

Master Agreement Product and Services



Agreement No. 00306890.0

This Master Agreement Products and Services ("**Agreement**") is between the **County of Santa Barbara** ("**Customer**" or "**County**") and **Environmental Systems Research Institute, Inc. ("Esri")**, a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

This Agreement is the sole and entire agreement of the parties as to the subject matter of this Agreement and supersedes any previous agreements, understandings, and arrangements relating to such subject matter. Neither party has relied on any statement, representation, or warranty not expressly stated in this Agreement. This Agreement comprises this signature page, the terms and conditions that begin on the following page, and all referenced attachments. Except for Product or Service descriptions, quantities, pricing, and delivery instructions, or as agreed in an Ordering Document signed by both parties, all terms included in any Ordering Document are void and of no effect. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by both parties.

The parties may sign this Agreement in counterparts or via electronic signatures; such execution is valid even if an original paper document bearing both parties' original signatures is not delivered.

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

[CONTINUE TO NEXT PAGE]

IN WITNESS WHEREOF, the parties have accepted, agreed, and executed this Master Agreement Products and Services to be effective on the date executed by COUNTY.

ATTEST:

MONA MIYASATO,
COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: Shela da Guerra
Deputy Clerk

COUNTY
COUNTY OF SANTA BARBARA

John Hunt
CHAIR, BOARD OF SUPERVISORS

Dated: 8-23-22

APPROVED AS TO FORM:

RACHEL VAN MULLEM
COUNTY COUNSEL

By: Jeresa Martinez
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

BETSY SCHAFFER, CPA, CPFO
AUDITOR CONTROLLER

By: C. Schaffer
A99ED5BD71D04FB...

APPROVED AS TO FORM:

GREG MILLIGAN, ARM
RISK MANAGER

By: Greg Milligan
DC240AC1E64247D...

RECOMMENDED FOR APPROVAL:

JANETTE D. PELL, DIRECTOR
GENERAL SERVICES DEPARTMENT

By: Janette D. Pell
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ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC. (Esri)

By: TD
Timothy Brazeal (Aug 10, 2022 09:25 PDT)

Name: Timothy Brazeal
Title: Manager, Commercial and Government Contracts
Date: Aug 10, 2022

Customer Contact Information

Contact: County of Santa Barbara,
Attn: Andre Monostori
Address: 105 E. Anapamu Street
City, State, ZIP: Santa Barbara, CA 93101

Telephone: (805) 568-2606
Email: amonostori@countyofsb.org

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

1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

1.1 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri

- a. Provides Services as set forth in this Agreement;
- b. Grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and
- c. Authorizes Customer to copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

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

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

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

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

1.4 Customer Content. Esri does not acquire any rights in Customer Content under this Agreement other than as needed to provide Esri Offerings and Services to Customer.

2.0 SOFTWARE AND ONLINE SERVICES

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

- a. **"Anonymous Users"** means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Customer's Value-Added Applications.
- b. **"App Login Credential(s)"** means a system-generated application login and associated password, provided when registering a Value-Added Application with Online Services, which when embedded in a Value-Added Application allows the Value-Added Application to access and use Online Services.
- c. **"Commercial App Deployment License"** means a license to distribute Value-Added Applications to third parties for a fee.
- d. **"Concurrent Use License"** means a license to install and use Software on computer(s) on a network, provided that the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
- e. **"Deployment License"** means a license to incorporate ArcGIS Runtime components in Value-Added Applications and distribute Value-Added Applications to Customer's end users.
- f. **"Deployment Server License"** means a license to use Software under a Server License for all uses permitted in this Agreement and as described in the Documentation.
- g. **"Development Server License"** means a license to use Software under a Server License only to build and test Value-Added Applications as described in the Documentation.

- h. **"Development Use"** means the right to install and use Products to build and test Value-Added Applications as described in the Documentation.
- i. **"Dual Use License"** means the right to install Software on a desktop computer and use it simultaneously with either a personal digital assistant (PDA) or handheld mobile device as long as the Software is only used by a single individual at any time.
- j. **"Failover License"** means a license to install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
- k. **"Named User(s)"** is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.
- l. **"Named User Credential(s)"** means an individual person's login and associated password enabling that person to access and use Products.
- m. **"Named User License"** means the right for a single Named User to use a specific Esri Offering.
- n. **"Online Services Subscription"** means a limited-term subscription conveying the right for one or more Named Users to access and use Online Services.
- o. **"Redistribution License"** means a license to reproduce and distribute Software provided that
 1. Customer reproduces and distributes the Software in its entirety;
 2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
 3. Customer reproduces all copyright and trademark attributions and notices; and
 4. Customer does not charge a fee to others for the use of the Software.
- p. **"Server License"** means a license to install and use Software on a server computer. Server Licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use rights, each Server License includes a Failover License.
- q. **"Service Credit(s)"** means a unit of exchange for consumption of services that can be used with an Online Services Subscription.
- r. **"Sharing Tools"** means publishing capabilities included with Customer's authorized use of Online Services or ArcGIS Enterprise that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.
- s. **"Single Use License"** means a license for a single authorized end user to install and use Software on a single computer. The single authorized end user may also install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.
- t. **"Staging Server License"** means a license to use Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.

2.2 License and Subscription Types. Esri provides Software Products under one or more of the license or subscription types identified in the definitions above. The Documentation and Ordering Documents identify which license or subscription type(s) applies to the ordered Products.

2.3 Software Terms of Use.

- a. Customer may
 1. Install, access, or store Software and Data on electronic storage device(s);
 2. Make archival copies and routine computer backups;

3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software licensed for Development Use;
 4. Move Software in the licensed configuration to a replacement computer;
 5. Distribute Software and any associated Authorization Codes required for use of a Deployment License to third parties; and
 6. Governmental or not-for-profit organizations that operate a website or offer Internet services may use server Software for revenue-generating purposes on a cost-recovery basis and not for profit.
- b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries but only to the extent that such customization is described in the Documentation.
 - c. Customer may use all fonts provided with Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
 - d. Esri publishes Product-specific Software terms of use at <https://www.esri.com/legal/scope-of-use>. A current copy of the Product-Specific Terms of Use is attached hereto as Attachment E.

2.4 Online Services Terms of Use.

- a. **Online Services Descriptions.** Esri publishes Online Services Subscription-specific terms of use at <https://www.esri.com/legal/scope-of-use>. A current copy of the Product-Specific Terms of Use is attached hereto as Attachment E. Use of Online Services is also subject to the Cloud Services terms found in [Attachment B](#).
- b. **Modifications of Online Services.** Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and when applicable, Esri will issue a prorated refund.
- c. **Sharing Customer Content.** Sharing Customer Content using Sharing Tools enables third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools. Customer's use of Sharing Tools is at Customer's sole risk.

2.5 Named User Licenses. Except as expressly set forth in this Agreement, the following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

a. Named Users.

1. Named User login credentials are for designated users only and may not be shared with other individuals.
 2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
 3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.
- b. **Anonymous Users.** Anonymous Users may only access Software or Online Services through Value-Added Applications that provide access to services or Content, that has been published for shared access through the use of Sharing Tools.

2.6 Value-Added Applications.

1. Customer is responsible for the development, operation, and technical support of Customer Content and Value-Added Applications.

2. Customer may not embed a Named User Credential into Value-Added Applications. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
3. Customer may embed an App Login Credential into Value-Added Applications that provide access by Anonymous Users to services or Content, that has been published for shared access by Anonymous Users through the use of Sharing Tools.
4. Customer may not embed an App Login Credential into Value-Added Applications that enables access to Customer Content that is not publicly shared through the use of Sharing Tools. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
5. Customer may not provide a third party, other than third parties included within the definition of Named Users, with access to Software or Online Services, other than through Customer's Value-Added Application(s).
6. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Software license or Online Services Subscription.

2.7 Limited-Use Programs.

- a. **Trial, Evaluation, and Beta Programs.** Products acquired under a trial, evaluation, or Beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or Beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.
- b. **Educational Programs.** Customer agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.
- c. **Grant Programs.** Customer may use Products provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Products, Customer shall not use Products for revenue-generating or for-profit purposes.
- d. **Other Esri Limited-Use Programs.** If Customer acquires Products under any limited-use program not listed above, Customer's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Agreement.

3.0 DATA

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

- a. **"Business Listing Data"** means any dataset that includes a list of businesses and may include other associated business attributes.
- b. **"Esri Content Package(s)"** means a digital file containing Online Services basemap Data extracted from the Online Services.
- c. **"Street Data"** means Data that includes or depicts information about roads, streets, and related features.

3.2 Permitted Uses.

- a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
- b. Subject to the restrictions set forth in this Agreement and provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation, Customer may:

1. Create representations of Data in hard-copy or static, electronic format (e.g., PDF, GIF, JPEG, HTML); in ArcGIS Web Maps; or in Esri Story Maps apps for the purposes of visualizing Data (including basic interactions such as panning, zooming, and identifying map features with simple pop-ups); and
 2. Use and include such representations of Data in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties.
- c. Customer may take Online Services basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise scrape, download, or store Data.
- d. Customer may make any internal use of geocoded results that are obtained and stored in compliance with this Agreement. Customer may not redistribute geocoded results except to (i) use and/or display on a map in connection with Customer's public, non-revenue generating website(s), (ii) permit access to third-parties for the purposes of Customer's business, or (iii) deliver to third parties, on a noncommercial/non-revenue generating basis, static results, static output or static base map renderings.

3.3 Use Restrictions.

- a. Customer may not act directly or authorize its customers to cobrand Data, use Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. *Business Listing Data*. Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. *Street Data*. Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for
 1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
 2. Synchronized multivehicle routing; or
 3. Synchronized route optimization.
- e. *Business Analyst Data*. Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.
- f. *Partial Dataset Licenses*: If Customer orders a subset of a dataset (e.g., a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. *Michael Bauer Research International Boundaries Data ("MBR Data")*. Customer's right to use data downloaded to Customer's premises (e.g., MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

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

4.0 MAINTENANCE

4.1 Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Agreement. A current copy of the Maintenance and Support Program is attached hereto as Attachment F.

5.0 PROFESSIONAL SERVICES

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

- a. **"Invention(s)"** means a patentable invention, discovery, innovation, or improvement, excluding Deliverables, relating to the subject matter of a Task Order.
- b. **"Inventor(s)"** means a party's principal, employee, consultant, or independent contractor that solely or jointly develops Inventions during Esri's performance under a Task Order.
- c. **"Professional Service Package(s)"** means a predefined unit of Professional Services, including travel-related expenses, provided at a firm fixed price.

