



PREMIUM SUPPORT SERVICES AGREEMENT

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

PSS Agreement No. \_\_\_\_\_

This Premium Support Services Agreement ("PSS Agreement") is entered into by and between Environmental Systems Research Institute, Inc. ("Esri"), a California corporation located at 380 New York Street, Redlands, California 92373-8100, and the licensee listed below ("Licensee"). Esri and Licensee shall be referred to herein collectively as the "Parties" and individually as a "Party."

Premium Support Services ("PSS") is a program that provides enhanced support for Esri Software, Data, and Documentation licensed under the applicable Esri Software license agreement(s).

PSS is available only to licensees who are current on Esri's Standard Maintenance. Licensee must order Standard Maintenance to qualify for PSS. Esri reserves the right to make service substitutions and modifications to PSS offerings at any time.

The terms and conditions of the Esri License Agreement(s) for the affected Esri Software, Data, and Documentation govern any updates, patches, hot fixes, or software provided under PSS.

This PSS Agreement may be executed in duplicate by the Parties. An executed PSS Agreement, modification, amendment, or separate signature page 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 any Party. Duplicates are valid and binding even if an original paper document bearing each Party's original signature is not delivered.

The Parties acknowledge that they have read and understand this PSS Agreement and agree to be bound by its terms and conditions. This PSS Agreement is in effect as of the date last signed below ("Effective Date").

\_\_\_\_\_  
(Licensee)

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(Esri)

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## ARTICLE 1—DEFINITIONS

Capitalized terms used in this PSS Agreement shall have the following meanings:

"Data" means any Esri or third-party digital dataset(s), including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes licensed under an Esri License Agreement.

"Documentation" means all printed and digital materials, including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.

"GIS" means geographic information systems.

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

"Licensees Authorized Contact(s)" or "LAC" means up to two individuals selected by Licensee to report Incidents to Support Services and work directly with Esri's Premium Support Coordinator regarding all such incidents.

"Premium Support Incident" means an Incident that is opened as a PSS Incident.

"Senior Support Analyst" means an experienced support analyst within Support Services.

"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.

"Standard Maintenance" means the general support and maintenance Esri makes available for unmodified Software, including Incident tracking, attempts to correct errors, new releases, and enhancements.

"Support Services" means Esri Support Services that provide technical assistance to Esri licensees.

"User Advocacy Group" means a group within Support Services created to improve Esri's ability to understand and respond to technical issues impacting Esri licensees.

## ARTICLE 2—PREMIUM SUPPORT SERVICES PROGRAM

**2.1 Premium Support Description.** If Licensee is currently covered by Standard Maintenance for all of its Software, Licensee may order, on an annual basis, PSS under the terms and conditions of this PSS Agreement. PSS shall provide (1) a designated Premium Support Coordinator ("PSC"); (2) unlimited telephone and e-mail support accessible to Licensee twenty-four hours per day, seven days per week, three hundred sixty-five days per year (24/7/365); (3) Priority Incident Management; and (4) other additional enhanced support and services.

**2.2 Premium Support Coordinator.** Esri shall assign a PSC to Licensee. The assigned PSC shall work directly with LAC and shall oversee all of Licensee's open Premium Support Incidents.

PSC shall

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

Esri may replace PSC during the term of this PSS Agreement with a written notification to Licensee.

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

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

**2.4 Priority Incident Management.** Priority Incident Management shall include the following:

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

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

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

Details of all PSS offerings can be found at [www.esri.com/services/pss/components.html](http://www.esri.com/services/pss/components.html).

## ARTICLE 3—RESTRICTIONS AND EXCLUSIONS

**3.1 Defense or Military Application.** Licensee must inform Esri if any of the services provided or to be provided by Esri pursuant to this PSS Agreement are directly related to a defense article as defined in 22 C.F.R. § 120.6 or for a military application, before such services are provided by Esri.

**3.2 Excluded Software.** PSS is not available for third-party software. Esri is not responsible for errors attributable to third-party software used in conjunction with or built upon Software.

**3.3 English Language.** All communications will be conducted in the English language except by agreement of both Parties.

**3.4 Acknowledgment.** Licensee acknowledges and agrees that the report of an error or defect of any Software is not a guarantee that it can or will be corrected. At Esri's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by Esri.

**3.5 Current on Maintenance.** Licensee shall remain current on Standard Maintenance during the term of this PSS Agreement. Standard Maintenance is described in the Esri US Software Maintenance Program at <http://www.esri.com/legal/pdfs/us-sw-maintenance.pdf>, which may be changed from time to time.

**3.6 Hardware Support.** Esri does not provide support for hardware, including but not limited to, graphics cards, monitors, plotters, graphics printers, digitizers, and modems, except to answer questions regarding how standard, supported devices interface with Software.

