

CONTRACT #14
RFS # 307.16-16008
Edison # 49564

Comptroller of the Treasury

VENDOR:
Environmental Systems
Research Institute (ERSI)



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF MANAGEMENT SERVICES
James K. Polk State Office Building
505 Deaderick Street, Suite 1400
Nashville, Tennessee 37243-1402
Phone (615) 747-5338**

**Justin P. Wilson
Comptroller**

**Tricia Kitchens
Director of
Division of Technology
Solutions**

MEMORANDUM

TO: Mark White, Chairman
Krista Lee, Executive Director
Fiscal Review Committee Members

ATTENTION: Leni Chick

FROM: Tricia Kitchens

SUBJECT: Environmental Systems Research Institute (ESRI) Sole Source Request

The Comptroller of the Treasury (COT) has been a user of ESRI for 18 years to provide geographic information system (GIS) features to local government and citizens in our Division of Property Assessment. In the past two years, we have expanded our use of the product to other divisions to improve delivery of information to the citizens of Tennessee.

We are requesting this Sole Source procurement to satisfy the needs of COT. This procurement is an Enterprise License Agreement that allows us to bundle needed software licenses, services and training at a lower cost than if we purchased the items individually through the state wide contract with ESRI. COT already has the infrastructure and personnel in place to expand our usage of ESRI and this license agreement provides the access to the software.

The proposed contract and Special Contract Request is enclosed along with a completed "Supplemental Documentation Required for Fiscal Review Committee" form, and pre-approved STS Endorsement Request.

To the best of our knowledge, it is cost effective to continue our relationship with ESRI.

cc: Susan Gullette

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Connie Rickabaugh	*Contact Phone:	615-401-7914		
*Presenter's name(s):	Tricia Kitchens/Susan Gullette				
Edison Contract Number: <i>(if applicable)</i>	49564	RFS Number: <i>(if applicable)</i>	30716-16008		
*Original or Proposed Contract Begin Date:	August 5, 2016	*Current or Proposed End Date:	August 4, 2019		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Comptroller of the Treasury				
*Division:	Division of Technology Solutions				
*Date Submitted:	May 10, 2016				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Environmental Systems Research Institute (ESRI)				
*Current or Proposed Maximum Liability:	\$705,000.00				
*Estimated Total Spend for Commodities:					
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2017	FY: 2018	FY: 2019	FY: 2020	FY 2021	FY
\$235,000	\$ 235,000	\$ 235,000	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding					

Supplemental Documentation Required for
Fiscal Review Committee

was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	\$705,000.00	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Sole Source	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		A review was held with the vendor on our usage of the product and they determined our cost based on that number along with estimated growth anticipated by COT.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		Based on past experience, it would be costly to switch to another vendor to provide these services and with ESRI being the industry leader, there is no reason to spend the time and money to change vendors.	

Rule Exception Request

Use this document to request changes to Central Procurement Office templates, policies, or other procurement documents or to modify the "necessary contract clauses" identified in Tenn. Comp. R. & Reg. 0690-03-01-.17 ("CPO Rule 17"). Complete this document in conformity with CPO Rule 17, which is available [here](#). Send the completed document in PDF format to: AgSprs.Agsprs@tn.gov All Rule Exception Requests are subject to review and approval by the Chief Procurement Officer. Rule Exception Requests that propose to modify any of CPO Rule 17's necessary contract clauses shall be subject to review and approval by the Comptroller of the Treasury.

APPROVED
 Kevin C. Bartels for
 Michael F. Perry
Digitally signed by Kevin C. Bartels for Michael F. Perry
 DN: cn=Kevin C. Bartels for Michael F. Perry,
 o=CPO, ou, email=Kevin.C.Bartels@tn.gov, c=US
 Date: 2016.05.23 10:06:39 -05'00'
CHIEF PROCUREMENT OFFICER

APPROVED

COMPTROLLER OF THE TREASURY

Agency request tracking #	30716-16008
1. Procuring Agency	Comptroller of the Treasury
2. Edlson contract ID #	49564
3. Contractor or Grantee	ESRI
4. Contract's Effective Date	August 5, 2016
5. Contract or grant contract's Term (with ALL options to extend exercised)	36 months (2 additional years with options exercised.)
6. Contract's Maximum Liability (with ALL options to extend exercised)	\$ 705,000 (\$1,285,000 with all options exercised.)
7. Citation and explanation of the rule(s) for which the exception is requested	0690-03-01.17 Necessary or Prohibited Contract Clauses and Rule Exceptions. The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.
8. Description of requested changes if adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety.	This is a revision to Rule Exception Request cy16-6819. See attached for revisions.
9. Justification	This is a sole source procurement for ESRI's GIS Enterprise License Agreement. We have already invested time and money in the ESRI products and it is tightly integrated with other COT applications. We already have the infrastructure in place to support this application as well as staff trained to support and develop applications. In addition, ESRI is the State Standard GIS package for Tennessee. The sole source letter from ESRI has already been submitted to CPO.
Signature of Agency head or designee and date	

TN COT

Special Terms and Conditions

1. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason; the State is obligated to pay Contractor for the EA Fee that applies annually in the year of such termination. For example, if the fee each year of a 3 year term is \$235,000.00, and the State terminates the Contract under this Article 1 in month 6 of the first year of the term, the State is obligated to pay Contractor \$235,000.00. The State shall give the Contractor at least thirty (30) days written notice before the termination date. ~~The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date.~~ In no event shall the State be liable to the Contractor for compensation for any goods or services ~~neither not requested nor accepted by the State, or for any services neither requested by the State nor satisfactorily performed by the Contractor.~~ In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
2. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
3. Assignment and Subcontracting. Except for a sale of all or substantially all of the assets of Contractor, ~~The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State.~~ Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
4. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

5. Insurance. Contractor shall maintain an appropriate level of insurance under this Contract and provide the State a certificate of insurance ("COI") evidencing such the coverages, and amounts specified below. ~~The COI shall be provided promptly after request, ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.~~

~~The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa~~

L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDGI is required for the Contractor to self insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDGI to transact business in the State of Tennessee; and (c) rated A-VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors,

~~contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).~~

- ~~2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).~~

~~b. Workers' Compensation and Employer Liability Insurance~~

- ~~1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:~~

~~i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or~~

~~ii. In an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.~~

- ~~2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101-103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:~~

~~i. The Contractor employees fewer than five (5) employees;~~

~~ii. The Contractor is a sole proprietor;~~

~~iii. The Contractor is in the construction business or trades with no employees;~~

~~iv. The Contractor is in the coal mining industry with no employees;~~

~~v. The Contractor is a state or local government; or~~

~~vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.~~

~~c. Automobile Liability Insurance~~

- ~~1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).~~

- ~~2) 1) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.~~

6. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
7. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- 8. **Monitoring.** The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- 9. ~~**Deleted. Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.~~
- 10. ~~**Deleted. Maintenance / Prepaid Service Cost Reimbursement**— If for any reason prepaid maintenance costs are paid for any equipment, software, or any item associated with this contract for a reason of displacement, discontinued, etc. the vendor / contractor is responsible for the prorated reimbursement due the State of Tennessee. All monthly charges will be prorated by a daily rate after the first of each month.~~
- 11. The following terms and conditions replace the terms and conditions in Addendum NO. 1 to The State of Tennessee Sourcing Event ID No. 32110-000008228 Esri Agreement No. 2014MPA1439

Section 2. STATE OF TENNESSEE, STANDARD TERMS AND CONDITIONS, EVENT NO. 32110-00000828

Term and Condition# 13 is deleted and replaced with:

The Parties agree that this modified paragraph below shall replace the standard term and condition #13:

In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the value of the Contract, which is stated in Appendix B EA FEE SCHEDULE, as may be amended by written agreement of the parties, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intention torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.

Section 3. STATE OF TENNESSEE, SPECIAL TERMS AND CONDITIONS, EVENT NO. 32110-00000828 is deleted in its entirety.

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

<p>APPROVED</p> <p>Michael F. Perry -AK</p> <p><small>Digitally signed by Michael F. Perry -AK DN: cn=Michael F. Perry -AK, o=CPO, ou=CPO, email=andy.kidd@tn.gov, c=US Date: 2016.04.25 10:12:52 -05'00'</small></p>	<p>APPROVED</p> <p><i>Andy Kidd</i> <i>4/26/2016</i></p>
<p>CHIEF PROCUREMENT OFFICER DATE</p>	<p>COMPTROLLER OF THE TREASURY DATE</p>

Request Tracking #	30716-16008
1. Contracting Agency	Comptroller of the Treasury
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Connie Rickabaugh <u>Connie.Rickabaugh@cot.tn.gov</u> 615-401-7914
4. Brief Goods or Services Caption	ESRI GIS Software
5. Description of the Goods or Services to be Acquired	ESRI GIS Software, Annual Maintenance and Consulting
6. Proposed Contractor	Environmental Systems Research Institute (ESRI)
7. Name & Address of the Contractor's principal owner(s) <i>- NOT required for a TN state education institution</i>	ESRI 280 New York Street Redlands, CA 92373-8100
8. Proposed Contract Period - with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months* *3 years with possibility of 2 year extension

Request Tracking #	30716-16008
9. Office for Information Resources Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, The current SWC is 44602, however the Comptroller of the Treasury requires additional capability.
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 1,285,500
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	Estimate from the Vendor
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	Due to bundling and volume, the prices in this contract are less than the prices for the same items if purchased individually through SWC44602.
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Email
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	The Comptroller of the Treasury divisions support many different functions and have used GIS technology for 18 years. We have begun the process of leveraging the ArcGIS Platform and available Web components to improve delivery of services to our customers. Extension of this contract will help us reach our mission of improving the life of all Tennesseans by making government work better.
19. Proposed contract impact on current State operations	No impact since we are already using the technology, we are just expanding our use.
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	We have already invested time and money in the ESRI products and it is tightly integrated with other COT applications. We already have the infrastructure in place to support this application as well as staff trained to support and develop applications. In addition, ESRI is the State Standard GIS package for Tennessee.
For No Cost and Revenue Contracts Only	

Request Tracking #	30716-16008
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Explanation of Need for or requirement placed on the State to acquire the goods or services	COT provides information and services to citizens and both State and Local Government entities in Tennessee to promote efficient operations. The Comptroller's Office leverages the ArcGIS Platform and available WebGIS workflows with several successes in OREA and appears on the brink of expanding use to a much broader segment of the Comptroller organization to support internal and external communication needs. ESRI's work with similar organizations indicates that there is significant potential to apply GIS in many additional technical, business and market areas within the TNCOT.
26. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	ESRI has been in business for 47 years and providing services to the State of TN for 30 years. They are a valued partner and are always willing to go the extra mile to assist our divisions.
27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: Sole Source Name/Address: ESRI
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	Based on past experience, it would be costly to switch to another vendor to provide these services and with ESRI being the leader, there is no reason to spend the time and money to change vendors.
Signature Required for all Special Contract Requests	

Request Tracking #	30716-16008
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	
Signature:	
Date:	4/21/16

TO: Andy Kidd, Director of Sourcing
Kevin Bartels, Staff Attorney – Sourcing

FROM: Tamara Byrd, Sourcing Analyst **Tamara Byrd**
Digitally signed by Tamara Byrd
DN: cn=Tamara Byrd, o=State of Tennessee,
ou=Central Procurement Office,
email=Tamara.Byrd@tn.gov, c=US
Date: 2016.04.21 16:00:41 -05'00'

DATE: April 21, 2016

SUBJECT: Special Contract Request Revised CY16- 6631
30716-16008 Environmental Systems Research Institute, Inc. (ESRI) GIS Software

The Comptroller of the Treasury is seeking a sole source procurement for ESRI GIS Software Maintenance and Consulting.

