScript/HTML5, ArcGIS API for Flex, ArcGIS API for Microsoft Silverlight, ArcGIS API for WPF) (15; 16; 64; 66; Addendum 2, Note 1)▪ Esri Business Analyst Server Developer (Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Developer Network (EDN) Software, Online Services, and Data (24; 26; Addendum 2, Note 1; Addendum 2, Note 6)▪ Esri File Geodatabase API (47) <p>Bundled Products</p> <ul style="list-style-type: none">▪ ArcGIS for Transportation Analytics (1; Addendum 2, Note 2; Addendum 2, Note 11) |
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Notes

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60.
 - a. ArcGIS Runtime SDK licenses shall not be used to develop Internet or server applications;
 - b. For ArcGIS Runtime Standard or Advanced:
 - (i) An end user must purchase a software application that includes an ArcGIS Runtime license to obtain the right to run an ArcGIS Runtime application on one (1) computer; and
 - (ii) Licensees building applications for their own internal use must purchase ArcGIS Runtime licenses for every application Deployed that includes ArcGIS Runtime.
 - (iii) A single user may have multiple ArcGIS Runtime licensed applications installed on one (1) computer, but each application is an independent Deployment of ArcGIS Runtime.
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66. For desktop applications or SharePoint, each license is per organization. For the purposes of this license, *organization* is equivalent to a principal registered unique domain identifier. *Domain* is the Internet domain name registered with a domain name registrar. For instance, in example.com, example.com is the registered unique domain identifier. Similarly, in example.com.xx, where xx is a registered country code, example.com.xx is the registered unique domain identifier. Desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.

**ADDENDUM 2
DATA TERMS OF USE
(E300-2)**

This Data Terms of Use Addendum ("Addendum 2") sets forth the terms of Licensee's use of Data and includes Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 2 takes precedence over conflicting terms of the License Agreement. Esri reserves the right to modify the Data terms of use referenced below at any time. For Data licensed through a subscription, Licensee may cancel the subscription upon written notice to Esri or discontinue use of the Data, as applicable. If Licensee continues to use the Data, Licensee will be deemed to have accepted the modification. Data terms of use are set forth in the notes referenced below:

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| <ul style="list-style-type: none"> ▪ ArcGIS Online Data (1) ▪ StreetMap Premium for ArcGIS (2) ▪ StreetMap Premium for Windows Mobile (2) ▪ StreetMap Premium for ArcPad (2) ▪ StreetMap Premium for ArcGIS for Transportation Analytics (2; Addendum 1, Note 1) ▪ NAVTEQ Traffic Data (11; Addendum 1, Note 1) ▪ ArcLogistics Data (2) | <ul style="list-style-type: none"> ▪ Data Appliance for ArcGIS (3) ▪ Business Analyst/Location Analytics Data (4, 10) ▪ Demographic, Consumer, and Business Data ("Esri Data") (5, 10) ▪ Data and Maps for ArcGIS (6) ▪ Address Coder Data (7, 10) ▪ Sourcebook•America Data (8, 10) ▪ MapStudio Data (9) |
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Notes

1. *ArcGIS Online Data*: Software and Online Services that reference this note enable access to ArcGIS Online Data. ArcGIS Online Data is provided for use solely in conjunction with Licensee's authorized use of Esri Software and Online Services. Licensee may use Data accessed through ArcGIS Online as permitted under the terms of the URLs referenced below:
 - a. NAVTEQ data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9791-navteq_use_data.pdf.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
 - c. Data from i-cubed is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9946-icubed.pdf>.
 - d. Microsoft Bing Maps data is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/e-802-bing-mapsvcs.pdf>.
 - e. BODC bathymetry data is subject to the terms of use found at https://www.bodc.ac.uk/data/online_delivery/gebco/terms_of_use/.

2. *StreetMap Premium for ArcGIS; StreetMap Premium for ArcGIS for Windows Mobile; StreetMap Premium for ArcPad; StreetMap Premium for ArcGIS for Transportation Analytics; ArcLogistics Data*: StreetMap Premium Data may be used for mapping, geocoding, and single vehicle routing purposes but is not licensed for dynamic routing. For instance, StreetMap Premium Data may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed. StreetMap Premium Data may not be used to perform synchronized routing of multiple vehicles. Data acquired for use with ArcGIS for Desktop, ArcGIS for Server, ArcPad, ArcGIS for Transportation Analytics, or ArcLogistics Software may only be used with the Product for which the Data was acquired, and may not be used with any other Product. StreetMap for Windows Mobile Data is licensed for use solely on mobile devices or in conjunction with ArcGIS for Mobile applications. Data may include data from either of the following sources:
 - a. NAVTEQ data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9791-navteq_use_data.pdf. NAVTEQ data, when licensed for use in StreetMap Premium for ArcGIS for Transportation Analytics, permits tracking, multivehicle routing, and route optimization.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.

3. *Data Appliance for ArcGIS*: Data provided with Data Appliance is subject to the following additional terms of use:
 - a. Licensee may only use Data for North America with the North America collection of the Data Appliance for ArcGIS. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
 - b. NAVTEQ data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9791-navteq_use_data.pdf.
 - c. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
 - d. Data from i-cubed is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9946-icubed.pdf>.
 - e. BODC bathymetry data is subject to the terms of use found at https://www.bodc.ac.uk/data/online_delivery/gebco/terms_of_use/.
4. *Business Analyst Data; Location Analytics Data*: Business Analyst Data is provided with Esri's Business Analyst (Server, Desktop) or accessed through Business Analyst Online and Community Analyst. Location Analytics Data is accessed through Business Analyst Online API, Community Analyst API, and Location Analytics API. The Data is subject to the following additional terms of use:
 - a. The Data is provided for Licensee's internal business use solely in connection with Licensee's authorized use of Software. Business Analyst Data is restricted for use only in conjunction with the respective Business Analyst extension. Location Analytics Data is restricted for use only in conjunction with Business Analyst Online API, Community Analyst API, and Location Analytics API. If Licensee orders a license for Esri Business Analyst or Business Analyst (Canadian Edition), or for Business Analyst Online API, Community Analyst API, and Location Analytics API, with a subset of the national dataset (i.e., Region, State, Local), Licensee may use only the licensed subset, not any other portion of the national dataset.
 - b. Licensee's use of Canadian Edition Data with Business Analyst (Server, Desktop), Business Analyst Online API, Community Analyst API, or Location Analytics API is subject to the Use of Data Restrictions specific to [Esri Business Analyst \(Canadian Edition\) Data](#).
 - c. Infogroup data is subject to the following terms of use: "Users" means end users of Esri Software. Any use of the Infogroup database not expressly authorized in this License Agreement is strictly prohibited. Without limiting the generality of the foregoing, Users are expressly prohibited from (i) cobranding or otherwise providing the product or service on behalf of any third party; (ii) sublicensing or reselling the Infogroup database; (iii) using or allowing third parties to use the Infogroup database for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from any mailing list, geographic or trade directories, business directories, classified directories, classified advertising, or other compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party; (iv) using the Infogroup database in any service or product not specifically authorized in this License Agreement or offering it through any third party; (v) disassembling, decompiling, reverse engineering, modifying, or otherwise altering the Infogroup database or any part thereof without Infogroup's prior written consent, such consent to be granted or withheld at Infogroup's sole discretion; or (vi) using the Infogroup database for any direct marketing purposes.
 - d. NAVTEQ data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9791-navteq_use_data.pdf.
 - e. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
5. *Demographic, Consumer, and Business Data ("Esri Data")*: This Data category includes demographic, consumer, business, and Tapestry Segmentation datasets. Subject to the terms of the License Agreement and this Addendum 2, Licensee may use the Esri Data for any business purpose.

6. *Data and Maps for ArcGIS*: The Data is available to licensed users of ArcGIS for Desktop, ArcGIS for Server, and ArcGIS Online. Data and Maps for ArcGIS is provided for use solely in conjunction with authorized use of ArcGIS for Desktop, ArcGIS for Server, and ArcGIS Online.
 - a. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at <http://www.esri.com/legal/redistribution-rights>, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
 - b. StreetMap Data may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
7. *Address Coder Data*: This Data is included with Address Coder and is provided for Licensee's internal business use solely in connection with Licensee's authorized use of Address Coder.
8. *Sourcebook•America Data*: This Data is included with Sourcebook•America and provided for Licensee's internal business use solely in connection with Licensee's authorized use of Sourcebook•America.
9. *MapStudio Data*: Use of this Data is subject to the following terms and conditions:
 - a. NAVTEQ data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9791-navteq_use_data.pdf.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
 - c. Data from i-cubed is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9946-icubed.pdf>.
 - d. Infogroup Data is subject to the following terms of use: "Users" means end users of Esri Software. Any use of the Infogroup database not expressly authorized in this License Agreement is strictly prohibited. Without limiting the generality of the foregoing, Users are expressly prohibited from (i) cobranding or otherwise providing the product or service on behalf of any third party; (ii) sublicensing or reselling the Infogroup database; (iii) using or allowing third parties to use the Infogroup database for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from any mailing list, geographic or trade directories, business directories, classified directories, classified advertising, or other compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party; (iv) using the Infogroup database in any service or product not specifically authorized in this License Agreement or offering it through any third party; (v) disassembling, decompiling, reverse engineering, modifying, or otherwise altering the Infogroup database or any part thereof without Infogroup's prior written consent, such consent to be granted or withheld at Infogroup's sole discretion; or (vi) using the Infogroup database for any direct marketing purposes.
10. Licensee may include Data in hard-copy or read-only format ("Outputs") in presentation packages, marketing studies, or other reports or documents prepared for third parties. Licensee shall not resell or otherwise externally distribute Outputs in stand-alone form.
11. *ArcGIS for Transportation Analytics—NAVTEQ traffic data option*: This online data service is available as an option for use exclusively with ArcGIS for Transportation Analytics. Use of this data is subject to the following terms and conditions:
 - a. NAVTEQ traffic data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9791-navteq_use_data.pdf.
 - b. No automatic routing or rerouting based on traffic conditions is permitted without the Navigation add-on.
 - c. NAVTEQ traffic data may not be archived and may be delivered only for end users' personal, near-term use, not to exceed one (1) twenty-four (24)-hour period.
 - d. NAVTEQ traffic data may not be used to display or broadcast in any FM/AM/HD radio broadcast or television broadcast **or through any RDS delivery method.**
 - e. NAVTEQ traffic data may not be used with or incorporated into any traffic system that provides voice traffic reports to inbound callers.
 - f. NAVTEQ traffic data may not be used to develop or commercially make available a text-to-voice e-mail alert or message or voice mail application using any portion of NAVTEQ traffic data.

**ADDENDUM 3
ONLINE SERVICES ADDENDUM
(E300-3)**

This Online Services Addendum ("Addendum 3") sets forth the terms of Licensee's use of Online Services and includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 3 takes precedence over conflicting terms of the License Agreement. Esri reserves the right to update the terms from time to time. [Section 1](#) of this Addendum 3 contains terms applicable to all Online Services; [Section 2](#) contains common terms applicable to specific Online Services.

SECTION 1—COMMON TERMS OF USE OF ONLINE SERVICES

ARTICLE 1—DEFINITIONS

In addition to the definitions provided in the License Agreement, the following definitions apply to this Addendum 3:

- a. "Anonymous Users" means individuals that do not qualify as Named Users but have limited access to Online Services.
- b. "API" means application programming interface.
- c. "ArcGIS Website" means <http://www.arcgis.com> and any related or successor websites.
- d. "Content" means Data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, software applications, and Developer Tools.
- e. "Developer Tools" means software development kits (SDKs), APIs, software libraries, code samples, and other resources.
- f. "Named Users" means Licensee's employees; agents; consultants; contractors; or, for Education Plan accounts, registered students; whom Licensee authorizes to access Online Services for Licensee's exclusive benefit through Licensee's ArcGIS Online account, to which they are explicitly linked through unique, individual user names and passwords. Named Users have access to features of Online Services that are not accessible to Anonymous Users. Named Users' access to features of Online Services may be constrained by Named Users type as defined for specific Online Services and as described in the applicable Ordering Document or other product documentation.
- g. "Online Content" means Content hosted or provided by Esri as part of Online Services, including any Map Services, Task Services, Image Services, and Developer Tools and excluding Content provided by third parties that Licensee accesses through Online Services.
- h. "Service Components" means each of the following: Online Services, Online Content, ArcGIS Website, Developer Tools, Documentation, or related materials.
- i. "Licensee's Content" means any Content that Licensee or Licensee's Named Users submit to Esri in connection with Licensee's use of the Online Services, any results derived from the use of Licensee's Content with Online Services, and any applications Licensee builds with Developer Tools and deploy with Online Services. Licensee's Content excludes any feedback, suggestions, or requests for Product improvements that Licensee provides to Esri.
- j. "Value-Added Application" means an application developed using the Developer Tools and Online Services as enabled through Licensee's use of Online Services and that includes functions or features that do not expose native Online Services directly to Licensee's end users. Licensee is prohibited from exposing native Online Service capabilities substantially similar or equivalent to those provided to Licensee by Esri.
- k. "Web Services" as used under Licensee's existing signed license agreement, if any, means Online Services and any Content delivered by such Online Services.

ARTICLE 2—USE OF ONLINE SERVICES

2.1 License to Online Services. Esri grants Licensee a personal, nonexclusive, nontransferable, worldwide license to access and use Online Services as set forth in the applicable Ordering Documents (i) for which the applicable license fees have been paid (if required), (ii) for Licensee's own internal use by Licensee and Licensee's Named Users or Anonymous Users (if applicable), and (iii) in accordance with this License Agreement and the licensed configuration on file as authorized by Esri.

2.2 Provision of Subscription Online Services. For subscription Online Services, Esri will

- a. Provide Online Services to Licensee in accordance with the Documentation;
- b. Provide customer support in accordance with Esri's standard customer support policies and any additional support Licensee may purchase; and
- c. Use commercially reasonable efforts to ensure that Online Services will not transmit to Licensee any Malicious Code, provided Esri is not responsible for Malicious Code that was introduced to Online Services through Licensee's account or through third-party Content.

2.3 Licensee's Responsibilities. Licensee and Licensee's Named Users or Anonymous Users (if applicable) are the only persons authorized to access Online Services through Licensee's accounts. Named Users' login credentials are for designated Named Users only and may not be shared among multiple individuals. Named Users' login credentials may be reassigned to new Named Users if the former users no longer require access to Online Services. Licensee and Licensee's Named Users are responsible for maintaining the confidentiality of Authorization Codes, Access Codes, Named Users' login credentials, or any other method that enables access to Online Services and for ensuring that unauthorized third parties do not access Licensee's account. Licensee will immediately notify Esri if Licensee becomes aware of any unauthorized use of Licensee's account or any other breach of security.

2.4 Prohibited Uses of the Online Services. In addition to the prohibited uses under the License Agreement, Licensee shall not (i) attempt to gain unauthorized access to the Online Services or assist others to do so; (ii) use Online Services for spamming, to transmit junk e-mail or offensive or defamatory material, or for stalking or making threats of physical harm; (iii) use Online Services to store or transmit software viruses, worms, time bombs, Trojan horses, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment ("Malicious Code"); (iv) mirror, reformat, or display Online Services in an attempt to mirror and/or make commercial use of Online Services except to the degree that Online Services directly enable such functionality; (v) share the client-side data cache derived from Online Services with other licensed end users or third parties; (vi) distribute the client-side data cache derived from Online Services to third parties; (vii) manually or systematically harvest information and data contained within Online Services; (viii) use ArcGIS Online Map Services, Geocoding Services, or Routing Services in connection with any products, systems, or applications installed or otherwise connected to or in communication with vehicles capable of vehicle navigation, positioning, dispatch, real-time route guidance, fleet management, or similar applications; or (ix) incorporate any portion of Online Services into a commercial product or service unless the commercial product adds material functionality to Online Services.

2.5 Evaluations. Esri may provide licenses to use certain Services for Licensee's internal evaluation purposes. Such licenses continue until the stated evaluation period expires or until Licensee purchases a subscription, whichever occurs first. **IF LICENSEE DOES NOT CONVERT LICENSEE'S EVALUATION LICENSE TO A SUBSCRIPTION PRIOR TO EXPIRATION OF THE EVALUATION TERM, ANY CONTENT AND CUSTOMIZATIONS THAT LICENSEE UPLOADED OR MADE DURING THE EVALUATION TERM WILL BE PERMANENTLY LOST. IF LICENSEE DOES NOT WISH TO PURCHASE A SUBSCRIPTION, LICENSEE MUST EXPORT SUCH CONTENT BEFORE THE END OF LICENSEE'S EVALUATION PERIOD.**

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2.7 Attributions. Licensee is not permitted to remove any Esri or its licensors' logos or other attribution associated with any use of ArcGIS Online Services.

ARTICLE 3—TERM AND TERMINATION

The following supplements Article 5—Term and Termination of the License Agreement:

3.1 Term of Subscriptions. The term of any subscription will be provided in the Ordering Document under which it is purchased or in the Online Services description referenced therein.

3.2 Subscription Rate Changes. Monthly subscription rates may be increased upon thirty (30) days' notice. Esri may increase rates for subscriptions with a term greater than one (1) month by notifying Licensee at least sixty (60) days prior to expiration of the then-current subscription term.

3.3 Service Interruption. Licensee's access (including access on behalf of Licensee's customers) to and use of Online Services may be temporarily unavailable, without prior notice, for any unanticipated or unscheduled downtime or unavailability of all or any portion of Online Services, including system failure or other events beyond the reasonable control of Esri or its affiliates.

3.4 Service Suspension. Esri and its affiliates shall be entitled, without any liability to Licensee, to suspend access to any portion or all of Online Services at any time on a service-wide basis (a) if Licensee breaches the License Agreement, exceeds Licensee's usage limits, and fails to purchase additional license capacity sufficient to support Licensee's continued use of Online Services as described in Article 5 of this Addendum; (b) if there is reason to believe that Licensee's use of Online Services will adversely affect the integrity, functionality, or usability of the Online Services or that Esri and its licensors may incur liability by not suspending Licensee's account; (c) for scheduled downtime to conduct maintenance or make modifications to Online Services; (d) in the event of a threat or attack on Online Services (including a denial-of-service attack) or other event that may create a risk to the applicable part of Online Services; or (e) in the event that Esri or its affiliates determine that Online Services (or portions thereof) are prohibited by law or otherwise that it is necessary or prudent to do so for legal or regulatory reasons. If warranted under these circumstances, Licensee will be notified of any Service Suspension beforehand and allowed reasonable opportunity to take remedial action.

3.5 Esri is not responsible for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Licensee or any Licensee customer may incur as a result of any Service Interruption or Service Suspension.

ARTICLE 4—LICENSEE'S CONTENT, FEEDBACK

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4.2 Removal of Licensee's Content. Licensee will provide information and/or other materials related to Licensee's Content as reasonably requested by Esri to verify Licensee's compliance with this License Agreement. Esri may remove or delete any portions of Licensee's Content if there is reason to believe that uploading it to, or using it with, Online Services violates this License Agreement. If reasonable under these circumstances, Esri will notify Licensee before Licensee's Content is removed. Esri will respond to any Digital Millennium Copyright Act take-down notices in accordance with Esri's Copyright Policy, available at http://www.esri.com/legal/dmca_policy.

4.3 Sharing Licensee's Content. Online Services and ArcGIS Website include publishing capabilities that allow Licensee to make Licensee's Content available to third parties ("Sharing Tools"). Licensee hereby grants to any third parties with whom Licensee elects to share Licensee's Content using such Sharing Tools the right and license to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Licensee's Content through Online Services subject to any terms of use and access restrictions that Licensee provides with Licensee's Content. **ESRI IS NOT RESPONSIBLE FOR ANY LOSS, DELETION, MODIFICATION, OR DISCLOSURE OF LICENSEE'S CONTENT RESULTING FROM LICENSEE'S NAMED USERS' MISUSE OF SUCH SHARING TOOLS OR ANY OTHER SERVICE COMPONENTS. LICENSEE'S USE OF SUCH SHARING TOOLS IS AT LICENSEE'S SOLE RISK.**

4.4 Retrieving Licensee's Content upon Termination. Upon termination of the License Agreement or any trial, evaluation, or subscription, Esri will make Licensee's Content available to Licensee for download for a period of thirty (30) days unless Licensee requests a shorter window of availability or Esri is legally prohibited from doing so. Thereafter, Licensee's right to access or use Licensee's Content with Online Services will end, and Esri will have no further obligations to store or return Licensee's Content.

ARTICLE 5—LIMITS ON USE OF ONLINE SERVICES; SERVICE CREDITS

Esri may establish limits on the Online Services available to Licensee. These limits may be controlled through Service Credits. Service Credits are used to measure the consumption of ArcGIS Online services made available through Licensee's account. The maximum Service Credits provided with Licensee's ArcGIS Online account will be addressed in the applicable Ordering Document. Esri will notify Licensee's account administrator when Licensee's Service consumption reaches approximately seventy-five percent (75%) of the Service Credits allocated to Licensee through Licensee's subscription. Esri reserves the right to suspend Licensee's account when consumption reaches one hundred percent (100%) of the Service Credits allocated to Licensee's subscription. Licensee's access to the account will be restored immediately upon the completion of Licensee's purchase transaction for additional Service Credits for the subscription account.

ARTICLE 6—ONLINE CONTENT; THIRD-PARTY CONTENT AND WEBSITES

6.1 Online Content. ArcGIS Online Data is included as a component of Online Services and is licensed under the terms of the License Agreement.

6.2 Third-Party Content and Websites. Online Services and ArcGIS Website may reference or link to third-party websites or enable Licensee to access, view, use, and download third-party Content. This Agreement does not address Licensee's use of third-party Content, and Licensee may be required to agree to different or additional terms in order to use third-party Content. Esri does not control these websites and is not responsible for their operation, content, or availability; Licensee's use of any third-party websites and third-party Content is *as is*, without warranty, and at Licensee's sole risk. The presence of any links or references in Online Services to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

ARTICLE 7—LICENSEE'S WARRANTIES

Licensee warrants that Licensee's Content or use of Online Services with a product, process, or system not supplied by Esri or specified by Esri in its Documentation will not (i) infringe or misappropriate any third-party intellectual property rights or proprietary rights, (ii) violate any third party's privacy rights or any applicable law, or (iii) contain or transmit to a third party any Malicious Code. Except as prohibited by applicable law, Licensee agrees to defend, indemnify, and hold harmless Esri from and against any claim, action, liability, or demand arising out of a breach of the foregoing warranties.

SECTION 2—TERMS OF USE FOR SPECIFIC ONLINE SERVICES

Specific Online Services are subject to the terms of use set forth in the notes referenced below:

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| <ul style="list-style-type: none">▪ ArcGIS Online (1; 2; Addendum 2, Note 1; Addendum 2, Note 6)▪ Business Analyst Online (3; Addendum 2, Note 1; Addendum 2, Note 4)▪ Business Analyst Online Mobile (3; Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Business Analyst Online API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (5; Addendum 2, Note 1; Addendum 2, Note 4) | <ul style="list-style-type: none">▪ Community Analyst (3; Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Community Analyst API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (5; Addendum 2, Note 1; Addendum 2, Note 4)▪ Esri Location Analytics API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (5; Addendum 2, Note 1; Addendum 2, Note 4)▪ Redistricting Online (2; Addendum 2, Note 1)▪ MapStudio (2a; 4; Addendum 2, Note 1; Addendum 2, Note 9) |
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Notes

1. In addition to the common terms of use of Online Services:
 - a. Licensee may use Licensee's ArcGIS Online account to build a Value-Added Application(s) using the ArcGIS Online Development Tools and Services enabled through Licensee's ArcGIS Online Plan account for Licensee's internal use.
 - b. Licensee may also provide access to Licensee's Value-Added Application(s) to third parties, subject to the following terms:
 - i. Licensee may allow Anonymous Users to access Licensee's Value-Added Application(s).
 - ii. Licensee shall not add third parties as Named Users to Licensee's ArcGIS Online account for the purpose of allowing third parties to access Licensee's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
 - iii. Licensee shall not provide a third party with access to ArcGIS Online Services enabled through Licensee's ArcGIS Online account other than through Licensee's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
 - iv. Licensee is responsible for any fees accrued through the use of Licensee's ArcGIS Online account by third parties accessing Licensee's Value-Added Application(s). This includes Service Credits required to support third-party Online Services usage and any additional subscription fees for Online Services as required.
 - v. Licensee is solely responsible for providing technical support for Licensee's Value-Added Application(s).
 - vi. Licensee will restrict third-party use of Online Services as required by the terms of this Agreement.
 - c. For ArcGIS Online ELA and Organization Plan accounts:
 - i. Licensee is also permitted to:
 - (1) Charge an additional fee to third parties to access Licensee's Value-Added Application(s), subject to the terms of this License Agreement; or
 - (2) Transfer Licensee's Value-Added Application(s) to a third party's ArcGIS Online account, subject to the following:
 - (a) Licensee may charge third parties a fee for Licensee's Value-Added Application(s).
 - (b) Licensee is not obligated to provide technical support for the third party's general use of its ArcGIS Online account not related to Licensee's Value-Added Application(s).
 - (c) Licensee is not responsible for any fees accrued through the third party's use of Licensee's Value-Added Application(s) that have been transferred to or implemented on the third party's ArcGIS Online account.

- (d) Licensee is not permitted to invite licensees of an ArcGIS Online Public Plan to participate in private groups. This restriction also applies to licensees of Education Plan accounts and NPO/NGO Plan accounts.
 - d. For ArcGIS Online Public Plan accounts, Education Plan accounts, and NPO/NGO use of ArcGIS Online Organization accounts: Licensee is not permitted to charge an additional fee to third parties to access Licensee's Value-Added Application(s) or generate more than incidental advertising revenue as a consequence of the deployment or use of the Value-Added Application(s). Charging a fee to access Licensee's Value-Added Application(s) or generating more than incidental advertising revenue requires an ArcGIS Online ELA or Organization Plan account.
 - e. ArcGIS Online Public Plan accounts:
 - i. Public Plan accounts are licensed for the personal use of an individual. Any use of Public Plan accounts by an individual for the benefit of a for-profit business or a government agency is prohibited.
 - This restriction does not apply to educational institutions when used for teaching purposes only, qualified NGO/NPO organizations, and press or media organizations. Individuals affiliated with these specific types of organization are permitted to use ArcGIS Online Public Plan accounts for the benefit of their affiliated organization(s).
 - ii. Public Plan account licensees are not permitted to create private groups or participate in any private group created by licensees of ArcGIS Online Organization, Education, NGO/NPO, or ELA Plans.
 - f. Licensee is not permitted to be the licensee of an ArcGIS Online account for or on behalf of a third party.
 - This restriction does not apply to education institutions that are permitted to license ArcGIS Online Public Plan accounts on behalf of registered students of the education institution for teaching purposes only. Education institutions are also permitted to provide access to a single ArcGIS Online Public Plan account to more than one (1) registered student when used for teaching purposes only.
 - g. The terms "Online ELA account," "Organization Plan account," "Public Plan account," and "Education Plan" account refer to different types of ArcGIS Online accounts.
2. Terms of Use for ArcGIS Online Content and Task Services:
- a. The following ArcGIS Online Content and Task Services are not subject to ArcGIS Online Organization Plan fee-based Service Credit consumption usage. There is no fee (unless otherwise noted) to use these services up to the predefined maximum usage limits shown below. Use of these services beyond the predefined usage limits requires an additional fee. These services may be used only in conjunction with ArcGIS Software or an ArcGIS Online account.
 - i. *Map Services, Imagery Services, and Geometry Services*: Licensee may put these services to any use consistent with these terms of use, subject to an aggregate limit of fifty million (50,000,000) transactions during any twelve (12)-month period. "Transaction" is defined in the Documentation at the ArcGIS Online Content resource center at <http://links.esri.com/agol/transactiondef>.
 - ii. *Standard Task Services* (available at <http://tasks.arcgisonline.com>): Licensee may put these services to any use consistent with these terms of use, subject to the following:
 - *Standard Geocoding Services*: Licensee may use these services for search capabilities only, and results may not be stored for later use. Whenever results are stored for later use, a subscription is required.
 - *Standard Routing Services*: Licensee is subject to a limit of five thousand (5,000) routing requests (as defined in the Documentation) during any twelve (12)-month period.
 - iii. *Subscription Task Services* (available at <http://premiumtasks.arcgisonline.com>): Upon Licensee's payment to Esri of the applicable fee(s), Licensee may put these services to any use consistent with these terms of use. Licensee may store results for later use.

