



Commonwealth of Virginia  
Virginia Information Technologies Agency

**SOFTWARE AND SERVICES**

**Optional Use Contract**

Date: November 12, 2008

Contract #: VA-030700-ESRI

Authorized User: State Agencies, Institutions, and other Public Bodies  
as defined in the VPPA

Contractor: Environmental Systems Research Institute, Inc. (ESRI)  
8620 Westwood Center Dr.  
Vienna, VA 22182

FIN: 95-2775732

Contact Person: See page 3

Pricing: see eVA catalog or contact vendor

FOB: Destination

Delivery: 7 Days ARO

Term: November 12, 2008 – April 11, 2009

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](mailto: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.



**CONTRACTOR POINTS OF CONTACT**

**ESRI-Virginia Territory Manager**

Robert Rike, Territory Manager  
Environmental Systems Research  
Institute, Inc.  
4205 Booth Drive  
Sandston, VA 23150  
Tel: (804) 737-0112  
Fax: (804) 737-0112  
Email: rrike@esri.com  
Web: <http://www.esri.com>

**ESRI-Washington D.C. Regional Office**

ATTN: Paul Hartwell, Regional  
Manager  
8620 Westwood Center Drive  
Vienna, VA 22182  
Tel: (703) 442-8892 or 442-9296  
Fax: (703) 506-9515 or 506-9514  
Hours: 8am to 5pm (Eastern) M-F

**ESRI Customer Support**

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

CIO of the Commonwealth  
Email: lem.stewart@vita.virginia.gov  
Lemuel C. Stewart, Jr.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY  
11751 Meadowville Lane  
Chester, VA 23836  
(804) 416-6100

TDD VOICE -TEL. NO.  
711

November 10, 2008

VIA EMAIL

**TO: Environmental Systems Research Institute, Inc. (ESRI)**

**RE: Modification #9 to contract VA-030700-ESRI**

In accordance with Section 30 of the above referenced contract, entitled "Term," please consider this Modification #9 your notification of the Commonwealth's extension of the above referenced contract. The expiration of the agreement is now extended to April 11, 2009.

In addition, the parties agree to add Attachment A: Pricing and Attachment B: Scope of Use to the agreement, as contained herein.

ESRI

By:   
(Signature)

Laura Dangermond

(print name)

Vice President

(Title)

November 10, 2008

Date

c: contract file

VITA

By:   
(Signature)  
Validity unknown

Digitally signed by John Tackley  
Date: 2008.11.12 09:35:02  
-05'00'  
Reason: On behalf of the  
Commonwealth of Virginia  
Location: Chester, VA

(print name)

(Title)

Date



# COMMONWEALTH of VIRGINIA

Lemuel C. Stewart, Jr.  
Chief Information Officer  
Email: [cio@vita.virginia.gov](mailto:cio@vita.virginia.gov)

**Virginia Information Technologies Agency**  
11751 Meadowville Lane  
Chester, Virginia 23836-6315  
(804) 416-6100

TDD VOICE -TEL. NO.  
711

September 29, 2008

VIA EMAIL

**TO: Environmental Systems Research Institute, Inc. (ESRI)**

**RE: VA-030700-ESRI**

In accordance with Section 30 of the above referenced contract, entitled "Term," please consider this correspondence your notification of the Commonwealth's extension of the above referenced contract, for 30 days.

The expiration of the agreement is now extended to November 11, 2008.

Regards,



Digitally signed by John Tackley  
Date: 2008.09.29 18:00:01  
-04'00'  
Reason: On behalf of the  
Commonwealth of Virginia  
Location: Chester, VA

Validity  
unknown

**John Tackley**  
**Supply Chain Management**

c: Contract File



## COMMONWEALTH *of* VIRGINIA

CIO of the Commonwealth  
Email: lem.stewart@vita.virginia.gov  
Lemuel C. Stewart, Jr.

**VIRGINIA INFORMATION TECHNOLOGIES AGENCY**  
**11751 Meadowville Lane**  
**Chester, VA 23836**  
**(804) 416-6100**

TDD VOICE -TEL. NO.  
711

September 10, 2008

VIA EMAIL

**TO: Environmental Systems Research Institute, Inc. (ESRI)**

**RE: VA-030700-ESRI**

In accordance with Section 30 of the above referenced contract, entitled "Term," please consider this correspondence your notification of the Commonwealth's extension of the above referenced contract, for 30 days.

The expiration of the agreement is now extended to October 11, 2008.

Regards,



Digitally signed by John Tackley  
DN: cn=John Tackley, c=US, o=Supply  
Chain Management, ou=Virginia  
Information Technologies Agency,  
email=John.Tackley@vita.virginia.gov  
Reason: On behalf of the Commonwealth  
of Virginia  
Location: Chester VA 23836  
Date: 2008.09.10 08:22:39 -04'00'

John Tackley  
Supply Chain Management

c: contract file



**MODIFICATION NO. 8  
TO  
CONTRACT VA-030700-ESRI  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (ESRI)  
ESRI Agreement No. 2003MPA2064**

This MODIFICATION NO. 8 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency) and ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., hereinafter referred to as "ESRI" or "Contractor", relating to the modification of Contract VA-030700-ESRI, as amended. This Modification No. 8 is hereby incorporated into and made an integral part of Contract VA-030700-ESRI.

The purpose of this Modification No. 8 is to update product offerings.

Both parties agree to replace Contract Attachment A—Software Pricing in its entirety per Contract Section Nos. 25 and 29 with updated Attachment A, attached hereto and incorporated herein, entitled Software Pricing. All Price List(s) previously incorporated into the Agreement are hereby deleted and made null and void.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030700-ESRI and cannot be modified, except in writing and 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.

COMMONWEALTH OF VIRGINIA  
(State or Commonwealth or VITA)

By: George S. Goodman Jr.

Name: George S. Goodman, Jr.

Title: Senior IT Sourcing Consultant

Date: April 7, 2008

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(ESRI)

By: Laura Dangermond

Name: Laura Dangermond

Title: Vice President

Date: April 3, 2008



**MODIFICATION NO. 7  
TO  
CONTRACT VA-030700-ESRI  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (ESRI)  
ESRI Agreement No. 2003MPA2064**

This MODIFICATION NO. 7 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency) and ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., hereinafter referred to as "ESRI" or "Contractor", relating to the modification of Contract VA-030700-ESRI, as amended. This Modification No. 7 is hereby incorporated into and made an integral part of Contract VA-030700-ESRI.

The purpose of this Modification No. 7 is to update certain Contract terms and conditions in order to accommodate current ESRI technologies and product offerings.

Both parties agree to replace Contract Attachment A—Software Pricing in its entirety per Contract Section Nos. 25 and 29 with updated Attachment A, attached hereto and incorporated herein, entitled Software Pricing. All Price List(s) previously incorporated into the Agreement are hereby deleted and made null and void.

Both parties agree to replace in its entirety the Contract "Scope of Use" document with Exhibit 1, entitled Scope of Use (E300 10/06B) with the updated version of E300 dated 05/07B. All previously incorporated Scope of Use documents are hereby deleted and made null and void.

## **2. INTERPRETATION OF AGREEMENT/ORDER OF PRECEDENCE**

The following definitions are modified, deleted and/or incorporated as follows:

- (a) "Software" means the actual copy of all or any portion of ESRI's proprietary software technology, computer software code, components, dynamic link libraries (DLLs), underlying organization, object model, and programs delivered on any media, including any release provided in source, object, or executable code format(s), inclusive of backups, updates, service packs, patches, hot fixes, sample code, sample application, sample extension, or merged copies permitted hereunder.
- (b) "Data" except as otherwise provided herein, means any ESRI or third party data vendor(s) digital data set(s) including, but not limited to, geographic, vector data coordinates, raster, or associated tabular attributes in ESRI's GIS software compatible format(s) supplied under this Agreement.
- (h) "Web Services" means software services or third party data components that perform GIS functions, tasks, or data services and are accessed over the Internet.

## **30. TERM**

The Agreement is extended from September 11, 2007 to September 11, 2008.

## **35. TITLE (SOFTWARE DATA AND DOCUMENTATION)**

**Grant of License**—Subsection (a) is modified as follows:

- (a) Use the type and number of copies of the Software, Data, and Documentation and access Web Services (i) for which the appropriate license fees have been paid to ESRI, (ii) for Licensee's own internal use only, and (iii) in accordance with Exhibit 1 and the licensed configuration on file as authorized by ESRI.

## 38. SOFTWARE WARRANTY AND DISCLAIMERS

Delete in its entirety the Data Disclaimer subsection and incorporate the following Data and Web Services Disclaimer, and incorporate the following new Disclaimers:

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- h. Licensee shall not unbundle individual or component parts of the Software or Data for independent use.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030700-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.

COMMONWEALTH OF VIRGINIA  
(State or Commonwealth or VITA)

By: George S. Goodman, Jr.

Name: George S. Goodman, Jr.

Title: Senior IT Sourcing Consultant

Date: 9-11-07

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(ESRI)

By: Laura Dangermond

Name: LAURA DANGERMOND  
VICE PRESIDENT

Title: \_\_\_\_\_

Date: SEP 06 2007



**EXHIBIT 1  
SCOPE OF USE  
(E300 5/07B)**

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

The scope of use for each ESRI Software identified below is described in the applicable footnotes listed in parentheses.

**Desktop GIS**

- ArcReader (1 and 20)
- ArcView (either 1, 2, or 6 and 17)
- ArcEditor (either 1, 2, or 6 and 17 and 26)
- ArcInfo (either 2 or 6 and 17, and 26)
- ArcGIS Desktop Extensions (7)
- ArcView 3.x and Extensions (1, 7, and 17)

**Server GIS**

- ArcGIS Server and Extensions
  - Workgroup (either 3, 5, or 6 and 7, 8, 9, 28, 29, 30, 32, 38, 39, and 40)
  - Enterprise (3, 4, 5, or 6 and 7, 8, 9, 27, 31, 38, 39, and 40)
- ArcIMS
  - ArcIMS and Extensions (either 3, 4, 5, or 6 and 7, 8, 10, and 31)
  - ArcIMS ArcMap Server (either 3, 4, 5, or 6 and 31)
- Tracking Server (5 and 31)
- ArcGIS Image Server and Extensions (either 3, 4, 5, or 6 and 7, 8, 31, 41, and 42)
- RouteMAP IMS (either 3, 4, or 5 and 8, 15, and 31)

**Mobile GIS**

- ArcPad (1, 12, and 13)
- ArcPad Application Builder (1)
- ArcGIS Mobile ADF Application Deployments (1, 15, and 16)

**Developer GIS**

- ESRI Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 33, 34, 35, and 36)
- ArcGIS Engine Developer Kit (either 1 or 6 and 14, 15, 22 and 43)
  - Extensions (7)
- ArcGIS Engine Runtime (1, 15, and 22)
  - Extensions (7)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)

- NetEngine (1, 5, and 15)
- NetEngine Internet (5)

**GIS Viewers and Connectors**

- ArcExplorer—Java and Windows Editions (1 and 20)
- ArcGIS Explorer (1 and 20)
- ArcGIS For AutoCAD (1 and 20)

**Business GIS**

- ArcGIS Business Analyst (either 1 or 2)
- ArcView Business Analyst (1)
- ArcLogistics Route (either 1 or 2 and 11)
- BusinessMAP (1)

**Cartographic Production**

- Maplex (1)
- Military Overlay Editor (1)
- Production Line Tool Set (PLTS) for ArcGIS, GIS Data ReViewer, Job Tracking for ArcGIS (JTX) (either 1 or 2), Job Tracking for ArcGIS Server (either 4 or 5 and 7)

**Web Services**

- ArcGIS Online (6, 25, 33, 34, and 35)
- ArcWeb Services (6, 16, 25, and 36)

**Data**

- ESRI Map Data (either 1 or 5 and 23 and 37)
- Demographic Data (either 1 or 5)
  - CommunityInfo
  - Retail Marketplace
  - Consumer Expenditure
- Community Tapestry Data
  - For Appending to Customer Records (6 and 21)
  - For Area Profiles (either 1 or 2 and 21)
- Community Coder (6 and 21)
- *Sourcebook•America* (1)
- Portfolio Product Suite (1)
- ArcGIS Data Appliance (6, 23, and 25)
- ArcGIS Data Appliance (Server Bundle) (6, 23, and 25)
- ArcGIS Data Appliance (Data Only) (6, 23, and 25)

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29. Can only be used with SQL Server 2005 Express.
30. Restricted to a maximum total of four (4) gigabytes of data.
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32. No redundant Software installation is permitted.
33. ArcGIS Online may only be utilized in conjunction with ArcGIS Desktop Software and ArcGIS Explorer Software.
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36. Licensee may not download or store resulting data or information except for results derived from using ArcWeb Services Address Manager.
37. Data provided with StreetMap may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or calculating an alternate route if a turn is missed.
38. ArcGIS Server 3 D extension included with ArcGIS Server (Workgroup or Enterprise) Standard and Advanced 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. ArcGIS Server 3D Extension can be used with ArcGIS Server Advanced if the additional license fees for the 3D extension have been paid.

