



LICENSE AND SERVICES MASTER AGREEMENT

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

Agreement No. _____

This License and Services Master Agreement ("Agreement") is between the entity shown below ("Customer") and Environmental Systems Research Institute, Inc. ("Esri"), a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

This Agreement is the sole and entire agreement of the parties as to the subject matter of this Agreement and supersedes any previous agreements, understandings, and arrangements relating to such subject matter. All attachments and addendums to this Agreement are incorporated and made part of this Agreement. The Agreement comprises this signature page, the terms and conditions that begin on the following page, and all referenced attachments and addendums. Additional or conflicting terms in any Ordering Documents exchanged during the ordering process, other than the terms of this Agreement, Product or Service descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Neither party has relied on any statement, representation, or warranty not expressly stated in this Agreement. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by both parties.

The parties may sign this Agreement in counterparts or via electronic signatures; such execution is valid even if an original paper document bearing both parties' original signatures is not delivered. This Agreement is executed and effective as of the last date signed below.

The authorized representatives of each party accept and agree to the terms of this Agreement by signing below:

Form with signature lines for Customer and Environmental Systems Research Institute, Inc. (Esri), including fields for Legal Address, By: Authorized Signature, Printed Name, Title, and Date.

Customer Contact Information

Form for Customer Contact Information with fields for Contact, Address, City, State, ZIP, Telephone, Fax, and Email.



LICENSE AND SERVICES AGREEMENT

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1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

1.1 Attachment A contains definitions of capitalized terms used throughout this Agreement. Each section of this Agreement may include additional definitions that are used exclusively within that section.

1.2 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable right to

- a. Use the Esri Offerings as set forth in the Documentation and applicable Ordering Documents; and
- b. Copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Products. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

_____ "Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright © [*Customer will insert the actual copyright date(s) from the source materials.*] Esri and its licensors. All rights reserved."

The grants of rights in this section (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this Agreement including Attachment B.

1.3 Consultant or Contractor Access. Customer may authorize its consultants or contractors to (i) host Software and Data for Customer and (ii) use Esri Offerings exclusively for Customer's benefit. Customer will be solely responsible for its consultants' and contractors' compliance with this Agreement and will ensure that each consultant or contractor discontinues use of the Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

1.4 Reservation of Rights. All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.

1.5 Trial, Evaluation and Beta Licenses. Products acquired under ana trial or evaluation license or subscription or under a Beta program are intended for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the evaluation term, Customer may lose any content and customizations made during the evaluation term. If Customer does not wish to purchase a license or subscription, Customer should export such content before the end of Customer's evaluation period.

1.56 Educational Programs. Customer agrees to use Esri Offerings provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "**Administrative Use**" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.

1.67 Grant Programs. Customer may use Esri Offerings provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Esri Offerings, Customer shall not use Esri Offerings for revenue-generating or for-profit purposes.

1.78 Other Esri Limited-Use Programs. If Customer acquires Esri Offerings under any limited-use program not listed above, Customer's use of the Esri Offerings may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the non-conflicting terms of this Agreement.

~~**1.8 Reservation of Rights.** All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.~~

2.0 SOFTWARE TERMS OF USE

2.1 License Types. Esri licenses Software under the following license types:

- a. **Concurrent Use License:** Customer may install and use the Software on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
- b. **Deployment License:** Customer may incorporate ArcGIS Runtime components in Value-Added Applications and distribute the Value-Added Applications to Customer's end users.
- c. **Deployment Server License:** Customer may use the Software under a Server License for all uses permitted in the Agreement and as described in the Documentation.
- d. **Development Server License:** Customer may use the Software under a Server License only to build and test Value-Added Applications as described in the Documentation.
- e. **Development Use:** Customer may install and use the Software to build and test Value-Added Applications as described in the Documentation.
- f. **Dual Use License:** Customer may install the Software on a desktop computer and use it simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any time.
- g. **Failover License:** Customer may install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
- h. **Redistribution License:** Customer may reproduce and distribute the Software provided that
 - 1. Customer reproduces and distributes the Software in its entirety;
 - 2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
 - 3. Customer reproduces all copyright and trademark attributions and notices; and
 - 4. Customer does not charge others a fee for the use of the Software.
- i. **Server License:** Customer may install and use the Software on a server computer. Server licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use, each Server License includes a Failover License.
- j. **Single Use License:** Customer may permit a single authorized end user to install and use the Software on a single computer. Customer may permit the single authorized end user to install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.
- k. **Staging Server License:** Customer may use the Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Servers.

2.2 Permitted Uses

a. Customer may

1. Install, access, or store Software and Data on electronic storage device(s);
 2. Make archival copies and routine computer backups;
 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, if the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software ~~licensed for provided under a~~ Development Use License.
 4. Move the Software in the licensed configuration to a replacement computer;
 5. Distribute to third parties Software and any associated Authorization Codes required for use of a Deployment License; and
 6. Use server Software for Commercial ASP Use if Customer has procured a Commercial ASP Use license or is a governmental or not-for-profit organization that operates a website or offers an Internet service on a cost-recovery basis and not for profit.
- b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries, but only to the extent that such customization is described in Documentation.
- c. Customer may use all fonts provided with the Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
- d. Addendum-1 provides Product-specific terms of use for individual Software. Esri may issue updates to Addendum-1 from time to time.

~~**2.3 Maintenance.** Esri will provide Maintenance in accordance with the Esri Maintenance and Support Program if Customer is in the United States. Customers outside the United States may obtain Maintenance from their local Esri distributor under the distributor's own terms.~~

3.0 ONLINE SERVICES ~~TERMS OF USE~~

3.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Anonymous Users"** means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Value-Added Applications. Customer may enable Anonymous Users to access its Content or Value-Added Applications by publishing them through the use of the Sharing Tools, included with Customer's authorized use of the Online Services.
- b. **"App Login Credential"** means a system-generated application login and associated password provided by registering a Value-Added Application with ArcGIS Online, which can be embedded in a Value-Added Application to enable the Value-Added Application to access and use Online Services.
- c. **"Service Credit(s)"** means a unit of exchange that is allocated with an Online Services subscription in an amount specified in the Ordering Document.
- d. **"Sharing Tools"** means publishing capabilities included with Online Services and ArcGIS Website that allow Customer to make Customer Content and Value-Added Applications available to third parties ~~and/or~~ Anonymous Users.

3.2 Subscription to Online Services. Esri provides Online Services subscriptions under the following terms. Addendum-1 also provides Product-specific terms of use for individual Online Services.

~~**3.3 Provision of Subscription Online Services.** For subscription Online Services, Esri will~~

- ~~a. Provide Online Services to Customer in accordance with the Documentation;~~

- ~~b. Provide Maintenance in accordance with the Esri Maintenance and Support Program if Customer is in the United States. Customers outside the United States may obtain Maintenance from Esri's distributor under the distributor's own terms.~~
- ~~c. Provide customer support in accordance with Esri's standard customer support policies and any additional support services Customer may purchase; and~~
- ~~d. Use commercially reasonable efforts to ensure that Online Services will not transmit to Customer any Malicious Code, provided Esri is not responsible for Malicious Code that was introduced to Online Services through Customer's subscription or through third party Content.~~

3.43.3 Access to Value-Added Applications

- a. Named Users have unique, individual login credentials. Named Users have private access to features of Online Services that are not publicly accessible to Anonymous Users.
- ~~b. b. Unless other noted in Addendum 1, Customer may use its Online Services subscription to build a Value-Added Application(s) for internal use by Named Users.~~
- c. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Online Services subscription.
- d. Customer may not add third parties as Named Users to Customer's Online Services subscription for the purpose of allowing third parties to access Customer's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
- e. Customer may not provide a third party with access to ArcGIS Online ~~Services~~services enabled through Customer's ArcGIS Online subscription other than through Customer's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
- f. Customer may enable Anonymous Users to access Customer's Value-Added Application(s) running under Customer's own subscription, subject to the following terms:
 - 1. Customer may charge for such access under subscription types that permit use for ~~revenue-generation~~commercial retail business purposes.
 - 2. Customer may embed an App Login Credential into Value-Added Applications ~~to enable public use by Anonymous Users~~ but may not embed a Named User Credential.
 - 3. Customer is responsible for all Service Credits consumed in Anonymous Users' use of Customer's Value-Added Application(s).
 - 4. Customer is solely responsible for providing technical support for Customer's Value-Added Application(s).
 - 5. Customer may not enable Anonymous Users to access Value-Added Applications that are intended for Customer's internal use only; Value-Added Applications used internally require each user to use Named User login credentials.

3.54 Customer's Responsibilities

- a. Customer is solely responsible for the development and operation of Customer Content and Value-Added Applications and for its Named Users' compliance with this Agreement. Customer and its Named Users or Anonymous Users (if applicable) are the only persons authorized to access Online Services through Customer's subscription. Named Users' login credentials are for designated Named Users only and may not be shared with other individuals. Customer may assign former Named Users' login credentials to new Named Users if the former users no longer require access to Online Services. ~~Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security.~~
- b. ~~If Customer is using non-Esri application development tools to build an application that accesses Esri's Online Services,~~ Customer must include attribution acknowledging that its application uses Esri Online Services, if attribution is not automatically displayed through the use of Online Services. Guidelines are provided in the Documentation.

