



**ENTERPRISE ADVANTAGE PROGRAM
AGREEMENT (E125)**

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

EAP Agreement No. _____

This Enterprise Advantage Program Agreement ("EAP Agreement") is entered into by and between Environmental Systems Research Institute, Inc. ("ESRI"), a California corporation, at 380 New York Street, Redlands, California 92373-8100 and the licensee listed below ("Licensee").

ESRI offers an Enterprise Advantage Program to Licensees current on ESRI software maintenance that are implementing or have implemented a geographic information system (GIS) enterprise solution based on ESRI software. Licensee agrees to contract with ESRI for and ESRI agrees to provide Licensee with certain enhanced consulting services, training, and support available under the Enterprise Advantage Program for the authorized Licensee location as described herein. The Enterprise Advantage Program is not designed for ESRI to provide project specific consulting services (i.e. application or database development for solutions or applications).

Software, Data, Web Services, and Documentation, as those terms are defined in the MLA, shall continue to be licensed under Master License Agreement No. _____ ("MLA"), entered into by Licensee and ESRI.

This EAP Agreement may be executed in duplicate by the parties. An executed EAP 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.

This EAP Agreement consists of this signature page and the attached terms and conditions. This EAP Agreement constitutes the sole and entire agreement of the parties as to Enterprise Advantage Program and supersedes any previous agreements, understandings, and arrangements between the parties relating to the Enterprise Advantage Program. Additional or different terms contained on Licensee's purchase order shall not apply. Any modifications or amendments to this EAP Agreement must be in writing and signed by an authorized representative of each party.

The parties acknowledge that they have read and understand this EAP Agreement and agree to be bound by its terms and conditions.

(Licensee)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(ESRI)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

**Authorized Licensee Location and Contact Information
(to be completed by Licensee)**

Contact: _____
Address: _____
City, State, ZIP: _____

Telephone: _____
Fax: _____
E-mail: _____

ARTICLE 1—DEFINITIONS

Capitalized terms that have not been defined in this EAP Agreement shall have the meaning found in the applicable ESRI license agreement.

"PSS" means Premium Support Services.

"Renewal Period" means any one-year extension of this EAP Agreement.

"Secure Formats" means object code, executable code, or similar formats.

"Term" means the initial term of this EAP Agreement.

ARTICLE 2—ENTERPRISE ADVANTAGE PROGRAM

2.1 Enterprise Advantage Program Description. The Enterprise Advantage Program is a menu of services, training, and support that provides Licensee with the flexibility to select components that best meets its needs. The Enterprise Advantage Program components include the following:

- a. *Assigned Technical Advisor.* An ESRI Technical Advisor who has expertise in ESRI GIS software capabilities and has the ability to analyze and assess optimal solutions in the context of GIS enterprise implementation will be assigned to Licensee. Unless additional Technical Advisory hours are purchased, the Technical Advisor services are expected to average two hours per week per account. Licensee may elect to retain additional Technical Advisor Services blocks for a supplemental price. Technical Advisors are not substitutes for services provided by ESRI Professional Services Division. Licensee will continue to contact ESRI Support Services as the first point of contact for all technical support inquiries. If a custom application or other services are required, Licensee will need to use ESRI Professional Services. If Licensee requests the Technical Advisor to come to Licensee's site, Licensee will pay reasonable travel costs. The Assigned Technical Advisor in coordination with the Assigned Account Manager shall
 - (1) Advise Licensee on GIS strategies, architectures, and product selection;
 - (2) Advise Licensee on training needs, available business partner solutions, and business case development;
 - (3) Act as Licensee's technical advocate in dealing with ESRI;
 - (4) Participate in annual account reviews; and
 - (5) Serve as point of escalation if Licensee is not satisfied with the resolution of an incident through ESRI Support Services.
- b. *Annual Account Review.* Licensee may attend a one-day annual GIS strategy and account review with Licensee's Account Manager and Technical Advisor at ESRI headquarters in Redlands, California. Key ESRI technical and industry specialists may also attend the review to answer questions and discuss Licensee's ideas and suggestions regarding ESRI software and support strategies. Licensee is responsible for its own travel expenses. As an option to hosting the review in Redlands, ESRI may conduct the review at the appropriate ESRI regional office to suit Licensee's convenience, and ESRI's Redlands staff will have the option to participate either by telephone or by webcast.
- c. *System Environment Profile.* ESRI will provide Licensee access to ESRI's Premium Support Services Website to enable Licensee to complete and maintain an inventory of Licensee's relevant GIS technical environment to assist the Technical Advisor(s) and PSS Coordinator in supporting Licensee's environment as appropriate.
- d. *Learning and Services Credits*
 - (1) Licensee will receive the number of ordered Learning and Services Credits. Licensee may use the credits toward any combination of consulting services support, training, premium support, or related travel expenses as described below.
 - (2) Licensee may order, for an additional price, one additional block of Learning and Services Credits during the initial term of the EAP Agreement and one additional block of Learning and Services Credits for each Renewal Term.
 - (3) If Licensee requests additional blocks of Learning and Services Credits over and above the initial additional block provided for in the preceding paragraph, Licensee must order Learning and Services Credits and Technical Advisor Services bundle.

