



IMPLEMENTATION SERVICES TIME AND MATERIALS AGREEMENT

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1. DEFINITIONS

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

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

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

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

2. OWNERSHIP AND GRANT OF LICENSE

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

3. PATENTS AND INVENTIONS

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

4. COMPENSATION

Services will be performed and invoiced on a time and materials basis. Labor, including travel time, will be invoiced on a monthly basis for actual hours expended during the previous month. Other direct costs (ODCs), such as travel-related expenses, will be invoiced at actual cost plus Esri's discounted fifteen percent (15%) general and administrative burden. Meals and incidental expenses will be invoiced on a per diem basis in accordance with the most current Federal Travel Regulations. Esri's payment terms are net thirty (30) days. If Customer's credit history has not been established, Esri reserves the right to require full or partial prepayment.

Esri may reallocate authorized funding between contracted activities, labor categories, and ODCs as necessary to facilitate the work requirements, provided the overall authorized funding is not exceeded. In the event that Esri reaches the not-to-exceed funding limit, Customer may increase the order funding to allow additional work to be performed, or direct Esri to stop work without further obligation or liability. If Services are required beyond the period of performance stated in the original proposal or resultant order, Esri reserves the right to escalate labor rates up to five percent (5%) per calendar year.

5. LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

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

Disclaimer of Warranties

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

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

6. LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

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

ESRI'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT

ACTUALLY PAID BY CUSTOMER FOR SERVICES UNDER THIS AGREEMENT FROM WHICH THE LIABILITY DIRECTLY AROSE.

7. CONFIDENTIALITY

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

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

8. EXPORT CONTROLS

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

9. GENERAL PROVISIONS

9.1 Nonsolicitation. Neither party will directly solicit for hire any employee of the other party who is associated with Services called

for under this Agreement during, and for a period of one (1) year after, project completion. In the event this provision is breached, liquidated damages equal to twelve (12) months of the employee's compensation, plus any legal expenses associated with the enforcement of this provision, shall be paid by the breaching party to the aggrieved party. The foregoing shall in no way restrict the parties from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

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

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

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

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

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

9.7 Entire Agreement. This Agreement is the sole and entire agreement of the parties for Services and supersedes any previous agreements, understandings, and arrangements between the parties relating to the subject matter. The undersigned acknowledges and represents that he/she has read and understands this Agreement and has the authority to bind his/her organization to these terms and conditions. An executed Agreement shall constitute a duplicate if it is transmitted through electronic means, such as fax or e-mail, and reflects the signing of the document by Customer. Duplicates are valid and binding even if an original paper document bearing the original signature is not delivered.

By: _____

Date: _____

Print Name: _____

Phone: _____

Organization ("Customer"): _____

Address: _____

City: _____

State: _____

ZIP Code: _____

Incorporating by reference Esri Proposal Number _____ Dated _____