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

5.3 Task Orders and Project Schedule.

- a. Esri will provide Professional Services and Deliverables as specified in Task Orders.
- b. Each Task Order will reference this Agreement and specify the commencement date and, if known, the period of performance.
- c. Task Orders may have the format shown in Attachment C or any other agreed-upon format.
- d. Each party will identify, in writing, the project manager who is responsible for Professional Services and Deliverables described in Task Orders. By written notice to the other party's technical administrator, either party may replace the project manager at any time with a similarly qualified person.
- e. Other than pricing and descriptions of Professional Services to be performed, terms and conditions in a Task Order are not binding unless both parties have signed the Task Order. The terms of a signed Task Order shall take precedence over conflicting terms in this Agreement.

5.4 Ownership of Deliverables and Inventions.

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

5.5 Acceptance.

- a. **For Firm Fixed Price Task Orders.** Customer will complete its acceptance review within 10 working days of receiving each Deliverable and classify the Deliverables as follows:
 1. "DELIVERABLE ACCEPTED" means a Deliverable conforming to the applicable Task Order with no more than minor nonconformities.
 2. "DELIVERABLE ACCEPTED WITH REWORK" means a Deliverable substantially conforming to the applicable Task Order but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable for the identified nonconformities and resubmit it within 30 days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within 10 working days of such resubmission and will reclassify the Deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
 3. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri will rework the Deliverable and resubmit it to Customer within 30 days, at which time Customer will have 10 working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

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

- b. **For Task Orders with Professional Service Packages.** Professional Services that Esri performs under Professional Service Packages will be deemed accepted unless Customer notifies Esri within 10 days after performance. Customer may purchase additional Professional Service Packages as needed to complete Customer's work requirements.
- c. **For Time and Materials Task Orders.** Professional Services are provided strictly on a time and materials basis subject to the Task Order not-to-exceed funding limit. The Professional Services provided will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Customer notifies Esri within 10 days after performance. Deliverables produced under a time and materials Task Order will not be subject to acceptance testing.

5.6 Warranty for Deliverables. Esri warrants to Customer that firm fixed price Deliverables materially comply with Specifications for a period of 90 days from acceptance, subject to the limitations and disclaimers of liability set forth in the "Limited Warranties and Disclaimers" section of Attachment B.

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

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

5.9 Payment; Invoices.

- a. **For Firm Fixed Price Task Orders.** Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.
- b. **For Professional Service Packages.** Esri will submit an invoice for Professional Service Packages on receipt of an agreed-upon Task Order. Esri may, at its sole discretion, stop work to avoid exceeding the total labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of the Esri invoice date.
- c. **For Time and Materials Task Orders.**
 - 1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) incurred as authorized under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri will invoice meals on a per diem basis in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <https://www.gsa.gov/>. Esri and Customer may include hourly labor rates in this Agreement; if the parties elect to do so, Attachment D will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; any increase in the first 5 years will not exceed 5 percent per year. Esri will invoice ODCs, including travel-related expenses incurred, plus a 15 percent burden.
 - 2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task

Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

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

6.0 ESRI MANAGED CLOUD SERVICES

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

- a. **"Esri Managed Cloud Services Environment"** means the hardware, Software, Data, and network platform that Esri or its third-party supplier provides as part of Esri Managed Cloud Services.
- b. **"Hosting"** means the business of housing and making accessible Customer Content via the Internet.

6.2 Provision of Esri Managed Cloud Services.

- a. **General Terms.** Use of Esri Managed Cloud Services is subject to the Cloud Services terms found in Attachment B of this Agreement.
- b. **Requirements Planning.** It is Customer's responsibility to plan for and address with Esri changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
- c. **Compensation and Expenses.** Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer monthly for the Esri Managed Cloud Services to be provided the following month. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the Esri Managed Cloud Services Environment. This paragraph does not apply to Esri Managed Cloud Services provided under the Advantage Program (see the section entitled "Advantage Program" in this Agreement).
- d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the Esri Managed Cloud Services Environment shall at all times remain with Esri.
- e. **Personally Identifiable Information.** Prior to providing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information.
- f. **Public Software.** Customer may not use, and may not authorize its end users or contractors to combine or use any Esri Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Esri Offering to be (1) disclosed or distributed in source code form, (2) made available free of charge to third parties, or (3) modifiable without restriction by third parties.
- g. **Monitoring.** Customer will provide information and other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's or Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

7.0 TRAINING

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

- a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
- b. **"Esri Academy LMS Integration Subscription"** means an optional term-limited subscription to Esri Academy enabling a specific number of unique Customer student(s) access to Self-Paced E-Learning through the Customer's learning management system.

- c. **"Esri E-Learning Content (SCORM Format) License"** means an optional term-limited license that provides Esri customers with Esri's e-learning content in SCORM (Shareable Content Object Reference Model) format to import into their learning management system.
- d. **"Esri Mobile Lab"** means a service in which Esri will deliver and set up a training environment at the Customer's site for use in conjunction with scheduled Esri Training Events only. The Esri Mobile Lab will include certain hardware, software, power cords, and network switches necessary for the instructor to set up the environment.
- e. **"Esri Training Event(s)"** means an Esri site class, Esri instructor-led online class, a Customer site/private class, workshop, or coaching services.
- f. **"Esri Training Representative"** means Customer's primary Esri liaison in organizing private Esri Training Events.
- g. **"Student(s)"** means a Customer employee or agent who is a registered participant in a specific Esri Training Event or Training-related services. If Customer is an individual, then Student means Customer.
- h. **"Training Pass"** means a nonrefundable, nontransferable block of prepaid training days with a fixed price per day throughout the Term of the Training Pass.
- i. **"Esri Mobile Router"** means a service in which Esri will deliver and setup a mobile router at the Customer's site for use in conjunction with a scheduled Esri Training Event only. The mobile router provides high-speed wireless internet access needed to run the Esri Training Event.

7.2 Permitted and Prohibited Uses.

- a. Esri provides Training Materials for Training purposes only and for the exclusive use of the Student who attends the Training course for which the Training Materials are provided.
- b. Customer may reproduce copies of Training Materials for registered Students.
- c. Customer may not and may not permit any Student to (i) separate the component parts of Training Materials for any use or (ii) use audio or video recording equipment during an Esri Training Event.
- d. Esri may issue temporary Product authorizations if Customer has an insufficient number of Products available for Training. Customer may use such Products as Training Materials under the terms of this Agreement. Customer will uninstall all deployed Products and return any media provided by Esri upon conclusion of the Esri Training Event.
- e. Customer will retain ownership of any Customer-Supplied Training Data.

7.3 Esri's Responsibilities.

Esri will

- a. Provide an instructor qualified to conduct Training;
- b. Provide all necessary Training Materials for Student; and
- c. Confirm Esri Training Events approximately 10 business days prior to the scheduled start date. Esri will only confirm Student registrations that include a payment method. Registrations without a confirmed payment method are placed on the reservation waiting list. All reservations on the waiting list are subject to availability. Customer site/Private class and coaching services confirmation is also dependent on receipt of the completed Customer site training request form.

7.4 Customer's Responsibilities.

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training Event. Esri reserves the right to disconnect any Student who permits unregistered student access to an online classroom Esri Training Event. In such case, the full Esri Training Event fee will be invoiced and payable;
- b. Ensure that all Students meet the minimum prerequisites for the applicable Esri Training Event as listed on Esri's training website;
- c. Submit Student registrations with payment method information at least 15 business days before the scheduled start date;

- d. Provide the Esri Training Representative with a list of names and email addresses of any Students who are to attend an Esri Training Event at least 3 business days before the scheduled start date, for compliance with the US embargoed country lists and the various US Government Lists of Parties of Concern or Specially Designated Nationals lists;
- e. For classes held at the Customer-designated facility, complete a client-site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
- f. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
- g. Assume full liability and responsibility for Student attending Training course(s) under this Agreement.
- h. If the Esri Mobile Lab or Mobile Router is used, Customer will
 - 1. Take delivery of the Esri Mobile Lab or Mobile Router from the shipping agent, and keep it in a secure, locked area at all times;
 - 2. Immediately report any previously damaged Esri Mobile Lab or Mobile Router equipment to the Esri Training Representative upon receipt of the shipment; and
 - 3. Be financially responsible for loss of, damage to, or theft of Esri Mobile Lab or Mobile Router equipment while in Customer's possession.

7.5 Student Registration and Training Event Change Policy.

- a. Customer will provide advance written notice to Esri Customer Service at service@esri.com to reschedule or cancel any Esri Training Event or to substitute a student in a scheduled Esri Training Event.
- b. A replacement Student must be from the same Customer organization as the Student being replaced.
- c. If Customer reschedules an Esri Training Event three or fewer days before the scheduled start date, Esri will charge Customer 50 percent of the fee plus the cost of the rescheduled Esri Training Event.
- d. If Customer (i) cancels an Esri Training Event 3 or fewer days before the scheduled start date without concurrently rescheduling or (ii) is absent without notice from the Esri Training Event, Customer will be liable for the full Esri Training Event fee.
- e. If cancellation of an Esri Training Event is necessary due to causes beyond the party's reasonable control, the affected party may reschedule or cancel the Esri Training Event without incurring any liability.
- f. *Termination of Agreement.* Students who are currently registered for an Esri Training Event as of the date of termination of this Agreement may attend the scheduled Esri Training Event, subject to the terms and conditions of this Agreement.

7.6 Invoicing; Prepaid Fees.

- a. Esri will invoice Customer upon completion of the Esri Training Event or on purchase of a Training Pass. On Customer request, Esri will invoice in advance for an Esri Training Event.
- b. If Customer is invoiced and pays that invoice prior to the scheduled Esri Training Event, then Customer has 1 year from the date of the invoice to consume training days. For a multiyear order, training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.
- c. Training Pass redemption rates are described at <https://www.esri.com/training/training-for-organizations/>.

This section 7.6 does not apply to Training provided under the Advantage Program.

7.7 Availability and General Provision of Wireless Service

- a. Esri will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to wireless service interruptions or unavailability.

7.8 Esri E-Learning in the Customer's Learning Management System

- a. Esri E-Learning Content (SCORM format) License, specific terms of use incorporated by reference are found at <https://www.esri.com/en-us/legal/overview>
- b. Esri Academy LMS Integration Subscription, specific terms of use incorporated by reference are found at <https://www.esri.com/en-us/legal/overview>

8.0 ADVANTAGE PROGRAM

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

- a. **"Activity Description"** means a mutually agreed upon written statement that confirms the number of Learning and Services Credits that Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate. The Activity Description serves as the Task Order for Services provided under the Advantage Program.
- b. **"Advantage Program"** means either Advantage Program, as described at www.esri.com/services/eeap/components, or the Advantage Program for Partners, as described at www.esri.com/partners/bpap/components.
- c. **"Authorized Contact"** means Customer's point of contact for the Advantage Program identified below.
- d. **"Learning and Services Credits"** means a contracted unit of exchange that Customer may use to acquire Professional Services, Training, PSS, Esri Managed Cloud Services, or related travel expenses as described below.
- e. **"Premium Support Services"** or **"PSS"** means a prioritized incident management and technical support program further described at <https://support.esri.com/en/support/premium>.
- f. **"Advisor"** means an Esri consultant assigned to work with Customer to provide Professional Services such as advising Customer on GIS strategies, facilitating annual planning, and developing and coordinating a collaborative work plan under the Advantage Program.