- iv. *Sample Services*: Licensee may use these services for internal evaluation and development purposes only. All licenses for ArcGIS Online Services are subject to these terms of use and any additional restrictions or requirements identified in the Documentation.

The following ArcGIS Online Service is subject to ArcGIS Online Organization Plan fee-based Service Credit consumption usage:

ArcGIS Online World Geocoding Service (available at <http://geocode.arcgis.com>): Licensee may use this service for search capabilities at no cost, but results may not be stored for later use. Upon Licensee's payment for an ArcGIS Online subscription or Service Credits, Licensee may batch geocode and store results for later use.

3. Licensee may not display or post any combination of more than one hundred (100) Esri Business Analyst Online or Community Analyst Reports and maps on Licensee's external websites.
4. Licensee may create, publicly display, and distribute maps in hard copy and static electronic format for news-reporting purposes, subject to any restrictions for ArcGIS Online Data set forth in [Addendum 2, Note 1](#).
5. Licensee may develop software or web applications that use Business Analyst Online API, Community Analyst API, or Location Analytics API to access, query, create, display, and redistribute Reports and resultant static, electronic maps to end user(s) of Licensee's software or web applications. If Licensee has an anonymous user subscription, Licensee may provide access to Licensee's Value-Added Application(s) to anonymous end users, limited to the number of Reports Licensee has paid for. End user(s) of Licensee's software or web applications may use Reports and maps for internal purposes only and not for further redistribution. "Report(s)" means any formatted output created by the Business Analyst Online API, Community Analyst API, or Location Analytics API Products, which includes PDF, CSV, Excel, HTML, and XML formats. Licensee shall not redistribute any Data in vector formats. Licensee and Licensee's end users are prohibited from using Reports or other output generated by Business Analyst Online API, Community Analyst API, or Location Analytics API as a substitute for Business Analyst Online API, Community Analyst API, or Location Analytics API, including, but not limited to, (i) combining and including such output in one or more files or databases and (ii) making such output available through a multiuser computer application. For clarity, end users may save Reports locally for their own internal use. For publicly facing applications developed with Business Analyst Online API (Canadian Edition), Reports and Data may be produced or exported in static formats only (e.g., JPEG, PDF); Licensee must ensure that Licensee's application does not allow Canadian Edition Reports to be exported as CSV, XML, HTML, or XLS files or in any other format that readily enables extraction or manipulation of the file's contents. Licensee is solely responsible for providing technical support for Licensee's Value-Added Application(s).

ADDENDUM 4
LIMITED USE PROGRAMS
(E300-4)

This Limited Use Programs Addendum ("Addendum 4") applies to any Licensee that has been qualified by Esri or its authorized distributor to participate in any of the programs described herein. This Addendum 4 includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 4 takes precedence over conflicting terms of the License Agreement. Esri reserves the right to update the terms from time to time.

| | |
|---|--|
| <ul style="list-style-type: none">▪ Educational Programs (1)▪ Grant Programs (2) | <ul style="list-style-type: none">▪ Home Use Program (3)▪ Other Esri Limited Use Programs (4) |
|---|--|

Notes

1. *Educational Programs:* Licensee agrees to use Products solely for educational purposes during the educational use Term. Licensee shall not use Products for any administrative use unless Licensee has acquired an administrative use Term License. Licensee shall not use Products for revenue-generating or for-profit purposes.
2. *Grant Programs:* Licensee may use Products only for Noncommercial purposes as specified in the Esri grant document. Licensee shall not use Products for revenue-generating or for-profit purposes.
3. *ArcGIS for Home Use Program:*
 - a. All ArcGIS for Home Use Program Products are provided as Term Licenses and are identified on Esri's Home Use Program website found at <http://www.esri.com/software/arcgis/arcgis-for-home> or Licensee's authorized distributor's website.
 - b. Esri grants to Licensee a personal, nonexclusive, nontransferable, Single Use License solely to use the Products provided under the ArcGIS for Home Use Program as set forth in the applicable Ordering Documents (i) for which the applicable license fees have been paid, (ii) for Licensee's own Noncommercial internal use, (iii) in accordance with this License Agreement and the configuration ordered by Licensee or as authorized by Esri or its authorized distributor, and (iv) for a period of twelve (12) months unless terminated earlier in accordance with the License Agreement. "**Noncommercial**" means use in a personal or individual capacity that (i) is not compensated in any fashion; (ii) is not intended to produce any works for commercial use or compensation; (iii) is not intended to provide a commercial service; and (iv) is neither conducted nor funded by any person or entity engaged in the commercial use, application, or exploitation of works similar to the licensed Products.
 - c. **Installation Support.** Installation Support for a period of ninety (90) days is included with ArcGIS for Home Use. As discussed further on the Esri or authorized distributor's website, Esri provides technical support in response to specific inquiries. Installation Support will apply only to unmodified Software. Software is provided only for standard hardware platforms and operating systems supported by Esri as described in the Software Documentation. Esri is not responsible for making or arranging for updates to interfaces for nonstandard devices or custom applications.

Esri Installation Support will be provided in compliance with the Esri ArcGIS for Home Use Installation Support document on the Esri website at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/home-use-installation-support.pdf>. Esri supports users solely with the installation of Esri Software. Esri's Support website is at <http://support.esri.com/en/support>. Support provided by an authorized distributor will be in accordance with the distributor's technical support program terms and conditions.
4. *Other Esri Limited Use Programs:* If Licensee acquires Products under any limited use program not listed above, Licensee's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Addendum 4. All such program terms are incorporated herein by reference.



IMPLEMENTATION SERVICES ADDENDUM FOR SERVICES PACKAGES

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

1. DEFINITIONS

"Commercial Off-the-Shelf Software" or **"COTS Software"** means all or any portion of Esri's proprietary software technology accessed or downloaded from an authorized Esri website or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies, available under license to the general public.

"Map Data" means any digital dataset(s) including geographic, vector data, coordinates, raster, or associated tabular attributes supplied by either party for use in the performance of this Addendum.

"Services" means consulting support being performed by Esri on a time and materials basis in exchange for compensation from Customer.

"Services Output" means any work product produced by Esri as a result of Services provided under this Addendum. Services Output can include, but is not limited to, reports, training materials, and custom software code.

"Services Package(s)" means a predefined unit of Services provided at a firm fixed price, as stated in Esri's proposal.

2. OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Addendum, Esri owns and retains all rights, title, and interest in Services Output. Subject to the terms and conditions in this Addendum, Esri hereby grants to Customer a nonexclusive, royalty-free, worldwide license to use, modify, and/or reproduce Services Output in connection with Customer's authorized use of Esri's COTS Software.

3. PATENTS AND INVENTIONS

Esri and Customer shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors ("Inventors") during the term of this Addendum. Esri and Customer shall jointly own any Inventions made or conceived jointly by Inventors from both parties. Where Inventions are jointly owned, each joint owner shall share equally the costs of acquiring protection for the Inventions and furnish the other joint owner with assistance reasonably required for acquiring protection. Neither Esri nor Customer may license, transfer, or sell its interest in jointly owned Inventions without the written consent of the other party, which shall not be unreasonably withheld.

4. COMPENSATION

Services will be performed and invoiced on a firm fixed price basis, and the deliverable will be consultation time. Esri will invoice Customer for all Services Packages ordered upon receipt of a valid Customer Purchase Order/ordering document. The Purchase Order/ordering document will confirm the quantity and price of the Services Packages ordered, as described in Esri's proposal or quotation, and will reference Customer acceptance of this terms and conditions document. Esri standard payment terms are net 30 days

from receipt of an Esri invoice. Payment shall be made to the Esri address identified on the Esri invoice. For Services provided beyond the period of performance proposed or provided in a new calendar year, Esri reserves the right to increase the Services Package price in accordance with Esri's most current price schedule. Esri's obligation for completion of the Services proposed is limited to the hours outlined in the Services Package descriptions within Esri's statement of work. If additional time is required to complete Customer's goals or activities set forth in the applicable statement of work, Esri and Customer will amend the Purchase Order/ordering document, as mutually agreed, by increasing the quantity of Service Packages ordered and issuing a new or amended Purchase Order/ordering document. Esri may, at its sole discretion, stop work to avoid exceeding the total hours allotted in a specific Services Package. Unused labor hours or travel remaining after the performance of a Services Package will expire and not be available for performance at a later date. If funded Services Packages have not been performed within twelve (12) months of the Esri invoice date, the Services Package will expire, and no refund will be provided. Any amendment to the Purchase Order/ordering document to add Services Packages shall not affect the rights or obligations of the parties under this Addendum.

5. LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

Esri warrants for a period of ninety (90) days from the date of performance that Services will conform substantially to the professional and technical standards of the software industry. If Services do not substantially conform to these standards, Customer may require Esri to reperform Services at no additional cost to Customer. Services Output is provided as is without warranty of any kind.

Disclaimer of Warranties

WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS AND THIS ADDENDUM EXPRESSLY EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IN ADDITION TO AND WITHOUT LIMITING THE PRECEDING PARAGRAPH, ESRI DOES NOT WARRANT IN ANY WAY MAP DATA. MAP DATA MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET CUSTOMER'S NEEDS OR EXPECTATIONS. CUSTOMER SHOULD NOT RELY ON ANY MAP DATA UNLESS CUSTOMER HAS VERIFIED MAP DATA AGAINST ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

6. LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

IN NO EVENT SHALL ESRI BE LIABLE TO CUSTOMER FOR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS ADDENDUM, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ESRI'S TOTAL CUMULATIVE LIABILITY UNDER THIS ADDENDUM, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR SERVICES UNDER THIS ADDENDUM FROM WHICH THE LIABILITY DIRECTLY AROSE.

7. CONFIDENTIALITY

Services Output is Esri confidential information, and Customer shall preserve and protect the confidentiality of Services Output. Customer agrees not to reverse engineer or decompile custom software delivered in object code, executable code, or similar formats (collectively, "Secure Formats"). For custom software delivered in source code or other human-readable formats, Customer shall have met its obligations under this Addendum if its disclosure of custom software is limited to custom software in Secure Formats, provided that the means for reverse engineering, decompiling, or disassembling the custom software is withheld from such disclosure, and the person or entity in receipt of the custom software similarly agrees not to perform the prohibited acts described above or allow others to do so.

Except as provided in the preceding paragraph, Customer shall not disclose Services Output to third parties without the advance written consent of Esri. Customer may make disclosures to Customer's employees to the extent reasonably required to allow Customer to use Services Output in a manner authorized under the applicable software licenses. Before disclosing all or any portion of Services Output to employees or third parties as permitted in the preceding sentence, Customer shall inform its employees or third parties of the obligations in this Addendum and obtain their agreement to be bound by them.

8. EXPORT CONTROLS

The disclosures permitted under Article 7, Confidentiality, shall not relieve Customer of its obligation to maintain Services Output in confidence and comply with all applicable laws and regulations of the United States including, without limitation, its export control laws. Customer expressly acknowledges and agrees not to export, reexport, transfer, or release Services Output, in whole or in part, to (i) any US embargoed country (or a national or resident of any US embargoed country); (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any US export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to US export laws.

9. GENERAL PROVISIONS

9.1 Nonsolicitation. Neither party will directly solicit for hire any employee of the other party who is associated with Services called for under this Addendum during, and for a period of one (1) year after, project completion. In the event this provision is breached, liquidated damages equal to twelve (12) months of the employee's compensation, plus any legal expenses associated with the enforcement of this provision, shall be paid by the breaching party to the aggrieved party. The foregoing shall in no way restrict the parties from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

9.2 Taxes. Services are quoted exclusive of all state, local, value-added, or other taxes; customs; duties; or other charges (other than income taxes payable by Esri). In the event such taxes and/or charges become applicable to Esri's Services or Services Output, Customer shall pay the applicable tax upon receipt of written notice that it is due.

9.3 UCC Inapplicability. Services provided under this Addendum will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of UCC.

9.4 Order of Precedence. These terms and conditions will take precedence over any Customer terms and conditions included in Customer ordering or authorizing documents, such as purchase orders. Any additional terms or conditions in Customer ordering or authorizing documents will be void and may be incorporated into this Addendum only by written amendment signed by both parties.



TRAINING TERMS AND CONDITIONS

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

This Training Agreement ("Agreement") is between you (hereinafter "**Client**") and **Environmental Systems Research Institute, Inc. ("Esri")**. Client acknowledges that Client has read and understood this Agreement and agrees to be bound by the terms and conditions hereof.

RECITALS

Client wishes to arrange for certain training in the use of GIS software. Esri is willing to conduct training courses and provide related services regarding the use of GIS software pursuant to the terms and conditions contained herein. The parties therefore agree as follows:

ARTICLE 1—TRAINING DESCRIPTION

Esri offers a set of instructor-led training and client coaching services related to the use of its proprietary GIS software. Instructor-led training events occur at a client's site, at an Esri Learning Center, or via the web in a cloud environment. The Esri software training courses offered, their location, the dates during which the courses are to be conducted, the number of participants, the prices to be paid, and registration requirements are set forth in the *Esri Training* catalog located on Esri's Training website (<http://training.esri.com>). All courses are conducted in substantial conformity with course descriptions outlined on the Esri Training website. Esri reserves the right to modify course content when necessary due to software technical capabilities or limitations. Client coaching services may be provided immediately before or immediately following an Esri training course to familiarize the Student with the software or to review and practice course concepts with an instructor's guidance.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- Esri will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. Esri will provide each Student with a course manual, where applicable.
- Esri will confirm Learning Center training event scheduled dates approximately ten (10) business days prior to the training event start date.
- Esri will confirm Client Site scheduled dates upon receipt of the completed Client Site Training Request Form and intended payment method.

ARTICLE 3—CLIENT'S RESPONSIBILITIES

- Client must ensure the protection of Esri's copyrights. Client shall neither copy or distribute nor permit a third party to copy or distribute any of Esri's training material(s).
- Client is not authorized to resell seat(s) to an Esri training event, unless explicitly authorized in writing by Esri.
- Client must ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Students are not permitted to view or participate in an Online Classroom training event. Esri reserves the right to disconnect any Students who permit access to unregistered Students.
- Client must confirm that all registered Students meet the minimum prerequisites for the applicable training event set forth on Esri's Training website.
- Client must submit registrations with a confirmed payment commitment at least seven (7) business days before the training event start date. If Client submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Client must submit to the Esri Training Event Assistant a list of the names of Students that are to attend any training event. Client must submit the list of Student names to Esri at least three (3) business days before the training

event start date. Any Student that is found on any of the various US Government Denied Persons lists will not be permitted to attend training.

- Client is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export regulation requirements, course scheduling changes, or cancellations.
- Client must provide written notice to Esri's Customer Service department at service@esri.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the training event start date.
- Client must complete and submit an Esri Client Site Training Request Form as well as ensure that it adheres to the course, facility, equipment, and Internet bandwidth and connectivity requirements for Esri Training as found at <http://training.esri.com/gateway/index.cfm?fa=classroom.requirements>.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from Esri. Esri reserves the right to record a classroom training event for future rebroadcast.
- If the Esri Mobile Lab equipment is utilized at Client's domestic site, then the following terms will apply:
 - Upon receipt, Client must immediately report any damage to the Mobile Lab equipment to the Training Event Assistant.
 - Client must keep the Mobile Lab equipment in a secure, locked area between training event sessions.
 - Client must ensure that only registered Students use the Mobile Lab equipment.
 - Client is responsible for any and all loss of, damage to, or theft of the Mobile Lab equipment while in Client's possession.
 - Client warrants that it maintains sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law.
 - The Esri instructor will check all Mobile Lab equipment following the completion of training. Any damage to the Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Client by written notice. Client hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
 - Client shall make the Mobile Lab equipment available for freight pickup immediately on conclusion of the Esri course(s).

ARTICLE 4—INSURANCE AND INDEMNIFICATION

4.1 Insurance. Esri carries, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with minimum coverage of one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, including death, and property damage liability, to include the following:
 1. Premises and operations
 2. Blanket contractual liability
 3. Broad form property damage
 4. Independent contractors
 5. Personal injury, with employee exclusion deleted
 6. Completed operations
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

4.2 Indemnification. Esri will indemnify and hold harmless Client and each of its directors and officers (collectively the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys fees, arising out of any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents while engaged in or as a result of the training or coaching services provided by Esri pursuant to this Agreement while on Client's site.

ARTICLE 5—UNIQUE CLIENT COACHING PRIVACY TERMS

In the event Client coaching services are to be ordered, the following terms shall apply:

Client shall not provide to Esri or disclose to the instructor any personally identified information ("PII") (e.g., GLBA, HIPAA, CII from the US Department of Homeland Security), classified, and so forth, data for use in the coaching session. Notwithstanding anything in this Agreement to the contrary, Esri retains the right to refuse acceptance of any nonpublic personal information ("NPI") or Customer Information regardless of the form of disclosure. Esri will only accept receipt of information from Client that comports with the exceptions set forth in Subsections 4(B) and 4(C)(ii) of Section 509 of the Gramm-Leach-Bliley Act (P.L. 106-102) (15 U.S.C. Section 6809) and implementing regulations thereof.

ARTICLE 6—SOFTWARE LICENSES

The terms of the Esri license agreement are applicable to all Students and cover all of Esri's software, data, and documentation licensed for use in any training course to be conducted. Esri may issue temporary software licenses for Client Site Training where there are an insufficient number of software licenses available at the Client's training facility. Upon conclusion of the training course or event, the Client must uninstall the temporary software licenses and return to Esri any media provided.

ARTICLE 7—CANCELLATION AND RESCHEDULING POLICY

7.1 Individual Student Seats

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without three (3) business days' notification, a transfer fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center training event to another one (1) time at no additional charge provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a training event provided Esri's Customer Service department is notified three (3) business days in advance. If three (3) business days' notification is not provided, Students may be charged the full class fee.

7.2 Client Site/Private Class/Coaching Services (Training Event)

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without notification three (3) business days in advance, a transfer fee may be assessed.
- A training event may be rescheduled by the client, provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. If appropriate notice of reschedule is provided, Client is responsible for Esri's reasonable travel expenses and shipping costs incurred.
- A training event may be canceled by the client provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. If appropriate notice of cancellation is provided, Client is responsible for any reasonable travel expenses and shipping costs. If a training event is canceled without appropriate notice, client is responsible for the full training event fee.

7.3 If cancellation of a training event is necessary due to Force Majeure as described in Article 11 below, the affected party is released in full from the three (3)-business day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

7.4 If Esri is unable to conduct the training on the scheduled date, Esri will notify Client at least three (3) business days before the scheduled date.

ARTICLE 8—PAYMENT

Accepted payment methods are found at <http://training.esri.com/gateway/index.cfm?fa=catalog.paymentdetails>.

If payment is made in the form of a purchase order, Esri shall invoice Client upon completion of each training course or immediately upon receipt of purchase order, as mutually agreed upon with the Client. Client shall make payment no later than thirty (30) days after receipt of invoice.

If Client is invoiced and pays that invoice prior to the scheduled training event, then Client has one (1) calendar year (twelve [12] consecutive months) from the date of the invoice to consume the training days. For a multiyear order, the training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.

ARTICLE 9—CONFIDENTIAL INFORMATION

Except as provided in Article 5, Unique Client Coaching Privacy Terms, Esri or Client may disclose to the other party certain confidential information under this Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the other party's confidential information.

ARTICLE 10—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, Esri and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

ARTICLE 11—FORCE MAJEURE

If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, threat of or actual terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.

ARTICLE 12—WARRANTY

Esri will provide training in a manner consistent with the technical and professional standards of the industry.

12.1 Disclaimer of Warranties. WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE DELIVERABLES ARE ERROR FREE.

ARTICLE 13—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO CLIENT FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY THE CLIENT FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 14—EXPORT CONTROL REGULATIONS

Esri technology is subject to US export control laws and regulations. Esri software, data, documentation, training materials, and any underlying information or technology may not be exported, reexported, or transferred in whole or in part to (i) any US embargoed or sanctioned country (including to a national or resident of a US embargoed or sanctioned country, currently including Cuba, Iran, North Korea, Sudan, and Syria); (ii) any person on the US Department of the Treasury's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity where such export or reexport violates any US export control law or regulation.

ARTICLE 15—TAXES

Training provided is quoted exclusive of all state, local, value-added, or other taxes; customs; or duties or other charges (other than income taxes payable by Esri). In the event such taxes or charges become applicable to Esri's training or deliverables, Client shall pay any such applicable tax upon receipt of written notice that such taxes or charges are due.

ARTICLE 16—UCC INAPPLICABILITY

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.



**ENTERPRISE ADVANTAGE PROGRAM
AGREEMENT (E125)**

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

EAP Agreement No. 2009EAP2064

This Enterprise Advantage Program Agreement ("EAP Agreement") is composed of this page and the related Terms and Conditions contained in Articles 1 through 12 below. This EAP Agreement adds additional terms and conditions to the Master Purchase Agreement (MPA) with respect to the EAP.

Esri offers an Enterprise Advantage Program to Licensees that are implementing or have implemented a geographic information system (GIS) enterprise solution based on Esri technology. Licensee agrees to contract with Esri for and Esri agrees to provide Licensee with certain enhanced consulting services, training, and support available under the Enterprise Advantage Program for the authorized Licensee location as described herein. The Enterprise Advantage Program is not designed for Esri to provide project specific professional services (e.g., application or database development for solutions or applications).

All Licensee contact regarding EAP activities shall be through the point of contact identified below.

**Authorized EAP Contact Information
(to be completed by Licensee)**

Contact: _____ Telephone: _____
Address: _____ Fax: _____
City, State, ZIP: _____ E-mail: _____

ARTICLE 1—DEFINITIONS

Capitalized terms that have not been defined in this EAP Agreement shall have the meaning found in the applicable Esri license agreement.

"Incident" means a communication via telephone or e-mail by Licensee to Support Services regarding technical problems with Software, Data, or Documentation.

"Map Data" means any digital dataset(s), including geographic data, vector data coordinates, raster data, or associated tabular attributes supplied or used in the performance of this EAP Agreement.

"PSS" means Premium Support Services.

"Renewal Period" means any one (1)-year extension of this EAP Agreement.

"Secure Formats" means object code, executable code, or similar formats.

"Term" means the initial term of this EAP Agreement.

"Work Product" means reports, documented analysis, sample code, prototype/unsupported code, or technical memorandums provided under this EAP Agreement.

ARTICLE 2—ENTERPRISE ADVANTAGE PROGRAM

2.1 Enterprise Advantage Program Description. The Enterprise Advantage Program is provided on an order-by-order, annual subscription basis. EAP is a menu of services, training, and support that provides Licensee with the flexibility to select components that best meet its needs. The Enterprise Advantage Program components include the following:

- a. *Technical Advisor.* An Esri Technical Advisor who has expertise in Esri GIS software capabilities and has the ability to analyze and assess optimal solutions in the context of GIS enterprise implementation will be assigned to Licensee. Licensee will receive up to the number of ordered Technical Advisor hours. Licensee may elect to retain additional Technical Advisor Services for a supplemental price. Technical Advisors are not substitutes for services provided by Esri Support Services or Professional Services. Licensee will continue to contact Esri Support Services as the first point of contact for all technical support inquiries. If a custom application or other services are required, Licensee will need to enter into an agreement for use of Esri Professional Services. If Licensee requests the Technical Advisor to come to Licensee's site, Licensee will pay reasonable travel costs. The Technical Advisor in coordination with the Account Manager shall
 - (1) Advise Licensee on GIS strategies, architectures, and product selection;
 - (2) Advise Licensee on training needs, available business partner solutions, consulting support requirements, and business case development;
 - (3) Act as Licensee's technical advocate in dealing with Esri;
 - (4) Participate in annual account reviews; and
 - (5) Serve as point of escalation if Licensee is not satisfied with the resolution of an incident through Esri Support Services.

- b. *Annual Account Review.* Licensee may attend a one (1)-day annual GIS strategy and account review with Licensee's Account Manager and Technical Advisor at Esri headquarters in Redlands, California. Key Esri technical and industry specialists may also attend the review to answer questions and discuss Licensee's ideas and suggestions regarding Esri software and support strategies. Licensee is responsible for its own travel expenses. As an option to hosting the review in Redlands, Esri may conduct the review at the appropriate Esri regional office as mutually agreed, and Esri's Redlands staff will have the option to participate either by telephone or by webcast.

c. *Learning and Services Credits*

- (1) Licensee will receive the number of ordered Learning and Services Credits. Licensee may use the credits toward any combination of consulting services support, training, premium support, or related travel expenses as described below.
- (2) Licensee may order, for an additional price, additional Learning and Services Credits either (i) as a block of fifty (50) credits or (ii) as a block of one hundred (100) credits, not to exceed a total of two hundred (200) credits during the Term or each Renewal Period of this EAP Agreement. If Licensee requests additional Learning and Services Credits over and above the initial two hundred (200) credits provided for in this paragraph, Licensee must order Learning and Services Credits along with additional Technical Advisor Services.
- (3) Learning and Services Credits may be exchanged as follows:

| | |
|--|---------------------------------------|
| Technical Consulting Services Support consisting of review of technology strategy, systems design, prototyping, and other general technical consulting services support activities (Any project-related activities requiring a deliverable other than consulting time will be scoped, budgeted, and scheduled through a separate agreement.) | 1 credit = 2 hours |
| Annual Premium Support Unlimited | 75 credits = Unlimited Incidents |
| Instructor-Led Training (one [1] person at an Esri Facility) or Virtual Classroom | 1 credit = 1 day |
| Client Site or Private Esri Site Training Event (for up to twelve [12] people) | 9 credits = 1 day |
| Additional Student | 0.75 credits = 1 day |
| Coaching Services (for up to fifteen [15] people) | 9 credits = 1 day |
| Virtual Campus Annual User License | 1 credit = 480 Virtual Campus dollars |
| Related Esri travel and per diem expenses | as quoted |

- (4) Unused Learning and Services Credits may be carried over to future years as long as Licensee remains an Esri Enterprise Advantage Program member. If this EAP Agreement expires (exclusive of termination for default), any unused credits will expire six (6) months after the expiration of this EAP Agreement; however, the Technical Advisor Services will not be available during this post-Term period.
- (5) Esri will provide EAP Contact with a monthly report outlining usage of Enterprise Advantage Program Learning and Services Credits to date.

d. *Exclusive Enterprise Webcast.* Esri will provide an e-mail invitation to the EAP Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.

2.2 Learning and Services Credit Use

- a. *Current on Maintenance.* Licensee must remain current on standard maintenance during the term of this EAP Agreement. Standard maintenance is described at <http://www.esri.com/legal>, which may be changed from time to time.
- b. *Authorization of Credit Use.* Licensee will contact its Account Manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit to Licensee a Learning and Services Credit estimate by e-mail for confirmation and authorization for use of the credits.
- c. *Travel and Per Diem.* Any Esri travel and per diem will be quoted separately. Licensee may direct Esri to use credits for travel and per diem as stated in Enterprise Advantage Program Description, Section 2.1 above, or Licensee will issue a purchase order and Esri will invoice Licensee for the travel and per diem expenses as described below in Article 6.
- d. *Notification of Consumed Credits.* Esri will notify Licensee in the event the authorized Learning and Services Credits are consumed prior to completion of the requested work. Licensee may elect to direct use of additional credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to discontinue work when the authorized credits are consumed.
- e. *Review of Proposed Activities.* Any activities proposed to be completed under the Enterprise Advantage Program will be subject to review and approval by Esri to ensure alignment with the intent of the program.

2.3 Defense or Military Application. At the time the Learning and Services Credits are requested or before any services are provided by the Technical Advisor, Licensee will inform Esri if any of the requested services, consulting, training, or support provided by Esri is directly related to a defense article or for a military application.

ARTICLE 3—LICENSE GRANT

3.1 Training. The terms of the Esri License Agreement shall be applicable to all Licensee course participants and for all of Esri's Software, Data, Web Services, and Documentation licensed for use in any training course to be conducted. Esri may issue temporary Software licenses when there is an insufficient number of Software licenses available at Licensee's training facility. Upon conclusion of the training event, Licensee shall uninstall the temporary Software licenses and return to Esri any media provided.

3.2 Work Product. Esri hereby grants to Licensee a nonexclusive, royalty-free license in the Work Product to use in connection with Licensee's authorized use of the Software and Data for support of which the Work Product was supplied.

3.3 PSS. The terms and conditions of the License Agreement for the affected Software will govern any updates, patches, hot fixes, or software provided under this EAP Agreement.