39. Any editing functionality included with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) are permitted for use only with ArcGIS Server Advanced.
41. ArcGIS Image Server Seamline and Orthorectification extensions, included with ArcGIS Image Server, can only be used with ArcGIS Image Server if the additional license fees for the extensions have been paid.
42. Licensee has the right to one (1) desktop deployment of the ArcGIS Image Server Service Editor for every two sockets of ArcGIS Image Server licensed. Additional Service Editor desktop deployments can be licensed for an additional fee. Licensee has the right to use the Seamline and Orthorectification extensions with the desktop deployment of Service Editor, provided the appropriate Seamline and Orthorectification Extension license fees have been paid. Licensee must have a separate license of the Seamline and Orthorectification extensions for each additional Service Editor Deployment.
43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the Engine Runtime Software.



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

**MODIFICATION NO. 5  
TO  
CONTRACT VA-030700-ESRI  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.  
ESRI Agreement No. 2003MPA2064**

This MODIFICATION NO. 5 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency) and ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., hereinafter referred to as "ESRI" or "Contractor", relating to the modification of Contract VA-030700-ESRI, as amended. This Modification No. 5 is hereby incorporated into and made an integral part of Contract VA-030700-ESRI.

The purpose of Modification No. 5 is to update Contract pricing and renew the agreement for another twelve months from September 12, 2006 through September 11, 2007.

Both parties agree to replace Contract Attachment A--Software Pricing in its entirety per Contract Section Nos. 25 and 29 with Attachment A, dated 8/15/06, attached hereto and incorporated herein, entitled Software Pricing. All Price List(s) previously incorporated into the Agreement are hereby deleted and made null and void.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030700-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.

COMMONWEALTH OF VIRGINIA  
(State or Commonwealth or VITA)

By: George S. Goodman, Jr.

Name: George S. Goodman, Jr.

Title: Senior IT Sourcing Consultant

Date: 9-11-06

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(ESRI)

By: Laura Dangermond

Name: LAURA DANGERMOND  
VICE PRESIDENT

Title: \_\_\_\_\_

Date: SEP 13 2006



## COMMONWEALTH *of* VIRGINIA

CIO of the Commonwealth  
Email: lem.stewart@vita.virginia.gov  
Lemuel C. Stewart, Jr.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY  
110 S. Seventh Street  
Richmond, Virginia 23219  
(804) 371-5000

TDD VOICE -TEL. NO.  
711

August 3, 2006

**VIA EMAIL:** [SBealer@ESRI.com](mailto:SBealer@ESRI.com)

**TO: Sheron Bealer**  
**Environmental Systems Research Institute, Inc.**

**RE: VA-030700-ESRI**

Please consider this correspondence your notification of the Commonwealth's extension of the above referenced contract, in accordance with the Terms of the agreement.

The expiration of the agreement is now extended to September 11, 2007.

Regards,



John Tackley  
On behalf of the  
Commonwealth of Virginia  
Richmond, VA  
2006.08.03 11:20:28  
-04'00'

John Tackley  
Supply Chain Management

c: contract file; Laura Dangermond



**MODIFICATION NO. 3  
TO  
CONTRACT VA-030700-ESRI  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.  
ESRI Agreement No. 2003MPA2064**

This MODIFICATION NO. 3 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency) and ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., hereinafter referred to as "ESRI" or "Contractor", relating to the modification of Contract VA-030700-ESRI, as amended. This Modification No. 3 is hereby incorporated into and made an integral part of Contract VA-030700-ESRI.

The purpose of Modification No. 3 is to update Contract pricing

Both parties agree to replace Contract Attachment A—Software Pricing in its entirety per Contract Section Nos. 25 and 29 with Attachment A, dated 3/7/06, attached hereto and incorporated herein, entitled Software Pricing. All Price List(s) previously incorporated into the Agreement are hereby deleted and made null and void.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030700-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.

COMMONWEALTH OF VIRGINIA  
(State or Commonwealth or VITA)

By: George S. Goodman, Jr.

Name: George S. Goodman, Jr.

Title: Senior IT Sourcing Consultant

Date: May 1, 2006

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(ESRI)

By: Laura Dangermond

Name: LAURA DANGERMOND  
VICE PRESIDENT

Title: \_\_\_\_\_

Date: MAY 17 2006



**MODIFICATION NO. 2  
TO  
CONTRACT VA-030700-ESRI  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.  
ESRI Agreement No. 2003MPA2064**

This MODIFICATION NO. 2 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency) and ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., hereinafter referred to as "ESRI" or "Contractor", relating to the modification of Contract VA-030700-ESRI, as amended. This Modification No. 2 is hereby incorporated into and made an integral part of Contract VA-030700-ESRI.

The purpose of Modification No. 2 is to update Contract pricing, Contractor's Scope of Use document and to exercise the Commonwealth's option to extend the Contract Term by one (1) year, from 9/12/05 through 9/11/06 (Reference Section No. 30 of the Contract).

Both parties agree to replace Contract Attachment A—Software Pricing in its entirety per Contract Section Nos. 25 and 29 with Attachment A, dated 08/31/05, attached hereto and incorporated herein, entitled Software Pricing. All Price List(s) previously incorporated into the Agreement are hereby deleted and made null and void.

Both parties agree to replace in its entirety the Contract "Scope of Use" document with Exhibit 1, entitled Scope of Use (E300 8/03) with the updated version of E300 dated 9/05B, and add Addendum to the General License Terms and Conditions for Limited Term ESRI Developer Network Subscription (E211B 5/05); both documents are attached hereto and incorporated herein. All previously incorporated Scope of Use documents are hereby deleted and made null and void.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030700-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.

COMMONWEALTH OF VIRGINIA  
(State or Commonwealth or VITA)

By: George S. Goodman, Jr.  
Name: George S. Goodman, Jr.  
Title: Senior IT Sourcing Consultant  
Date: October 27, 2005

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(ESRI)

By: Laura Dangermond  
Name: LAURA DANGERMOND  
Title: Vice President  
Date: OCT 20 2005

**ATTACHMENT A  
TO  
CONTRACT VA-030700-ESRI**

**Rate Schedule**

This Attachment "A" is hereby incorporated into and made an integral part of Agreement VA--030700-ESRI between ESRI and the Commonwealth of Virginia. All other Price List(s) previously incorporated into the Agreement are hereby deleted and made null and void.



**EXHIBIT 1  
SCOPE OF USE  
(E300 9/05B)**

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

The scope of use for each ESRI Software identified below is described in the applicable footnotes listed in parentheses.

**Desktop Software**

- ArcGIS Desktop
  - ArcReader (1 and 18)
  - ArcView (1, 2, 6, and 14)
  - ArcEditor (1, 2, 6, and 14)
  - ArcInfo (2, 6, and 14)
  - ArcInfo Workstation Extensions (2 and 6)
  - ArcGIS Desktop Extensions (1, 2, and 6)
- Production Line Tool Set for ArcGIS (PLTS); GIS Data ReViewer; Job Tracking for ArcGIS (1 and 2)
- ArcView GIS 3.x
  - ArcView and Extensions (1)
- ArcPad (1, 9, and 10)
- ArcPad StreetMap (1, 9, and 19)
- ArcLogistics Route (1 and 8)
- BusinessMAP (1)
- Maplex (1)
- MOLE (1)
- ArcExplorer (1 and 18)
- Data Sets (1)

**Server Software**

- ArcGIS Server
  - ArcGIS Server Base License (3, 5, 7, and 22)
  - Extensions (3, 6, 7, and 22)
- ArcSDE
  - ArcSDE Application and Connection Server (3, 5, 7, 17, and 22)
  - ArcSDE for Coverages (3, 5, 7, 17, and 22)
  - ArcSDE Client Access (2, 17, and 22)
  - ArcSDE CAD Client (2, 17, and 22)
- ArcIMS
  - ArcIMS and Extensions (3, 5, 6, 7, 12, and 22)
  - ArcIMS ArcMap Server (3, 5, 7, 12, and 22)
  - RouteMap IMS (3, 5, 7, 12, and 22)

- Tracking Server (7 and 22)
- ESRI Image Server
  - ESRI Image Server Base License (3, 5, 7, and 22)
  - Extensions (3, 6, 7, and 22)

**Developer Software**

- ArcGIS Schematics SDK (1, 4, 12, and 15)
- ArcGIS Engine
  - ArcGIS Engine Developer Kit (1, 12, and 21)
  - ArcGIS Engine Runtime (1, 12, and 21)
  - Extensions (1, 6, 12, and 21)
- MOLE SDK (1, 4, and 12)
- ArcPad Application Builder (1)
- MapObjects—Windows Edition (1, 4, 11, 12, and 15)
- MapObjects—Java Edition (1, 3, 4, 5, 7, 12, 15, 16, and 22)
- MapObjects LT (1, 4, 11, and 12)
- NetEngine (1, 5, and 12)
- NetEngine Internet (3, 5, and 13)
- Geocoding Development Kit (1)

**ESRI Software, Data, and Documentation**

- ArcGIS Business Analyst (1, 2, and 20)
- ArcView Business Analyst (1 and 20)
- Demographic Data (1 and 20)
  - CommunityInfo
  - Retail Marketplace
  - Consumer Expenditure
- Community Tapestry Data (1 and 20)
- Third Party Data (1 and 20)
- Community Coder (1 and 20)
- Sourcebook America (included with ArcReader) (1, 18, and 20)
- Portfolio
  - Allocate (1 and 20)
  - Solocast (1 and 20)

1. "Single use license" means a license must be dedicated for each computer or network access point that has use rights for the Software, Data, or Documentation. Licensee may make a second copy for Licensee's exclusive use on a portable computer so long as only one (1) copy of the Software, Data, and Documentation is in use at any one time.
2. "Concurrent use license" means a license that permits execution of the Software on any computer on the network. The number of simultaneous/concurrent users may be controlled by a License Manager to access and use the Software, Data, or Documentation.
3. "Server license" means a license for (server-side) Software that (i) resides on a server computer and provides services to multiple users and/or client computers in a distributed computing environment, or (ii) resides on an individual desktop computer and provides services to that computer in conjunction with ArcGIS Desktop or other Server Software. For

example, an ArcSDE direct connection with an ArcGIS Desktop application, or an ArcSDE direct connection with ArcIMS or ArcGIS Server is a server license.