8.2 Advantage Program Description. The Advantage Program is provided on an order-by-order, annual subscription basis and provides strategy and planning support in addition to a menu of items including Professional Services, Training, PSS, and Esri Managed Cloud Services that Customer can select to best meet its needs with guidance from Advisor. The Advantage Program may change from time to time. The Advantage Program includes the following:

- a. **Advisor.** Customer will receive up to the number of Advisor hours ordered. Customer may elect to retain additional Advisor hours for a supplemental price.
- b. **Annual Planning Meeting.** A 1-day annual planning meeting is included.
- c. **Work Plan.** A collaboratively developed document is designed to drive the program's implementation through definition of Customer's GIS vision, goals, and objectives.
- d. **Learning and Services Credits.** Customer will receive the number of Learning and Services Credits ordered. Customer may use the credits toward any combination of Professional Services, Training, PSS, Esri Managed Cloud Services, or related travel expenses. Customer may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the applicable Advantage Program website. Esri will provide a monthly report outlining usage of Learning and Services Credits to date to the Authorized Contact.
- e. **Technology Webcasts.** Esri will provide an email invitation to the Authorized Contact for webcasts presenting business and technical information related to enterprise GIS.
- f. **No Project Services.** The Advantage Program is not designed for Esri to provide project-specific Professional Services such as custom application or database development for solutions or applications. Esri will not provide these types of Professional Services under the Advantage Program and does not warrant that Deliverables provided under an Advantage Program will comply with Specifications.

8.3 Authorized Contact Information. Customer identifies the following person as its initial Authorized Contact and any notices required under this Agreement to Customer shall be made to the following

Contact Name: Andre Monostori, Assistant Director, General Services Dept.
Address: 105 E. Anapamu Street, Room 304
City, State, ZIP: Santa Barbara, CA 93101
Email: amonostori@countyofsb.org
Telephone: (805) 568-2606

8.4 Current on Maintenance. Customer must remain current on standard Software Maintenance during the Advantage Program term.

8.5 Authorization of Learning and Services Credits Use. Customer will contact its account manager or Advisor to consume Learning and Services Credits for a particular request. Esri will submit an Activity Description by email to Customer for confirmation and authorization to use Learning and Services Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an email. Esri will begin work and deduct the estimated credit amount stated in the Activity Description from the unused Learning and Services Credits available.

8.6 Activity Descriptions for Esri Managed Cloud Services. The Activity Description for Esri Managed Cloud Services orders must include the following:

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

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

8.7 Travel and Per Diem Expenses. Any Esri travel and per diem expenses will be quoted separately. Travel expenses will include a 15 percent burden, and per diem will be determined in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <https://www.gsa.gov/>. Customer will use Learning and Services Credits for travel and per diem expenses.

8.8 Notification of Consumed Credits. Esri will notify Customer if the authorized Learning and Services Credits are consumed prior to completion of the requested work. Customer may elect to direct the use of additional Learning and Services Credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to stop work if Customer has consumed all its Learning and Services Credits.

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

8.10 Invoicing.

- a. Esri shall invoice Customer as quoted for the Advantage Program subscription, additional Learning and Services Credits, or Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 30 days in advance of the Advantage Program subscription expiration date. Esri will extend the Advantage Program subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Advisor services upon receipt of Customer's order.
- b. Pricing for program renewals and new or additional Services will be in accordance with Esri's standard pricing at the time of purchase or renewal.

8.11 Termination and Expiration. Upon termination or expiration of an Advantage Program subscription:

- a. Services will end as of the expiration or termination date stated; and
- b. Unless either party terminates the Advantage Program subscription for cause, Customer may apply any unused Learning and Services Credits toward any Professional Services, Training, PSS, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within 3 months after the termination or expiration date. Any other unused Learning and Services Credits will expire 30 days after the expiration or termination date; if Customer renews the Advantage Program subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from the purchase date or termination of this Agreement, whichever comes first.

ATTACHMENT A GLOSSARY OF TERMS

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

"Affiliate" means any entity that directly or indirectly (i) Controls; (ii) is Controlled by; or (iii) is under common Control with a party, where "Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"API" means application programming interface.

"ArcGIS Website" means www.arcgis.com and any related or successor websites.

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

"Beta" means any alpha, beta, or other prerelease version of a Product.

"Cloud Services" means Online Services and Esri Managed Cloud Services.

"Content" means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources used in connection with Esri Offerings and Services.

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

"Customer Content" means any Content that Customer provides, uses, or develops in connection with Customer's use of Esri Offerings or Services, including Value-Added Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

"Data" means any commercially available digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes that Esri bundles with other Esri Offerings or delivers independently.

"Deliverables" means anything that Esri delivers to Customer as a result of performance of Professional Services.

"Documentation" means all user reference documentation that Esri provides with a Deliverable or an Esri Offering.

"Esri Managed Cloud Services" means a Customer-specific cloud infrastructure, Software, Data, and network platform that Esri hosts, manages, and makes available to Customer or Customer's end users via the Internet.

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

"GIS" means geographic information system.

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

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

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

"Ordering Document(s)" means a sales quotation, Maintenance renewal quote, purchase order, proposal, Task Order, or other document identifying Esri Offerings, updates, or Services that Customer orders.

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

"Product(s)" means Software, Data, and Online Services.

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

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

"Service(s)" means Maintenance. If Esri provides Esri Managed Cloud Services, Training, or Professional Services directly to Customer, then Services also include Esri Managed Cloud Services, Training, and Professional Services.

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

"Specification(s)" means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.

"Task Order(s)" means an Ordering Document for Services.

"Term License" means a license for use of an Esri Offering for a limited time period ("**Term**").

"Third-Party Content" means any Content that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"Training" means (i) Product training or (ii) related training that Esri provides under this Agreement.

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

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

ATTACHMENT B GENERAL TERMS AND CONDITIONS

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

ARTICLE B.1—GENERAL USE RESTRICTIONS

Except as expressly permitted in this Agreement, Customer will not

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

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

ARTICLE B.2—TERM AND TERMINATION

B.2.1 Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Any right to terminate pending Services engagements for convenience is set forth in the applicable section in the body of this Agreement. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

B.2.2 If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions to Esri Offerings. If Customer terminates this Agreement for cause or convenience, then Customer may, at its election, also terminate Customer's licenses or subscriptions to Esri Offerings.

B.2.3 Upon any termination or expiration of a license or subscription, Customer will

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

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

ARTICLE B.3—LIMITED WARRANTIES AND DISCLAIMERS

B.3.1 Limited Warranties. Except as disclaimed below, Esri warrants to Customer that (i) Products and Training will substantially comply with the applicable Specifications and (ii) Services will substantially conform to the professional and technical standards of the industry. The warranty period for Esri Offerings offered under a Perpetual License and for Services runs for 90 days from the date of delivery or from the date of acceptance if this Agreement provides an acceptance period. The warranty period for Esri Offerings offered under a subscription or Term License basis runs for the lesser of (i) the duration of the subscription or term or (ii) 90 days from delivery or acceptance if this Agreement provides an acceptance period.

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

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

B.3.4 Disclaimers.

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services.
- b. **Third-Party Websites; Third-Party Content.** Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Offerings or Esri websites, including www.esri.com and www.arcgis.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

B.3.5 Exclusive Remedy. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be to replace any defective media and to (i) repair, correct, or provide a workaround for the applicable Esri Offering or Services or (ii) at Esri's election, terminate Customer's right to use and refund the fees paid for Esri Offerings or Services that do not meet Esri's limited warranties.

ARTICLE B.4—LIMITATION OF LIABILITY

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

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

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

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

ARTICLE B.5—INDEMNIFICATIONS

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

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

B.5.2 Infringement Indemnity.

- a. Esri will defend, hold all Indemnitees harmless from, and indemnify any Loss arising out of an Infringement Claim.
- b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or Services or (ii) modify the Esri Offerings or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings or Services and will refund any (a) license fees that Customer paid for the infringing Esri Offerings or Services acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery or (b) unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.
- c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings or Services with a product, process, system, or element that Esri has not supplied or specified in the Specification; (ii) alteration of Esri Offerings or Services by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings or Services after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings or Services.

B.5.3 General Indemnity Esri will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents performing Services while on customer's site, except where such indemnification is

prohibited by law. Esri's indemnification obligation does not apply to Indemnitee's sole negligence or willful misconduct.

B.5.4 Conditions for Indemnification. As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Infringement Claim provided that any settlement or compromise which requires monetary contribution from Customer or an admission regarding or inferring Customer's wrongdoing (excluding infringement) must be approved by Customer, and (iv) reasonably cooperate in the defense of the Infringement Claim at Esri's request and expense.

B.5.5 This section sets forth the entire obligation of Esri, its authorized distributor, and its third party licensors regarding any Claim for which Esri must indemnify Customer.

ARTICLE B.6—INSURANCE

If Esri is providing Services, Esri will provide proof that it carries at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability ("CGL") with a minimum coverage of \$1,000,000.00 (US dollars) combined single limit per occurrence for bodily injury, including death, and property damage liability to include the following:
 1. Premises and operations;
 2. Blanket contractual liability;
 3. Broad form property damage;
 4. Independent contractors;
 5. Personal injury, with employee exclusion deleted; and
 6. Completed operations.
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.
- c. Professional Liability with a minimum coverage of \$1,000,000.00 (US Dollars)

Additional Insured – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Esri including materials, parts, or equipment furnished in connection with such work or operations.

ARTICLE B.7—SECURITY AND COMPLIANCE

B.7.1 Security. Esri publishes its security capabilities at <https://trust.arcgis.com>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at securesupport@esri.com for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

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

B.7.3 Export Compliance. Each party will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries or denied entities or persons except in

accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.6, 120.9, and 120.10, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

B.7.4 Privacy. Esri will process personal data according to the terms of the Data Processing Addendum available at <https://www.esri.com/en-us/privacy/overview>. A current copy of the Data Processing Addendum is attached hereto as Attachment G.

ARTICLE B.8—CLOUD SERVICES

B.8.1 Prohibited Uses. Customer shall not provide Customer Content or otherwise access or use Cloud Services in a manner that

- a. Creates or transmits spam, spoofings, or phishing email or offensive or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services without written approval from Esri's Product Security Officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services.

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

B.8.3 Customer Content.

- a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Customer Content as needed to provide Cloud Services to Customer. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Esri under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
- b. If Customer accesses Cloud Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
- c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.
- d. When Customer's use of Cloud Services ends, Esri will either
 1. Make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so; or
 2. Download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Esri will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

B.8.4 Removal of Customer Content. Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If

reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at www.esri.com/legal/dmca_policy.

