



**CUSTOM SOFTWARE, TECHNICAL DATA, AND
ASSISTANCE LICENSE ADDENDUM
(E600 10/05)**

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ARTICLE 1—DEFINITIONS

All words, phrases, or terms defined in other parts of this Agreement shall have the same meaning in this Addendum. The following additional words, phrases, or terms shall have the following meaning:

- i. "Task Order" means a task order issued under this Addendum. (A sample task order form is attached as Attachment A.)
- ii. "Custom Software" means all or any portion of the computer software code, components, dynamic link libraries (DLLs), and programs delivered on any media provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied under any Task Order, exclusive of Software.
- iii. "Technical Data" means, without limitation, all technical materials including formula, compilations, software code or programs, methods, techniques, know-how, technical assistance, processes, algorithms, designs, data dictionaries and models, schematics, user documentation, training documentation, specifications, drawings, flowcharts, briefings, test or quality control procedures, or other similar information supplied or disclosed by ESRI under any Task Order.
- iv. "Map Data" means any digital data set(s) including geographic, vector data coordinates, raster, or associated tabular attributes supplied or used in performance of any Task Order.
- v. "Deliverables" means Custom Software, Technical Data, or Map Data specified for delivery or use by Licensee under a Task Order.
- vi. "Supported Software" means the Software identified pursuant to Article 2.

ARTICLE 2—TASK ORDERS AND PROJECT SCHEDULE

ESRI shall provide Deliverables as specified in Task Orders for support of the Software identified therein ("Supported Software").

Unless otherwise provided by ESRI in writing, ESRI's Senior Contract Administrator, _____, is authorized to agree to Task Orders. Licensee shall provide advanced written notification of the name and title of the representative authorized to sign Task Orders and bind Licensee. Each party may enter into Task Orders at its sole discretion and shall not have any obligation under a Task Order until it is signed by both parties.

Each party shall identify in writing the project manager who is responsible for the Deliverables specified in Task Orders. By written notice, either party may replace the project manager at any time with a similarly qualified person.

ESRI shall complete each Task Order in accordance with the schedule specified in that Task Order.

ARTICLE 3—LICENSE GRANT

Subject to the terms and conditions set forth in this Agreement and effective upon their delivery, ESRI hereby grants to Licensee a nonexclusive, worldwide license in the Deliverables to use, modify, and reproduce the Deliverables in connection with Licensee's authorized use of Supported Software. The grant in the immediately preceding sentence does not apply to Map Data, which Licensee must separately and directly license from the vendor.

ARTICLE 4—PATENTS AND INVENTIONS

During performance of Task Orders, the parties anticipate that inventions, innovations, and improvements ("Inventions") relating to the subject matter of such Task Orders may be conceived solely or jointly by principals, employees, consultants, or independent contractors (hereinafter called "Inventors") of the parties hereto.

The parties agree that, as of the effective date of this Agreement, ESRI or its licensors own all intellectual property rights in the Software. During the term of this Agreement, Licensee shall promptly notify ESRI if Licensee becomes aware of any known or suspected infringement or violation of these rights.

Each party shall retain title to any Inventions made or conceived solely by its Inventors during the term of this Addendum, including, but not limited to, such Inventions as ESRI's Inventors solely make or conceive while providing technical assistance pursuant to this Addendum. The parties shall jointly own any Invention made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Software and as additional compensation for the Technical Data access and license provided under this Addendum, Licensee hereby grants and agrees to grant to ESRI an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use.

Licensee agrees to disclose promptly to ESRI (i) each Invention relating to the Software and made or conceived by Licensee's Inventors during the term of this Addendum and (ii) of any decision to file a patent application with respect to such Invention and the country or countries in which such application will be filed.

Where only one party has title to an Invention, that party, at its sole discretion, shall have the right, but not the obligation, at its expense to: (i) decide on whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on such Invention; (ii) decide the extent and scope of such protection; and (iii) protect and enforce in any country any patents issued on such Invention.

Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.

The acquisition or maintenance of protection shall not be abandoned by a joint owner (the "Assigning Owner") without giving the other joint owner (the "Beneficial Owner") an opportunity to intervene and acquire or maintain protection at the Beneficial Owner's expense. The Assigning Owner electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such of its rights in such Inventions to the Beneficial Owner as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.

All Inventions made by Inventors during performance of tasks and activities defined by Task Orders during the term of this Addendum will be presumed, absent clear and convincing evidence to the contrary, to have resulted from the Inventors' activities under the Task Orders.

Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which is hereby given to ESRI for Inventions relating to the Software and shall otherwise not be unreasonably withheld by either party. However, either party may transfer such Inventions to its Affiliates for their internal use only. "Affiliate" shall mean the parent or subsidiary companies of a party or subsidiary companies to a party's parent provided there is more than fifty percent (50%) ownership of the subsidiary by the parent or party.

ARTICLE 5—OWNERSHIP, CONFIDENTIALITY, AND EXPORT CONTROLS

Except as specifically granted in this Addendum, ESRI or its licensors own and retain all right, title, and interest in the Deliverables. This Agreement does not transfer ownership rights of any description in the Deliverables to Licensee or any third party.

Unless otherwise agreed in writing, the Deliverables are ESRI confidential and Licensee shall preserve and protect their confidentiality. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Deliverables delivered only in object code, executable code, or formats subject to similar or greater means of access control (collectively, "Secure Formats"). For Deliverables delivered in source code or other human-readable formats, Licensee shall have met its obligations under this Article if its disclosure of Deliverables is limited to Deliverables in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling such Deliverables is withheld from such

disclosure, and the person or entity in receipt of such Deliverables similarly agrees not to perform such acts or allow others to do so.

Except as provided in the preceding paragraph, Licensee shall not disclose the Deliverables to employees or third parties without the advanced written consent of ESRI. However, Licensee may, without such consent, make such disclosures to employees as are reasonably required for the Licensee's authorized use of the Supported Software, provided that such disclosure is strictly limited to the portions of the Deliverables needed for that purpose.

The disclosures permitted under the preceding paragraph shall not relieve Licensee of its obligation to maintain the Deliverables in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Deliverables to employees or third parties as permitted in the preceding paragraph, Licensee shall inform such employees or third parties of the obligations in this Article and obtain their agreement to be bound by them.

Licensee shall not have any obligation to protect any part of a Deliverable that it can prove: (i) was in Licensee's possession before receipt from ESRI; (ii) is or becomes a matter of public knowledge through no fault of Licensee; (iii) is rightfully disclosed by a third party without a duty of confidentiality; (iv) is disclosed by ESRI to a third party without a duty of confidentiality; (v) is independently developed by Licensee; or (vi) is required to be disclosed by operation of law.

ARTICLE 6—ACCEPTANCE

A. For Time and Materials Task Orders

Deliverables are provided strictly on a time and materials basis. Therefore, Licensee shall accept Deliverables as promptly as practicable after delivery, and Deliverables shall be deemed accepted thirty (30) days after delivery.

B. For Firm Fixed Price Task Orders

Deliverables for fixed price Task Orders shall be categorized as follows:

- i. "DELIVERABLE ACCEPTED" means a Deliverable conforming to applicable Task Order(s) with no more than minor nonconformities. Licensee shall complete its acceptance review within ten (10) working days of receiving each Deliverable.
- ii. "DELIVERABLE ACCEPTED WITH REWORK" means a deliverable substantially conforming to applicable Task Order(s), but having a significant number of identified nonconformities and accepted subject to rework by ESRI. ESRI shall rework the Deliverable for the identified nonconformities and resubmit it within thirty (30) days. Licensee will rerun its acceptance review for the nonconformities detected in the initial review within ten (10) working days of such resubmission and will reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
- iii. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). ESRI shall rework the Deliverable and resubmit it to Licensee within thirty (30) days, at which time Licensee shall have ten (10) working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Licensee agrees it shall not use any Deliverable in its business operations before acceptance as described in Subsections B(i) or B(ii). If ESRI does not receive within ten (10) working days after delivery written notice that the Deliverable is "ACCEPTED WITH REWORK" or "REJECTED" in accordance with B(ii) or B(iii), or if Licensee uses the Deliverable in its business operations, the Deliverable shall be deemed, as of the first to occur of either of these events, to have been accepted.