4. A "Stand-alone Deployment license" grants the right to Licensee to redistribute a stand-alone application to end users, provided the application is installed on each computer on which the application is run. The Stand-alone Deployment license requires payment of redistribution or deployment fees, except for MapObjects LT.
5. A "Server Deployment license" grants the right to Licensee to redistribute an application via a network, the Internet, or Intranet to end users of the application (also known as an "Internet Redistribution license"). The Server Deployment license does not require payment of additional deployment or redistribution fees, except for MapObjects—Java Edition.
6. Extensions to Software programs follow the same scope of use as that granted for the corresponding Software programs. For example, if Licensee orders Concurrent Use ArcInfo, then any associated extension is also licensed for concurrent use or if Licensee orders an ArcGIS Server extension, that extension is also licensed for use on a server.
7. MapObjects—Java Edition and "Server Software" licenses are licensed per Server/CPU. Each Server Software license may be installed on up to 2 CPUs in one server; licenses for additional CPUs are available. Server licenses include the rights to develop, test, and deploy applications to end users via a network, the Internet, or Intranet on or from the same licensed server, provided the source and object code are not accessible to users of the application and that Licensee does not generate revenue directly by charging for access to the site or service by selling data, pay-per-view, subscription fee, or similar means by utilization of the Software. Licensee shall not use any type of development or testing licenses, including those licenses installed in a staging server environment (Staging Server licenses) to deploy applications for production use by end users. The administration tools for ArcIMS, ArcSDE, ESRI Image Server, and MapObjects—Java Edition may be copied and redistributed throughout Licensee's organization. User developed ArcGIS Server administration tools may be copied throughout Licensee's organization, but the ArcCatalog application (found in the ArcGIS Desktop (ArcView, ArcEditor, or ArcInfo) may not be copied unless part of a licensed ArcGIS Desktop installation. 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.
8. ESRI and its licensor(s) grant Licensee a nonexclusive, nontransferable, limited license to use, copy, and prepare derivative works by
  - (a) Translating "alroute.mld" (hereinafter "Dictionary") from the original text in the English language;
  - (b) Editing Geographic Data Technology (GDT) Data included within ArcLogistics Route; and
  - (c) Adding Data (owned by Licensee or others) to ArcLogistics Route Software.

The license grant is conditioned as follows:

- (a) The derivative works are for Licensee's internal use only;
- (b) ESRI and its licensor(s) retain all exclusive right, title, and interest in and benefits from the derivative works, except Data owned by Licensee or others; and
- (c) Licensee expressly waives and relinquishes any and all ownership including, but not limited to, copyright, moral rights, or any other statutory or common law claims to the derivative works, except for Data owned by Licensee or others.

Licensee shall not translate, modify, or edit in any way the software name "ArcLogistics Route," software logo, any third party software, any text other than the Dictionary, or any Data other than GDT's.

The amount of Data used by Licensee is limited by Data credits purchased. Additional license fees are required if ArcLogistics Route with Data is to be accessed by more than one (1) ArcLogistics Route license.

9. ArcPad SOFTWARE IS NOT LICENSED FOR NAVIGATIONAL USE.
10. This is a "Dual Use License," meaning the Software may be installed on a desktop computer and may be used simultaneously with either a Personal Digital Assistant (PDA) or handheld mobile computer provided that the Software is only used by a single individual at any one (1) time.
11. Licensee shall not redistribute or disclose the MapObjects developer license file (\*.lic). Developers must attribute as follows: "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. U.S. Patent No. 5,710,835."

12. Redistribution rights for standard or Internet application(s) may be subject to payment of additional license fees. Other restrictions notwithstanding, Licensee may redistribute commercial applications to its sublicensee(s) provided Licensee uses a written sublicense agreement that protects ESRI's rights in its Software, Data, and Documentation to the same extent as the ESRI License Agreement, and that includes the following terms, as a minimum:
  - (a) Sublicensee may not reverse engineer, decompile, or disassemble the ESRI Software, Data, or Documentation, except to the extent permitted by applicable law, copy for commercial use, transfer, or assign its rights under the license grant; and
  - (b) Sublicensee may not use any ESRI Software, Data, or Documentation, in whole or in part, separate from Licensee's executable application.
  - (c) Third party dependent or required components are redistributable subject to permission from the owner or author.
13. Subject to an annual renewal fee.
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15. The Redistribution Stand-alone (or Deployment) license is per application per computer. For MapObjects—Windows Edition, Internet or Intranet Deployment requires an ArcIMS Internet Deployment License. Except for ArcIMS licenses, one (1) Internet Deployment license is required for each ArcIMS server/CPU that runs Web mapping applications built with MapObjects—Windows Edition. For MapObjects—Java Edition, Internet or Intranet Deployment requires a MapObjects—Java Internet Deployment License. An application upgrade is not a redeployment as long as it uses the same major revision of ArcGIS Schematics SDK, MapObjects—Windows Edition, or MapObjects—Java Edition.
16. The MapObjects—Java Edition contains Java Archive (JAR) files, which indicate they are authentic ESRI-certificated files when used over the Internet. Any Licensee certificate placed on the modified "re-jarred" files cannot reference ESRI as a source of trusted content. In addition to any other rights and restrictions in the Agreement, Licensee may use the MapObjects—Java Edition on a single computer to
  - (a) Build applet(s) that are used only as an internal component in end user interfaces, and to copy the applet(s) to additional computers (e.g., Web Server) from which Licensee may deploy the applet(s) to end users via download in the course of browsing or interacting with Licensee's Web pages. End user redistribution of the applet(s) is not allowed; and
  - (b) Build stand-alone Java Applications. Licensee may deploy the Java class ESRI certificated libraries as an integral part of Licensee's application(s); and
  - (c) Build servlets and/or Enterprise JavaBeans with MapObjects—Java components, requiring a MapObjects—Java Internet Deployment License for each server configuration; and
  - (d) Distribute MapObjects Java applets, provided (i) Licensee's Web pages or software application(s) is targeted at end users and not as a development tool; (ii) Licensee does not use ESRI's name, logos, or trademark to market Licensee's Web pages or application(s); and (iii) Licensee includes a valid Licensee copyright notice on Licensee's Web pages and software application(s).
17. ArcSDE is licensed on a Server/CPU basis and on a one-to-one basis with a relational database. Licensee may run ArcSDE on a Server to connect to a DBMS, or may connect directly to a DBMS by running ArcSDE on an individual desktop computer. Each ArcSDE Server license permits multiple ArcSDE instances on one (1) server or one (1) desktop computer if Licensee has multiple database instances on the corresponding database Server. Licensee may not connect to more than one (1) database server with an ArcSDE license. ArcSDE for Coverages is licensed only in conjunction with ArcView, ArcEditor, or ArcInfo concurrent use licenses, or ArcSDE Server or ArcIMS Server licenses. Licensee may reproduce and redistribute ArcSDE for Coverages for its internal use.
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- (d) There is no charge or fee attributable to the use of the ArcReader or ArcExplorer Software; and
  - (e) Sourcebook America may not be redistributed.
19. Data provided with ArcPad StreetMap may be used for mapping, geocoding, and routing purposes but may not be used for dynamic routing purposes. Dynamic routing or "real-time guidance" is predictive routing and is not included in the ArcPad StreetMap functionality. For instance, ArcPad StreetMap may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or calculating an alternate route if a turn is missed.
20. Notwithstanding the Term and Termination provision of the General License Terms and Conditions, Tapestry and Community Coder are term licenses. ESRI Software, Data, and Documentation shall be subject to the Permitted Uses and Uses Not Permitted described below

"Permitted Uses:

- (a) Licensee is granted permission to include resultant maps, reports, or other data output derived from ESRI Software, Data, and Documentation only as part of Licensee's value-added products and/or services (e.g., Licensee's client reports, presentation packages, marketing studies, etc.) to current or prospective clients, so long as the resultant maps, reports, or other data output derived from ESRI Software, Data, and Documentation comprises less than twenty percent (20%) of the total value of the Licensee's client reports, presentation packages, or marketing studies.
- (b) If Licensee orders a license for ArcGIS Business Analyst with a subset of the national data set (i.e., Region, State, Local), Licensee may use only the licensed subset, and may not use any other portion of the national data set.

Uses Not Permitted:

- (a) Licensee shall not sell; rent; lease; sublicense; lend; assign; time-share; or act as a service bureau or Application Service Provider (ASP) of full, complete, stand-alone reports, maps, or data output created from ESRI Software, Data, and Documentation without first entering into an appropriate reseller-type agreement with ESRI.
  - (b) Unless Licensee has separately licensed a copy of Community Coder, or ESRI Data that permits appending of the Community Tapestry market segmentation system codes ("Tapestry Codes"), Licensee shall not use the ESRI Data to assign or append Tapestry Codes to addresses or geographical data not included with ESRI Software, Data, and Documentation. If Licensee is granted the right to assign Tapestry Codes to Licensee's own files or records (i.e., profiling), Tapestry Codes shall not be disclosed to or used for the benefit of third parties nor shall Licensee provide any third party with mapping, indexing or delivery services made possible through the use of the deliverables without ESRI's express written permission.
  - (c) Licensee shall not use, copy, redistribute, publicly display, broadcast, or otherwise retransmit the ESRI Software, Data, and Documentation on the Internet without first entering into an appropriate Internet/Intranet Deployment-type agreement with ESRI.
  - (d) Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the Community Tapestry market segmentation systems type of said individual's place of residence.
21. The ArcGIS Engine Developer Kit grants the right to develop an unlimited number of applications on a single computer and to deliver the applications with or without the Engine Runtime Software to end users. The ArcGIS Engine Developer Kit licenses and Engine Runtime licenses may be licensed independent of the other. Licensee shall not redistribute the Engine Developer Kit authorization file. The Engine Runtime licenses shall not be used for development of Engine applications. Internet and Server development and deployment is not permitted. 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 unlimited number of applications built from the ArcGIS Engine Developer Kit on one (1) computer. The ArcGIS Engine Runtime Extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. Developers must attribute as follows: "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. U.S. Patent No. 5,710,835."
22. Server Software may be used in logical, virtual, and "on-demand" server configurations. When counting the number of CPU licenses required for each type of server configuration, ESRI counts all the physical CPUs in a server where the Server Software is installed and/or running. In logical server configurations each Server Software license may be installed on up to two (2) CPUs in one (1) logical server. For "on-demand computing" dormant CPUs do not need to be licensed until they are activated. In virtual server configurations all CPUs in the server must be licensed.



## **ADDENDUM TO THE GENERAL LICENSE TERMS AND CONDITIONS FOR LIMITED TERM ESRI DEVELOPER NETWORK SUBSCRIPTION**

This Addendum to the General License Terms and Conditions for the Limited Term ESRI Developer Network Subscription ("Addendum") modifies the terms and conditions of the License Agreement to incorporate additional or different terms and conditions specifically for the ESRI Developer Network subscription.

### **Modification to License Agreement**

The General License Terms and Conditions (E200) are modified as follows:

**1. Article 1—Definitions**, is amended by the addition of the following definitions:

"EDN" shall mean the ESRI Developer Network.

"EDN Software Library" shall mean the Software, Data, Documentation, License Manager, ArcWeb Services, instructional materials, and any other materials made available to Licensee during the subscription period.

"EDN Website" shall mean the ESRI Web site devoted to the global community of GIS developers through which licensees may download and upload software, data, and information through peer-to-peer sharing.

"Service Pack" shall mean a Software update available to Licensee through the ESRI Support Web page as a download via the Internet or by other means.