ARTICLE 4—WARRANTIES AND DISCLAIMERS

4.1 Warranties and Disclaimers

- a. All services, training, and Work Products will be provided in a professional and workerlike manner.
- b. Esri warrants for a period of thirty (30) days after delivery of the services that the services will conform to professional and technical standards of the software industry.
- c. *Map Data Disclaimer.* Map Data may contain some nonconformities, defects, errors, or omissions. MAP DATA IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, Esri and its licensors do not warrant that the Map Data will meet Licensee's needs or expectations, that the use of the Map Data will be uninterrupted, or that all nonconformities can or will be corrected. Esri and its licensors are not inviting reliance on the Map Data and Licensee should always verify actual Map Data.

4.2 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ENTERPRISE ADVANTAGE PROGRAM OR ANY WORK PRODUCT PROVIDED HEREUNDER WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR-FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. WORK PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

ARTICLE 5—LIMITATION OF LIABILITY

5.1 Disclaimer of Certain Types of Liability. ESRI IS NOT LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS EAP AGREEMENT OR USE OF THE WORK PRODUCT, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5.2 General Limitation of Liability. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER FOR DIRECT DAMAGES SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE EAP PROGRAM.

5.3 Applicability of Disclaimers and Limitations. The parties agree that Esri has set its prices and entered into this EAP Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 6—COMPENSATION

6.1 The fees for the initial term of the EAP are set forth in the MPA Price List. Esri shall invoice Licensee as quoted for the Enterprise Advantage Program upon receipt of Licensee's order and annually in advance. Fees for additional Learning and Services Credits or Technical Advisor Services will be invoiced upon receipt of Licensee's order. Licensee shall pay Esri within thirty (30) calendar days of receipt of invoice.

6.2 Pricing for annual program renewals and new or additional Esri service offerings will be in accordance with the MPA Price List at the time of purchase or renewal.

6.3 Licensee may elect to use Learning and Services Credits for actual travel expenses of Esri employees plus a standard burden, or to be invoiced at the actual cost for travel expenses plus a standard burden. Meals will be charged on a per diem basis. Esri travel will be in accordance with the Federal Travel Regulation (FTR) limits.

ARTICLE 7—TERM AND TERMINATION

7.1 The Term of each EAP order shall be one (1) year beginning on the date on which Licensee's purchase order is processed. EAP is provided on an order-by-order basis. If Licensee is currently covered by Standard Maintenance for all its Software, Licensee may order, on an annual basis, EAP subject to the terms and conditions of this EAP Agreement. The Term of each EAP order shall begin on the date on which Licensee's purchase order is processed. Prior to the end of the Term, Esri may provide Licensee with a quotation for an additional one (1) year Renewal Period. If Licensee accepts the quote, Esri will submit an invoice to Licensee for the quoted annual Enterprise Advantage Program price and this EAP Agreement will automatically extend for the Renewal Period.

7.2 Licensee may terminate this EAP Agreement at any time without cause or may simply choose not to renew the Enterprise Advantage Agreement relationship.

7.3 Licensee may terminate this EAP Agreement for Esri's breach of a material term upon thirty (30) days' notice to Esri and opportunity to cure. If termination is due solely to Esri's failure to perform a material term of this EAP Agreement, Esri will refund a prorated share of amounts paid to Esri equal to the credits not used by Licensee.

7.4 Esri may terminate this agreement for Licensee's breach of a material term upon thirty (30) days' notice to Licensee and opportunity to cure, or terminate this EAP Agreement in the event of termination or expiration of the Enterprise Advantage Agreement relationship as set forth in that Enterprise Advantage Agreement. In such event, Esri is not obligated to refund any amounts paid for credits not used.

7.5 Upon termination or expiration of this EAP Agreement

- a. Except when termination results from non-renewal, all outstanding Learning and Services Credits shall be subject to cancellation, acceptance, or rejection at the sole discretion of Esri.
- b. In the event of termination for a material breach, the due dates of all invoices for amounts owed by Licensee to Esri shall be accelerated automatically so that such amounts become due and payable on the effective date of termination, regardless of the payment term provisions set forth in this EAP Agreement.
- c. Except where a provision specifically provides otherwise, any cause of action or claim of one (1) party accrued to or to accrue because of any breach or default of the other party and any accrued license rights shall survive to the degree necessary to permit their complete fulfillment or discharge.

ARTICLE 8—CONFIDENTIALITY

8.1 Confidential Information. It may be necessary for Esri or Licensee to disclose to the other party certain confidential information under this EAP Agreement. The access code or password for the PSS website, information disclosed at review

sessions, and any Work Product are confidential information of Esri. Licensee data contained in the Esri PSS website database is confidential information of Licensee. Each party shall use the confidential information described above only for exchanging information needed to provide the PSS contemplated by this EAP Agreement. Within sixty (60) days of termination of this EAP Agreement, each party shall return or destroy and provide a certification of destruction of the confidential information of the other party.

8.2 Work Product

- a. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Work Product delivered only in Secure Formats. For Work Product delivered in source code or other human-readable formats, Licensee will have met its obligations under this EAP Agreement if its disclosure of Work Product is limited to such items in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling such Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.
- b. Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advance written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.
- c. The disclosures permitted under this section shall not relieve Licensee of its obligation to maintain the Work Product in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Work Product to employees or third parties as permitted in the preceding paragraph, Licensee shall inform such employees or third parties of the obligations in this EAP Agreement and obtain their agreement to be bound by them.

8.3 Excluded Confidential Information. Licensee shall not provide to Esri or disclose to the instructor any data or information that is personally identified information (PII), including, but not limited to, GLBA or HIPAA type data or information, or critical infrastructure information (CII) from the US Department of Homeland Security. Notwithstanding anything in this Agreement to the contrary, Esri retains the right to refuse acceptance of any nonpublic personal information (NPI) or customer information regardless of the form of disclosure. Esri will only accept receipt of information from Licensee that comports with the exceptions set forth in Subsections 4(B) and 4(C)(ii) of Section 509 of the Gramm-Leach-Bliley Act (PL 106-102) (15 USC Section 6809) and implementing regulations thereof.

8.4 Other Exchange of Confidential Information. Any other exchange of confidential information between the parties shall require execution of a nondisclosure agreement signed between the parties separate from this EAP Agreement.

ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

9.1 Premium Support Services. Should the Licensee choose to use Learning and Services Credits for PSS, the terms of this Article 9 shall also apply.

9.2 Premium Support Availability. Licensee may use Learning and Services Credits for PSS (annually) for any product covered under Esri's standard maintenance subscription, provided that Licensee is current on maintenance for applicable Esri Software. Esri shall provide PSS for the Term of the EAP Agreement.

9.3 Premium Support Description. PSS shall provide (1) a designated Premium Support Coordinator ("PSC"); (2) unlimited telephone and e-mail support accessible to Licensee twenty-four hours per day, seven days per week, three hundred sixty-five days per year (24/7/365); (3) Priority Incident Management; and (4) other additional enhanced support and services.

9.4 Premium Support Coordinator. Esri shall assign a PSC to Licensee. The assigned PSC shall work directly with Licensee's Authorized Contact ("LAC") and shall oversee all of Licensee's Premium Support Incidents. Licensee may select up to two (2) individuals to report Premium Support Incidents to Support Services and work directly with PSC regarding all such Incidents.

The PSC shall

- a. Be familiar with Licensee's GIS software architecture and infrastructure to perform the scope of support pursuant to this Article 9;

- b. Verify that all open Premium Support Incidents of Licensee are prioritized above Incidents opened pursuant to standard maintenance;
- c. Work closely with Senior Support Analysts toward the resolution of all open Premium Support Incidents; and
- d. Provide LAC with a daily status update on all open Premium Support Incidents or as agreed upon by PSC and Licensee.

Esri may replace PSC during the Term of the EAP Agreement with a written notification to Licensee.

9.5 Telephone and E-mail Support. Esri shall provide support to Licensee for Software by telephone or e-mail and shall include the following:

- a. LAC may open an Incident by calling Support Services or logging the Incidents via the PSS website. An e-mail acknowledgment shall be sent to LAC for a new Incident logged via the PSS website. The assigned PSC shall use commercially reasonable efforts to call or send an e-mail response within one (1) hour of receipt of a new Incident to notify Licensee that the logged Premium Support Incident is in the initial stage of review;
- b. LAC shall have the ability to log Premium Support Incidents via the telephone. Incidents logged in this manner will receive personalized messaging and Priority Incident Management; and
- c. PSC shall be available to LAC from 5:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, except on Esri holidays. In the event that PSC is not available during such time, LAC's telephone calls and e-mails will be routed to a Senior Support Analyst who can assist LAC. PSC will be notified of the Incident. Telephone calls and e-mails during all other times (after hours, weekends, and Esri holidays) will be routed to Senior Support Analysts.

9.6 Priority Incident Management. Priority Incident Management shall include the following:

- a. Premium Support Incidents reported by LAC will be given priority handling after the initial Premium Support Incident is created and documented;
- b. Software defects affecting Licensee will be a priority for discussion of the User Advocacy Group; and
- c. For identified Software defects that are approved for an out-of-cycle hot fix or patch, PSC shall assist in presenting the hot fix or patch to LAC and verify that the delivered hot fix or patch addresses the reported issue.

9.7 Other Additional Enhanced Support and Services. Esri shall provide additional offerings to Licensee as a part of PSS, which include, but are not limited to, the following:

- a. *Premium Support Website Access.* LAC shall have access to the PSS website. LAC shall have the ability to log and track the status and completion of all identified Premium Support Incidents on this website. LAC may log and view their Incidents and access other PSS-related tools and information through this website.
- b. *System/Environment Profile.* Through the PSS website, Licensee shall have access to an Esri database to enter and maintain data regarding Licensee's equipment, applications, and skill sets associated with Esri technology.
- c. *PSS Software Alert Newsletter.* Esri shall provide to Licensee a news bulletin that discusses key current issues in Software being investigated by Esri.
- d. *Quarterly Teleconference Meeting.* Esri and Licensee shall conduct a quarterly teleconference meeting to discuss Licensee's Premium Support Incidents. Esri shall make available the assigned Account Manager, PSC, Premium Support Manager, and other Esri staff as deemed necessary by Esri.

Details of all PSS offerings can be found at www.esri.com/services/pss/components.html.

9.8 PSS Restrictions and Exclusions

- a. *Excluded Software.* PSS is not available for third-party software. Esri is not responsible for errors attributable to third-party software used in conjunction with or built upon Software.
- b. *English Language.* All communications will be conducted in the English language except by agreement of both parties.
- c. *Acknowledgment.* Licensee acknowledges and agrees that the report of an error or defect of any Software is not a guarantee that it can or will be corrected. At Esri's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by Esri.
- d. *Hardware Support.* Esri does not provide support for hardware, including but not limited to, graphics cards, monitors, plotters, graphics printers, digitizers, and modems, except to answer questions regarding how standard, supported devices interface with Software.

- e. *Exceptions to PSS.* The following are not covered by PSS:
- i) Any problem resulting from Licensee's misuse, improper use, unauthorized modification, or damage of the Software or Licensee's combining or merging the Software with any hardware or software not supplied or identified as compatible by Esri;
 - ii) Any problem resulting from third party hardware or software;
 - iii) Errors in any version of the Software other than the officially supported version of Software; and
 - iv) Any on-site support or implementation services on-site or otherwise, including, but not limited to, those provided by Esri Professional Services or any third party.

ARTICLE 10—CONSULTING SERVICES SUPPORT TERMS AND CONDITIONS

10.1 Consulting Services Support. Should Licensee choose to use Learning and Services Credits for consulting services support, the terms of this Article 10 shall also apply.

10.2 Patents and Inventions

- a. Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of this Agreement. The parties shall jointly own any Invention(s) made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Software, Licensee hereby grants and agrees to grant to Esri an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use.
- b. Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.
- c. A joint owner ("Assigning Owner") electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such its rights in such Inventions to the other joint owner ("Beneficial Owner") as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.
- d. Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party which is hereby given to Esri for Inventions relating to the Software and shall otherwise not be unreasonably withheld by either party.

10.3 Ownership. Except as specifically granted in this EAP Agreement, Esri or its licensors own and retain all right, title, and interest in the Work Product.

ARTICLE 11—TRAINING TERMS AND CONDITIONS

11.1 Training. Should Licensee choose to use Learning and Services Credits for training or coaching services, the terms of this Article 11 shall also apply.

11.2 Training Location. Training may be conducted at Licensee's site, at an Esri Learning Center or via the web.

11.3 Course Descriptions. The Esri Software training courses to be conducted, their location, the dates during which the courses are to be conducted, the number of participants, and registration requirements are set forth in the *Esri Training* catalog located on the Esri training website (<http://training.esri.com>). All courses shall be conducted in substantial conformity with the course descriptions outlined on the Esri training website. Esri reserves the right to modify course content when necessary due to Software technical capabilities or limitations. Licensee may utilize coaching services immediately before or immediately following an Esri training course to familiarize Licensee's student with the software or to review and practice course concepts with an instructor's guidance.

11.4 Esri's Responsibilities

- a. Esri shall provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Students") on scheduled dates. Esri will provide each student with a course manual, where applicable.
- b. Esri will confirm Learning Center training event scheduled dates approximately ten (10) business days prior to the training event start date.
- c. Esri will confirm Licensee Site training events upon receipt of completed Client-Site Training Request Form and intended payment method.

11.5 Licensee's Responsibilities

- a. Licensee must ensure the protection of Esri's copyrights. Licensee shall not copy or distribute, or permit a third party to copy or distribute, any of Esri's training material(s).
- b. Licensee is not authorized to resell seats to an Esri training event unless explicitly authorized in writing by Esri.
- c. Licensee must ensure that all Students have received confirmation from Esri to participate in an Esri training event. An unregistered Student is not permitted to view or participate in a Virtual Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Students.
- d. Licensee must confirm that all registered Students meet the applicable minimum prerequisites for the applicable training event set forth on Esri's training website.
- e. Licensee must submit registration with a confirmed payment commitment at least seven (7) business days before the training event start date. If Licensee submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- f. US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List). To meet these export requirements, Licensee must submit to the Esri Training Event Assistant a list of the names of Students who are to attend any training event. Licensee must submit the list of Student names to Esri at least three (3) business days before the training event start date. Any Student whose name is found on any of the various US Government Denied Persons lists will not be permitted to attend training.
- g. Licensee is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export licensing requirements, course scheduling changes, or cancellations.
- h. Licensee must provide written notice to Esri's Customer Service at service@esri.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of such change(s) prior to the training event start date.
- i. Students may not use audio or video recording equipment within the classroom without prior written approval from Esri. Esri reserves the right to record a classroom training event for future rebroadcast.
- j. Licensee is responsible to ensure that it adheres to the course, facility, and equipment as well as Internet bandwidth and connectivity requirements for Esri Training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.
- k. Where the Esri Mobile Lab equipment is utilized at Licensee's domestic site, the following terms apply:
 - Upon receipt, Licensee must immediately report any damage to the Mobile Lab equipment to the Training Event Assistant.
 - Licensee must keep the Mobile Lab equipment in a secure, locked area between training event sessions.
 - Licensee must ensure that only registered Students use the Mobile Lab equipment.
 - Licensee is responsible for any and all loss of, damage to, or theft of the Mobile Lab equipment while in Licensee's possession.
 - Licensee warrants that it maintains sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law.
 - The Esri instructor will check all Mobile Lab equipment following the completion of training. Any damage to the Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Licensee by written notice. Licensee hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
 - Licensee shall make the Mobile Lab equipment available for freight pickup immediately upon conclusion of the Esri training event.

11.6 Cancellation and Rescheduling Policy

Individual Student Seats

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without three (3) business days' notification, an additional, nonrefundable transfer and data processing fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center training event to another one (1) time at no additional charge provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a training event provided Esri's Customer Service is notified three (3) business days in advance. If three (3) business days' notification is not provided, Student may be charged the full Student Seat fee.

Client Site/Private Class/Coaching Services (Training Event)

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service is notified three (3) business days in advance of the training event start date.
- A training event may be rescheduled by the Licensee provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. If appropriate notice of rescheduling is provided, Licensee is responsible for reasonable travel expenses and shipping costs.
- A training event may be canceled by the Licensee provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. If appropriate notice of cancellation is provided, Licensee is responsible for any reasonable travel expenses and shipping costs. If a training event is canceled without appropriate notice, Licensee is responsible for the full training event fee.

If cancellation of a training event is necessary due to Force Majeure as described in Article 12 below, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

If Esri is unable to conduct the training on the scheduled date, Esri will notify Licensee at least three (3) business days before the scheduled date.

ARTICLE 12—GENERAL PROVISIONS

12.1 Intellectual Property Rights Attribution. Licensee shall retain any copyright, patent, or trademark notices on all items licensed under this EAP Agreement and shall take other necessary steps to protect Esri's or its licensor's intellectual property rights.

12.2 No Implied Waivers. The failure of either party to enforce any provision of this EAP Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

12.3 Severability. If any provision of this EAP Agreement is determined to be invalid, illegal, or unenforceable, the parties agree the remaining provisions of this EAP Agreement shall remain in full force if both the economic and legal substance of the transactions contemplated by this EAP Agreement are not affected in any manner that is materially adverse to either party by severing the provision determined to be invalid, illegal, or unenforceable.

MODIFICATION #3
TO
VITA CONTRACT NUMBER VA-090403-ESRI / Esri CONTRACT NO. 2009MPA2064
BETWEEN
THE VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

This MODIFICATION #3 is an agreement between the Virginia Information Technologies Agency (VITA), herein referred to as "State" or "Commonwealth" or "VITA", and Environmental Systems Research Institute, Inc., hereinafter referred to as "Contractor" or "ESRI" relating to the modification of the above Contract. This Modification #3 is hereby incorporated into and made part of Contract VA-090403-ESRI, as revised.

The purpose of this Modification #3 is to extend the Term of the Agreement.

The parties agree to the following:

1. The Term of the Agreement is extended through April 5, 2013.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090403-ESRI and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED. PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT. ELECTRONIC SIGNATURES WILL BE CONSIDERED AS ORIGINAL SIGNATURES.

ENVIRONMENTAL SYSTEMS

RESEARCH INSTITUTE, INC.

BY: Krista Moreno

NAME: Krista Moreno

TITLE: Manager Contracts & Legal Svcs.

DATE: April 10, 2012

VIRGINIA INFORMATION

TECHNOLOGIES AGENCY

BY: Dana Smith

NAME: Dana Smith

TITLE: Director, Finance & Administration

DATE: 4-11-12

MODIFICATION #2
TO
CONTRACT NUMBER VA-090403-ESRI / Esri CONTRACT NO. 2009MPA2064
BETWEEN
THE VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

This MODIFICATION #2 is an agreement between the Virginia Information Technologies Agency (VITA), herein referred to as "State" or "Commonwealth" or "VITA", and Environmental Systems Research Institute, Inc., hereinafter referred to as "Contractor" or "Esri" relating to the modification of the above Contract. This Modification #2 is hereby incorporated into and made part of Contract VA-090403-ESRI, as revised.

The purpose of this Modification #2 is to replace and add contract Sections, Exhibits and other documents, as listed below.

The parties agree to the following.

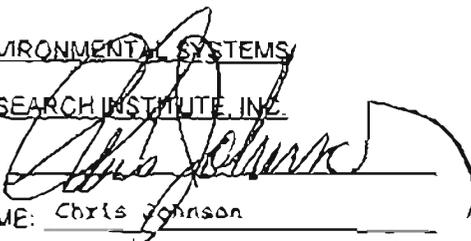
1. Modification #1, Exhibit 1, Scope of Use is hereby replaced in its entirety with the attached Exhibit 1, Scope of Use (E300, 02/27/2012), pp. 1-5;
2. Modification #1, State of Virginia MPA Pricing is hereby replaced in its entirety with the attached Exhibit 2, ESRI MPA Price List (E417SHM, 02/07/2012) pp. 1-26;
3. Training Terms and Conditions (E207, 2/09), is hereby replace in its entirety with the attached Exhibit 3, Training Terms and Conditions (E207CW, 07/11/2011) pp. 1-5;
4. Enterprise Advantage Program (E125, 04/04/2011), is hereby replaced in its entirety with the attached Exhibit 4, Enterprise Advantage Program (E125M, 04/04/2011) pp. 1-10.
5. Implementation Services Addendum For Services Packages (G363D, 02/03/2012) is hereby incorporated in its entirety as the attached Exhibit 5, pp. 1-2;
6. Managed Services Addendum (G595, 03/05/2010), is hereby incorporated in its entirety as the attached Exhibit 6, pp. 1-5.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090403-ESRI and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED. PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT ELECTRONIC SIGNATURES WILL BE CONSIDERED AS ORIGINAL SIGNATURES.

ENVIRONMENTAL SYSTEMS

RESEARCH INSTITUTE, INC.

BY: 

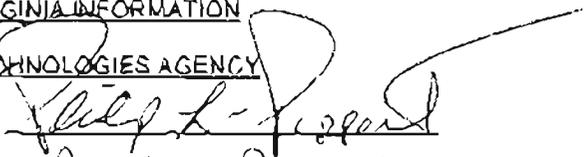
NAME: Chris Johnson

TITLE: Manager, Domestic Contract

DATE: March 23, 2012

VIRGINIA INFORMATION

TECHNOLOGIES AGENCY

BY: 

NAME: Philip L. Pippert

TITLE: ACTING DIRECTOR, SIM

DATE: 3/26/12



**EXHIBIT 1
SCOPE OF USE
(E300 09/29/2011)**

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

The scope of use for the Software, Data, and Web Services identified below is described in the applicable footnotes identified in parentheses.

Software

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS API for iOS, Windows Phone, or Android (1, 16, 25, and 33)
- ArcGIS Desktop
 - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
 - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
 - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iOS (1, 25, and 33)
- ArcGIS Mobile Deployments (1, 15, 16, 25, 33, and 54)
- ArcGIS Runtime (1, 15, 18, 33, 35, and 59)
- ArcGIS Runtime SDK (1, 15, 18, 33, 35, and 60)
- ArcGIS Server
 - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
 - Enterprise (either 3, 4, or 5 and 8, 9, 25, 27, 31, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
 - > Cloud Bundle (6 and 33)
- ArcGIS Server Extensions
 - ArcGIS for INSPIRE (7, 8, 33, and 35)
 - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
 - ArcGIS Server Image Extension (7, 8, and 42)
 - ArcGIS Server Image Extension Service Editor (1)
 - Other Extensions (7)
- ArcGIS Web Mapping (including SharePoint, JavaScript, Adobe Flex, Microsoft Silverlight/WPF, SOAP, and REST) (6, 33, and 35)
- ArcIMS
 - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
 - Desktop (1 and 25)
 - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
 - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
 - Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
- Esri Aeronautical Solution (either 1 or 2)
- Esri Business Analyst (Canadian Edition) (either 1 or 2 and 6, 25, 33, 36, 45, and 48)
- Esri Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
- Esri Business Analyst Online API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6, 16, 25, 33, 35, 55, and 56)

- Esri Business Analyst Server
 - Workgroup (either 3, 4, or 5 and 8, 9, 21, 25, 28, 29, 31, 33, 39, 40, 45, and 48)
 - Enterprise (either 3, 4, or 5 and 8, 9, 21, 25, 27, 31, 33, 39, 40, 45, and 48)
- Esri Business Analyst Server (Canadian Edition) (either 3, 4, or 5 and 8, 9, 21, 25, 27, 31, 33, 36, 39, 40, 45, and 48)
- Esri Business Analyst Server Developer (3, 6, 25, 33, 35, and 51)
- Esri Business Analyst Server Developer (Canadian Edition) (3, 6, 25, 33, 35, 36, and 51)
- Esri CityEngine (either 1 or 2 and 44)
- Esri Defense Mapping (either 1 or 2)
- Esri Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, and 35)
- Esri File Geodatabase API (47)
- Esri Nautical Solution (either 1 or 2)
- Esri Production Mapping (either 1 or 2)
- Geoportal Clients for ArcGIS (7, 20, and 52)
- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Portal for ArcGIS (5, 6, 31, 33, 61, 62, and 63)
- Tracking Server (either 4 or 5 and 31)

Web Services

- ArcGIS Online Services (6, 25, 33, 34, and 35)
- Esri Business Analyst Online (6, 25, 33, 48, 56, 57, and 58)
- Esri Business Analyst Online Mobile (1, 6, 25, 33, 48, 56, 57, and 58)
- Esri Community Analyst (6, 25, 33, 48, 56, 57, and 58)
- Esri MapStudio (6, 25, 33, 34, 35, and 56)
- Esri Redistricting Online (6, 25, 33, 34, and 35)

Data

- Data with ArcGIS Data Appliance (6, 23, 25, and 41)
- Esri Address Coder (either 1, 2, or 5 and 21, 22, 25, and 48)
- Esri Business Analyst (Canadian Edition) Data (either 1 or 2 and 6, 21, 25, 33, 36, 45, and 48)
- Esri Business Analyst Data (either 1 or 2 and 21, 25, 33, 45, and 48)
- Esri Business Analyst Server (Canadian Edition) Data (either 3, 4, or 5 and 21, 25, 33, 36, 45, and 48)
- Esri Business Analyst Server Data (either 3, 4, or 5 and 21, 25, 33, 45, and 48)
- Esri Data & Maps (either 1, 2, 3, 4, or 5 and 23 and 37)
- Esri Data (either 1, 2, or 5 and 25 and 48)
 - Demographic, Consumer Spending, Market Potential, Retail MarketPlace, Business, Traffic, Shopping Center, Cable Boundaries, Banking, and Crime
- Sourcebook•America (1 and 21)
- StreetMap Premium (either 1, 2, 4, or 5 and 6 and 25)
- Tapestry Segmentation (either 1, 2, or 5 and 21 and 48)

1. "Single Use License." Licensee may permit a single authorized end user to install and use the Software, Data, and Documentation on a single computer for use by that end user on the computer on which the Software is installed. Remote access is not permitted. Licensee may permit the single authorized end user to make a second copy for end user's exclusive use on a portable computer as long as only one (1) copy of the Software, Data, and Documentation is in use at any one (1) time. No other end user may use the Software, Data, or Documentation under the same license at the same time for any other purpose.
2. "Concurrent Use License." Licensee may install and use the Software, Data, and Documentation on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. No other end user may use the Software, Data, or Documentation under the same license at the same time for any other purpose.
3. "Development Server License." Licensee may install and use the Software on a single computer to design and build applications that interface with or utilize server Software as described in the Documentation.
4. "Staging Server License." In addition to the Development Server License rights, Licensee may use and install the Software for the following purposes: user acceptance testing, performance testing, load testing of other third-party software, staging new commercial data updates, and training activities.
5. "Deployment Server License." In addition to the Staging Server License rights, Licensee may install and use the Software or Data to provide services to multiple users on the same or other computer(s).
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7. Extensions to Software programs follow the same scope of use as that granted for the corresponding Software programs.
8. The administration tools for the Software may be copied and redistributed throughout Licensee's organization.
9. User-developed ArcGIS Server administration tools may be copied throughout Licensee's organization, but the ArcCatalog application (found in ArcGIS Desktop) may not be copied.
10. The ArcIMS license includes the right to deploy MapObjects—Windows Edition applications on the Internet or intranet. Licensee shall not develop client/server solutions with the ArcIMS—Java Archive (JAR) files without a license for the MapObjects—Java Edition developer kit.
11. Licensee may install and use the Software to provide services to multiple users on the same or other computer(s). The Software is licensed per server. The licensed server is the server on which Licensee installs the Spatial Data Service.
12. Software is only licensed for navigational use when used in conjunction with ArcLogistics.
13. "Dual Use License" means the Software may be installed on a desktop computer and used simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any one (1) time.
14. Developers must include the following attribution with any deployed MapObjects application: "Portions of this computer program are owned by LizardTech, Inc., and are Copyright © 1995–2002 LizardTech, Inc., and/or the University of California. All rights reserved. US Patent No. 5,710,835."
15. Deployment licenses for desktop or Internet application(s) may be subject to payment of additional license fees.
16. Licensee may deliver applications to its sublicensee(s) provided Licensee uses a written sublicense agreement that protects Esri's rights in its Software, Data, Web Services, and Documentation to the same extent as the Esri License Agreement including, but not limited to, the following terms:
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 - b. Sublicensee may not use any Esri Software, Data, Web Services, or Documentation, in whole or in part, separate from Licensee's executable application; and
 - c. Third-party dependent or required components are redistributable subject to permission from the owner or author.
 - d. Applications may be subject to deployment fees owed to Esri. Licensee shall contact its distributor for details.
17. Licensee may use Business Objects Crystal Reports software only with the ArcView 3.x Software with which it was acquired and subject to the Crystal Reports License Agreement available on the media. Licensee may not use a software program or system to cache or queue report requests.
18. The deployment license is per application per computer.
19. MapObjects—Java Edition contains Java Archive files, which indicate they are authentic Esri-certificated files when used over the Internet. Licensee shall not use Esri certification or reference Esri as a source of trusted content in any modified MapObjects—Java Archive files. Licensee may deploy the unmodified Java class Esri-certified libraries as an integral part of the Licensee's application(s).
20. Licensee may reproduce and deploy the Software provided all the following occur: (a) the Software is reproduced and deployed in its entirety; (b) a license agreement accompanies each copy of the Software that protects the Software to the same extent as the Esri License Agreement, and the recipient agrees to be bound by the terms and conditions of the license agreement; (c) all copyright and trademark attributions/notices are reproduced; and (d) there is no charge or fee attributable to the use of the Software.
21. Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the individual's place of residence, as profiled in the Tapestry Segmentation system.

