

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

963



FORM APPROVED COUNTY COUNSEL
BY: GREGORY P. PRIAMOS DATE 11/24/15

FROM: Riverside County Information Technology (RCIT)

SUBMITTAL DATE:
November 24, 2015

SUBJECT: Approval of the Enterprise License Agreement (ELA) with Environmental Systems Research Institute, Inc. (ESRI) for Geographical Information Services (GIS) Application Suite and ongoing software licensing and maintenance support without Obtaining Competition for five years; Districts: All; [\$3,480,000 aggregate]; ISF and General Fund.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute an ELA with ESRI to provide GIS software, ongoing software licensing and maintenance support, and enrollment in the ESRI Enterprise Advantage Program (EEAP), in the aggregate amount of \$3,480,000, without securing competitive bids for five years; and,
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459.5, to execute the renewal options based on the availability of fiscal funding, and sign amendments that do not change the substantive terms of the agreement; including amendments to the compensation provision that do not exceed 10% annually, as approved to form by County Counsel.

BACKGROUND:

Summary

(continued on page 2)

Steve Reneker
Chief Information Officer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 665,000	\$ 665,000	\$ 3,480,000	\$ 760,000	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$	\$	\$	\$	

SOURCE OF FUNDS: RCIT Operating Budgets (73% ISF) and Sheriff and Fire (27% GF) chargeback

Budget Adjustment: No
For Fiscal Year: 15/16-19/20

C.E.O. RECOMMENDATION:

APPROVE

BY:

County Executive Office Signature

Jennifer L. Sargent

MINUTES OF THE BOARD OF SUPERVISORS

☐ A-30
☐ Positions Added
☐ 4/5 Vote
☐ Change Order

Prev. Agn. Ref.: 3.54-11/6/12&3-20-4/8/14 | District: ALL | Agenda Number:

3-48

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Approval of the Enterprise License Agreement (ELA) with Environmental Systems
Research Institute, Inc. (ESRI) for Geographical Information Services (GIS) Application Suite and
ongoing software licensing and maintenance support without Obtaining Competition for five
years; [Districts: ALL]; [\$3,480,000 aggregate]; ISF and General Fund.
DATE: November 24, 2015
PAGE: 2 of 3**

BACKGROUND:

Summary (continued)

Riverside County Information Technology (RCIT), in conjunction with other county departments, including: Sheriff, Fire, Transportation and Land Management Agency (TLMA), Assessor-Clerk-Recorder, Flood Control, Environmental Health, and Public Health utilize an integrated collection of proprietary software and services developed and sold by ESRI, the worldwide leader of Geographic Information Systems (GIS). The County has benefitted from a partnership with ESRI since 1988.

On November 6, 2012, Item 3.54 the Board of Supervisors approved a consolidated three year Enterprise License Agreement with ESRI. On April 8, 2014, Item 3-20, the agreement was amended to move Sheriff and Fire ESRI services to the County Enterprise Licensing Agreement.

The ELA program allows unlimited deployments that currently have GIS systems throughout the County and allows departments that currently have GIS systems to access new and expanding tool sets offered by ESRI. Additionally, those departments that have a need for GIS, but have not had the resources to create a GIS system of their own, will have access to these powerful tools through this agreement. The ELA offers numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Maintenance on all ESRI software identified in the agreement and deployed within the organization
- Complete flexibility to deploy software products when and where needed

County departments continue to use the latest GIS tools, produce maps, reports, and analyze large volumes of data for internal and external customers including the Southern California Association of Governments (SCAG), University of CA Riverside (UCR), and other County departments. Some examples of these activities include: support of all land use and regional planning efforts, public safety/emergency services, redistricting, and business and demographic analysis.

In addition to ESRI's products and services offered, the ELA also includes:

- Maintenance/support services.
- Hosted user conferences.
- Annual subscription to the ESRI Enterprise Advantage Program (EEAP) that includes: technical advisory hours, an annual 1-day planning session, quarterly technology webcasts and learning credits that can be applied towards consulting support and training.
- Premium support services that provide access to prioritize incident management and all-hours technical support.

The County has established the governance group, eGIS Committee, to oversee the ELA for all County departments and ensure all GIS requirements and business needs are being met. Departments represented include; Sheriff, Fire, Flood, TLMA, Assessor, and RCIT.

Impact on Citizens and Businesses

This agreement combines county GIS efforts under one agreement with ESRI - streamlining administration of the agreement and provides more capability to both Public Safety and other County Departments to serve the public's GIS needs.

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
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[Districts: ALL]; [\$3,480,000 aggregate]; ISF and General Fund.
DATE: November 24, 2015
PAGE: 3 of 3

SUPPLEMENTAL:

Additional Fiscal Information

The ELA Fee is \$3,480,000 which includes optional Years 4 and 5. The ELA Fee is in consideration of the ELA Products, ELA Maintenance, Enterprise Advantage Program, and ESRI International User Conference registrations.

	Year 1 2015	Year 2 2016	Year 3 2017	Year 4 2018 (Optional)	Year 5 2019 (Optional)	EA Fee
Payments	\$665,000	\$665,000	\$665,000	\$725,000	\$760,000	\$3,480,000

Contract History and Price Reasonableness

ESRI is the sole source for their proprietary software. ESRI provides subscription services, ongoing software licensing and maintenance support and an Enterprise Advantage Program. Having an Enterprise License Agreement will also benefit the County by allowing individual departments to utilize the ESRI products to meet their business needs without additional software licensing expense. The cost savings to the County by enrolling in the three (3) year Enterprise License Agreement (ELA) provides a total savings of \$358,650. Without the ELA, the County would be required to enter into a deployment of an annual maintenance cost of \$784,550. The agreement not only offers a savings of \$119,550 each year for the first three (3) years, but also includes options for broader growth of web GIS. By entering into year four (4), the County will receive a savings of \$59,550 and year five (5) will receive a savings of \$24,550. The aggregate savings over the five (5) year term of the agreement is \$442,750. As with any county purchase, all purchase orders will be processed through County Purchasing for approval.



STEVE RENEKER
Chief Information Officer

MEMORANDUM

LOUIS RAJA ARUL DOSS, ACIO
Enterprise Applications Bureau
VEVA HARGUINDEGUY, ACIO
Converged Communications Bureau
JIM SMITH, ACIO
Technology Services Bureau

To: Board of Supervisors/Purchasing Agent
Via: RCIT, Procurement Contract Specialist
From: Steve Reneker, Chief Information Officer
Subject: Sole Source Procurement for Environmental Systems Research Institute, Inc (ESRI) Enterprise Licensing Agreement

Date: November 18, 2015

The below information is provided in support of my Department requesting approval for a sole source.

1. Supplier being requested:

Environmental Systems Research Institute, Inc (ESRI)

2. Vendor ID: 0000029059

3. Supply/Service being requested:

ESRI to provide an Enterprise License Agreement (ELA) for GIS software, subscription services, ongoing software licensing, maintenance support, and enrollment in ESRI's Enterprise Advantage Program Enterprise Advantage (EEAP) Program.

4. Alternative suppliers that can or might be able to provide supply/service and extent of market research conducted:

None, all products/services are proprietary to ESRI. Previous ELA was approved via SSJ #13-201 and BOS Agenda #3.54 on 11/6/2012.

5. Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:

ArcGIS, ArcInfo, ArcEditor, ArcView and a host of other spatial, analytical and Geostatistical computer products/applications related to geographic information and data are proprietary to ESRI. Technical and developmental resources are controlled or owned by ESRI.

6. Reasons why my department requires these unique features and what benefit will accrue to the county:

Continued support and establishment of an enterprise level agreement for GIS tools to produce maps, reports and analyze large volumes of data for internal and external customers. Some examples of these benefits are support land use decisions, emergency services, redistricting and regional planning.

7. Period of Performance: From 11/27/15 to 11/27/2020 (5 years)

Is this an annually renewable contract? ☐ No ☒ Yes (for years 4-5)
Is this a fixed-term agreement: ☐ No ☒ Yes (for years 1-3)

8. Identify all costs for this requested purchase. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained. (Note: ongoing costs may include but are not limited to subscriptions, licenses, maintenance, support, etc.)

Description:	FY 5/16	FY16/17	FY17/18	FY18/19 Optional	FY19/20 Optional	Total
One-time Costs:						
Annual EA Fee	\$665,000	\$665,000	\$665,000	\$725,000	\$760,000	\$3,480,000

9. Price Reasonableness:

ESRI is the sole source for their proprietary software. The cost saving to the County by enrolling in the Enterprise License Agreement to provide GIS software, subscription services, ongoing software licensing and maintenance support and enrollment in ESRI's Enterprise Advantage Program, totals **\$358,650** during the three (3) year contract. Without the ELA, the county would be required to enter into a deployment of an annual maintenance cost of \$784,550. The agreement not only offers a savings of \$119,550 each year for the first three (3) years, but also includes options for broader growth of web GIS than would an annual maintenance agreement. By entering into year four (4) the County will receive a savings of \$59,550 and year five (5) will receive a savings of \$24,550. The aggregate savings over the five (5) year term of the agreement is estimated at \$442,750. Having an Enterprise License Agreement will also benefit the County by allowing individual departments to utilize the ESRI products to meet their business needs without additional software licensing expense. As with any county purchase, all purchase orders will be process through County Purchasing for approval.

10. Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain)? Software support and maintenance is included in ELA.

11. Projected Board of Supervisor Date (if applicable): December 8, 2015

Steve Reneker 11/23/2015
Steve Reneker, Chief Information Officer Date

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Not to exceed: \$ 3,480,000 ☐ One time ☐ Annual Amount through FY19/20

René Adams 11/24/15 16-400
Purchasing Agent Date Approval Number

List Attachments:

F11; ELA #2015ELA7001



ENTERPRISE AGREEMENT
(E512G 06/26/2015)

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

Agreement No. 2015ELA7001

This Enterprise Agreement, including the documents listed below (collectively, "Agreement" or "EA"), is between **County of Riverside ("County")**, with its main offices located at 4080 S. Lemon St., Riverside, CA 92501, and **Environmental Systems Research Institute, Inc. ("Esri")**, with an effective date of November 27, 2015 ("Effective Date"). This Agreement provides for the licensing and Deployment of certain Esri Software, delivery of EA Maintenance, and provision of Esri User Conference registrations and any additional services as specified herein.

This Agreement is composed of the following documents, which are incorporated herein by reference:

1. Enterprise Agreement signature page(s), E512G
2. Enterprise License Terms and Conditions, E512G, including
 - Appendix A—Products and Deployment Schedule
 - Appendix B—EA Fee Schedule
 - Appendix C—County Annual Deployment Report
 - Appendix D—EA Points of Contact
 - Appendix E—Tier 1 Help Desk Authorized Individuals
3. License Agreement, found at <http://www.esri.com/legal/software-license>, including the following:
 - General License Terms and Conditions, E204
 - Esri Exhibit 1, Scope of Use, E300Note: Licensee is defined on first page of item 2 above.
4. Esri Enterprise Advantage Program (EEAP) EA Addendum—Agreement No. 2015EAP7001.
An EEAP subscription is included in this ELA, and EEAP terms and conditions are incorporated as an ELA Addendum. The EEAP includes up to 100 Technical Advisory hours and 100 Learning and Services credits per year.
Note: Licensee is defined on first page of item 2 above.

The parties acknowledge that they have read and understand this Agreement and agree to be bound by the terms and conditions contained herein.

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

ACCEPTED AND AGREED:

COUNTY OF RIVERSIDE
(County)

By: _____
Authorized Signature

Printed Name: Marion Ashley

Title: Chairman of the Board of Supervisors

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

FORM APPROVED COUNTY COUNSEL

E512G

NEAL R. KIPNIS

DATE

ENTERPRISE LICENSE TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

All definitions in other parts of the EA will have the same meaning in this Enterprise License Terms and Conditions. In addition, the following definitions apply to the EA:

- "Deploy," "Deployment," or "Deployed" means to redistribute, or the redistribution of, the EA Products (and their related keycodes/registration files), or their having been redistributed, by County during the term of this EA for installation and use by Licensee.
- "EA Fee(s)" means the fee set forth in Appendix B—EA Fee Schedule.
- "EA Maintenance" means Tier 2 Support, updates, and patches provided by Esri for EA Products and Rolled-In Software.
- "EA Products" means the Products identified in Tables A-1 and A-2 of Appendix A—Products and Deployment Schedule. EA Products do not include unit-priced item(s) or Esri technology that may be embedded in third-party products purchased by Licensee.
- "Effective Date" means the date the Agreement commences and the start date for all licenses, regardless of when an Ordering Document is provided by Licensee.
- "Eligible Agency" means the government entity (e.g., city, district, utility, board, or municipality) that is identified in Appendix F as eligible to participate under this EA.
- "Incident(s)" means a failure of Products to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" means the applicable license agreement incorporated by this reference that is (i) found at <http://www.esri.com/legal/software-license>, composed of the General License Terms and Conditions (E204) and Exhibit 1—Scope of Use (E300) and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed license agreement between Esri and Licensee that supersedes such electronically acknowledged license agreement.
- "Licensee" means County. For avoidance of doubt, the definition of Licensee will not include consultants or contractors. Licensees must not include persons or entities ineligible to receive or have access to Esri products or services by operation of law, including US export control laws, decrees, orders, rules, regulations, policies, riders, conditions, or provisos.
- "Rolled-In Software" means Products of the same type as EA Products that Licensee acquired for use prior to the Effective Date, that are current on paid maintenance (as shown in Esri's customer service records), and that receive EA Maintenance during the term of the EA.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction, patches, hot fixes, and workarounds; replacement deliveries; or any other type of Product corrections or modifications specified in the most current applicable Esri US Software Maintenance Program.
- "Tier 1 Help Desk" means County's point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in the attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by Esri to the Tier 1 Help Desk when an Incident cannot be resolved through Tier 1 Support.

ARTICLE 2—GRANT OF LICENSE

2.1 Grant of License. Licensee's use of the EA Products is subject to the License Agreement and any additional terms set forth in this Article 2 and in Article 3 below. Rolled-In Software will be licensed in accordance with the License Agreement.

2.2 Beta License. Beta licenses are not available under this EA as EA Products. If a beta license is requested and provided, it will be licensed separately and individually under the terms of the License Agreement (see Beta License in Section 3.2 of the General License Terms and Conditions—E204) only. No other benefits, grants, or rights provided in this EA shall apply or be provided/granted.

2.3 Consultant Access. Esri grants Licensee the right to permit Licensee's consultants or contractors to use the EA Products exclusively for Licensee's benefit. Licensee shall be solely responsible for compliance by consultants and contractors with this License Agreement and shall ensure that the consultant or contractor discontinues use of EA Products upon completion

of work for Licensee. Access to or use of EA Products by consultants or contractors not exclusively for Licensee's benefit is prohibited. Licensee may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations except for the purpose of hosting the Software or Data on Contractor Servers for the benefit of Licensee. Consultant or contractors must not include persons or entities ineligible to receive or have access to Esri products or services by operation of law, including US export control laws, decrees, orders, rules, regulations, policies, riders, conditions, or provisos.

2.4 County Responsibility. County shall remain primarily responsible to Esri for compliance by Licensees (including their users) with the terms and conditions of this EA.

ARTICLE 3—SCOPE OF USE

The Permitted Uses and Uses Not Permitted sections of the General License Terms and Conditions portion of the License Agreement are modified to include the additional term in Sections 3.1 and 3.2 below:

3.1 Additional Permitted Uses. For the term of the EA, County may copy and Deploy the EA Products to Licensees up to the quantities of licenses granted in Appendix A. No other Licensee has a right to copy (except as permitted in the License Agreement) or Deploy the EA Products.

3.2 Uses Not Permitted

- a. County shall not transfer, redistribute, or Deploy the EA Products outside the United States or its territories or possessions without the prior written permission of Esri and agreement on additional fees, if any.
- b. Licensee shall not use the EA Products outside the United States or its territories or possessions without the prior written permission of Esri and agreement on additional fees, if any. Any such export will be subject to US Export Control Regulation requirements of the License Agreement.
- c. Licensee shall not transfer, redistribute, or assign EA Products to any third party without the prior written permission of Esri.

3.3 Additional Restrictions Applicable to EA and License Agreement. A new or additional Eligible Agency may not be added as an EA participant or Licensee without the express prior written approval of Esri. Addition of an Eligible Agency may result in an increase in the EA Fee.

ARTICLE 4—MAINTENANCE

4.1 EA Maintenance. EA Maintenance is included in the EA Fee. Rolled-In Software and EA Products will receive EA Maintenance, provided that standard maintenance is available for each item. EA Maintenance includes benefits specified in the most current applicable Esri US Software Maintenance Program document (found at www.esri.com/legal) as modified by this Section 4.1.

a. Tier 1 Support Provided by County

- (1) The Tier 1 Help Desk will provide Tier 1 Support to all Licensees.
- (2) The Tier 1 Help Desk will use analysts fully trained in the Products they are supporting.
- (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
- (4) Tier 1 Support analysts will be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from Licensee. This may include obtaining any customizations, code samples, or data involved in the Incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Incidents.
- (5) If the Tier 1 Help Desk cannot resolve an Incident, an authorized Tier 1 Help Desk individual may contact Esri for Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions available to Licensee.
- (6) County may assign named Tier 1 Help Desk individuals up to the quantity listed in Appendix B. These individuals will be identified in Appendix E and will be the only individuals (callers) authorized to contact Esri directly for Tier 2 Support.

b. Tier 2 Support Provided by Esri

- (1) Esri shall log the calls received from Tier 1 Help Desk individuals.
- (2) Esri shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
- (3) Esri may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
- (4) Esri shall attempt to resolve Incident submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals and not Licensee.
- (5) When an Incident is resolved, Esri shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to Licensee.
- (6) Esri may, at its sole discretion, make patches, hot fixes, or updates available for downloading from Esri's website or, if requested, deliver them on media.