**2. Article 4—Scope of Use**, is amended by the addition of the following **Permitted Uses**:

- Licensee may use only the type and number of copies of the Software, Data, Documentation, and ArcWeb Services included in the EDN Software Library during the subscription period for which the appropriate subscription fees have been paid to ESRI in accordance with the licensed configuration on file with ESRI Customer Service for Licensee's internal use and the terms of this Agreement.
- The Licensee may use each EDN subscription license for one (1) developer who may use the EDN Software Library and other resources of the program solely for the purposes of research, development, test, and demonstration of a prototype application to Licensee's customers and internal users for acceptance testing. There are no deployment, runtime, commercial use, or production rights granted by the EDN subscription license.
- Licensee agrees that it will order a separate EDN subscription for each individual developer who accesses the EDN Software Library and EDN Website. Licensee shall also order a separate EDN subscription for each individual developer of a consultant or contractor who requires access to the EDN Library in support of Licensee.
- Licensee may permit each authorized developer to copy and install the EDN Software Library on multiple computers for use solely by the authorized developer(s) covered by an EDN subscription provided Licensee requires the developer(s) to use the software only as permitted by this EDN subscription license.
- Licensee may use, copy, reproduce, and redistribute the Service Pack(s) as part of Licensee's application. Any other right to use, copy, reproduce, and redistribute Software, Data, and Documentation or ArcWeb Services, including updates, is subject to the grants and scope of use in the applicable ESRI license agreement for full commercial use, and use of the EDN Software Library is limited to the permitted uses in this Addendum.
- Licensee may use the EDN Software Library at one (1) location for each subscription.
- Licensee may grant access to server applications developed using the EDN Software Library to Licensee's customers and internal users for acceptance testing purposes only provided that Licensee's customers and internal users will not perform any debugging, configuration, or maintenance.

3. **Article 4—Scope of Use**, is amended by the addition of the following **Uses Not Permitted**:

- A single EDN subscription may not be shared by multiple developers or other users who do not have an EDN subscription.
  - The EDN subscription may not be used for production purposes, and does not include the right to any deployments, runtimes, or server technology for production or other commercial purposes.
  - Licensee shall not transfer or redistribute the EDN Software Library, in whole or in part, among other Licensee sites, or among other individual developers at a single site, except for other developer(s) with an EDN subscription at the site.
  - Licensee shall not publicly disclose results of benchmark testing except with prior written permission of ESRI.
4. **Article 5—Maintenance**, does not apply to the EDN subscription and Licensee shall not be entitled to standard Maintenance. Licensee shall receive updates to the EDN Software Library during the term of the subscription, but ESRI technical support is not available unless Licensee elects to order Developer Support Group technical support services (DSG Support) for the EDN Software Library products eligible for such support.
5. **Article 6—Term and Termination**, does not apply to the EDN subscription and is replaced by the Term, Termination, and Renewal provision in the General Provisions for the EDN subscription indicated below.
6. **Article 7—Limited Warranties and Disclaimers**, Section 7.1, Limited Warranties, does not apply to any sample code made available to Licensee through the EDN subscription. Section 7.3, General Disclaimer, shall apply to any sample code. THE SAMPLE CODE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OF IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SAMPLE CODE.

**ArcWeb Services Terms and Conditions for the EDN Subscription**

The Master License Agreement is modified by the addition of the following terms for ArcWeb Services included in the EDN subscription:

1. **Grant**—ESRI hereby grants a nonexclusive, nontransferable, *limited license* to the Licensee, and Licensee hereby accepts the limited license for use of the ArcWeb Service(s), including any applicable data or documentation (hereinafter referred to as "Service(s)"), up to the authorized number of credits during the ESRI Developers Network (EDN) subscription period. Such license includes the right to access the Service(s) made available on the Web site and to use the Service(s) to research, develop, test, and demonstrate prototype Web-based application development as permitted herein. ESRI reserves the right to immediately terminate this license should Licensee use the Service(s) for any use not permitted under this Agreement. Further, ESRI reserves the right to change the number of credits, specific ArcWeb Service(s), and related terms and conditions.

2. **Reservation of Ownership and Grant of License**—The Service(s) accessed pursuant to this Agreement or any other materials delivered hereunder, is proprietary to ESRI or its licensors and contains trade secrets, inclusive of unpublished specifications. All rights, title, ownership in patents, trademarks, copyrights, trade secrets, know-how, and any proprietary rights in the Service(s) remain exclusively with ESRI or its licensors. The Service(s) is protected by United States copyright laws and applicable international treaties and/or conventions. Licensee acknowledges that the Service(s) is proprietary to ESRI or its licensors.

**3. Scope of Use**

Licensee may

- a. Use the Service(s) within an internal network environment for Licensee's own internal use as described herein;
- b. Access and use any secure ESRI Web site resources made available to Licensee for Licensee's internal use only, provided that Licensee follows ESRI's terms of use policy specified therein. All password or controlled access information provided by ESRI shall be treated as ESRI confidential information;

- c. The Licensee may use each EDN subscription license for one (1) developer who may use the Service(s), and other resources of the program solely for the purposes of research, development, test, and demonstration of a prototype application to Licensee's customers and internal users. There are no deployment, runtime, commercial, server use, or production rights granted by the EDN subscription license for Web-enabled applications developed using the ArcWeb Service(s);
- d. Download and store geocoded results only when using the Service known as Address Manager; or
- e. Grant access to server applications developed using the EDN Software Library to Licensee's customers and internal users for acceptance testing purposes only provided that Licensee's customers and internal users will not perform any debugging, configuration, or maintenance.

Licensee may not

- a. Copy, download, store (except as permitted above), publish, transmit, transfer, sell, or otherwise use the Service(s) except as expressly permitted herein;
- b. Sell, lease, lend, rent, timeshare, assign, sublicense, or transfer any right to use the Service(s) to any third party without the prior express written permission of ESRI;
- c. Attempt to unlock or bypass the access code used or uncover any ESRI source code, reverse engineer, decompile, or disassemble the Service(s) for any purpose, except to the extent permitted by applicable law notwithstanding this restriction, in order to protect ESRI or its supplier(s) trade secrets and proprietary information contained in the Services;
- d. Publicly disclose results of benchmark testing except with prior written permission of ESRI;
- e. Create derivative Service(s) or add value to the Service(s) and thereafter resell or otherwise distribute the Service(s) as Licensee's own services;
- f. Reformat and display the Service(s) in an attempt to mirror or make commercial use of the ESRI Web site;
- g. Use the Service(s) for production or other commercial purposes; or
- h. Use the Service(s) beyond the EDN subscription period or carry over any credits remaining into a new EDN subscription period.

**4. Third Party Data Sets**—If the Service(s) to be used includes third party data sets owned and licensed by Geographic Data Technology, Inc. ("GDT"), TeleAtlas North America, Inc. ("TANA"), Meteorlogix, LLC ("Meteorlogix"), NAVTEQ (Navteq), MDS Data (MDS), or ESRI Italia S.p.A. (ESRI Italia), the applicable license limitations set forth in Attachment No. 1, ArcWeb Service(s) Terms and Condition for the EDN subscription, Third Party Data Sets—License Limitation, are incorporated by reference and shall apply to this license Agreement. ESRI reserves the right to modify or supplement the terms and conditions in Attachment 1 at any time as ESRI, in its sole discretion, deems necessary to comply with the third party data vendor's requirements.

**5. ArcWeb Service(s) Warranty**—THE SERVICE(S) IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE BEARS ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICE(S).

ESRI reserves the right to make any changes it deems necessary or desirable to the Service(s).

**General Provisions for the EDN Subscription**

**The following clauses are added to the Master License Agreement and are specifically applicable to the EDN Software Library and the EDN subscription:**

**1. Term, Termination, and Renewal**—The EDN subscription period and term of the license for use of the EDN Software Library is one (1) year from date of shipment or transmittal of the EDN subscription code. This license expires upon expiration of the EDN subscription, use of all permitted credits with respect to ArcWeb Services, or earlier by either party upon written notice to the other. Licensee may renew the subscription by payment of the EDN subscription fee on or before the expiration date, so long as Licensee complies with the terms of this Agreement. The license for the EDN subscription and EDN Software Library may terminate if (i) Licensee elects in writing to discontinue use of the EDN Software Library and terminates its EDN subscription or (ii) either party terminates the EDN subscription or this Agreement for a material breach that is not cured within ten (10) days of written notice to the other party, except that termination is immediate for a material breach of a nature that it is impossible to cure. No refund of the EDN subscription fee will be made for termination for the EDN subscription, except as required by a judgment of default against ESRI filed in a court of competent jurisdiction.

**2. Deinstallation upon Expiration or Termination**—ESRI may terminate this Agreement as provided in the General Provisions of the EDN subscription, Article 1, Term, Termination, and Renewal, above. Upon expiration or termination of the EDN subscription, Licensee shall uninstall, remove, and destroy the EDN Software Library and all components and all whole or partial copies, modifications, or merged portions in any form, and upon ESRI's request, certify to or provide evidence of such deinstallation or destruction to ESRI.

**3. Audit Rights**—Licensee shall maintain at Licensee's principal place of business complete and accurate business records of the use of the EDN Software Library acquired pursuant to this Agreement. ESRI shall have the right to annually inspect such records at its expense and upon reasonable notice to Licensee and provided such inspection is reasonable in scope and is non-disruptive of Licensee's operations. If an audit reveals that Licensee has used the EDN Software Library for purposes other than those permitted by the EDN subscription license terms set forth in this Agreement, then Subscriber shall pay ESRI's reasonable costs of conducting the audit, in addition to the payment of additional fees based on full use commercial license fees.

**4. Nondisclosure and Compliance with Terms of Use and Privacy Statement**—Licensee agrees that it shall not disclose any technical, business, or marketing information about or related to the EDN program to other entities involved in the development or licensing of geographic information system software, or disclose any password except to the authorized developer(s). Licensee agrees to comply with the Terms of Use Agreement and Privacy Statement posted on the EDN subscription Web site. Licensee agrees to advise each authorized developer of the rights and obligations of this Agreement and to require compliance with the terms and conditions of this Agreement.

**5. Precedence**—The terms and conditions in this Addendum shall take precedence over any conflicting terms of the Master License Agreement General Terms and Conditions and Exhibit 1, Scope of Use, with respect to the EDN Software Library and EDN subscription.

**ATTACHMENT NO. 1  
TO THE  
ArcWeb SERVICE(S) TERMS AND CONDITIONS FOR THE EDN SUBSCRIPTION  
THIRD PARTY DATA SETS—LICENSE LIMITATIONS**

1. If the Service(s) to be used includes data sets owned or licensed by Geographic Data Technology, Inc. (GDT), the following limitations shall apply:
  - a. The use of GDT Data or its derivatives is strictly prohibited in any On-board Navigation System. For the purposes of this Agreement, an "On-board Navigation System" includes at least the following components installed in or on a vehicle: (a) storage medium to store at least a portion of the GDT Data or a certain database derived there from, (b) a gyroscope, and (c) a device to detect the wheel rotation of a vehicle.
  - b. The use of GDT Data for routing capabilities is limited to a driving directions service that enables Licensee to generate multipoint driving directions between user-defined locations utilizing ESRI software accessing GDT Data.
  - c. The use of the GDT Data or its derivatives is strictly prohibited in the use of Automatic Vehicle Location (AVL). For the purposes of this Agreement, an AVL shall mean the service of locating a mobile or stationary unit with technology such as a Global Positioning System (GPS), triangulation, or a gyroscope to automatically estimate a specific point, such as a latitude/longitude, and delivering the GPS derived information and/or non-GPS derived information.
  - d. If Licensee is accessing Service(s) for Address Manager and utilize GDT Data, the following terms shall apply:
    - (i) Geocodes utilizing GDT Data may be delivered in single or batch mode.
    - (ii) GDT Data utilized in the Service(s) may be used for the purpose of returning list of geocodes.
    - (iii) Geocoded results may be downloaded and stored onto Licensee's computer for Licensee's internal business use only and only in connection with Address Manager.
  