B.8.5 Service Suspension. Esri may suspend access to Cloud Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer Content as described above.

B.8.6 Notice to Esri. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

ARTICLE B.9—GENERAL PROVISIONS

B.9.1 Payment. Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice.

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

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

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

B.9.5 Taxes and Fees; Shipping Charges. Pricing of Esri Offerings and Services that Esri quotes to Customer is exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; shipping and handling charges; and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing.

B.9.6 Compliance Review. Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

B.9.7 No Implied Waivers. The failure of either party to enforce any provision of this Agreement is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

B.9.8 Severability. If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

B.9.9 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement. Upon mutual agreement, Esri's Affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services. Esri's distributors are not Affiliates of Esri.

B.9.10 Survival of Terms. The Glossary of Terms and provisions of the following Articles of these General Terms and Conditions will survive the expiration or termination of this Agreement: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications," and "General Provisions."

B.9.11 US Government Customer. The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of Products under applicable public procurement law, such rights will extend only to the portions affected. ArcGIS Online has been granted FedRAMP tailored low authorization but does not meet higher security requirements including those found in DFARS 252.239-7010.

B.9.12 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

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

B.9.13 Dispute Resolution. The parties will use the following dispute resolution processes:

- a. **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
- c. **Other Government Entities.** Esri will comply with mandatory dispute resolutions under applicable law.

B.9.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes (other than those involving either part's employees, cyber attacks, laws, regulations, government orders, or any other force majeure event. In the event Esri is unable to provide the services due to the Force Majeure event for a period of no more than thirty (30) days, Customer shall be entitled to terminate the agreement and Esri shall return fees to Customer covering the period of time services were not provided.

B.9.15 Independent Contractor. Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its

authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

B.9.16 Notice. Customer may send notices required under this Agreement to Esri at the following address:

Environmental Systems Research Institute, Inc.
Attn.: Contracts and Legal Department
380 New York Street
Redlands, CA 92373-8100
USA
Tel.: 909-793-2853
Email: LegalNotices@esri.com

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

Contact Name: Andre Monostori, Assistant Director, General Services Dept.
Address: 105 E. Anapamu Street, Room 304
City, State, ZIP: Santa Barbara, CA 93101
Email: amonostori@countyofsb.org
Telephone: (805) 568-2606

ATTACHMENT C
SAMPLE TASK ORDER
Esri Agreement No. _____
Task Order No. _____

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

- 1. Scope of Work: *[As applicable, specifically identify and describe Deliverables including custom code, map data, technical data (including technical assistance), and the resources to be provided by Customer (including Customer-supplied personnel, software, hardware, and digital or hard-copy data) and place of delivery and location where technical assistance will be provided.]*

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

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

ACCEPTED AND AGREED:

[sample only—do not sign]
(Customer)

Signature: [sample only—do not sign]

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature: [sample only—do not sign]

Printed Name: _____

Title: _____

Date: _____

**ATTACHMENT D
TIME AND MATERIALS RATE SCHEDULE**

Hourly time and materials labor category descriptions and rates have been provided for each labor category for calendar year 2022. The hourly labor rates for services that are performed after 2022 may be escalated in an amount not to exceed five percent (5%) each year. Esri shall provide an updated Rates by Labor Category Table prior to implementation of such rates.

Current Rates by Labor Category

Labor Category	Rate
Technology Consultant/Engineer (S1)	\$261
Senior Technology Consultant/Engineer (S2)	\$337
Principal Technology Consultant/Engineer (S3)	\$414
Consultant/Project Manager (M1)	\$316
Senior Consultant/Project Manager (M2)	\$398
Principal Consultant/Program Manager (M3)	\$525
Technology Support Specialist (DB)	\$219

Attachment E

Product-Specific Terms of Use

The following list identifies additional terms of use that apply to specific Products. Each Product listing identifies one or more footnotes that apply to that Product. These footnotes supplement the terms of this Agreement. The definitions for each footnote follow the list. Unless otherwise noted in the applicable Ordering Document, extensions to a Product follow the same scope of use as that granted for the corresponding Product. In addition to the definitions within the Master Agreement, the following definitions will apply to the Product-Specific Terms of Use:

- "Authentication" means using any Esri provided mechanism that enables access to ArcGIS Platform location services. See Security and Authentication documentation (<https://developers.arcgis.com/documentation/mapping-apis-and-services/security/>) for current list of Authentication mechanisms).

Desktop Products

- ArcGIS Desktop (Advanced, Standard, or Basic) (26)
- ArcGIS Earth (20; 65)
- ArcGIS Explorer Desktop (20)
- ArcGIS for AutoCAD (20)
- ArcPad (13)
- ArcReader (20)
- ArcGIS for Personal Use (3; 26)
- ArcGIS CityEngine (78)

Server Products

- ArcGIS Enterprise
 - Standard or Advanced (17; 21; 23; 31; 87)
 - Workgroup Standard or Advanced (21; 23; 26; 28; 29; 30; 87)
 - ArcGIS GIS Server (Standard or Advanced) (31)
 - ArcGIS GIS Server Basic (31; 39)
 - ArcGIS GIS Server Workgroup (Standard or Advanced) (26; 28; 29; 30)
 - ArcGIS GIS Server Workgroup Basic (26; 39)
 - ArcGIS Maritime (2)
- ArcGIS Enterprise Optional Capability Servers:
 - ArcGIS Image Server, ArcGIS GeoEvent Server, ArcGIS GeoAnalytics Server, and ArcGIS Notebook Server Standard (31)
- ArcGIS Enterprise Workgroup Optional Capability Servers:
 - ArcGIS Image Server, ArcGIS GeoEvent Server, ArcGIS GeoAnalytics Server, and ArcGIS Notebook Server Standard (4)
- ArcGIS Business Analyst Enterprise (17; 21; 23; 31; 87)
- ArcGIS World Geocoder Basic (67)

Developer Products

- ArcGIS Developer Subscription
 - All Plans (16; 24; 26; 66; 68; 77; 89; 91; 97; 103)
 - Active subscriptions with an effective start date prior to January 27, 2021 (79)
 - Active subscriptions with an effective start date after January 26, 2021 (88)
 - Builder, Professional, Premium, or Enterprise Plans (77, 92)
 - Essentials Plan (90)
 - ArcGIS AppStudio Developer Edition (11; 16; 19)
 - ArcGIS Runtime SDK for Android, iOS, Java, macOS, .NET, Qt, or WPF (16; 19)
 - ArcGIS Engine Developer Kit and Extensions (16; 19; 22; 26)
 - ArcGIS API for JavaScript (16; 64)
 - ArcGIS CityEngine SDK and Procedural Runtime (16; 19)

- ArcGIS Runtime Deployment License for Android, iOS, Java, Mac OS X, .NET, Qt, or WPF
 - Lite (15)
 - Basic or Standard (1; 14; 15; 18)
 - Advanced (14; 15; 18)
- ArcGIS Engine Deployment License for Windows/Linux and Extensions (15; 22; 26)
- Esri File Geodatabase API (47)

Mobile

- ArcGIS Navigator (14)

Other

- ArcGIS Hub (85)
- ArcGIS Indoors (86)
- ArcGIS Indoors Maps (99; 100; 101)
- ArcGIS Indoors Spaces (100; 101)
- ArcGIS IPS(100; 101)
- ArcGIS Maps for Adobe Creative Cloud Complimentary user (74)
- ArcGIS Insights (17)
- Site Scan for ArcGIS Operator license (32; 33)
- ArcGIS GeoAnalytics Engine
 - Connected, Additional Core-Hours Plans (103)
 - Disconnected Plan (27, 102)

Online Services

- ArcGIS Online subscriptions are available through multiple Selling Programs:
 - Commercial Retail, EAs; and Government Programs (23; 66; 68; 69; 70; 82; 96; 103)
 - Education Programs (23; 66; 68; 69; 70; 71; 82; 96; 103)
 - Non-profit Programs (23; 66; 68; 69; 70; 71; 82; 96; 103)
- Public Plan (66; 68; 74; 75; 76; 80)
 - Customers under the following categories have these additional rights:
 - Commercial Retail (72)
 - enterprise agreements (72)
 - Government (72)
 - NGO/NPO (72)
 - Press/Media Programs (72)
 - Education Programs (71)
- ArcGIS AEC Project Delivery Subscription (83)
- ArcGIS Velocity (103)

Footnotes:

1. May not be used to edit an enterprise geodatabase via Direct Connect.
2. Not for use in navigation.
3. Licensed for personal, noncommercial use only.
4. – Limited to 1 four-core server.
 - Can be installed on a separate machine.
- 5–10. Reserved.
11. Applications built with ArcGIS AppStudio Developer Edition are subject to the terms of use for ArcGIS Runtime Deployment License.
12. Reserved.
13. Licensed as a Dual Use License.
14. May be used for navigational purposes.
15. Licensed as a Deployment License.
16. Customer may use the SDKs or APIs to create Value-Added Applications and distribute and license those Value-Added Applications to its end users to use anywhere not prohibited under applicable export regulations.

17. Customer shall not redistribute Oracle Instant Client libraries or their documentation that is included with this Product. Oracle is a third-party beneficiary of this Agreement solely with respect to Customer's use of the Oracle Instant Client libraries. The Uniform Computer Information Transaction Act (UCITA) shall not apply to Customer's use of the Oracle Instant Client libraries.
18. The Deployment License is per Value-Added Application per computer for stand-alone applications.
19. License may not be used to develop Internet or server-based Value-Added Applications.
20. Licensed as a Redistribution License.
21. See Master Agreement <https://www.esri.com/legal/software-license> for additional terms of use for Named User Licenses.
22.
 - a. An end user must acquire a license in either ArcGIS Engine for Windows/Linux Software or other ArcGIS Desktop Software (Basic, Standard, or Advanced) to obtain the right to run an ArcGIS Engine application on 1 computer; and
 - b. The ArcGIS Engine for Windows/Linux extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine Value-Added Applications. A single user can have multiple ArcGIS Engine Value-Added Applications installed on 1 computer for use only by that end user.
23. System to System Communication
 - a. Customer may use a basic service login to enable one-way, read-only, system-to-system communications from ArcGIS Enterprise or ArcGIS Online to other third-party, enterprise business system(s) in the customer's organization. Customer may use a Viewer Named User Credential or Level 1 Named User Credential as a basic service login until Esri implements an actual service login credential. A specific Viewer Named User Credential or Level 1 Named User Credential used as a basic service login credential may only be used for system-to-system integration purposes and may not also be used by a Named User to access the system.
 - b. Customer may use a standard service login to enable two-way, read-write, system-to-system communications between ArcGIS Enterprise or ArcGIS Online and other third-party, enterprise business system(s) in the customer's organization. Customer may use an Editor (or higher) Named User Credential or Level 2 Named User Credential as a standard service login until Esri implements an actual service login credential. A specific Editor (or higher) Named User Credential or Level 2 Named User Credential used as a standard service login credential may only be used for system-to-system integration purposes and may not also be used by a Named User to access the system.
24. Software may be used only for the purposes of development, testing, and demonstration of a prototype Value-Added Application and creating map caches. Customer may use Value-Added Applications and map caches with ArcGIS Enterprise Staging Server Licenses and Deployment Server Licenses. Software and Data may be installed on multiple computers for use by any ArcGIS Developer Subscribers with Builder or higher plan subscriptions; all other Software is licensed as a Single Use License.
25. Reserved.
26. The geodatabase is restricted to 10 gigabytes of Customer's data.
27. May not be used to generate revenue by providing services to third parties.
28. Use is limited to 10 concurrent end users of applications other than ArcGIS Enterprise Workgroup or ArcGIS GIS Server Workgroup applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Enterprise Workgroup or ArcGIS GIS Server Workgroup geodatabase. There are no limitations on the number of connections from web applications.
29. Software requires a supported version of SQL Server Express. Supported versions are listed with the system requirements for the product on the Esri website.
30. Use is restricted to a maximum of 10 gigabytes of Customer's data. All components must be installed on a single server.
31. Includes a Failover License.
32. The use of this Software does not include a pilot's license (e.g., FAA, EASA, etc.) to operate a drone.
33. Customer may only use online storage provided with this Software to store Customer Content collected or processed through this Software.
- 34–38. Reserved.
39. Any editing functionality included with ArcGIS GIS Server is not permitted for use with ArcGIS GIS Server Basic and ArcGIS GIS Server Workgroup Basic.
- 40–46. Reserved.