ARTICLE 5—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT REPORT

5.1 Purchase Orders, Delivery, and Deployment

- a. Upon Effective Date, Esri will invoice County and provide Authorization Codes to activate the nondestructive copy protection program that enables County to download, operate, or allow access to the EA Products listed in Appendix A. In accordance with the fee schedule in Appendix B, Esri will issue an invoice annually for each additional year listed. Invoices will be due and payable within thirty (30) days of invoice.
- b. Delivery of updates/new versions of EA Products will be made in the same manner. If requested by County, Esri will deliver a limited number of sets of backup media as provided in Appendix B to the ship-to address identified in Appendix D—EA Points of Contact, FOB destination with shipping charges prepaid. County may purchase additional backup media sets at the prices in effect at the time of purchase. Delivery or receipt of tangible media could cause prior and future license fees to be subject to taxes. County acknowledges that Esri has a right to invoice for and County agrees to pay any such sales or use tax associated with receipt of tangible media.
- c. County shall track the Deployment status of EA Products.

5.2 Purchase Order Requirements

- a. Any purchase orders issued by County will reference, incorporate, and be subject to the terms and conditions of this EA. No additional, conflicting, or different terms contained in a purchase order or ordering document will be binding. All orders and deliveries pertaining to this EA will be processed through County's centralized point of contact.
- b. The following information will be included in each purchase order:
 - (1) Esri customer number, the ship-to address, and bill-to address as identified in Appendix D
 - (2) Purchase order number
 - (3) Applicable annual payment due
 - (4) On the face of the purchase order, the following printed statement: "Governed by and subject to Enterprise Agreement No. 2015ELA7001."

5.3 Annual Report of Deployments. At each anniversary date and ninety (90) days prior to the expiration date of this EA, County shall provide a written report, as set forth in Appendix C, to Esri detailing all Deployments made, including preexisting and Rolled-In Software. The report will be subject to audit by an authorized representative of Esri.

5.4 Esri User Conference Registration. Esri shall provide Esri User Conference registrations to County annually during the term of this EA in the quantities set forth in Appendix B. County is responsible for distributing the registrations to Licensees. Third parties may not represent or attend on behalf of County at any Esri User Conference.

ARTICLE 6—POINTS OF CONTACT; NOTICES

6.1 Points of Contact. In Appendix D, each party shall identify points of contact for administrative and technical issues.

6.2 Legal Notices. Except as otherwise set forth in this EA, any notice, report, demand, or other communication will be made in writing in English; sent by courier, registered or certified airmail, or facsimile or other electronic transmission; and confirmed when sent by courier or by registered or certified airmail, properly addressed to the appropriate party at the address set forth below, until changed by notice in writing by either party hereto. If sent by courier or airmail, notice will be effective upon the earlier of confirmed receipt or seven (7) days from the date of deposit with the courier service or post office. If sent by electronic transmission, notice will be effective one (1) business day from the date of transmission, provided confirmation of receipt is made. Notices will be given at the following addresses:

To: Esri
380 New York Street
Redlands, CA 92373-8100
Attn.: Manager, Contracts and Legal
Fax: 909-307-3020
E-mail: legalnotices@esri.com

To: County
as listed in Appendix D

ARTICLE 7—TERM, TERMINATION, AND EXPIRATION

7.1 Term. The term of the EA will commence on the Effective Date and be for the period listed in Appendix B unless this EA is terminated earlier as provided herein.

7.2 Termination for a Material Breach. Esri may terminate this EA for a material breach by Licensee. Licensee will be given a period of thirty (30) days from date of written notice to cure any material breach. Upon termination of this EA by Esri for a material breach by Licensee, all licenses Deployed will also terminate, and the full amount of unpaid EA Fees will be due and payable by County within thirty (30) days from the date of termination. Licensees shall uninstall, remove, and destroy all EA Products; training materials; and any whole or partial copies, modifications, or merged portions in any form. County shall deliver evidence of such destruction to Esri (e.g., certification letter). Licensee may continue to use Rolled-In Software, provided Licensee complies with the terms and conditions of the License Agreement. Further, Esri agrees that Licensee is not required to pay a maintenance reinstatement fee for lapsed maintenance for Rolled-In Software if Licensee orders maintenance at time of EA termination. Other items that may be included in this EA—such as EAP, Esri Virtual Campus annual user license, access codes, Virtual Campus dollar credits, and Esri User Conference registrations—will also terminate if this EA is terminated.

7.3 County's Right to Terminate-Material Breach. County may terminate this Agreement, at County's discretion, for cause and without the payment of any termination fee or other charge, upon written notice to Esri by County, if Esri materially breaches any of its duties or obligations under this Agreement and does not cure such breach within thirty (30) days after written notice thereof.

7.4 Termination for Non-appropriation of funds. The County's obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of County funding from which payment can be made ("Lack of Funds"). No legal liability on the part of the County shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, County shall immediately notify Esri in writing; and this Agreement shall be deemed terminated and have no further force and effect.

Under no circumstances may County deploy additional copies of the Software, Data, or Documentation upon termination of the EA for Lack of Funds.

In the event that the EA is terminated for Lack of Funds the following conditions will apply:

- a. Licensee must uninstall, remove, and destroy all Deployed Software, Data, or Documentation and any whole or partial copies identified in Appendix A, Table A-2, however Licensee(s) may continue to use Rolled-In Software, subject to its compliance with the License Agreement;
- b. Licensee may continue to use Deployed Enterprise License Software, Data, or Documentation identified in Appendix A, Table A-1, provided:
 - i. Licensee shall report the quantity and types of Deployed Enterprise License Software identified in Appendix A and Esri shall determine the quantity and type of Software, Data, or Documentation that

Licensee may continue to use under the License Agreement terms. This determination will be based on multiplying the commercial list price of the Deployed Enterprise License Software identified in Table A-1 by the reported quantity and types and subtracting that amount from a portion of the EA Fee amounts paid (portion of EA Fee applicable to Enterprise License Software licenses identified in Table A-1 hereinafter referred to as "Offset Amount"). Licensee shall uninstall, remove, and destroy Deployed Enterprise License Software valued in excess of the Offset Amount to reach an authorized quantity and type level. The remaining authorized quantities and types of software ("Remaining Software") will be licensed in accordance with the License Agreement; and

- ii. Rolled-In Software licenses of the type identified in Table A-1 will not terminate and may be used at the version level they have been upgraded to at the time of termination. Use and licensing of Rolled-In Software licenses will be in accordance with the License Agreement.

- c. No refund will be provided to Licensee for payments made prior to termination.

Within thirty (30) days of termination of the EA for Lack of Funds, County will document in writing to Esri the total quantity and type (e.g., Product) of Remaining Software and Rolled-In Software for which County desires to obtain maintenance, if any. Payment of maintenance fees for such Remaining Software and Rolled-In Software for which County wishes to have maintenance, if any, will be effective from the date of the EA termination, provided that County allocates appropriate funds. Maintenance reinstatement fees will not be required for maintenance on Rolled-In Software that lapsed during the term of the EA. Other items that may be included in this EA such as EAP, Virtual Campus training access/VC dollar credits, and User Conference Registrations will also terminate if this EA is terminated for Lack of Funds.

7.5 License Term and Use upon Expiration of EA Term. Upon full payment of the EA Fee and expiration of this EA, the License Agreement will survive, and Licensee may continue to use the Deployed Enterprise License Software and Rolled-In Software in accordance with the terms and conditions set forth in the License Agreement. Licensee shall notify Esri of the quantity and type of licenses for which Licensee elects to purchase standard maintenance. If maintenance is not ordered for Rolled-In Software or Enterprise License Software upon expiration of the EA, it lapses. If, at a later date, Licensee decides to reinstate maintenance, Licensee must pay maintenance reinstatement fees from the date of EA expiration (e.g., back maintenance fees). County shall not Deploy additional copies of the Enterprise License Software beyond the quantities in use upon termination or as of the date of expiration.

ARTICLE 8—CONFIDENTIALITY

8.1 Esri Confidential Information. Certain terms and conditions of this EA are confidential and proprietary information of Esri. Except as provided herein, County shall not publish or disclose the EA (or contents) to any third party without Esri's prior written consent. Disclosure may be made only to those Company or Affiliate employees, contractors, or consultants of Licensee (e.g., outside counsel or accountants) who have a need to know to perform their duties or work on behalf of Licensee, and have an obligation of confidentiality. No other portions of the EA may be disclosed to a contractor or consultant. To the extent that any such disclosures may be required by law (such as an open/public records request), County shall inform Esri of the requested disclosure, with a reasonable description of the requested disclosure and identification of the requester, in sufficient time for Esri to assert any objection Esri may have to such disclosure with the appropriate administrative or judicial body.

