



SOFTWARE MAINTENANCE AGREEMENT

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

Software Maintenance Agreement No. \_\_\_\_\_

This Software Maintenance Agreement ("Agreement") is between the licensee printed below ("Licensee") and Environmental Systems Research Institute, Inc. ("Esri").

DEFINITIONS

"Software" means all or any portion of Esri's proprietary software technology accessed or downloaded from an Esri-authorized website or delivered on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

ARTICLE 1—TERM AND FEE

The initial term of this Agreement will begin on receipt of order (renewal date) and will continue for twelve (12) consecutive months at the fee(s) noted in the Esri Quotation. Thereafter, Licensee may continue the service for annual maintenance and update at the then current fee. Should Licensee decide to extend this Agreement, Licensee must issue a purchase order in advance of the renewal date at the quoted price. Payment is due annually in advance. If Licensee wishes to reinstate lapsed maintenance, Licensee agrees to pay a reinstatement fee as well as the maintenance fee. Licensee agrees to pay Esri invoices within thirty (30) days of receipt. To reinstate lapsed maintenance, maintenance fees from the date maintenance lapsed, in addition to the current fees, must be paid. Maintenance fees are nonrefundable.

ARTICLE 2—SOFTWARE MAINTENANCE AND UPDATE SERVICE

As discussed further on the Esri website named below, Esri provides technical support in response to specific inquiries as well as software maintenance by way of patches, updates, and upgrades as applicable. Maintenance is composed of technical support, updates, and other benefits. Esri will support/maintain the Software for a period of twelve (12) months. Software maintenance will apply only to unmodified Software and commercially released updated versions of the Software. Software updates are provided only for standard hardware platforms and operating systems supported by Esri as described in the Software documentation. Licensee is responsible for making or arranging for updates to interfaces for nonstandard devices or custom applications.

Esri maintenance will be provided in compliance with the Esri US Software Standard Maintenance Program on the Esri website at http://www.esri.com/legal/pdfs/us-sw-maintenance.pdf. Esri supports users with the installation and maintenance of Esri Software, assistance in solving problems arising from the use of the Software, hardware interfacing of peripheral devices, and logging of enhancement requests and problems or issues submitted by the user. Esri's Support website is found at http://support.esri.com/en/support.

Licensee may contact Technical Support at

- E-mail: support@esri.com
Website Address: http://support.esri.com/
Phone: +1-909-793-3774
Toll-Free Phone: +1-888-377-4575, extension 2
Support Web Form: http://support.esri.com/en/webform
Chat: http://support.esri.com/en/webform-chat

Hours: 5:00 a.m. to 5:00 p.m. Pacific time (Monday through Friday, except Esri holidays)

Resultant order documents for maintenance must include the statement, "This order is subject to the terms and conditions of Software Maintenance Agreement G060 <insert Software Maintenance Agreement number>. All other terms and conditions are void."

ARTICLE 3—TERMINATION

This Agreement may be terminated by either party giving the other party thirty (30) days' notice of intent to terminate prior to the end of the term identified in Article 1.

ARTICLE 4—LIMITATION OF LIABILITY AND REMEDIES

Esri will use commercially reasonable efforts to provide corrections or workaround solutions for any problem or issue reported and determined to be in the Software or the documentation at no cost to Licensee for the term of this Agreement. While it is Esri's goal to provide an acceptable resolution for incoming problems/issues and incidents, Esri cannot predict a resolution time and is unable to guarantee that all problems or issues can be resolved or addressed.

EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTY, 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, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. ESRI DOES NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION WILL MEET LICENSEE'S NEEDS, OR THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED.

If Esri fails to fulfill its obligations under this Agreement, Licensee's sole and exclusive remedy is the right to terminate this Agreement immediately for the affected Software.

IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE SOFTWARE OR DOCUMENTATION, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND 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.

ARTICLE 5—LICENSE

Maintenance and support are provided subject to the terms and conditions of the then-current General License Terms and Conditions/License Agreement and Exhibit 1 Scope of Use, available on Esri's website at http://www.esri.com/legal/licensing/software-license.html or included with a quote or with the deliverable Software. Licensee may only use the type and number of copies of the Software, Data, Web Services, and Documentation for which the appropriate license fees have been paid to Esri and in accordance with the General License Terms and Conditions/License Agreement, Exhibit 1 Scope of Use, and the licensed configuration on file with Esri Customer Service.

Licensee may not assign the rights granted hereunder, or any of them, without the prior written consent of Esri.

ARTICLE 6—APPLICABLE LAWS

This Agreement is governed by and construed in accordance with the laws of the State of California without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property.

ARTICLE 7—ENTIRE AGREEMENT

This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matter. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by an authorized representative of each party.

The parties have agreed to these terms and have executed this Agreement on the date last signed below.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the last date written below.

(Licensee)

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

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

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

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

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
(Esri)

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

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

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

Licensee Contact Information

Contact: \_\_\_\_\_

Installation Address: \_\_\_\_\_

\_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

General License Terms and Conditions/License Agreement (E200/E204), Esri Exhibit 1 (E300)