

# Professional Services Agreement



This Professional Services Agreement ("Agreement") is between the Customer ("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.

## 1. DEFINITIONS

**"COTS Software"** means all or any portion of Esri's proprietary commercial off the shelf software technology accessed or downloaded from an authorized Esri website or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies, available under license to the general public.

**"Deliverable(s)"** means anything that Esri delivers to Customer as a result of performance of Services.

**"Ordering Document"** means a purchase order or other ordering document identifying the proposal or quote for Services that Customer orders.

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

**"Service Package(s)"** means a predefined unit of Services including travel related expenses provided at a firm fixed price.

## 2. OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this section, Esri owns and retains all rights, title, and interest in Deliverables provided under this Agreement. In consideration of Customer's payment of all applicable fees in accordance with this Agreement, Esri grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use Deliverables as set forth in the applicable specifications and Esri's proposal. Esri authorizes Customer to copy and make derivative works of the Deliverables for Customer's own internal use in conjunction with Customer's authorized use of Esri's COTS Software. The grants of rights in this section continue for the duration of the subscription or applicable term or perpetually if no term is applicable or identified in Esri's proposal. Customer will not: (i) sell, rent, lease, sublicense, distribute or assign services or Deliverables; (ii) reverse engineer, decompile, or disassemble any Deliverables delivered in compiled form, (iii) remove or obscure any Esri or its licensors' patent, trademark, proprietary rights notices, or legends contained or affixed to any Deliverables. All rights not specifically granted in this Agreement are reserved.

## 3. COMPENSATION AND INVOICING

For Service Packages, Esri will perform and invoice services on a firm fixed price basis. Esri will invoice Customer for all non-Federal Service Packages ordered upon receipt of a valid Ordering Document. For all Federal Orders, Esri will submit an invoice after completion of each Service Package. The Ordering Document will confirm the quantity and price of the Service Packages ordered, as described in Esri's proposal or quotation and will reference Customer acceptance of the

applicable quote or proposal. Esri's obligation for completion of the services proposed is limited to the hours, days, or weeks outlined in the Service Package descriptions within Esri's proposal. Esri may, at its sole discretion, stop work to avoid exceeding the total allotted time specified. For non-Federal orders, unused labor time or travel remaining after the performance of a Service Package will expire and not be available for performance later. If funded Service Packages have not been performed within the Agreement Term as stated in Section 9.7, the Service Package will expire, and no refund will be provided.

For Firm Fixed Price engagements, Esri will prepare and submit monthly invoices based on the percent complete for each Deliverable as of the end of the preceding month or after the completion of each milestone, as specified in Esri's proposal. Upon acceptance of all Deliverables under this Agreement, the unpaid balance of the total Agreement value will be due.

For Time and Material based engagements, Esri will perform and invoice Services on a time and materials basis using the labor categories and rates specified for the performance period. Labor, including travel time, will be invoiced on a monthly basis for actual hours expended during the previous month or for actual workdays expended. Daily rates are based on eight (8) hours of labor and a partial day will be adjusted and invoiced accordingly. Meals will be invoiced on a "per diem" basis in accordance with the full daily limits (excluding rates for incidentals) specified on the U.S. Defense Travel website at

<https://www.defensetravel.dod.mil/site/perdiemCalc.cfm>. For Federal orders, travel-related expenses will be at Esri's cost. For non-Federal orders, other direct costs (ODCs), including travel-related expenses and meal per diem, will include a fifteen percent (15%) burden. Esri may reallocate authorized funding between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall authorized funding is not exceeded. If Esri reaches the not-to-exceed funding limit, Customer may increase the Ordering Document funding to allow additional work to be performed, or Esri may stop work without further obligation or liability. If Customer requires Services beyond the term stated in the proposal, Esri reserves the right to escalate labor rates up to five percent (5%) per calendar year.

Customer will pay each invoice no later than thirty (30) calendar days after receipt and will send payment to the Esri address identified on the invoice.

## 4. CANCELLATION POLICY (for non-Federal Orders).

- A. Customer will provide at least five (5) business days advanced written notice to the Esri point of contact as identified in the Ordering Documents to reschedule or cancel any activity or task.
- B. For activities or tasks that span more than one (1) business day onsite, if the Customer reschedules or cancels the consulting engagement within three (3) business days of the scheduled start date, Esri will separately invoice the Customer a cancellation fee of \$2,500.

- C. If cancellation of an activity or task is necessary due to causes beyond the party's reasonable control, the affected party may reschedule or cancel without incurring any liability.

## 5. ACCEPTANCE

For Service Packages and Time and Material engagements, Deliverables are consultation time only. Services are subject to the not-to-exceed funding limit and will be deemed accepted unless Customer notifies Esri within ten (10) business days after performance. Customer may purchase additional Services or Service Packages as needed to complete Customer's work requirements.