ARTICLE 9—RELATIONSHIP OF THE PARTIES

The EA does not constitute a partnership, joint venture, or agency between Esri and County. Neither Esri nor County will hold itself out as such, nor shall Esri or County be bound or become liable because of any representation, action, or omission of the other.

ARTICLE 10—FORCE MAJEURE

If the performance of any obligation under this EA is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war; threat of or actual terrorist act, cyber attack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any government agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a

temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.

ARTICLE 11—GIS STANDARD

County shall officially name Esri as its GIS standard and act as a reference for other Esri customers and potential customers as long as the EA remains in effect. This EA will not be construed or interpreted as an exclusive dealings agreement, and County reserves the right to purchase from third parties any of their requirements for GIS software or related services.

County agrees that Esri may publicize the existence of the EA.

ARTICLE 12—ADMINISTRATIVE REQUIREMENTS

12.1 Esri Partner Original Equipment Manufacturer (OEM) Bundled or Embedded Items/Services. Certain Esri partners are authorized to either embed limited portions of Esri technology or bundle Esri products or services with the partner's application or service under Esri's OEM or Solution OEM programs. Partner pricing and product bundling is independent of this EA, and each partner markets under its own business model and pricing. Licensee shall not be entitled to or seek any discount from the OEM partner or Esri, directly or indirectly, as a result of or based on the availability of such Products as EA Products under this EA. Licensee shall not be entitled to or seek to decouple Esri's technology or products/services from the partner's bundle or solution. In addition, such Products or any component thereof included in the OEM software program or product, will be licensed through the license agreement provided by the OEM partner and not through this EA.

12.2 EA Products—Limited Quantity or Unit-Priced Items. Esri reserves the right to exclude new Products from unlimited Deployment. New Products may contain or be developed with (i) newly acquired technology obtained through a significant investment or (ii) third-party intellectual property that requires a unit-based royalty fee or prohibits Deployment under a site or enterprise license. Such items can be made available to County on a limited-quantity basis or as unit-priced items.

12.3 Obsolescence. During the term of this Agreement, some of the items listed in Appendix A may become obsolete, will no longer be commercially offered, or may no longer be available for Deployment. Licensee may continue to use EA Products that have been Deployed, but support and upgrades for older items may not be available. EA Maintenance and maintenance and availability of EA Products identified in Appendix A will be subject to each item's Product Life Cycle Support Status, which can be found at <http://support.esri.com/en/content/productlifecycles> by selecting the product type and clicking the Product Life Cycle link for specific product plans. Esri's Product Life Cycle Support Policy, available at <http://help.arcgis.com/en/shared/product-life-cycle/ProductLifeCycle.pdf>, covers the support phases and overall support plans.

ARTICLE 13—GENERAL PROVISIONS

13.1 The General Provisions and Limitations of Liability of the License Agreement will apply to the entire EA. If there is a conflict among any of the other terms and conditions in the various documents, the order of descending precedence will be as follows: (1) Signature Page, (2) E512G Enterprise License Terms and Conditions, (3) E300 Scope of Use, and (4) E204 General License Terms and Conditions. In the event this EA includes the Esri Enterprise Advantage Program, the terms and conditions of the Enterprise Advantage Program Addendum will take precedence over the provision of the EA with respect to the Enterprise Advantage Program. Except as otherwise expressly provided herein, any amendment or Addendum to this EA must be in writing and signed by an authorized representative of each party.

13.2 Survival of Certain EA Clauses. The provisions of Section 7.5 and Article 8 of this Enterprise License Terms and Conditions document (E512G) will survive the expiration or termination of this EA.

**APPENDIX A
PRODUCTS AND DEPLOYMENT SCHEDULE**

County may Deploy the EA Products up to the total quantity of licenses indicated below to Licensees during the term of this EA.

**Table A-1
Enterprise License Software—Unlimited Quantities**

Product	Total Qty/Seats
ArcGIS for Desktop: ArcGIS for Desktop Advanced, Standard, and Basic (single and concurrent use)	Unlimited
ArcGIS for Desktop extensions: ArcGIS 3D Analyst, ArcGIS Data Reviewer, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Publisher, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager (single and concurrent use)	Unlimited
ArcGIS for Server: ArcGIS for Server Enterprise and Workgroup (Advanced, Standard, and Basic)	Unlimited
ArcGIS for Server extensions: ArcGIS 3D Analyst, ArcGIS Geostatistical Analyst, ArcGIS Image Extension, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Spatial Analyst, ArcGIS Data Reviewer, ArcGIS Workflow Manager and ArcGIS GeoEvent	Unlimited
ArcGIS Engine	Unlimited
ArcGIS Engine extensions: ArcGIS 3D Analyst, ArcGIS Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics, and ArcGIS Spatial Analyst (single and concurrent use)	Unlimited
ArcGIS Runtime	Unlimited
ArcGIS Runtime extensions: ArcGIS 3D Analyst, ArcGIS Network Analyst, and ArcGIS Spatial Analyst (single use)	Unlimited
Mapping and Charting solutions: Esri Production Mapping for Desktop	Unlimited

**Table A-2
Enterprise License Software—Limited Quantities**

Product	Rolled-In Qty. (if applicable)	Qty./Seats to Be Deployed	Total
Esri Developer Network (EDN) Standard: annual subscriptions	N/A	8	8
ArcGIS Data Interoperability for Desktop extension: concurrent-use licenses	2	0	2
Esri Roads & Highways for Desktop: concurrent-use license	1	0	1
Esri CityEngine: Advanced concurrent-use licenses	1	1	2

Product	Number of Subscriptions	Named Users per Subscription	Annual Credits per Subscription
ArcGIS Online Level 6 subscription	1	1,000	110,000
Esri Community Analyst Level 4 subscription	1	250	N/A

**APPENDIX B
EA FEE SCHEDULE**

The EA Fee is \$3,480,000 which includes optional Years 4 and 5. The EA Fee is in consideration of the EA Products, EA Maintenance, Enterprise Advantage Program, and Esri International User Conference registrations.

	Year 1 2015	Year 2 2016	Year 3 2017	*Year 4 2018 (Optional)	*Year 5 2019 (Optional)	EA Fee
Payments	\$665,000	\$665,000	\$665,000	\$725,000	\$760,000	\$3,480,000

***Optional—Year 4 and Year 5.**

County may exercise its options by submitting a purchase order on October 26, 2018 for Year 4 (2018) and October 26, 2019 for Year 2019. The fees will be due and payable within thirty (30) days of the anniversary date of the EA.

Esri Enterprise Advantage Program (EAP)	One annual subscription to include: 100 Technical Advisory Hours per Year, 100 Learning and Services Credits per Year
Number of Esri International User Conference Registrations per Year	31
Number of Tier 1 Help Desk Individuals	16
Number of Sets of Backup Media, if requested	2
Support Incidents for EDN per Year	One 10-Pack/Year
Term of ELA	November 27, 2015 through November 26, 2020 (assuming option Year 7 and Year 8 are exercised)

**APPENDIX D
EA POINTS OF CONTACT**

Either party may change its point of contact by written notice to the other party.

1. Esri point of contact for order processing issues:

Name: Customer Service
Esri
380 New York Street
Redlands, CA 92373-8100
E-mail: service@esri.com
Phone: 888-377-4575
Fax: 909-307-3083

2. Esri contact for Tier 2 Support issues:

E-mail: support@esri.com
Phone: 909-793-3774 (within the United States only)
Fax: 909-792-0960
Web: support@esri.com

3. County centralized point of contact for order release and administrative issues:

Name: Damian Laning
E-mail: Damian.Laning@rivcoit.org
Phone: (951) 955-6523
Fax: _____

4. All invoices to County will be mailed to the address listed below (unless otherwise stated on the purchase order):

County Office: Riverside County Information Technology
Name: Accounts Payable
Address: 3450 14th Street
Riverside, CA 92501

5. All deliverables to County will be shipped to the address listed below:

County Office: _____
Name: _____
Address: _____

6. All notices to County will be mailed to the address listed below:

County Office: _____
Name: _____
Address: _____

APPENDIX E
TIER 1 HELP DESK AUTHORIZED INDIVIDUALS

Below are named Tier 1 Help Desk individuals authorized to seek Tier 2 Support from Esri. Substitutes/Changes to Tier 1 Help Desk authorized individuals may be made by written notice to Esri.