22. (a) ArcGIS Engine Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an ArcGIS Engine application on one (1) computer; and (c) the ArcGIS Engine Runtime extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. A single user can have multiple applications installed on one (1) computer for use only by that end user.
23. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at <http://www.esri.com/legal/>, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
24. EDN Software, Web Services, and Data may only be used by one (1) named developer per subscription solely for the purposes of research, development, testing, and demonstration of a prototype application. EDN server Software and Data may be installed on multiple computers for use by any named EDN developer.
25. Use of included third-party owned data shall be subject to the Use of Data Restrictions found at <http://www.esri.com/legal/> for the specific Data accessed. The Use of Data Restrictions may be modified by Esri from time to time. If a modification is unacceptable to Licensee, Licensee may cancel a subscription upon written notice to Esri, or discontinue use of the Data or Web Services, as applicable. If Licensee continues to use the Data or Web Services, Licensee will be deemed to have accepted the modification.
26. An ArcSDE Personal Edition geodatabase is restricted to ten (10) gigabytes of Licensee data.
27. ArcGIS Server Web ADF Runtime Software may not be deployed independent of Licensee's ArcGIS Server Enterprise configuration.
28. Use is limited to ten (10) concurrent end users of applications other than ArcGIS Server applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Server geodatabase. There are no limitations on the number of connections from web applications.
29. Software can only be used with SQL Server 2005/2008 Express.
30. Use is restricted to a maximum of ten (10) gigabytes of Licensee data.
31. Redundant Software installation(s) for failover operations is allowed but can only be operational during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
32. No redundant Software installation is permitted.
33. Licensee's access to and use of Cloud Bundle, ArcGIS Web Mapping, ArcGIS Online Services, Business Analyst Online, Business Analyst Online API, or Microsoft Bing Maps is conditioned upon Licensee's acceptance of the [Esri Web Services and API Terms of Use](#), the [Business Analyst Online Web Subscription Terms and Conditions](#), the [Terms of Use for Bing Maps Services](#), and any other terms and conditions applicable thereto or to any third-party data being accessed through them, found at <http://www.esri.com/legal/>.
34. Licensee's organization is limited to the number of specified credits, transactions, geography, or number of users as described in the online product description.
35. Licensed end users shall not share the client-side data cache derived from ArcGIS Online Services with other licensed end users or third parties.
36. Licensee's use of Esri Business Analyst (Canadian Edition) Data is subject to the Use of Data Restrictions specific to [Esri Business Analyst \(Canadian Edition\) Data](#).
37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
38. The ArcGIS Server 3D extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D extension Software is permitted with ArcGIS Server Standard.
39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.
43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.

44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
45. Data licensed with Esri Business Analyst and Esri Business Analyst Server is restricted for use only in conjunction with the respective Business Analyst extension.
46. Licensee should not follow any route suggestions that appear to be hazardous, unsafe, or illegal. Licensee assumes all risk of using this navigation Software.
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49. Esri MapIt Silverlight Web or WPF applications may not be deployed independent of Licensee's MapIt deployment configuration.
50. Licensee has the right to one (1) desktop deployment of Spatial Data Assistant for each Esri MapIt server license.
51. Esri Business Analyst Server Developer and Data may only be installed on one (1) server per license solely for the purposes of research, development, testing, and demonstration of a prototype application.
52. Source code is the intellectual property of Esri. Licensee shall treat any source code file identified as "Software" in a README file or at <http://www.esri.com/legal/> as a trade secret for Licensee's own internal use only and not for further redistribution or access by unlicensed third parties. Licensee shall not modify the Software, Documentation, Data, or source code to incorporate, embed, link, or otherwise include any code, libraries, or data licensed or distributed under an open source licensing or distribution models similar to Free Software Foundation's GNU General Public License (GPL) or GPL-compliant licenses, including, without limitation, the Artistic License (e.g., Perl), the Mozilla Public License, the Netscape Public License, and the Sun Community or Industry Standards License, that could require a user to make its proprietary source code available to a requesting third party.
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57. Licensee may only display or post any combination of 100 Business Analyst Online or Community Analyst Reports and maps on its external websites.
58. Licensee shall order a separate Business Analyst Online or Community Analyst subscription for each person who uses Business Analyst Online or Community Analyst and shall provide output from the Business Analyst Online or Community Analyst subscription only to the e-mail of the individual subscriber.
59. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Runtime Software up to the number of deployment licenses that have been purchased.
60. (a) ArcGIS Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must purchase a software application that includes an ArcGIS Runtime license to obtain the right to run an ArcGIS Runtime application on one (1) computer. A single user may have multiple ArcGIS Runtime licensed applications installed on one (1) computer that utilize a single ArcGIS Runtime.
61. Oracle is a third-party beneficiary of Esri's rights under the Esri License Agreement with respect to the Software but is not a party hereto and assumes no obligations hereunder.
62. Esri and its Licensors reserve the right to conduct an audit of Licensee's use of the Software. Licensee will provide reasonable assistance and access to information regarding Licensee's use of the Software. Audit results may be reported to Esri's Licensors. Fees for over-deployment or excess usage are payable within thirty (30) days of the invoice date.
63. Licensee may not publish the results of benchmark tests run on the Software without the prior written permission of Esri and its Licensors.



TRAINING TERMS AND CONDITIONS

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

This Training Agreement ("Agreement") is between you (hereinafter "**Client**") and **Environmental Systems Research Institute, Inc. ("Esri")**. Client acknowledges that Client has read and understood this Agreement and agrees to be bound by the terms and conditions hereof.

RECITALS

Client wishes to arrange for certain training in the use of GIS software. Esri is willing to conduct training courses and provide related services regarding the use of GIS software pursuant to the terms and conditions contained herein. The parties therefore agree as follows:

ARTICLE 1—TRAINING DESCRIPTION

Esri offers a set of instructor-led training and client coaching services related to the use of its proprietary GIS software. Instructor-led training events occur at a client's site, at an Esri Learning Center, or via the web in a cloud environment. The Esri software training courses offered, their location, the dates during which the courses are to be conducted, the number of participants, the prices to be paid, and registration requirements are set forth in the *Esri Training* catalog located on Esri's Training website (<http://training.esri.com>). All courses are conducted in substantial conformity with course descriptions outlined on the Esri Training website. Esri reserves the right to modify course content when necessary due to software technical capabilities or limitations. Client coaching services may be provided immediately before or immediately following an Esri training course to familiarize the Student with the software or to review and practice course concepts with an instructor's guidance.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- Esri will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. Esri will provide each Student with a course manual, where applicable.
- Esri will confirm Learning Center training event scheduled dates approximately ten (10) business days prior to the training event start date.
- Esri will confirm Client Site scheduled dates upon receipt of the completed Client Site Training Request Form and intended payment method.

ARTICLE 3—CLIENT'S RESPONSIBILITIES

- Client must ensure the protection of Esri's copyrights. Client shall neither copy or distribute nor permit a third party to copy or distribute any of Esri's training material(s).
- Client is not authorized to resell seat(s) to an Esri training event, unless explicitly authorized in writing by Esri.
- Client must ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Students are not permitted to view or participate in an Online Classroom training event. Esri reserves the right to disconnect any Students who permit access to unregistered Students.
- Client must confirm that all registered Students meet the minimum prerequisites for the applicable training event set forth on Esri's Training website.
- Client must submit registrations with a confirmed payment commitment at least seven (7) business days before the training event start date. If Client submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Client must submit to the Esri Training Event Assistant a list of the names of Students that are to attend any training event. Client must submit the list of Student names to Esri at least three (3) business days before the training

event start date. Any Student that is found on any of the various US Government Denied Persons lists will not be permitted to attend training.

- Client is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export regulation requirements, course scheduling changes, or cancellations.
- Client must provide written notice to Esri's Customer Service department at service@esri.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the training event start date.
- Client must complete and submit an Esri Client Site Training Request Form as well as ensure that it adheres to the course, facility, equipment, and Internet bandwidth and connectivity requirements for Esri Training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from Esri. Esri reserves the right to record a classroom training event for future rebroadcast.
- If the Esri Mobile Lab equipment is utilized at Client's domestic site, then the following terms will apply:
 - Upon receipt, Client must immediately report any damage to the Mobile Lab equipment to the Training Event Assistant.
 - Client must keep the Mobile Lab equipment in a secure, locked area between training event sessions.
 - Client must ensure that only registered Students use the Mobile Lab equipment.
 - Client is responsible for any and all loss of, damage to, or theft of the Mobile Lab equipment while in Client's possession.
 - Client warrants that it maintains sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law.
 - The Esri instructor will check all Mobile Lab equipment following the completion of training. Any damage to the Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Client by written notice. Client hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
 - Client shall make the Mobile Lab equipment available for freight pickup immediately on conclusion of the Esri course(s).

ARTICLE 4—INSURANCE AND INDEMNIFICATION

4.1 Insurance. Esri carries, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with minimum coverage of one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, including death, and property damage liability, to include the following:
 1. Premises and operations
 2. Blanket contractual liability
 3. Broad form property damage
 4. Independent contractors
 5. Personal injury, with employee exclusion deleted
 6. Completed operations
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

4.2 Indemnification. Esri will indemnify and hold harmless Client and each of its directors and officers (collectively the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys fees, arising out of any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents while engaged in or as a result of the training or coaching services provided by Esri pursuant to this Agreement while on Client's site.

ARTICLE 5—UNIQUE CLIENT COACHING PRIVACY TERMS

In the event Client coaching services are to be ordered, the following terms shall apply:

Client shall not provide to Esri or disclose to the instructor any personally identified information ("PII") (e.g., GLBA, HIPAA, CII from the US Department of Homeland Security), classified, and so forth, data for use in the coaching session. Notwithstanding anything in this Agreement to the contrary, Esri retains the right to refuse acceptance of any nonpublic personal information ("NPI") or Customer Information regardless of the form of disclosure. Esri will only accept receipt of information from Client that comports with the exceptions set forth in Subsections 4(B) and 4(C)(ii) of Section 509 of the Gramm-Leach-Bliley Act (P.L. 106-102) (15 U.S.C. Section 6809) and implementing regulations thereof.

ARTICLE 6—SOFTWARE LICENSES

The terms of the Esri license agreement are applicable to all Students and cover all of Esri's software, data, and documentation licensed for use in any training course to be conducted. Esri may issue temporary software licenses for Client Site Training where there are an insufficient number of software licenses available at the Client's training facility. Upon conclusion of the training course or event, the Client must uninstall the temporary software licenses and return to Esri any media provided.

ARTICLE 7—CANCELLATION AND RESCHEDULING POLICY

7.1 Individual Student Seats

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without three (3) business days' notification, a transfer fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center training event to another one (1) time at no additional charge provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a training event provided Esri's Customer Service department is notified three (3) business days in advance. If three (3) business days' notification is not provided, Students may be charged the full class fee.

7.2 Client Site/Private Class/Coaching Services (Training Event)

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without notification three (3) business days in advance, a transfer fee may be assessed.
- A training event may be rescheduled by the client, provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. If appropriate notice of reschedule is provided, Client is responsible for Esri's reasonable travel expenses and shipping costs incurred.
- A training event may be canceled by the client provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. If appropriate notice of cancellation is provided, Client is responsible for any reasonable travel expenses and shipping costs. If a training event is canceled without appropriate notice, client is responsible for the full training event fee.

7.3 If cancellation of a training event is necessary due to Force Majeure as described in Article 11 below, the affected party is released in full from the three (3)-business day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

7.4 If Esri is unable to conduct the training on the scheduled date, Esri will notify Client at least three (3) business days before the scheduled date.

ARTICLE 8—PAYMENT

Accepted payment methods are found at <http://training.esri.com/gateway/index.cfm?fa=catalog.paymentdetails>.

If payment is made in the form of a purchase order, Esri shall invoice Client upon completion of each training course or immediately upon receipt of purchase order, as mutually agreed upon with the Client. Client shall make payment no later than thirty (30) days after receipt of invoice.

If Client is invoiced and pays that invoice prior to the scheduled training event, then Client has one (1) calendar year (twelve [12] consecutive months) from the date of the invoice to consume the training days. For a multiyear order, the training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.

ARTICLE 9—CONFIDENTIAL INFORMATION

Except as provided in Article 5, Unique Client Coaching Privacy Terms, Esri or Client may disclose to the other party certain confidential information under this Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the confidential information of the other party.

ARTICLE 10—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, Esri and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

ARTICLE 11—FORCE MAJEURE

If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, threat of or actual terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.

ARTICLE 12—WARRANTY

Esri will provide training in a manner consistent with the technical and professional standards of the industry.

12.1 Disclaimer of Warranties. WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE DELIVERABLES ARE ERROR FREE.

ARTICLE 13—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO CLIENT FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY THE CLIENT FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 14—EXPORT CONTROL REGULATIONS

Esri technology is subject to US export control laws and regulations. Esri software, data, documentation, training materials, and any underlying information or technology may not be exported, reexported, or transferred in whole or in part to (i) any US embargoed or sanctioned country (including to a national or resident of a US embargoed or sanctioned country, currently including Cuba, Iran, North Korea, Sudan, and Syria); (ii) any person on the US Department of the Treasury's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity where such export or reexport violates any US export control law or regulation.

ARTICLE 15—TAXES

Training provided is quoted exclusive of all state, local, value-added, or other taxes; customs; or duties or other charges (other than income taxes payable by Esri). In the event such taxes or charges become applicable to Esri's training or deliverables, Client shall pay any such applicable tax upon receipt of written notice that such taxes or charges are due.

ARTICLE 16—UCC INAPPLICABILITY

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

ARTICLE 17—GOVERNING LAW

This Agreement is governed by and construed in accordance with the laws of the state in which training is being held or, in the case of training provided over the Internet, the laws of the State of California, without reference to its conflict of laws principles.

ARTICLE 18—ENTIRE AGREEMENT

This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements (including any attached purchase order terms and conditions) between the parties relating to such subject matter. Client hereby acknowledges and represents that he/she has read and understands this Agreement and has the authority to bind his/her organization to these terms and conditions.



ENTERPRISE ADVANTAGE PROGRAM
AGREEMENT (E125)

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

EAP Agreement No. _____

This Enterprise Advantage Program Agreement ("EAP Agreement") is entered into by and between Environmental Systems Research Institute, Inc. ("Esri"), a California corporation, at 380 New York Street, Redlands, California 92373-8100 and the licensee listed below ("Licensee").

Esri offers an Enterprise Advantage Program to Licensees current on Esri software maintenance that are implementing or have implemented a geographic information system (GIS) enterprise solution based on Esri technology. Licensee agrees to contract with Esri for and Esri agrees to provide Licensee with certain enhanced consulting services, training, and support available under the Enterprise Advantage Program for the authorized Licensee location as described herein. The Enterprise Advantage Program is not designed for Esri to provide project specific professional services (e.g., application or database development for solutions or applications).

Software, Data, Web Services, and Documentation, as these terms are defined in the Master License Agreement ("MLA" or "License Agreement"), shall continue to be licensed under Master License Agreement No. _____ ("MLA" or "License Agreement"), entered into by Licensee and Esri, or the then-current, applicable click-through License Agreement provided with the item (E204/E300).

This EAP Agreement consists of this signature page and the attached terms and conditions. This EAP Agreement constitutes the sole and entire agreement of the parties and supersedes any previous agreements, understandings, and arrangements between the parties relating to the Enterprise Advantage Program. Other than information regarding the services or Software being ordered and shipping instructions, if any, additional or different terms contained on Licensee's purchase order are objected to and shall not apply even if accepted or acknowledged by Esri unless specifically included in a modification to this EAP Agreement. Any modifications or amendments to this EAP Agreement must be in writing and signed by an authorized representative of each party.

The parties acknowledge that they have read and understand this EAP Agreement, have the authority to bind their respective organizations, and agree to be bound by its terms and conditions.

(Licensee)

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

All Licensee contact regarding EAP activities shall be through the point of contact identified below.

Authorized EAP Contact Information
(to be completed by Licensee)

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, ZIP: _____

E-mail: _____

ARTICLE 1—DEFINITIONS

Capitalized terms that have not been defined in this EAP Agreement shall have the meaning found in the applicable Esri license agreement.

"Incident" means a communication via telephone or e-mail by Licensee to Support Services regarding technical problems with Software, Data, or Documentation.

"Map Data" means any digital dataset(s), including geographic data, vector data coordinates, raster data, or associated tabular attributes supplied or used in the performance of this EAP Agreement.

"PSS" means Premium Support Services.

"Renewal Period" means any one (1)-year extension of this EAP Agreement.

"Secure Formats" means object code, executable code, or similar formats.

"Term" means the initial term of this EAP Agreement.

"Work Product" means reports, documented analysis, sample code, prototype/unsupported code, or technical memorandums provided under this EAP Agreement.

ARTICLE 2—ENTERPRISE ADVANTAGE PROGRAM

2.1 Enterprise Advantage Program Description. The Enterprise Advantage Program is a menu of services, training, and support that provides Licensee with the flexibility to select components that best meet its needs. The Enterprise Advantage Program components include the following:

- a. *Technical Advisor.* An Esri Technical Advisor who has expertise in Esri GIS software capabilities and has the ability to analyze and assess optimal solutions in the context of GIS enterprise implementation will be assigned to Licensee. Licensee will receive up to the number of ordered Technical Advisor hours. Licensee may elect to retain additional Technical Advisor Services for a supplemental price. Technical Advisors are not substitutes for services provided by Esri Support Services or Professional Services. Licensee will continue to contact Esri Support Services as the first point of contact for all technical support inquiries. If a custom application or other services are required, Licensee will need to enter into an agreement for use of Esri Professional Services. If Licensee requests the Technical Advisor to come to Licensee's site, Licensee will pay reasonable travel costs. The Technical Advisor in coordination with the Account Manager shall
 - (1) Advise Licensee on GIS strategies, architectures, and product selection;
 - (2) Advise Licensee on training needs, available business partner solutions, consulting support requirements, and business case development;
 - (3) Act as Licensee's technical advocate in dealing with Esri;
 - (4) Participate in annual account reviews; and
 - (5) Serve as point of escalation if Licensee is not satisfied with the resolution of an incident through Esri Support Services.
- b. *Annual Account Review.* Licensee may attend a one (1)-day annual GIS strategy and account review with Licensee's Account Manager and Technical Advisor at Esri headquarters in Redlands, California. Key Esri technical and industry specialists may also attend the review to answer questions and discuss Licensee's ideas and suggestions regarding Esri software and support strategies. Licensee is responsible for its own travel expenses. As an option to hosting the review in Redlands, Esri may conduct the review at the appropriate Esri regional office as mutually agreed, and Esri's Redlands staff will have the option to participate either by telephone or by webcast.

c. *Learning and Services Credits*

- (1) Licensee will receive the number of ordered Learning and Services Credits. Licensee may use the credits toward any combination of consulting services support, training, premium support, or related travel expenses as described below.
- (2) Licensee may order, for an additional price, additional Learning and Services Credits either (i) as a block of fifty (50) credits or (ii) as a block of one hundred (100) credits, not to exceed a total of two hundred (200) credits during the Term or each Renewal Period of this EAP Agreement. If Licensee requests additional Learning and Services Credits over and above the initial two hundred (200) credits provided for in this paragraph, Licensee must order Learning and Services Credits along with additional Technical Advisor Services.
- (3) Learning and Services Credits may be exchanged as follows:

| | |
|--|---------------------------------------|
| Technical Consulting Services Support consisting of review of technology strategy, systems design, prototyping, and other general technical consulting services support activities (Any project-related activities requiring a deliverable other than consulting time will be scoped, budgeted, and scheduled through a separate agreement.) | 1 credit = 2 hours |
| Annual Premium Support Limited | 15 credits = 5 Incidents |
| Annual Premium Support Limited | 22 credits = 10 Incidents |
| Annual Premium Support Unlimited | 75 credits = Unlimited Incidents |
| Instructor-Led Training (one [1] person at an Esri Facility) or Virtual Classroom | 1 credit = 1 day |
| Client Site or Private Esri Site Training Event (for up to twelve [12] people) | 9 credits = 1 day |
| Additional Student | 0.75 credits = 1 day |
| Coaching Services (for up to fifteen [15] people) | 9 credits = 1 day |
| Virtual Campus Annual User License | 1 credit = 480 Virtual Campus dollars |
| Related Esri travel and per diem expenses | as quoted |

Note: Offerings above may be added or removed from time to time in conformance with the EAP requirements.

- (4) Unused Learning and Services Credits may be carried over to future years as long as Licensee remains an Esri Enterprise Advantage Program member. If this EAP Agreement expires (exclusive of termination for default), any unused credits will expire six (6) months after the expiration of this EAP Agreement; however, the Technical Advisor Services will not be available during this post-Term period.
- (5) Esri will provide EAP Contact with a monthly report outlining usage of Enterprise Advantage Program Learning and Services Credits to date.

d. *Exclusive Enterprise Webcast.* Esri will provide an e-mail invitation to the EAP Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.

2.2 Learning and Services Credit Use

- a. *Current on Maintenance.* Licensee must remain current on standard maintenance during the term of this EAP Agreement. Standard maintenance is described at <http://www.esri.com/legal>, which may be changed from time to time.
- b. *Authorization of Credit Use.* Licensee will contact its Account Manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit to Licensee a Learning and Services Credit estimate by e-mail for confirmation and authorization for use of the credits.
- c. *Travel and Per Diem.* Any Esri travel and per diem will be quoted separately. Licensee may direct Esri to use credits for travel and per diem as stated in Enterprise Advantage Program Description, Section 2.1 above, or Licensee will issue a purchase order and Esri will invoice Licensee for the travel and per diem expenses as described below in Article 6.
- d. *Notification of Consumed Credits.* Esri will notify Licensee in the event the authorized Learning and Services Credits are consumed prior to completion of the requested work. Licensee may elect to direct use of additional credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to discontinue work when the authorized credits are consumed.

- e. *Review of Proposed Activities.* Any activities proposed to be completed under the Enterprise Advantage Program will be subject to review and approval by Esri to ensure alignment with the intent of the program.

2.3 Defense or Military Application. At the time the Learning and Services Credits are requested or before any services are provided by the Technical Advisor, Licensee will inform Esri if any of the requested services, consulting, training, or support provided by Esri is directly related to a defense article or for a military application.

ARTICLE 3—LICENSE GRANT

3.1 Training. The terms of the Esri License Agreement shall be applicable to all Licensee course participants and for all of Esri's Software, Data, Web Services, and Documentation licensed for use in any training course to be conducted. Esri may issue temporary Software licenses when there is an insufficient number of Software licenses available at Licensee's training facility. Upon conclusion of the training event, Licensee shall uninstall the temporary Software licenses and return to Esri any media provided.

3.2 Work Product. Esri hereby grants to Licensee a nonexclusive, royalty-free license in the Work Product to use in connection with Licensee's authorized use of the Software and Data for support of which the Work Product was supplied.

3.3 PSS. The terms and conditions of the License Agreement for the affected Software will govern any updates, patches, hot fixes, or software provided under this EAP Agreement.

ARTICLE 4—WARRANTIES AND DISCLAIMERS

4.1 Warranties and Disclaimers

- a. All services, training, and Work Products will be provided in a professional and workerlike manner.
- b. Esri warrants for a period of thirty (30) days after delivery of the services that the services will conform to professional and technical standards of the software industry.
- c. *Map Data Disclaimer.* Map Data may contain some nonconformities, defects, errors, or omissions. MAP DATA IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, Esri and its licensors do not warrant that the Map Data will meet Licensee's needs or expectations, that the use of the Map Data will be uninterrupted, or that all nonconformities can or will be corrected. Esri and its licensors are not inviting reliance on the Map Data and Licensee should always verify actual Map Data.

4.2 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ENTERPRISE ADVANTAGE PROGRAM OR ANY WORK PRODUCT PROVIDED HEREUNDER WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR-FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. WORK PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

ARTICLE 5—LIMITATION OF LIABILITY

5.1 Disclaimer of Certain Types of Liability. ESRI IS NOT LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS EAP AGREEMENT OR USE OF THE WORK PRODUCT, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5.2 General Limitation of Liability. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER FOR DIRECT DAMAGES SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE EAP PROGRAM.

5.3 Applicability of Disclaimers and Limitations. The parties agree that Esri has set its prices and entered into this EAP Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 6—COMPENSATION

6.1 Upon execution of this EAP Agreement or the inception of a Renewal Period, Esri shall invoice Licensee as quoted for the Enterprise Advantage Program annually in advance. Fees for additional Learning and Services Credits or Technical Advisor Services will be invoiced upon receipt of Licensee's order. Licensee shall pay Esri within thirty (30) calendar days of receipt of invoice.

6.2 Pricing for annual program renewals and new or additional Esri service offerings will be in accordance with Esri's most current price schedule at the time of purchase or renewal.

6.3 Licensee may elect to use Learning and Services Credits for actual travel expenses of Esri employees plus a standard burden, or to be invoiced at the actual cost for travel expenses plus a standard burden. Meals will be charged on a per diem basis.

ARTICLE 7—TERM AND TERMINATION

7.1 The Term of this EAP Agreement is one (1) year from the last date of signature on the signature page. Prior to the end of the Term, Esri may provide Licensee with a quotation for an additional one (1) year Renewal Period. If Licensee accepts the quote, Esri will submit an invoice to Licensee for the quoted annual Enterprise Advantage Program price and this EAP Agreement will automatically extend for the Renewal Period.

7.2 Licensee may terminate this EAP agreement at any time without cause or may simply choose not to renew the Enterprise Advantage Agreement relationship.

7.3 Licensee may terminate this EAP Agreement for Esri's breach of a material term upon thirty (30) days' notice to Esri and opportunity to cure. If termination is due solely to Esri's failure to perform a material term of this EAP Agreement, Esri will refund a prorated share of amounts paid to Esri equal to the credits not used by Licensee.

7.4 Esri may terminate this agreement for Licensee's breach of a material term upon thirty (30) days' notice to Licensee and opportunity to cure, or terminate this EAP Agreement in the event of termination or expiration of the Enterprise Advantage Agreement relationship as set forth in that Enterprise Advantage Agreement. In such event, Esri is not obligated to refund any amounts paid for credits not used.

7.5 Upon termination or expiration of this EAP Agreement

- a. Except when termination results from non-renewal, all outstanding Learning and Services Credits shall be subject to cancellation, acceptance, or rejection at the sole discretion of Esri.
- b. In the event of termination for a material breach, the due dates of all invoices for amounts owed by Licensee to Esri shall be accelerated automatically so that such amounts become due and payable on the effective date of termination, regardless of the payment term provisions set forth in this EAP Agreement.
- c. Except where a provision specifically provides otherwise, any cause of action or claim of one (1) party accrued to or to accrue because of any breach or default of the other party and any accrued license rights shall survive to the degree necessary to permit their complete fulfillment or discharge.

ARTICLE 8—CONFIDENTIALITY

8.1 Confidential Information. It may be necessary for Esri or Licensee to disclose to the other party certain confidential information under this EAP Agreement. The access code or password for the PSS website, information disclosed at review sessions, and any Work Product are confidential information of Esri. Licensee data contained in the Esri PSS website database is confidential information of Licensee. Each party shall use the confidential information described above only for exchanging information needed to provide the PSS contemplated by this EAP Agreement. Within sixty (60) days of termination of this EAP Agreement, each party shall return or destroy and provide a certification of destruction of the confidential information of the other party.

8.2 Work Product

- a. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Work Product delivered only in Secure Formats. For Work Product delivered in source code or other human-readable formats, Licensee will have met its obligations under this EAP Agreement if its disclosure of Work Product is limited to such items in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling such Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.
- b. Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advance written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.
- c. The disclosures permitted under this section shall not relieve Licensee of its obligation to maintain the Work Product in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Work Product to employees or third parties as permitted in the preceding paragraph, Licensee shall inform such employees or third parties of the obligations in this EAP Agreement and obtain their agreement to be bound by them.