- (4) Each Learning and Services Credit may be exchanged for one of the following:
- (a) Two hours of consulting services support consisting of review of technology strategy, systems design, prototyping, and other general technical consulting services support activities. Any project related activities requiring a deliverable other than consulting time will be scoped, budgeted, and scheduled through a separate agreement;
 - (b) Two hours of Premium Support Services;
 - (c) One day at the ESRI Application Development Center;
 - (d) One day for one student at an ESRI Training Center in Redlands, California, or at a regional office;
 - (e) On-site Instructor-Led Training (9 credits = 1 day);
 - (f) 480 Virtual Campus dollars for Virtual Campus training; or
 - (g) Related ESRI travel and per diem expenses as quoted.
- (5) Unused Learning and Services Credits may be carried over to future years as long as Licensee remains an ESRI Enterprise Advantage Program customer. If this EAP Agreement expires (exclusive of termination for default), any unused credits will expire six months after the expiration of this EAP Agreement; however, the Technical Advisor Services will not be available during this post-Term period.
- (6) ESRI will provide Licensee with a monthly report outlining usage of Enterprise Advantage Program Learning and Services Credits to date of usage.
- e. *Exclusive Enterprise Webcast.* ESRI will provide access to a quarterly webcast presenting business and technical information related to enterprise GIS.

2.2 Learning and Services Credit Use

- a. *Current on Maintenance.* Licensee must remain current on standard maintenance during the term of this EAP Agreement. Standard maintenance is described at <http://www.esri.com/legal>, which may be changed from time to time.
- b. *Authorization of Credit Use.* Licensee will contact its Account Manager to consume Learning and Services Credits for a particular request. ESRI will submit to Licensee a Learning and Services credit estimate by email for confirmation and authorization for use of the credits.
- c. *Travel and Per Diem.* Any ESRI travel and per diem will be quoted separately. Licensee may direct ESRI to use credits for travel and per diem as stated in Enterprise Advantage Program Description, Section 2.1 above, or Licensee will issue a purchase order and ESRI will invoice Licensee for the travel and per diem expenses as described below in Article 6.
- d. *Notification of Consumed Credits.* ESRI will notify Licensee in the event the authorized Learning and Services Credits are consumed prior to completion of the requested work. Licensee may elect to direct use of additional credits, if available; procure additional Learning and Services Credits; or notify ESRI to stop work on such requested work. ESRI reserves the right to discontinue work when the authorized credits are consumed.
- e. *Review of Proposed Activities.* Any activities proposed to be completed under the Enterprise Advantage Program will be subject to review and approval by ESRI to ensure alignment with the intent of the program.

2.3 Defense or Military Application. At the time the Learning and Services Credits are requested or before any services are provided by the Technical Advisor, Licensee will inform ESRI if any of the requested services, consulting, training, or support provided by ESRI is directly related to a defense article or for a military application.