Ted Cronin, ACR
4080 Lemon St 6th Floor
Riverside CA 92502
951-955-0487
tcronin@asrclrec.com

Alma Hidalgo, Flood
1995 Market St
Riverside, CA 92502
951-955-1973
arhidalgo@rcflood.org

Tracy Venegas, Sheriff
1260 Palmyrita Ave
Riverside, CA 92506
951-955-8338 Fax: 951-955-2756
tvenegas@riversidesheriff.org

Hiroiyuki Matsuda, ACR
4080 Lemon St 6th Floor
Riverside, CA 92502
951-955-2964
hmatsuda@asrclrec.com

Christi Yu, Flood
1995 Market St
Riverside, CA 92502
951-955-1255
cyu@rcflood.org

Nick Cervantez, Sheriff
7195 Alessandro Blvd
Riverside, CA 92506
951-955-2519 Fax: 951-955-6840
ncervant@riversidesheriff.org

Kevin Meconis, CHA
4065 County Circle Drive
Riverside, CA 92503
951-358-5561
kmeconis@rivcocha.org

John Carillo, Flood
1995 Market St
Riverside, CA 92502
951-955-8636
jbcarrillo@rcflood.org

Brian Gray, Sheriff
1500 Castellano Rd
Riverside, CA 92059
951-955-9296 Fax: 951-955-2920
bgray@riversidesheriff.org

Dave Donley, FIRE
210 W San Jacinto Ave
Perris, CA 92570
951-940-6883
dave.donley@fire.ca.gov

Robert Hu, RCIT
3450 14th St
Riverside, CA 92501
951-955-8429
Zhengyu.Hu@rivcoit.org

Richard Fairhurst, Transportation
4080 Lemon St 8th Floor
Riverside, CA 92502
951-955-6157
rfairhur@rctlma.org

Andrea Merrill, FIRE
210 W San Jacinto Ave
Perris, CA 92570
951-940-6900
andrea.merrill@fire.ca.gov

Don Duncan, RCIT
3450 14th St
Riverside, CA 92501
951-955-1813
Donald.Duncan@rivcoit.org

Andrew McGee, FIRE
210 W San Jacinto Ave
Perris, CA 92570
951-940-6900
andrew.mcgee@fire.ca.gov

Mickey Zolezio, RCIT-GIS
3450 14th St
Riverside, CA 92501
951-955-4649
mickey.zolezio@rivcoit.org



**ESRI ENTERPRISE ADVANTAGE PROGRAM (EEAP)
ENTERPRISE AGREEMENT (EA)
ADDENDUM (E125-EA)**

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

EEAP Agreement No. 2015EAP7001

This Esri Enterprise Advantage Program (EEAP) Enterprise Agreement (EA) Addendum adds terms and conditions to the EA with respect to the Esri Enterprise Advantage Program.

Esri offers the Esri Enterprise Advantage Program to Licensees that are current on Esri software maintenance and implementing or have implemented a geographic information system (GIS) enterprise solution based on Esri technology. Licensee agrees to contract with Esri for and Esri agrees to provide Licensee with certain enhanced consulting services, training, Premium Support Services (PSS), and Managed Services available under the Esri Enterprise Advantage Program for the authorized Licensee location as described herein. 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, Licensee will need to enter into an agreement for use of Esri Professional Services.

This EEAP EA Addendum supersedes any previous agreements or understandings related to the Esri Enterprise Advantage Program. All other terms and conditions of the EA and any preceding addenda will remain in full force and effect.

ARTICLE 1—DEFINITIONS

Capitalized terms that have not been defined in this EEAP EA Addendum shall have the meaning found in the applicable Esri License Agreement.

1.1 "Activity Description" means the confirmation email or document received from Licensee that describes the number of Learning and Services Credits Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate.

1.2 "Authorized EEAP Contact" means the Licensee point of contact identified on the final page of this EEAP EA Addendum.

1.3 "End User" means any third party or entity that accesses or uses any Licensee Content via Licensee Website.

1.4 "Esri Mobile Lab" means Esri hardware, shipped to domestic US Licensee site training events if Licensee does not have the required hardware to host a scheduled training event, consisting of laptops preconfigured with Esri Software, Training Materials, hard drives, power cords, and network switches.

1.5 "Hosting" means the business of housing and making accessible Licensee Content via the Internet.

1.6 "Licensee Authorized Contact(s)" or "LAC" means up to two (2) individuals selected by Licensee to report Premium Support Reports and work directly with Esri's Technical Account Manager ("TAM") regarding all such reports. A Licensee that has purchased unlimited PSS may designate additional LAC upon payment of additional fees.

1.7 "Licensee Content" means items including, but not limited to, custom software applications owned or licensed by Licensee, photos, journal text, geospatial data, nongeospatial data, user interfaces, graphics components, and icons, plus any personally identifiable information, supplied by or on behalf of Licensee.

1.8 "Licensee Website" means Licensee Content viewed through a user interface and made available via the Internet under the domain name reserved for the website.

1.9 "Managed Services" means Hosting and the provision of the Managed Services Environment, enhanced by the provision of related services (such as system monitoring and support associated with providing Licensee access to the Managed Services Environment), required to make Licensee Content available to Licensee or Licensee's End Users.

1.10 "Managed Services Environment" means the hardware, Software, Data, Online Services, and network that Esri or its third-party suppliers/partners make available as the underlying environment for Hosting the Licensee Content.

1.11 "Premium Support Report(s)" means a communication via telephone or email by Licensee to Support Services regarding technical problems with Software, Data, or Documentation.

1.12 "Protected Information" means any information, whether in written or digital format, that incorporates content from a protected category, including, but not limited to, personally identifiable information, Customer Proprietary Network Information (CPNI), Protected Health Information (as it is defined by the Health Insurance Portability and Accountability Act of 1996 [HIPAA]), Unclassified Controlled Technical Information (as it is defined by DFARS Section 204.73), and data controlled by the International Traffic and Arms Regulations (ITAR) classified as other than EAR99, all of which may require a greater degree of control, monitoring, and security than is typically established for Esri's Managed Services offering.

1.13 "PSS" means Premium Support Services, which is a prioritized incident management and technical support program as further described at <http://support.esri.com/en/support/premium>.

1.14 "Renewal Period" means any one (1)-year extension of this EEAP EA Addendum.

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

1.16 "Student(s)" means a registered participant for a specific training course, Licensee coaching services, or training-related services.

1.17 "Technical Account Manager" (TAM) means a designated support resource who acts as the primary point of contact to Licensee for the purpose of coordinating Premium Support Reports through Esri's support processes.

1.18 "Term" means the initial term of this EEAP EA Addendum as described in Section 7.1.

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

1.20 "Work Product" means reports, documented analysis, sample code, prototype/unsupported code, or technical memorandums provided as a result of the consulting services performed under this EEAP EA Addendum.

ARTICLE 2—ESRI ENTERPRISE ADVANTAGE PROGRAM

2.1 Esri Enterprise Advantage Program Description. The Esri Enterprise Advantage Program is a menu of consulting services, training, PSS, and Managed Services that provides Licensee with the flexibility to select components that best meet its needs. The Esri Enterprise Advantage Program includes the following components as further described at www.esri.com/services/eeap/components, which may be changed from time to time.

- a. *Technical Advisor.* Licensee will receive up to the number of Technical Advisor hours ordered. Licensee may elect to retain additional Technical Advisor hours for a supplemental price.
- b. *Annual Account Planning Session.* A one (1)-day annual account planning and review meeting.
- c. *Technical Work Plan.* A collaboratively developed document designed to drive the program's implementation through definition of Licensee's GIS vision, goals, and objectives.
- d. *Learning and Services Credits.* Licensee will receive the number of Learning and Services Credits ordered. Licensee may use the credits toward any combination of consulting services support, training, PSS, or related travel expenses. Licensee 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.

2.2 Learning and Services Credit Use

2.2.1 Current on Maintenance. Licensee must remain current on standard maintenance during the Term of this EEAP EA Addendum. Standard maintenance is described at <http://www.esri.com/legal>, which may be changed from time to time.

2.2.2 Authorization of Credit Use. Licensee will contact its Account Manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit to Licensee a Learning and Services Credit estimate by email for confirmation and authorization to use the credits. This confirmation email or document is hereafter referred to as an Activity Description. The total credits quoted in the Activity Description will be drawn from the unused Learning and Services Credits available, in a single transaction, upon Esri's receipt of approval via email from the Authorized EEAP Contact.

2.2.3 Travel and Per Diem. Any Esri travel and per diem will be quoted separately. Licensee may direct Esri to use credits for travel and per diem, as stated in Esri Enterprise Advantage Program Description, Section 2.1 above, or Licensee will issue a purchase order and Esri will invoice Licensee for the travel and per diem expenses as described below in Article 6.

2.2.4 Notification of Consumed Credits. Esri will notify Licensee in the event that the authorized Learning and Services Credits are consumed prior to completion of the requested work. Licensee may elect to direct use of additional credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to discontinue work when the authorized credits are consumed.

2.2.5 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.

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

ARTICLE 3—OWNERSHIP; LICENSE GRANT

3.1 For Training

3.1.1 Software. The terms of the Esri License Agreement shall be applicable to all Licensee course participants and for all of Esri's Software, Data, Online Services, and Documentation used by Student during any training event. Esri may issue temporary Software licenses when there is an insufficient number of Software licenses available at Licensee's training facility. Upon conclusion of the training event, Licensee shall uninstall the temporary Software licenses and return to Esri any media provided.