For Firm Fixed Price engagements, Customer will complete its acceptance review within ten (10) business days of receiving each Deliverable. Customer may accept or reject Deliverables as follows:

- A. "Deliverable Accepted" means a Deliverable conforming to the Scope of Work with no more than minor nonconformities.
- B. "Deliverable Accepted with Rework" means a Deliverable substantially conforming to the Scope of Work but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable to repair the identified nonconformities and resubmit the Deliverable within thirty (30) calendar days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within ten (10) business days of such resubmission and will reclassify the deliverable as either Deliverable Accepted or Deliverable Rejected.
- C. "Deliverable Rejected" means a Deliverable that fails to substantially conform to the applicable Scope of Work. Esri will rework the Deliverable and resubmit it to Customer within thirty (30) calendar days, at which time Customer will have ten (10) business days to rerun its acceptance review and reclassify the deliverable as either Deliverable Accepted or Deliverable Rejected.

Customer will not use any Deliverable in its business operations before acceptance as described in A or B above. If Esri does not receive written notice that the Deliverable is either Accepted, Accepted with Rework, or Rejected in accordance with A, B, or C above within ten (10) business days after delivery, or if Customer uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first occurrence of either of these events, to have been accepted.

## 6. LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

Esri warrants for a period of ninety (90) calendar days from the date of acceptance of a Deliverable that the Deliverable will materially comply with to the applicable written specifications referenced in the proposal or quote. If a Deliverable does not substantially conform to these standards or specifications, Esri will reperform the Deliverable at no additional cost to Customer.

**Disclaimer of Warranties. Except for the limited warranty set forth in this section, Esri disclaims all warranties or conditions of any kind, express or implied, including,**

**without limitation, warranties of merchantability, fitness for a particular purpose, or noninfringement of intellectual property rights. Esri does not warrant that Deliverables, 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. Deliverables 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 a Customer's own risk and cost.**

**Artificial Intelligence (AI)/Machine Learning (ML) Disclaimer. Certain Esri Services may integrate third-party AI/ML software libraries and third-party or Esri created pre-trained AI/ML models for various tasks including, but not limited to, object detection, image obfuscation, image classification, or text or speech recognition. Customer may use these capabilities at its option and such AI/ML capabilities are delivered "as is" and without warranty of any kind. In certain cases, the Esri Services may provide Customers the ability to configure their own custom AI/ML models to meet Customer's unique requirements, which except for the express warranties contained in this Agreement, shall be at Customer's own risk.**

## 7. LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

- A. Neither Customer, Esri nor any Esri authorized distributor or third-party licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; costs of procurement of substitute goods or services.
- B. Neither Customer, Esri, an Esri Affiliate, any Esri authorized distributor or third-party licensor be liable for any direct damages exceeding the applicable Services fees paid or owed to Esri during the twelve (12) month period prior to the date upon which the related claim arose.
- C. The limitations and exclusions of liability do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

## 8. EXPORT COMPLIANCE

Each party will comply with all applicable export and trade sanctions 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), the US Department of Treasury, Office of Foreign Assets Control (OFAC) Regulations, and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services to any United States embargoed countries currently including Iran, Syria, North Korea, Cuba, Russia, Belarus, Crimea region of Ukraine, the Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR), 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 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 or (iii) is subject to the EAR where the cloud host is on the US government's Specially Designated Nationals List, Denied Entity List, Unverified List or Denied Parties List or any other US government restricted list. Customer will notify Esri in advance if Esri's performance of any Services is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.31, 120.32 and 120.33, respectively; Esri will not perform any such Services until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

## **9. GENERAL PROVISIONS**

**9.1 Use of Subcontractors.** Esri reserves the right to utilize technically qualified subcontractor resources to support work contracted under this agreement. Esri will remain responsible for the quality of all work performed by an Esri subcontractor resource.

**9.2 Taxes.** Services are quoted exclusive of all state, local, value-added, or other taxes; customs; duties; or other charges (other than income taxes payable by Esri). In the event such taxes and/or charges become applicable to Esri's services or

Deliverables, Customer will pay the applicable tax upon receipt of written notice that it is due.

**9.3 Order of Precedence.** These terms and conditions will take precedence over any Customer terms and conditions included in Customer Ordering Documents. Any additional terms or conditions in Customer Ordering Documents will be void unless a written amendment signed by both parties is incorporated.

**9.4 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.

**9.5 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California and, as applicable, U.S. federal law without reference to their conflict of laws principles.

**9.6 Entire Agreement.** This Agreement is the sole and entire agreement of the parties for services and supersedes any previous agreements, understandings, and arrangements between the parties relating to the subject matter. The undersigned acknowledges and represents that they have read and understood this Agreement and have the authority to bind their organization to these terms and conditions.

**9.7 Agreement Term.** This Agreement is effective as of the date signed below and will expire as provided for in the proposal or quote. If no date is provided, this Agreement shall expire at the end of the calendar year for Time and Material or Firm Fixed Price work or twelve (12) months from the effective date for Service Packages.