**3.7 Exceptions to PSS.** The following are not covered by this PSS Agreement:

- a. Any problem resulting from Licensee's misuse, improper use, unauthorized modification, or damage of the Software or Licensee's combining or merging the Software with any hardware or software not supplied or identified as compatible by Esri;
- b. Any problem resulting from third-party hardware or software;
- c. Errors in any version of the Software other than the officially supported version of Software; and
- d. Any on-site support or implementation services on-site or otherwise, including, but not limited to, those provided by Esri Professional Services or any third party.

#### **ARTICLE 4—TERM AND TERMINATION**

**4.1 Term.** The term of this PSS Agreement commences on the Effective Date. Licensee may automatically renew this PSS Agreement on an annual basis pursuant to Article 5 of this PSS Agreement provided the Licensee is current on Standard Maintenance.

**4.2 Termination for Convenience.** Either Party may elect not to renew this PSS Agreement for its sole convenience at the end of any term. Either Party shall provide the other written notice of termination no less than ninety (90) calendar days prior to the end of any term.

**4.3 Termination.** Either Party may terminate this PSS Agreement for a material breach that is not cured within ten (10) calendar days after written notice to the other Party, or for bankruptcy or insolvency of the other Party. In the event of termination for a material breach, the due dates of all invoices for amounts owed by Licensee to Esri shall be accelerated automatically so that such amounts become due and payable on the effective date of termination, regardless of the payment term provisions set forth in this PSS Agreement. Except where a provision specifically provides otherwise, any cause of action or claim of one Party accrued to or to accrue because of any breach or default of the other Party, and any accrued license rights shall survive to the degree necessary to permit their complete fulfillment or discharge.

#### **ARTICLE 5—COMPENSATION**

**5.1 Pricing.** Pricing for the annual renewals and any new Support Service offerings shall be in accordance with Esri's most current price schedule at the time of purchase or renewal.

**5.2 Invoices.** Licensee shall issue a purchase order upon execution of this PSS Agreement, and Esri shall issue an invoice to Licensee. No later than ninety (90) calendar days prior to the expiration of the then current term of this PSS Agreement, Esri shall provide Licensee with a quote for the annual renewal of this PSS Agreement. In the event Licensee issues a purchase order for the annual renewal, Esri shall issue an invoice to Licensee.

#### **5.3 Purchase Order Requirements**

- a. Any purchase orders issued by Licensee shall reference and be subject to the terms and conditions of this PSS Agreement. No additional or different term contained in a purchase order or ordering document shall be binding.
- b. The following information shall be included in each purchase order:
  - (1) Licensee's name and Esri customer number;
  - (2) Purchase order number;
  - (3) Applicable annual payment due; and
  - (4) On the face of the purchase order, print the following statement: "Subject to PSS Agreement No. \_\_\_\_\_."
  - (5) Information regarding LAC in the following manner:
    - a) Contact Name(s):
    - b) Telephone:
    - c) Fax:

- d) E-mail:
- e) Address:

Licensee may replace LAC during the term of this PSS Agreement by providing written notification to the PSC.

## ARTICLE 6—CONFIDENTIALITY

**6.1 Confidential Information.** Each Party acknowledges that it may receive confidential information from the other Party pursuant to this PSS Agreement. "Confidential Information" means any information designated in writing as Confidential Information by the disclosing Party. During the period this PSS Agreement is in effect, and at all times thereafter, each Party shall (a) safeguard the Confidential Information with the same degree of care that it uses to protect its own Confidential Information, but no less than reasonable care; (b) maintain the confidentiality of such information; (c) not use such information except as permitted under this PSS Agreement; and (d) not disseminate, disclose, sell, publish, or otherwise make available such information to any third party without the prior written consent of the disclosing Party. Each Party warrants to the other that the disclosure of Confidential Information is in compliance with all relevant agreements with third parties and applicable laws, including export control laws. Either Party may disclose Confidential Information to its attorneys or advisors under the obligation of confidentiality. Esri reserves the right to refuse to accept any software, application, component, source code, data, geodatabase, or other information or technology subject to contractual or legal restrictions that prohibit use by Esri to support Licensee.

The restrictions in the preceding paragraph do not apply to any information that (a) is already lawfully in the other Party's possession (unless received pursuant to a nondisclosure agreement); (b) is or becomes generally available to the public through no fault of a Party; (c) is disclosed to the other Party by a third party who may transfer or disclose such information without restriction; (d) is required to be disclosed by a Party as a matter of law; (e) is disclosed by a Party with the other Party's prior written approval; and (f) is independently developed by a Party without any use of Confidential Information of the other Party. In all cases, each Party shall use all reasonable efforts to give the other Party ten (10) calendar days prior written notice of any disclosure of Confidential Information under this PSS Agreement.