ARTICLE 7—CHANGES TO SCOPE OF WORK

Licensee may, at any time, request changes within the general scope of an open Task Order. If the parties agree to such changes and such changes cause an increase or decrease in the cost or time required to provide a Deliverable under any Task Order (regardless of whether the Deliverable itself is changed), an equitable adjustment in the price or schedule, or both, shall be made, and this Agreement shall be modified accordingly in writing and signed by both parties.

ARTICLE 8—COMPENSATION; INVOICES

A. For Time and Materials Task Orders

ESRI shall prepare and submit to Licensee written monthly invoices showing the compensation due for work performed under Task Orders. The amount invoiced will be equal to the number of hours expended during the previous month multiplied by the rates for labor categories set forth in Attachment B, plus other burdened direct costs. ESRI may, at its sole discretion, stop work in order to avoid exceeding the total value of applicable Task Orders. Any election to exceed such total value shall not affect the rights or obligations of the parties under this Agreement, including any right to compensation for such excess work and to stop work at anytime after such total value is exceeded.

B. For Firm Fixed Price Task Orders

ESRI shall prepare and submit monthly invoices based on the percent complete for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the full amount of that Task Order is due.

C. Payment

Licensee shall pay each invoice no later than thirty (30) days after receipt thereof.

ARTICLE 9—REQUIRED CORRECTIONS AND LIMITED WARRANTY

A. Correction of Deliverables and Warranty

1. For Time and Materials Task Orders: Not later than thirty (30) days after acceptance of a Deliverable, Licensee may require ESRI to correct or replace, at ESRI's option, Deliverables that at the time of delivery do not conform with the applicable written specifications included in, or delivered by ESRI pursuant to, the corresponding Task Order. The cost of replacement or correction shall be determined under the Time and Materials section of the Compensation; Invoices article of this Addendum.

ESRI shall have no obligation or liability under this Agreement to correct Deliverables that were nonconforming at the time of delivery, except as provided in this Subsection A.1.

2. For Firm Fixed Price Task Orders: ESRI warrants that for a period of thirty (30) days after acceptance of a Deliverable that the Deliverable will conform, in a manner consistent with professional and technical standards in the software industry, with the applicable written specifications that are included in, or delivered by ESRI pursuant to, the corresponding Task Order.

B. Disclaimer

1. THE REQUIRED CORRECTIONS AND WARRANTY SET FORTH IN SECTION "A" OF THIS ARTICLE ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER OBLIGATIONS TO CORRECT OR REPLACE DELIVERABLES AND OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT DELIVERABLES ARE ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR ARE COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; AND (ii) ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT.
2. IN ADDITION TO AND WITHOUT LIMITING THE PRECEDING PARAGRAPH, ESRI DOES NOT WARRANT IN ANY WAY THE MAP DATA, WHETHER SUPPLIED BY LICENSEE OR ESRI, OR THE VENDORS OF EITHER OF THEM. IF SUPPLIED BY ESRI OR ITS VENDORS, ESRI BELIEVES SUCH MAP DATA IS RELIABLE, BUT IT MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET LICENSEE'S NEEDS OR EXPECTATIONS. ESRI IS NOT INVITING RELIANCE ON MAP DATA, AND LICENSEE SHOULD ALWAYS VERIFY ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

ARTICLE 10—LIMITATION OF LIABILITY

A. Disclaimer of Certain Types of Liability

IN NO EVENT SHALL ESRI OR ITS LICENSOR(S) 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 DELIVERABLES, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

B. General Limitation of Liability

IN NO EVENT WILL ESRI'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DELIVERABLES, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, EXCEED THE AMOUNTS PAID TO ESRI BY LICENSEE FOR THE DELIVERABLES FROM WHICH THE LIABILITY DIRECTLY AROSE.