47. Customer may develop and distribute Value-Added Applications that use Esri File Geodatabase API to Customer's end users.
- 48–63. Reserved.
64. Value-Added Applications for web deployment must be used in conjunction with other Esri Products. Third-party technologies may also be used in conjunction with Value-Added Applications as long as the Value-Added Applications are always used in conjunction with other Esri Product(s).
65. May only be used in conjunction with other Esri Product(s). Third-party technologies may also be used in conjunction with ArcGIS Earth as long as ArcGIS Earth is always used in conjunction with other Esri Products.
66. Only Customers with an active Online Services subscription may store geocoded results generated by World Geocoding Service.
67. Limited to 250,000,000 geocodes per annual subscription.
68. Customer may use the data accessible through Infographics Service for display purposes only and may not save any data accessible through this service.
69. May be used for any business purpose of Customer's organization.
70. May be used for development and test purposes for Customer's organization.
71. May be used for teaching purposes in educational organizations.
72. May be used for the internal business purposes of Customer's organization.
73. Reserved.
74. May be used for personal use.
75. Customer may enable third-party use of Value-Added Applications only by publicly sharing the Value-Added Application(s) using Sharing Tools. Customer may not use this subscription to power a Value-Added Application for its own internal business use unless Customer is an educational institution using the Value-Added Application for teaching purposes only, a qualified NGO/NPO organization, or a media or press organization.
76. Customer is not permitted to create private groups or participate in any private groups.
77. Includes a Commercial App Deployment license.
- A Commercial App Deployment license is required when:
 - Customer deploys revenue-generating Value-Added Applications that are not for use solely with an ArcGIS Online or ArcGIS Enterprise license and have not yet migrated to use ArcGIS Platform location services Authentication.
 - A Commercial App Deployment license is not required when:
 - Customer deploys revenue-generating Value-Added Applications solely for use with an ArcGIS Online and/or ArcGIS Enterprise license. Such Value-Added Applications are not required to use ArcGIS Platform location services Authentication.
78. Includes a Commercial App Deployment license.
79. Each subscription is limited to 1,000,000 geosearch transactions per month in conjunction with Customer's subscription. Transactions include both basemap data and geocode search transactions. One basemap data transaction is equivalent to eight 256x256 tile requests. One geocode search transaction is equivalent to one address or place. If the results are stored in any manner such as after batch geocoding, the stored results are not counted toward the transaction limit. However, storage does consume Service Credits. For transactions greater the 1,000,000 per month, call Esri Sales or your local distributor for details.
80. May permit registered students of an education institution to directly access the Online Services and share a single subscription between more than 1 registered student for teaching purposes only.
81. Reserved.
82. A Named User may embed its Named User Credential in an ArcGIS API for Python script solely for the purpose of automating a workflow to be used exclusively by the Named User whose Named User Credential is embedded in the script.
83. Customer must use a separate AEC Project Delivery Subscription for each Customer client ("Client"). Customer may (i) use the AEC Project Delivery Subscription solely to collaborate on project work with its Client; and (ii) provide Client with Named User access to the AEC Project Delivery Subscription to enable Client to access the AEC Project Delivery Subscription to collaborate on project work that Customer performs for Client. Client may not use the Named User License for any other purpose. Customer is solely responsible for Client's compliance with these terms of use and will ensure that Client stops using the AEC Project Delivery Subscription when the project ends.

84. Reserved.
85. Software licenses and subscriptions included with ArcGIS Hub may only be used to support the community initiatives enabled by ArcGIS Hub. Customer may allow 3rd parties to be Named Users of ArcGIS Hub for the sole purpose of engaging in community activities. Customers may allow employees, agents, consultants, or contractors to be Named Users of ArcGIS Hub for the sole purpose of administering, configuring, maintaining, and supporting community initiatives through ArcGIS Hub. No other use of software licenses and subscriptions included with ArcGIS Hub is permitted.
86. Customer may use the software licenses and subscriptions included with ArcGIS Indoors solely to enable the capabilities of ArcGIS Indoors as defined in the ArcGIS Indoors Documentation. No other use of software licenses and subscriptions included with ArcGIS Indoors is permitted.
87. Accessing Parcel Fabric services provided by ArcGIS Enterprise is prohibited except through ArcGIS Pro Standard and ArcGIS Pro Advanced.
88. Subscription limits are determined as defined by the available Service Request Plans.
89. Customer may distribute directly, or through its sales channels, revenue-generating Value-Added Applications, that access ArcGIS Platform location services through Authentication, to third parties. All revenue-generating Value-Added Applications are required to use Authentication when accessing ArcGIS Platform location services. Except as set forth in footnote 77 above, Customers who are in the process of migrating their revenue-generating Value-Added Applications to use ArcGIS Platform location services must have a Commercial App Deployment license until the migration to ArcGIS Platform location services is complete.
90. Customer may have multiple subscriptions within their organization for development and test purposes. Customer may only use one subscription within their organization for use with deployed Value-Added Applications.
91. Application migration—a developer who has Value-Added Applications built with:
 - a. The client APIs (including JavaScript 4.x and Runtime SDKs (any version), REST, Esri's open source mapping libraries, supported 3rd party open source mapping libraries) is required to use the ArcGIS Platform location services in their applications by April 30, 2022.
 - b. The JavaScript 3.x API are required to use the ArcGIS Platform location services in their applications by December 31, 2022
92. Customer is only permitted to create private groups or participate in private groups within the development and test ArcGIS Online Organization Subscription included with the ArcGIS Developer Subscription.
93. Reserved.
94. Reserved.
95. Reserved.
96. Customer may use ArcGIS Image services for interactive, non-programmatic access by Named Users only. Programmatic use of the ArcGIS Image services (e.g., batch classification, deep learning, etc., or exporting volumes of data larger than 10MB at a time) are not permitted.
97. Customer's end users who are prompted for an API key for use with a third party's Value-Added Application must generate such API keys through an ArcGIS Developer Subscription. API keys generated through an ArcGIS Online account are not permitted in this scenario.
98. Reserved.
99. The user types included with ArcGIS Indoors Maps are licensed solely for use to enable the capabilities as defined in the product documentation for ArcGIS Indoors Maps, ArcGIS Indoors Spaces, and ArcGIS IPS.
100. Customer may only develop Value-Added Applications for use by user types provided with ArcGIS Indoors Maps with functionality relating to indoor mapping, way finding, navigation, routing, or positioning.
101. An ArcGIS Indoors Spaces license is required to use either Workspace Reservations or Space Planner.
102. Each Disconnected Plan is limited to one production cluster.
103. Includes Online Services, or capacity, that can be utilized through a consumption model. Customer may purchase additional subscription options as needed to enable the continued use of applicable Online Services or capacity. Esri will provide Customer's subscription account administrator with advanced notification of subscription consumption and expiration. Esri reserves the right to suspend Customer's access to Online Services or capacity, when subscription consumption reaches 100 percent of total allocated or pre-paid capacity or Online Services. If overages are enabled, Esri will invoice monthly in arrears and Customer is responsible for paying the associated costs incurred at the applicable rates. Esri

reserves the right to suspend Customer's access to Esri Offerings if Customer has a past due amount. Esri will promptly restore Customer's access to Esri Offerings once Customer funds access to the Esri Offerings.



Attachment F

Esri Maintenance and Support Program

This Esri Maintenance and Support Program document describes Esri's commitment to support a US customer's use of Esri's unmodified Qualifying Products by providing some or all of the following maintenance benefits: technical support, new version software, hot fixes, patches, software updates, Self-Paced E-Learning, beta programs, and/or Esri User Conference registration ("**Maintenance**"). Maintenance benefits may vary by product, license type, subscription, or program. For Maintenance details, contact Esri Customer Service or visit Esri's product qualification web page at <https://www.esri.com/software/maintenance/benefits>.

In addition to Maintenance, customers in the United States of America may purchase one or more of the following programs ("**Support Program[s]**"), which enhance the benefits of Maintenance:

- a. Premium Support Services ("**PSS**")
- b. Special Events Premium Support Services ("**SEPSS**")
- c. North America Regulated Industries Support ("**NORUS**")
- d. After Hours Support
- e. ArcGIS Platform Technical Support
- f. Enablement Support Services

Contact Esri for further details regarding the Support Programs.

Esri reserves the right to change the Esri Maintenance and Support Program at any time and, if reasonable under the circumstances, Esri will provide thirty (30) days' advance written notice of any material alterations. Any material alterations will become effective upon renewal.