8.3 Excluded Confidential Information. Licensee shall not provide to Esri or disclose to the instructor any data or information that is personally identified information (PII), including, but not limited to, GLBA or HIPAA type data or information, or critical infrastructure information (CII) from the US Department of Homeland Security. Notwithstanding anything in this Agreement to the contrary, Esri retains the right to refuse acceptance of any nonpublic personal information (NPI) or customer information regardless of the form of disclosure. Esri will only accept receipt of information from Licensee that comports with the exceptions set forth in Subsections 4(B) and 4(C)(ii) of Section 509 of the Gramm-Leach-Bliley Act (P.L. 106-102) (15 U.S.C. Section 6809) and implementing regulations thereof.

8.4 Other Exchange of Confidential Information. Any other exchange of confidential information between the parties shall require execution of a nondisclosure agreement signed between the parties separate from this EAP Agreement.

ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

9.1 Premium Support Services. Should the Licensee choose to use Learning and Services Credits for PSS, the terms of this Article 9 shall also apply.

9.2 Premium Support Availability. Licensee may use Learning and Services Credits for PSS (annually) for any product covered under Esri's standard maintenance subscription, provided that Licensee is current on maintenance for applicable Esri Software. Esri shall provide PSS for the Term of the EAP Agreement.

9.3 Premium Support Description. PSS shall provide (1) a designated Premium Support Coordinator ("PSC"), (2) limited or unlimited telephone and e-mail support accessible to Licensee twenty-four hours per day, seven days per week, three hundred sixty-five days per year (24/7/365), (3) Priority Incident Management, and (4) other additional enhanced support and services.

9.4 Premium Support Coordinator. Esri shall assign a PSC to Licensee. The assigned PSC shall work directly with Licensee's Authorized Contact ("LAC") and shall oversee all of Licensee's Premium Support Incidents. Licensee may select

up to two (2) individuals to report Premium Support Incidents to Support Services and work directly with PSC regarding all such Incidents.

The PSC shall

- a. Be familiar with Licensee's GIS software architecture and infrastructure to perform the scope of support pursuant to this Article 9;
- b. Verify that all open Premium Support Incidents of Licensee are prioritized above Incidents opened pursuant to standard maintenance;
- c. Work closely with Senior Support Analysts toward the resolution of all open Premium Support Incidents; and
- d. Provide LAC with a daily status update on all open Premium Support Incidents or as agreed upon by PSC and Licensee.

Esri may replace PSC during the Term of the EAP Agreement with a written notification to Licensee.

9.5 Telephone and E-mail Support. Esri shall provide support to Licensee for Software by telephone or e-mail and shall include the following:

- a. LAC may open an Incident by calling Support Services or logging the Incidents via the PSS website. An e-mail acknowledgment shall be sent to LAC for a new Incident logged via the PSS website. The assigned PSC shall use commercially reasonable efforts to call or send an e-mail response within one (1) hour of receipt of a new Incident to notify Licensee that the logged Premium Support Incident is in the initial stage of review;
- b. LAC shall have the ability to log Premium Support Incidents via the telephone. Incidents logged in this manner will receive personalized messaging and Priority Incident Management; and
- c. PSC shall be available to LAC from 5:00 a.m. to 5:00 p.m., Pacific Standard Time, Monday through Friday, except on Esri holidays. In the event that PSC is not available during such time, LAC's telephone calls and e-mails will be routed to a Senior Support Analyst who can assist LAC. PSC will be notified of the Incident. Telephone calls and e-mails during all other times (after hours, weekends, and Esri holidays) will be routed to Senior Support Analysts.

The number of Incidents a Licensee may open is dependent on the number of Premium Support Incidents purchased, that is, either unlimited, limited to five (5), or limited to ten (10) Incidents. Unused Incidents purchased as a block of five (5) or ten (10) Incidents will carry over in the case of a renewal of the EAP.

9.6 Priority Incident Management. Priority Incident Management shall include the following:

- a. Premium Support Incidents reported by LAC will be given priority handling after the initial Premium Support Incident is created and documented;
- b. Software defects affecting Licensee will be a priority for discussion of the User Advocacy Group; and
- c. For identified Software defects that are approved for an out-of-cycle hot fix or patch, PSC shall assist in presenting the hot fix or patch to LAC and verify that the delivered hot fix or patch addresses the reported issue.

9.7 Other Additional Enhanced Support and Services. Esri shall provide additional offerings to Licensee as a part of PSS, which include, but are not limited to, the following:

- a. *Premium Support Website Access.* LAC shall have access to the PSS website. LAC shall have the ability to log and track the status and completion of all identified Premium Support Incidents on this website. LAC may log and view their Incidents and access other PSS-related tools and information through this website.
- b. *System/Environment Profile.* Through the PSS website, Licensee shall have access to an Esri database to enter and maintain data regarding Licensee's equipment, applications, and skill sets associated with Esri technology.
- c. *PSS Software Alert Newsletter.* Esri shall provide to Licensee a news bulletin that discusses key current issues in Software being investigated by Esri.
- d. *Quarterly Teleconference Meeting.* Esri and Licensee shall conduct a quarterly teleconference meeting to discuss Licensee's Premium Support Incidents. Esri shall make available the assigned Account Manager, PSC, Premium Support Manager, and other Esri staff as deemed necessary by Esri.

Details of all PSS offerings can be found at www.esri.com/services/pss/components.html.

9.8 PSS Restrictions and Exclusions

- a. *Excluded Software.* PSS is not available for third-party software. Esri is not responsible for errors attributable to third-party software used in conjunction with or built upon Software.
- b. *English Language.* All communications will be conducted in the English language except by agreement of both parties.
- c. *Acknowledgment.* Licensee acknowledges and agrees that the report of an error or defect of any Software is not a guarantee that it can or will be corrected. At Esri's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by Esri.
- d. *Hardware Support.* Esri does not provide support for hardware, including but not limited to, graphics cards, monitors, plotters, graphics printers, digitizers, and modems, except to answer questions regarding how standard, supported devices interface with Software.
- e. *Exceptions to PSS.* The following are not covered by PSS:
 - i) Any problem resulting from Licensee's misuse, improper use, unauthorized modification, or damage of the Software or Licensee's combining or merging the Software with any hardware or software not supplied or identified as compatible by Esri;
 - ii) Any problem resulting from third party hardware or software;
 - iii) Errors in any version of the Software other than the officially supported version of Software; and
 - iv) Any on-site support or implementation services on-site or otherwise, including, but not limited to, those provided by Esri Professional Services or any third party.

ARTICLE 10—CONSULTING SERVICES SUPPORT TERMS AND CONDITIONS

10.1 Consulting Services Support. Should Licensee choose to use Learning and Services Credits for consulting services support, the terms of this Article 10 shall also apply.

10.2 Patents and Inventions

- a. Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of this Agreement. The parties shall jointly own any Invention(s) made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Software, Licensee hereby grants and agrees to grant to Esri an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use.
- b. Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.
- c. A joint owner ("Assigning Owner") electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such its rights in such Inventions to the other joint owner ("Beneficial Owner") as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.
- d. Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party which is hereby given to Esri for Inventions relating to the Software and shall otherwise not be unreasonably withheld by either party.

10.3 Ownership. Except as specifically granted in this EAP Agreement, Esri or its licensors own and retain all right, title, and interest in the Work Product.

ARTICLE 11—TRAINING TERMS AND CONDITIONS

11.1 Training. Should Licensee choose to use Learning and Services Credits for training or coaching services, the terms of this Article 11 shall also apply.

11.2 Training Location. Training may be conducted at Licensee's site, at an Esri Learning Center or via the Web.

11.3 Course Descriptions. The Esri Software training courses to be conducted, their location, the dates during which the courses are to be conducted, the number of participants, and registration requirements are set forth in the *Esri Training* catalog located on the Esri training website (<http://training.esri.com>). All courses shall be conducted in substantial conformity with the course descriptions outlined on the Esri training website. Esri reserves the right to modify course content when necessary due to Software technical capabilities or limitations. Licensee may utilize coaching services immediately before or immediately following an Esri training course to familiarize Licensee's student with the software or to review and practice course concepts with an instructor's guidance.

11.4 Esri's Responsibilities

- a. Esri shall provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Students") on scheduled dates. Esri will provide each student with a course manual, where applicable.
- b. Esri will confirm Learning Center training event scheduled dates approximately ten (10) business days prior to the training event start date.
- c. Esri will confirm Licensee Site training events upon receipt of completed Client-Site Training Request Form and intended payment method.

11.5 Licensee's Responsibilities

- a. Licensee must ensure the protection of Esri's copyrights. Licensee shall not copy or distribute, or permit a third party to copy or distribute, any of Esri's training material(s).
- b. Licensee is not authorized to resell seats to an Esri training event unless explicitly authorized in writing by Esri.
- c. Licensee must ensure that all Students have received confirmation from Esri to participate in an Esri training event. An unregistered Student is not permitted to view or participate in a Virtual Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Students.
- d. Licensee must confirm that all registered Students meet the applicable minimum prerequisites for the applicable training event set forth on Esri's training website.
- e. Licensee must submit registration with a confirmed payment commitment at least seven (7) business days before the training event start date. If Licensee submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- f. US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List). To meet these export requirements, Licensee must submit to the Esri Training Event Assistant a list of the names of Students who are to attend any training event. Licensee must submit the list of Student names to Esri at least three (3) business days before the training event start date. Any Student whose name is found on any of the various US Government Denied Persons lists will not be permitted to attend training.
- g. Licensee is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export licensing requirements, course scheduling changes, or cancellations.
- h. Licensee must provide written notice to Esri's Customer Service at service@esri.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of such change(s) prior to the training event start date.
- i. Students may not use audio or video recording equipment within the classroom without prior written approval from Esri. Esri reserves the right to record a classroom training event for future rebroadcast.
- j. Licensee is responsible to ensure that it adheres to the course, facility, and equipment as well as Internet bandwidth and connectivity requirements for Esri Training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.

- k. Where the Esri Mobile Lab equipment is utilized at Licensee's domestic site, the following terms apply:
- Upon receipt, Licensee must immediately report any damage to the Mobile Lab equipment to the Training Event Assistant.
 - Licensee must keep the Mobile Lab equipment in a secure, locked area between training event sessions.
 - Licensee must ensure that only registered Students use the Mobile Lab equipment.
 - Licensee is responsible for any and all loss of, damage to, or theft of the Mobile Lab equipment while in Licensee's possession.
 - Licensee warrants that it maintains sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law.
 - The Esri instructor will check all Mobile Lab equipment following the completion of training. Any damage to the Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Licensee by written notice. Licensee hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
 - Licensee shall make the Mobile Lab equipment available for freight pickup immediately upon conclusion of the Esri training event.

11.6 Cancellation and Rescheduling Policy

Individual Student Seats

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without three (3) business days' notification, an additional, nonrefundable transfer and data processing fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center training event to another one (1) time at no additional charge provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a training event provided Esri's Customer Service is notified three (3) business days in advance. If three (3) business days' notification is not provided, Student may be charged the full Student Seat fee.

Client Site/Private Class/Coaching Services (Training Event)

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service is notified three (3) business days in advance of the training event start date.
- A training event may be rescheduled by the Licensee provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. If appropriate notice of rescheduling is provided, Licensee is responsible for reasonable travel expenses and shipping costs.
- A training event may be canceled by the Licensee provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. If appropriate notice of cancellation is provided, Licensee is responsible for any reasonable travel expenses and shipping costs. If a training event is canceled without appropriate notice, Licensee is responsible for the full training event fee.

If cancellation of a training event is necessary due to Force Majeure as described in Article 12 below, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

If Esri is unable to conduct the training on the scheduled date, Esri will notify Licensee at least three (3) business days before the scheduled date.

ARTICLE 12—GENERAL PROVISIONS

12.1 Intellectual Property Rights Attribution. Licensee shall retain any copyright, patent, or trademark notices on all items licensed under this EAP Agreement and shall take other necessary steps to protect Esri's or its licensor's intellectual property rights.

12.2 No Implied Waivers. The failure of either party to enforce any provision of this EAP Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

12.3 Severability. If any provision of this EAP Agreement is determined to be invalid, illegal, or unenforceable, the parties agree the remaining provisions of this EAP Agreement shall remain in full force if both the economic and legal substance of the transactions contemplated by this EAP Agreement are not affected in any manner that is materially adverse to either party by severing the provision determined to be invalid, illegal, or unenforceable.

12.4 Force Majeure. If the performance of this EAP Agreement, or any obligation except the making of payments, is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, terrorist act, cyber attack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, or interference.

12.5 Applicable Laws. This EAP Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflict of laws principles.

12.6 Nonsolicitation of Contractor Personnel. Licensee shall not solicit for hire any Esri employee who is associated with efforts called for under this Agreement during the term of this EAP Agreement and for a period of one (1) year thereafter. In the event the foregoing provision is breached, Licensee shall pay Esri liquidated damages for recruiting and training costs equal to twelve (12) months of the employee's compensation plus any legal expenses associated with the enforcement of this provision.

12.7 Taxes. Services provided are quoted exclusive of all state, local, value-added or other taxes, customs, or duties, or other charges (other than income taxes payable by Esri). In the event such taxes and/or charges become applicable to Esri's services, applications, or data, Licensee shall pay any such applicable tax upon receipt of written notice that such taxes are due.

12.8 UCC Inapplicability. Any services provided under this EAP Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

12.9 Assignment and Delegation. Esri may, in whole or in part, assign any of its rights or delegate any performance under this EAP Agreement, provided that Esri shall remain responsible for the performance it delegates. This EAP Agreement binds and benefits successors or assigns permitted under this Section 12.9.

12.10 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release Software, Data, Web Services, or Documentation, in whole or in part, to (i) any US embargoed country (or to a national or resident of any US embargoed country); (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity where such export or reexport violates any US export control laws or regulations including, but not limited to, the terms of any export license or license exemption and any amendments and supplemental additions to US export laws as they may occur from time to time.

12.11 Headers. Headers are for convenience only and are not to be used in the interpretation of this EAP Agreement.



IMPLEMENTATION SERVICES ADDENDUM FOR SERVICES PACKAGES

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

1. DEFINITIONS

"Commercial Off-the-Shelf Software" or **"COTS Software"** means all or any portion of Esri's proprietary software technology accessed or downloaded from an authorized Esri website or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies, available under license to the general public.

"Map Data" means any digital dataset(s) including geographic, vector data, coordinates, raster, or associated tabular attributes supplied by either party for use in the performance of this Addendum.

"Services" means consulting support being performed by Esri on a time and materials basis in exchange for compensation from Customer.

"Services Output" means any work product produced by Esri as a result of Services provided under this Addendum. Services Output can include, but is not limited to, reports, training materials, and custom software code.

"Services Package(s)" means a predefined unit of Services provided at a firm fixed price, as stated in Esri's proposal.

2. OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Addendum, Esri owns and retains all rights, title, and interest in Services Output. Subject to the terms and conditions in this Addendum, Esri hereby grants to Customer a nonexclusive, royalty-free, worldwide license to use, modify, and/or reproduce Services Output in connection with Customer's authorized use of Esri's COTS Software.

3. PATENTS AND INVENTIONS

Esri and Customer shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors ("Inventors") during the term of this Addendum. Esri and Customer shall jointly own any Inventions made or conceived jointly by Inventors from both parties. Where Inventions are jointly owned, each joint owner shall share equally the costs of acquiring protection for the Inventions and furnish the other joint owner with assistance reasonably required for acquiring protection. Neither Esri nor Customer may license, transfer, or sell its interest in jointly owned Inventions without the written consent of the other party, which shall not be unreasonably withheld.

4. COMPENSATION

Services will be performed and invoiced on a firm fixed price basis, and the deliverable will be consultation time. Esri will invoice Customer for all Services Packages ordered upon receipt of a valid Customer Purchase Order/ordering document. The Purchase Order/ordering document will confirm the quantity and price of the Services Packages ordered, as described in Esri's proposal or quotation, and will reference Customer acceptance of this terms and conditions document. Esri standard payment terms are net 30 days

from receipt of an Esri invoice. Payment shall be made to the Esri address identified on the Esri invoice. For Services provided beyond the period of performance proposed or provided in a new calendar year, Esri reserves the right to increase the Services Package price in accordance with Esri's most current price schedule. Esri's obligation for completion of the Services proposed is limited to the hours outlined in the Services Package descriptions within Esri's statement of work. If additional time is required to complete Customer's goals or activities set forth in the applicable statement of work, Esri and Customer will amend the Purchase Order/ordering document, as mutually agreed, by increasing the quantity of Service Packages ordered and issuing a new or amended Purchase Order/ordering document. Esri may, at its sole discretion, stop work to avoid exceeding the total hours allotted in a specific Services Package. Unused labor hours or travel remaining after the performance of a Services Package will expire and not be available for performance at a later date. If funded Services Packages have not been performed within twelve (12) months of the Esri invoice date, the Services Package will expire, and no refund will be provided. Any amendment to the Purchase Order/ordering document to add Services Packages shall not affect the rights or obligations of the parties under this Addendum.

5. LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

Esri warrants for a period of ninety (90) days from the date of performance that Services will conform substantially to the professional and technical standards of the software industry. If Services do not substantially conform to these standards, Customer may require Esri to reperform Services at no additional cost to Customer. Services Output is provided as is without warranty of any kind.

Disclaimer of Warranties

WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS AND THIS ADDENDUM EXPRESSLY EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IN ADDITION TO AND WITHOUT LIMITING THE PRECEDING PARAGRAPH, ESRI DOES NOT WARRANT IN ANY WAY MAP DATA. MAP DATA MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET CUSTOMER'S NEEDS OR EXPECTATIONS. CUSTOMER SHOULD NOT RELY ON ANY MAP DATA UNLESS CUSTOMER HAS VERIFIED MAP DATA AGAINST ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

6. LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

IN NO EVENT SHALL ESRI BE LIABLE TO CUSTOMER FOR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS ADDENDUM, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ESRI'S TOTAL CUMULATIVE LIABILITY UNDER THIS ADDENDUM, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR SERVICES UNDER THIS ADDENDUM FROM WHICH THE LIABILITY DIRECTLY AROSE.

7. CONFIDENTIALITY

Services Output is Esri confidential information, and Customer shall preserve and protect the confidentiality of Services Output. Customer agrees not to reverse engineer or decompile custom software delivered in object code, executable code, or similar formats (collectively, "Secure Formats"). For custom software delivered in source code or other human-readable formats, Customer shall have met its obligations under this Addendum if its disclosure of custom software is limited to custom software in Secure Formats, provided that the means for reverse engineering, decompiling, or disassembling the custom software is withheld from such disclosure, and the person or entity in receipt of the custom software similarly agrees not to perform the prohibited acts described above or allow others to do so.

Except as provided in the preceding paragraph, Customer shall not disclose Services Output to third parties without the advance written consent of Esri. Customer may make disclosures to Customer's employees to the extent reasonably required to allow Customer to use Services Output in a manner authorized under the applicable software licenses. Before disclosing all or any portion of Services Output to employees or third parties as permitted in the preceding sentence, Customer shall inform its employees or third parties of the obligations in this Addendum and obtain their agreement to be bound by them.

8. EXPORT CONTROLS

The disclosures permitted under Article 7, Confidentiality, shall not relieve Customer of its obligation to maintain Services Output in confidence and comply with all applicable laws and regulations of the United States including, without limitation, its export control laws. Customer expressly acknowledges and agrees not to export, reexport, transfer, or release Services Output, in whole or in part, to (i) any US embargoed country (or a national or resident of any US embargoed country); (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any US export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to US export laws.

9. GENERAL PROVISIONS

9.1 Nonsolicitation. Neither party will directly solicit for hire any employee of the other party who is associated with Services called for under this Addendum during, and for a period of one (1) year after, project completion. In the event this provision is breached, liquidated damages equal to twelve (12) months of the employee's compensation, plus any legal expenses associated with the enforcement of this provision, shall be paid by the breaching party to the aggrieved party. The foregoing shall in no way restrict the parties from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

9.2 Taxes. Services are quoted exclusive of all state, local, value-added, or other taxes; customs; duties; or other charges (other than income taxes payable by Esri). In the event such taxes and/or charges become applicable to Esri's Services or Services Output, Customer shall pay the applicable tax upon receipt of written notice that it is due.

9.3 UCC Inapplicability. Services provided under this Addendum will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of UCC.

9.4 Order of Precedence. These terms and conditions will take precedence over any Customer terms and conditions included in Customer ordering or authorizing documents, such as purchase orders. Any additional terms or conditions in Customer ordering or authorizing documents will be void and may be incorporated into this Addendum only by written amendment signed by both parties.

9.5 Equitable Relief. Customer agrees that any breach of this Addendum by Customer may cause Esri irreparable damage. In the event of a breach, in addition to any and all remedies at law, Esri shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction to prevent violation of these terms without the requirement of posting a bond or undertaking or proving injury as a condition of relief.

9.6 Governing Law. This Addendum shall be governed by and construed in accordance with the laws of the State of California without reference to its conflict of laws principles.

9.7 Entire Agreement. This Addendum is the sole and entire agreement of the parties for Services and supersedes any previous agreements, understandings, and arrangements (including any attached purchase order terms and conditions) between the parties relating to the subject matter.



MANAGED SERVICES ADDENDUM

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

This Managed Services Addendum ("Addendum") is appended to and made part of the Master Services Agreement No. <#> (hereinafter referred to as "Agreement") made between **Environmental Systems Research Institute, Inc.** (hereinafter referred to as "**Esri**"), and <Customer Name> (hereinafter referred to as "**Customer**").

WITNESSETH:

WHEREAS, Esri is a developer and marketer of proprietary geographic information system (GIS) COTS Software, Esri Data, Web Services, and other services, including associated Managed Services as defined below; and

WHEREAS, Customer is desirous of engaging Esri to provide Managed Services for Customer Content;

NOW THEREFORE, in consideration of the foregoing and mutual promises herein set forth, the parties hereby agree as follows:

SECTION 1—DEFINITIONS

- (a) "Base Components" shall mean the hardware, COTS Software, Esri Data, and network that Esri, or its third-party suppliers/partners make available as the underlying environment for Hosting Customer Content.
- (b) "Base Services" shall mean the provision of operational support associated with managing Base Components and Customer Content within the specified service levels.
- (c) "Customer Content" shall mean items including, but not limited to, custom software applications owned or licensed by Customer, photos, journal text, geospatial data, nongeospatial data, user interfaces, graphics components, and icons, plus any personally identifiable information, supplied by or on behalf of Customer.
- (d) "Customer Web Site" shall mean Customer Content viewed through a user interface and made available via the Internet under the Domain Name reserved for the Web site.
- (e) "Data Center" shall mean a facility, either at Esri's headquarters in Redlands, California, or a partner's hosted facility, which houses Base Components and Customer Content including Web servers and other related equipment and supports the provision of Managed Service(s).
- (f) "Domain Name(s)" shall mean a series of alphanumeric strings separated by periods that is an address of a computer network connection, which Customer has specified for Customer Web Site.
- (g) "End User" shall mean any third party or entity who accesses or uses any Customer Content via Customer Web Site.
- (h) "Esri Data" means any Esri or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes.
- (i) "Hosting" means the business of housing, servicing, and maintaining files for one or more Web sites.
- (j) "Intellectual Property Rights" shall mean any and all now known or hereafter known tangible and intangible (i) rights associated with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, and other industrial property rights; (v) all other intellectual and industrial property rights of every kind and nature throughout the universe and however designated (including logos, "rental" rights, and rights to remuneration), whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions, or reissues hereof now or hereafter in force (including any rights in any of the foregoing).
- (k) "Managed Service(s)" shall mean Hosting and provision of access to Base Components and related Base Services required to make Customer Content available to Customer or Customer's End Users.
- (l) "Public Software" shall mean any software, documentation, or other material that contains or is derived (in whole or in part) from any software, documentation, or other material that is distributed as free software, open source software (e.g., Linux), or other similar licensing or distribution models, including, but not limited to, software, documentation or other material licensed or distributed under any other of the following licenses or distribution models, or license or distribution models similar to any of the following: (i) the GNU General Public License (GPL), Lesser/Library GPL (LGPL), or Free Documentation License; (ii) the Artistic License (e.g., Perl); (iii) the Mozilla Public License; (iv) the Netscape Public

License; (v) the Sun Community Source License (SCSL); (vi) the Sun Industry Standards License (SISL); (vii) the Berkeley Software Distribution (BSD) License; and (viii) the Apache License.

SECTION 2—MANAGED SERVICES

2.1 Managed Services. It is the responsibility of Customer to determine whether Base Components, Base Services, Customer Content, or the combination of the three meets Customer's needs and service levels, if applicable, as set forth in the applicable Task Order. It is Customer's responsibility to plan for and request additional capacity to support anticipated growth, utilization, and peaks in demand.

2.2 License to Customer Content. During the term of the related applicable Task Order, Customer hereby grants to Esri and its affiliates permission to use Customer Content to support the provision of Managed Services. Such permission shall include, but not be limited to, the grant of rights and license to manipulate, publish, distribute, and implement Customer Content within the environment in any reasonable manner needed to support the provision of Managed Services.

2.3 Expenses. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri, or removal of Customer Content from Data Center, unless otherwise set forth in a separate agreement.

2.4 Risk of Loss. Risk of loss for all Customer Content shall at all times remain with Customer. Risk of loss for all Base Components shall at all times remain with Esri.

2.5 Personally Identifiable Information. Prior to Esri providing Managed Services utilizing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information (as defined in regulations such as HIPAA, GLB, or SSI).

2.6 Public Software. Customer may not use, and may not authorize End Users to use, any Public Software in connection with Base Services in any manner that requires, pursuant to the license applicable to such Public Software, that any Base Services be (i) disclosed or distributed in source code form, (ii) made available free of charge to recipients, or (iii) modifiable without restriction by recipients.

2.7 Monitoring. Customer will provide information and/or other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's and/or Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may crawl or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

2.8 Prohibited Content. In the event that Esri reasonably believes that any Customer Content violates the law, infringes or misappropriates the rights of any third party, or otherwise violates a material term of this Agreement ("Prohibited Content"), Esri will notify Customer of Prohibited Content in accordance with Esri's standard Digital Millennium Copyright Act ("DMCA") "take down" notice processing procedures and may request that such content be removed from Base Services or access to it be disabled. Notwithstanding, Esri may remove or disable access to any Prohibited Content without prior notice pursuant to the DMCA or as required to comply with any judicial, regulatory, or other governmental order. In the event that Esri removes content without prior notice, Esri will provide prompt written notice to Customer in accordance with Esri's standard DMCA take down notice processing procedures unless prohibited by law.

SECTION 3—OWNERSHIP

3.1 Customer's Property. All Customer Content that Customer gives to Esri under this Addendum shall at all times remain the Intellectual Property Rights of Customer or its licensor(s). Esri shall have no rights to such Customer Content other than the limited right to use such content for the purposes expressly set forth in subsections 2.2 and 2.8 of this Addendum.

3.2 Esri's Property. Esri or its affiliates shall retain at all times the right, title, and interest in and to all Base Components.

SECTION 4—TERMINATION

In the event of expiration, termination, or take down of Prohibited Content as set forth in subsection 2.8 of the Agreement or an applicable Task Order while Esri is providing Managed Services, Esri will download all Customer Content in Esri's

possession to a medium of Customer's choosing and deliver such Customer Content to Customer. Customer will be responsible for any unpaid fees due through the date of Termination.

SECTION 5—LIMITED WARRANTIES

5.1 Esri warrants that there is no outstanding contract, commitment, or agreement to which Esri is a party or legal impediment of any kind known to Esri that conflicts with this Addendum or might limit, restrict, or impair the rights granted to Customer hereunder.

5.2 Customer warrants and represents that Customer has the full authority and right from the owner or any third party to grant permission(s) to use Customer Content offered and submitted herein to Esri.

5.3 Customer warrants and represents that Customer Content does not

- (a) Infringe on any proprietary rights of third persons or contain any information that is deemed unlawful, libelous, violative of any person's right to privacy and/or publicity, obscene, pornographic, or indecent;
- (b) Violate any law, statute, ordinance, or regulation, including, without limitation, the laws and regulations governing export control, personally identifiable information, unfair competition, antidiscrimination, or false advertising; or
- (c) Contain any viruses, Trojan horses, trap doors, back doors, worms, time bombs, cancel bots, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, corrupt, or expropriate any system, data, or personal information.