COT provides information and services to citizens and both State and Local Government entities in Tennessee to promote efficient operations. ESRI is the State Standard GIS package for Tennessee.

The Tennessee Comptroller of the Treasury division supports many different functions and have used GIS technology for 18 years. Although currently there is a SWC (44602) in place for ESRI Software, the Treasury Division requires additional capability of services. Due to bundling and volume the pricing, COT will pay less than the prices for the same items if purchased individually through the current SWC.

Sourcing Analyst recommends approval of the contract. The agency is seeking a 3 year contract with the option for 2 renewals. The maximum contract liability of \$1,285,500.00 is for the entire five year contract with Environmental Systems Research Institute, (ESRI).

Andy T. Kidd

Digitally signed by Andy T. Kidd
DN: cn=Andy T. Kidd, o=CPO,
ou=CPO - Sourcing,
email=andy.kidd@tn.gov, c=US
Date: 2016.04.25 10:13:03 -05'00'

Andy Kidd, Director of Sourcing

Date

Kevin C. Bartels

Digitally signed by Kevin C. Bartels
DN: cn=Kevin C. Bartels, o, ou=CPO Legal,
email=Kevin.C.Bartels@tn.gov, c=US
Date: 2016.04.25 08:51:13 -05'00'

Kevin Bartels, Staff Attorney – Sourcing

Date

Rule Exception Request

Use this document to request changes to Central Procurement Office templates, policies, or other procurement documents or to modify the "necessary contract clauses" identified in Tenn. Comp. R. & Reg. 0690-03-01-.17 ("CPO Rule 17"). Complete this document in conformity with CPO Rule 17, which is available [here](#). Send the completed document in PDF format to: Agsprs.Agsprs@tn.gov All Rule Exception Requests are subject to review and approval by the Chief Procurement Officer. Rule Exception Requests that propose to modify any of CPO Rule 17's necessary contract clauses shall be subject to review and approval by the Comptroller of the Treasury.

APPROVED

CHIEF PROCUREMENT OFFICER

APPROVED



COMPTROLLER OF THE TREASURY

Agency request tracking #	30716-16008
1. Procuring Agency	30701
2. Edison contract ID #	49564
3. Contractor or Grantee	ESRI
4. Contract's Effective Date	08/05/2016
5. Contract or grant contract's Term (with ALL options to extend exercised)	60 months
6. Contract's Maximum Liability (with ALL options to extend exercised)	\$ 1,990,000.00
7. Citation and explanation of the rule(s) for which the exception is requested	0690-03-01-.17 NECESSARY OR PROHIBITED CLAUSES AND RULE EXCEPTIONS. The purpose of this rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these rules. The form and the content of all contract clauses shall be established by Central Procurement Office Policy. This rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.
8. Description of requested changes If adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety.	ESRI is a sole source vendor and requires the State to base the contract on ESRI terms and conditions. The Comptroller's Office and ESRI have agreed that rather than negotiating new contract terms, ESRI will accept the existing statewide ESRI contract terms as the base terms and conditions for the Comptroller's contract. The statewide contract used the Edison configurator to write the base contract between the State and ESRI. The solicitation event (Sourcing Event 32110-000008228) terms and conditions are referenced in the Special Terms and Conditions of the statewide contract.

	<p>Because of the differences in the procurement processes of the two contracts, some of the solicitation event terms and conditions require rewriting before being included in the Comptroller's Office contract. The rewritten terms and conditions are included in the TNCOT Special Terms and Conditions section.</p> <p>See the attached revised contract.</p>
9. Justification	<p>ESRI is a sole source vendor and requires the State to base the contract on ESRI terms and conditions. The Comptroller's Office and ESRI have agreed that rather than negotiating new contract terms, ESRI will accept the existing statewide ESRI contract terms as the terms for the Comptroller's contract.</p>
Signature of Agency head or designee and date <i>Justin P. Wilson</i> 5/9/16	



STIS Pre-Approval Endorsement Request E-Mail Transmittal

TO : STIS Contracts
Department of Finance & Administration
E-mail : it.abc@tn.gov

FROM : Tricia Kitchens, Director – Division of Technology Solutions, Comptroller of the Treasury
E-mail : Tricia.Kitchens@cot.tn.gov

DATE : 3/18/16

RE : Request for STIS Pre-Approval Endorsement

Applicable RFS # 30716-16008

STIS Endorsement Signature & Date:

Chief Information Officer

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Strategic Technology Solutions (STIS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STIS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STIS endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

Contracting Agency	Comptroller of the Treasury
Agency Contact (name, phone, e-mail)	Tricia Kitchens, 615.747.5338, Tricia.Kitchens@cot.tn.gov
<p>Attachments Supporting Request (mark all applicable)</p> <p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STIS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STIS is aware that these documents will not have CPO signature when submitted with this request.</p> <p> <input type="checkbox"/> Solicitation Document <input checked="" type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input type="checkbox"/> Proposed Contract/Grant or Amendment <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) </p>	

Applicable RFS # 30716-16008

Information Systems Plan (ISP) Project Applicability

To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.

IT Director/Staff Name Confirming (required): Tricia Kitchens

Applicable Not Applicable

Subject Information Technology Service Description

Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract or solicitation sections related to the IT services.

The Comptroller is renewing their Enterprise Licensing Agreement with ESRI. We have had this agreement for the past 3 years and wish to renew the contract due to expanding use of the technology in all Comptroller divisions. Our current ELA expires in August 4, 2016.



SOLE SOURCE LETTER

Environmental Systems Research Institute, Inc. (Esri)

380 New York Street

Redlands, CA 92373

Telephone: 909-793-2853, Ext. 1-1990

Email: jricks@esri.com

DATE: March 28, 2016

TO: To Whom It May Concern

FROM: Jackie Ricks, Esri Contracts and Legal Services

RE: Sole Source Justification for Enterprise Agreement (EA)

This letter confirms Esri, as owner and manufacturer, is the sole source provider of all U.S. domestic Enterprise Agreements. While some products are available through value-added resellers on a unit priced basis, Esri is the only source that can grant a right to copy and deploy products in an Enterprise Agreement. An EA is a bundled package for licensing software, maintenance, and online services for redistribution within the organization. Esri products are provided with a special grant to copy and deploy specified quantities of capped items and unlimited quantities of items without a cap, during the term of the EA.

If you have further questions, please feel free to call me at our Contracts and Legal Services Department at 909-793-2853, extension 1990.

Sincerely,

A handwritten signature in blue ink that reads "J. Ricks".

Jackie Ricks
Contract Coordinator



Contracts & Legal Services Dept.

380 New York Street

Redlands, CA 92373

Voice 909.793.2853 Ext. 1-1990

jricks@esri.com



SOLE SOURCE LETTER
Environmental Systems Research Institute, Inc. (Esri)
380 New York Street
Redlands, CA 92373
E-mail: jricks@esri.com

DATE: March 28, 2016

TO: To Whom It May Concern

RE: Esri Sole Source Justification for Geographic Information System Software

This letter confirms that Esri, as owner and manufacturer, is the sole-source provider of software maintenance (technical support plus Esri software updates/upgrades) for Esri products.

Esri is the sole-source provider of the following Esri products in the commercial, state, and local government marketplace:

- ArcGIS for Desktop & Extensions Subscription (Basic, Advanced, Standard)
- ArcGIS for Aviation Bundle
- ArcGIS for Desktop Advanced
- ArcGIS for Desktop Standard
- ArcGIS for Maritime Bundle
- ArcGIS for Server and extensions
- ArcGIS Online (excluding data owned by 3rd party providers)
- ArcGIS Runtime and Extensions
- Certain proprietary training courses
- Esri Business Analyst Online
- Esri Business Analyst Server
- Esri Community Analyst
- Esri Defense Mapping Bundle
- Esri Developer Network (EDN) subscriptions
- Esri MapStudio
- Esri Maps Products
- Esri Roads and Highways
- Esri Services Packages
- Portal & Hosted Portal for ArcGIS

In an effort to support diversity in federal contracting, Esri has authorized certain small businesses (see GSA Advantage! for details) as resellers of the following Esri products to eligible entities purchasing under a GSA Schedule. Esri GSA resellers cannot sell Esri software to state or local entities:

- ArcGIS for Aviation
- ArcGIS for Desktop Advanced
- ArcGIS for Desktop Standard
- ArcGIS for Maritime: Bathymetry
- ArcGIS for Maritime: Charting
- ArcGIS for Server and extensions
- Esri Business Analyst Server
- Esri Defense Mapping
- Esri Production Mapping

Esri distributes certain software licenses, *excluding those listed above*, through open-market value-added resellers and distributors. If you have further questions, please contact me at 909-793-2853, extension 1-1990.