3.65 Modifications of Online Services. Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair,

correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Esri will issue a prorated refund.

3.76 Subscription Rate/Fee Changes. Esri may ~~increase rates/change fees~~ for subscriptions with a term greater than 1 month by notifying Customer at least 60 days prior to expiration of the then-current subscription term. Esri may ~~increase/change~~ monthly subscription ~~rates/fees~~ upon 30 days' notice. Outside the US, the distributor may provide notice of rate changes.

3.87 Customer Content

- a. *Ownership.* Customer retains all right, title, and interest in Customer Content. Customer hereby grants Esri and Esri's vendors or licensors a nonexclusive, nontransferable, worldwide right to host, run, and reproduce Customer Content solely for the purpose of enabling Customer's use of Online Services. Without Customer's permission, Esri will not access, use, or disclose Customer Content except as reasonably necessary to support Customer's use of Online Services, respond to Customer's requests for customer support, or troubleshoot Customer's subscription or for any other purpose authorized by Customer in writing. If Customer accesses Online Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Online Services, and Customer Content. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure. It is Customer's sole responsibility to ensure that Customer Content is suitable for use with Online Services and for maintaining regular offline backups using the Online Services export and download capabilities.
- b. *Sharing Customer Content.* If Customer elects to share Customer Content using Sharing Tools, then Customer acknowledges that Customer has enabled third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools or Online Services, Online Content, ArcGIS Website, Documentation, or related materials. Customer's use of Sharing Tools is at Customer's sole risk.
- c. *Retrieving Customer Content upon Termination.* Upon termination of the Agreement or any trial, evaluation, or subscription, Esri will make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so. Thereafter, Customer's right to access or use Customer Content with Online Services will end, and Esri will have no further obligations to store or return Customer Content.

3.98 Limits on Use of Online Services; Service Credits. Each Online Services subscription includes Service Credits as described in the applicable Ordering Document. Each Service Credit entitles Customer to consume a set amount of Online Services, the amount varying depending on the Online Services that Customer is using. As Customer consumes Online Services, Service Credits are automatically debited from Customer's subscription, up to the maximum number of Service Credits available. Customer may purchase additional Service Credits as needed. Esri will notify Customer's subscription account administrator when Customer's Service consumption reaches approximately 75% of the Service Credits allocated to Customer through Customer's subscription. Esri reserves the right to suspend Customer's access to Online Services that consume Service Credits when Customer consumes all its Service Credits. Esri will promptly restore Customer's access to its Online Services once Customer has purchased additional Service Credits.

3.10 ArcGIS Enterprise with Virtual Cloud Infrastructure. Customer will provide information or other materials related to its Content (including copies of any client-side applications) as reasonably requested to verify Customer's compliance with this Agreement. Esri may monitor the external interfaces (e.g., ports) of Customer Content to verify Customer's compliance with this Agreement. Customer will not block or interfere with such monitoring, but Customer may use encryption technology or firewalls to help keep its Content confidential. Customer will reasonably cooperate with Esri to identify the source of any problem with the ArcGIS Enterprise with Virtual Cloud Infrastructure services that may reasonably be attributed to Customer Content or any end-user materials that Customer controls.

4.0 DATA ~~TERMS OF USE~~

4.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. "**Business Listing Data**" means ~~information about any dataset that includes a list of~~ businesses, demographics, and logistics that enables improved decision-making, optimized internal ~~may include other associated~~ business processes, increased operational efficiency, new revenues, and competitive advantages over business rivals ~~attributes~~.
- b. "**Esri Content Package**" means a digital file containing ArcGIS Online basemap content (e.g., raster map tiles, images, vector data) extracted from the ArcGIS Online basemap services.
- c. "**Street Data**" means Data that includes or depicts information about roads, streets, and related features.

4.2 Permitted Uses

- a. Unless otherwise authorized in writing, Customer may only use Data ~~in connection~~ with the Products with which Esri has provided the Data.
- b. Customer may include representations of the Data in hard copy or static, electronic formats (e.g., PDF, GIF, JPEG) in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Product(s) to third parties subject to restrictions set forth in this License Agreement, provided that Customer affixes an attribution statement to the Data representations acknowledging Esri ~~and~~/or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation.
- c. Customer may take ArcGIS Online basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use exclusively with licensed ArcGIS Runtime applications, ~~ArcGIS Desktop~~, and ArcGIS API for Flex apps Desktop. Customer may not otherwise cache or download such Data.
- d. Esri does not acquire any rights in Customer data under this Agreement.

4.3 Use Restrictions

- a. Customer may not act directly or authorize its customers to cobrand Data, use the Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. Business Listing Data. Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. Street Data. Customer may use Street Data for mapping, geocoding, ~~and point-to-point~~ routing and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for

- ___ 1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn, or calculating an alternate route if a turn is missed;
- ___ 2. Synchronized multivehicle routing; or
- ___ 3. Synchronized Route optimization.

- e. Business Analyst Data. Customer may cache Data provided with Esri-Business Analyst (Server, Desktop) is subject to the following additional terms of use: on a mobile device for use; in conjunction with its use of Business Analyst Server. Customer may not otherwise cache or download such Data.

- 1.—f. Partial Dataset Licenses: If Customer orders a license for Esri-Business Analyst or Business Analyst (Canadian edition) with a subset of the national dataset (i.e., Region, State, Local for example, a country, region, state or local portion of a global database), Customer may use only the licensed subset, not any other portion of the national full dataset.

- 2.—~~Data provided with Business Analyst Server may not be cached or downloaded by client applications and devices.~~

g. *MapStudio Data*. Customer may create, publicly display, and distribute maps in hard copy and static electronic format for news-reporting purposes only.

4.4 Supplemental Terms and Conditions for Data. Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These ~~flow-down~~ terms supplement and amend the terms of this Agreement and are available at <http://www.esri.com/legal/third-party-data>.

5.0 TRAINING TERMS OF SERVICE MAINTENANCE

The following terms apply to Training that US Customers: Esri provides directly to will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Master Agreement if Customer is in the United States.

Customers outside the United States: Customer may obtain Training maintenance services from their local Esri distributor under the distributor's own terms standard support policy.

6.0 TRAINING

6.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

~~5.1 Definitions.~~ The following definitions supplement the definitions provided in Attachment A:

- a. "**Customer-Supplied Training Data**" means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
- b. "**Esri Mobile Lab**" means Esri equipment consisting of laptops preconfigured with Esri Software, Training Materials, hard drives, power cords, and network switches provided to Customer for use in conjunction with Training.
- c. "**Esri Training Event Assistant**" means Customer's primary Esri liaison in organizing ~~Customer site and private training~~ Training events.
- d. "**Student**" means a registered participant for a specific Training course, Customer coaching services, or training-related services.

56.2 Permitted and Prohibited Uses

- a. ~~Customer may use Esri provides~~ Training Materials ~~in conjunction with Customer's authorized use of Products for Student's own~~ training purposes. ~~Customer may not use Training Materials to train anyone other than only and for the individual exclusive use of the~~ Student who attends the ~~specific~~ training course ~~for with~~ which ~~Esri provides~~ the Training Materials are provided.
- b. Customer may run and install 1 copy of Training Materials and reproduce 1 copy of Training Materials. Customer may make 1 additional copy of the original Training Materials for archive purposes only, unless Esri grants in writing the right to make additional copies.
- c. Customer may not (i) separate the component parts of the Training Materials for use on multiple systems or in the cloud, (ii) use the Training Materials in conjunction with any other software package, (iii) merge and compile the Training Materials into a separate database(s) or documents for other analytical uses, or (iv) use audio ~~and/or~~ video recording equipment during a training course.
- d. Esri may issue temporary Product authorizations if Customer has an insufficient number of Products available for Training. Customer may use such Products for Training purposes only and under the terms of this Agreement. Customer will uninstall all deployed Products and return any media provided by Esri upon conclusion of the Training event.
- e. Customer will retain ownership of any Customer-Supplied Training Data.