3.1.2 Training Materials. This EEAP EA Addendum gives Student certain limited rights to use electronic and tangible versions of the Training Materials. Esri and its licensor(s) retain exclusive rights, title, and ownership to the copy of Training Materials licensed under this Agreement. Training Materials are protected by United States copyright laws and applicable international copyright treaties and/or conventions. All rights not specifically granted in this EEAP EA Addendum are reserved to Esri and its licensor(s). Esri grants to Student a personal, nonexclusive, nontransferable license to use Training Materials for Student's own training purposes. Student may run and install one (1) copy of Training Materials and reproduce one (1) copy of Training Materials. Student may make one (1) additional copy of the original Training Materials for archive purposes only, unless Esri grants in writing the right to make additional copies.

3.1.3 Prohibited Uses. Training Materials are intended solely for the use of the training of the individual Student who registered and attended a specific training course. Student may not

- a. Separate the component parts of the Training Materials for use on multiple systems or in the cloud, use in conjunction with any other software package, and/or merge and compile into a separate database(s) or documents for other analytical uses;
- b. Make any attempt to circumvent the technological measure(s) (e.g., software or hardware key) that effectively controls access to Training Materials;
- c. Remove or obscure any copyright, trademark, and/or proprietary rights notices of Esri or its licensor(s); or

- d. Use audio and/or video recording equipment during a training course.

3.1.4 Licensee-Supplied Training Data. Licensee will retain ownership of any Licensee-supplied data.

3.2 For Work Product

3.2.1 Ownership. Except as specifically granted in this EEAP EA Addendum, Esri or its licensors own and retain all right, title, and interest in the Work Product.

3.2.2 License Grant. Esri hereby grants to Licensee a nonexclusive, royalty-free license in the Work Product to use in connection with Licensee's authorized use of the Software and Data for support of which the Work Product was supplied.

3.2.3 Patents and Inventions. Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of this EEAP EA Addendum. The parties shall jointly own any Invention(s) made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Esri Software, Licensee hereby grants and agrees to grant to Esri an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use. Except as provided below, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection. Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which is hereby given to Esri for Inventions relating to the Esri Software and shall otherwise not be unreasonably withheld by either party.

3.3 For PSS. The terms and conditions of the License Agreement for the affected Software will govern any updates, patches, hot fixes, or software provided pursuant to Esri's performance of the PSS ordered under this EEAP EA Addendum.

3.4 For Managed Services. Esri or its affiliates shall retain at all times the right, title, and interest in the Managed Services Environment.

3.5 Licensee Content

3.5.1 Ownership. All Licensee Content submitted by Licensee to Esri under this EEAP EA Addendum shall at all times remain the intellectual property of Licensee or its licensor(s). Rights maintained in intellectual property by Licensee or its licensor(s) shall mean any and all now known or hereafter known

- a. Rights associated with works of authorship throughout the universe, including, but not limited to, copyrights, moral rights, and mask works;
- b. Trademark and trade name rights and similar rights;
- c. Trade secret rights;
- d. Patents, designs, algorithms, and other industrial property rights;
- e. Other intellectual and industrial property rights of every kind and nature throughout the universe and however designated (including logos, "rental" rights, and rights to remuneration), whether arising by operation of law, contract, license, or otherwise; and
- f. Registrations, initial applications, renewals, extensions, continuations, divisions, or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

Esri shall have no rights to such Licensee Content other than the limited right to use such content for the purposes expressly set forth in Subsections 3.5.2 and 11.9 of this EEAP EA Addendum.

3.5.2 License to Licensee Content. During the term of the Activity Description, Licensee hereby grants to Esri and its affiliates permission to use Licensee Content to support the provision of Managed Services. Such permission shall include, but not be limited to, the grant of rights and license to manipulate, publish, distribute, and implement Licensee Content within the Managed Services Environment in any reasonable manner needed to support the provision of Managed Services.

ARTICLE 4—WARRANTIES AND DISCLAIMERS

4.1 Warranties

4.1.1 Esri will perform its obligation under this EEAP EA Addendum in a professional and workmanlike manner.

4.1.2 Esri warrants for a period of ninety (90) days after delivery of the services that the services will conform to professional and technical standards of the software industry.

4.1.3 During the term of the Managed Services as described in the Activity Description, Esri warrants that the Managed Services will conform to the scope, descriptions, and assumptions for Managed Services set forth at <http://www.esri.com/services/emcs/packages>. Licensee's exclusive remedy and Esri's entire liability for breach of the limited warranty set forth in this article shall be limited, at Esri's sole discretion, to

- a. Providing a correction or a workaround for the Managed Services, or
- b. Returning the Managed Services fees paid for up to three (3) months prior to Licensee's invocation of the limited warranty, provided Licensee ceases to use the Managed Services.

4.1.4 Esri warrants that the media upon which Training Materials is provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt. Licensee's exclusive remedy and Esri's entire liability for breach of the limited warranties set forth in this Article 4.1.4 shall be limited, at Esri's sole discretion, to

- a. Replacement of any defective Training Materials;
- b. Repair, correction, or a workaround for Training Materials; or
- c. Return of the fees paid by Licensee for Training Materials that do not meet Esri's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of the Training Materials and executes and delivers evidence of such actions to Esri.

4.1.5 Licensee warrants that Licensee Content will not

- a. Infringe or misappropriate any third-party intellectual property rights or proprietary rights;
- b. Violate any third party's privacy rights or any applicable law; or
- c. Contain or transmit to a third party any software viruses; worms; time bombs; Trojan horses; or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

Except as prohibited by applicable law, Licensee agrees to defend, indemnify, and hold Esri harmless from and against any claim, action, liability, or demand arising out of a breach of the foregoing warranties.

4.2 Data Disclaimer. Data may contain nonconformities, defects, errors, or omissions. Licensee should verify data accuracy before use. ALL DATA THAT ESRI PROVIDES IS "AS IS" WITHOUT WARRANTY OF ANY KIND.

4.3 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ESRI ENTERPRISE ADVANTAGE PROGRAM OR ANY WORK PRODUCT PROVIDED HEREUNDER WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. WORK PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

4.4 Internet Disclaimer. LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE INTERNET (INCLUDING, WITHOUT LIMITATION, THE WEB) IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT

- a. THE INTERNET IS NOT A SECURE INFRASTRUCTURE;
- b. ESRI HAS NO CONTROL OVER THE INTERNET; AND
- c. ESRI IS NOT LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE LICENSEE WEBSITE.

ARTICLE 5—LIMITATION OF LIABILITY

5.1 Disclaimer of Certain Types of Liability. ESRI IS NOT LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS EEAP EA ADDENDUM OR USE OF THE WORK PRODUCT, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

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

5.3 Applicability of Disclaimers and Limitations. The parties agree that Esri has set its prices and entered into this EEAP EA Addendum in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 6—COMPENSATION

6.1 The fees for the initial term of this EEAP EA Addendum are included in the EA Fees. Fees for additional Learning and Services Credits or Technical Advisor Services will be invoiced upon receipt of Licensee's order. Licensee shall pay Esri within thirty (30) calendar days of receipt of invoice.

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

6.3 For Esri travel-related expenses, Licensee 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/>.

ARTICLE 7—TERM AND TERMINATION

7.1 Initial Term; Renewals. The Term of this EEAP EA Addendum shall run concurrent with the term of the EA. Prior to the end of the Term, Esri may provide Licensee with a quotation for a Renewal Period. If Licensee accepts the quote, the following terms will apply:

- a. Esri will submit an invoice to Licensee for the quoted annual Esri Enterprise Advantage Program price and Licensee will pay in accordance with Section 6.1 of this EEAP EA Addendum;
- b. This EEAP EA Addendum will automatically be extended for the Renewal Period; and
- c. The Learning and Services Credits remaining at the end of the initial Term or any subsequent Renewal Period will remain valid for use for a period not to exceed two (2) years following the initial purchase date.

7.2 Termination for Convenience. Licensee may terminate this EEAP EA Addendum without cause upon delivery of thirty (30) days' prior written notice or may simply choose not to renew the EEAP EA Addendum.

7.3 Termination for Cause by Licensee. Licensee may terminate this EEAP EA Addendum for Esri's material breach of its obligations under this EEAP EA Addendum upon thirty (30) days' prior written notice to Esri providing Esri the opportunity to cure. If termination is due solely to Esri's failure to perform a material term of this EEAP EA Addendum, Esri will refund a prorated share of amounts paid to Esri equal to the credits not used by Licensee.

7.4 Termination for Cause by Esri. Esri may terminate this EEAP EA Addendum for Licensee's material breach of its obligations under this EEAP EA Addendum upon thirty (30) days' prior written notice to Licensee providing Licensee the opportunity to cure. In such event, Esri is not obligated to refund any amounts paid for credits not used.