SECTION 6—DISCLAIMER OF WARRANTIES

6.1 WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN SUBSECTION 5.1 ABOVE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION (i) THAT THE MANAGED SERVICES WILL OPERATE WITHOUT INTERRUPTION AND ARE COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS, OR (ii) ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

6.2 **Data Disclaimer.** IN THE EVENT THAT ANY ESRI DATA IS PROVIDED UNDER THIS ADDENDUM, THE ESRI DATA HAS BEEN OBTAINED FROM SOURCES BELIEVED TO BE RELIABLE, BUT ITS ACCURACY AND COMPLETENESS ARE NOT GUARANTEED. THE ESRI DATA MAY CONTAIN SOME NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS. ESRI DOES NOT WARRANT THAT THE ESRI DATA WILL MEET CUSTOMER'S NEEDS OR EXPECTATIONS, THAT THE USE OF THE ESRI DATA WILL BE UNINTERRUPTED, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. ESRI IS NOT INVITING RELIANCE ON THIS ESRI DATA, AND CUSTOMER SHOULD ALWAYS VERIFY ACTUAL ESRI DATA INCLUDING, BUT NOT LIMITED TO, MAP, SPATIAL, RASTER, AND TABULAR INFORMATION.

6.3 **Internet Disclaimer.** CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE INTERNET (INCLUDING, WITHOUT LIMITATION, THE WEB) IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) ESRI HAS NO CONTROL OVER THE INTERNET, AND (iii) ESRI IS NOT 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 WEB SITE.

6.4 Esri does not warrant that all Managed Services will be available outside the United States.

SECTION 7—EXCLUSIVE REMEDY AND LIMITATION OF LIABILITY

7.1 **General Limitation of Liability.** IN NO EVENT WILL ESRI'S TOTAL CUMULATIVE LIABILITY UNDER THIS ADDENDUM, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, EXCEED THE AMOUNTS PAID OR PAYABLE TO ESRI BY

CUSTOMER FOR GOODS OR SERVICES RENDERED DURING THE PERIOD OF FOUR (4) MONTHS IMMEDIATELY PRECEDING THE BREACH.

7.2 Disclaimer of Certain Types of Liability. IN NO EVENT SHALL ESRI BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SALES, OR LOSS OF ANY GOODWILL, ARISING OUT OF OR RELATED TO THIS ADDENDUM OR USE OF THE BASE SERVICES OR HOSTING OF PERSONALLY IDENTIFIABLE INFORMATION PROVIDED BY CUSTOMER IN THE CUSTOMER CONTENT, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7.3 Applicability of Disclaimers and Limitations. Customer agrees that the limitations of liability and disclaimers set forth in this Addendum will apply regardless of whether Customer has accepted the goods or services delivered by Esri. The parties agree that Esri has set its prices and entered into this Addendum in reliance on 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 in its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

SECTION 8—INFRINGEMENT INDEMNITY

Customer shall defend, indemnify, and hold harmless Esri from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, that may be incurred by Esri against any claims, actions, or demands by a third party alleging that Customer Content infringes a patent, copyright, trademark, or other proprietary right.

SECTION 9—GENERAL PROVISIONS

9.1 Relationship of the Parties. The parties hereto agree that each is an independent contractor with respect to this Addendum; that this Addendum does not constitute an agency, partnership, franchise, or joint venture; and that nothing herein contained is intended to constitute, nor shall it be construed to constitute, the parties as agents, partners, franchisor/franchisee, or coventurers of each other. Except as expressly provided in this Addendum, neither party shall have any power or authority to act in the name or on behalf of the other party except with the prior, express written consent of the other party.

9.2 Export Regulations. The parties acknowledge that this Addendum and the performance thereof may be subject to compliance with any and all applicable United States laws, regulations, or orders relating to the export of Customer Content. Customer must have appropriate EAR 99 certification for Customer Content hosted in the Managed Services environment.

9.3 Insurance. Each party shall, throughout the term of this Addendum, obtain and maintain at its own cost and expense from a qualified insurance company an appropriate Commercial General Liability (CGL) insurance policy, including coverage for products liability, naming the other party as an additional named insured. Such policy shall provide protection against any and all claims, demands, and causes of action arising out of any error, omission, failure to perform, or defect, alleged or otherwise, of goods and services used in connection therewith or any use thereof. The amount of coverage shall be in the minimum amount of one million U.S. dollars (US\$1,000,000). The policy shall provide for thirty (30) days' notice, delivered on a reasonable-efforts basis, to the other party from the insurer by registered or certified mail, with return receipt requested, in the event of any modification, cancellation, or termination thereof. Both parties agree to furnish the other party a Certificate of Insurance evidencing the same within thirty (30) days after the effective date of this Addendum.

9.4 Sales and Use Taxes. All fees payable by Customer are exclusive of state, local, and other taxes or charges (including, without limitation, custom duties, tariffs, and value-added taxes, but excluding income taxes payable by Esri). In the event such taxes or charges become applicable to Managed Services, Customer will pay any such taxes upon receipt of written notice that they are due.

9.5 Consents. Any consent required under this Addendum shall not be unreasonably withheld or delayed by the respective party.

9.6 Survival of Terms. The provisions of Sections and subsections 1, 2.3, 2.4, 3, 5, 6, 7, 8, and 9 of this Addendum shall survive the expiration or termination of this Addendum for any reason.

9.7 Amendments. Except as otherwise expressly provided herein, any Amendment(s) to or Task Orders issued under this Addendum must be in writing and signed by an authorized representative of each party.

9.8 Order of Precedence. In the event of a conflict between the terms and conditions of this Addendum and those of the Agreement, the terms and conditions of this Addendum supersede those of the Agreement.

**MODIFICATION #1
TO
CONTRACT NUMBER VA-090403-ESRI
BETWEEN
THE VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.**

This MODIFICATION #1 is an agreement between the **Virginia Information Technologies Agency (VITA)**, hereinafter referred to as "State" or "Commonwealth" or "VITA", and **Environmental Systems Research Institute, Inc.** hereinafter referred to as "Contractor" or "ESRI" relating to the modification of the above Contract. This Modification #1 is hereby incorporated into and made part of Contract VA-090403-ESRI, as revised.

The purpose of this Modification #1 is to replace contract Exhibit 1, Scope of Use (E300 5/08C), and to replace contract Pricing contained in E417M -1Q09-VA.

The parties agree to the following:

- 1. The above referenced Exhibit 1 is hereby replaced in its entirety with the attached Exhibit 1 - E300 7-16-10, pp 1 through 4.
- 2. The above referenced Pricing is hereby replaced in its entirety with the attached Pricing - E417SHM-3Q10, pp 1 through 18.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090403-esri and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED. PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT. ELECTRONIC SIGNATURES WILL BE CONSIDERED AS ORIGINAL SIGNATURES.

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.

VIRGINIA INFORMATION
TECHNOLOGIES AGENCY

BY: *Sheron Bealer*

BY: *Sam Nixon*

NAME: Sheron Bealer

NAME: SAM NIXON

Director of Contracts

TITLE: and Legal Services

TITLE: CIO

DATE: September 20, 2010

DATE: 10/7/10

**MODIFICATION #1
TO
CONTRACT NUMBER VA-090403-ESRI
BETWEEN
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The parties agree to the following:

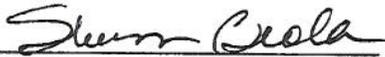
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ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.

VIRGINIA INFORMATION
TECHNOLOGIES AGENCY

BY: 

BY: 

NAME: Sheron Bealer

NAME: SAM NIXON

TITLE: Director of Contracts
and Legal Services

TITLE: CIO

DATE: September 20, 2010

DATE: 10/7/10

LICENSE AGREEMENT ADDENDUM

The Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Environmental Systems Research Institute, Inc. (hereinafter referred to as "ESRI" or "Supplier"), a business incorporated in California, F.E.I.N. 95-2775732, having its principal place of business at 380 New York Street, Redlands, CA 92373, are this day entering into this Contract and, for their mutual convenience, the parties are using the standard form contract described as a Master Purchase Agreement ("MPA") provided by Supplier. This addendum, duly executed by the parties, is attached to and hereby made a part of Supplier's standard form contract and together shall govern the use of ESRI Geographic Information System Software, Data, Web Services, Documentation or services licensed by and provided to the Commonwealth under this agreement, whether or not specifically referenced in any purchase order document, Any other terms and conditions, except for applicable eVA terms and conditions, proposed by an Authorized Entity in such purchase order are null and void, regardless of whether ESRI signs and/or acknowledges such purchase order(s).

This addendum shall also be used for resulting Enterprise License Agreements (ELAs), available to Commonwealth agencies as mutually agreed to between ESRI and the authorized entity/agency, which terms, conditions and agreement number shall reference this addendum for an ELA by the Commonwealth of Virginia, or an Authorized Entity/Agency of the Commonwealth of Virginia.

Supplier warrants that it is a corporation authorized to do in Virginia for the business provided for in this Contract. If Supplier is not a U.S.-based entity, Supplier maintains a registered agent and a certification of authority to do business in Virginia.

This Contract is executed by VITA on behalf of all public bodies, including VITA, as defined by §2.2-4301 and hereinafter referred to as "Authorized Users" or Authorized Entities."

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, any license granted by Supplier shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, such license shall be held as a user by that public body,

As used herein, the term "contract" shall mean the Supplier's standard form contract and any and all exhibits and attachments thereto and the term "this Contract" shall mean the combination of this Addendum and the Supplier's standard form contract and any and all exhibits and attachments thereto.

Supplier's standard form contract is, with the exceptions noted herein, acceptable to VITA. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard form contract cannot be accepted by VITA, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Supplier's standard form contract, none of the following shall have any effect or be enforceable against VITA, the Commonwealth, any Authorized User, or any of their officers, directors, employees or agents:

1. Requiring or stating that the terms of the Supplier's standard form contract shall prevail over the terms of this addendum in the event of conflict, however Supplier's non-conflicting and non-opposing "additional" terms shall take precedence over this addendum.
2. Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing this Contract or requiring or permitting that any dispute under this Contract be resolved in any court other than a circuit court of the Commonwealth of Virginia;
3. Renewing or extending this Contract beyond the initial term or automatically continuing this Contract's period from term to term;
4. Requiring that this Contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of VITA before this Contract is considered in effect;
5. Delaying the acceptance of this Contract or its effective date beyond the date of execution;
6. Requiring any total or partial compensation or payment for lost profit or liquidated damages by VITA, the Commonwealth, any Authorized User, or their officers, directors, employees or agents if this Contract is terminated before its ordinary period;
7. Permitting termination by Supplier of this Contract or the licenses granted thereunder, or permitting suspension of services by Supplier, except pursuant to an order from a court of competent jurisdiction. This provision is superseded by Article 5.1 of the Master Purchase Agreement, or the Material Breach Article of an ELA as negotiated between ESRI and Customer.
8. Defining "perpetual" or "indefinite" license rights to have any meaning other than license rights that exist in perpetuity or indefinitely unless otherwise terminated in accordance with the applicable provisions of this Contract or an individual ELA; This provision is supplemented by the Master Purchase Agreement, as ESRI offers a variety of license rights/types depending on the product/license purchased (i.e. indefinite, term or subscription types).
9. Permitting unilateral modification of this Contract by Supplier, except to the extent accommodated by Article 9, subsection 9.1, Future Orders; reference ESRI General License Terms and Conditions, E200 of the License Agreement.
10. Permitting modification or replacement of this Contract pursuant to any new release, update or upgrade of Software or subsequent renewal of maintenance, except as provided under Section 9, above. If Supplier provides to any Authorized User an update or upgrade subject to additional payment, unless such additional payments are provided for under this agreement and agreed to between Supplier and Authorized User, such Authorized User shall have the right to reject such update or upgrade;
11. Requiring purchase of a new release, update, or upgrade of Software or subsequent renewal of maintenance in order for the Commonwealth, VITA, or any Authorized User to receive or maintain the benefits of Supplier's indemnification of the Commonwealth, VITA, or such Authorized User against any claims of infringement on any third-party intellectual property rights;
12. Imposing any interest charge(s) contrary to that specified by §2.2-4347 et seq. of the Code of Virginia. Cancellation charges as provided under Article 5, subsection 5.2, ESRI State and Local MPA Terms and Conditions, are allowable.

13. Requiring the Commonwealth, VITA, or any Authorized User to maintain any type of insurance either for the benefit of the Commonwealth, VITA, or such Authorized User or for Supplier's benefit;
14. Granting Supplier a security interest in property of the Commonwealth, any Authorized User, or any of their officers, directors, employees or agents;
15. Requiring the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to indemnify or to hold harmless Supplier for any act or omission;
16. Limiting or adding to the time period within which claims can be made or actions can be brought;
17. Limiting selection and approval of counsel and approval of any settlement in any claim arising under this Contract and in which the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents is a named party; except pursuant to Article 8, Infringement Indemnity, of the MPA's License Agreement, General License Terms and Conditions-E200.
18. Binding the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
19. Obligating the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to pay costs of collection or attorney's fees;
20. Limiting the liability of Supplier for property damage or personal injury. This provision is superseded by the MPA's License Agreement, General License Terms and Conditions-E200, Article 7, Limitation of Liability, as negotiated between ESRI and Customer.
21. Requiring any dispute resolution procedure(s) other than those in accordance with §2.2-4363 et seq. of the Code of Virginia;
22. ESRI will not unreasonably withhold authorization for the Commonwealth, VITA, or any Authorized User to transfer or assign this Contract or any license to Software pursuant to this Contract;
23. Permitting Supplier to assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations thereunder, to any entity without the prior written consent of VITA. Supplier may assign all or any of its rights and obligations to a third party as a result of a merger or acquisition or sale of all or substantially all of its assets to such third party provided assignee agrees in writing to be bound by the terms and conditions set forth in this Contract and provided such third party is a U.S.-based entity or maintains a registered agent and a certification of authority to do business in Virginia, or to an affiliate of Supplier, provided Supplier remains liable for affiliate's compliance with the terms and conditions set forth in this Contract;
24. Granting Supplier or an agent of Supplier the right to audit or examine the books, records, or accounts of VITA or any Authorized User, Only license auditing will be permitted of VITA or any Authorized User pursuant to the terms of an ESRI Enterprise License Agreement (ELA) for the ELA Licensee;
25. Permitting Supplier to access any Commonwealth, ELA Licensee or Authorized User records or data, except pursuant to court order; Supplier will be permitted access only to such ESRI licensing data necessary to perform license auditing pursuant to the terms of an ESRI Enterprise License Agreement (ELA) for the ELA Licensee;
26. Permitting Supplier to use any information provided by the Commonwealth or any Authorized User except for Supplier's own internal administrative purposes, except

pursuant to the terms of an ESRI ELA, and statements, and/or news articles publicizing existence of this Contract, and/or projects related to this Contract, or ESRI's/subcontractors role in GIS matters within the Commonwealth and only after written permission by an authorized representative of the Authorized User agency and/or VITA is obtained by ESRI;

27. Requiring the Commonwealth, VITA, or any Authorized User to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury; and
28. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of VITA to bestow or incur on behalf of the Commonwealth of Virginia.

The parties further agree as follows:

29. Ownership of any Commonwealth, VITA or User Entity/Agency data provided to ESRI in performance of this Contract or any order placed under this Contract or generated by ESRI software is and shall remain with the Commonwealth, VITA or User Entity/Agency.
30. The contractual provisions at the following URLs are mandatory provisions, required by law or by VITA, that are hereby incorporated by reference:
<http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf> and
<http://www.vita.virginia.gov/uploadedFiles/SCM/eVATsandCs.pdf>

With regards to Provision 8, Section 508 Compliance and Provision 9, Non-Visual Access, of the aforementioned terms and conditions, Supplier's Software adheres to various degrees of Section 508 Compliance and Non-Visual Access, from fully-complaint to non-complaint. Supplier publishes Voluntary Accessibility Templates (VPATS) that describe the level of compliance for certain Software, and is updated periodically at: <http://www.esri.com/legal/section508/swguide.html>. Supplier's 508 Compliance strategic objectives support the objectives of Section 508 compliancy.

The terms and conditions in documents posted to the aforereferenced URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia or a change in VITA policy. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URL periodically.

"Agencies" referred to in Provision 2, Anti-Discrimination, of the Core Contractual Terms at the above .URL shall mean agencies of the Commonwealth of Virginia. In Provision 4, Antitrust, "particular goods or services" means particular third-party goods or services purchased or acquired by ESRI. This Contract has no fixed monetary value, is not firm fixed price and is available for optional use by all public bodies of the Commonwealth, therefore, the second paragraph of Provision 6, Modifications, is not applicable The definition of "Subcontractor" from Code of Virginia §2.2-4347 applies. However, the term "subcontractor" is clarified to mean any entity supplying labor or materials to ESRI in direct performance of this Contract or any order placed under this Contract and does not include entities providing labor or materials to ESRI for non-Commonwealth customers or indirect ESRI business.

31. The contractual claims provision §2.2-4363 of the Code of Virginia is also incorporated by reference.
32. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are

expressly disclaimed. UCITA shall not apply to this Contract except only to the extent required by §59.1-501.15 of the Code of Virginia.

33. Supplier shall comply with all applicable federal, state, and local laws, regulations, and ordinances.
34. The Commonwealth does not waive its sovereign immunity or its immunity under the Eleventh Amendment.
35. The Commonwealth is tax exempt and shall not be responsible for payment of taxes, duties, or penalties.
36. Supplier warrants that it is the owner of the Software or otherwise has the right to grant to all Authorized Users the license to use the Software granted hereunder.
37. Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, including any directly related liabilities, obligations, losses, damages, fines, judgments, settlements, (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims directly relate to: (i) bodily injury (including wrongful death) or damage to tangible personal property proximately caused by the gross negligence or intentionally wrongful acts or omissions of ESRI while on Licensee's premises, if such actions or omissions were not proximately caused by the intentional action or omission of Licensee or any third party. For the purpose of this paragraph, "tangible personal property" shall not include documentation, software, data, or data files, or (ii) breach of any warranty or covenant of Supplier contained herein, For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.
38. Any Authorized User may rely on independent contractors, acting on behalf of such Authorized User, to perform functions requiring the use of and access to the Supplier's Software, subject to the limitations contained in ESRI's Enterprise License Terms and Conditions Article 2.3, and the MPA's License Agreement, General License Terms and Conditions-E200, Article 3.4, Consultant Access. If any invention, work of authorship, or confidential information is developed exclusively by an employee, consultant, contractor, or subcontractor of an Authorized User during the performance of this agreement by Supplier, Supplier shall have no ownership claim to such invention, work of authorship, or confidential information.
39. Nothing in this Contract shall be construed as conveying any rights or interest in Commonwealth or Authorized User data to Supplier.
40. The currency which shall be used for this Contract is United States Dollars. Any claim which may arise hereunder shall be settled in United States Dollars.
41. Any travel expenses incurred by Supplier in the course of performing the services must be pre-approved by the appropriate Authorized User and shall be reimbursed at the then-current per diem rates published by the Virginia Department of Accounts.
42. All payment obligations under this Contract are subject to the availability of federal, state, and/or local appropriations for this purpose. In the event of non-appropriation of funds for the items under this Contract, VITA may terminate, in whole or in part, this Contract or any order, for those goods or services for which funds have not been appropriated, except for ELA's and for Software and services previously delivered under the MPA. This may extend to the renewal of maintenance services for only some of the licenses granted by Supplier. Written notice will be provided to the Supplier as soon as

possible after legislative action is completed. There shall be no time limit for termination due to termination for lack of appropriations.

43. An Authorized User may require that Supplier personnel submit to a criminal background check prior to performance of any services under this Contract. The Authorized User may, at its discretion, allow ESRI to perform such criminal background check. The type and extent of the background check shall be determined by the Authorized User. If the Authorized User determines that it cannot allow ESRI to perform such criminal background check, the Authorized User will provide sufficient guarantee to ESRI that employee privacy will not be compromised as a result of its procedures. Further, any costs associated with Authorized User's conduct of a criminal background check shall be borne solely by the Authorized User. If ESRI conducts the criminal background check, all associated costs shall be borne solely by ESRI.
44. By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted and contact information for submission is available at: <http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls>. The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.
The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.
The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at <http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls>. Failure to comply with reporting, payment and distribution Requirements of this section may result in default of the Contract.
45. Except for liability with respect to (i) bodily injury (including wrongful death) or damage to tangible personal property proximately caused by the gross negligence or intentionally wrongful acts or omissions of ESRI while on Licensee's premises, if such actions or omissions were not caused by the action or omission of Licensee or any third party and (ii) Supplier's infringement indemnification obligations, and (iii) Security obligations as set forth herein, Supplier's liability shall be limited to Article 7 Limitation of Liability, ESRI General License Terms & Conditions -E200 as provided under the contract. For the purpose of this paragraph, "tangible personal property" shall not include documentation, software, data, or datafiles. FOR ALL OTHER CONTRACTUAL CLAIMS, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT AS PROVIDED UNDER THIS CONTRACT.
46. In addition to the insurance coverage required by law as referenced in the Incorporated Contractual Provisions section of this Contract, Supplier shall carry errors and omissions insurance coverage in the amount of \$2,000,000 per occurrence.

47. Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at (<http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary or Personal information by the Supplier or an employee or agent of Supplier shall constitute a breach of its obligations under this Section and the Contract.

Supplier shall immediately notify VITA and Authorized User, if applicable, of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined in Virginia Code 18.2-186.6, and other personal identifying information, such as insurance data or date of birth, provided by VITA or Authorized User to Supplier. Supplier shall provide VITA the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

Any associated costs for impact to Supplier's administrative labor (e.g. staff time involved in the security process) or technical labor (e.g., COTS installation services) due to any new or additional Commonwealth security requirements or other costs such as travel, per diem, etc., shall be provided in detail by Supplier to the Authorized User and approved by the Authorized User in advance of incurring any of the associated costs. Supplier will invoice the Authorized User only for the approved costs.

48. Supplier's signed certification of compliance with 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act") is incorporated as Exhibit A hereto.
49. Upon written authorization from the Authorized Entity/User and pursuant to any ELA Agreement, Supplier may use the name or proprietary mark of the Authorized Entity/User, directly or indirectly, in any press release or formal advertisement.
50. Pursuant to the Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order and in accordance with the signed Non-Disclosure Agreement (NDA) of this Contract, each Party shall hold in strict confidence all Confidential Information of any other Party. Each Authorized Entity/User/Licensee shall be required to sign a separate NDA with ESRI as attached and incorporated herein.
51. No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party.
52. Notwithstanding all Authorized User's rights to license or purchase Supplier's Products or Services under this Contract, an Authorized User is under no obligation to purchase

or license from Supplier any of Supplier's Products or Services. This Contract is optional use and non-exclusive, and all Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third Party Suppliers of Products and Services similar to, or in competition with, the Products and Services provided by Supplier. However, once an ELA is executed, the Authorized User/Agency is obligated for the Products or Services during the term of the ELA.

53. Except for an order for an ELA which shall be proposed, negotiated and executed individually, Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (eVA Home Page). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:
- Purchase Order (PO): An official PO form issued by an Authorized User in accordance with the requirements and restrictions of Article 7, Orders, of the MPA. For ELA orders, the terms and conditions of the ELA will be clearly identified in the ELA agreement and, except for eVA standard terms and conditions, as modified by Provision 54 below, will be the only applicable terms to the PO.
 - Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.
54. Provisions 9 (regarding failure to deliver) and 15 (regarding the Vendors' Manual) of eVA's standard purchase order terms and conditions do not apply to this Contract.
55. By the 10th day of every month following month end, Supplier shall submit to VITA the Small Business Subcontracting Monthly Report found at this link: <http://www.vita.virginia.gov/uploadedFiles/SCM/Templates/SWAMSubcontractingReportTemplate.xls> Supplier's report should include spend on all Supplier's contracts with second-tier Suppliers which provide Products or Services under this Contract. The report should specify the amount of such spend provided to small businesses. Supplier shall submit the report to SWaM@vita.virginia.gov.
56. No subcontractors are authorized to perform under this Contract.
57. This ordering authority is limited to issuing orders for the Products, Services, Solution or Solution Components and Deliverables available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with or additional to the terms and conditions of this Contract, the terms of this Contract shall supersede, and the inconsistent and additional terms shall be void. Notwithstanding the foregoing, Supplier shall not accept any order from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY AUTHORIZED USER ARE THE SOLE OBLIGATION OF SUCH AUTHORIZED USER AND NOT THE RESPONSIBILITY OF VITA UNLESS SUCH AUTHORIZED USER IS VITA.

This Contract, consisting of this VITA license agreement addendum, Exhibit A – Certification Regarding Lobbying, the Supplier's standard form contract and any and all exhibits and attachments thereto, constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed as of the last date set forth below by the undersigned authorized representatives of the parties, intending thereby to be legally bound.

**ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC.**

**VIRGINIA INFORMATION
TECHNOLOGIES AGENCY**

By: Sharon Bealer

(Signature)

Name: _____

(Print)

Sharon Bealer
Director, Contracts and Legal Services

Title: _____

Date: _____

By: Susan S Woolley

(Signature)

Name: _____

(Print)

Susan S Woolley
Director, SEN

Title: _____

Date: 4/06/2009

By: Donald J. Berry, Jr.

(Signature)

Name: _____

DONALD J. BERRY, Jr.
Director of Operations

Title: _____

Date: APR 03 2009

ADDENDUM – EXHIBIT A
CERTIFICATION REGARDING LOBBYING
(Attached as Next Page)

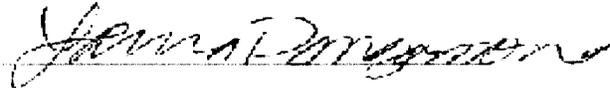
ATTACHMENT F: CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- i) No Federal appropriated funds have been paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-L.L.L. "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii) The undersigned will require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontractors, sub grants, and Contracts under grants, loans and cooperative agreement) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1362 of title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$20,000 and not more than \$100,000 for each such failure.

Signature to:



Printed Name

James Dangermond-Vita, President

Organization

Environmental Systems Research Institute, Inc.

Date:

March 26, 2009



STATE AND LOCAL MPA TERMS AND CONDITIONS
(E500M 11/06)

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

ESRI Agreement No. 2009MPA2064

This Master Purchase Agreement ("MPA" or "Agreement") is between the Commonwealth of Virginia by the Virginia Information Technologies Agency ("Customer") identified below and Environmental Systems Research Institute, Inc. ("ESRI"). The Agreement enables Customer and Authorized Entities to acquire ESRI geographic information system Software, Data, Web Services, Documentation, or services over a defined period of time.

This Agreement is comprised of the following documents:

1. The VITA License Agreement Addendum as incorporated in VITA Contract No. VA-090403-ESRI, including Exhibit A, Certification Regarding Lobbying
2. State and Local MPA Terms and Conditions, E500M 11/06
3. ESRI License Agreement No. 2009MLA2064 that incorporates, General License Terms and Conditions, E200M 6/08, Exhibit 1, Scope of Use, E300 5/08C
4. ESRI MPA Price List
5. ESRI Client Site Training Terms and Conditions, E207 2/09
6. Enterprise Advantage Program MPA Addendum
7. Enterprise License Agreement Addendum
8. ESRI Mutual Non Disclosure Agreement

ARTICLE 1—DEFINITIONS

All definitions in other parts of the MPA shall have the same meaning in this ESRI MPA Terms and Conditions. In addition, the following definitions apply to this MPA:

- a. **"Authorized Entity"** means an Authorized User of the governmental body authorized by Customer to order and acquire Software, Data, Web Services, Documentation, products, or services under this Agreement.
- b. **"Authorized User"** means all public bodies, including VITA, as defined by §2.2-4301 of the Code of Virginia.
- c. **"Customer"** means the Commonwealth of Virginia by the Virginia Information Technologies Agency (VITA),
- d. **"License Agreement"** means the General License Terms and Conditions (E200M) and Exhibit 1, Scope of Use (E300), ESRI Agreement No. 2009MLA2064.
- e. **"Licensee"** means the Customer or an Authorized Entity that places orders pursuant to this Agreement.

ARTICLE 2—TERM OF AGREEMENT

Licensee's right to purchase under this Agreement shall remain in effect for three (3) years from the effective date unless terminated earlier as set forth in Article 5—Termination; Cancellation. The term may be extended upon mutual written agreement. The term of any Software, Data, or Web Services licenses ordered through this Agreement shall be as stated in the License Agreement. ESRI may elect to not renew this Agreement should total orders for licenses, training, consulting, or custom application development not exceed fifty thousand dollars (\$50,000.00) per any two (2)-year period.