5.3 Esri's Responsibilities

Esri will

- a. Provide an instructor qualified to conduct the Training;
- b. Provide all necessary Training Materials for Student; and
- c. Confirm class approximately 10 business days prior to the scheduled start date; Customer site and private classes confirmation is dependent on receipt of the completed Customer site training request form and intended method of payment; and.
- ~~d. If applicable, ship the Esri Mobile Lab to Customer's designated contact.~~

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6.4 Customer's Responsibilities

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training event. Unregistered students may not view or participate in an online classroom Training event. Esri reserves the right to disconnect any Student who permits access to an unregistered student;
- b. Confirm that all Students meet the minimum prerequisites for the applicable Training event as listed on Esri's Training website;
- c. Submit registrations with a confirmed payment commitment at least 715 business days ~~prior to~~before the scheduled start date. Esri will not confirm reservations for registrations submitted without payment commitment but will instead add the registration to a wait list pending payment confirmation. All wait list reservations are subject to availability;
- d. Provide the Esri Training Event Assistant with a list of the names and email addresses of any Students who are to attend ~~a Customer site or private Training an~~ event at least 3 business days before the scheduled start date.
- e. Be responsible for all Student travel arrangements and hold Esri harmless for losses from any nonrefundable travel arrangements due to the denial of Student's participation based on US government export regulation requirements, course scheduling changes, or cancellations;
- f. For classes held at the customer-designated facility, complete a client site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
- g. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
- h. Assume full responsibility for Student attending Training course(s) under this Agreement. Customer agrees to indemnify Esri, its officers, directors, and employees for any and all claims, liabilities, and expenses (including reasonable legal fees) arising out of or based on any uncured material breach by Student of the terms and conditions of this Agreement.
- i. If the Esri Mobile Lab is used, Customer will
 1. Immediately report any existing damage to Esri Mobile Lab equipment to the Esri Training Event Assistant upon receipt of the equipment.
 2. Keep Esri Mobile Lab equipment in a secure, locked area between Training event sessions.
 3. Ensure that only Student(s) uses Esri Mobile Lab equipment.
 4. Be responsible for loss of, damage to, and/or theft of Esri Mobile Lab equipment while in Customer's possession.
 5. Maintain sufficient insurance coverage obligations created by this Agreement and by law or regulation.
 6. Allow the Esri instructor to check all Esri Mobile Lab equipment following the completion of Training. Esri will notify Customer in writing of any damage to Esri Mobile Lab equipment due to Student use, excluding normal wear and tear. Customer will be financially responsible for any repair or replacement of equipment resulting from such damage.
 7. Make Esri Mobile Lab equipment available for freight pickup upon the conclusion of the Training event.

56.5 Student Registration and Training Event Change Policy

- a. *Individual Student Seats.* Customer will provide written notice to the Esri Customer Service department at service@esri.com of any Student transfer, cancellation, or substitution requests at least 3 business days before the scheduled start date.
 1. Multiple requests and any requests that occur without the 3 business days' advance notice are subject to a fee, as determined by Esri.
 2. Cancellation of Student registrations that occur without the 3 business days' advance notice are subject to the full Training event fee.
 3. Any substitute Student must be from the same organization as the Student being replaced.
- b. *Customer Site/Private Class/Coaching Services (Training Event).* Customer will provide written notice to Esri Customer Service at service@esri.com of any Training event rescheduling, cancellation, or Student substitution requirements at least 3 business days before the scheduled start date.
 1. Training event rescheduling and cancellations that occur without the 3 business days' advance notice are subject to the full Training event fee. Customer will be responsible for all of Esri's reasonable travel expenses and shipping costs (including Esri Mobile Lab) for all rescheduled or canceled Training events.
 2. Student substitutions that occur without the 3 business days' advance notice are subject to a fee. Any substitute Student must be from the same organization as the Student being replaced.
- c. If cancellation of a Training event is necessary due to causes beyond the party's reasonable control, the affected party is released in full from the 3-business-day notification requirement. The affected party will either reschedule or cancel the Training without incurring any liability.
- d. If Esri is unable to conduct the Training on the scheduled date, Esri will notify Customer at least 3 business days before the scheduled start date.
- e. Esri will not permit any Student who is a resident of a US embargoed country or is listed on any of the various US Government Lists of Parties of Concern or Specially Designated Nationals lists to attend the training event.
- f. *Termination of Agreement.* Students who are currently registered for a training course as of the date of termination of this Agreement may attend the scheduled Training, subject to the terms and conditions of this Agreement.

5.6 Payments

6.6 Invoicing; Prepaid Fees

- a. Esri will invoice Customer upon completion of each training course or immediately upon receipt of a purchase order if mutually agreed to by the parties. ~~Customer's payment will be due no later than 30 days after receipt of the invoice.~~
- b. If Customer is invoiced and pays that invoice prior to the scheduled Training event, then Customer has 1 calendar year from the date of the invoice to consume the Training days. For a multiyear order, the Training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.

67.0 PROFESSIONAL SERVICES TERMS

7.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

~~The following terms apply to Professional Services that Esri provides directly to Customer.~~

~~6.1 Definitions.~~ The following definitions supplement the definitions provided in Attachment A:

- a. "**Invention(s)**" means patentable inventions, discoveries, innovations, and improvements, excluding Deliverables, relating to the subject matter of a Task Order.

- b. "Inventor(s)" means the parties' principals, employees, consultants, or independent contractors that solely or jointly develop Inventions during the course of Esri's performance under a Task Order.
- c. "Professional Service Package(s)" means a predefined unit of Professional Services, including travel-related expenses, provided at a firm fixed price.
- d. "Task Order" means (i) a mutually signed Ordering Document having substantially the same format as the sample task order shown in Attachment C or (ii) any other agreed-upon Ordering Document for Professional Services.

67.2 Permitted Uses. Customer may use, copy, and modify the Deliverables solely in conjunction with Customer's authorized use of Products.

67.3 Task Orders and Project Schedule

- a. Esri will provide Professional Services and Deliverables as specified in the Task Order.
- b. Each Task Order will specify the period of performance.
- c. Each party will identify, in writing, the project manager, who is responsible for the Professional Services and Deliverables described in Task Orders. By written notice to the other party's technical administrator, either party may replace the project manager at any time with a similarly qualified person.

67.4 Ownership of Deliverables and Inventions

- a. Esri or its licensors own and retain ownership of the Deliverables.
- b. Each party will retain title to any Inventions made or conceived solely by its Inventors during the term of this Agreement, including, but not limited to, such Inventions that Esri's Inventors solely make or conceive while providing technical assistance pursuant to this Agreement. The parties will jointly own any Inventions made or conceived jointly by Inventors from both parties.
- c. The parties will negotiate in good faith and cooperate reasonably in (i) deciding whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on any Invention and the extent and scope of such protection and (ii) protecting and enforcing any patents issued on such Invention.

67.5 Acceptance

- a. *For Time and Materials Task Orders.* Professional Services are provided strictly on a time and materials basis subject to the Task Order not-to-exceed funding limit. The Deliverables will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Customer notifies Esri within 10 days after performance.
- b. *For Task Orders with Professional Service Packages.* Professional Services that Esri performs under Professional Service Packages will be deemed accepted unless Customer notifies Esri within 10 days after performance. Customer may purchase additional Professional Service Packages as needed to complete Customer's work requirements.
- c. *For Firm Fixed Price Task Orders.* Customer will accept or reject the Deliverables as follows:
 1. "DELIVERABLE ACCEPTED" means a Deliverable conforming to applicable Task Order(s) with no more than minor nonconformities. Customer will complete its acceptance review within 10 working days of receiving each Deliverable.
 2. "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 will rework the Deliverable for the identified nonconformities and resubmit it within 30 days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within 10 working days of such resubmission and will reclassify the Deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
 3. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri will rework the Deliverable and resubmit it to Customer within 30 days, at which time Customer will have 10 working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Customer may not use any Deliverable in its business operations before acceptance as described in c.1. or c.2. If Customer does not notify Esri in writing within 10 working days after delivery that it has classified the Deliverable as ACCEPTED WITH REWORK or REJECTED in accordance with c.2. or c.3., or if Customer uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first of either of these events to occur, to have been accepted.

67.6 Changes to Scope of Work. The parties may change the general scope of an open Task Order by mutual agreement. To document any agreed-upon scope change that affects the cost or time required to provide a Deliverable, the parties will jointly sign a written amendment to the Task Order that includes an equitable adjustment in the price, schedule, or both.

67.7 Customer Termination for Convenience. Customer may terminate any Task Order at any time on 30 days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this Agreement, including reasonable termination expenses and the pro rata contract price for the Task Orders affected.

67.8 Payment; Invoices

a. For Time and Materials Task Orders

1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any expenses incurred for which the Customer has agreed to reimburse Esri. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the rates for labor categories in Attachment D. Esri will invoice meals on a per diem basis in accordance with the full daily limits stated in the most current federal travel regulations. Attachment D includes hourly labor rates for each labor category for the current calendar year. In the first 5 years of this Agreement, Esri may increase hourly labor rates for services in subsequent years in an amount not to exceed the greater of 5% per year or the cumulative increase in the consumer price index (CPI-U) since the last price increase. Other direct costs (ODCs), including travel-related expenses and meals per diem, will include a 15% burden.
2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

b. For Professional Service Packages. Esri will submit an invoice for Professional Service Packages on acceptance of the Task Order unless otherwise agreed. Esri may, at its sole discretion, stop work in order to avoid exceeding the total labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work.

c. For Firm Fixed Price Task Orders. Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.

67.9 System and Data Access. Each Task Order will specify any requirement for Customer to give Esri personnel access to Customer's systems or data.