7.5 Survival. Upon termination or expiration of this EEAP EA Addendum

- a. The Technical Advisor, Annual Account Review, and Activity Description services will end as of the expiration or termination date;
- b. Unless either party terminates this EEAP EA Addendum for cause, Licensee may apply any unused Learning and Services Credits toward any consulting services support, training, premium support, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within three (3) months after the termination or expiration date. Any other unused Learning and Services Credits will expire thirty (30) days after the expiration or termination date; if Licensee renews the EEAP EA Addendum within this time period, any unused Learning and Services Credits will carry over for up to two (2) years from their purchase date, or termination of the EEAP EA Addendum, whichever comes first;
- c. Unless Esri terminates this EEAP EA Addendum for Licensee's breach, Licensee retains the right to use any Training Materials and Work Product.

ARTICLE 8—CONFIDENTIALITY OBLIGATIONS

8.1 Obligations Pertaining to PSS. It may be necessary for Esri or Licensee to disclose to the other party certain confidential information under this EEAP EA Addendum. Confidential information shall be designated by Disclosing Party in writing or orally and confirmed in writing within thirty (30) calendar days of disclosure as "Confidential," "Proprietary," "Trade Secret," or other similar term. Each party shall use the confidential information described above only for exchanging information needed to provide the PSS contemplated by this EEAP EA Addendum. Within sixty (60) days of termination of this EEAP EA Addendum, each party shall promptly return or destroy and provide a certification of destruction of the confidential information of the other party.

8.2 Obligations Pertaining to Training. Except as described in Section 8.4, Esri or Licensee may disclose to the other party certain confidential information under this EEAP EA Addendum. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this EEAP EA Addendum. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the other party's confidential information.

8.3 Obligations Pertaining to Work Product

8.3.1 Any Work Product provided to Licensee is deemed confidential information of Esri. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Work Product delivered in Secure Formats. For Work Product delivered in source code or other human-readable formats, Licensee will have met its obligations under this EEAP EA Addendum if its disclosure of Work Product is limited to such items in Secure Formats, provided that the means for reverse engineering, decompiling, or disassembling such Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.

8.3.2 Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advance written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.

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

8.4 Excluded Information. Licensee shall not provide to Esri or disclose to the instructor any data or information that is personally identified information (PII), including, but not limited to, Gramm-Leach-Bliley Act (GLBA)- or HIPAA-type data or information or critical infrastructure information (CII) from the US Department of Homeland Security. Notwithstanding anything in this Addendum to the contrary, Esri retains the right to refuse acceptance of any nonpublic personal information (NPI) or customer information regardless of the form of disclosure. Esri will only accept receipt of information from Licensee that comports with the exceptions set forth in Subsections 4(B) and 4(C)(ii) of Section 509 of the Gramm-Leach-Bliley Act (PL 106-102) (15 USC Section 6809) and implementing regulations thereof.

8.5 Other Exchange of Confidential Information. Any other exchange of confidential information between the parties shall require execution of a nondisclosure agreement signed between the parties separate from this EEAP EA Addendum.

ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

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

9.2 PSS Availability. Licensee may use Learning and Services Credits for PSS (annually) for any product covered under Esri's standard maintenance subscription, provided that Licensee is current on maintenance for applicable Esri Software. Esri shall provide PSS for the Term of the EEAP EA Addendum as further described at <http://support.esri.com/en/support/premium>.

9.3 Premium Support Description. PSS shall provide

- a. A designated TAM;
- b. The ability for LAC to submit Premium Support Reports or escalate standard technical support incidents to Premium Support Reports via telephone or the Esri My Support Portal twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year;
- c. Priority Incident Management; and
- d. Additional enhanced support and services, as described at <http://support.esri.com/en/support/premium>.

9.4 PSS Restrictions and Exclusions

9.4.1 Excluded Software. PSS is not available for third-party software. Esri is not responsible for errors attributable to third-party software used in conjunction with or built on Software.

9.4.2 English Language. All communications will be conducted in the English language except by agreement of both parties.

9.4.3 Acknowledgment. Licensee acknowledges and agrees that the report of an error or defect of any Software is not a guarantee that it can or will be corrected. At Esri's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by Esri.

9.4.4 Exceptions to PSS. The following are not covered by PSS:

- a. Any problem resulting from Licensee's misuse, improper use, unauthorized modification, or damage of the Software or Licensee's combining or merging the Software with any hardware or software not supplied or identified as compatible by Esri;
- b. Any problem resulting from third-party hardware or software;
- c. Errors in any version of the Software other than the officially supported version of Software; and
- d. Any support or implementation services, on-site or otherwise, including, but not limited to, those provided by Esri Professional Services or any third party.

ARTICLE 10—TRAINING TERMS AND CONDITIONS

10.1 Application. Should Licensee choose to use Learning and Services Credits for training or coaching services, the terms of this Article 10 shall also apply.

10.2 Training Descriptions. Esri offers instructor-led training and client coaching services in the use of Esri's Software as described below:

- a. Instructor-led training is offered online in a cloud-based environment, at a Licensee site, or at an Esri Learning Center. Course information, location, dates, number of maximum participants, and registration requirements can be found in the Esri Training catalog located at <http://training.esri.com>. Courses are conducted in close conformance with the course description outlined in the Esri Training catalog and are subject to change due to limitations or constraints including, but not limited to, technical capabilities and Licensee's needs.
- b. Client coaching services are available for Licensee to enhance the learning experience by providing extra time to review and practice course concepts with an instructor's on-site guidance.

10.3 Esri's Responsibilities. Esri will

- a. Provide the training in a manner consistent with the technical and professional standards of the industry.
- b. Provide an instructor qualified to conduct the course(s).
- c. Provide all necessary training materials for Student(s).
- d. Confirm class approximately ten (10) business days prior to the scheduled start date. For Licensee site and private classes, confirmation is dependent on receipt of the completed Licensee site training request form and intended method of payment.

10.4 Licensee's Obligations; Limitations

10.4.1 Licensee will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered student(s) will not be permitted to view or participate in an Online Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered student(s).
- b. Confirm that all Students meet the minimum prerequisites for the applicable training event set forth on Esri's Training website.
- c. Submit registrations with a confirmed payment commitment at least seven (7) business days prior to the scheduled start date. Registrations submitted without payment commitment will not be guaranteed a reservation and will be added to a wait list pending payment confirmation. All wait list reservations are subject to availability.
- d. Submit to the Esri Training Event Assistant a list of the names and email addresses of Students that are to attend a Licensee site or private training event at least three (3) business days prior to the scheduled start date. Subject to compliance with Section 12.12 Export Control Regulations, any Student that is a resident of a US embargoed country or found on any of the various US Government Lists of Parties of Concern or Specially Designated Nationals lists will not be permitted to attend the training event.
- e. Be responsible for all Student travel arrangements. Esri is not responsible for losses from nonrefundable travel arrangements due to the denial of a Student's participation based on US government export regulation requirements, course scheduling changes, or cancellations.
- f. Complete and submit an Esri Licensee site training request form, if applicable, and ensure that the class environment adheres to the requirements for Esri Training as found online at <http://training.esri.com/gateway/index.cfm?fa=classroom.requirements>.
- g. Ensure that Student use of Training Materials provided by Esri complies with the terms of this EEAP EA Addendum.
- h. Assume full responsibility for Student attending training course(s) under this EEAP EA Addendum. Licensee 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 EEAP EA Addendum.
- i. Ensure that Student does not use audio and/or video recording equipment within the classroom without prior written approval from Esri.

10.4.2 The Esri Mobile Lab option is available for domestic US Licensee site training events if Licensee does not have the required hardware to host a scheduled class. If the Esri Mobile Lab is used, Licensee will

- a. Immediately report any damage to the Esri Mobile Lab equipment to the Training Event Assistant upon receipt of the equipment.
- b. Keep the Esri Mobile Lab equipment in a secure, locked area between training event sessions.
- c. Ensure that only Students use the Esri Mobile Lab equipment.
- d. Be responsible for loss of, damage to, and/or theft of the Esri Mobile Lab equipment while in Licensee's possession.
- e. Warrant that it maintains sufficient insurance coverage obligations created by this EEAP EA Addendum and required by law.
- f. Allow the Esri instructor to check all Esri Mobile Lab equipment following the completion of training. Any damage to the Esri Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Licensee by written notice. Licensee hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
- g. Make the Esri Mobile Lab equipment available for freight pickup upon the conclusion of the training event.

10.5 Student Registration and Training Event Change Policy

10.5.1 Individual Student Seats. Licensee will provide written notice to Esri's Customer Service department at service@esri.com of any Student transfer, cancellation, or substitution requests at least three (3) business days before the scheduled start date, subject to the following conditions:

- a. Multiple requests and any requests that occur without the three (3) business days' advance notice are subject to a fee, as determined by Esri.
- b. Cancellation of Student registrations that occur without the three (3) business days' advance notice is subject to the full training event fee.
- c. Substitute Students must be from the same organization as the Student being replaced.

10.5.2 Licensee Site/Private Class/Client Coaching Services (Training Event). Licensee will provide written notice to Esri's Customer Service department at service@esri.com of any training event reschedule, cancellation, or Student substitution requirements at least three (3) business days before the scheduled start date.