ARTICLE 3—LICENSE GRANT

3.1 Training. The terms of the ESRI license agreement shall be applicable to all Licensee course participants and for all Software and Documentation licensed for use in any training course to be conducted. For on-site training, temporary Software licenses may be issued by ESRI where there is an insufficient number of Software licenses available at the training facility. Licensee shall uninstall the temporary Software licenses at the conclusion of the training course.

3.2 Deliverables. ESRI hereby grants to Licensee a nonexclusive, royalty-free, worldwide license in the deliverables to use and reproduce the deliverables in connection with Licensee's authorized use of the Software and Data for support of which the deliverables were supplied.

3.3 PSS. The terms and conditions of the license agreement for the affected Software will govern any updates, patches, hot fixes, or software provided under this EAP Agreement.

ARTICLE 4—WARRANTIES AND DISCLAIMERS

4.1 Warranties and Disclaimers

- a. All Services will be provided in a professional and workmanlike manner.
- b. ESRI warrants that for a period of 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 applicable written specifications included in the corresponding task or delivered to Licensee pursuant to this EAP Agreement.
- c. *Map Data Disclaimer.* Map Data may contain some nonconformities, defects, errors, or omissions. MAP DATA ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, ESRI and its licensors do not warrant that the Map Data will meet Licensee's needs or expectations, that the use of the Map Data will be uninterrupted, or that all nonconformities can or will be corrected. ESRI and its licensors are not inviting reliance on the Map Data and Licensee should always verify actual Map Data.

4.2 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, 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 THE ENTERPRISE ADVANTAGE PROGRAM OR ANY DELIVERABLES PROVIDED HEREUNDER WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR-FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. THE DELIVERABLES ARE NOT DESIGNED, MANUFACTURED, 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.

ARTICLE 5—LIMITATION OF LIABILITY

5.1 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 FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS EAP AGREEMENT OR USE OF THE DELIVERABLES, 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.

5.2 General Limitation of Liability. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FOR DIRECT DAMAGES SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE EAP PROGRAM.

5.3 Applicability of Disclaimers and Limitations. The parties agree that ESRI has set its prices and entered into this EAP 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 6—COMPENSATION

6.1 Upon execution of this EAP Agreement or the inception of a Renewal Period, ESRI shall invoice Licensee as quoted for the Enterprise Advantage Program annually in advance. Fees for additional Learning and Services Credits or Technical Advisor Services will be invoiced upon receipt of Licensee's order. Licensee shall pay ESRI within 30 calendar days of receipt of invoice.

6.2 Pricing for annual program renewals and new ESRI service offerings will be in accordance with ESRI's most current price schedule at the time of purchase or renewal.

6.3 Licensee may elect to use Learning and Services Credits for actual travel expenses plus a standard burden, or to be invoiced at the actual cost for travel expenses plus a standard burden. Meals will be charged on a per diem basis.

ARTICLE 7—TERM AND TERMINATION

7.1 The Term of this EAP Agreement is one year from the last date of signature on the signature page. Prior to the end of the Term, ESRI may provide Licensee with a quotation for an additional one year Renewal Period. If Licensee accepts the quote, ESRI will submit an invoice to Licensee for the quoted annual Enterprise Advantage Program price and this EAP Agreement will automatically extend for the Renewal Period.

7.2 Either party may elect not to renew the EAP Agreement for its sole convenience at the end of any term upon 30 days written notice to the other party, in which event the EAP shall expire.

7.3 Either party may terminate this EAP Agreement for a material breach that is not cured within 10 days after written notice to the other party or for bankruptcy or insolvency of the other party.