6.10 Restrictions on Solicitation. Neither party will solicit for hire any employee of the other party who is associated with any Professional Services engagement during the term of this Agreement and for a period of 1 year thereafter. This does not restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

78.0 ESRI MANAGED CLOUD SERVICES

8.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

~~Esri will provide Esri Managed Cloud Services (EMCS) to Customer under the following terms:~~

~~7.1 Definitions.~~ The following definitions supplement the definitions provided in Attachment A:

- a. "EMCS Environment" means the hardware, Software, Data, and network that Esri provides as part of EMCS.
- b. "Hosting" means the business of housing and making accessible Customer Content via the Internet.

~~7.2 Provision of EMCS~~

- a. **Requirements Planning.** It is Customer's responsibility to plan for and address with Esri changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
- b. **License to Customer Content.** During the term of the Task Order issued under the Agreement, Customer hereby grants to Esri and its ~~Affiliates~~subcontractors permission to use Customer Content to support the provision of EMCS. Such permission shall include, but not be limited to, the grant of rights and license to manipulate, publish, distribute, and implement Customer Content within the EMCS Environment in any reasonable manner needed to support the provision of EMCS.
- c. **Compensation and Expenses.** Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer on a monthly basis for the EMCS to be provided the following month. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the EMCS Environment.
- d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the EMCS Environment shall at all times remain with Esri.
- e. **Personally Identifiable Information.** Prior to providing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information.
- f. **Public Software.** Customer may not use, and may not authorize its end users to use, any software, documentation, or other material that contains or is derived (in whole or in part) from any software, documentation, or other material distributed as free software, open-source software (e.g., Linux), or other similar licensing or distribution models, including, but not limited to, software, documentation, or other material licensed or distributed under any of the following license or distribution models or license or distribution models similar to any of the following: (i) the GNU General Public License (GPL), Lesser/Library GPL (LGPL), or Free Documentation License; (ii) the Artistic License (e.g., Perl); (iii) the Mozilla Public License; (iv) the Netscape Public License; (v) the Sun Community Source License (SCSL); (vi) the Sun Industry Standards License (SISL); (vii) the Berkeley Software Distribution (BSD) License; and (viii) the Apache License ("Public Software") in connection with the Customer Content in any manner that requires, pursuant to the license applicable to such Public Software, that any component of the EMCS be (i) disclosed or distributed in source code form, (ii) made available free of charge to recipients, or (iii) modifiable without restriction by recipients.
- g. **Monitoring.** Customer will provide information and ~~or~~ other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's ~~and/or~~ Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

7.3 Takedown or Termination of EMCS. In the event of takedown of Customer Content or upon any expiration, ~~or~~ termination, ~~or~~ of an applicable Task Order while Esri is providing EMCS, Esri will download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer. Customer will be responsible for any unpaid fees due through the date of termination.

~~8.0 ESRI ENTERPRISE ADVANTAGE PROGRAM~~

~~8.1 Definitions. The following definitions supplement the definitions provided in Attachment A:~~

9.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. "Activity Description" means a confirmation email or document received from Customer that confirms the number of Learning and Services Credits that Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate.
- b. "Authorized EEAP Contact" means the Customer point of contact for EEAP identified below.
- c. "EEAP" means the Esri Enterprise Advantage Program as described in this Section.
- d. "Learning and Services Credits" means credits that Customer may use in exchange for Professional Services, Training, PSS, EMCS, or related travel expenses as described below.
- e. "PSS" ~~means or~~ "Premium Support Services, which is" means a prioritized incident management and technical support program, further described at <http://support.esri.com/en/support/premium>.
- f. "Technical Advisor" means an Esri advisor assigned to work with Customer to provide Professional Services comprising advising on GIS strategies, facilitating annual account planning, developing a collaborative technical work plan, and proactively coordinating the provision of Services and Esri Offerings under EEAP.

89.2 EEAP Description. The Esri Enterprise Advantage Program is provided on an order-by-order, annual subscription basis. The Esri Enterprise Advantage Program is a menu of Professional Services, Training, PSS, and EMCS that provides Customer with the flexibility to select the components that best meet its needs. The current Esri Enterprise Advantage Program is further described at www.esri.com/services/eeap/components, which may be changed from time to time. EEAP includes:

- a. **Technical Advisor.** Customer will receive up to the number of Technical Advisor hours ordered. Customer may elect to retain additional Technical Advisor hours for a supplemental price.
- b. **Annual Account Planning Session.** A 1-day annual account planning and review meeting is included.
- c. **Technical Work Plan.** A collaboratively developed document designed to drive the program's implementation through definition of Customer's geographic information system (GIS) vision, goals, and objectives.
- d. **Learning and Services Credits.** Customer will receive the number of Learning and Services Credits ordered. Customer may use the credits toward any combination of Professional Services, Training, PSS, or related travel expenses. Customer may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the following website: <http://www.esri.com/services/eeap/components#learning>. Esri will provide the Authorized EEAP Contact with a monthly report outlining usage of Esri Enterprise Advantage Program Learning and Services Credits to date.
- e. **Quarterly Technology Webcast.** Esri will provide an email invitation to the Authorized EEAP Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.
- f. **No Development Services.** The Esri Enterprise Advantage Program is not designed for Esri to provide project-specific professional services such as custom application or database development for solutions or applications. If these types of professional services are required, Customer will need to enter into a separate Task Order for Professional Services.

89.3 Authorized EEAP Contact Information. Customer identifies the following person as its initial Authorized EEAP Contact.

(to be completed by Customer):

Contact Name: _____
Telephone: _____
Address: _____
Fax: _____
City, State, ZIP: _____

Email: _____

89.4 Current on Maintenance. Customer must remain current on standard Product Maintenance during the EEAP Term.

89.5 Authorization of Learning and Services Credits Use. Customer will contact its Account Manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit to Customer a Learning and Services Credit estimate by email for confirmation and authorization to use the Learning and Service Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an Activity Description. Esri will begin performance and deduct the amount quoted from the unused Learning and Services Credits available.

89.6 Activity Descriptions for EMCS. The Activity Description for EMCS orders must include the following:

- a. **The EMCS term**—The time period in which Esri provides the EMCS to Customer. The EMCS term does not begin until setup and deployment of the data and application are complete.
- b. **Targeted system availability**—The minimum percentage of time that Customer has external access to the application and associated data content through the Internet. Examples of supported levels of system availability are 95%, 99%, and 99.9%. Not all EMCS offerings include a targeted system availability.
- c. **Number of anticipated requests**—A request is made by an end user through a client (e.g., desktop computer, web application, mobile device) and sent to a server(s) that is set up in the EMCS environment by Esri and performs computational tasks on behalf of the end user. An example of a common request used in a GIS is a map request. A map request is made every time a user pans, zooms, or queries a map service.
- d. **Amount of data storage**—The storage capacity required to retain digital data, which is to be used and consumed in Customer GIS applications ~~and/or~~ Online Services.
- e. **Learning and Services Credits Consumption**—The price for the EMCS in Learning and Services Credits.

The Data storage location may be defined in the Activity Description.

89.7 Travel and Per Diem Expenses. Any Esri travel and per diem expenses will be quoted separately. Customer may direct Esri to use Learning and Services Credits for travel and per diem expenses, or Customer will issue a purchase order and Esri will invoice Customer for the travel and per diem expenses.

89.8 Notification of Consumed Credits. Esri will notify Customer if the authorized Learning and Services Credits are consumed prior to completion of the requested work. Customer may elect to direct the use of additional Learning and Services 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~~stop work ~~when the authorized credits are if Customer has~~ consumed all of its Learning and Services Credits.

89.9 Review of Proposed Activities. Any activities proposed to be completed under the Esri Enterprise Advantage Program will be subject to review and approval by Esri to ensure alignment with the intent of the program.

~~**8.10 Defense or Military Application.** At the time the Learning and Services Credits are requested or before the Technical Advisor performs any services, Customer 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.~~

8.119.10 Invoicing

- a. Esri shall invoice Customer as quoted for the EEAP subscription, additional Learning and Services Credits, or Technical Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 30 days in advance of the EEAP subscription expiration date. Esri will extend the EEAP subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Technical Advisor services upon receipt of Customer's order.
- b. Pricing for annual program renewals and new or additional Esri service offerings will be in accordance with ~~the MPA Price List~~Esri's standard pricing at the time of purchase or renewal.
- c. For Esri travel-related expenses, Customer may elect to do one of the following: (1) use Learning and Services Credits to pay for Esri travel-related expenses including Esri's standard handling fee or (2) request a separate invoice for Esri's

travel-related expenses including Esri's standard handling fee. Esri will invoice for all meals (excluding incidental expenses) on a per diem basis in accordance with the per diem rates specified on the government General Services Administration (GSA) website at <http://gsa.gov/>.