C. Applicability of Disclaimers and Limitations

Licensee agrees that the limitations of liability and disclaimers set forth in this Agreement will apply regardless of whether Licensee has accepted the Deliverables or any other product or service delivered by ESRI. The parties agree that ESRI has set its prices and entered into this Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose or cause consequential loss), and that the same form an essential basis of the bargain between the parties.

ARTICLE 11—HIGH RISK ACTIVITIES

- A. Deliverables are not fault-tolerant and are not designed, manufactured, or intended for use or resale for use for insurance underwriting or with critical health and safety or online control equipment in hazardous environments that require fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, emergency response, terrorism prevention or response, life support, or weapons systems ("High Risk Activities"). ESRI SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.
- B. Licensee agrees to indemnify, defend, and hold ESRI, its officers, directors, employees, agents, subcontractors, licensors, successors, and assigns harmless from and against any and all liability, losses, claims, expenses (including attorneys' fees), demands, or damages of any kind, including direct, indirect, special, punitive, incidental, or consequential damages, arising out of or in any way connected with Licensee's use or permitting the use by others of Deliverables for High Risk Activities. Delivery of Deliverables does not constitute a waiver of the rights and obligations set forth in this Article.

ARTICLE 12—TERM AND TERMINATION

A. Term

Unless terminated earlier pursuant to Section B or C of this Article, the term of this Addendum shall expire upon the later to occur of (i) the delivery of the last scheduled Deliverable as specified in the Task Orders executed under this Addendum or (ii) the expiration of a two (2)-year period commencing on the effective date of this Agreement.

B. Termination for Convenience

Licensee may terminate this Addendum or any Task Order at any time on thirty (30) days' written notice to ESRI and upon payment to ESRI of all amounts due to date pursuant to this Addendum, including reasonable termination expenses and the pro rata contract price for the Task Orders affected.

C. Termination for Cause

Either party, as applicable, shall have the right, in addition and without prejudice to any other rights or remedies, to terminate this Addendum or any Task Order as follows:

- i. By ESRI, at its sole discretion and without opportunity to cure, if (a) Licensee fails to pay after ten (10) days' written notice the amounts due to ESRI pursuant to the "Compensation; Invoices" article of this Addendum, (b) ESRI has terminated all or any part of this Agreement under any other of its provisions, or (c) Licensee engages in unauthorized use, reproduction, or disclosure of Deliverables.
- ii. By either party for any material breach of this Addendum that is not cured within fifteen (15) days of receipt by the party in default of a notice specifying the breach and requiring its cure.

D. Obligations upon Termination

Upon termination of this Addendum, the parties shall have no further obligations pursuant to its terms, except that Articles 4, 5, 8, 9B, and 10–14 shall survive termination. Unless Licensee has materially breached its obligations under this Agreement, Articles 3 and 9A shall also survive termination.

ARTICLE 13—RESTRICTIONS ON HIRING

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

ARTICLE 14—TAXES

Values specified in Task Orders are exclusive of state, local, and other taxes or charges (including, without limitation, custom duties, tariffs, and value-added taxes, but excluding income taxes payable by ESRI). In the event such taxes or charges become applicable to Deliverables, Licensee shall pay any such taxes upon receipt of written notice that they are due.

ARTICLE 15—INDEPENDENT CONTRACTOR

ESRI is, and at all times will be, an independent contractor. Nothing in this Agreement shall be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither party has the authority to enter into any contracts on behalf of the other party or otherwise act on behalf of the other party.

ARTICLE 16—FORCE MAJEURE

The obligations in this Addendum are subject to the "Force Majeure" article set forth in this Agreement.