2. If the Service(s) to be used includes data sets owned or licensed by TeleAtlas North America, Inc. (TANA), the following limitations shall apply:
  - a. Except as may otherwise be agreed to by TANA, Licensee's grant of license is for internal business or personal use only and not for transfer, distribution, or disclosure to third parties or use for the benefit of third parties.
  - b. Licensee's grant of license to use is limited to the authorized number of concurrent users, subscribers, or credits as applicable.
  - c. Licensee's use of the ArcWeb Services is limited other than while connected to ESRI's Server; other than that end user may use the results of the ArcWeb Services (e.g., batch geocoding results) for internal business or personal use only.
  - d. Licensee may not pass title to or any ownership interest in the TANA Data as contained in the ArcWeb Services from passing to any end user, Developer, or any other third party.
  - e. Licensee may not derive or attempt to derive the structure of the TANA Data as contained in the ArcWeb Services.
  - f. Except as may be permitted herein, Licensee may not duplicate (except for a single archival copy if Licensee is a Developer), reproduce, disclose, publish, distribute, or transfer any TANA Data as contained in the ArcWeb Services.
  - g. Licensee may not remove or obscure any TANA copyright, trademark notice, or restrictive legend.
  - h. If Licensee is an end user, Licensee may not modify or create any derivative works of the TANA Data or the ArcWeb Services, except Licensee may use the results of the ArcWeb Services (e.g., the shapefile of a route, but not the underlying road network) for internal business or personal use only.
  - i. TANA is a third party beneficiary of ESRI's rights under this Agreement with Licensee in order to enforce its intellectual property rights, but is not a party thereto and shall have no obligations thereunder.
  - j. Licensee acknowledges that the TANA Data as contained in the ArcWeb Services includes confidential and proprietary information and materials and may include trade secrets, and that Licensee agrees to hold the TANA Data as contained in the ArcWeb Services in confidence and in trust.
  - k. U.S. GOVERNMENT RIGHTS. If Licensee is an agency, department, or other entity of the United States Government, or funded in whole or in part by the United States Government, then use, duplication, reproduction, release, modification, disclosure, or transfer of this commercial product and accompanying documentation, is restricted in accordance with FAR 12.212 and DFARS 227.7202, and by a license agreement. Contractor/Manufacturer is Tele Atlas North America, Inc., 1605 Adams Drive, Menlo Park, California 94025;

Telephone: 650-328-3825. The TANA Data is ©1984–2003 by Tele Atlas North America, Inc., and Tele Atlas N.V. ALL RIGHTS RESERVED. For purpose of any public disclosure provision under any federal, state, or local law, it is agreed that the Products are a trade secret and a proprietary commercial product and not subject to disclosure.

1. If Licensee is an agency, department, or other entity of any State government, the United States Government or any other public entity, or funded in whole or in part by the United States Government, then Licensee hereby agrees to protect the TANA Data as contained in the ArcWeb Services from public disclosure and to consider the TANA Data as contained in the ArcWeb Services exempt from any statute, law, regulation, or code, including any Sunshine Act, Public Records Act, Freedom of Information Act, or equivalent, which permits public access and/or reproduction or use of the Products. In the event such exemption is challenged under any such laws, this Agreement shall be considered breached and any and all right to retain any copies or to use any of the TANA Data as contained in the Authorized Derivative Services shall be terminated and considered immediately null and void. Any copies of the TANA Data as contained in the Authorized ArcWeb Services held by Licensee shall immediately be destroyed. If any court of competent jurisdiction considers this clause void and unenforceable, in whole or in part, for any reason, this Agreement shall be considered terminated and null and void, in its entirety, and any and all copies of the TANA Data on the ArcWeb Services shall immediately be destroyed.

2.1 The following terms shall apply if Licensee receives TANA GB Data:

- a. All warranties of Ordnance Survey, whether express or implied, including, but not limited to, the implied warranties of noninfringement, merchantability, completeness, accuracy, and fitness for a particular purpose are hereby disclaimed and shall not apply. Licensee acknowledges that Ordnance Survey makes no warranty and gives no representation that the TANA GB Data is complete, accurate, and/or up to date and is an essential condition of this Agreement and that Licensee accepts the TANA GB Data on that basis.
- b. In no event shall ESRI, Ordnance Survey, or TANA have any liability to Licensee with respect to Licensee's use of the TANA GB Data.
- c. Licensee may not use the TANA GB Data in any printed, published form that results in products to be distributed freely or sold to the public without the prior permission of Ordnance Survey.
- d. Licensee shall indemnify Ordnance Survey from and against all claims, demands, or actions, irrespective of the nature of the cause of the claim, demand, or action alleging loss, costs, expenses, damages, or injuries (including injuries resulting from death) arising out of the use of the TANA GB Data.

2.2 The following term shall apply if Licensee receives TANA Data of Denmark:

Licensee is prohibited from using the TANA Data of Denmark to create maps within telephone books, or other products similar to telephone books (e.g., directories), including such products in digital form.

2.3 The following term shall apply if Licensee receives TANA Data of Norway:

Licensee is prohibited from using the TANA Data of Norway to create general purpose printed or digital maps, which are similar to the basic national products of the Norwegian Mapping Authority. (Any Derivative Product of the TANA Data of Norway shall be regarded as similar to the basic national products of the Norwegian Mapping Authority if such Derivative Product has a regional or national coverage, and at the same time has a content, scale, and format similar to the basic national products of the Norwegian Mapping Authority.)

2.4 When Licensee accesses TANA Data, the following additional terms shall apply:

- a. Licensee is granted the right to use the ArcWeb Services only for the purpose of creating Derivative Product(s) that shall not remove or disengage the Data from the ArcWeb Services, shall access the Data on ESRI's servers only, and for no other purpose unless otherwise agreed to by TANA.
- b. Licensee shall notify ESRI immediately if Licensee learns of any misappropriation, unauthorized use, or public disclosure of the ArcWeb Services or TANA Data and Licensee shall cooperate with ESRI's efforts to prevent such misappropriation, misuse, or public disclosure.
- c. If the ArcWeb Services, TANA Data, or any portion thereof are modified, merged, or combined into or with any software, hardware, other programs, or other data, such modifications, mergers, or combinations shall continue to be subject to the provisions of this Agreement, and TANA retains ownership of its spatial map database contained in the ArcWeb Services or Data and all such portions.

- d. In no event may Licensee translate and/or convert the Data into another data format.
  - e. In no event shall Licensee (i) extract data from the TANA Data or the ArcWeb Services in any digital, vector-based form, (ii) deliver any TANA Data in its original form to any third party, but may only combine the TANA Data with substantial added value to create the authorized ArcWeb Service(s), (iii) use the TANA Data to provide any competitive information about TANA or the TANA Data to any third parties, (iv) create Derivative Products that compete with the TANA Data, or (v) create Derivative Products other than the specific authorized ArcWeb Service(s).
  - f. Licensee may not provide access to the Data other than through the ArcWeb Services.
  - g. Licensee agrees that attributes in the TANA Data of (i) Functional Road Class, (ii) Speed Category, (iii) Access Restrictions and Conditions; (iv) Internal Intersections Links, (v) Maneuvers, (vi) Indescribable Links, (vii) Special Explication, and (viii) House Number Ranges, shall be used by the ArcWeb Services for calculation purposes only, and such attributes may not be displayed or otherwise disclosed to end users, consumers, or any third party, provided, however, that specific house numbers may be derived from House Number Ranges and displayed to end users and/or consumers to identify correlating locations satisfying search queries of such end users and/or consumers; and (ix) TANA Data attributes of Sign Text may only be displayed or otherwise revealed in connection with a specific route for which driving directions and/or route guidance is provided to an end user and/or consumer.
  - h. Licensee may not disclose, sublicense, distribute, transmit, or in any manner otherwise provide the TANA Data to Geographic Data Technology, Inc. (GDT), Geographic Data Technology Canada, Inc. (GDT Canada), and Navigation Technologies, Inc. (NavTech).
  - i. ESRI reserves the right to terminate this Agreement if Licensee violates or breaches any material term of this Agreement.
  - j. Licensee must destroy (and provide certification of such destruction) or return to ESRI all copies of the TANA Data that Licensee is in the possession or control of upon termination or expiration of this Agreement.
3. If the Service(s) to be evaluated includes data owned or licensed by Meteorlogix, the following limitation shall apply:
- Licensee may not store Meteorlogix Data for any amount of time exceeding a five (5) day period from the date of receipt of such Data.
4. **NAVTEQ Data.** If Licensee's access to Service(s) includes Third Party Data owned and provided by NAVTEQ North America LLC (NAVTEQ), then Licensee's use of NAVTEQ Data shall be subject to the following terms and conditions:

#### **General Terms**

In no event shall NAVTEQ Data be used to provide dynamic or real-time route guidance directions and/or alerts, including without limitation, derived locations pursuant to a request for roadside assistance, automatic collision notification and reporting triggered by an accident, and notification that an asset or person has breached the boundary or perimeter of a defined geographic area, or Route Optimization through the Service(s) or otherwise. For the purposes of this Addendum Route Optimization means calculating the order of destinations, way points and or routes thereto for people, devices, and or transportation means, based on availability, positioning and or routing of at least one other person, device or transportation.

In no event shall the Points of Interest data (i.e., business listings) included in any NAVTEQ Data be used for sales lead generation where sales lead generation mean an application specifically designed to generate sales lead information in the form of ASCII or other text-formatted lists of category-specific business listings which (i) originate from the NAVTEQ Data and (ii) include complete mailing addresses for each business. Sales lead generation shall not include any application permitted hereunder where mailing address or phone numbers are provided in bit map graphical images or in another no-text form.

## Canada

The following provisions apply to NAVTECH Data for the coverage area of Canada, which may include or reflect data from third party licensors, including Her Majesty the Queen in Right of Canada ("Third Party Data"):

1. **Disclaimer and Limitation:** Licensee agrees that use of the Third Party Data is subject to the following provisions:
  - (A) **DISCLAIMER: THE THIRD PARTY DATA IS LICENSED ON AN "AS IS" BASIS. THE LICENSORS OF SUCH DATA, INCLUDING HER MAJESTY THE QUEEN, MAKE NO GUARANTEES, REPRESENTATIONS OR WARRANTIES RESPECTING SUCH DATA, EITHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, EFFECTIVENESS, COMPLETENESS, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE.**
  - (B) **LIMITATION ON LIABILITY: THE THIRD PARTY DATA LICENSORS, INCLUDING HER MAJESTY THE QUEEN, SHALL NOT BE LIABLE: (i) IN RESPECT OF ANY CLAIM, DEMAND OR ACTION, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF THE CLAIM, DEMAND OR ACTION ALLEGING ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, WHICH MAY RESULT FROM THE USE OR POSSESSION OF SUCH DATA; OR (ii) IN ANY WAY FOR LOSS OF REVENUES OR CONTRACTS, OR ANY OTHER CONSEQUENTIAL LOSS OF ANY KIND RESULTING FROM ANY DEFECT IN THE DATA.**
2. **Copyright Notice:** In connection with each copy of all or any portion of the NAVTECH Data for the coverage area of Canada, Licensee shall affix in a conspicuous manner the following copyright notice on at least one of: (i) the label for the storage media of the copy; (ii) the packaging for the copy; or (iii) other materials such as user manuals or end user license agreements: **"This data includes information taken with permission from Canadian authorities, including © Her Majesty the Queen in Right of Canada, © Queen's Printer for Ontario."**
3. Licensee shall indemnify and save harmless the licensors, including Her Majesty the Queen and the Minister, and their officers, employees and agents from and against any claim, demand or action, irrespective of the nature of the cause of the claim, demand or action, alleging loss, costs, expenses, damages or injuries (including injuries resulting in death) arising out of Licensee's use or possession of the Third Party Data.