ARTICLE 3—PRODUCT OFFERINGS

3.1 Discontinued Items. ESRI may, at its sole discretion, discontinue offering any Software, Data, Web Services, Documentation, or other product and services included in this Agreement at any time upon reasonable written notice to Customer.

3.2 New Items. ESRI may, at its sole discretion, offer new Software, Data, Web Services, Documentation, services, or larger quantity discount pricing by providing email notice to Customer or as provided on ESRI's web site. ESRI may require additional license terms, restricted to Articles 1 through 4 of the General License Terms and Conditions and Exhibit 1, Scope of Use, prior to use of new Software, Data, Web Services, Documentation, or services. Such notice or web site update shall become part of this Agreement upon (i) ordering Software, Data, Documentation, Web Services, or services covered by the notice/web site update or (ii) thirty (30) days after Customer's receipt of notice, whichever is sooner. Customer may object in

writing to the terms of the notice prior to the occurrence of (i) or (ii). Any objections or changes to the terms in the notice shall require written agreement of both parties.

3.3 Enterprise License Agreement Option

An Enterprise License Agreement (ELA) is available to Commonwealth agencies under the MPA. The ELA will be a separate agreement between ESRI and the agency, or Licensee, where the Licensee commits to make annual payments to ESRI for a specified period of time, but with a three (3) year minimum commitment, in exchange for software, maintenance, services and/or training. (See ELA Addendum)

ARTICLE 4—GRANT OF LICENSE AND SCOPE OF USE

The license grant and permitted uses specified in Article 3 and Article 4 of the License Agreement are restricted to use within the United States of America, its possessions, and territories. For Internet mapping Software, the server must be located within the United States of America, its possessions, and territories.

ARTICLE 5—TERMINATION; CANCELLATION

5.1 Termination

- a. **Termination for Convenience.** This Agreement may be terminated by ESRI or Customer upon forty-five (45) days' written notice. ESRI, at its sole election, may terminate the right of any Authorized Entity to participate in this Agreement in accordance with this provision without terminating this Agreement with respect to Customer or any other Authorized Entity. Any order placed under this Agreement may be terminated for convenience by Licensee upon thirty (30) days written notice..
- b. **Termination for Breach.** This Agreement or any order placed under this Agreement may be terminated for breach provided the breaching party is given forty-five days' written notice and fails to cure in accordance with Article 5 of the General License Terms and Conditions portion of this Agreement. However, termination shall be effective upon written notice to Licensee if Licensee discloses any trade secret or other information proprietary to ESRI in breach of this Agreement.
- c. **Licensee Obligations Upon Termination.** On termination of this Agreement or any order placed under this Agreement,, all related accounts and payments will be processed according to financial arrangements set forth herein for performance rendered to the date of termination. After termination of this Agreement, Authorized Entities shall no longer be permitted to place orders under this Agreement. After termination for breach of an individual order placed under this Agreement, that individual Licensee shall no longer be permitted to place orders under this Agreement.
- d. **License Survival.** Upon expiration of this Agreement or voluntary termination of this Agreement for the convenience of Customer, Licensee may continue to retain and use such licensed Software, Data, Web Services, and Documentation in accordance with the License Agreement. Licensee may then directly and separately contract for Software maintenance.

5.2 Cancellation of an Order. Purchase orders may be canceled by Licensee in whole or in part, upon forty-five (45) days' written notice to ESRI. There will be no cancellation charge for canceled Software, Data, or Documentation unless such Software, Data, or Documentation has been delivered. If the Software, Data, or Documentation has been shipped, the cancellation will require Licensee payment of return shipping costs. There are no refunds for cancellation of a subscription or maintenance if the term for the subscription or maintenance has started.

ARTICLE 6—FUNDING; NO MINIMUM PURCHASE

6.1 Funding. Where the financial obligations of Licensee payable after the current fiscal year are contingent upon funds being appropriated, budgeted, or otherwise made available, and the funds are not appropriated or otherwise made available, this Agreement, or any order placed under this Agreement, may be terminated, in whole or in part, as set forth in Article 5.

6.2 No Minimum Purchase. Customer does not guarantee to purchase any certain quantity under this Agreement.

ARTICLE 7—ORDERS

7.1 Licensee Purchase Orders. Licensee shall issue purchase orders to ESRI for Software, Data, Web Services, Documentation, services, based on the pricing specified in this Agreement. The terms and conditions of this Agreement shall

govern all orders issued by Licensee. Any additional or different terms included with an order shall require approval by ESRI and will only pertain to that order.

7.2 Purchase Order Requirements. The following information shall be included in each purchase order:

- a. Name or identification of Licensee, place of delivery, and the end user name and contact information
- b. Purchase order number
- c. Date delivery is requested (minimum thirty [30] days after ESRI receipt of order)
- d. Primary site for maintenance if primary maintenance is *not* ordered
- e. Quantity, description, and unit price based on the Price List of this Agreement
- f. On the face of the purchase order, print the following statement: "Subject to Master Purchase Agreement No. 2009MPA2064/VITA Contract No. VA-090403-ESRI"
- g. Authorized signature approving the order

7.3 Additional Quotes. Subject to the terms of Article 3, Product Offerings, above Customer and or Authorized Entities may request a quote for any new or unlisted Software, Data, Web Services, or services and issue a purchase order under this Agreement.

7.4 Authorized Entity. An Authorized Entity may order or acquire Software, Data, Web Services, Documentation, services, or maintenance subject to this Agreement. Authorized Entities will be required to assent to the terms of this Agreement. ESRI shall not fill any purchase orders that do not adequately provide the information identified in section 7.2.

7.5 Registration/Keycode Request. To activate Software subject to a License Manager, Licensee may be required to register or obtain a keycode through ESRI's Web site at myESRI.com or through ESRI's Customer Service Department.

ARTICLE 8—ESRI AUTHORIZED RESELLER ORDERS

8.1 Criteria to Order from Reseller. Licensee may purchase certain Software from an authorized ESRI reseller under the terms of this Agreement if the following requirements are satisfied:

- a. The quotation for Software and the selection of the ESRI reseller must comply with all applicable state and local public procurement laws and regulations;
- b. The ESRI reseller must be a member of the ESRI Business Partner Program in good standing at the time the ESRI reseller places the order with ESRI and be authorized to provide the Software ordered as defined at ESRI Web site <http://gis.esri.com/partners/index.html>. Select "Resellers" to view the authorized resellers and the Software they are authorized to provide; and
- c. The Licensee purchase order forwarded by the reseller to ESRI must list the information requested in section 7.2, the ESRI reseller name, and the Software MPA pricing [Reseller must use MPA pricing to use this Agreement.].

8.2 Order Process. If all conditions of sale under this Agreement are met, ESRI will accept the order and the authorized reseller will receive a sales commission. ESRI will deliver the Software directly to Licensee, invoice, and receive payment for any such order. If ESRI does not accept the order, Licensee may enter into a direct transaction with the ESRI reseller, and the order will not be processed under this Agreement.

8.3 ESRI Reseller List. Upon request, the ESRI regional office will provide Licensee with a list of authorized ESRI resellers in good standing that do business in Licensee's state.

ARTICLE 9—PRICING

9.1 Pricing. ESRI will provide Software, Data, Web Services, Documentation, maintenance, and support specified at the prices incorporated into this Agreement. The specified prices stated in the incorporated ESRI Price List are exclusive of shipping, installation, and applicable taxes.

ESRI and Customer may adjust the price schedule of this Agreement no more than semi-annually or as mutually agreed upon if new technology is made available in the interim. Any adjustment may reflect a decrease or increase based on sales volume, usage, or other available discounts. Additionally, all price adjustments will be consistent with ESRI's normal pricing practices for all state and local government customers. Such price adjustments shall become effective upon email notice to and email acknowledgment from VITA.

9.2 Training Services. Training will be provided in accordance with the policies defined under "Education and Training" at www.esri.com and the ESRI Client Site Training Terms and Conditions (E207) incorporated herein. Training prices are subject to annual escalation, not to exceed seven percent (7.0%) in January of each year.

9.3 Freight. Freight terms are FOB Origin with freight charges prepaid and added to the invoice. Standard shipping is by two (2)-day air via UPS or equivalent carrier. Expedited express delivery for Software can be arranged. Shipping and handling charges may be confirmed in advance; the ESRI invoicing program will incorporate the current fees automatically. There may be periodic changes due to fluctuations in the transportation industry fees.

ARTICLE 10—MAINTENANCE

ESRI will provide maintenance, comprised of updates and technical support as specified in the latest software maintenance program found on the ESRI Web site at <http://esri.com/legal>.

Maintenance is generally offered on an annual basis. Upon expiration of any complimentary maintenance year or any subsequent maintenance term, Licensee may issue a purchase order under this Agreement for renewal of maintenance at the terms and pricing then in effect. Upon acceptance of an ESRI quotation, the purchase order shall be issued in advance or no later than concurrent with the present maintenance term. If maintenance lapses, Licensee must pay back maintenance fees to reinstate maintenance.

ARTICLE 11—TERMS OF COMPENSATION AND ACCEPTANCE

11.1 Terms of Compensation. Software, Data, and Documentation will be invoiced one-hundred percent (100%) upon shipment. Web Services will be invoiced one-hundred percent (100%) upon issuance of access codes. Software installation and training services, as applicable, will be invoiced upon completion. Licensee agrees to pay each invoice in full within thirty (30) days of receipt of order or invoice, whichever occurs later.

11.2 Acceptance. Unless rejected in writing, acceptance of any shipment of Software, Data, and Documentation shall be presumed to have occurred thirty (30) days after shipment by ESRI. Acceptance of Web Services occurs upon issuance of access codes. If ESRI installation is ordered, acceptance occurs upon completion of ESRI Software installation and testing, unless rejected in writing.

11.3 Rejection of Order. ESRI may reject any purchase order if Licensee fails or refuses to pay any license or service fee due and payable.

ARTICLE 12—RESERVED

ARTICLE 13—GENERAL PROVISIONS

13.1 Order of Precedence. The General Provisions and Limitations of Liability provisions of the License Agreement shall apply to the entire Agreement unless specifically stated otherwise and are supplemented by the provisions set forth in this Article 13. In the event of a conflict between the terms of documents in this Agreement, the documents will have the following precedence: (i) VITA's License Agreement Addendum, (ii) ESRI MPA Terms and Conditions (E500M), (iii) the License Agreement, and (iv) the ESRI Client Site Training Terms and Conditions.

13.2 Notice. Notice required or contemplated by either party must be delivered in person or by courier, express mail, facsimile, or postage-prepaid certified or registered airmail addressed to the party for whom it is intended at the address specified herein. Either party may change its address by giving prompt written notice to the other party of the change.

Licensee Contact:
John Tackley
Strategic Sourcing Specialist
Virginia Information Technologies Agency
Supply Chain Management, 11751 Meadowville Lane
Chester, VA 23836
804-416-6165 (V)
804-416-6361 (F)

ESRI Contact:
Manager, Contracts and Legal Services
380 New York Street
Redlands, CA 92373-8100
Phone: 909-793-2853
Fax: 909-307-3020



GENERAL LICENSE TERMS AND CONDITIONS (E200M 6/08)

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

ARTICLE 1—DEFINITIONS

Definitions. The terms used are defined as follows:

- a. "Beta" means any alpha, beta, or prerelease Software, Data, Documentation, or Web Services.
- b. "Data" means any ESRI or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes, licensed under this License Agreement.
- c. "Documentation" means all printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- d. "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- e. "Software" means all or any portion of ESRI's proprietary software technology accessed or downloaded from an authorized ESRI Web site or delivered on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.
- f. "Term License" means licenses provided for use in a limited time period or on a subscription or transaction basis.
- g. "Web Services" means software services or ESRI or third-party data provided by ESRI that perform geographic information system (GIS) functions, tasks, or data services and are accessed over the Internet.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

Software, Data, Web Services, and Documentation are licensed and not sold. ESRI and its licensors own Software, Data, Web Services, and Documentation, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect Software, Data, Web Services, and Documentation from unauthorized use, reproduction, distribution, or publication. ESRI and its third-party licensors reserve all rights not specifically granted in this License Agreement including the right to change and improve Web Services.

ARTICLE 3—GRANT OF LICENSE

3.1 Grant of License. Subject to the terms of this License Agreement, ESRI grants to Licensee a personal, nonexclusive, nontransferable license solely to

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(E300 07/16/2010)

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- ArcExplorer—Java and Windows Editions (20 and 25)
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- ArcGIS Desktop
 - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
 - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
 - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iOS (1, 25, and 33)
- ArcGIS Mobile Deployments (1, 15, 16, 25, 33, and 54)
- ArcGIS Server
 - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
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 - > Cloud Bundle (6 and 33)
- ArcGIS Server Extensions
 - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
 - ArcGIS Server Image Extension (7, 8, and 42)
 - ArcGIS Server Image Extension Service Editor (1)
 - Other Extensions (7)
- ArcGIS Web Mapping (including SharePoint, JavaScript™, Adobe® Flex™, Microsoft® Silverlight™/WPF™, SOAP, and REST) (6, 33, 35, and 53)
- ArcIMS
 - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
 - Desktop (either 1 or 2 and 25)
 - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
 - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
 - Navigator (1 and 46)

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- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
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- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Tracking Server (either 4 or 5 and 31)

Web Services

- ArcGIS Online Services (6, 25, 33, 34, and 35)

Data

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 36. Reserved.
 37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
 38. The ArcGIS Server 3D extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D extension Software is permitted with ArcGIS Server Standard.
 39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
 40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
 41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
 42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.

43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.
44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
45. Data licensed with ESRI Business Analyst and ESRI Business Analyst Server is restricted for use only in conjunction with the respective Business Analyst extension.
46. Licensee should not follow any route suggestions that appear to be hazardous, unsafe, or illegal. Licensee assumes all risk of using this navigation Software.
47. Reserved.
48. Licensee may include reports and maps created from the Software or Data in hard-copy or read-only format for presentation packages or marketing studies for subsidiaries and customers. The total content of the ESRI reports and maps must be less than twenty percent (20%) of Licensee's total content of the presentation package or marketing study. Full, complete, stand-alone reports or maps created from the Software or Data and not part of a presentation package or marketing study cannot be resold, sublicensed, or otherwise transferred without prior written permission of ESRI. Licensee's third-party customer may only receive reports and maps generated by Licensee and may only use the maps and reports received from Licensee for internal purposes. In no case shall Licensee redistribute the Data in digital formats.
49. ESRI MapIt Silverlight Web or WPF applications may not be deployed independent of Licensee's MapIt deployment configuration.
50. Licensee has the right to one (1) desktop deployment of Spatial Data Assistant for each ESRI MapIt server license.
51. ESRI Business Analyst Server Developer and Data may only be installed on one (1) server per license solely for the purposes of research, development, testing, and demonstration of a prototype application.
52. Source code is the intellectual property of ESRI. Licensee shall treat any source code file identified as "Software" in a README file or at <http://www.esri.com/legal/> as a trade secret for Licensee's own internal use only and not for further redistribution or access by unlicensed third parties. Licensee shall not modify the Software, Documentation, Data, or source code to incorporate, embed, link, or otherwise include any code, libraries, or data licensed or distributed under an open source licensing or distribution models similar to Free Software Foundation's GNU General Public License (GPL) or GPL-compliant licenses, including, without limitation, the Artistic License (e.g., Perl), the Mozilla Public License, the Netscape Public License, and the Sun Community or Industry Standards License, that could require a user to make its proprietary source code available to a requesting third party.
53. Deployment license options are as follows:
 - a. A license for Web applications is per the principal registered unique domain identifier. Domain is the Internet domain name registered with a domain name registrar. For example, in example.com, example.com is the registered unique domain identifier. Similarly, in example.com.xx, where xx is a registered country code, example.com.xx is the registered unique domain identifier.
 - b. A license for desktop applications or SharePoint is per organization. For the purposes of this license, organization is equivalent to a principal registered unique domain identifier (as described above). For example, desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.
54. ArcGIS Mobile is licensed for use with ArcGIS Server Advanced (Enterprise or Workgroup) and ArcGIS Desktop (ArcInfo, ArcEditor, ArcView, and ArcGIS Engine applications).

For Contract Pricing Pages 25 to 39:

See ESRI's eVA Catalog



TRAINING TERMS AND CONDITIONS

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

Whereas, the Client wishes to arrange for training of its employees, the following terms shall be followed as applicable:

I. SCOPE

ESRI agrees to conduct training courses pursuant to the terms contained herein. Training may be conducted at Client's site or at an ESRI learning center.

Course Description: The ESRI Software training course(s) to be conducted, the location, the dates during which the course(s) is to be conducted, the number of participants, and the prices to be paid to ESRI are as set forth in the *ESRI Course Catalog* or at ESRI's training Web site (<http://training.esri.com>). Client Site pricing and schedule information are available on request. All courses shall be conducted in substantial conformity with course descriptions outlined on the ESRI training Web site (<http://training.esri.com>). ESRI reserves the right to modify course content when necessary due to Software technical capabilities or limitations.

ESRI's Responsibilities:

- ESRI shall provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants. ESRI will provide each student with a course manual.
- ESRI's Training Event Assistant, through whom all course(s), dates, and locations shall be confirmed, can be reached via the contact information as listed in the Client Site Training Request Form, found at <http://downloads2.esri.com/Campus/documents/regapp.pdf>.
- Learning center training class scheduled dates are confirmed by the Training Event Assistant approximately ten (10) business days prior to the start date.
- Client Site classes are confirmed by the Training Event Assistant upon receipt of payment/order information and completed Client Site Training Request Form.

Client's Responsibilities:

- Client must ensure that ESRI copyrights are observed and that neither Client nor any third party copies or distributes any training materials provided for training purposes.
- Client is not authorized to resell ESRI training seats, unless explicitly authorized by ESRI in writing.
- Client is responsible for confirming that all registered students meet the applicable minimum prerequisites for the applicable class set forth on ESRI's training Web site.
- Client shall submit to the Training Event Assistant a list of student names at least three (3) business days before the class start date for export license compliance check purposes.
- Travel is Client's responsibility. ESRI assumes no responsibility for nonrefundable travel arrangement losses resulting from denial of a student's(s') participation due to U.S. government export licensing requirements, course scheduling changes, or cancellations. Even though ESRI strives to confirm all classes, class cancellations are sometimes unavoidable.
- Client must notify the Training Event Assistant of any cancellation, rescheduling, or participant substitution requirements and receive confirmation of change(s) prior to the class start date.

IIA. UNIQUE LEARNING CENTER TERMS

Where courses are to be conducted at an ESRI learning center, the following apply:

- Seating is limited in some classes. Registrations are always processed, using a standard student registration application, on a first-come, first-served basis. Waiting lists are used when necessary. Class schedules and registration applications are attached to every course catalog and are available on the Web at <http://training.esri.com>. Registrations must be submitted in advance and require a payment commitment within seven (7) business days of the class start date.
- Sales tax will be charged where applicable. Some states have enacted an E-Procurement fee for state government customers. ESRI may also add the E-Procurement fee to the cost of training classes where applicable.

II.B. UNIQUE CLIENT SITE TERMS

Client's Responsibilities: Where courses are to be conducted at Client's facilities, Client shall provide physical training facilities that meet the following minimum requirements or modifications as mutually agreed to by both parties:

- Client shall, where possible, provide a one (1)-room facility, sufficient for a training course for up to twelve (12) persons (or such other number as may be agreed to by ESRI's Training Event Assistant). The facility shall have appropriate climate control and lighting as well as sufficient power and number of outlets to accommodate the required number of computers and other equipment to be used.
- Where the ESRI Mobile Lab is utilized for a scheduled class:
 - Client shall be responsible for any and all loss, damage, or theft to the Mobile Lab while in Client's possession. Client should immediately report any damage or missing items, upon receipt, to the Training Event Assistant.
 - Client shall keep the Mobile Lab equipment in a secure, locked area between class sessions.
 - Client shall sign release form at completion of course that outlines status of Mobile Lab and makes the Mobile Lab equipment available for freight pickup immediately on conclusion of the ESRI course(s).
 - Client shall ensure no one except registered students uses the Mobile Lab equipment.
 - Client warrants that it shall maintain sufficient insurance coverage to enable it to meet its obligations created by this agreement and by law.
- Where the ESRI Mobile Lab is not utilized for a scheduled class:
 - Client shall supply all computer hardware for the training course(s). Computers must be platforms fully supported by ESRI. All computer hardware shall be configured with an appropriate release of an operating system to run the current release version of the ESRI required Software.
 - There shall be a minimum of one (1) computer and color monitor for every participant.
 - ESRI will not be liable for any damage or loss to Client computer hardware or software where ESRI has provided telephone support to Client for its computer hardware configuration for the scheduled class.
- Client shall provide other peripheral devices including, but not limited to, digitizers and plotters/printers, as required by the training course being conducted, and they should be fully supported by Client.
- Client shall be responsible for providing one (1) high-resolution PC projector and screen as well as one (1) large writing board. Where Client cannot make a PC projector available, it must contact the Training Event Assistant no fewer than ten (10) business days prior to start date.
- Client shall limit the number of course participants to twelve (12) students per course. Additional students, up to a maximum of fifteen (15), may be added to some classes for an additional fee.
- Client shall complete and submit an ESRI Client Site Training Request Form, as provided by the Training Event Assistant, no less than four (4) weeks prior to the start of any course. Final schedule is subject to mutual agreement. Thereafter, Client shall issue payment no less than four (4) weeks prior to the start of the course.

III. SOFTWARE LICENSES

The terms of the ESRI License Agreement portion of this Agreement shall be applicable to all Client course participants and for all Software and Documentation licensed for use in any training course to be conducted. For Client Site training, temporary Software licenses may be issued by ESRI where there is an insufficient number of Software licenses available at the training facility. Client shall uninstall the temporary Software licenses at the conclusion of the training course.

IV. EXPORT CONTROL REGULATIONS

ESRI's technology is subject to U.S. export control laws and regulations—ESRI's Software, Data, Documentation, training materials, and any underlying information or technology may not be exported, reexported, or provided in whole or in part to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation.

V. CANCELLATION AND RESCHEDULING POLICY

Client may cancel or reschedule student attendance in a learning center class or a Client Site class up to three (3) working days before the scheduled class start date. In such event, Client will be responsible for any reasonable travel and shipping expenses incurred by ESRI. Where Client does not notify ESRI at least three (3) days prior to the scheduled training date for a student or Client Site class, Client will be liable for the full payment of the student enrollment or the entire Client Site training class.

In the event that ESRI is unable to conduct the training on the scheduled date, Client will be notified at least three (3) business days before the scheduled date. ESRI will either reschedule the training or cancel the order without ESRI incurring any liability.

Class participants may transfer to another class up to two (2) times at no additional charge. Subsequent transfers will be assessed an additional nonrefundable transfer fee. Student substitutions, when a student's place in class is filled by another person from the same organization, is allowed provided that the ESRI Training Event Assistant is notified three (3) business days in advance of class start date.

VI. PAYMENT

Clients within the United States:

- Credit cards are accepted when training is ordered online.
- A purchase order or government requisition is accepted when ordered online or by fax.
 - Purchase orders for less than eight hundred dollars (\$800) are accepted only from United States federal, state, and local government agencies; United States educational institutions; and Fortune 500 companies.
 - Where payment is made in the form of a purchase order, ESRI shall invoice Client upon completion of each training course.
 - Client shall pay said invoice within thirty (30) days of receipt thereof.
- A check or money order payable to ESRI is accepted when training is ordered online, by fax, or by mail.

Clients outside the United States:

- Credit cards are accepted when training is ordered online.
- A check or money order payable to ESRI in U.S. dollars is accepted when ordering online, by fax, or by mail.
- A wire transfer payable to ESRI in U.S. dollars is accepted when ordering online, by fax, or by mail.



**ENTERPRISE ADVANTAGE PROGRAM
MPA ADDENDUM**

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

EAP Agreement No. TBD

This document ("EAP Agreement") is comprised of this page and the MPA Addendum related Terms and Conditions.

ESRI offers an Enterprise Advantage Program to Licensees current on ESRI software maintenance that are implementing or have implemented a geographic information system (GIS) enterprise solution based on ESRI software. Licensee agrees to contract with ESRI for and ESRI agrees to provide Licensee with certain enhanced consulting services, training, and support available under the Enterprise Advantage Program for the authorized Licensee location as described herein. The Enterprise Advantage Program is not designed for ESRI to provide project specific professional services (i.e. application or database development for solutions or applications).

All Licensee contact regarding EAP activities shall be through the point of contact identified below.

**Authorized EAP Contact Information
(to be completed by Licensee)**

Contact: _____ Telephone: _____
Address: _____ Fax: _____
City, State, ZIP: _____ E-mail: _____

ARTICLE 1—DEFINITIONS

Capitalized terms that have not been defined in this EAP Agreement shall have the meaning found in the applicable ESRI license agreement.

"PSS" means Premium Support Services.

"Secure Formats" means object code, executable code, or similar formats.

"Term" means the initial term of this EAP Agreement.

"Work Product" means reports, documented analysis, sample code, prototype/unsupported code, or technical memorandums provided under this EAP Agreement.

"Renewal Period" means any one-year extension of this EAP Agreement.

ARTICLE 2—ENTERPRISE ADVANTAGE PROGRAM

2.1 Enterprise Advantage Program Description. The Enterprise Advantage Program is a menu of services, training, and support that provides Licensee with the flexibility to select components that best meets its needs. The Enterprise Advantage Program components include the following:

- a. *Assigned Technical Advisor.* An ESRI Technical Advisor who has expertise in ESRI GIS software capabilities and has the ability to analyze and assess optimal solutions in the context of GIS enterprise implementation will be assigned to Licensee. Licensee will receive up to the number of ordered Technical Advisor Hours. Licensee may elect to retain additional Technical Advisor Services blocks (100 hour blocks) for a supplemental price. Technical Advisors are not substitutes for services provided by ESRI Support Services or Professional Services Division. Licensee will continue to contact ESRI Support Services as the first point of contact for all technical support inquiries. If a custom application or other services are required, Licensee will need to use ESRI Professional Services. If Licensee requests the Technical Advisor to come to Licensee's site, Licensee will pay reasonable travel costs. The assigned Technical Advisor in coordination with the assigned Account Manager shall
 - (1) Advise Licensee on GIS strategies, architectures, and product selection;
 - (2) Advise Licensee on training needs, available business partner solutions, and business case development;
 - (3) Act as Licensee's technical advocate in dealing with ESRI;
 - (4) Participate in annual account reviews; and
 - (5) Serve as point of escalation if Licensee is not satisfied with the resolution of an incident through ESRI Support Services.
- b. *Annual Account Review.* Licensee may attend a one-day annual GIS strategy and account review with Licensee's Account Manager and Technical Advisor at ESRI headquarters in Redlands, California. Key ESRI technical and industry specialists may also attend the review to answer questions and discuss Licensee's ideas and suggestions regarding ESRI software and support strategies. Licensee is responsible for its own travel expenses. As an option to hosting the review in Redlands, ESRI may conduct the review at the appropriate ESRI regional office to suit Licensee's convenience, and ESRI's Redlands staff will have the option to participate either by telephone or by webcast.
- c. *System Environment Profile.* ESRI will provide Licensee access to ESRI's Premium Support Services Website to enable Licensee to complete and maintain an inventory of Licensee's relevant GIS technical environment to assist the Technical Advisor(s) and PSS Coordinator in supporting Licensee's environment as appropriate.
- d. *Learning and Services Credits*
 - (1) Licensee will receive the number of ordered Learning and Services Credits. Licensee may use the credits toward any combination of consulting services support, training, premium support, or related travel expenses as described below.
 - (2) Licensee may order, for an additional price, one additional block of Learning and Services Credits during the initial term of the EAP Agreement and one additional block of Learning and Services Credits for each Renewal Term.

- (3) If Licensee requests additional blocks of Learning and Services Credits over and above the initial additional block provided for in the preceding paragraph, Licensee must order Learning and Services Credits and Technical Advisor Services bundle.
 - (4) Each Learning and Services Credit may be exchanged for one of the following:
 - (a) Two hours of consulting services support consisting of review of technology strategy, systems design, prototyping, and other general technical consulting services support activities. Any project related activities requiring a deliverable other than consulting time will be scoped, budgeted, and scheduled through a separate Professional Services Agreement negotiated between ESRI and VITA.
 - (b) Two hours of Premium Support Services;
 - (c) One day for one student at an ESRI Training Center in Redlands, California, or at a regional office;
 - (d) On-site Instructor-Led Training (9 credits – 1 day);
 - (e) 480 Virtual Campus dollars for Standard Virtual Campus training; or
 - (f) Related ESRI travel and per diem expenses as quoted.
 - (5) Unused Learning and Services Credits may be carried over to future years as long as Licensee remains an ESRI Enterprise Advantage Program customer. If this EAP Agreement expires (exclusive of termination for default), any unused credits will expire six months after the expiration of this EAP Agreement; however, the Technical Advisor Services will not be available during this post-Term period.
 - (6) ESRI will provide EAP Contact with a monthly report outlining usage of Enterprise Advantage Program Learning and Services Credits to date of usage.
- e. *Exclusive Enterprise Webcast.* ESRI will provide an email invitation to the EAP Contact for quarterly webcast presenting business and technical information related to enterprise GIS.