7.4 Upon termination or expiration of this EAP Agreement

- a. Except when termination results from non-renewal, all outstanding Learning and Services credits shall be subject to cancellation, acceptance, or rejection at the sole discretion of ESRI.
- b. 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 EAP Agreement.
- c. 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 8—CONFIDENTIALITY

8.1 Confidential Information. It may be necessary for ESRI or Licensee to disclose to the other party certain confidential information under this EAP Agreement. The access code or password for the PSS Web site and any deliverables are confidential information of ESRI. Licensee data contained in the ESRI PSS Web site database is confidential information of Licensee. Each party shall use the confidential information described above only for exchanging information needed to provide the PSS contemplated by this EAP Agreement. Within 60 days of termination of this EAP Agreement, each party shall return or destroy and provide a certification of destruction of the confidential information of the other party.

8.2 Deliverables

- a. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile deliverables delivered only in Secure Formats. For deliverables delivered in source code or other human-readable formats, Licensee shall have met its obligations under this EAP Agreement 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.
- b. 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 to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.
- c. The disclosures permitted under this Section 8.2 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 EAP Agreement and obtain their agreement to be bound by them.

8.3 Other Exchange of Confidential Information. Any other exchange of confidential information between the parties shall require execution of a nondisclosure agreement signed between the parties separate from this EAP Agreement.

ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

9.1 Should the Licensee choose to use Learning and Services Credits for PSS, the terms of this Article 9 shall apply.

9.2 Licensee may use Learning and Services Credits for PSS for any product covered under ESRI's normal maintenance subscription. When logging a call with ESRI Support, Licensee must specify that EAP credits will be used toward the support incident.

9.3 ESRI will support the licensed Software (as defined in ESRI's license agreement) by providing Licensee with enhanced online and telephone support and other services through the PSS program as described below:

- a. *Assigned PSS Coordinator.* ESRI will assign a PSS Coordinator to Licensee. The assigned PSS Coordinator will work directly with Licensee's authorized callers to facilitate Licensee's PSS needs.
- b. *Normal Business Hours of Operation.* PSS operates during the normal business hours of Monday through Friday, from 6:00 a.m. to 5:00 p.m. Pacific time, excluding weekends and ESRI holidays.
- c. *Acknowledgment/Response Time.* An "Incident" is a reported failure of the Software to operate according to the Documentation (as defined in ESRI's license agreement) furnished by ESRI where such failure substantially impacts operational or functional performance. Licensee may open an Incident by calling ESRI's Helpdesk Support Services or logging the Incident via the Premium Support Web site. An automated e-mail acknowledgment will be sent for a new Incident logged via the Premium Support Web site. The assigned PSS Coordinator will use commercially reasonable efforts to call or send an e-mail response within one business hour of the receipt of a new Incident to notify Licensee that the submitted Incident is in the initial stage of review.
- d. *Two Authorized Callers.* Licensee may designate up to two specific authorized callers who may contact PSS, thereby providing continuity and building technical and business knowledge by both parties to improve services.
- e. *Toll-Free Support Number.* Licensee may request PSS by telephone at 888-621-1755 (toll free to domestic callers) or 909-793-3774 or by facsimile at 909-792-0960.
- f. *Premium Support Web Site Access.* Licensee will receive access to the Premium Support Web site at <http://support.esri.com/psg>. PSS Coordinators will log and track status and completion of all identified PSS Incidents. Licensee's authorized callers may log and view their Incidents, initiate chat sessions and remote screen sharing with assigned ESRI support staff, and access other PSS-related tools and information through the Premium Support Web site.
- g. *System/Environment Profiling.* Licensee will be provided access to an ESRI database through the Premium Support Web site to enter and maintain data regarding Licensee's equipment, applications, and skill sets associated with ESRI technology.
- h. *Incident Management.* Incident management is an interactive process between PSS and Licensee that permits Licensee to contact the PSS Coordinator. Once an Incident is logged, the PSS Coordinator will confer with ESRI Technical Support analysts in an attempt to determine an appropriate resolution or workaround. If required, the PSS Coordinator will also confer with ESRI Development. The PSS Coordinator will initiate proactive follow-up to inform Licensee of the progress made on each Incident.
- i. *PSS Software Alert Newsletter.* Licensee will receive a news bulletin that discusses key current issues being investigated by ESRI.
- j. *Quarterly Teleconference Meeting.* ESRI and Licensee will schedule a quarterly teleconference meeting to discuss Licensee's current support Incidents. ESRI will make available the assigned Account Manager, PSS Coordinator, PSS Manager, and other ESRI staff as required.