## European Supplier Terms

The following provisions apply to the NAVTECH Data for and to the extent indicated respecting any territory including any country of Europe, which may include or reflect data from third party licensors:

1. **OS Enforcement.** With respect to NAVTECH Data for the territory of Great Britain, Licensee acknowledges and agrees that the Ordnance Survey ("OS") may bring a direct action against Licensee to enforce compliance with the OS copyright notice (see Section 3 below).
2. **Traffic Codes.** The following provisions apply to the grant of license for use of NAVTECH Data that includes Traffic Codes.
  - A. **General Restrictions Applicable to Traffic Codes.** Licensee acknowledges and agrees that in certain countries of the Territory of Europe, Licensee shall be responsible for obtaining rights directly from third party RDS-TMC code providers to use the Traffic Codes in the Data and to deliver to end users information, data, applications, products and/or services in any way derived from or based on such Traffic Codes.
  - B. **Display of Third Party Rights Legend for Belgium.** Licensee shall, for each provision of information, data, applications, products and/or services that uses Traffic Codes for Belgium, provide the following notice to the End User: "Traffic Information is provided by the Ministerie van de Vlaamse Gemeenschap and the Ministère de l'Équipement et des Transports."

3. **Third Party Notices.** Any and all copies of the NAVTECH Data and/or packaging shall include the respective Third Party Notices set forth below and used as described below corresponding to the territory (or portion thereof) included in such copy:

<u>Territory</u>	<u>Notice</u>
France	<b>The following notice must appear on all copies of the Data, and may also appear on packaging:</b> "source: Géoroute® IGN France & BD Carto® IGN France"
Germany	"Die Grundlagendaten wurden mit Genehmigung der zuständigen Behörden entnommen" or "Die Grundlagendaten wurden mit Genehmigung der zustaendigen Behoerden entnommen."
Great Britain	– <u>Until 12/31/05:</u> "Based on Ordnance Survey electronic data and used with the permission of the Controller of Her Majesty's Stationary Office © Crown Copyright, 1995." – <u>After 12/31/05:</u> "Based upon Crown Copyright material."
Italy	"La Banca Dati Italiana è stata prodotta usando quale riferimento anche cartografia numerica ed al tratto prodotta e fornita dalla Regione Toscana."
Norway	"Copyright © 2000; Norwegian Mapping Authority"
Portugal	"Source: IgeoE-Portugal"
Spain	"Información geográfica propiedad del CNIG"
Sweden	"Based upon electronic data © National Land Survey Sweden."
Switzerland	"Topografische Grundlage: © Bundesamt für Landestopographie."

5. **MDS Data.** If Licensee's access to Service(s) includes Third Party Data owned and provided by MapData Sciences Pty Ltd. (MDS), Licensee's use of the MDS Data shall be subject to the following terms and conditions:

- A. ESRI reserves the right, upon ten (10) days notice to Licensee, to suspend or terminate Service(s) that include any such MDS data.
- B. Copyright notice: Copyright in all of the mapping based materials on this website and any associated websites, including but not limited to information, artwork, text, maps, images, driving directions, and pictures, derived from the Australian mapping data, (herein referred to as "Content"), is either owned by or administered by MapData Sciences Pty Ltd ("MDS") ACN 45 053 437 282 (for the purpose of this notice MDS shall include MDS, its employees, servants, and agents) for and on behalf of variously, the following:
- MapData Sciences Pty Ltd;
  - The Public Sector Mapping Agencies (PSMA)
  - State Governments of New South Wales, Victoria, Queensland, Tasmania, South Australia, and Western Australia;
  - The Territory Governments of Australian Capital Territory and Northern Territory;
  - Land Information New Zealand
  - Statistics New Zealand
- C. MDS does not warrant or make any representations regarding the accuracy, reliability, completeness, or correctness in relation to the Content presented on this website or any associated websites. Licensee accepts sole responsibility and risk associated with the use and results of information contained in this website or any associated websites.
- D. In no event shall MDS be liable for any loss or damages, including special, indirect, or consequential damages, however caused which may arise from or in connection with the use or performance of MDS Data or Materials used for this service or Content contained on this website or any associated website. Further, the State,

Territory, and Commonwealth Governments of Australia and PSMA Australia Ltd, do not make any representations or warranties about the Data acquired hereunder accuracy, reliability, completeness or suitability for any particular purpose and, to the extent permitted by law (but subject to any liability which cannot be excluded under the Trade Practices Act 1974 and equivalent State and Territory legislation), the above government bodies disclaim all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which might be incurred as a result of the Data acquired hereunder being accurate or complete in any way and for any reason.

- E. If Licensee cannot comply with or do not agree with all of the terms and conditions of the above disclaimers, do not use this website or access MDS Data.
6. **ESRI Italia.** If Licensee's access to Service(s) includes Third Party Data owned and provided by ESRI Italia S.p.A., Licensee's use of ESRI Italia data in conjunction with Service(s) known as Map Image, Address Finder, and Query is strictly prohibited in any Personal or In-Vehicle Navigation systems that use Global Positioning Systems (GPS) real time data.

**MODIFICATION #1  
CONTRACT NUMBER #VA-030700-ESRI  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC..  
ESRI AGREEMENT NO. 2003MPA2064**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth", and ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., hereinafter referred to as "ESRI" OR "Contractor", relating to Contract #VA-030700-ESRI as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #1 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #1 is to replace Attachment A – Software Pricing in its entirety per Contract Sections #25 and #29.

Both parties agree to the following:

Attachment A – Software Pricing is replaced in its entirety.

The foregoing is the complete and final expression of the parties' agreement to modify Contract #VA-030700-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.

COMMONWEALTH OF VIRGINIA

BY: *Laura Dangermond*

BY: *Timothy W. Moore*

NAME: Laura Dangermond

NAME: *Timothy W. Moore*

TITLE: Vice President

TITLE: *Sourcing Mgr*

DATE: APR 13 2004

DATE: *4/14/09*

**MASTER ORDERING AGREEMENT  
VA-030700-ESRI  
(ESRI # 2003MPA2064)  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (ESRI)**

**1. SCOPE OF CONTRACT**

This is a Master Ordering Agreement (the "Agreement" or "Contract") between the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "VITA" (Virginia Information Technologies Agency) and ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., hereinafter referred to as "ESRI" or "Contractor", a wholly owned private corporation having its principal place of business at 380 New York Street, Redlands, CA 92373-8100. This Agreement contains the Contractual terms and conditions by which the Commonwealth will establish a Master License Ordering Agreement for State Agencies, Institutions, and other public bodies as defined in Section 2.2-4301. Definitions of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users" to acquire "Software" and Software technical support and maintenance services ("Services") pursuant to the Commonwealth's Request For Proposal #2003-41, dated April 4, 2003 (the "RFP") and the Contractor's proposal, dated May 2, 2003, as amended and in response thereto. The Commonwealth's RFP, Contractor's Proposal, any previous agreements, understandings, and arrangements are hereby superseded in their entirety by this Agreement, and this Agreement constitutes the sole and entire agreement of the parties.

Upon award, all orders for Software and Services will be placed directly with the Contractor by Authorized Users.

The Virginia General Assembly passed legislation that abolishes the Department of Information Technology ("DIT") as of July 1, 2003. All activities and functions of DIT have been consolidated into a new agency that is the Virginia Information Technologies Agency ("VITA"). Therefore, for purposes of this Contract ("Agreement") all references to either the Commonwealth, or DIT, or VITA, shall have the same meaning.

**2. INTERPRETATION OF AGREEMENT / ORDER OF PRECEDENCE**

As used in this Agreement, the following words, phrases, or terms shall have the following meanings:

(a) "Software" means the actual copy of all or any portion of ESRI's proprietary geographic information system (GIS) software technology, computer software code, components, dynamic link libraries (DLLs), and programs delivered on any media, including, but not limited to, alpha, beta, prerelease, restricted version(s), or final

commercial release provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied under this Agreement.

(b) "Data" means any ESRI or third party data vendor(s) digital data set(s) including, but not limited to, geographic, vector data coordinates, raster, or associated tabular attributes in ESRI® GIS software compatible format(s) supplied under this Agreement.

(c) "Documentation" means all of the printed and digital materials including, but not limited to, user documentation, training documentation, or technical information and briefings supplied under this Agreement.

(d) "License Manager" means the nondestructive license management software program, comprised of a confidential software keycode or hardware key, which controls the distribution of the licensed number of Software copies to requesting end user(s) of Licensee.

(e) "Authorized User" means any "Public body" as defined in Section 2.2-4301. Definitions of the Virginia Public Procurement Act (VPPA) as any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in the VPPA.

(f) "Licensee" means the governmental body that has signed this Agreement or any Authorized User that places an order pursuant to this Agreement.

(g) "Services" means maintenance and technical support services to be provided as delineated herein and described under "Support" ("Support Services Brochure") at [www.esri.com](http://www.esri.com). ESRI consulting services are not included in this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) this document, consisting of Terms and Conditions labeled 1 through 51, Attachment A, entitled *Software Pricing* with Appendix 1, *ESRI Scope of Use* (E300 dated 8/03), and Appendix 2, *ESRI Client Site Training Terms and Conditions* (E207 1/02), and Attachment B entitled *Lobbying Certificate*; and (2) all executed Orders and their attachments referencing this Agreement.

The terms and conditions of this Contract take precedence over any eVA, or third party, incorporated terms and conditions.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

### **3. HEADINGS NOT CONTROLLING**

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

#### **4. APPLICABLE LAWS AND COURTS**

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

#### **5. ANTI-DISCRIMINATION**

By submitting their offers, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, Services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E)

In every Contract over \$10,000 the provisions in a. and b. below apply:

- a. During the performance of this Contract, the Contractor agrees as follows:
  - 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

- b. The Contractor will include the provisions of 1, above, in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **6. ETHICS IN PUBLIC CONTRACTING**

By submitting their offers, offerors certify that their offers are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their offer, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, Services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

## **7. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting their offers, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

## **8. DEBARMENT STATUS**

By submitting their offers, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting offers on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

## **9. ANTITRUST**

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or Services purchased or acquired by the Commonwealth of Virginia under said Contract.

## **10. PAYMENT**

### **a. To Prime Contractor:**

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All Software or Services provided under this Contract or any Order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

**b. To Subcontractors:**

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
  - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
  - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- 2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts

withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

## **11. TESTING AND INSPECTION**

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure Software and Services conform to the Documentation. However, any test/inspection conducted by the Commonwealth or any Authorized User shall not be construed to affect the timeliness of any payment(s) to be made to Contractor for any Software or Services ordered under this Agreement.

## **12. ASSIGNMENT OF CONTRACT**

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Contract shall not be assignable, in whole or in part, to any other party without VITA's written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the DIT purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on VITA's "Assignment Notice/Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the VITA Contracts Manager. Upon VITA's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Controller, VITA of the assignment and shall supply the Controller, with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment.

In the event VITA receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Contract, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty (30) days after VITA's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Acquisition Services Directorate (ASD) of VITA shall promptly notify the Contractor of any assignment notice it receives.