Jackie Ricks



**ENTERPRISE AGREEMENT
(E512G 01/22/2016)**

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

Agreement No. 306700

This Enterprise Agreement, including the documents listed below (collectively, "Agreement" or "EA"), is between **Tennessee Comptroller of the Treasury ("TNCOT")**, with its main offices located at 505 Deadrisk Street, Suite 1700, Nashville, TN 37243, and **Environmental Systems Research Institute, Inc. ("Esri")**, with an effective date of August 5, 2016 ("Effective Date"). This Agreement provides for the licensing and Deployment of certain Esri Software, delivery of EA Maintenance, and provision of Esri User Conference registrations and any additional services as specified herein.

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

1. Enterprise Agreement signature page(s), E512G
2. Enterprise License Terms and Conditions, E512G, including
 - Appendix A—Products and Deployment Schedule
 - Appendix B—EA Fee Schedule
 - Appendix C—TNCOT Annual Deployment Report
 - Appendix D—EA Points of Contact
 - Appendix E—Tier 1 Help Desk Authorized Individuals
3. State of Tennessee Standard Terms and Conditions Sourcing Event ID No. 32110-000008228, including Addendum 1, between Esri and the State of Tennessee dated January 8, 2015 ("Standard Terms"), as found in the State of Tennessee Master Purchase Agreement 2014MPA1439 between Esri and the State of Tennessee ("MPA"), which are hereby incorporated by reference.
4. License Agreement as found in the MPA, which includes the General License Terms and Conditions, E204M and Exhibit 1, Scope of Use, E300 ("License Agreement"). The License Agreement is hereby incorporated by reference. For clarity, the MPA is not incorporated by reference as it is a separate program with certain Esri offerings; should Licensee elect to acquire Esri offerings under the MPA, the terms and pricing of the MPA govern such acquisition and not this Agreement.
5. Esri Training Terms and Conditions E207CWM ("Training Terms") as found in the MPA, which are hereby incorporated by reference.
6. Esri Enterprise Advantage Program Agreement ("EEAP") E125M as found in the MPA, which is hereby incorporated by reference.
7. TNCOT Special Terms and Conditions, which are hereby incorporated by reference.

Note: Licensee is defined on first page of item 2 above.

In the event the MPA terminates or expires, the Standard Terms, License Agreement, Training Terms, and EEAP survive such termination or expiration solely for the purpose of this Agreement.

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

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

ACCEPTED AND AGREED:

TENNESSEE COMPTROLLER OF THE TREASURY
(TNCOT)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

ARTICLE 1—DEFINITIONS

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

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

ARTICLE 2—GRANT OF LICENSE

2.1 Grant of License. Licensee's use of the EA Products is subject to the License Agreement and any additional terms set forth in this Article 2 and in Article 3 below.

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

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

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

ARTICLE 3—SCOPE OF USE

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

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

3.2 Uses Not Permitted

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

ARTICLE 4—MAINTENANCE

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

a. Tier 1 Support Provided by TNCOT

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

b. Tier 2 Support Provided by Esri

- (1) Esri shall log the calls received from Tier 1 Help Desk individuals.
- (2) Esri shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
- (3) Esri may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
- (4) Esri shall attempt to resolve Incident submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals and not Licensee.

- (5) When an Incident is resolved, Esri shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to Licensee.
- (6) Esri may, at its sole discretion, make patches, hot fixes, or updates available for downloading from Esri's website or, if requested, deliver them on media.

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

5.1 Purchase Orders, Delivery, and Deployment

- i. Esri does not require TNCOT to issue purchase orders and will invoice TNCOT upon the Effective Date of the EA and subsequently on each contract anniversary date during the EA Term. TNCOT may submit purchase orders in accordance with its own process requirements. If TNCOT issues purchase orders, then TNCOT will submit its initial purchase order upon execution of this EA and any subsequent purchase order at least 30 days before the anniversary date. Invoices will be due and payable within thirty (30) days of invoice.
- ii. Any purchase orders that TNCOT issues will reference, incorporate, and be subject to the terms and conditions of this EA. No additional, conflicting, or different terms contained in a purchase order or ordering document will be binding. TNCOT will process all orders and deliveries pertaining to this EA through TNCOT's centralized point of contact.
- iii. TNCOT will include the following information in each purchase order:
 - (1) Esri customer number, the ship-to address, and bill-to address as identified in Appendix D.
 - (2) Purchase order number.
 - (3) Applicable annual payment due and name of Licensee.
 - (4) On the face of the purchase order, the following printed statement: "Governed by and subject to Enterprise Agreement No. 306700"
- iv. Esri will provide Authorization Codes to activate the nondestructive copy protection program that enables TNCOT to download, operate, or allow access to the EA Products listed in Appendix A.
- v. Delivery of updates/new versions of EA Products will be made in the same manner. If requested by TNCOT, Esri will deliver a limited number of sets of backup media as provided in Appendix B to the ship-to address identified in Appendix D—EA Points of Contact, FOB destination with shipping charges prepaid. TNCOT may purchase additional backup media sets at the prices in effect at the time of purchase. Delivery or receipt of tangible media could cause prior and future license fees to be subject to taxes. Esri may invoice for and TNCOT agrees to pay any such sales or use tax associated with receipt of tangible media.
- vi. TNCOT shall track the Deployment status of EA Products.

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

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

ARTICLE 6—POINTS OF CONTACT; NOTICES

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

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

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

To: TNCOT
as listed in Appendix D

ARTICLE 7—TERM, TERMINATION, AND EXPIRATION

7.1 Term.

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

(B) Licensee shall have the option to renew the ELA at the pricing set forth in Appendix B for two 2 additional, one (1) year renewal terms upon prior written notice to Esri; prior written notice shall occur at least thirty (30) days prior to the expiration date of the then-current term.

7.2 Termination for a Material Breach. Esri may terminate this EA for a material breach by Licensee. Licensee will be given a period of thirty (30) days from date of written notice to cure any material breach. Upon termination of this EA by Esri for a material breach by Licensee, all licenses Deployed will also terminate, and the full amount of unpaid EA Fees will be due and payable by TNCOT within thirty (30) days from the date of termination. Licensees shall uninstall, remove, and destroy all EA Products; training materials; and any whole or partial copies, modifications, or merged portions in any form. TNCOT shall deliver evidence of such destruction to Esri (e.g., certification letter). Other items that may be included in this EA—such as EAP, Esri Virtual Campus annual user license, access codes, Virtual Campus dollar credits, and Esri User Conference registrations—will also terminate if this EA is terminated.

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

ARTICLE 8—CONFIDENTIALITY

8.1 Esri Confidential Information. Certain terms and conditions of this EA are confidential and proprietary information of Esri. Except as provided herein, TNCOT shall not publish or disclose the EA (or contents) to any third party without Esri's prior written consent. No other portions of the EA may be disclosed to a contractor or consultant. To the extent that any such disclosures may be required by law (such as an open/public records request), TNCOT shall inform Esri of the requested disclosure, with a reasonable description of the requested disclosure and identification of the requester, in sufficient time for Esri to assert any objection Esri may have to such disclosure with the appropriate administrative or judicial body.

ARTICLE 9—RELATIONSHIP OF THE PARTIES

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

ARTICLE 10—FORCE MAJEURE

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

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

ARTICLE 11—GIS STANDARD

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

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

ARTICLE 12—ADMINISTRATIVE REQUIREMENTS

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

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

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

ARTICLE 13—GENERAL PROVISIONS

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

13.2 Survival of Certain EA Clauses. The provisions of Section 7.4 and Article 8 of this Enterprise License Terms and Conditions document (E512G) will survive the expiration or termination of this EA.

**APPENDIX A
PRODUCTS AND DEPLOYMENT SCHEDULE**

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

**Table A-1
EA Products—Uncapped Quantities**

Product	Total Qty. to Be Deployed
ArcGIS for Desktop: ArcGIS for Desktop Advanced, Standard, and Basic (single and concurrent use)	Uncapped
ArcGIS for Desktop extensions: ArcGIS 3D Analyst, ArcGIS Data Reviewer, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Publisher, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager (single and concurrent use)	Uncapped
ArcGIS for Server: ArcGIS for Server Enterprise and Workgroup (Advanced, Standard, and Basic)	Uncapped
ArcGIS for Server extensions: ArcGIS 3D Analyst, ArcGIS Geostatistical Analyst, ArcGIS Image Extension, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager	Uncapped
ArcGIS Engine: ArcGIS Engine development tools for deploying custom applications	Uncapped
ArcGIS Engine extensions: ArcGIS 3D Analyst, ArcGIS Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics, and ArcGIS Spatial Analyst (single and concurrent use)	Uncapped
ArcGIS Runtime: Standard deployment licenses for custom applications	Uncapped
ArcGIS Runtime extensions: ArcGIS 3D Analyst, ArcGIS Network Analyst, and ArcGIS Spatial Analyst (single use)	Uncapped
Mapping and Charting solutions: Esri Production Mapping	Uncapped

**Table A-2
EA Products—Capped Quantities**

Product	Number of Subscriptions	Named Users per Subscription	Annual Credits per Subscription
ArcGIS Online Subscription:			
Year 1	1	150	20,000
Year 2	1	150	30,000
Year 3	1	150	40,000
Esri Business Analyst Online	1	50	-
Esri Developer Network Standard (EDN) – each year	1	-	-

**APPENDIX B
EA FEE SCHEDULE**

The EA Fee is **\$705,000.00**. The EA Fee is in consideration of the EA Products, EA Maintenance, Esri User Conference registrations, and EDN, EEAP.

	Year 1	Year 2	Year 3	EA Fee	Option Year 4*	Option Year 5*
Payments	\$235,000.00	\$235,000.00	\$235,000.00	\$705,000.00	\$270,000.00	\$310,000.00

Number of Esri International User Conference Registrations per Year	5
Number of Tier 2 Help Desk Callers That May Contact Esri for Tier 2 Support	5
Number of Sets of Backup Media, if Requested	5 (optional; upon request)
Support Incidents for EDN	One 10-Pack/Year
Esri Enterprise Advantage Program (EAP)	<ul style="list-style-type: none"> ▪ Up to 100 technical advisory hours ▪ Annual 1-day planning session ▪ Quarterly technology webcasts ▪ 100 learning and services credits: use towards consulting support; training; premium support services
Term of EA	3 years beginning August 5, 2016 through August 4, 2019 (plus any exercised Option Years).

* Licensee may exercise an Option in accordance with the requirements in Section 7.1(B). Option Year 5 may only be exercised if Option Year 4 has been exercised.