8.129.11 Termination and Expiration. Upon termination or expiration of an EEAP subscription:

- a. Technical Advisor, Annual Account Planning Session, and Activity Description services will end as of the expiration or termination date unless Customer renews its subscription;
- b. Unless either party terminates the EEAP subscription for cause, Customer may apply any unused Learning and Services Credits toward any Professional Services, Training, PSS, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within 3 months after the termination or expiration date. Any other unused Learning and Services Credits will expire 30 days after the expiration or termination date; if Customer renews the EEAP subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from their purchase date or termination of the EEAP Agreement, whichever comes first; ~~and~~.
- ~~c. Unless Esri terminates this EEAP subscription for Customer's breach, Customer retains the right to use any Training Materials.~~

ATTACHMENT A GLOSSARY OF TERMS

The following glossary of terms applies to all Esri Offerings and Services that Esri may ~~offer~~provide to its customers. Certain Esri Offerings or Services may not be within the scope of this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

"**API**" means application programming interface.

"**ArcGIS Website**" means <http://www.arcgis.com> and any related or successor websites.

"**Authorization Code(s)**" means any key, authorization number, enablement code, login credential, activation code, token, user name and password, or other mechanism required for use of Esri Offering.

"**Beta**" means any alpha, beta, or other prerelease Product.

"**Cloud Services**" means Online Services and EMCS.

"**Commercial ASP Use**" means use as a commercial application service provider; that is, to generate revenue by providing access to Software or Online Services through a Value-Added Application; for example, by charging a subscription fee, service fee, or any other form of transaction fee or by generating more than incidental advertising revenue.

"**Content**" means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software applications, software development kits (SDKs), APIs, software libraries, code samples, and other resources.

"**Control**" means having more than 50% of the voting stock or other voting interest in the Controlled entity.

"**Customer Content**" means any Content that Customer, Customer's end users, or any other user provides to Esri in connection with Customer's use of Esri Offerings; any results derived from the use of Customer Content with Esri Offerings; and any Value-Added Applications Customer builds and deploys with Products. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

"**Data**" means any commercially available digital dataset(s), including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes, that Esri bundles with other Esri Offerings or delivers independently. Data excludes any Content that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"**Deliverables**" means anything that Esri delivers to a Customer as a result of performance of Professional Services other than Products, Training, or Maintenance. Deliverables may include, but are not limited to, consulting services, customized training curriculums, software code, 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; methods, techniques, or know-how; technical assistance, processes, formulas, or algorithms; designs; data dictionaries and models; compilations; schematics; documentation; specifications; drawings; flowcharts; briefings; or test or quality control procedures.

"**Documentation**" means all user reference documentation that ~~is delivered~~Esri delivers with the Product.

"**Esri Managed Cloud Services**" or "**EMCS**" means a single-tenant hardware, Software, Data and network platform, and related system monitoring and support services that Esri provides to house and make Customer Content available to Customer or Customer's end users via the Internet.

"**Esri Offering(s)**" means any Product, Maintenance, or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include Training Materials and Deliverables.

"**GIS**" means geographic information systems.

"**Maintenance**" means a subscription program ~~entitling that Esri provides and that entitles~~ the Customer to Product updates and other benefits such as access to technical support and access to self-paced, web-based learning resources.

"**Malicious Code**" means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial-of-service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

"**Named User**" is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique secure named user login credential (identity) enabling access to a Product that requires such identity in order to ~~enable access to~~ identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.

"**Named User Credential**" means an individual person's login and associated password enabling that person to access and use Products.

"**Named User License or Subscription**" means a license or subscription for use by a single Named User.

"**Online Content**" means Content ~~hosted or provided by that~~ Esri hosts or provides as part of Online Services, including any map services, task services, image services, SDKs, APIs, software libraries, code samples, and other resources, but excluding Content provided by third parties that Customer accesses through Online Services.

"**Online Services**" means any commercially available, Internet-based geospatial system that Esri provides under this Agreement, including applications and associated APIs for storing, managing, publishing, and using maps, data, and other information. Online Services exclude Data and Content.

"**Ordering Document(s)**" means a sales quotation, Maintenance renewal quote, purchase order, proposal, or other document identifying the Products or Services that Customer orders.

"**Perpetual License**" means a license to use a version of the Product, for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Customer as authorized under this Agreement.

"**Personal Use**" means personal, noncommercial use by an individual Customer. Personal Use excludes use for the benefit of any third party, including commercial, educational, governmental or nonprofit entities.

"**Product(s)**" means Software, Data, and Cloud Services licensed or subscribed to under the terms of this Agreement.

"**Professional Services**" means any development or consulting services that Esri provides to Customer.

"**Sample(s)**" means sample code, sample applications, add-ons, or sample extensions of Products.

"**Services**" means the technical support provided under Maintenance. If Esri provides Training or Professional Services directly to Customer, then Services also include Training and Professional Services.

"**Software**" means ~~all or any portion of Esri's any~~ proprietary commercial off-the-shelf software, excluding Data, accessed or downloaded from an Esri-authorized website or ~~delivered that Esri delivers~~ on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

"**Term License**" means a license ~~or access provided~~ for use of a Product for a limited time period ("**Term**") ~~or on a subscription or transaction basis;").~~

"**Training**" means ~~instructor led standard Product training and coaching services for the use of Esri's GIS Software that Esri provides under this Agreement.~~

"**Training Materials**" means digital or printed content required to complete Training, which may include, but is not limited to, workbooks, data, concepts, exercises, and exams.

"**Value-Added Application**" means an application developed by Customer for use in conjunction with the authorized use of any Software, Data, or Online Services.

ATTACHMENT B
GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all Esri Offerings and Services that Esri may offer to its customers. Certain Esri Offerings or Services may not be available under this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

ARTICLE 1—GENERAL USE RESTRICTIONS

Except as expressly permitted in this Agreement, Customer will not

- a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Esri Offerings;
- b. Use ~~Esri Offerings~~Software for Commercial ASP Use or service bureau purposes;
- c. Distribute or provide direct access to Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- d. Distribute Authorization Codes to third parties;
- e. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- f. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- g. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or regulation;
- h. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, ~~and~~/or legends contained in or affixed to any Esri Offerings, output, metadata file, or online ~~and~~/or hard-copy attribution page of any Data or Documentation;
- i. Unbundle or independently use individual or component parts of Esri Offerings;
- j. Incorporate any portion of the Esri Offerings into a ~~third-party~~ product or service for third-party use that competes with the Esri Offerings;
- k. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
- l. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any part of the Esri Offerings to open-source or open-database license terms that require any part of the Esri Offerings to be
 - 1. Disclosed in source code form to third parties;
 - 2. Licensed to third parties for the purpose of making derivative works; or
 - 3. Redistributable to third parties at no charge.

These restrictions will not apply to the extent that they conflict with applicable law or regulation.

ARTICLE 2—TERM AND TERMINATION

This Agreement is effective upon acceptance. Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid or to terminate pending Services engagements without further liability. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions in Esri Offerings. If Customer terminates this Agreement for any reason, then Customer may, at its election, also terminate Customer's licenses or subscriptions in Esri Offerings.

Upon any termination of a license or subscription, Customer will

- a. Stop accessing and using the terminated Esri Offerings;
- b. Clear any client-side data cache derived from the terminated ~~OnlineCloud~~ Services; and
- c. Stop using, uninstall, remove, and destroy all copies of affected Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

Esri may stop performing Services immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under the Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

ARTICLE 3—LIMITED WARRANTIES AND DISCLAIMERS

3.1 Limited Warranties. Esri warrants:

- a. For a period of 90 days,
 1. Software will substantially conform to the Documentation under normal use and all media will be free from defects in materials and workmanship from the date of delivery;
 2. Training Materials will substantially conform to Esri's published course descriptions from the date of delivery;
 3. Services will substantially conform to the professional and technical standards of the software industry from the date of performance; and
 4. Deliverables provided on a firm-fixed price basis will substantially conform to the specifications set forth in the agreed-upon Ordering Document from the date of acceptance.
- b. During the applicable ~~subscription~~ term,
 1. Online Services will substantially conform to the Documentation under normal use;
 2. Maintenance will substantially conform to the professional and technical standards of the software industry; and
 3. EMCS will conform to the scope, descriptions, and assumptions for EMCS set forth in the Ordering Document.

3.2 Special Disclaimer. Content, Data, samples, hot fixes, patches, updates, Online Services provided at no charge, and trial, evaluation and Beta Products are delivered "as is" and without warranty of any kind.

3.3 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected. Esri Offerings are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

3.4 Disclaimers

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of ~~OnlineCloud~~ Services.

- b. **Third-Party Content and Websites.** Esri is not responsible for any third-party website or Content that appears in or is referenced by Esri Offerings and Esri websites, including www.esri.com and www.arcgis.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

3.5 Exclusive Remedy. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be limited, at Esri's sole discretion, to (i) replace any defective media; (ii) repair, correct, or provide a workaround for the applicable Esri Offering or Services; or (iii) return the fees paid by Customer for Esri Offerings or Services that do not meet Esri's limited warranties, provided that Customer uninstalls, removes, and destroys all copies of the applicable Esri Offerings; ceases accessing and using the applicable Cloud Services; and executes and delivers evidence of such actions to Esri or its authorized distributor.

ARTICLE 4—LIMITATION OF LIABILITY

4.1 Disclaimer of Liability. Neither Customer, Esri, nor any Esri distributor or licensor will be liable for any indirect, special, incidental, or consequential damages, **including** lost profits, lost sales, or loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license or subscription fees paid or owed to Esri for the Esri Offerings giving rise to the cause of action.