9.4 PSS Restrictions and Exclusions

- a. *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.
- b. *Territory.* PSS is available only within the United States and its territories.
- c. *Acknowledgment.* Licensee acknowledges and agrees that the report of an error or defect of the Software to PSS 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.
- d. *Hardware Support.* ESRI does not provide support for hardware, graphics cards, monitors, plotters, graphics printers, digitizers, modems, and so forth, except to answer questions regarding how standard, supported devices interface with Software.
- e. *On-Site Support.* PSS does not include on-site support.

ARTICLE 10—CONSULTING SERVICES SUPPORT TERMS AND CONDITIONS

10.1 Should Licensee choose to use Learning and Services credits for consulting services support, the terms of this Article 10 shall apply.

10.2 Patents and Inventions

- a. Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of 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, 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.
- b. 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.
- c. A joint owner ("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 other joint owner ("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.
- d. 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.

10.3 Ownership. Except as specifically granted in this EAP Agreement, ESRI or its licensors own and retain all right, title, and interest in the deliverables.

ARTICLE 11—TRAINING TERMS AND CONDITIONS

11.1 Should Licensee choose to use Learning and Services credits for training, the terms of this Article 11 shall apply.

11.2 Training Location. Training may be conducted at Licensee's site or at an ESRI Learning Center.

11.3 Course Description. The ESRI Software training course(s) to be conducted, the location, the dates during which the courses are to be conducted, the number of participants, and the prices to be paid to ESRI are as set forth in the ESRI Course Catalog or at ESRI's training Web site, which is incorporated by this reference. All courses shall be conducted in substantial conformity with the most current ESRI training course brochure(s). ESRI reserves the right to modify course content when necessary due to Software technical abilities or limitations.

11.4 ESRI's Responsibility. ESRI shall provide an instructor qualified to conduct the course(s), as well as all necessary training materials sufficient for the number of registered participants. ESRI will provide each student with a course manual.

11.5 ESRI's Scheduling Coordinator. The ESRI Scheduling Coordinator, who is the person through whom all course(s), dates, and locations shall be confirmed, can be contacted at 909-793-2853, extension 1523.

11.6 Unique ESRI Learning Center Terms. Where courses are to be conducted at ESRI facilities, the following restrictions and requirements apply:

- a. Seating is limited in some classes. Registrations are always processed using a standard student registration application, on a first-come, first-served basis. Waiting lists are used when necessary. Registration applications are attached to every course catalog or are available on the Web or from the Learning Center.
- b. Class schedules are widely disseminated by ESRI Marketing and the regional offices. The Redlands Learning Center or Scheduling Coordinator works with each Regional Training Coordinator to add classes to accommodate waiting lists where appropriate.
- c. All class registrants are asked to include proof of payment when they submit their registration application.
- d. The tuition includes a \$110 data-processing fee, which is nonrefundable. This fee may be charged in cases of short-notice cancellations or due to multiple student transfers. Student substitutions, when a student's place in class is filled by another person from the same organization, are allowed, provided that the ESRI Learning Center is notified

in advance. Licensee will be billed for the data processing fee, but Learning and Services Credits will not be used if the ESRI Learning Center receives notice of cancellation at least six business days prior to the class start date. Learning and Services Credits will be used for participants who cancel five days or less before the class start date or who fail to appear for the class.

- e. Training classes are confirmed approximately 10 days prior to the start date.
- f. Travel is the registrant's responsibility. ESRI assumes no responsibility for nonrefundable travel arrangement losses resulting from course scheduling changes or cancellations. Even though ESRI strives to confirm all classes, class cancellations are sometimes unavoidable.