**APPENDIX D
EA POINTS OF CONTACT**

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

1. Esri point of contact for order processing issues:

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

2. Esri contact for Tier 2 Support issues:

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

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

Name: _____
E-mail: _____
Phone: _____
Fax: _____

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

TNCOT Office: _____
Name: _____
Address: _____

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

TNCOT Office: _____
Name: _____
Address: _____

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

TNCOT Office: _____
Name: _____
Address: _____

APPENDIX E
TIER 1 HELP DESK AUTHORIZED INDIVIDUALS

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

1. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

4. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

2. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

5. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

3. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____



Terms and Conditions

Event Number: 32110-000008228

Standard Terms and Conditions

Instructions to Bidders:

1. Read the entire bid, including all terms and conditions and specifications.
2. If submitting the bid by mail: All bid prices must be typed or written in ink on the Line Details portion of the Invitation to Bid (ITB); any corrections, erasures or other forms of alteration to unit prices must be initialed by the bidder.
3. If submitting the bid by mail, the bid must be manually signed in ink; failure to do so will cause rejection of your bid. If submitting the bid on-line, your electronic signature constitutes having signed the bid.
4. Bid prices shall include delivery of all items F.O.B. destination or as otherwise specified.
5. Address all inquiries and correspondence to the Purchasing Agent indicated in the Invitation to Bid.
6. I (we) agree to strictly abide by all the statutes and terms contained in the rules of the Department of General Services, Central Procurement Office which are by reference made a part hereof, in addition to the Standard and Special Terms & Conditions, and Specifications embodied in this Invitation to Bid.
7. **IMPORTANT:** By submitting the bid, the Bidder certifies compliance with the above and further certifies that this bid is made without collusion or fraud.
8. State statutes require that all bidders be registered prior to the issuance of a contract or a purchase order. Vendors/Bidders can register online at the State of Tennessee Supplier Portal: <https://supplier.edison.tn.gov>.
9. I (We) propose to furnish and deliver any and all of the supplies, services, and/or other commodities named in the Invitation to Bid, and for which I (we) have set prices in my (our) offering.
10. It is understood and agreed that this bid, when certified by authorized signature, shall constitute an offer, which when accepted in writing by the Department of General Services, Central Procurement Office, and subject to the terms and conditions of such acceptance, will constitute a valid binding contract between the State of Tennessee and the Vendor/Contractor (bidder) submitting such offering.
11. By my (our) written signature on this bid I (we) guarantee and certify that all items included in the bid meet or exceed any and all State specifications covering such items. I (We) further agree, if awarded a contract or purchase order as a result of this bid, to deliver such commodities, service or merchandise which meet or exceed the specifications.

12. It is understood and agreed that no contract may be assigned, sublet, or transferred without the written consent of the Central Procurement Office.

13. The inclusion in any response of a limitation of remedies or liabilities clause may be cause for rejection, unless otherwise specified in this solicitation or in accordance with the provisions of *Tennessee Code Annotated* § 12-3-701 or Central Procurement Office Rules, policies or procedures.

14. All bidders have the right to inspect the bid file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested bidders should contact the Purchasing Agent following the bid opening date or once the file is open for the seven (7) day inspection period. A "File Open for Inspection" letter will be sent to all bidders detailing the bidder(s) recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the bid file will be provided to the bidder. If there is no request to inspect the bid file by the end of the seven (7) day inspection period, the Purchasing Agent will proceed with the award.

15. Protest by Vendor: Pursuant to Tenn. Code Ann. § 4-56-103, any actual proposer may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows:
http://tn.gov/generalserv/cpo/for_bidders.html

16. Bid Mailing Instructions: Each individual bid proposal must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the bid opening date. Bids should be mailed in a properly labeled sealed envelope to the following address:

Department of General Services, Central Procurement Office
Attn: Bidder Services
3rd Floor, William R Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102

17. Subject to paragraph 13, the Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106

18. Contracts are entered into solely for the convenience of the State of Tennessee. The vendor/contractor understands and agrees that the State of Tennessee, as a signatory party to a contract, is solely responsible for its performance, and that the officers and employees of the Department of General Services, Central Procurement Office, act exclusively as agents of the State for the award, consummation, and administration of contracts and are not personally liable for any performance or nonperformance by the State.

19. A bid must be received in the Central Procurement Office on or before the date and hour designated for the bid opening or the bid will be rejected.

20. The Central Procurement Office may reject any or all bids. Action to reject all bids shall be taken only for unreasonably high prices, errors in the Invitation to Bid (ITB), cessation of need, unavailability of funds, or any other reason approved by the Procurement Commission. The Procurement Commission has authorized rejection of all bids for failure to secure adequate competition. If an ITB is to be re-advertised, all prior bids shall remain closed to inspection until the evaluation of the re-advertisement is complete.

21. All present and former employees or officials of the State are referred to Tennessee Code Annotated 12-4-103.

22. Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-bid conference or other scheduled function should contact the Central Procurement Office to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephonically, or otherwise, and should be made no less than ten (10) days prior to the scheduled event, to allow time for the Central Procurement Office to provide such aid or service.

23. No person on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State Constitutional and/or statutory law shall be excluded from participation in, or denied benefits of, or be otherwise subjected to discrimination in the performance of the Contract or in the employment practices of the vendor/contractor. The vendor/contractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to employees and applicants, notices of non-discrimination.

24. TAXES: Purchases of goods by the State of Tennessee are exempt from Tennessee sales and use tax pursuant to Tenn. Code Ann. 67-6-329(a) (4), and the state is generally exempt from Federal excise tax. Contractors are subject to Tennessee sales and use tax on all materials and supplies used in the performance of a contract, whether such materials and supplies are purchased by the contractor, produced by the contractor, or provided to the contractor by the State, pursuant to Tenn. Code Ann. 67-6-209. The contractor agrees to pay all taxes incurred in the performance of an awarded contract.

State agencies which procure products for the purpose of resale shall register with the Department of Revenue. Upon registration the agency will issue resale certificates to the successful contractor(s) for products procured for resale. The agency is responsible for the collection of the appropriate sales or use tax when the product is sold.

25. Exceptions to terms and conditions and/or those proposed by the bidder which may vary from the invitation to bid may render the bid unresponsive and subject the bid to rejection.

26. Unless otherwise stated, all goods called for by a purchase order must be tendered in a single delivery in compliance with the delivery time specified and payment is due only on such tender. Partial shipments and/or back orders will only be accepted with receiving agency's prior authorization.

27. All products, materials, supplies and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available as of the date of the bid opening, unless otherwise stated in this event.

28. Manufacturers of chemical products which are the subject of purchase contracts for the State of Tennessee shall list and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDS search repository or on the manufacturer's website so that such information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public. In lieu of posting a MSDS on MSDSSEARCH, a bidder shall include the manufacturer's universal resource

locator (URL) for its MSDS in the event. For purposes of this MSDS requirement, the Department of General Services recognizes the following URL for national MSDS search repository:MSDS-SEARCH, which can be accessed on the internet at: <http://www.msdssearch.com>.

29. Conflict of Interest: The State may not consider a solicitation response from an individual who is, or within the past six (6) months has been, a state employee. For purposes of this solicitation, an individual shall be considered to be a "state employee" and prohibited from submitting a response to this solicitation for six (6) months after such time as all compensation for salary, termination pay, and annual leave has been paid to such state employee. A contract with or a solicitation response from a company, corporation, or any other contracting entity in which a controlling interest is held by a state employee shall be considered to be a contract with or a solicitation response from a state employee as though the state employee were submitting a response or entering a contract on his or her behalf. Notwithstanding the foregoing, a contract with or a solicitation response from a company, corporation, or any other contracting entity that employs an individual who does not own a controlling interest in such entity and who is, or within the past six months has been, a state employee shall not be considered a contract with or a solicitation response from a state employee and shall not constitute a prohibited conflict of interest.

30. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The contractor agrees that it will be subject to the exclusive jurisdiction of the courts of Tennessee in actions that may arise under this contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Section 9-8-101 through 9-8-407.

31. State and Federal Compliance: The contractor shall comply with all applicable state and federal laws and regulations in the performance of this contract.

32. Professional Licensure and Department of Revenue Registration: All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Proposer provides for consideration and evaluation by the State as a part of a proposal in response to this solicitation, shall be properly licensed to render such opinions. Before the Contract resulting from this solicitation is signed, the apparent successful Proposer (and Proposer employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Proposer to submit evidence of proper licensure. Before the Contract resulting from this solicitation is signed, the apparent successful Proposer must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Proposer provides proof of such registration. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

33. Prohibition of Illegal Immigrants: The requirements of State of Tennessee's Public Acts, 2006, Chapter Number 878 and Executive Order 41 addressing the use of Illegal Immigrants in the performance of any contract to supply goods or services to the State of Tennessee, shall be a material provision of this contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this contract.

As required by Public Acts, 2006, Chapter Number 878, no person may enter into a contract to supply goods or services to the State without first attesting in writing that the person will not knowingly utilize the services of Illegal Immigrants in the performance of this contract, and will not knowingly utilize the services of any subcontractor who will utilize the services of Illegal Immigrants in the performance of this contract. For purposes of this contract, "Illegal Immigrant" shall be defined as any person who is not either a United States citizen, a lawful permanent resident, or a person whose physical presence in the United States is authorized or allowed by the department of homeland security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the contract. The contractor hereby attests,

certifies, warrants, and assures that it shall comply with this term and condition for the entire contract period.

The contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract. The contractor may appeal the imposition of the one-year prohibition by utilizing an appeals process established by the Commissioner of Finance and Administration.

As per Executive Order 41, the contractor shall be required to submit semi-annual Attestation Forms and obtain a signed Attestation Form from any subcontractor prior to the use of the subcontractor and semi-annually thereafter during the contract period. The records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State. Records shall include but are not limited to the following:

Documentation on contractors' employees and subcontractor personnel working on this contract showing that they are legal to work in the United States and payroll records.
Signed and dated Attestation Forms for your company that have been submitted to the Central Procurement Office and Attestation Forms obtained from subcontractor(s).

Note: The contractor shall be required to obtain prior approval to subcontract from the Central Procurement Office.