4.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

4.3 Applicability of Disclaimers and Limitations. Esri or its authorized distributor has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

4.4 The foregoing warranties, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Customer's jurisdiction. Customer may have additional rights that may not be waived or disclaimed. Esri does not seek to limit Customer's warranty or remedies to any extent not permitted by law.

ARTICLE 5—INDEMNIFICATIONS

5.1 Definitions. The following definitions supplement the definitions provided in [Attachment A](#):

- a. "**Claim**" means any claim, action, or demand by a third party.
- b. "**Indemnitees**" means Customer and its directors, officers, and employees.
- c. "**Infringement Claim(s)**" means any Claim alleging that Customer's use of or access to Esri Offerings or Services infringe a ~~US~~ patent, copyright, trademark, or trade secret.
- d. "**Loss(es)**" means out-of-pocket loss, damage award, settlement amount, cost, or expense, including awarded attorneys' fees.

5.2 Infringement Indemnity

- a. Esri will defend and hold all Indemnitees harmless from any Infringement Claim and indemnify any Loss arising out of an Infringement Claim as set forth in the following paragraphs.
- b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or (ii) modify the Esri Offerings while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings and will refund any (a) applicable Services fees; (b) license fees that Customer paid for the infringing Esri Offerings acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery; or (c) unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.

- c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings with a product, process, system, or element that Esri has not supplied or specified in its Documentation; (ii) Esri Offerings' alteration by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings.

5.3 General Indemnity. Esri will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or property damage (excluding databases not covered under a reasonable backup program) brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents performing Services while on Customer's site.

5.4 Conditions for Indemnification. As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Infringement Claim, and (iv) reasonably cooperate in the defense of the Infringement Claim at Esri's request and expense.

5.5 This Section sets forth the entire obligation of Esri, its authorized distributor, and its licensors regarding any Infringement Claim.

ARTICLE 6—INSURANCE

If Esri is providing Services, Esri will carry, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with minimum coverage of (\$1,000,000.00) combined single limit per occurrence for bodily injury, including death, and property damage liability, to include the following:

- ___ 1. Premises and operations;
- ___ 2. Blanket contractual liability;
- ___ 3. Broad form property damage;
- ___ 4. Independent contractors;
- ___ 5. Personal injury, with employee exclusion deleted; and
- ___ 6. Completed operations.

- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

ARTICLE 7—SECURITY AND COMPLIANCE

7.1.1 Security. Esri publishes its security capabilities at <http://doc.arcgis.com/en/trust/security/security-overview.htm>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share controlled Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. For US federal government customers, Online Services are FISMA Low authorized but do not meet higher security requirements including those found in DFARS 252.239-7010. Alternative solutions that meet these or similar requirements are available.

7.2 Malicious Code. Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through third-party Content.

7.3 Export Compliance. Each party will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access, transfer, or use of Services or Esri Offerings to any United States embargoed countries or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri ~~will not perform in advance if Esri's performance of any~~ provide provision of any ~~Esri Offerings is~~ related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.6, 120.9, and 120.10, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying and obtaining an export license if needed.

~~**7.2 Security.** Esri publishes its security capabilities at <http://doc.arcgis.com/en/trust/security/security-overview.htm>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share controlled Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations.~~

ARTICLE 8—CLOUD SERVICES ~~INTERRUPTIONS, TAKEDOWNS, AND SUSPENSIONS~~

8.1 Prohibited Uses. Customer may not access or use Cloud Services to

- a. Spam, spoof, or phish email; transmit junk email or offensive or defamatory material; or stalk or make threats of physical harm;
- b. Store or transmit any Malicious Code;
- c. Violate any law or regulation;
- d. Infringe or misappropriate the rights of any third party;
- e. Probe, scan, or test the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services; or
- f. Benchmark the availability, performance, or functionality of Cloud Services for competitive purposes.

8.2 Service Interruption. System failures or other events beyond Esri's reasonable control may interrupt Customer's access to OnlineCloud Services. Esri may not be able to provide advance notice of such interruptions.

8.3 Removal of Customer Content. Esri may remove or delete any portions of Customer Content if there is reason to believe that uploading Customer Content to, or using it with, Cloud Services materially violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content ~~is removed~~. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at http://www.esri.com/legal/dmca_policy.

8.4 Service Suspension. Esri may suspend access to Cloud Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or

regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damage, liabilities, or losses that may result from any interruption or suspension of [OnlineCloud](#) Services or removal of Customer's content as described above.

8.5 Notice to Esri. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

ARTICLE 9—GENERAL PROVISIONS

9.1 Payment. Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the US will pay the distributor's invoices in accordance with the distributor's payment terms.

9.2 Feedback. Esri may freely use any feedback, suggestions, or requests for Product improvement that the Customer provides to Esri.

9.3 Patents. Customer may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Products. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that Products, or any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

~~9.4 Taxes and Fees; Shipping Charges. Fees quoted~~ **9.4 Restrictions on Solicitation.** Neither party will solicit for hire any employee of the other party who is associated with the performance of Services during the performance of the Services and for a period of 1 year thereafter. This does not restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

9.5 Taxes and Fees; Shipping Charges. Fees that Esri quotes to Customer are exclusive of any and all applicable taxes or fees, including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; and shipping and handling charges. For Customers outside the US, the distributor may quote taxes or fees in accordance with its own policies.

9.56 Compliance Review. Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than ~~7~~**14** business days' written notice, or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

9.67 No Implied Waivers. The failure of either party to enforce any provision of this Agreement ~~will~~is not ~~be deemed~~ a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.78 Severability. ~~The parties agree that if~~ any provision of this Agreement is held to be unenforceable for any reason, (a) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (b) all other provisions of this Agreement remain in effect.

9.89 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement.

9.910 Survival of Terms. The Glossary of Terms and provisions of the following Articles 3, 4, 5, and 9 of these General Terms and Conditions will survive the expiration or termination of this Agreement: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications" and "General Provisions".

9.1011 US Government Customer. The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of the Products under applicable public procurement law, such rights will extend only to the portions affected.

~~9.11 Governing Law. US federal law and the law of the State of California govern this Agreement, excluding their respective choice of law principles.~~
9.12 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- a. Government Entities. If Customer is a government entity, the applicable laws of Customer's jurisdiction govern this Agreement.
- b. Non-Government Entities. US federal law and the law of the State of California exclusively govern this Agreement, excluding their respective choice of law principles.

9.1213 Dispute Resolution. The parties will use the following dispute resolution processes:

- a. *Equitable Relief.* Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. *US Government Agencies.* This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
- c. *Other Government Entities.* Esri will comply with mandatory dispute resolutions under applicable law.
- d. *Arbitration.* Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

9.1314 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

9.1415 Independent Contractor. Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

9.1516 Notice. Customer may send notices required under this Agreement to Esri at the following address:

____ Environmental Systems Research Institute, Inc.
____ Attn: Contracts & Legal Department
____ 380 New York Street
____ Redlands, CA 92373-8100
____ USA

____ Tel.: 909-793-2853
____ Email: LegalNotices@esri.com

**ATTACHMENT C
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 _____ ("Customer"), _____ ("Customer Address"), this Task Order authorizes preparation and provision of the ~~Services Output and/or~~ 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) and the resources to be provided by Customer (including Customer-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, Customer agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Customer 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 Customer and (2) copies of ordinances, codes, regulations, or other governmental documents.

2. Contract Type: *[Firm Fixed Price (FFP) or Time and Materials (T&M)]*:
3. Total Task Order Value (if FFP) or Not-to-Exceed Value (if T&M):
4. Customer Address for the Receipt of Esri Invoices:
5. Delivery Schedule or Start/End Date(s) for Each Deliverable:
6. Special Considerations:
7. Esri Project Manager: *[insert name, telephone, fax, and email address]*
Esri Senior Contract Administrator: *[insert name, telephone, fax, and email address]*
Customer Project Manager: *[insert name, telephone, fax, and email address]*
Customer Senior Contract Administrator: *[insert name, telephone, fax, and email address]*
Customer Accounts Payable Contact: *[insert name, telephone, fax, and email address]*

ACCEPTED AND AGREED:

[sample only—do not sign]
(Customer)

Signature: [sample only—do not sign]

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature: [sample only—do not sign]

Printed Name: _____

Title: _____

Date: _____

**ATTACHMENT D
TIME AND MATERIALS RATE SCHEDULE**



**ADDENDUM 1
PRODUCT-SPECIFIC TERMS OF USE**

SOFTWARE

The following [tablelist](#) identifies additional terms of use that apply to specific Software. Each Product listing identifies one or more footnotes that apply to that Product. These footnotes supplement the terms of the Agreement. The definitions for each footnote follow the [tablelist](#). Unless otherwise noted in the applicable Ordering Document, extensions to Software follow the same scope of use as that granted for the corresponding Software.