ARTICLE 1—DEFINITIONS

The terms used are defined as follows:

- a. "**Authorized Caller(s)**" means the Customer-designated individual who may contact Esri to request technical support (e.g., to report technical issues or request product assistance).
- b. "**Case(s)**" means the Esri record that contains technical notes and documentation of all related interactions between Customer and Esri Support Services for a given technical issue. Depending on how the request was initiated, Esri will provide phone, email, or chat confirmation of the Case creation. The Case will be given a unique identification number for reference and tracking.
- c. "**Customer**" means Licensee or Customer as defined in the Master Agreement or Customer's signed Agreement with Esri.
- d. "**Customer Number**" means a unique number created by Esri to identify each Customer office or site, which is included on Esri invoices.
- e. "**Esri Support Services**" means Esri support team.
- f. "**Hot Fix(es)**" means a single fix in one of the specific functional areas that is critical to Customer (e.g., Customer's production has stopped). Esri will send the Hot Fix to Customer as soon as Esri completes a technical feasibility assessment. With the Hot Fix, Esri will deliver documentation that will clearly identify the technical problems addressed and any limitations. Esri will conduct limited testing on Hot Fixes before providing them to Customer. Esri will incorporate Hot Fixes into subsequent Software Updates. Hot Fixes do not provide new functionality. Hot Fixes will only function with the associated Esri product type and release.
- g. "**Patch(es)**" means a single fix (see Hot Fix[es]) or a set of related fixes that are in a specific functional area of the Esri product and will apply to multiple Esri customers. Once a Patch is released, it will be incorporated into a subsequent Software Update. Esri conducts limited testing on Patches before providing them to customers. Patches do not provide new functionality. Patches will only function with the associated Esri product type and release.
- h. "**Premium LAC**" means up to two (2) individuals designated by Customer as its authorized caller(s) to report a PSS Case and work directly with the TAM.

- i. **"PSS Case(s)"** means a Case that is opened as or elevated to PSS and/or SEPSS via Customer request or technical support's elevation process.
- j. **"Qualifying Product(s)"** means Esri's unmodified products or products that were modified by Esri or under Esri's direction and are eligible for some or all of the Maintenance benefits for qualifying products licensed to Customer subject to the terms and conditions of the Master Agreement or Customer's signed Agreement with Esri.
- k. **"Self-Paced E-Learning"** means a collection of self-paced learning resources for applicable Esri products accessible from the Esri Training website.
- l. **"Software Updates"** means a collection of files that enhance or correct a Qualifying Product and that will be available for Customer to download during the Maintenance term.
- m. **"TAM"** means the technical account manager who will be the primary point of contact for the coordination and escalation of PSS Cases.

ARTICLE 2—PAYMENT, RENEWAL, REINSTATEMENT, AND EXPIRATION

2.1 Payment. Esri will automatically provide Maintenance for the first twelve (12) consecutive months from the licensed date of Qualifying Products. All Maintenance and any Support Program(s) may be purchased in advance, with payment terms of net thirty (30) days, unless otherwise agreed to in another agreement between Customer and Esri. Customer may issue a purchase order for its initial Support Program order at any time during a Maintenance term. This Article 2.1 does not apply to the payment of the EA Fee identified in Enterprise Agreement number 00306386.0 signed by Esri and Customer.

2.2 Renewals. Esri will issue a quote ninety (90) days before the expiration date ("**Renewal Quote**"). The Renewal Quote will be sent via email and provide Customer with a breakdown of the Qualifying Products licensed and Support Program(s) due to expire and the associated fees to renew. If Customer has acquired multiple Qualifying Products and/or Support Programs throughout the course of a year, Esri will provide a single Renewal Quote with prorated fees and a common renewal term for all Qualifying Products and Support Program(s). The common renewal term will start on the earliest of the Qualifying Products renewal dates.

2.3 Reinstatement Fee for Past-Due Renewals. Esri will reinstate Maintenance and Support Program(s), if applicable, if Customer initiates an order no later than thirty (30) days after the expiration date. At Esri's discretion, Esri may continue to provide Maintenance and support during this period. If Customer does not renew Maintenance prior to the expiration date but at a later date wants to reinstate Maintenance, fees to reinstate Maintenance include the then-current Maintenance Fee and will include additional fees that Customer would have paid since the expiration date.

2.4 Term Expiration. It is Customer's responsibility to renew Maintenance and/or Support Programs to receive benefits. If Esri does not receive a purchase order or payment for any Maintenance or Support Program renewal prior to the expiration date, then Esri will notify Customer that the term has expired and Customer will no longer receive benefits.

ARTICLE 3—ESRI USER CONFERENCE REGISTRATION; SELF-PACED E-LEARNING

3.1 Esri User Conference Registration. During the Maintenance term, licenses for Qualifying Products may include registrations to attend the Esri User Conference. Unless otherwise agreed to in writing by Esri and Customer, Customer's eligibility will be dependent on the license type(s) and quantity of Qualifying Products. Customer may purchase additional registrations. Customer must submit a registration form for each individual attending the conference. Esri User Conference registrations are assigned in the order received and are nontransferable.

3.2 Self-Paced E-Learning. During the Maintenance term, Customer will receive access to Self-Paced E-Learning. Each individual must have an Esri account; have a broadband Internet connection; and be an employee, agent, consultant, or contractor of Customer. For education accounts, individuals may include registered students.

ARTICLE 4—TECHNICAL SUPPORT

4.1 Scope of Technical Support. During the Maintenance term, Qualifying Products will receive the level of technical support corresponding to the respective life cycle phase. Information on the Qualifying Product life cycle phase and the ArcGIS Product Life Cycle Support Policy can be found at <https://support.esri.com/en/content/productlifecycles>. Esri does not provide technical support for (a) customization of solutions, templates, or tools; (b) patches received outside of a life cycle; or (c) third-party software, hardware, technology, or similar peripherals that are not provided by Esri. However, Esri does answer questions about how to interface Esri products with supported devices. Further details on the scope of technical support is found at <https://support.esri.com/en/supportscope>.

4.2 Authorized Callers. Customer may designate a limited number of Authorized Callers per Qualifying Product. Customer may replace Authorized Callers at any time through the My Esri site.

4.3 Submitting a Case. For Qualifying Products, Authorized Caller may contact Esri as many times as needed. All requests for technical support must contain detailed information about the technical issue. Authorized Caller must be prepared to provide as much of the following information as possible:

- The Esri Customer Number
- The phone number and email address where Authorized Caller can be reached
- The version of the software and operating system in use
- The database in use, if applicable
- The Online Services, tools, and/or APIs in use, if applicable
- The Esri Global ID
- A description of what Customer was doing when the problem occurred and steps to reproduce the issue
- The exact wording of any error messages that appear on the screen

4.4 Telephone, Chat, and Web Form. If Customer needs help with a technical issue, an Authorized Caller may contact Esri by phone, chat, or web form.

- a. *By Telephone.* The Authorized Caller will be connected to a technical support analyst who will create a Case and be dedicated to work on the technical issue. If a technical support analyst is unavailable, the Authorized Caller may create a Case, which will be placed in a dispatch queue for the next available technical support analyst.
- b. *By Chat.* To initiate a chat consultation, the Authorized Caller must click the Chat with an Analyst button at <https://support.esri.com/en/webform-chat>. Chat-based requests can only be made during Esri Support Services operating hours, listed in Article 11 below. The Authorized Caller must create a Case and will be connected to a technical support analyst. If a technical support analyst is unavailable, the Authorized Caller can opt to receive an email notification when the next technical support analyst is available.
- c. *By Web Form.* The Authorized Caller may request technical support by completing an online web form available at My Esri. Requests made through this channel are received twenty-four (24) hours a day, seven (7) days a week, but are logged and assigned to a technical support analyst the next business day. Esri will respond on a first come, first served basis. All Cases reported by web form are given the same priority and level of attention as those reported by telephone.
- d. *By Esri Support App.* The Authorized Caller may create and manage Cases either by telephone or web form using the mobile app. The Esri Support Mobile app is available on Android and iOS devices.

4.5 Technical Support Website. Esri has created a self-help support website for customers to view technical articles, updated product documentation, blogs, links to forums, and technology announcements. Additionally, Authorized Callers may connect to My Esri to submit technical issues, chat with technical specialists, and track technical support Cases. The Esri Support website can be found at <https://support.esri.com>.

4.6 Standard Technical Support Response Time. Esri will respond to a technical support request during Esri Support Services operating hours. Esri will make commercially reasonable efforts to respond according to the severity level of the technical issue as shown in the table below. An Authorized Caller may request that the

technical support analyst change a technical issue severity level, but requests for critical and high-severity levels must be made via telephone.

Severity	Criteria	Response Time
Critical	<ul style="list-style-type: none"> ▪ Causes a severe impact to business operations (e.g., critical business processes are disabled) ▪ No workaround available 	Six (6) business hours
High	<ul style="list-style-type: none"> ▪ Causes a noncritical impact to business operations (e.g., significant degradation of quality or handling of data) ▪ No stable workaround available 	Eight (8) business hours
Medium	<ul style="list-style-type: none"> ▪ Causes a minor impact to business operations 	Two (2) business days
Routine	<ul style="list-style-type: none"> ▪ Causes little or no impact to business operations 	Three (3) business days

4.7 Resolution Time. After the Case is logged, Esri will use commercially reasonable efforts to provide corrections to a technical issue or supply a workaround. While it is Esri's goal to provide an acceptable resolution to technical issues, Esri cannot guarantee that all technical issues can be fixed or resolved.

ARTICLE 5—PREMIUM SUPPORT SERVICES AND SPECIAL EVENTS PREMIUM SUPPORT SERVICES (US CUSTOMERS ONLY)

Customers current on Maintenance may purchase PSS or SEPSS. Upon payment for PSS or SEPSS, Customer will receive all benefits described in Article 4 above and additionally receive (i) access to a designated TAM; (ii) the ability for the Premium LAC to convert a Case into a PSS/SEPSS Case at any time; (iii) priority Case management; (iv) the ability to request support Cases twenty-four (24) hours a day, three hundred sixty-five (365) days a year; and (v) additional enhanced support and services.

5.1 Technical Account Manager. Esri will assign a TAM to Customer to work directly with the Premium LAC to oversee open Cases.

- a. TAM will endeavor to (i) conduct quarterly reviews with Customer to align on support goals and objectives; (ii) become familiar with Customer's geographic information system (GIS) software architecture and infrastructure; (iii) verify that all open PSS/SEPSS Cases are prioritized above Cases opened under Maintenance; (iv) coordinate and facilitate priority technical support issues between the Customer and Esri technical teams, and provide escalation management, as needed; (v) identify potential areas of concern, before they arise, to improve Customer's overall operational excellence and stability; and (vi) make reasonable efforts to be available from 5:00 a.m. to 5:00 p.m. (Pacific time), Monday through Friday, except on Esri holidays.
- b. Esri may replace TAM with another technical account manager of similar skill and background, by written notice to Customer.
- c. All communications will be conducted in the English language unless by written agreement of both parties.

5.2 Priority Case Management. Cases submitted via telephone and web form may be converted to a PSS/SEPSS Case by the Premium LAC and will be given priority handling.

5.3 Case Response Time. In addition to the response times outlined in Article 4.6, Esri will make commercially reasonable efforts to call or send an email response within one (1) business hour of receipt of a new PSS/SEPSS Case, regardless of its severity level. Esri will provide a status report every business day until closure of the PSS/SEPSS Case.