By authorized signature on this Invitation to Bid the contractor constitutes signing the Attestation Form for the initial six (6) months of the contract period. The contractor shall be required to submit signed Attestation Forms on a semi-annual basis from the start date of the contract period through to its completion date to the Central Procurement Office. Such attestations shall be maintained by the contractor in a permanent file on the vendor premises and made available to State officials upon request. The State of Tennessee provides an "approved Attestation Form" to support the reaffirmation process. The form can be accessed and printed from the internet at http://tn.gov/generalserv/cpo/for_bidders.html

34. Modifications and Amendments: This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Chief Procurement Officer, the Commissioner of Human Resources, and the Comptroller of the Treasury).

35. Records - Examination/Audit: The state may, at reasonable times, examine/audit the books and/or records of any vendor/ contractor where such books and/or records relate to the performance of any contract or subcontract with the state. Such books and records shall be kept in conformity with generally accepted accounting principles and maintained by the vendor/contractor or subcontractor for a period of three (3) years from the date of final payment under the prime contract or subcontract. Said examination/audit may be performed at any reasonable time by the Central Procurement Office, the Comptroller of the Treasury, or their duly appointed representative(s).

36. HIPAA Compliance: The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").

a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.

d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.



ADDENDUM NO. 1

to

The State of Tennessee Sourcing Event ID No. 32110-000008228

Esri Agreement No. 2014MPA1439

The following comments, clarifications, exceptions and documents shall be incorporated by reference and integrated into the State of Tennessee, Contract #xxxxx for Esri Software, maintenance, technical support, consulting and training.

1. **STATE OF TENNESSEE SPECIFICATIONS, SOURCING EVENT #8228**
2. **STATE OF TENNESSEE, STANDARD TERMS AND CONDITIONS, EVENT NO. 32110-000008228**

Term and Condition #	
6	<p>The Parties agree that this paragraph below shall be included at the end of the standard term and condition #6:</p> <p style="padding-left: 40px;">The Parties agree that the comments and exceptions made to the Terms and Conditions and to the Special Terms and Conditions in this Addendum No. 1 shall be incorporated into the State Contract.</p>
10	<p>The Parties agree that this paragraph below shall be included at the end of the standard term and condition #10:</p> <p style="padding-left: 40px;">The Parties agree that this Addendum 1 shall be part of Esri's bid.</p>
11	<p>The Parties agree that this paragraph below shall be included at the end of the standard term and condition #11:</p> <p style="padding-left: 40px;">Esri guarantees and certifies that all Products shall substantially adhere to its Documentation and that all services shall be performed in a professional manner consistent with customary software industry practices.</p>
12	<p>The Parties agree that this modified paragraph below shall replace the standard term and condition #12:</p> <p style="padding-left: 40px;">The Parties agree that this paragraph is modified as follows: "Upon Esri assignment of any resulting contract to an entity that acquires a substantial part or all of Esri's assets, Esri agrees to notify the State immediately."</p>
13	<p>The Parties agree that this modified paragraph below shall replace the standard term and condition #13:</p> <p style="padding-left: 40px;">In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the value of the Contract, which is stated in Special Term #3, "Volume, Multi-Year", as may be amended by written agreement of the parties, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.</p>

17	<p>The Parties agree that this modified section below shall replace the standard term and condition #17:</p> <p>Subject to paragraph 13, the Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses (except for data that is not subject to a reasonable back-up program), and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of the comparative negligence or willful misconduct on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. Each party further agrees it shall each be liable for the reasonable cost of attorneys in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of each party</p> <p>In the event of any such suit or claim, the Contractor shall give the State reasonable notice thereof and shall provide all reasonable assistance required by the State in the State's defense. The State shall give the Contractor sufficient advanced written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106</p> <p>Notwithstanding anything in this section to the contrary, any provision or provisions of this will not apply to the extent they are (it is) finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.</p>
36	<p>The Parties agree that this modified section below shall replace the standard term and condition #36:</p> <p>HIPAA Compliance: The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy if and when such laws and obligations apply (collectively the "Privacy Rules"). For clarity, the parties do not intend to and will not deliver to the other party any "protected health information" as defined by the Privacy Rules.</p> <ol style="list-style-type: none"> a. Each party warrants to the other party that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract. b. Each party warrants that it will cooperate with the other party, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules. c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision, and the obligations of HIPAA shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document. d. Subject to the limitations set forth in the Contract, the Contractor will indemnify the State and hold it harmless for any violation of the Privacy Rules by the Contractor. This includes the costs of responding to a breach of protected health information, and any fines, penalties, or damages paid by the State because of the violation.

3. STATE OF TENNESSEE, SPECIAL TERMS AND CONDITION, EVENT NO. 8228

<p>10. Fixed Bid Price for Contract Period (No Price Increase Allowed)</p>	<p>The Parties agree that this modified section below shall replace the special term and condition #10:</p> <p>The Parties agree that the percentage discounts for Products shall remain fixed during the term of the contract, and Esri shall provide any discounted pricing during its periodic updates to its Catalog (MPA Price List). While the percentage discount rate shall remain fixed during the term, individual pricing for Products and maintenance (Product updates and technical support) may be proportionally increased. The Parties agree that Esri has provided fixed pricing rates for Time and Material (T&M) engagements per labor category in the Event Details document as well as in Esri's contract document submittal. This pricing shall remain firm for the term of the contract. Pricing for collateral services such as Product-related services, training, and Esri's Enterprise Advantage Program (EEAP) may be increased on an annual basis during the term of the contract.</p>
<p>23. Contract Cancellation</p>	<p>The Parties agree that this modified section below shall replace the special term and condition #23, Contract Cancellation, Section "Termination for Cause":</p> <p>Termination for Cause: The Parties agree that any failure of Esri's obligations shall mean any material breaches of contract as interpreted by the law of the State of Tennessee, and that Esri shall have a reasonable period in which to cure any alleged material breaches of contract. If this contract is cancelled or terminated for any reason, all licenses granted hereunder terminate as well. Upon termination of a license a subscription, or the contract, Licensee will (i) stop accessing and using affected Product(s); (ii) clear any client-side data cache derived from Online Services; and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee'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.</p>
<p>30. Maintenance/Prepaid Service Cost Reimbursement</p>	<p>The Parties agree that this modified section below shall replace the special term and condition #30:</p> <p>If for any reason prepaid maintenance costs are paid for any equipment, software, or any item associated with this contract for the reason of displacement, discontinued, etc. The vendor/ contractor is responsible for the prorated reimbursement due the State of Tennessee. All monthly charges will be prorated by a daily rate after the first of each month.</p>

4. The Following attached Esri documents are incorporated herein by reference, and shall be incorporated into the resulting Contract:

- I. License Agreement (comprised of the General License Terms and Conditions and Exhibit 1, Scope of Use);
- II. Training Terms and Conditions;
- III. Response and Resolution Time Matrix;
- IV. Custom Software, Technical Data, and Assistance License Addendum (including Attachment B, Time and Materials Rate Schedule (2014–2019));
- V. Enterprise Advantage Program Agreement; and
- VI. MPA Price List

ACCEPTED AND AGREED:

THE STATE OF TENNESSEE

Signature:

Michael F. Perry

Printed Name:

Michael F. Perry

Title:

Chief Procurement Officer

Date:

1/8/15

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature:

Chris Johnson

Printed Name: Chris Johnson

Title: Manager, Domestic Contracts

Date:

JAN 7, 2015



TRAINING TERMS AND CONDITIONS

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

Training Terms and Conditions

ARTICLE 1—TRAINING DESCRIPTION

Esri offers a set of instructor-led training and client coaching services related to the use of its proprietary GIS software. Instructor-led training events occur at a client's site, at an Esri Learning Center, or via the web in a cloud environment. The Esri software training courses offered, their location, the dates during which the courses are to be conducted, the number of participants, the prices to be paid, and registration requirements are set forth in the *Esri Training* catalog located on Esri's Training website (<http://training.esri.com>). All courses are conducted in substantial conformity with course descriptions outlined on the Esri Training website. Esri reserves the right to modify course content when necessary due to software technical capabilities or limitations. Client coaching services may be provided immediately before or immediately following an Esri training course to familiarize the Student with the software or to review and practice course concepts with an instructor's guidance.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- Esri will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. Esri will provide each Student with a course manual, where applicable.
- Esri will confirm Learning Center training event scheduled dates approximately ten (10) business days prior to the training event start date.
- Esri will confirm Client Site scheduled dates upon receipt of the completed Client Site Training Request Form and intended payment method.

ARTICLE 3—CLIENT'S RESPONSIBILITIES

- Client must ensure the protection of Esri's copyrights. Client shall neither copy or distribute nor permit a third party to copy or distribute any of Esri's training material(s).
- Client is not authorized to resell seat(s) to an Esri training event, unless explicitly authorized in writing by Esri.
- Client must ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Students are not permitted to view or participate in an Online Classroom training event. Esri reserves the right to disconnect any Students who permit access to unregistered Students.
- Client must confirm that all registered Students meet the minimum prerequisites for the applicable training event set forth on Esri's Training website.
- Client must submit registrations with a confirmed payment commitment at least seven (7) business days before the training event start date. If Client submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Client must submit to the Esri Training Event Assistant a list of the names of Students that are to attend any training event. Client must submit the list of Student names to Esri at least three (3) business days before the training event start date. Any Student that is found on any of the various US Government Denied Persons lists will not be permitted to attend training.
- Client is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export regulation requirements, course scheduling changes, or cancellations.
- Client must provide written notice to Esri's Customer Service department at service@esri.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the training event start date.

- Client must complete and submit an Esri Client Site Training Request Form as well as ensure that it adheres to the course, facility, equipment, and Internet bandwidth and connectivity requirements for Esri Training as found at <http://training.esri.com/gateway/index.cfm?fa=classroom.requirements>.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from Esri. Esri reserves the right to record a classroom training event for future rebroadcast.
- If the Esri Mobile Lab equipment is utilized at Client's domestic site, then the following terms will apply:
 - Upon receipt, Client must immediately report any damage to the Mobile Lab equipment to the Training Event Assistant.
 - Client must keep the Mobile Lab equipment in a secure, locked area between training event sessions.
 - Client must ensure that only registered Students use the Mobile Lab equipment.
 - Client is responsible for any and all loss of, damage to, or theft of the Mobile Lab equipment while in Client's possession.
 - Client warrants that it maintains sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law.
 - The Esri instructor will check all Mobile Lab equipment following the completion of training. Any damage to the Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Client by written notice. Client hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
 - Client shall make the Mobile Lab equipment available for freight pickup immediately on conclusion of the Esri course(s).