ARTICLE 17—COMMERCIAL TERMS AND CONDITIONS

This Addendum contains ESRI's commercial terms and conditions. Licensee's rights in the Deliverables are strictly limited to the uses granted by this Addendum. In the event any court, arbitrator, or board holds that the U.S. Government has greater rights to any portion of the Deliverables, such rights shall extend only to the portion(s) affected, and use, duplication, or disclosure by the U.S. Government is subject to restrictions as provided in DFARS §227.7202-1(a) and §227.7202-3(a) (1995), DFARS §252.227-7013(c)(1)(ii) (OCT 1988), FAR §12.212(a) (1995), FAR §52.227-19 (June 1987), or FAR §52.227-14 (ALT III) (June 1987), as applicable.

ARTICLE 18—NOTICE

All notice required by this Agreement shall be in writing to the parties at the following respective addresses, or to such other address as a party may subsequently specify in a notice provided in the manner described in this Article, and shall be deemed to have been received (i) upon delivery in person; (ii) upon the passage of three (3) days following post by first class registered or certified mail, return receipt requested, with postage prepaid; (iii) upon the passage of two (2) days following post by overnight receipted courier service; or (iv) upon transmittal by confirmed telex or facsimile, provided that if sent by facsimile a copy of such notice shall be concurrently sent by U.S. certified mail, return receipt requested and postage prepaid, with an indication that the original was sent by facsimile and the date of its transmittal:

Licensee: _____

Attn.: _____
Tel.: _____
Fax: _____

ESRI: ESRI
380 New York Street
Redlands, CA 92373-8100
USA
Project/Technical Notice—Attn.: _____,
Senior Contract Administrator/Specialist
Tel.: 909-793-2853, extension _____
Fax: 909-307-3034
Legal Notice—Attn.: Contract Manager
Tel.: 909-793-2853, extension 1593
Fax: 909-307-3020
With a copy to _____, Senior Contract Administrator/Specialist

Notice for non-U.S. Licensees shall be deemed to have been received (i) upon delivery in person; (ii) upon the passage of seven (7) days following post by international courier service with shipment tracking provisions; or (iii) upon transmittal by confirmed telex or facsimile, provided that if sent by facsimile a copy of such notice shall be concurrently sent by receipted international courier service, with an indication that the original was sent by facsimile and the date of its transmittal.

ARTICLE 19—ASSIGNMENT AND DELEGATION

ESRI may, in whole or in part, assign any of its rights or delegate any performance under this Agreement, provided that ESRI shall remain responsible for the performance it delegates. This Agreement binds and benefits successors or assigns permitted under this Article 19.

ATTACHMENT A
SAMPLE TASK ORDER
ESRI Agreement No. _____
Task Order No. _____

In accordance with the terms and conditions of the above-referenced Agreement between Environmental Systems Research Institute, Inc. (ESRI), and _____ (Licensee), this Task Order authorizes delivery of the Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

1. Scope of Work: [As applicable, specifically identify and describe Deliverables including Custom Code, Map Data, and Technical Data (including Technical Assistance), Supported Software, and the resources to be provided by Licensee (including Licensee-supplied personnel, software, hardware, and digital or hard-copy data), and place of delivery and location where technical assistance will be provided.]

In addition to the foregoing, Licensee agrees that its employees, representatives, and subcontractors will cooperate and communicate with ESRI during performance of this Task Order. Without cost to ESRI, Licensee shall provide, allow access to, or assist ESRI in obtaining all data ESRI requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Licensee and (2) copies of ordinances, codes, regulations, or other governmental documents.

2. Contract Type (FFP or T&M):
3. Total Task Order Value or Not-to-Exceed Value (if time and materials basis):
4. Delivery Schedule or Start/End Date(s) for Each Deliverable:
5. Special Considerations:
6. ESRI Project Manager:
ESRI Senior Contract Administrator:

ACCEPTED AND AGREED:

(Licensee)
Signature: _____
Printed Name: _____
Title: _____
Date: _____

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

**ATTACHMENT B
TIME AND MATERIALS RATE SCHEDULE**