ARTICLE 6—NORTH AMERICA REGULATED INDUSTRIES SUPPORT (US CUSTOMERS ONLY)

Customers current on Maintenance may purchase NORUS on an annual basis. Upon payment for NORUS, Customer will receive technical support from technical support analysts who are confirmed US citizens located in the US. Support Cases and Customer data created or collected under the NORUS program are secured within a restricted case management system within Esri Support Services. To assist Customer with data security or regulatory compliance requirements, access is limited to NORUS technical support analysts and those with US

Department of Defense (DoD)-level security clearances, when applicable. Staff are located in facilities designed to provide physical, informational, and operational security.

ARTICLE 7—AFTER HOURS SUPPORT (US CUSTOMERS ONLY)

Customers current on Maintenance may purchase After Hours Support on an annual basis. Upon payment for After Hours Support, Customer will receive all benefits described in Article 4 above and the ability to request a support Case twenty-four (24) hours a day, three hundred sixty-five (365) days a year. Esri will make commercially reasonable efforts to call or send an email response within one (1) business hour of receipt of a new Case, regardless of its severity level.

ARTICLE 8—ARCGIS PLATFORM TECHNICAL SUPPORT

Customers with a current ArcGIS Developer Subscription may purchase ArcGIS Platform Technical Support on an annual basis. Upon payment for ArcGIS Platform Technical Support, Customer will receive all benefits described in Article 4 above and may purchase Support Programs as described in Articles 5, 6 and 7 above.

ARTICLE 9—ENABLEMENT SUPPORT SERVICES (US CUSTOMERS ONLY)

Enablement Support Services ("ESS") is an annual subscription that builds upon the Maintenance and Support Program. Qualified Customers current on Maintenance may purchase ESS. ESS includes the following four types of activities ("Enablement Activities") for Esri Qualifying Products as documented in the ESS proposal: (i) Installation Support; (ii) Configuration Support; (iii) Enterprise Integration; and (iv) Operations and Administration support. Enablement Activities will be periodically scheduled by Esri and Customer by their respective points of contact. ESS also includes an annual performance review, ongoing technical exchanges throughout the subscription term and monthly reporting.

ARTICLE 10—CONFIDENTIALITY

All data, conversations, and Cases are confidential in nature. Esri will treat all Cases as confidential, using the same degree of care, but no less than reasonable care, as Esri uses to protect its own confidential information of a similar nature. After ninety (90) days of closing a Case, Esri will delete or destroy all Customer digital data provided to triage the Case, unless otherwise requested by Customer in writing. This obligation to delete or destroy excludes information retained in backup media or other archival records maintained in the ordinary course of business by Esri.

ARTICLE 11—CONTACTING ESRI

Esri Support Services

<https://www.esri.com/contactus>

Web: <https://support.esri.com>

Tel.: 909-793-3774

Toll-Free Phone: 888-377-4575, extension 2

Support Web Form: <https://support.esri.com/en/webform>

My Esri: <https://my.esri.com>

Chat: <https://support.esri.com/en/webform-chat>

Esri Corporate Offices

Tel.: 909-793-2853

Fax: 909-793-5953

Email: info@esri.com

Esri Customer Service

Tel.: 888-377-4575, extension 5

Email: service@esri.com

Web: <https://service.esri.com>

Operating Hours: 5:00 a.m. to 5:00 p.m. (Pacific time), Monday through Friday, except Esri holidays.



Attachment G Data Processing Addendum

This Data Processing Addendum ("**Addendum**") is effective on the first date that Customer provides to Esri Personal Data (as defined below) subject to the applicable Privacy Law (as defined below) and forms part of the Master Agreement or other written or electronic agreement ("**Agreement**") by and between the organization signing or accepting below ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**, and sets forth the terms and conditions relating to the privacy, confidentiality, and security of Personal Data associated with Online Services and subscription and maintenance services to be rendered by Esri to Customer pursuant to the Agreement. All terms defined or used in the Agreement shall have the same meaning in this Addendum unless otherwise specified. Terms used in this Addendum which are not defined herein or in the Agreement shall have the meaning set forth in the applicable Privacy Law.

Whereas Customer may provide Esri, a company located in the United States, with access to Personal Data, Personal Information or Personally Identifiable Information to act as a Processor or Service Provider in connection with Online Services and subscription and maintenance services performed by Esri for or on behalf of Customer pursuant to the Agreement; and

Whereas Customer requires that Esri preserve and maintain the privacy and security of such Personal Data as a Processor according to the terms of this Addendum;

Now therefore, in consideration of the mutual covenants and agreements in this Addendum and the Agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Customer and Esri agree as follows:

SECTION I—DEFINITIONS

- A. "**Privacy Laws**" means the European Union General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, The California Consumer Privacy Act of 2018 or other privacy laws applicable to Esri.
- B. The terms "personal data", "data subject", "processing", "controller", "processor" and "supervisory authority" as used in this Addendum have the meanings given in the GDPR.
- C. "**Personal Data**" means Personal Data, Personal Information or Personally Identifiable Information as defined in applicable Privacy Laws about individuals located in the European Union, Switzerland, the United Kingdom, California or other locations covered by Privacy Laws and may include, but not limited to, the following: (i) categories of data subjects: prospects, customers, business partners, and vendors and (ii) types of personal data: name, title, position, and email address and location.
- D. "**Data Incident**" means a breach of Esri's security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data on systems managed by or otherwise controlled by Esri. "Data Incidents" will not include unsuccessful attempts or activities that do not compromise the security of Personal Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.

SECTION II—PRIVACY, CONFIDENTIALITY, AND INFORMATION SECURITY

- A. Authority to Process Personal Data
 - i. Customer and Esri agree that Customer is the Controller and Esri is the Processor or Service Provider of Personal Data, except when Customer is a Processor of Personal Data, then Esri is a subprocessor.
 - ii. These Addendum terms do not apply where Esri is a Controller of Personal Data (e.g., Personal Data received and Processed by Esri as needed for account setup, authorization, and sign on).
 - iii. Esri will Process Personal Data only with Customer's written instructions, (a) on behalf of and for the benefit of Customer; (b) for the purposes of Processing Personal Data in connection with the Agreement; and (c) to carry out its obligations pursuant to this Addendum, the Agreement, and applicable Privacy Laws and other law.

- iv. Customer will have the exclusive authority to determine the purposes for and means of Processing Personal Data.
- v. The subject matter and details of the processing are described in Annex I of Attachment 1, and this Addendum (including the Attachment, Appendix, and Annexes) and the Agreement are Customer's complete instructions to Esri for the Processing of Personal Data. Any alternative or additional instructions may only be by written amendment to this Addendum.

B. Disclosure of and Access to Personal Data

- i. Esri will hold in confidence all Personal Data. Esri will not Sell Personal Data.
- ii. Esri will (a) provide at least the same level of privacy protection for Personal Data received from Customer, as is required by the GDPR, CCPA and other applicable Privacy Laws; (b) promptly notify Customer if at any time Esri determines that it can no longer meet its obligation to provide the same level of protection as is required by the Privacy Laws; and (c) take reasonable and appropriate steps to remediate the Processing of such Personal Data if, at any time, Customer notifies Esri that Customer has reasonably determined Esri is not Processing the Personal Data in compliance with the Privacy Laws.
- iii. If Esri Processes Personal Data provided by Customer that is subject to the GDPR and Esri is established in, or transfers or makes accessible any Personal Data to any subprocessors in a country that does not ensure adequate data privacy safeguards are in place within the meaning of GDPR, then Esri will enter into the standard contractual clauses with Customer as set forth in Attachment 1 of this Addendum. If a subprocessor is a Data Importer (as that term is used in such standard contractual clauses under GDPR), Esri shall either (a) enter into contractual obligations with subprocessor, where such obligations contain adequate privacy safeguards in accordance with GDPR or (b) enter into the standard contractual clauses with Customer on behalf of such data importer.
- iv. Esri will not share, transfer, disclose, or otherwise provide access to any Personal Data to any third party, or contract any of Esri's rights or obligations concerning Personal Data to a third party, unless Customer has authorized Esri to do so in writing, except as required by law. Where Esri, with the consent of Customer, provides to a third party access to Personal Data or contracts such rights or obligations to a third party, Esri will, with each third party, (a) enter into a written agreement that imposes obligations on the third-party that are consistent with the GDPR, CCPA and the other Privacy Laws, (b) transfer the Personal Data to the third party only for the limited and specified purposes as instructed by Customer, (c) require the third party to notify Esri if the third party determines that it can no longer meet its obligation to provide the same level of protection as is required by the applicable Privacy Laws; and (d) upon notice, take reasonable and appropriate steps to stop and remediate unauthorized Processing. Customer hereby provides its consent for Esri to use subprocessors as necessary to provide the services including, but not limited to, use Microsoft Corporation, Amazon Web Services, Inc., Salesforce.com, Inc., Akamai Technologies, Inc. (including their affiliates) and Esri's technical support vendors. To the extent that Esri makes any changes with regard to the use of its subprocessors, it shall inform Customer and provide Customer with the right to object to such change. To the extent Customer has a reasonable objection to such change in subprocessors, the parties shall cooperate to address the objection in a reasonable manner.
- v. Esri will promptly inform Customer in writing of any requests with respect to Personal Data received from Customer's customers, consumers, employees, or other associates. Customer will be responsible for responding to any such request, but Esri will reasonably cooperate with Customer to address any such request or a request by an individual about whom Esri holds Personal Data for access, rectification, objection, portability, restriction, erasure, or export of his or her Personal Data.
- vi. Taking into account the state of the art; the costs of implementation; and the nature, scope, context, and purposes of Processing, as well as the risk of varying likelihood and severity of the rights and freedoms of natural persons, Esri will implement appropriate technical and organizational measures to protect the Personal Data from loss; misuse; and unauthorized access, disclosure, alteration, and destruction. To this effect, Esri will limit internal access to Personal Data so that it is only accessible on a need-to-know basis to fulfill Esri's performance of services for or on behalf of Customer, by employees who have agreed to comply with privacy and security obligations that are substantially similar to those required by this Addendum.
- vii. Subject to applicable law, Esri will notify Customer immediately in writing of any subpoena or other judicial or administrative order by a government authority or proceeding seeking access to or disclosure of

Personal Data. Customer may, if it so chooses, seek a protective order, and Esri will reasonably cooperate with Customer in such action, provided Customer reimburses Esri for all costs, fees, and legal expenses associated with the action. Esri will have the right to approve or reject any settlements that affect Esri. However, Esri agrees that approval of a settlement will not be unreasonably withheld.

- viii. If Esri becomes aware of a Data Incident, Esri will: (a) notify Customer of the Data Incident promptly and without undue delay after becoming aware of the Data Incident; and (b) promptly take reasonable steps to minimize harm and secure Personal Data. Notifications made pursuant to this section will describe, to the extent possible, details of the Data Incident, including steps taken to mitigate the potential risks and steps Esri recommends Customer take to address the Data Incident. Esri will not assess the contents of Personal Data in order to identify information subject to any specific legal requirements. Customer is solely responsible for complying with incident notification laws applicable to Customer and fulfilling any notification obligations to third parties related to any Data Incident(s). Esri's notification of or response to a Data Incident under this section will not be construed as an acknowledgement by Esri of any fault or liability with respect to the Data Incident.