ARTICLE 4—INSURANCE AND INDEMNIFICATION

4.1 Insurance. Esri carries, at a minimum, the following coverage:

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

4.2 Indemnification. Esri will indemnify and hold harmless Client and each of its directors and officers (collectively the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys fees, arising out of any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents while engaged in or as a result of the training or coaching services provided by Esri pursuant to this Agreement while on Client's site.

ARTICLE 5—UNIQUE CLIENT COACHING PRIVACY TERMS

In the event Client coaching services are to be ordered, the following terms shall apply:

Client shall not provide to Esri or disclose to the instructor any personally identified information ("PII") (e.g., GLBA, HIPAA, CII from the US Department of Homeland Security), classified, and so forth, data for use in the coaching session. Notwithstanding anything in this Agreement to the contrary, Esri retains the right to refuse acceptance of any nonpublic personal information ("NPI") or Customer Information regardless of the form of disclosure. Esri will only accept receipt of information from Client that comports with the exceptions set forth in Subsections 4(B) and 4(C)(ii) of

Section 509 of the Gramm-Leach-Bliley Act (P.L. 106-102) (15 U.S.C. Section 6809) and implementing regulations thereof.

ARTICLE 6—SOFTWARE LICENSES

The terms of the Esri license agreement are applicable to all Students and cover all of Esri's software, data, and documentation licensed for use in any training course to be conducted. Esri may issue temporary software licenses for Client Site Training where there are an insufficient number of software licenses available at the Client's training facility. Upon conclusion of the training course or event, the Client must uninstall the temporary software licenses and return to Esri any media provided.

ARTICLE 7—CANCELLATION AND RESCHEDULING POLICY

7.1 Individual Student Seats

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without three (3) business days' notification, a transfer fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center training event to another one (1) time at no additional charge provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a training event provided Esri's Customer Service department is notified three (3) business days in advance. If three (3) business days' notification is not provided, Students may be charged the full class fee.

7.2 Client Site/Private Class/Coaching Services (Training Event)

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without notification three (3) business days in advance, a transfer fee may be assessed.
- A training event may be rescheduled by the client, provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. If appropriate notice of reschedule is provided, Client is responsible for Esri's reasonable travel expenses and shipping costs incurred.
- A training event may be canceled by the client provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. If appropriate notice of cancellation is provided, Client is responsible for any reasonable travel expenses and shipping costs. If a training event is canceled without appropriate notice, client is responsible for the full training event fee.

7.3 If cancellation of a training event is necessary due to Force Majeure as described in Article 11 below, the affected party is released in full from the three (3)-business day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

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

ARTICLE 8—WARRANTY

Esri will provide training in a manner consistent with the technical and professional standards of the industry.

8.1 Disclaimer of Warranties. WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE DELIVERABLES ARE ERROR FREE.

ARTICLE 9—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

(SUBJECT TO THE STATE OF TENNESSEE TERMS AND CONDITIONS, EVENT NUMBER 32110-8228, PARAGRAPH 13)



LICENSE AGREEMENT
(E204M 06/13/2014)

GENERAL LICENSE TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

Definitions. The terms used are defined as follows:

- a. "Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, account user name and password, or other mechanism required for use of a Product.
- b. "Beta" means any alpha, beta, or prerelease Product.
- c. "Commercial Application Service Provider Use" or "Commercial ASP Use" means generating revenue by providing access to Software or Online Services through a Value-Added Application, for example, by charging a subscription fee, service fee, or any other form of transaction fee or by generating more than incidental advertising revenue.
- d. "Content" has the meaning provided in Addendum 3.
- e. "Data" means any Esri or third-party digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes, whether bundled with Software and Online Services or delivered independently.
- f. "Deployment License" means a license that allows Licensee to sublicense select Software and associated Authorization Codes to third parties.
- g. "Documentation" means all user reference documentation that is delivered with the Software.
- h. "Online Services" means any Internet-based geospatial system, including applications and associated APIs, but excluding Data or Content, hosted by Esri or its licensors, for storing, managing, publishing, and using maps, data, and other information.
- i. "Ordering Document(s)" means a sales quotation, purchase order, or other document identifying the Products that Licensee orders.
- j. "Perpetual License" means a license to use a version of a Product for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Licensee as authorized under this Agreement.
- k. "Product(s)" means Software, Data, Online Services, and Documentation licensed under the terms of this License Agreement.
- l. "Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.
- m. "Service Credit(s)" means a unit of exchange that is allocated with an Online Services subscription in an amount specified in the Ordering Document. Each Service Credit entitles Licensee to consume a set amount of Online Services, the amount varying depending on the Online Services being consumed. As Online Services are consumed, Service Credits are automatically debited from Licensee's account, up to the maximum number of Service Credits available. Additional Service Credits can be purchased as described in Addendum 3 (also available at <http://www.esri.com/legal>).
- n. "Software" means all or any portion of Esri's proprietary software technology, excluding Data, accessed or downloaded from an Esri-authorized website or delivered on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.
- o. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or transaction basis.
- p. "Value-Added Application" means an application developed by Licensee for use in conjunction with the authorized use of any Software, Data, or Online Services.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

Products are licensed, not sold. Esri and its licensors own Products and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect Products from unauthorized use, reproduction, distribution, or

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ARTICLE 3—GRANT OF LICENSE

3.1 Grant of License. Esri grants to Licensee a personal, nonexclusive, nontransferable license solely to use the Products as set forth in the applicable Ordering Documents (i) for which the applicable license fees have been paid; (ii) in accordance with this License Agreement and the configuration ordered by Licensee or as authorized by Esri or its authorized distributor; and (iii) for the applicable Term or, if no Term is applicable or identified, until terminated in accordance with the State Contract. In addition to the Scope of Use in Article 4, Exhibit 1—Scope of Use (E300M) applies to specific Products. Addendum 1, Addendum 2, Addendum 3, and Addendum 4 collectively comprise Exhibit 1—Scope of Use (E300M) and are also available at <http://www.esri.com/legal/software-license>. Addendums only apply to Products specifically identified within an Addendum. Exhibit 1—Scope of Use (E300M) includes Addendums for the following Product types, which are incorporated by reference:

- a. *Software.* Terms of use for specific Software products are set forth in Addendum 1.
- b. *Data.* Data terms of use are set forth in Addendum 2.
- c. *Online Services.* Terms of use for Online Services are set forth in Addendum 3.
- d. *Limited Use Programs.* Terms of use for noncommercial, nonprofit, educational, or other limited-use programs are set forth in Addendum 4.

3.2 Evaluation and Beta Licenses. Products acquired under an evaluation license or under a Beta program are intended for evaluation and testing purposes only and not for commercial use. Any such use is at Licensee's own risk, and the Products do not qualify for Esri or distributor maintenance.

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

- a. For Products delivered to Licensee, Licensee may
 1. Install and store Products 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 six (6) months, provided that the deployment of either version does not exceed Licensee's licensed quantity; thereafter, Licensee shall not use more Software in the aggregate than Licensee's total licensed quantity;
 4. Move the Software in the licensed configuration to a replacement computer; and
 5. Distribute to third parties Software and any associated Authorization Codes required for use of a Deployment License.
- b. *Commercial Application Service Provider Use.* Licensee may use the Product for Commercial ASP Use provided that Licensee (i) acquires a Commercial ASP Use license, or (ii) is a governmental or not-for-profit organization that operates a website or offers an Internet service on a cost recovery basis and not for profit.
- c. Licensee may customize Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in Documentation.
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- e. *Font Components.* All fonts provided with a Product may be used with the authorized use of any Products. Esri fonts may also be separately used to print any output created by Products. Additional use restrictions for third-party fonts included with a Product are set forth in the font file itself.
- f. *Consultant or Contractor Access.* Subject to Section 3.1, Esri grants Licensee the right to permit Licensee's consultants or contractors to use the Products exclusively for Licensee's benefit. Licensee shall be solely responsible for compliance by consultants and contractors with this License Agreement and shall ensure that the consultant or contractor discontinues Product use upon completion of work for Licensee. Access to or use of Products by consultants or contractors not exclusively for Licensee's benefit is prohibited.
- g. Licensee may use, copy, reproduce, publish, publicly display, or redistribute map images and reports containing map images derived from the use of Esri Product(s) in hard copy or static, electronic formats (e.g., PDF, GIF, JPEG) to third parties subject to restrictions set forth in this License Agreement, provided that Licensee affixes an attribution statement to the map images acknowledging Esri and/or its applicable licensor(s) as the source of the portion(s) of the Data used for the map images. For avoidance of doubt, any data that is supplied or used by Licensee in its use of the Product(s) that is not Data shall be and remain the property of Licensee or its third-party licensor(s).

4.2 Uses Not Permitted. Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, Licensee shall not

- a. Sell, rent, lease, sublicense, lend, time-share, assign, or use Products for Commercial ASP Use or service bureau purposes;
- b. Provide third parties with direct access to Products so that the third parties may use the Product directly, develop their own GIS applications, or create their own solutions in conjunction with the Product;
- c. Distribute Software, Data, or Online Services to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- d. Distribute Authorization Codes to third parties;
- e. Reverse engineer, decompile, or disassemble Products;
- f. Make any attempt to circumvent the technological measure(s) that controls access to or use of Products;
- g. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Products in violation of Esri's or a third party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or government regulation;
- h. Remove or obscure any Esri (or its licensors') patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder;
- i. Unbundle or independently use individual or component parts of Software, Online Services, or Data;
- j. Incorporate any portion of the Product into a product or service that competes with any Product;
- k. Publish or in any other way communicate the results of benchmark tests run on Beta without the prior written permission of Esri and its licensors; or
- l. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with any Product in a manner that would subject such code or any part of the Product to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third parties, (ii) licensed to third parties for the purpose of making derivative works, or (iii) redistributable to third parties at no charge.
- m. Licensee 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 Esri technology or services. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Esri technology or services, or any portion thereof, are a part of any claim or preferred embodiment in a patent application or a similar application.

ARTICLE 5—RESERVED

ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

6.1 Limited Warranties. Except as otherwise provided in this Article 6, Esri warrants for a period of ninety (90) days from the date Esri issues the Authorization Code enabling use of Software and Online Services that (i) the unmodified Software and Online Services will substantially conform to the published Documentation under normal use and service and (ii) media on which Software is provided will be free from defects in materials and workmanship.