- a. Training event reschedules and cancellations that occur without the three (3) business days' advance notice are subject to the full training event fee. Licensee 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.
- b. Student substitutions that occur without the three (3) business days' advance notice are subject to a fee. Substitute Students must be from the same organization as the student being replaced.

10.5.3 If cancellation of a training event is necessary due to force majeure as described in Article 12.5 below, the affected party is released in full from the three (3)-business-day notification requirement. The affected party will either reschedule or cancel the training without that affected party incurring any liability.

10.5.4 If Esri is unable to conduct the training on the scheduled date, Esri will notify Licensee at least three (3) business days before the scheduled start date.

10.6 Unless specifically authorized in writing by Esri, Licensee is not authorized to resell seat(s) to an Esri training event.

10.7 Indemnification. Esri will indemnify and hold harmless Licensee and each of its directors and officers (collectively, the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys' fees, arising out of any action or claim for bodily injury, death, or property damage 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 while engaged in or as a result of the training or coaching services provided by Esri pursuant to this EEAP EA Addendum while on Licensee's site.

ARTICLE 11—MANAGED SERVICES TERMS AND CONDITIONS

11.1 Documentation. The Activity Description must define the following:

- a. The Hosting term—This is the duration in which the Managed Services Environment is available to Licensee via HTTP or HTTPS access through the Internet. The Hosting term does not begin until setup and deployment of the data and application are complete.
- b. Targeted system availability—"System availability" means that Licensee and associated End Users are able to have external HTTP or HTTPS access to the application and associated data content through the Internet. Examples of supported levels of system availability are ninety-five percent (95%), ninety-nine percent (99%), and ninety-nine point nine percent (99.9%). Not all Managed Services 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 the server(s) that is set up in the Managed Services Environment by Esri and performs computational tasks on behalf of 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—"Data storage" refers to the components required to retain digital data, which is to be used and consumed in Licensee GIS applications and/or Online Services, and
- e. The quote for the applicable price in terms of Learning and Services Credits.

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

11.2 Requirements Planning. It is Licensee's responsibility to plan for and address with Esri changes to Licensee's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.

11.3 Licensee Content Licensing and Deployment Confirmation. Licensee is responsible for maintaining the appropriate licensing to the Licensee Content. Provision of Managed Services will be subject to Licensee's compliance of all relevant Esri and third-party licensing agreement terms, conditions, and arrangements. Licensee will confirm access to the Managed Services Environment within five (5) days of receiving notification from Esri that the Managed Services Environment and Licensee Content are accessible.

11.4 Risk of Loss. Risk of loss for all Licensee Content shall at all times remain with Licensee, and it is Licensee's sole responsibility to maintain regular backups of Licensee Content. Risk of loss for the Managed Services Environment shall at all times remain with Esri.

11.5 Protected Information. Prior to providing any Licensee Content under this EEAP EA Addendum, Licensee shall notify Esri if Licensee Content includes Protected Information.

11.6 Public Software. Licensee may not upload, use, process, modify, or combine any Open-Source Materials in a manner that requires Esri to (i) disclose or distribute in source code form; (ii) make available free of charge; or (iii) permit others to modify, without charge, any component of the Managed Services. "Open-Source Materials" means 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 or open source software or under other similar licensing or distribution models.

11.7 Monitoring. Licensee will provide information and/or other materials related to its Licensee Content as reasonably requested by Esri or its Hosting partner to verify Esri's and/or Licensee's compliance with this EEAP EA Addendum. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Licensee Content solely for the purpose of verifying compliance with this EEAP EA Addendum.

11.8 Prohibited Use. Licensee may not access or use Managed Services to do any of the following, which hereafter will collectively be referred to as "Prohibited Use":

- a. Spam, spoof, phish, or transmit junk email or offensive or defamatory material;
- b. Stalk or make threats of physical harm;

- c. Store or transmit any software viruses; worms; time bombs; Trojan horses; or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment;
- d. Violate any law;
- e. Infringe or misappropriate the rights of any third party;
- f. Process, store, or transmit any data, information, or technology that is controlled for export under the International Traffic in Arms (ITAR) regulations, is unclassified controlled technical information (UCTI) under DFARS 204.73, or is protected health information (PHI) under HIPAA; or
- g. Otherwise violate a material term of this EEAP EA Addendum.

11.9 Takedowns and Service Suspension. If Esri believes that any Licensee's use of the Managed Services constitutes a Prohibited Use or if Licensee Content violates the restrictions listed in Section 11.8, Esri will notify Licensee, request Licensee to stop the Prohibited Use, and may request that such Licensee Content be removed from Managed Services Environment or access to it be disabled. Esri may remove or disable access to any such Licensee Content without prior notice as permitted under applicable law or as required to comply with any judicial, regulatory, or other governmental order. Esri may also suspend Licensee's access to Managed Services Environment at any time

- a. For scheduled downtime to conduct maintenance or make modifications to Managed Service(s); or
- b. In the event of a threat or attack on Managed Service(s) (including a denial-of-service attack) or other event that may create a risk to the applicable part of Managed Services.

If feasible under these circumstances, Licensee will be notified of any service suspension beforehand and allowed reasonable opportunity to take remedial action. In the event that Esri removes Licensee Content or suspends access to Managed Services Environment without prior notice, Esri will provide prompt written notice to Licensee unless prohibited by law.

ARTICLE 12—GENERAL PROVISIONS

12.1 Relationship of the Parties. The parties hereto agree that each is an independent contractor with respect to this EEAP EA Addendum; that this EEAP EA Addendum does not constitute an agency, partnership, franchise, or joint venture; and that nothing herein contained is intended to constitute, nor shall it be construed to constitute, the parties as agents, partners, franchisor/franchisee, or co-venturers of each other. Except as expressly provided in this EEAP EA Addendum, neither party shall have any power or authority to act in the name or on behalf of the other party except with the prior express written consent of the other party.

12.2 Intellectual Property Rights Attribution. Licensee shall retain any copyright, patent, or trademark notices on all items licensed under this EEAP EA Addendum and shall take other necessary steps to protect Esri's or its licensor's intellectual property rights. Licensee shall not copy or distribute, or permit a third party to copy or distribute, any of Esri's Training Material(s).

12.3 No Implied Waivers. The failure of either party to enforce any provision of this EEAP EA Addendum shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

12.4 Severability. If any provision of this EEAP EA Addendum is determined to be invalid, illegal, or unenforceable, the parties agree the remaining provisions of this EEAP EA Addendum shall remain in full force if both the economic and legal substance of the transactions contemplated by this EEAP EA Addendum are not affected in any manner that is materially adverse to either party by severing the provision determined to be invalid, illegal, or unenforceable.

12.5 Force Majeure. If the performance of this EEAP EA Addendum, or any obligation except the making of payments, is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, terrorist act, cyber attack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, or interference.

12.6 Applicable Laws. This EEAP EA Addendum shall be governed by and construed in accordance with the laws of the State of California without reference to conflict of laws principles.

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

12.8 Taxes. Services provided are quoted exclusive of all state, local, value-added, or other taxes, customs, or duties, or other charges (other than income taxes payable by Esri). In the event such taxes and/or charges become applicable to Esri's services, applications, or data, Licensee shall pay any such applicable tax upon receipt of written notice that such taxes are due.

12.9 UCC Inapplicability. Any services provided under this EEAP EA Addendum will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

12.10 Assignment and Delegation. Esri may, in whole or in part, assign any of its rights or delegate any performance under this EEAP EA Addendum, provided that Esri shall remain responsible for the performance it delegates. This EEAP EA Addendum binds and benefits successors or assigns permitted under this Section 12.10.

12.11 Insurance. Each party shall, throughout the term of this EEAP EA Addendum, obtain and maintain at its own cost and expense from a qualified insurance company an appropriate commercial general liability (CGL) insurance policy, including coverage for products liability, naming the other party as an additional named insured. Such policy shall provide protection against any and all claims, demands, and causes of action arising out of any error, omission, failure to perform, or defect, alleged or otherwise, of goods and services used in connection therewith or any use thereof. The amount of coverage shall be in the minimum amount of one million US dollars (US\$1,000,000).

12.12 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release Software, Data, Online Services, or Documentation, in whole or in part, to

- a. Any US embargoed country (or to a national or resident of any US embargoed country);
- b. Any person on the US Treasury Department's list of Specially Designated Nationals;
- c. Any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or
- d. Any person or entity where such export or reexport violates any US export control laws or regulations including, but not limited to, the terms of any export license or license exemption and any amendments and supplemental additions to US export laws as they may occur from time to time.

12.13 Headers. Headers are for convenience only and are not to be used in the interpretation of this EEAP EA Addendum.

All Licensee contact regarding the Esri Enterprise Advantage Program shall be through the point of contact identified below.

**Authorized EEAP Contact Information
(to be completed by Licensee)**

Contact: _____ Telephone: _____

Address: _____ Fax: _____

City, State, ZIP: _____ Email: _____