## **13. MODIFICATIONS**

This Contract may be modified in accordance with 2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below, or their authorized designee. No modifications to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or

provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any Contract or Order issued on a firm fixed price basis may not be increased more than twenty five percent (25%) of \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

Authorized Representatives:

Commonwealth of Virginia:  
Contracts Manager  
Dept. of Information Technology  
Richmond Plaza Bldg., Lobby Level  
110 South 7th Street  
Richmond, VA 23219-3931  
[contracts@dit.state.va.us](mailto:contracts@dit.state.va.us)

Contractor:  
ESRI  
ATTN: Laura Dangermond, VP  
380 New York Street  
Redlands, CA 92373-8100  
[ldangermond@esri.com](mailto:ldangermond@esri.com)

Authorized Representative for Legal/Administrative Notice(s):

Contractor:  
ESRI  
ATTN: Sheron Bealer, Contracts Mgr  
380 New York Street  
Redlands, CA 92373-8100  
[sbealer@esri.com](mailto:sbealer@esri.com)

#### **14. TAXES**

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

#### **15. TRANSPORTATION AND PACKAGING**

By submitting their offer, all offerors certify and warrant that the pricing includes shipping and handling and is offered for F.O.B. destination. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

## **16. INSURANCE**

By signing and submitting a proposal under this solicitation, the offeror or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The offeror or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

### **INSURANCE COVERAGES AND LIMITS REQUIRED:**

- a. Worker's Compensation - Statutory requirements and benefits.
- b. Employers Liability - \$100,000.
- c. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Software and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

## **17. ANNOUNCEMENT OF AWARD**

Upon the award or the announcement of the decision to award a contract as a result of this solicitation, ASD will publicly post such notice on its website at <http://asd.state.va.us/> for a minimum of ten (10) days. Additionally, a public posting of the award will be available on the eVA webpage at <http://awards.dgs.state.va.us/Award-View.asp>.

## **18. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

## **19. NONDISCRIMINATION OF CONTRACTORS**

An offeror or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, Services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, Services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, Services, or disbursements from an alternative provider.

## **20. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or Services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

Effective until July 1, 2003, the Commonwealth will direct AMS not to invoice for the 1% transaction fee for orders issued during the period July 1, 2002, through June 30, 2003, to allow additional time for vendors to become electronically enabled. AMS will continue to invoice for transaction fees accrued prior to July 1, 2002. To enable vendors to analyze the future impact of transaction fees, AMS will issue "no pay" invoices for transaction fees that would normally accrue during the period of July 1, 2002, through June 30, 2003. For contracts that extend beyond June 30, 2003, contractors may request price adjustments to incorporate the eVA transaction fee, as provided in the Price Escalation/De-escalation clause in the Terms and Conditions of the contract.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

### **eVA BUSINESS-TO-GOVERNMENT CONTRACTS**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

Vendors desiring to provide goods and/or Services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from [www.eva.state.va.us](http://www.eva.state.va.us). AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.

b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from [www.eva.state.va.us](http://www.eva.state.va.us).

### **21. BREACH**

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Software or Service available by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required Service within the time

limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within fifteen (15) days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Software or Services. All shipping and handling costs for return of Software shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

## **22. TERMINATION FOR CONVENIENCE**

The Commonwealth may terminate this Contract in whole or in part, for Convenience at any time by submitting to the Contractor, a writing, sixty (60) days prior to the date of termination. The Commonwealth shall be obligated for all outstanding Orders, as per Contract, subsequent to this termination. The Commonwealth shall not be obligated for any other costs in the event of Termination for Convenience.

## **23. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS**

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor as to Software performance.

## **24. DELIVERY DATE**

The Contractor shall deliver the Software by the delivery date specified in any executed Order referencing the Agreement or within seven (7) calendar days After Receipt of the Order (ARO) if no date is specified. If delivery of Software is not completed within the time specified, the Commonwealth or an Authorized User may cancel the Order without further obligation. The Commonwealth or an Authorized User may postpone any

delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

## **25. AVAILABILITY OF SOFTWARE / PRODUCT OFFERINGS**

Contractor may, at its sole discretion, discontinue offering any Software, Data, other product, or Service included in this Agreement at any time upon thirty (30) calendar days written notice being provided to the Contracts Manager, VITA.

At any time, at its sole discretion, Contractor may offer new Software, Services, Data, Documentation, or larger quantity discount pricing for consideration by the Commonwealth by providing a thirty (30) calendar day written notice to the Contracts Manager, VITA. Contractor may require additional license terms prior to use of new Software or Data. Upon mutual agreement, this Contract shall be modified to reflect the addition of such new Software, Services, Data, Documentation, or larger quantity discount pricing as proposed by Contractor.

## **26. SOFTWARE CONDITION**

All Software to be supplied by Contractor shall be new.

## **27. INTELLECTUAL PROPERTY INDEMNIFICATION**

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any Software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of Software furnished hereunder with any Software not supplied by the Contractor.

If any Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide non-infringing substitutes

that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Software or Service.

If a Licensed Work is held to infringe and use of such Licensed Work is enjoined, or if in Contractor's opinion a Licensed Work is likely to become the subject of infringement, then the Commonwealth will permit Contractor, at Contractor's option and expense, to: (a) procure for Customer the right to continue to use such Licensed Work, or (b) replace or modify such Licensed Work so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) upon Customer's return of such infringing Licensed Work, refund to Customer the consideration paid for such Licensed Work, less one percent (1%) of the total paid for each month or use by the Commonwealth, whereupon Contractor's continued liability to Customer will cease.

## **28. NON-APPROPRIATION**

All funds for payment of Software or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth or an Authorized User may cancel an Order for Software or Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate the Orders for such purchases that are dependent on such federal funds without further obligation.

## **29. PRICE PROTECTION/ADJUSTMENTS**

The State will not pay any additional costs or higher pricing above those provided for in Schedule A, attached hereto and incorporated herein, entitled "*Software Pricing*" (ESRI MPA Price List E404, State of Virginia, 09/08/03). In no event may the amount of any Order under this Agreement, without adequate consideration, be increased for any purpose.

At its sole discretion, Contractor may change or discontinue sales and support of any Contract Software or Service, at any time, with thirty (30) days prior written notice to the Contracts Manager, VITA by email to [contracts@vita.virginia.gov](mailto:contracts@vita.virginia.gov).

Any price decrease effectuated during any Contract term shall be passed on to the Commonwealth. This decrease will become effective upon the completion of written Contract modification, which includes a pricing update to Attachment A (containing such a price decrease) that the Contractor issues to the Commonwealth.

### **30. TERM**

This Agreement shall take effect on the date of its final execution by both parties, and continue for two (2) years, "initial Term". The Commonwealth at its sole discretion may extend this Agreement for three (3) additional one (1) year periods, provided that total orders for new and additional Software licenses and training services under this Agreement exceed fifty thousand dollars (\$50,000) per year, or one hundred thousand dollars (\$100,000) for any two (2)-year period. The Commonwealth will issue a written notification to the Contractor stating the extension period, thirty (30) calendar days prior to the expiration of any current Term or option periods.

### **31. CONTRACTUAL RECORDS**

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of three (3) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all Orders, invoices or correspondence directly relating to this agreement.

In no event shall the Commonwealth or its agents have the right to audit ESRI's overhead, G&A and profits for the Software or Services offered under this Agreement.

### **32. LIMITATION OF LIABILITY**

To the maximum extent permitted by applicable law, the Contractor's liability under this Contract for loss or damages to government property (excluding databases not subject to a reasonable backup program) caused by use of any defective or deficient Software supplies, Software, and/or Services delivered under this Contract shall not exceed the greater of \$3 million or two (2) times the amount of money paid to the Contractor under this Contract during the twelve (12) month period preceding the event or circumstance giving rise to such liability. The Contractor will not be liable under this Contract for any indirect, incidental, special, or consequential damages, including without limitation damages from loss of profits, revenue, savings, data or use of the supplies, Software, equipment and/or Services delivered under this Contract, arising out of the Commonwealth's use or inability to use the Contractor's Software and/or Services provided hereunder, even if the Contractor has been advised of the possibility of such damages. The first sentence above, will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or gross negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement. Contractor's liability for damages under this Contract for costs of procurement of substitute goods shall not exceed the amounts actually paid by the Commonwealth for the Software or Services for which the substitute is acquired.

### **33. CONTRACTUAL DISPUTES**

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Virginia Information Technologies Agency, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the Software or Services identified in the Appendices to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or technical support Services hereunder, unless a court of competent jurisdiction directs either party to do so.

### **34. CREDITS**

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

### **35. TITLE (SOFTWARE DATA AND DOCUMENTATION)**

The Contractor represents and warrants that it is the owner of the Software Data and Documentation or, if not the owner, has received all proper authorizations from the owner to license the Software Data and Documentation, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the Software product is of original development, and that the package and its use

will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person. The Commonwealth's remedy for any breach of the representations and warranties of this paragraph are as provided in Paragraph 27, *Intellectual Property Indemnification*.

## **GRANT OF LICENSE**

In consideration of the mutual promises and covenants provided herein and for other good and valuable consideration, and conditioned upon compliance with all of the terms and conditions set forth in the Agreement including, but not limited to, Section 45, *Commonwealth's Rights to Computer Software*, Contractor grants to Licensee a personal, nonexclusive, nontransferable license to:

- (a) Use the Software, Data, and Documentation as a single package for Licensee's own internal use only; and
- (b) Access and use any secure ESRI Web site resources made available to Licensee for Licensee's internal use only, provided that Licensee follows ESRI's terms of use policy specified therein. All password or controlled access information provided by ESRI shall be treated as ESRI confidential information.

## **36. TERM OF SOFTWARE LICENSE**

Except for term licenses, all licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis and shall commence upon the delivery of the Software by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. Upon termination of this Agreement, an Authorized User shall uninstall, remove, and destroy all Software, Data, and Documentation, and any whole or partial copies, modifications, or merged portions in any form and execute and deliver evidence of such destruction to Contractor, which evidence shall be in a form acceptable to Contractor. All licenses granted to any Authorized User of this Agreement are for the use of the Software Product at the computing facilities of any Authorized User at the sites identified in any executed Attachment or Order referencing this Agreement. Except for term licenses, this license is perpetual and, except for an order by a court of competent jurisdiction, in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any perpetual license provided hereunder.

License Survival – Upon voluntary termination of this Agreement for the convenience of the Commonwealth or the expiration of this Agreement, the Commonwealth or an Authorized User may continue to retain and use such licensed Software, Data, and Documentation in accordance with the Contractor's General License Terms and Conditions; Scope of Use (Appendix 1 to Attachment A); and any other license terms contained herein. Licensee may then directly and separately contract for Software updates, maintenance, and/or technical support service.

### **37. CONTRACTOR'S WARRANTY/CUSTOMER SERVICE POINT-OF-CONTACT**

The Contractor shall provide the Commonwealth with designated points-of-contact and make arrangements to enable its Warranty/Customer Service representatives to receive such notification to permit the Commonwealth to make such contact.

### **38. SOFTWARE WARRANTY AND DISCLAIMERS**

**Limited Warranty** – For a period of ninety (90) days from the later of the date of keycode issuance or date of delivery of the Software, Data, or Documentation to Licensee, Contractor represents and warrants that (i) the unmodified Software will substantially conform to the Contractor's published Documentation and (ii) the media upon which the Software, Data, and Documentation is provided will be free from defects in materials and workmanship under normal use and service.

**Data Disclaimer** – If included under this Agreement, the Data has been obtained from sources believed to be reliable, but its accuracy and completeness are not guaranteed. The Data may contain some nonconformities, defects, errors, or omissions. CONTRACTOR AND ITS LICENSOR(S) MAKE NO WARRANTY WITH RESPECT TO THE DATA. Without limiting the generality of the preceding sentence, Contractor and its licensor(s) do not warrant that the Data will meet Licensee's needs or expectations, the use of the Data will be uninterrupted, or that all nonconformities can or will be corrected. Contractor and its licensor(s) are not inviting reliance on this Data, and Licensee should always verify actual Data including, but not limited to, map, spatial, raster, and tabular information.