<p>Desktop Products</p> <ul style="list-style-type: none">▪ ArcGIS Desktop (Advanced, Standard, or Basic) (26)▪ ArcGIS Earth (65)▪ ArcGIS Explorer Desktop (20)▪ ArcGIS for AutoCAD (20)▪ ArcPad (13)▪ ArcReader (20)▪ ArcGIS for Windows Mobile (15; 54)▪ ArcGIS for Personal Use (3, 26) <p>Server Products</p> <ul style="list-style-type: none">▪ ArcGIS Enterprise<ul style="list-style-type: none">— Standard or Advanced (21; 31)— Workgroup Standard or Advanced (21; 28; 29; 30; 32)— ArcGIS GIS Server (Standard or Advanced) (31)— ArcGIS GIS Server Basic (39)— ArcGIS GIS Server Workgroup (Standard or Advanced) (28; 29; 30; 32)— ArcGIS GIS Server Workgroup Basic (39)— ArcGIS GIS Server Extension— ArcGIS Maritime: Server (2)— ArcGIS Image Server, ArcGIS GeoEvent Server, ArcGIS GeoAnalytics Server (4)▪ Esri Business Analyst Server<ul style="list-style-type: none">— Workgroup (28; 29; 30; 31; 39)— Enterprise (31; 39)▪ World Geocoder for ArcGIS Basic (67)	<p>Developer Tools</p> <ul style="list-style-type: none">▪ AppStudio for ArcGIS Standard (11, 16, 19)▪ ArcGIS Runtime SDK for Android, iOS, Java, Mac OS X, Microsoft .NET Framework (Windows [desktop], Windows Phone, Windows Store), Qt, or WPF (16; 19)▪ ArcGIS Runtime Standard Level for Android, iOS, Java, Mac OS X, Microsoft .NET Framework (Windows [desktop], Windows Phone, Windows Store), Qt, or WPF (15; 18)▪ ArcGIS Engine Developer Kit and Extensions (16, 19; 22, 26)▪ ArcGIS Engine for Windows/Linux and Extensions (15; 22; 26)▪ ArcGIS Web Mapping (including ArcGIS API for JavaScript/HTML5, ArcGIS API for Flex, ArcGIS API for Microsoft Silverlight) (15; 16; 64; 66)▪ ArcGIS Developer Subscription (24; 26)▪ Esri File Geodatabase API (47) <p>Other</p> <ul style="list-style-type: none">▪ Navigator for ArcGIS (14)
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- Desktop Products**
- ArcGIS Desktop (Advanced, Standard, or Basic) (26)
 - ArcGIS Earth (65)
 - ArcGIS Explorer Desktop (20)
 - ArcGIS for AutoCAD (20)
 - ArcPad (13)
 - ArcReader (20)
 - ArcGIS for Windows Mobile (15; 54)
 - ArcGIS for Personal Use (3, 26)

Server Products

- [ArcGIS Enterprise](#)
 - [Standard or Advanced \(21; 31\)](#)
 - [Workgroup Standard or Advanced \(21; 28; 29; 30\)](#)
 - [ArcGIS GIS Server \(Standard or Advanced\) \(31\)](#)
 - [ArcGIS GIS Server Basic \(39\)](#)
 - [ArcGIS GIS Server Workgroup \(Standard or Advanced\) \(28; 29; 30\)](#)
 - [ArcGIS GIS Server Workgroup Basic \(39\)](#)
 - [ArcGIS GIS Server Extension](#)
 - [ArcGIS Maritime: Server \(2\)](#)
 - [ArcGIS Image Server, ArcGIS GeoEvent Server, ArcGIS GeoAnalytics Server \(4\)](#)
- [Esri Business Analyst Server](#)
 - [Workgroup \(28; 29; 30; 31; 39\)](#)
 - [Enterprise \(31; 39\)](#)
- [World Geocoder for ArcGIS Basic \(67\)](#)

Developer Tools

- [AppStudio for ArcGIS Standard \(11, 16, 19\)](#)
- [ArcGIS Runtime SDK for Android, iOS, Java, Mac OS X, Microsoft .NET Framework \(Windows \[desktop\], Windows Phone, Windows Store\), Qt, or WPF \(16; 19\)](#)
- [ArcGIS Runtime Basic Level for Android, iOS, Java, Mac OS X, Microsoft .NET Framework \(Windows \[desktop\], Windows Phone, Windows Store\), Qt, or WPF \(1\)](#)
- [ArcGIS Runtime Basic, Standard, Advanced Levels and the Analysis Extension for Android, iOS, Java, Mac OS X, Microsoft .NET Framework \(Windows \[desktop\], Windows Phone, Windows Store\), Qt, or WPF \(15; 18\)](#)
- [ArcGIS Engine Developer Kit and Extensions \(16, 19; 22, 26\)](#)
- [ArcGIS Engine for Windows/Linux and Extensions \(15; 22; 26\)](#)
- [ArcGIS Web Mapping \(including ArcGIS API for JavaScript/HTML5, ArcGIS API for Flex, ArcGIS API for Microsoft Silverlight\) \(15; 16; 64; 66\)](#)
- [ArcGIS Developer Subscription \(24; 26\)](#)
- [Esri File Geodatabase API \(47\)](#)

Mobile

- [Navigator for ArcGIS \(14\)](#)

Footnotes:

~~1.~~ [May not be used to edit an Enterprise Geodatabase via Direct Connect.](#)

~~Reserved.~~

2. Not for use in navigation.
3. Licensed for Personal Use only.
4. When used with ArcGIS Enterprise Workgroup
 - Limited to 1 four-core server.
 - Can be installed on a separate machine.
- ~~5–10.~~ Reserved.

11. Applications built with AppStudio for ArcGIS Standard are subject to the terms of use for ArcGIS Runtime Standard Level.

12. Reserved.

~~13. "Dual Use License" means the Software may be installed on a desktop computer and used simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any one time.~~

[13. Licensed as a Dual Use License.](#)

14. May be used for navigational purposes.

15. Licensed as a Deployment License.

16. Customer may use the SDKs or APIs to create Value-Added Applications and distribute and license those Value-Added Applications to its end users to use the Value-Added Applications anywhere not prohibited under export regulation.
17. Reserved.
18. The Deployment License is per Value-Added Application per computer for stand-alone applications.
19. License may not be used to develop Internet or server-based Value-Added Applications.
20. ~~Customer may reproduce and distribute the Software provided all the following occur:~~
 - ~~a. The Software is reproduced and distributed in its entirety;~~
 - ~~b. A license agreement accompanies each copy of the Software that protects the Software to the same extent Licensed as this Redistribution License Agreement, and the recipient agrees to be bound by the terms and conditions of the license agreement;~~
 - ~~c. All copyright and trademark attributions/notices are reproduced; and~~
 - ~~d. There is no charge or fee attributable to the use of the Software.~~
21. Customer may build a Value-Added Application(s) for use by Customer's Named Users. Customer may not (i) embed a Named User credential into a credential in Value-Added Application. Customer may not Applications or (ii) embed or use App Login Credentials in Value-Added Applications. Customer may permit (x) public access to Value-Added Applications require without credentials or (y) access using unique, individual Named User login credentials.
22. a. An end user must acquire a license in either ArcGIS Engine for Windows/Linux Software or other ArcGIS Desktop Software (Basic, Standard, or Advanced) to obtain the right to run an ArcGIS Engine application on 1 computer; and
 - b. The ArcGIS Engine for Windows/Linux extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine Value-Added Applications. A single user can have multiple ArcGIS Engine Value-Added Applications installed on 1 computer for use only by that end user.
23. Reserved.
24. Software may be used only for the purposes of development, testing, and demonstration of a prototype Value-Added Application and creating map caches. Value-Added Applications and map caches can be used with Staging and Deployment ArcGIS Enterprise servers. Software and Data may be installed on multiple computers for use by any ArcGIS Developer Subscribers with ExtendBuilder or higher plan subscriptions; all other Software is licensed as a Single Use License.
25. Reserved.
26. A Personal Edition geodatabase is restricted to 10 gigabytes of Customer's data.
27. Reserved.
28. Use is limited to 10 concurrent end users of applications other than ArcGIS Enterprise Workgroup or ArcGIS GIS Server Workgroup applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Enterprise Workgroup or ArcGIS GIS Server Workgroup geodatabase. There are no limitations on the number of connections from web applications.
29. Software requires a supported version of SQL Server Express. Supported versions are listed with the system requirements for the product on the Esri website.
30. Use is restricted to a maximum of 10 gigabytes of Customer's data.
31. Includes a Failover License.
32. Reserved.
- ~~31. Customer may have redundant Esri Server Software installation(s) for failover operations, but the redundant Software can only be operational during the period the primary site is nonoperational (active-passive failover). The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.~~
- ~~32. Redundant Software installation for failover operations is not permitted.~~
- 33-38. Reserved.
39. Any editing functionality included with ArcGIS GIS Server is not permitted for use with ArcGIS GIS Server Basic (and ArcGIS GIS Server Workgroup or Enterprise)-Basic.
- 40-46. Reserved.