6.2 Special Disclaimer. CONTENT, DATA, SAMPLES, HOT FIXES, PATCHES, UPDATES, ONLINE SERVICES PROVIDED ON A NO-FEE BASIS, AND EVALUATION AND BETA SOFTWARE ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND.

6.3 Internet Disclaimer. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE PERFORMANCE OR DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF ONLINE SERVICES. NOTWITHSTANDING THE FORGOING, ESRI SHALL EMPLOY REASONABLE COMMERCIAL MEASURES TO SUPPORT ITS CONTINUAL OPERATION OF ONLINE SERVICES.

6.4 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT THAT PRODUCTS WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. PRODUCTS ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. LICENSEE SHOULD NOT FOLLOW ANY ROUTE SUGGESTIONS THAT APPEAR TO BE HAZARDOUS, UNSAFE, OR ILLEGAL. ANY SUCH USES SHALL BE AT LICENSEE'S OWN RISK AND COST.

6.5 Remedy. Licensee's remedy and Esri's entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at Esri's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Software or Online Services subject to the Esri Maintenance Program or Licensee's authorized distributor's maintenance program, as applicable; or (iii) return of the license fees paid by Licensee for Software or Online Services that do not meet Esri's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation; ceases using Online Services; and executes and delivers evidence of such actions to Esri.

Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent they are finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

ARTICLE 7—LIMITATION OF LIABILITY(SUBJECT TO THE STATE OF TENNESSEE TERMS AND CONDITIONS, EVENT NUMBER 32110-8228, PARAGRAPH 13)

7.1 Disclaimer of Certain Types of Liability. ESRI AND ITS LICENSORS SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT OR USE OF PRODUCTS, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7.2 General Limitation of Liability. EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, THE TOTAL CUMULATIVE LIABILITY OF ESRI HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR THE PRODUCTS THAT GIVE RISE TO THE CAUSE OF ACTION.

7.3 Applicability of Disclaimers and Limitations. The parties agree that Esri has set its fees and entered into this License Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between

the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. LICENSEE MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. ESRI DOES NOT SEEK TO LIMIT LICENSEE'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

7.4 State of Tennessee Liability. Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent they are finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

ARTICLE 8—(RESERVED)

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Updates. New or updated Products may require additional or differing terms for use and shall be governed by the then-current Esri License Agreement terms and conditions (including Exhibit 1—Scope of Use). However Articles 6, 7 and 9 and Sections 6.3, 6.5, 7.1, 7.2, 7.3, 9.1, 9.3, 9.4, 9.5, 9.7 and 9.8 as amended in this document, shall apply to then-current versions of the General License Terms and Conditions (or Esri License Agreement included with the deliverable). Updated versions of the license terms and conditions will be available on Esri's Web site, included with a quote, or included with the deliverable Product.

9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, import, transfer, release, or provide access to Products, Content, Licensee's Content, or Value-Added Applications to (i) any US embargoed country; (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity or into any country where such export, reexport, access, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any amendments and supplemental additions to those import/export laws as they may occur from time to time.

Sections 9.3, 9.4 and 9.5: RESERVED

9.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate Licensee's obligations under this License Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent shall be void. This License Agreement shall be binding on the respective successors and assigns of the parties to this License Agreement. Notwithstanding, a government contractor under contract to the government to deliver Products may assign this License 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 License Agreement.

Section 9.7: RESERVED

9.8 Equitable Relief. Licensee agrees that any breach of this License Agreement by Licensee may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Esri shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

9.9 Feedback. Esri may freely use any feedback, suggestions, or requests for Product improvements that Licensee provides to Esri.



**EXHIBIT 1
SCOPE OF USE
(E300 06/13/2014)**

**ADDENDUM 1
SOFTWARE TERMS OF USE
(E300-1)**

This Software Terms of Use Addendum ("Addendum 1") sets forth the terms of Licensee's use of Software and includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 1 takes precedence over conflicting General License Terms and Conditions of the License Agreement.

SECTION 1—DEFINITIONS

Software may be offered under the following license types as set forth in the applicable sales quotation, purchase order, or other document identifying the Products that Licensee orders:

1. "Concurrent Use License" means a license to install and use the Product on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
2. "Deployment Server License" means a full use license that authorizes Licensee to install and use the Software for all uses permitted in the License Agreement and as described in the Documentation.
3. "Development Server License" means a license that authorizes Licensee to install and use the Software to build and test Value-Added Applications as described in the Documentation.
4. "Esri Client Software" means ArcGIS Runtime apps, ArcGIS for Desktop, and ArcGIS API for Flex apps.
5. "Esri Content Package" means a digital file containing ArcGIS Online basemap content (e.g., raster map tiles, images, vector data) extracted from the ArcGIS Online Basemap Services.
6. "Single Use License" means a license that allows Licensee to permit a single authorized end user to install and use the Product on a single computer for use by that end user on the computer on which the Product is installed. Licensee may permit the single authorized end user to install a second copy for end user's exclusive use on a second computer as long as only one (1) copy of Product is in use at any time. No other end user may use Product under the same license at the same time for any other purpose.
7. "Staging Server License" means a license that authorizes Licensee to install and use the Software for the following purposes: building and testing Value-Added Applications and map caches; conducting user acceptance testing, performance testing, and load testing of other third-party software; staging new commercial data updates; and training activities as described in the Documentation. Value-Added Applications and map caches can be used with Development and Deployment Servers.
8. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or transaction basis.
9. "Perpetual License" means a license to use a version of the Product, for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Licensee as authorized under this Agreement.

SECTION 2—TERMS OF USE FOR SPECIFIC SOFTWARE

The following table is a list of Esri Products that have specific Terms of Use in addition to the general Terms of Use as set forth in the General License Terms and Conditions of the License Agreement. Additional Terms of Use are listed immediately below this table and are referenced by number(s), shown in parentheses, immediately following each Product name in the following table (in some cases, the Additional Terms of Use referenced may be found in a separate Addendum, as noted):

<p>Desktop Products</p> <ul style="list-style-type: none"> ▪ ArcGIS for Desktop (Advanced, Standard, or Basic) (26; Addendum 2, Note 1; Addendum 2, Note 6) ▪ ArcGIS Explorer Desktop (20; Addendum 2, Note 1) ▪ ArcGIS for AutoCAD (20) ▪ ArcPad (12; 13; Addendum 2, Note 1; Addendum 2, Note 2) ▪ ArcReader (20; Addendum 2, Note 1) ▪ Esri Business Analyst (Addendum 2, Note 1; Addendum 2, Note 4) ▪ Esri Maps for IBM Cognos, MicroStrategy, Microsoft Dynamics CRM, Office, SharePoint, Salesforce, or SAP BusinessObjects (2; Addendum 2, Note 1) ▪ ArcGIS for Windows Mobile (15; 54; Addendum 2, Note 1) ▪ ArcGIS for iOS; ArcGIS for Windows Phone; ArcGIS for Android (Addendum 2, Note 1) <p>Server Products</p> <ul style="list-style-type: none"> ▪ ArcGIS for Server <ul style="list-style-type: none"> – Workgroup (28; 29; 30; 32; 38; 39; Addendum 2, Note 1; Addendum 2, Note 6) – Enterprise (31; 38; 39; Addendum 2, Note 1; Addendum 2, Note 6) – with Virtual Cloud Infrastructure (10; Addendum 3—Common Terms) ▪ ArcGIS for Server Extension <ul style="list-style-type: none"> – ArcGIS for INSPIRE (Addendum 2, Note 1) ▪ Esri Business Analyst for Server <ul style="list-style-type: none"> – Workgroup (28; 29; 30; 31; 39; Addendum 2, Note 1; Addendum 2, Note 4) – Enterprise (31; 39; Addendum 2, Note 1; Addendum 2, Note 4) ▪ Portal for ArcGIS (31; Addendum 2, Note 1) ▪ Esri Tracking Server (31) 	<p>Developer Tools</p> <ul style="list-style-type: none"> ▪ ArcGIS Runtime SDK for Android, iOS, Java, Mac OS X, Microsoft .NET Framework (Windows [desktop], Windows Phone, Windows Store), Qt, or WPF (16; 19; Addendum 2, Note 1) ▪ ArcGIS Runtime Standard Level for Android, iOS, Java, Mac OS X, Microsoft .NET Framework (Windows [desktop], Windows Phone, Windows Store), Qt, or WPF (15; 18; Addendum 2, Note 1) ▪ ArcGIS Engine Developer Kit and Extensions (16, 19; 22, 26) ▪ ArcGIS Engine for Windows/Linux and Extensions (15; 22; 26; Addendum 2, Note 1; Addendum 2, Note 6) ▪ ArcGIS Web Mapping (including ArcGIS API for JavaScript/HTML5, ArcGIS API for Flex, ArcGIS API for Microsoft Silverlight) (15; 16; 64; 66; Addendum 2, Note 1) ▪ Esri Business Analyst Server Developer (Addendum 2, Note 1; Addendum 2, Note 4) ▪ Esri Developer Network (EDN) Software and Data (24; 26; Addendum 2, Note 6) ▪ Esri File Geodatabase API (47) <p>Bundled Products</p> <ul style="list-style-type: none"> ▪ ArcGIS for Transportation Analytics (1; Addendum 2, Note 1; Addendum 2, Note 2; Addendum 2, Note 11)
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Notes:

- If you do not license any of the Products in the table above, these Additional Terms of Use do not apply to you.
- Additional Terms of Use for Products ONLY APPLY to the Products that reference them by number in the table above.
- Unless otherwise noted in the applicable Ordering Document, extensions to Software follow the same scope of use as that granted for the corresponding Software.

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ArcGIS Online for Organizations account included with ArcGIS for Transportation Analytics. The ArcGIS Online for Organizations account can be used for any purpose subject to the terms of this License Agreement.