**General Disclaimer** – EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, CONTRACTOR 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, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. CONTRACTOR DOES NOT WARRANT THAT THE SOFTWARE, DATA, OR DOCUMENTATION WILL MEET AN AUTHORIZED USER'S NEEDS, OR THAT THE AUTHORIZED USER'S OPERATION OF THE SAME WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED.

THE AUTHORIZED USER/LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT BETA AND EVALUATION SOFTWARE IS DELIVERED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. THE AUTHORIZED USER ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE BETA AND EVALUATION SOFTWARE.

**Exclusive Remedy** — An Authorized User's/Licensee's exclusive remedy and Contractor's entire liability for breach of the limited warranties set forth in this section entitled Software Warranty shall be limited, at Contractor's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a work-around for the Software subject to the Contractor's Support Services Policy; or (iii) return of the license fees paid by an Authorized User/Licensee for the Software, Data, or Documentation that does not meet Contractor's Limited Warranty, provided that the Authorized User/Licensee uninstalls, removes, and destroys all copies of the Software, Data, or Documentation and executes and delivers to Contractor a Certification of Destruction in a form acceptable to Contractor.

### **39. WARRANTY AGAINST DISABLING CODES**

Contractor represents and warrants to the Commonwealth that Contractor does not employ the use of any virus, worm, trapdoor, or backdoor (hereinafter collectively referred to as "Disabling Codes") in the Software that would otherwise intentionally cause the Software to become incapable of being used in the manner in which it was designed or intended; or damage, destroy, or erase an Authorized User/Licensee's data due to the remote activation or implementation of said Disabling Codes by Contractor. However, certain Software does contain a nondestructive, license management software program that administers and controls the distribution of the licensed copies of the Software to Authorized User(s) through the use of a software keycode or hardware key.

### **40. PERIODIC PROGRESS REPORTS/INVOICES**

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the offeror will include a section on involvement of small businesses and business owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

### **41. FINAL ACTUAL INVOLVEMENT REPORT**

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each business class (i.e. small, minority-owned, women-owned) the total actual dollars spent on this

Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value.

#### **42. BUY OUTS – THIRD PARTY ACQUISITION OF CONTRACTOR’S SOFTWARE**

Contractor shall promptly notify the DIT Contracts Manager in the event that the intellectual property in or business associated with any Software or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The terms and conditions of this Agreement including but not limited to the license rights and related Services shall not be affected in such event identified above even if the successor or assignee already has an agreement with the Commonwealth covering Software and Services of the type covered by this Agreement. The Contractor’s responsibilities under this Agreement shall not be released by such acquisition. In addition, prior to any acquisition, Contractor shall obtain for the Commonwealth’s benefit the assignee’s agreement to fully perform this Agreement.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

The failure of any successor or assignee of the Contractor to acknowledge its obligation to adhere to the terms and conditions of this Agreement shall constitute a breach of this Agreement for which the successor or assignee and the original Contractor shall be liable and subject to debarment.

#### **43. ORDERS**

Authorized Users of this Contract may order Software and Services from this Contract by one of the following Order methods:

- a. Purchase Order: An official Purchase Order form issued by an Authorized User.
- b. Delivery Order (DO): A DO issued by the Acquisition Services Directorate, VITA.
- c. EVA: eVA is the Commonwealth’s total e-procurement solution. Contractor shall accept any and all orders issued through eVA.
- d. Charge/Credit Card:
  - i. Any order/payment transaction processed through the Commonwealth’s contract with American Express (AMEX). Each order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.

- ii. Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Software/Services available under this Agreement. Under no circumstances shall any Authorized User/Licensee of the Commonwealth have the authority to modify this Agreement.

Contractor acknowledges that the forgoing is not limited to preclude the Commonwealth from issuing Orders against subject Contract as it so chooses.

Orders, other than for the initial purchase, may be canceled by an Authorized User in whole or in part, upon forty-five (45) days' written notice to Contractor. There will be no cancellation charge for canceled Software unless the Software has been delivered. If the Software has been shipped, the cancellation will require Licensee payment of return shipping costs.

#### **44. INVOICING**

The Contractor shall remit each invoice to the ordering entity, or Authorized User. The Contractor shall issue invoices, identifying at a minimum, the components listed below.

- a. manufacturer's product number
- b. product description
- c. price per unit
- d. quantities of merchandise
- e. extended price
- f. date ordered
- g. date delivered
- h. listing of returns

#### **45. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE**

Notwithstanding anything to the contrary in this Agreement, the Commonwealth or Authorized User shall have:

##### **Permitted Uses**

- Licensee/Authorized User may (i) install and store copies onto electronic storage device(s) and (ii) only use the Software, Data, and Documentation as described in Exhibit 1 set forth herein and in accordance with the licensed configuration on file with ESRI Customer Service or ESRI authorized distributors.
- Licensee/Authorized User may make one (1) copy of the Software, Data, and Documentation for archival purposes during the term of this Agreement. Additionally, Licensee/Authorized User may make routine computer backups of the

Software, Data, and Documentation. Licensee/Authorized User may establish a redundant server for failover operations in the event the primary site fails.

- Licensee/Authorized User may customize the Software using any (i) macro or scripting language, (ii) open application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
- Licensee/Authorized User may use the Data only as described in the Distribution Rights section of the help or metadata files delivered with the Software, Data, and Documentation.
- Licensee/Authorized User may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. The portion(s) of the Documentation supplied in digital format merged with other software and printed or digital documentation shall continue to be subject to the terms and conditions of this Agreement and shall provide the following copyright attribution notice acknowledging the proprietary rights of ESRI and its licensor(s) in the Documentation supplied in digital format: "Portions of this document include intellectual property of ESRI and its licensor(s) and are used herein under license. Copyright © [Insert the actual copyright date(s) from the source materials] ESRI and its licensor(s). All rights reserved."

### **Uses Not Permitted**

- Licensee/Authorized User shall not sell; rent; lease; sublicense; lend; assign; time-share; or act as a service bureau or Application Service Provider (ASP) that allows third party access to the Software, Data, and Documentation except as provided herein; or transfer, in whole or in part, access to prior or present versions of the Software, Data, or Documentation, any updates, or Licensee's//Authorized User's rights under this Agreement.
- Licensee/Authorized User shall not redistribute the Software, in whole or in part, including, but not limited to, extensions, components, or DLLs without the prior written approval of Contractor as set forth in an appropriate redistribution license agreement.
- Licensee/Authorized User shall not reverse engineer, decompile, or disassemble the Software, Data, or Documentation, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction in order to protect Contractor and its licensor(s) trade secrets and proprietary information contained in the Software, Data, or Documentation.
- Licensee/Authorized User shall not make any attempt to circumvent the technological measure(s) (e.g., License Manager, etc.) that controls access to or use of the Software, Data, and Documentation, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
- Licensee/Authorized User shall not use the Software to transfer or exchange any material where such transfer or exchange is prohibited by copyright or any other law.

- Licensee/Authorized User shall not remove or obscure any Contractor or its licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Software, Data, or Documentation.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's or Authorized User's rights to use any technical data which the Commonwealth or Authorized User may already possess or acquire under proper authorization from other sources.

#### **46. CONFIDENTIALITY**

Commonwealth agrees that Software is proprietary to Contractor and has been developed or acquired at Contractor's expense and that it shall hold and use the Software in the same manner as it would deal with its own confidential information. Commonwealth shall not knowingly divulge, nor knowingly permit any of its employees, agents, or representatives to divulge, any proprietary information with respect to the Software, the technology embodied therein, or any other documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as specifically authorized by Contractor, in writing, or as may be required by the laws of the Commonwealth of Virginia.

Commonwealth shall take all reasonable steps necessary or appropriate to insure compliance with this Section by the Commonwealth's employees, agents and representatives, including copying reproducible legends and markings on all physical components of the Software.

The Commonwealth's obligation under this Section shall terminate three years after the Commonwealth ceases using the Software containing the proprietary information.

#### **47. COMPLIANCE WITH FEDERAL LOBBYING ACT**

a. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 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"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

b. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

c. A representative of Contractor shall sign the certification attached as Attachment "B" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

#### **48. EXCLUSIVITY OF TERMS AND CONDITIONS**

The Virginia Information Technologies Agency (VITA) will not sign or execute any additional contract, license or other agreement, including shrink-wrap Software, containing contractual terms and conditions as a result of this procurement. Any documents signed by persons other than the Contracts Manager, VITA, shall have no validity and the attached Terms and Conditions shall supersede all such agreements. Vendors should read and understand all of the Terms and Conditions prior to submitting a bid.

#### **49. CONTRACTOR'S REPORT OF SALES**

Contractor must agree to provide reporting on a monthly basis that breaks out the spend amounts by agency, Institution of Higher Education, Municipality and other Public Body, as well as the departmental and/or divisional levels that is buying. Reports are to be provided on the 15th of each month, reporting transactions that took place in the immediately prior month. At any time thereafter, as appropriate, additional reports may be agreed upon. All reports shall be forwarded electronically via Email to the Commonwealth using a Microsoft Excel Spreadsheet format to be provided to Contractor. Generally, the Commonwealth wants to capture the following types of information, at a minimum:

- a. Purchase Order Number
- b. Customer Number
- c. Invoice Quantity
- d. Product Number
- e. Product Name
- f. Price Paid
- g. Invoice Number
- h. Customer Name

Electronic copies of reports shall be provided to the Commonwealth no later than 15 days following the end of each month.

Contractor will be provided a listing of the proper name and spelling of each agency and Institution and Public Body that you will agree to use in your reporting. If the Commonwealth three (3) digit user code is not contained in the purchase order, ESRI has no obligation to use the Commonwealth listing reference for that purchase order.

## **50. SURCHARGE ADJUSTMENT**

The Contractor must pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this contract. The Contractor must remit the SCA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The SCA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the SCA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The SCA reimburses the Commonwealth and defrays the costs for Spend Management procurements and the administration of the subsequent awards. The SCA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DGS may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DGS that validates agreement, then the payment shall be made by check as described herein made payable to the Department of General Services.

If the full amount of the SCA is not paid within 30 calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the SCA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including but not limited to temporary reduced pricing, fire sales, one time sales, trade ins, and promotional items that have been marked down under this Contract.

## **51. NON-VISUAL ACCESS TO TECHNOLOGY**

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(i) Effective, interactive control and use of the Technology shall be readily achievable by non-visual means;

(ii) The Technology equipped for non-visual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) Non-visual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(iv) The technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalence is not available.

Installation of hardware, Software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of non-visual access Software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

**REMEDY FOR NON-COMPLIANCE**

For any non-compliance by Contractor of the requirements of the Non-visual Access to Technology Section, the sole remedy for commercial off-the-shelf Software is return of the copy of Software for such visually-impaired users and refund of the license fee paid for such copy.

**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: LAURA DANGERMOND

TITLE: Vice President

DATE: SEP 10 2003

**COMMONWEALTH OF VIRGINIA**

BY: 

NAME: Robert E. Gleason

TITLE: Technology Contracts Mgr

DATE: 9/12/03

**ATTACHMENT "B"**  
**TO**  
**CONTRACT VA-030700-ESRI**

**CERTIFICATION REGARDING LOBBYING**

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

a. 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 or an 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.

b. 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-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and Contracts under grants, loans and cooperative agreements) 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 1352, 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 \$10,000 and not more than \$100,000 for each such failure.

Signature:



Printed Name:

Laura Dangermond

Organization:

Environmental Systems Research Institute, Inc.

Date:

SEP 10 2002