The access code or password for the PSS website is Confidential Information of Esri. Licensee's data contained in the Esri PSS website database is Confidential Information of Licensee.

**6.2 Return of Materials.** Within sixty (60) calendar days of termination of this PSS Agreement, each Party shall either return the Confidential Information to the disclosing Party or destroy and provide a certification of destruction of the Confidential Information of the disclosing Party. Any other exchange of confidential information between the Parties will require execution of a nondisclosure agreement signed between the Parties separate from this PSS Agreement.

## ARTICLE 7—LIMITED WARRANTIES AND DISCLAIMERS

**7.1 Limited Warranties and Disclaimers.** All services provided pursuant to this PSS Agreement shall be performed in a professional and workmanlike manner. This PSS Agreement is subject to the terms and conditions of the agreement(s) between Esri and Licensee listed in this PSS Agreement and the Esri US Software Maintenance Program at <http://www.esri.com/legal/pdfs/us-sw-maintenance.pdf>, which may be changed from time to time.

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

**7.3 Internet Disclaimer.** BOTH PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) NEITHER PARTY HAS CONTROL OVER THE INTERNET, AND (iii) NEITHER PARTY IS LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT

MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THIS PSS AGREEMENT OR SERVICES PURSUANT TO THIS PSS AGREEMENT.

**7.4 Error and Nonconformities Disclaimer.** ESRI SHALL NOT BE RESPONSIBLE FOR ANY ERROR OR NONCONFORMITIES ATTRIBUTABLE TO A MODIFICATION TO ESRI SOFTWARE, DATA, AND DOCUMENTATION; LICENSEE'S OR ITS LICENSOR'S SOFTWARE, APPLICATION, COMPONENT, SOURCE CODE, DATA, GEODATABASE, OR OTHER INFORMATION OR TECHNOLOGY; OR THIRD-PARTY APPLICATIONS MADE BY OR AT THE DIRECTION OF LICENSEE.

## **ARTICLE 8—LIMITATION OF LIABILITY**

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

**8.2 General Limitation of Liability.** ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR THIS PSS AGREEMENT.

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

## **ARTICLE 9—GENERAL PROVISIONS**

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

**9.2 Non-Solicitation of Esri Personnel.** Licensee shall not solicit for hire any member of Esri's technical staff who is associated with this PSS Agreement while the PSS Agreement is in effect and for a period of one (1) year thereafter. If this provision is breached, liquidated damages equal to twelve (12) months of the Esri's technical staff's compensation plus any legal expenses associated with the enforcement of this provision shall be paid by Licensee to Esri.

**9.3 UCC Inapplicability.** Any of the services provided pursuant to this PSS Agreement shall not be governed by the Uniform Commercial Code ("UCC") and shall not be deemed "goods" as defined by the UCC.

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

**9.5 No Implied Waiver.** The failure of either Party to enforce any provision of this PSS Agreement shall not be deemed a waiver of the provisions or of the right of such Party thereafter to enforce that or any other provision.

**9.6 Assignment and Delegations.** Esri may, in whole or in part, assign any of its rights or delegate any performance pursuant to this PSS Agreement, provided that Esri shall remain responsible for the performance of delegates.

**9.7 Export Control.** Esri's technology is subject to US export control laws and regulations. Software, Data, Documentation, and any underlying information or technology may not be exported, reexported, or provided in whole or in part to (i) any country to which the United States has embargoed goods; (ii) any person on the 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 law or regulation.

**9.8 Governing Law and Arbitration.** This PSS Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflict of laws principles. Any controversy or claim arising out of or relating to this PSS Agreement, or the breach thereof, which cannot be settled through negotiation, shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If Licensee is a US Government agency, this PSS Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC §§601–613), in lieu of the arbitration provisions of this clause.

**9.9 Headers.** Headers are for convenience only and are not to be used in the interpretation of this PSS Agreement.

**9.10 Taxes.** Services provided are quoted exclusive of all state, local, value-added, or other taxes, and 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 provided pursuant to this PSS Agreement, Esri Software, Data, or Documentation, Licensee shall pay any such applicable taxes and/or charges upon receipt of written notice that such taxes and/or charges are due.

**9.11 Entire Agreement.** This PSS Agreement constitutes the sole and entire agreement of the Parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the Parties relating to such subject matter. Additional or different terms included with an order or other document of Licensee shall not be binding upon Esri. Any modification(s) or amendment(s) to this PSS Agreement must be in writing and signed by an authorized representative of each Party.