2.2 Learning and Services Credit Use

- a. *Current on Maintenance.* Licensee must remain current on standard maintenance during the term of this EAP Agreement. Standard maintenance is described at <http://www.esri.com/legal>, which may be changed from time to time.
- b. *Authorization of Credit Use.* Licensee will contact its Account Manager or Technical Advisor to consume Learning and Services Credits for a particular request. ESRI will submit to Licensee a Learning and Services credit estimate by email for confirmation and authorization for use of the credits.
- c. *Travel and Per Diem.* Any ESRI travel and per diem will be quoted separately. Licensee may direct ESRI to use credits for travel and per diem as stated in Enterprise Advantage Program Description, Section 2.1 above, or Licensee will issue a purchase order and ESRI will invoice Licensee for the travel and per diem expenses as described below in Article 6.
- d. *Notification of Consumed Credits.* ESRI will notify Licensee in the event the authorized Learning and Services Credits are consumed prior to completion of the requested work. Licensee may elect to direct use of additional credits, if available; procure additional Learning and Services Credits; or notify ESRI to stop work on such requested work. ESRI reserves the right to discontinue work when the authorized credits are consumed.
- e. *Review of Proposed Activities.* Any activities proposed to be completed under the Enterprise Advantage Program will be subject to review and approval by ESRI to ensure alignment with the intent of the program.

2.3 Defense or Military Application. At the time the Learning and Services Credits are requested or before any services are provided by the Technical Advisor, Licensee will inform ESRI if any of the requested services, consulting, training, or support provided by ESRI is directly related to a defense article or for a military application.

ARTICLE 3—LICENSE GRANT

3.1 Training. The terms of the ESRI license agreement shall be applicable to all Licensee course participants and for all Software Data, Web Services and Documentation licensed for use in any training course to be conducted. For on-site training, temporary Software licenses may be issued by ESRI where there is an insufficient number of Software licenses available at the training facility. Licensee shall uninstall the temporary Software licenses at the conclusion of the training course.

3.2 Work Product. ESRI hereby grants to Licensee a nonexclusive, royalty-free license in the Work Product to use in connection with Licensee's authorized use of the Software and Data for support of which the Work Product was supplied.

3.3 PSS. The terms and conditions of the License Agreement portion of this MPA for the affected Software will govern any updates, patches, hot fixes, or software provided under this EAP Agreement.

ARTICLE 4—WARRANTIES AND DISCLAIMERS

4.1 Warranties and Disclaimers

- a. All services, training and Work Product will be provided in a professional and workmanlike manner.
- b. ESRI warrants for a period of 30 days after acceptance of the Work Product that the Work Product will conform, in a manner consistent with professional and technical standards in the software industry, with applicable written specifications included in the corresponding task or delivered to Licensee pursuant to this EAP Agreement.
- c. *Map Data Disclaimer.* Map Data may contain some nonconformities, defects, errors, or omissions. MAP DATA ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, ESRI and its licensors do not warrant that the Map Data will meet Licensee's needs or expectations, that the use of the Map Data will be uninterrupted, or that all nonconformities can or will be corrected. ESRI and its licensors are not inviting reliance on the Map Data and Licensee should always verify actual Map Data.

4.2 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ENTERPRISE ADVANTAGE PROGRAM OR ANY WORK PRODUCT PROVIDED HEREUNDER WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR-FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. WORK PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

ARTICLE 5—LIMITATION OF LIABILITY

5.1 Disclaimer of Certain Types of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS EAP AGREEMENT OR USE OF THE WORK PRODUCT, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5.2 General Limitation of Liability. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FOR DIRECT DAMAGES SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE EAP PROGRAM.

The limitation stated in this section shall not apply to bodily injury (including wrongful death) or damage to tangible personal property proximately caused by the gross negligence or intentionally wrongful acts or omissions of ESRI while on Licensee's premises, if such actions or omissions were not caused by the action or omission of Licensee or any third party. For the purpose of this paragraph, "tangible personal property" shall not include documentation, software, data, or data files.

5.3 Applicability of Disclaimers and Limitations. The parties agree that ESRI has set its prices and entered into this EAP Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 6—COMPENSATION

6.1 The fees for the initial term of the EAP are included in the MPA Price List. Fees for additional Learning and Services Credits or Technical Advisor Services will be invoiced upon receipt of Licensee's order. Licensee shall pay ESRI within 30 calendar days of receipt of invoice.

6.2 Pricing for new ESRI service offerings will be in accordance with ESRI's most current price schedule at the time of purchase per Article 9, Subsection 9.1, MPA Terms and Conditions. .

6.3 Licensee may elect to use Learning and Services Credits for actual travel expenses plus a standard burden, or to be invoiced at the actual cost for travel expenses plus a standard burden. Meals will be charged on a per diem basis.

ARTICLE 7—TERM AND TERMINATION

7.1 The Term of the EAP Agreement is one year from the date of the purchase order. Prior to the end of the Term, ESRI may provide Licensee with a quotation for an additional one year Renewal Period. If Licensee accepts the quote, ESRI will submit an invoice to Licensee for the quoted annual Enterprise Advantage Program price and this EAP Agreement will automatically extend for the Renewal Period.

7.2 ESRI or Customer may elect not to renew this EAP Agreement for its sole convenience at the end of any term upon 30 days written notice to the other party, in which event the EAP shall expire. ESRI or Licensee may elect not to renew an order for EAP at the end of the order's term upon 30 days written notice to the other party, in which event the EAP shall expire.

7.3 ESRI or Customer may terminate this EAP Agreement, or ESRI or Licensee may terminate an individual order for EAP, for a material breach that is not cured within 30 days after written notice to the other party or for bankruptcy or insolvency of the other party.

7.4 Upon termination or expiration of this EAP Agreement

- a. Except when termination results from non-renewal, all outstanding Learning and Services credits shall be subject to cancellation, acceptance, or rejection at the sole discretion of ESRI.
- b. In the event of termination for a material breach, the due dates of all invoices for amounts owed by Licensee to ESRI shall be accelerated automatically so that such amounts become due and payable 30 days after the effective date of termination, regardless of the payment term provisions set forth in this EAP Agreement.
- c. Except where a provision specifically provides otherwise, any cause of action or claim of one party accrued to or to accrue because of any breach or default of the other party and any accrued license rights shall survive to the degree necessary to permit their complete fulfillment or discharge.

ARTICLE 8—CONFIDENTIALITY

8.1 Confidential Information. It may be necessary for ESRI or Licensee to disclose to the other party certain confidential information under this EAP Agreement or an individual EAP order issued under this Agreement. The access code or password for the PSS Web site and any Work Product are confidential information of ESRI. Licensee data contained in the ESRI PSS Web site database is confidential information of Licensee. Each party shall use the confidential information described above only for exchanging information needed to provide the PSS contemplated by this EAP Agreement or the EAP order. Within 60 days of termination of this EAP Agreement or the EAP order, each party shall return or destroy and provide a certification of destruction of the confidential information of the other party. If this Subsection is implemented the parties shall execute an NDA as incorporated and attached herein.

8.2 Work Product

- a. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Work Product delivered only in Secure Formats. For Work Product delivered in source code or other human-readable formats, Licensee shall have met its obligations under this EAP Agreement if its disclosure of Work Product is limited to such items in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.

- b. Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advanced written consent of ESRI. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.
- c. The disclosures permitted under this Section 8.2 shall not relieve Licensee of its obligation to maintain the Work Product in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Work Product to employees or third parties as permitted in the preceding paragraph, Licensee shall inform such employees or third parties of the obligations in this EAP Agreement and obtain their agreement to be bound by them.

8.3 Other Exchange of Confidential Information. Any other exchange of confidential information between ESRI and Licensee shall require execution of a nondisclosure agreement signed between the parties separate from this EAP Agreement.

ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

9.1 Should the Licensee choose to use Learning and Services Credits for PSS, the terms of this Article 9 shall also apply.

9.2 Licensee may use Learning and Services Credits for PSS for any product covered under ESRI's normal maintenance subscription. When logging a call with ESRI Support, Licensee must specify that EAP credits will be used toward the support incident.

9.3 ESRI will support the licensed Software (as defined in the License Agreement portion of this Agreement) by providing Licensee with enhanced online and telephone support and other services through the PSS program as described below:

- a. *Assigned PSS Coordinator.* ESRI will assign a PSS Coordinator to Licensee. The assigned PSS Coordinator will work directly with Licensee's authorized callers to facilitate Licensee's PSS needs.
- b. *Normal Business Hours of Operation.* PSS operates during the normal business hours of Monday through Friday, from 6:00 a.m. to 5:00 p.m. Pacific time, excluding weekends and ESRI holidays.
- c. *Acknowledgment/Response Time.* An "Incident" is a reported failure of the Software to operate according to the Documentation furnished by ESRI where such failure substantially impacts operational or functional performance. Licensee may open an Incident by calling ESRI's Helpdesk Support Services or logging the Incident via the Premium Support Web site. An automated e-mail acknowledgment will be sent for a new Incident logged via the Premium Support Web site. The assigned PSS Coordinator will use commercially reasonable efforts to call or send an e-mail response within one business hour of the receipt of a new Incident to notify Licensee that the submitted Incident is in the initial stage of review.
- d. *Two Authorized Callers.* Licensee may designate up to two specific authorized callers who may contact PSS, thereby providing continuity and building technical and business knowledge by both parties to improve services.
- e. *Toll-Free Support Number.* Licensee may request PSS by telephone at 888-621-1755 (toll free to domestic callers) or 909-793-3774 or by facsimile at 909-792-0960.
- f. *Premium Support Web Site Access.* Licensee will receive access to the Premium Support Web site at <http://support.esri.com/psg>. PSS Coordinators will log and track status and completion of all identified PSS Incidents. Licensee's authorized callers may log and view their Incidents, initiate chat sessions and remote screen sharing with assigned ESRI support staff, and access other PSS-related tools and information through the Premium Support Web site.
- g. *System/Environment Profiling.* Licensee will be provided access to an ESRI database through the Premium Support Web site to enter and maintain data regarding Licensee's equipment, applications, and skill sets associated with ESRI technology.
- h. *Incident Management.* Incident management is an interactive process between PSS and Licensee that permits Licensee to contact the PSS Coordinator. Once an Incident is logged, the PSS Coordinator will confer with ESRI Technical Support analysts in an attempt to determine an appropriate resolution or workaround. If required, the PSS Coordinator will also confer with ESRI Development. The PSS Coordinator will initiate proactive follow-up to inform Licensee of the progress made on each Incident.
- i. *PSS Software Alert Newsletter.* Licensee will receive a news bulletin that discusses key current issues being investigated by ESRI.
- j. *Quarterly Teleconference Meeting.* ESRI and Licensee will schedule a quarterly teleconference meeting to discuss Licensee's current support Incidents. ESRI will make available the assigned Account Manager, PSS Coordinator, PSS Manager, and other ESRI staff as required.

9.4 PSS Restrictions and Exclusions

- a. *Excluded Software.* PSS is not available for third-party software. ESRI is not responsible for errors attributable to third-party software used in conjunction with or built upon Software.
- b. *Territory.* PSS is available only within the United States and its territories.
- c. *Acknowledgment.* Licensee acknowledges and agrees that the report of an error or defect of the Software to PSS is not a guarantee that it can or will be corrected. At ESRI's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by ESRI.
- d. *Hardware Support.* ESRI does not provide support for hardware, graphics cards, monitors, plotters, graphics printers, digitizers, modems, and so forth, except to answer questions regarding how standard, supported devices interface with Software.
- e. *On-Site Support.* PSS does not include on-site support.

ARTICLE 10—CONSULTING SERVICES SUPPORT TERMS AND CONDITIONS

10.1 Should Licensee choose to use Learning and Services credits for consulting services support, the terms of this Article 10 shall also apply.

10.2 Patents and Inventions

- a. Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of this EAP Agreement or the term of an individual EAP order placed under this Agreement. The parties shall jointly own any Invention made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Software, Licensee hereby grants and agrees to grant to ESRI an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use.
- b. Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.
- c. A joint owner ("Assigning Owner") electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such of its rights in such Inventions to the other joint owner ("Beneficial Owner") as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.
- d. Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which is hereby given to ESRI for Inventions relating to the Software and shall otherwise not be unreasonably withheld by either party.

10.3 Ownership. Except as specifically granted in this EAP Agreement, ESRI or its licensors own and retain all right, title, and interest in the Work Product.

ARTICLE 11—TRAINING TERMS AND CONDITIONS

11.1 Should Licensee choose to use Learning and Services credits for training, the terms of this Article 11 shall also apply.

11.2 Training Location. Training may be conducted at Licensee's site or at an ESRI learning center.

11.3 Course Descriptions. The ESRI Software training courses offered, the location, the dates during which the courses are to be conducted, the number of participants, and the prices to be paid to ESRI are as set forth in the *ESRI Course Catalog* or at ESRI's training Web site (<http://training.esri.com>). Client Site pricing and schedule information are available on request. All courses shall be conducted in substantial conformity with course descriptions outlined on the ESRI training Web site (<http://training.esri.com>). ESRI reserves the right to modify course content when necessary due to Software technical capabilities or limitations.

11.4 ESRI's Responsibility.

- ESRI shall provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants. ESRI will provide each student with a course manual.
- ESRI's Training Event Assistant, through whom all course(s), dates, and locations shall be confirmed, can be reached via the contact information as listed in the Client Site Training Request Form, found at <http://downloads2.esri.com/Campus/documents/regapp.pdf>.
- Learning center training class scheduled dates are confirmed by the Training Event Assistant approximately ten (10) business days prior to the start date.
- Client Site classes are confirmed by the Training Event Assistant upon receipt of payment/order information and completed Client Site Training Request Form.

11.5 Client's Responsibilities.

- Client must ensure that ESRI copyrights are observed and that neither Client nor any third party copies or distributes any training materials provided for training purposes.
- Client is not authorized to resell ESRI training seats, unless explicitly authorized by ESRI in writing.
- Client is responsible for confirming that all registered students meet the applicable minimum prerequisites for the applicable class set forth on ESRI's training Web site.
- Client shall submit to the Training Event Assistant a list of student names at least three (3) business days before the class start date for export license compliancy check purposes.
- Travel is Client's responsibility. ESRI assumes no responsibility for nonrefundable travel arrangement losses resulting from denial of a student's(s') participation due to U.S. government export licensing requirements, course scheduling changes, or cancellations. Even though ESRI strives to confirm all classes, class cancellations are sometimes unavoidable.
- Client must notify the Training Event Assistant of any cancellation, rescheduling, or participant substitution requirements and receive confirmation of change(s) prior to the class start date.

11.6 Unique ESRI Learning Center Terms. Where courses are to be conducted at ESRI facilities, the following restrictions and requirements apply:

- Seating is limited in some classes. Registrations are always processed, using a standard student registration application, on a first-come, first-served basis. Waiting lists are used when necessary. Class schedules and registration applications are attached to every course catalog and are available on the Web at <http://training.esri.com>. Registrations must be submitted in advance.
-

11.7 Unique Licensee Site Terms. Where courses are to be conducted at Licensee's facilities, Licensee shall provide physical training facilities that meet the following minimum requirements or modifications as mutually agreed to by both parties:

- Client shall, where possible, provide a one (1)-room facility, sufficient for a training course for up to twelve (12) persons (or such other number as may be agreed to by ESRI's Training Event Assistant). The facility shall have appropriate climate control and lighting as well as sufficient power and number of outlets to accommodate the required number of computers and other equipment to be used.
- Where the ESRI Mobile Lab is utilized for a scheduled class:
 - Client shall be responsible for any and all loss, damage, or theft to the Mobile Lab while in Client's possession. Client should immediately report any damage or missing items, upon receipt, to the Training Event Assistant.
 - Client shall keep the Mobile Lab equipment in a secure, locked area between class sessions.
 - Client shall sign release form at completion of course that outlines status of Mobile Lab and makes the Mobile Lab equipment available for freight pickup immediately on conclusion of the ESRI course(s).
 - Client shall ensure no one except registered students uses the Mobile Lab equipment.
 - Client warrants that it shall maintain sufficient insurance coverage to enable it to meet its obligations created by this agreement and by law.
- Where the ESRI Mobile Lab is not utilized for a scheduled class:

- Client shall supply all computer hardware for the training course(s). Computers must be platforms fully supported by ESRI. All computer hardware shall be configured with an appropriate release of an operating system to run the current release version of the ESRI required Software.
 - There shall be a minimum of one (1) computer and color monitor for every participant.
 - ESRI will not be liable for any damage or loss to Client computer hardware or software where ESRI has provided telephone support to Client for its computer hardware configuration for the scheduled class.
- Client shall provide other peripheral devices including, but not limited to, digitizers and plotters/printers, as required by the training course being conducted, and they should be fully supported by Client.
 - Client shall be responsible for providing one (1) high-resolution PC projector and screen as well as one (1) large writing board. Where Client cannot make a PC projector available, it must contact the Training Event Assistant no fewer than ten (10) business days prior to start date.
 - Client shall limit the number of course participants to twelve (12) students per course. Additional students, up to a maximum of fifteen (15), may be added to some classes for an additional fee.
 - Client shall complete and submit an ESRI Client Site Training Request Form, as provided by the Training Event Assistant, no less than four (4) weeks prior to the start of any course. Final schedule is subject to mutual agreement.

11.8 Software Licenses. The terms of the ESRI license agreement shall be applicable to all Client course participants and for all Software and Documentation licensed for use in any training course to be conducted. For Client Site training, temporary Software licenses may be issued by ESRI where there is an insufficient number of Software licenses available at the training facility. Client shall uninstall the temporary Software licenses at the conclusion of the training course.

11.9 Cancellation and Rescheduling Policy. Client may cancel or reschedule student attendance in a learning center class or a Client Site class up to three (3) working days before the scheduled class start date. In such event, Client will be responsible for any reasonable travel and shipping expenses incurred by ESRI. Where Client does not notify ESRI at least three (3) days prior to the scheduled training date for a student or Client Site class, Client will be liable for the full payment of the student enrollment or the entire Client Site training class.

In the event that ESRI is unable to conduct the training on the scheduled date, ESRI will make reasonable attempts to notify Client at least three (3) business days before the scheduled date. ESRI will either reschedule the training or cancel the order without ESRI incurring any liability.

Class participants may transfer to another class up to two (2) times at no additional charge. Subsequent transfers will be assessed an additional nonrefundable transfer fee. Student substitutions, when a student's place in class is filled by another person from the same organization, is allowed provided that the ESRI Training Event Assistant is notified three (3) business days in advance of class start date.

ARTICLE 12—GENERAL PROVISIONS

12.1 Intellectual Property Rights Attribution. Licensee shall retain any copyright, patent, or trademark notices on all items licensed under this EAP Agreement and shall take other necessary steps to protect ESRI's or its licensor's intellectual property rights.

12.2 Non-solicitation of Contractor Personnel. Licensee shall not solicit for hire any ESRI employee who is associated with efforts called for under this EAP Agreement during the term and for a period of one year thereafter. In the event the foregoing provision is breached, Licensee shall pay ESRI liquidated damages for recruiting and training costs equal to twelve months of the employee's compensation plus any legal expenses associated with the enforcement of this provision.

12.3 Export Control. ESRI's technology is subject to U.S. export control laws and regulations—ESRI's Software, data, documentation, and any underlying information or technology may not be exported, reexported, or provided in whole or in part to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation.

**ESRI Master Purchase Agreement No. 2009MPA2064/VITA Contract No. VA-090403-ESRI**

An Enterprise License Agreement (ELA) is a separate contract where the Customer commits to a three year contract with annual payments to ESRI. An ELA represents a significant commitment on the part of the customer to deploy GIS technology across the entire department or agency. ELAs permit deployment of unlimited quantities of selected ESRI products and associated maintenance over the term of the agreement and vesting of the licenses at the end of the agreement term. The Commonwealth of Virginia and ESRI have pre-negotiated statutory and license terms under this contract that shall be incorporated into potential ELAs, thereby facilitating the consummation and execution of an ELA.

Customer Benefits:

An ELA will provide numerous benefits including:

- a lower cost-per-unit for licensed software
- substantially reduced administrative and procurement expenses
- maintenance on all ESRI software deployed within the company
- complete flexibility to deploy software products when and where needed.

Terms, Conditions and Pricing: A potential Customer shall be subject to additional ELA terms and conditions including:

- Customer will establish a single point of contact for orders and deliveries, and will be responsible for redistribution to eligible users.
- Any software products identified in the proposal to which Customer will have unlimited access that have been previously deployed by Customer will be regarded as current on maintenance throughout the term of the agreement.
- Customer will establish a Tier 1 support center to field calls from internal users of ESRI products. Customer may designate a number of individuals who may directly contact ESRI for Tier 2 technical support.
- Customer will provide an annual report of installed ESRI products to ESRI.
- ESRI products that Customer is eligible to use will be shipped automatically as they become available.
- Customer will name ESRI their company-wide GIS standard, will act as an ESRI reference site, and will permit ESRI to publicize ABC's use of ESRI products.
- Customer will receive a number of complimentary annual registrations to the ESRI International User Conference.

A potential Customer may contact ESRI for a proposal tailored to the Customers needs.



MUTUAL NONDISCLOSURE AGREEMENT

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

Agreement No. [To Be Determined (TBD)]

This Mutual Nondisclosure Agreement (Agreement) is effective as of [TBD] (Effective Date), is incorporated into ESRI Agreement No. 2009MPA2064/VITA Contract No. VA-0090403-ESRI by and between Environmental Systems Research Institute, Inc. (ESRI), with a principal place of business at 380 New York Street, Redlands, California 92373-8100, and [TBD].

[TBD] and ESRI may be collectively referred to as "the Parties" or individually as a "Party." The Parties may either receive or disclose Confidential Information under this Agreement and may therefore be referred to either as the "Recipient" or the "Disclosing Party" as the case may be.

The Parties to this Agreement may engage in confidential business discussions for the purpose of [TBD]. Each Party agrees to regard the information that it will exchange in such discussions as commercially sensitive, proprietary, and confidential. The Recipient shall use the Confidential Information only in connection with its business relationship with the Disclosing Party, as described in this Agreement, and shall make no other use whatsoever of the Confidential Information.

In consideration of the mutual promises and covenants set forth below and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree with respect to such information as follows:

1. Definition

As used herein, the term "Confidential Information" shall mean all information provided by the Disclosing Party to the Recipient in the form of the following:

- a. All technical and nontechnical information including, without limitation, patent, trade secret and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae, any and all of which relate to the past, present, future, or proposed products and services of the Parties; information concerning research, experimental and development work, design details, specifications and engineering information, financial information, customer lists, business forecasts, sales and marketing plans; and all such other information that may be revealed to one Party by the other for the purpose(s) described in this Agreement, and that has been supplied in any form (whether print, hard copy, electronic, or otherwise) by the Disclosing Party to the Recipient and designated in writing, or orally and confirmed in writing, by the Disclosing Party as "Confidential," "Restricted," "Secret," or other similar term;
- b. Tangible information, including all reproductions thereof, supplied in any form (whether print, hard copy, electronic, or otherwise) that has been disclosed by the Disclosing Party to the Recipient and marked as "Confidential," "Restricted," "Secret," or other similar term;
- c. Information that is disclosed orally or by demonstration and confirmed in writing as "Confidential," "Restricted," "Secret," or other similar term; or
- d. Information that is observed by the Recipient during a visit to the Disclosing Party's facility and that is identified as being confidential and confirmed in writing as "Confidential," "Restricted," "Secret," or other similar term.

2. Information Excluded

The following information shall not be subject to the obligations in this Agreement:

- a. Information that is or becomes available to the public through no breach of this Agreement; or
- b. Information that is already known to the Recipient and can be shown to be in its possession at the time of disclosure; or
- c. Information that is subsequently and lawfully received unsolicited by the Recipient from a third party that is not under a similar nondisclosure obligation to the Disclosing Party; or
- d. Information that is independently developed by either Party without reference to the Confidential Information.

3. Nondisclosure Obligations

The Recipient will use the same degree of care with respect to nondisclosure of the Disclosing Party's Confidential Information as the Recipient uses to protect its own Confidential Information, but in no event less than a reasonable degree of care. Without limiting the foregoing, the Recipient agrees that it will keep secret and protect the confidentiality of any Confidential Information at all times and as herein provided, by

- a. Not disclosing any Confidential Information, or the fact that it has been obtained, to any third party without the prior written consent of the Disclosing Party unless such information is disclosed pursuant to a Virginia Freedom of Information request; and
- b. Not disclosing any Confidential Information to any employees who do not have a need to know such Confidential Information; and
- c. Ensuring that all such employees who do have a need to know the Confidential Information have been informed of their confidentiality obligations regarding the Confidential Information and have agreed to be bound by them.

4. Rights

- a. The disclosure of such Confidential Information to the Recipient shall not cause it to have any rights for use or otherwise with respect to such Confidential Information except for the limited purpose(s) stated herein.
- b. No license, interest in, or other proprietary right to the Recipient under any patent, or other similar intellectual property instrument issued now or hereafter, is granted or implied by the disclosure of any Confidential Information.

5. No Warranty

All Confidential Information is provided AS IS without warranty of any kind. Confidential Information that may be disclosed shall not constitute a representation or a warranty of accuracy, suitability, or completeness, nor serve as an inducement of reliance by the Disclosing Party to the Receiving Party.

6. Limitation

Each Party may develop products, data, records and services related to the general subject matter of the Confidential Information. Either party may develop products, data, records and services without the use of the other Party's Confidential Information. Neither party shall be liable for payment of royalties, license fees, or any other amounts from such independent development.

7. Return of Materials

Upon the Disclosing Party's written request or upon termination of this Agreement, the Recipient agrees to promptly return to the Disclosing Party any materials or documents, whether or not furnished by the Disclosing Party, containing Confidential Information together with all copies thereof made by the Recipient, or to destroy such items and deliver to the Disclosing Party written certification that they have been destroyed.

8. Term and Termination

This Agreement terminates as to the exchange of any new Confidential Information one (1) year after the Effective Date. Either Party may terminate the right to exchange Confidential Information under this Agreement at any time by written notice to the other specifically referencing this Agreement. In any event, however, the obligations of each Party to maintain the confidentiality of the Confidential Information it has received under this Agreement continues for a period of three (3) years after such termination and then terminates, provided, however, that such obligation continues indefinitely as to Confidential Information constituting a trade secret under applicable law so long as such Confidential Information remains a trade secret.

9. Points of Contact

The designated points of contact for controlling the authorized recipients of the Confidential Information are

For ESRI
Name: [TBD]
Address: _____

Telephone: _____
Fax: _____

For [TBD]
Name: [TBD]
Address: _____

Telephone: _____
Fax: _____

10. Equitable Relief

The Parties agree that any breach of this Agreement may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, the Disclosing Party shall have the right to seek an injunction, specific performance, or other equitable relief in any circuit court of Virginia to prevent violation of these terms and without the requirement of posting a bond.

11. Export Control Regulations

The Parties expressly acknowledge and agree that the Recipient shall not export, reexport, or provide the Confidential Information, in whole or in part, to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation. The Recipient shall not export the Confidential Information to any facility in violation of these or other applicable laws and regulations. The Recipient represents and warrants that it or its employees who gain access to the Confidential Information are not a national, resident, located in or under the control of, or acting on behalf of any person, entity, or country subject to such U.S. export controls.

12. Governing Law

This Agreement shall be governed by the laws of the Commonwealth of Virginia.

13. Modifications to Agreement

This Agreement constitutes the entire agreement of the Parties regarding Confidential Information and supersedes any prior agreements or understandings between the Parties hereto regarding the Confidential Information, and no amendment, alteration, or waiver of this Agreement shall be valid or binding unless made in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties below have caused this Agreement to be executed by authorized representatives as of the date first written above.

[TBD]
Signature: _____
Printed Name: _____
Title: _____
Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(ESRI)
Signature: _____
Printed Name: _____
Title: _____
Date: _____