- C. Esri currently has the third-party certifications and review processes in place as described at <https://trust.arcgis.com>.
- D. Esri will comply with applicable data protection and privacy laws, including, but not limited to, the GDPR and CCPA, to the extent such laws apply to Esri in its role as a Processor or Service Provider.
- E. Customer certifies that it has:
- i. Obtained the written consent, affirmative opt-in, other written authorization ("**Consent**") from applicable individuals or has another legitimate, legal basis for delivering or making accessible Personal Data to Esri (as well as its subsidiaries, affiliates, and subprocessors), and such Consent or other legitimate basis allows Esri (and its subsidiaries, affiliates, and subprocessors) to Process the Personal Data pursuant to the terms of the Agreement and this Addendum, and
 - ii. Ensured that the delivery and disclosure to Esri of Personal Data is in compliance with the GDPR, CCPA and other Privacy Laws which are applicable to Customer.
- F. Esri will assist Customer in ensuring that its secure Processing obligations, as Controller, under the GDPR are met, which may include assisting Customer in a consultation with a supervisory authority where a data protection impact assessment indicates that the intended Processing would result in a high risk. Upon request, Esri shall make available to Customer the information necessary to demonstrate compliance with the GDPR and will allow for and contribute to audits, including inspections, to confirm Esri's compliance with this Addendum by Controller or another auditor mandated by Controller. All expenses resulting from this Subsection F will be incurred by Customer, unless Esri is found materially noncompliant.
- G. Upon fulfillment of the purpose for which Customer provided Personal Data under this Addendum, Esri shall either return all Personal Data Processed on behalf of Customer or delete or destroy the Personal Data, including any existing copies, at Customer's expense, if any, unless Esri has a legal obligation to maintain such Personal Data.

ATTACHMENT 1
STANDARD CONTRACTUAL CLAUSES
Controller to Processor

SECTION I

Clause 1

Purpose and scope

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)¹ for the transfer of data to a third country.
- (b) The Parties:
 - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies') transferring the personal data, as listed in Annex I.A (hereinafter each 'data exporter'), and
 - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each 'data importer')have agreed to these standard contractual clauses (hereinafter: 'Clauses').
- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

Clause 2

Effect and invariability of the Clauses

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

Clause 3

Third-party beneficiaries

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
 - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
 - (ii) Clause 8.1(b), 8.9(a), (c), (d) and (e);
 - (iii) Clause 9(a), (c), (d) and (e);
 - (iv) Clause 12(a), (d) and (f);
 - (v) Clause 13;

¹ Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

- (vi) Clause 15.1(c), (d) and (e);
- (vii) Clause 16(e);
- (viii) Clause 18(a) and (b).

(b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

Clause 4

Interpretation

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

Clause 5

Hierarchy

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

Clause 6

Description of the transfer(s)

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

Clause 7

Docking clause

- (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
- (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
- (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

SECTION II—OBLIGATIONS OF THE PARTIES

Clause 8

Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

8.1 Instructions

- (a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
- (b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

8.2 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B, unless on further instructions from the data exporter.

8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand the its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

8.6 Security of processing

- (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
- (b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

- (d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union² (in the same country as the data importer or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.9 Documentation and compliance

- (a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.
- (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.
- (c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.
- (d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- (e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

Clause 9

Use of sub-processors

- (a) The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least thirty (30) days in advance, thereby

² The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.

- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects.³ The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- (c) The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
- (d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- (e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby—in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent—the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

Clause 10

Data subject rights

- (a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.
- (b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
- (c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

Clause 11

Redress

- (a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body⁴ at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.

- (b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- (c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:

³ This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

⁴ The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.

- (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
 - (ii) refer the dispute to the competent courts within the meaning of Clause 18.
- (d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
 - (e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
 - (f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

Clause 12

Liability

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
- (c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.
- (d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.
- (e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (f) The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
- (g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

Clause 13

Supervision

- (a) **Where the data exporter is established in an EU Member State:** The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679: The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679: The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

- (b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III—LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES**Clause 14****Local laws and practices affecting compliance with the Clauses**

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
- (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
 - (ii) the laws and practices of the third country of destination—including those requiring the disclosure of data to public authorities or authorising access by such authorities—relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards;⁵
 - (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- (c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
- (e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).
- (f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

⁵ As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

Clause 15

Obligations of the data importer in case of access by public authorities

15.1 Notification

- (a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
 - (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
 - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 Review of legality and data minimisation

- (a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).
- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV—FINAL PROVISIONS

Clause 16

Non-compliance with the Clauses and termination

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
- (b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:

- (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
- (ii) the data importer is in substantial or persistent breach of these Clauses; or
- (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

- (d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
- (e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

Clause 17

Governing law

These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of Ireland.

Clause 18

Choice of forum and jurisdiction

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
- (b) The Parties agree that those shall be the courts of Ireland.
- (c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
- (d) The Parties agree to submit themselves to the jurisdiction of such courts.

APPENDIX

ANNEX I

A. LIST OF PARTIES

Data exporter(s):

1. **Name:** As identified in the Agreement and this Addendum

Address: Per Esri's customer service records

Contact person's name, position and contact details: Per Esri's customer service records

Activities relevant to the data transferred under these Clauses: Online Services and subscription and maintenance services to be rendered by Esri to Customer

Signature and date: Each party's signature of the Addendum shall be considered a signature to these Clauses.

Role (controller/processor): Controller

Data importer(s):

1. **Name:** Environmental Systems Research Institute, Inc. ("Esri")

Address: 380 New York Street, Redlands, CA 92373, USA

Contact person's name, position and contact details: Chief Information Security Officer, privacy@esri.com

Activities relevant to the data transferred under these Clauses: Online Services and subscription and maintenance services to be rendered by Esri to Customer

Signature and date: Each party's signature of the Addendum shall be considered a signature to these Clauses.

Role (controller/processor): Processor

B. DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred

Individuals about whom data is provided to Esri via the Online Services and subscription and maintenance services by (or at the direction of) Customer or by Customer End Users, who may include Customer's customers, employees, suppliers and End Users.

Categories of personal data transferred

Data relating to individuals provided to Esri via the Online Services and subscription and maintenance services, by (or at the direction of) Customer or by Customer End Users.

Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

Considering that only Customer (not Esri) has full knowledge and control in relation to what data is provided to Esri via the Online Services and subscription and maintenance services, Esri treats all Customer Data to the standards of sensitive data by providing technical and organizational measures described in Annex II. Customer is responsible for verifying that such measures are appropriate for the specific categories of data provided to Esri via the Online Services and subscription and maintenance services.

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

The frequency of the transfer depends on the frequency at which Customer provides Personal Data to Esri via the Online Services and subscription and maintenance services. It is expected that transfers may be one-off and/or continuous.

Nature of the processing

Spatial analytics accomplished through the following operations dependent on Customer's choice of settings and actions performed: collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

Purpose(s) of the data transfer and further processing

Esri will process Personal Data for the purposes of providing the Online Services and subscription and maintenance services to Customer in accordance with the Agreement.

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

The period for which the personal data will be retained depends on duration of processing as determined by Customer and Customer's additional instructions.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

Cloud services and technical support services with processing of the same nature and duration as described above.

C. COMPETENT SUPERVISORY AUTHORITY

As applicable in accordance with Clause 13

ANNEX II

TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

Esri will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Personal Data uploaded to ArcGIS Online Services and subscription and maintenance services, as described in the Security and Privacy Documentation applicable to the specific ArcGIS Online Services and subscription and maintenance services purchased by the data exporter, as updated from time to time, and accessible via <https://trust.arcgis.com/en/security/security-overview.htm> or otherwise made reasonably available by Esri.

A. Technical Measures for ArcGIS Online Services. Esri implemented the following technical measures for the above referenced ArcGIS Online Services:

- i. The state-of-the-art encryption algorithm and its parameterization (e.g., key length, operating mode, if applicable) are used for Customer data at rest.
- ii. The strength of the encryption takes into account the time period during which the confidentiality of the encrypted personal data must be preserved.
- iii. The encryption algorithm is implemented by properly maintained software the conformity of which to the specification of the algorithm chosen has been verified by certification.
- iv. The keys are reliably managed (generated, administered, stored, linked to the identity of an intended recipient, and revoked).
- v. ArcGIS Online allows the Customer (data exporter) to pseudonymize the fields (e.g., user credentials) in such a manner that the personal data can no longer be attributed to a specific data subject, nor be used to single out the data subject in a larger group, without the use of additional information exclusively held and controlled by Customer (data exporter), of which the Customer (data exporter) retains sole control of the algorithm or repository that enables reidentification using additional information.
- vi. ArcGIS Online supports best practices for transport encryption protocols.
- vii. A trustworthy public key certification authority and infrastructure are used.
- viii. Specific protective and state-of-the-art measures are used against active and passive attacks.
- ix. The existence of backdoors (in hardware or software) has been ruled out.
- x. ArcGIS Online can be used in combination with ArcGIS Enterprise in a configuration that allows the Customer (data exporter) to store and manage Personal Data under Customer's (data exporter's) control without transferring it to a third country, whereas a data exporter processes Personal Data in such a manner that it is split into two or more parts, and the part that is being transferred to the third country can no longer be interpreted or attributed to a specific data subject without the use of additional information under the Customer's (data exporter's) control.

Additional information on technical measures can be found here: <https://trust.arcgis.com/en/documents/>

B. Organizational and Contractual Measures

- i. Esri's efforts around privacy are described at <https://www.esri.com/en-us/privacy/overview>.
- ii. Esri commits to treating Personal Data per its Privacy Statement (available here: <https://www.esri.com/en-us/privacy/privacy-statements/privacy-statement>) and Esri Products & Services Privacy Statement Supplement (available here: <https://www.esri.com/en-us/privacy/privacy-statements/privacy-supplement>).
- iii. Esri provides a presigned Data Processing Addendum that contains Standard Contractual Clauses here: <https://www.esri.com/en-us/privacy/privacy-gdpr>.
- iv. Esri maintains and enforces an internal Personal Information Protection Policy that requires employees to protect Personal Data that they access.
- v. Esri maintains a Corporate Security Policy that addresses access controls and corporate security measures.

C. Adoption of Further Requirements and Right to Early Termination. If supervisory authorities adopt further requirements and measures with regard to the transfer of Personal Data to the US, Esri will amend this Addendum to fulfill the additional requirements. If Esri cannot meet the additional requirements, Customer shall have the right to terminate the Agreement for convenience (without termination fee or penalty) by giving written notice thereof to Esri.