11.7 Unique Licensee Site Terms. Where courses are to be conducted at Licensee's facilities, Licensee shall provide physical training facilities that meet the following minimum requirements or modifications as mutually agreed to by both parties:

- a. Licensee shall, where possible, provide a one-room facility, sufficient for a training course for up to 12 persons (or such other number as may be agreed to by ESRI's scheduling coordinator). The facility shall have appropriate climate control, lighting, and sufficient power and number of outlets to accommodate the required number of computers and other equipment to be used.
- b. Licensee shall supply all computer hardware for the training course. Computers must be platforms fully supported by ESRI. All computer hardware shall be configured with an appropriate release of an operating system to run the current release version of the ESRI required Software. There shall be a minimum of one computer and color monitor for every participant. Other peripheral devices, including but not limited to digitizers and plotters/printers, as required by the training course being conducted, shall be Class 1 supported.
- c. Licensee shall be responsible for providing one high-resolution PC projector and screen as well as one large writing board.
- d. Licensee shall limit the number of course participants to 12 students per course. Additional students, up to a maximum of 15, may be added to some classes for an additional fee.
- e. Licensee agrees that all participants shall be regular employees of Licensee who meet the prerequisites set forth in the ESRI training brochure(s).
- f. Licensee shall complete and submit an ESRI Licensee Site Request form no less than four weeks prior to the start of any course. Final schedule is subject to mutual agreement.

11.8 Mobile Lab. When ESRI's mobile lab is provided for use by students as part of a training class delivered at Licensee's location, the following provisions apply:

- a. Licensee shall use its best efforts to protect the Mobile Classroom equipment from loss, damage, or theft while in Licensee's possession. Licensee should immediately report any damage or missing items upon receipt of the Mobile Classroom.
- b. Licensee shall keep the Mobile Classroom equipment in a secure, locked area between class sessions.
- c. Licensee shall make the Mobile Classroom equipment available for freight pick-up at the conclusion of the ESRI courses.
- d. Licensee shall ensure no one except ESRI students uses the Mobile Classroom equipment.
- e. Licensee shall be liable for loss or damage to ESRI's Mobile Classroom equipment as a result of Licensee's failure to comply with the requirements described above.
- f. Licensee warrants that it shall maintain sufficient insurance coverage to enable it to meet its obligations created by this agreement and by law.

ARTICLE 12—GENERAL PROVISIONS

12.1 Intellectual Property Rights Attribution. Licensee shall retain any copyright, patent, or trademark notices on all items licensed under this EAP Agreement and shall take other necessary steps to protect ESRI's or its licensor's intellectual property rights.

12.2 No Implied Waivers. The failure of either party to enforce any provision of this EAP 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.

12.3 Severability. If any provision of this EAP Agreement is determined to be invalid, illegal, or unenforceable, the parties agree the remaining provisions of this EAP Agreement shall remain in full force if both the economic and legal substance of

the transactions contemplated by this EAP 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.

12.4 Force Majeure. If the performance of this EAP 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.

12.5 Applicable Laws. This EAP Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflict of laws principles.

12.6 Non-solicitation of Contractor Personnel. It is hereby mutually agreed that Licensee will not solicit for hire any employee(s) of ESRI's technical staff, who is (are) associated with efforts called for under this effort, for a period of one year thereafter. In the event the foregoing provision is breached, liquidated damages equal to 12 months of the employee's compensation plus any legal expenses associated with the enforcement of this provision shall be paid by the Licensee to ESRI.

12.7 Taxes. Services provided are quoted exclusive of all state, local, value-added or other taxes, customs, or 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, applications, or data, Licensee shall pay any such applicable tax upon receipt of written notice that such taxes are due.

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

12.9 Assignment and Delegation. ESRI may, in whole or in part, assign any of its rights or delegate any performance under this EAP Agreement, provided that ESRI shall remain responsible for the performance it delegates. This EAP Agreement binds and benefits successors or assigns permitted under this Section 12.9.

12.10 Export Control. ESRI's technology is subject to U.S. export control laws and regulations—ESRI's 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 U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation.

12.11 Headers. Headers are for convenience only and are not to be used in the interpretation of this EAP Agreement.