47. Customer may develop and distribute Value-Added Applications that use Esri File Geodatabase API to Customer's end users.
- ~~48–53.~~ Reserved.
54. ArcGIS for Windows Mobile Deployments are licensed for use with ArcGIS Enterprise (Advanced or Standard), ArcGIS Enterprise Workgroup (Advanced), ArcGIS Desktop (Advanced, Standard, Basic), and ArcGIS Engine Value-Added Applications.
- ~~55–63.~~ Reserved.
64. Value-Added Application(s) for web deployment must be used in conjunction with other Esri Product(s). Third-party technologies may also be used in conjunction with Value-Added Application(s) as long as the Value-Added Application(s) is always used in conjunction with other Esri Product(s).
65. Can only be used in conjunction with other Esri Product(s). Third-party technologies may also be used in conjunction with ArcGIS Earth as long as ArcGIS Earth is always used in conjunction with other Esri Product(s).
66. For desktop applications, each license is per organization. For the purposes of this license, *organization* is equivalent to a principal registered unique domain identifier. *Domain* is the Internet domain name registered with a domain name registrar. For instance, in example.com, example.com is the registered unique domain identifier. Similarly, in example.com.xx, where xx is a registered country code, example.com.xx is the registered unique domain identifier. Desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.
67. Limited to 250,000,000 geocodes per annual subscription.

ONLINE SERVICES

ONLINE SERVICES

The following tablelist identifies additional terms of use that apply to specific Online Services. Each Product listing identifies one or more footnotes that apply to that Product. The definitions for each footnote follow the tablelist. Unless otherwise noted in the applicable Ordering Document, extensions to Software follow the same scope of use as that granted for the corresponding Software.

<ul style="list-style-type: none">■ ArcGIS Online subscriptions are available through multiple Selling Programs:<ul style="list-style-type: none">— Commercial Retail, EAs; Government Programs (1; 2; 3; 11; 12; 14; 20)— Education Program (1; 2; 8; 10; 14; 19)— Non-Profit Program (1; 2; 8; 14; 19; 20)■ ArcGIS Online Developer Deployment subscriptions are available through multiple Selling Programs:<ul style="list-style-type: none">— Commercial Retail, EAs; Government Programs<ul style="list-style-type: none">▫ Free Subscription (1; 8; 9; 10; 13; 19; 20)▫ Paid Subscription (1; 8; 9; 10; 11; 13; 20)— Education, NGO/NPO, Press/Media Programs<ul style="list-style-type: none">▫ Free Subscription (1; 3; 4; 5; 6; 9; 10; 13; 19)▫ Paid Subscription (1; 3; 4; 5; 6; 9; 10; 13; 19)— NGO/NPO, Press/Media Programs<ul style="list-style-type: none">▫ Free Subscription (1; 3; 4; 5; 6; 9; 10; 13; 19; 20)▫ Paid Subscription (1; 3; 4; 5; 6; 9; 10; 13; 19; 20)■ Public Plan<ul style="list-style-type: none">— Commercial Retail, EAs; Government; NGO/NPO; Press/Media Programs (1; 4; 5; 6; 7; 9; 10; 15; 19; 20)— Education Programs (1; 4; 5; 6; 7; 9; 10; 15; 19)	<ul style="list-style-type: none">■ Esri Business Analyst Online (16)■ Esri Business Analyst Online Mobile (16)■ Esri Community Analyst (16)■ Esri MapStudio (17)
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- ArcGIS Online Developer Deployment subscriptions are available through multiple Selling Programs:
 - Commercial Retail, EAs; Government Programs
 - + Free Subscription (1; 9; 10; 13; 16)
 - + Paid Subscription (1; 9; 10; 11; 13)
 - Education Programs (Free or Paid Subscriptions) (1; 3; 4; 5; 6; 9; 10; 13; 16)
 - NGO/NPO, Press/Media Programs (Free or Paid Subscription) (1; 3; 4; 5; 6; 9; 10; 13; 16)
- ArcGIS Online subscriptions are available through multiple Selling Programs:
 - Commercial Retail, EAs; Government Programs (1; 2; 3; 11; 12; 14; 17)
 - Education Program (1; 2; 14; 16; 17)
 - Non-Profit Program (1; 2; 14; 16; 17)
- Public Plan
 - Commercial Retail, EAs; Government; NGO/NPO; Press/Media Programs (1; 4; 5; 6; 7; 9; 10; 15; 16)
 - Education Programs (1; 4; 5; 6; 7; 9; 10; 15; 16)

Footnotes:

1. ~~In addition to the common terms of use of Online Services:~~
 - a. ~~Customer may use Customer's Esri Online Services subscription to build a Value-Added Application(s) for Customer's internal use.~~
 - b. ~~Customer may also provide access to Customer's Value-Added Application(s) to third parties, subject to the following terms:~~
 - i. ~~Customer may allow Anonymous Users to access Customer's Value-Added Application(s).~~
 - ii. ~~Customer shall not add third parties as Named Users to Customer's ArcGIS Online subscription for the purpose of allowing third parties to access Customer's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.~~
 - iii. ~~Customer shall not provide a third party with access to ArcGIS Online Services enabled through Customer's ArcGIS Online subscription other than through Customer's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.~~
 - iv. ~~Customer is solely responsible for providing technical support for Customer's Value-Added Application(s).~~
 - v. ~~Customer may not remove or obscure any trademarks or logos that would normally be displayed through the use of the Online Services without written permission. Customer must include attribution acknowledging that its application is using Online Services provided by Esri, if attribution is not automatically displayed through the use of Online Services. Guidelines are provided in the Documentation.~~
 - vi. ~~Customer may not embed a Named User credential into a Value-Added Application. An App Login Credential may only be embedded into Value-Added Applications that are used to provide public, anonymous access to ArcGIS Online. Customer may not embed or use ArcGIS Online App Login Credentials in Value-Added Applications for internal use. Value-Added Applications used internally require Named User login credentials.~~
 - c. ~~World Geocoding Service:~~ Customer may not store the geocoded results generated by ~~the service~~World Geocoding Service without an ArcGIS Online subscription.
 - d. ~~Infographics Service:~~ Customer may use the data accessible through ~~this service~~Infographics Service for display purposes only. ~~Customer is prohibited from saving and may not save~~ any data accessible through this service.
2. May be used for any business purpose of the Customer's organization.
3. May be used for development and test purposes for the Customer's organization.
4. May be used for teaching purposes in educational organizations.
5. May be used for the benefit of the Customer's qualified NGO/NPO organization.
6. May be used for the benefit of press or media organizations.
7. May be used for personal use.
8. Subscriber's (reserved)
9. Customer may enable third-party use of Value-Added Applications must be published for public access, only by publicly sharing using Sharing Tools. Customer may not use this subscription to power a Value-Added Application for its own business use unless Customer is an educational institution using the Value-Added Application for teaching purposes only, a qualified NGO/NPO organization, or a media or press organization.
9. ~~May not be used for the benefit of a for-profit or government organization.~~
10. Customer is not permitted to create private groups or participate in any private groups.
11. Customer may make Value-Added Applications available to third parties for a fee.
12. Customer may use this subscription to create or participate in private groups.
13. Each subscription is limited to 1,000,000 basemap and 1,000,000 geosearch ~~Transactions per month in conjunction with Customer's subscription. "Transaction" is defined in the Documentation at ArcGIS Resources at <http://links.esri.com/agol/transactiondef>.~~ transactions per month in conjunction with Customer's subscription. Transactions include both basemap data and geocode search transactions. One basemap data transaction is equivalent to eight 256x256 tile requests. One geocode search transaction is equivalent to one address or place. If the results are stored in any manner such as after batch geocoding, the stored results are not counted towards the transaction limit. However, storage does consume service credits.

14. Each subscription is limited to a combined 50,000,000 basemap and geospatial transactions in any 12-month period. Transactions ~~per month~~. "~~Transaction~~" include both basemap data and geocode search transactions. One basemap data transaction is defined in equivalent to eight 256x256 tile requests. One geocode search transaction is equivalent to one address or place. If the Documentation at ArcGIS Resources at <http://links.esri.com/agol/transactiondef> results are stored in any manner such as after batch geocoding, the stored results are not counted towards the transaction limit. However, storage does consume service credits.
15. May permit registered students of an education institution to directly access the Online Services and share a single subscription between more than 1 registered student, for teaching purposes only.
16. Customer may not ~~display or post any combination of more than 100 Esri Business Analyst Online or Community Analyst Reports and maps on Customer's external websites.~~
- ~~17. Customer may create, publicly display, and distribute maps in hard copy and static electronic format for news reporting purposes, subject to any restrictions for ArcGIS Online Data.~~
- ~~18. Reserved.~~
- ~~19. Customer may not make Value-Added Applications available to third parties for a fee.~~
- ~~20. Licensee is not permitted to be the licensee for or on behalf of a third party.~~
17. A Named User may embed their Named User Credential in a *ArcGIS API for Python* script solely for the purpose of automating a workflow to be used exclusively by the Named User whose Named User Credential is embedded in the script.