2. Esri Maps applications are licensed for use by Licensee's Named Users of ArcGIS Online or Portal for ArcGIS. Esri Maps applications may only be used by individuals who have been entitled to be a Named User of ArcGIS Online or Portal for ArcGIS. Embedding a Named User credential into an Esri Maps application is prohibited. Use of Esri Maps applications with ArcGIS Online Public Plans or ArcGIS Online Developer Plans is prohibited.
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13. "Dual Use License" means the Software may be installed on a desktop computer and used simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any one (1) time.
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 - a. The Software is reproduced and distributed in its entirety;
 - b. A license agreement accompanies each copy of the Software that protects the Software to the same extent as this License Agreement, and the recipient agrees to be bound by the terms and conditions of the license agreement;
 - c. All copyright and trademark attributions/notices are reproduced; and
 - d. There is no charge or fee attributable to the use of the Software.
21. Reserved.
22. a. An end user must license either ArcGIS Engine for Windows/Linux Software or other ArcGIS for Desktop Software (Basic, Standard, or Advanced) to obtain the right to run an ArcGIS Engine application on one (1) computer; and
 - b. The ArcGIS Engine for Windows/Linux extensions shall not be used in combination with ArcGIS for Desktop Software to run ArcGIS Engine Value-Added Applications. A single user can have multiple ArcGIS Engine Value-Added Applications installed on one (1) computer for use only by that end user.
23. Reserved.
24. EDN Software may be used only for the purposes of development, testing, and demonstration of a prototype Value-Added Application and creating map caches. Value-Added Applications and map caches can be used with Staging and Deployment Servers. EDN server Software and Data may be installed on multiple computers for use by any Licensee EDN developer; all other EDN Software is licensed as a Single Use License.
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26. An ArcSDE Personal Edition geodatabase is restricted to ten (10) gigabytes of Licensee's data.
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28. Use is limited to ten (10) concurrent end users of applications other than ArcGIS for Server applications. This restriction includes use of ArcGIS for Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS for Server geodatabase. There are no limitations on the number of connections from web applications.

29. Software can only be used with 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 ten (10) gigabytes of Licensee's data.
31. Licensee may have redundant Esri Server Software installation(s) for failover operations, but the redundant Software can only be operational during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
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- 33–37. Reserved.
38. The ArcGIS 3D Analyst for Server extension included with ArcGIS for Server Standard (Workgroup or Enterprise) may be used only for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS 3D Analyst for Server extension Software is permitted with ArcGIS for Server Standard.
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47. Licensee may develop and distribute Value-Added Applications that use Esri File Geodatabase API to Licensee's end users.
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54. ArcGIS for Windows Mobile Deployments are licensed for use with ArcGIS for Server Enterprise (Advanced or Standard), ArcGIS for Server Workgroup (Advanced), ArcGIS for Desktop (Advanced, Standard, Basic), and ArcGIS Engine Value-Added Applications.
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**ADDENDUM 2
DATA TERMS OF USE
(E300-2)**

This Data Terms of Use Addendum ("Addendum 2") sets forth the terms of Licensee's use of Data and includes Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 2 takes precedence over conflicting General License Terms and Conditions of the License Agreement. Esri reserves the right to modify the Data terms of use referenced below at any time. For Data licensed through a subscription, Licensee may cancel the subscription upon written notice to Esri or discontinue use of the Data, as applicable. If Licensee continues to use the Data, Licensee will be deemed to have accepted the modification. Data terms of use are set forth in the notes referenced below:

SECTION 1—GENERAL RESTRICTIONS ON USE OF DATA

In addition to the restrictions set forth in Article 4.2 of the License Agreement, the following restrictions apply to use of Data by Licensee and Licensee's end users (collectively, "Users"). Any use of Data that is not expressly authorized in Section 2 or elsewhere in the License Agreement is strictly prohibited. Without limiting the generality of the foregoing, Licensee shall ensure Users are prohibited from (i) cobranding Data, (ii) using the Data in any unauthorized service or product, or (iii) offering Data through or on behalf of any third party.

SECTION 2—SPECIFIC TERMS OF USE FOR DATA

The following table is a list of Esri Products that have specific Terms of Use in addition to the general Terms of Use as set forth in the General License Terms and Conditions of the License Agreement. Additional Terms of Use are listed immediately below this table and are referenced by number(s), shown in parenthesis, immediately following each Product name in the following table:

<ul style="list-style-type: none">▪ ArcGIS Online Data (1)▪ StreetMap Premium for ArcGIS (2)▪ StreetMap for Windows Mobile (2)▪ StreetMap for ArcPad (2)▪ StreetMap Premium for ArcGIS for Transportation Analytics (2; Addendum 1, Note 1)▪ HERE Traffic Data (11; Addendum 1, Note 1)▪ Data Appliance for ArcGIS (3)	<ul style="list-style-type: none">▪ Business Analyst/Location Analytics Data (4, 10)▪ Demographic, Consumer, and Business Data ("Esri Data") (5, 10)▪ Data and Maps for ArcGIS (6)▪ Esri MapStudio Data (9)
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Notes:

- If you do not license any of the Products in the table above, these Additional Terms of Use do not apply to you.
- Additional Terms of Use for Products ONLY APPLY to the Products that reference them, by number, in the table above.

Additional Terms of Use for Products listed above:

1. *ArcGIS Online Data:* Software and Online Services that reference this note enable access to ArcGIS Online Data. ArcGIS Online Data is provided for use solely in conjunction with Licensee's authorized use of Esri Software and Online Services. Use of ArcGIS Online Data that is accessible through non-fee-based ArcGIS Online accounts may be subject to usage limits.

ArcGIS Online Basemap Data:

- a. ArcGIS Online basemap data can be taken offline through Esri Content Packages and subsequently delivered (transferred) to any device for use exclusively with licensed Esri Client Software.
- b. ArcGIS Online basemap data is subject to an aggregate limit of fifty million (50,000,000) transactions during any twelve (12)-month period. Transactions include both basemap and geosearch Transactions. "Transaction" is defined in the Documentation at ArcGIS Resources at <http://links.esri.com/ago1/transactiondef>.

Licensee may use Data accessed through ArcGIS Online as permitted under the terms of the URLs referenced below:

- a. HERE data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
 - c. Data from i-cubed is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9946-icubed.pdf>.
 - d. Microsoft Bing Maps data is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/e-802-bing-mapsvcs.pdf>.
 - e. BODC bathymetry data is subject to the terms of use found at https://www.bodc.ac.uk/data/online_delivery/gebco/terms_of_use/.
 - f. MB-Research GmbH (MBR) Data: Users are prohibited from (i) using MBR Data, including, without limitation, European demographic data, consumer demand data, and postal and geographic boundaries, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from any database or other compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party or (ii) modifying or otherwise altering MBR Data without MBR's prior written consent, such consent to be granted or withheld at MBR's sole discretion.
 - g. D&B Data: May not be used for direct mailing or direct marketing purposes.
2. *StreetMap Premium for ArcGIS: StreetMap for ArcGIS for Windows Mobile; StreetMap for ArcPad; StreetMap Premium for ArcGIS for Transportation Analytics:* These Products, collectively referred to as "StreetMap Data," may be used for mapping, geocoding, and point-to-point routing purposes but is not licensed for dynamic, real-time routing guidance. For instance, StreetMap Data may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed. StreetMap Data may not be used to perform synchronized multivehicle routing or route optimization. StreetMap Data acquired for use with ArcGIS for Desktop, ArcGIS for Server, ArcPad, or ArcGIS for Transportation Analytics may only be used with the Product for which the StreetMap Data was acquired, and may not be used with any other Product. StreetMap for Windows Mobile Data is licensed for use solely on mobile devices or in conjunction with ArcGIS for Mobile applications. StreetMap Data may include data from either of the following sources:
- a. HERE data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html. HERE data, when licensed for use in StreetMap Premium for ArcGIS for Transportation Analytics, permits tracking, synchronized multivehicle routing, and route optimization.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
3. *Data Appliance for ArcGIS:* Data provided with Data Appliance is subject to the following additional terms of use:
- a. HERE data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-teleatlas_use_data.pdf.
 - c. Data from i-cubed is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9946-icubed.pdf>.
 - d. BODC bathymetry data is subject to the terms of use found at https://www.bodc.ac.uk/data/online_delivery/gebco/terms_of_use/.
4. *Business Analyst Data; Location Analytics Data:* Business Analyst Data is provided with Esri Business Analyst (Server, Desktop) or accessed through Business Analyst Online and Community Analyst. Location Analytics Data is accessed through Business Analyst Online API, Community Analyst API, and Location Analytics API. The Data is subject to the following additional terms of use:
- a. The Data is provided for Licensee's internal business use solely in connection with Licensee's authorized use of Software. Subject to Addendum 2, Note 10, Business Analyst Data, including derivative products (e.g., geocodes), are restricted for use only in conjunction with the respective Business Analyst extension. Location Analytics Data is restricted for use only in conjunction with Business Analyst Online API, Community Analyst API, and Location Analytics API. If Licensee orders a license for Esri Business Analyst or Business Analyst

- (Canadian Edition), or for Business Analyst Online API, Community Analyst API, and Location Analytics API, with a subset of the national dataset (i.e., Region, State, Local), Licensee may use only the licensed subset, not any other portion of the national dataset.
- b. Business Analyst Data provided with Business Analyst for Server may not be cached or downloaded by client applications and devices.
 - c. Infogroup data is subject to the following terms of use: "Users" means end users of Esri Software. Any use of the Infogroup database not expressly authorized in this License Agreement is strictly prohibited. Without limiting the generality of the foregoing, Users are expressly prohibited from (i) sublicensing or reselling the Infogroup database; (ii) using or allowing third parties to use the Infogroup database for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from any mailing list, geographic or trade directories, business directories, classified directories, classified advertising, or other compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party; (iii) using the Infogroup database in any service or product not specifically authorized in this License Agreement or offering it through any third party; (iv) disassembling, decompiling, reverse engineering, modifying, or otherwise altering the Infogroup database or any part thereof without Infogroup's prior written consent, such consent to be granted or withheld at Infogroup's sole discretion; or (v) using the Infogroup database for any direct marketing purposes.
 - d. HERE data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html.
 - e. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/-/media/Files/Pdfs/legal/pdfs/9792-telcatlas_use_data.pdf.
 - f. MBR Data: Users are prohibited from (i) using MBR Data, including, without limitation, European demographic data, consumer demand data, and postal and geographic boundaries, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from any database or other compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party or (ii) modifying, or otherwise altering MBR Data without MBR's prior written consent, such consent to be granted or withheld at MBR's sole discretion.
 - g. D&B Data: May not be used for direct mailing or direct marketing purposes.
5. *Demographic, Consumer, and Business Data ("Esri Data")*: This Data category includes the Updated Demographic Database, Census Data, American Community Survey (ACS) Data, Consumer Spending, Business Summary, Business Locations, Retail MarketPlace, and Tapestry Segmentation datasets. Esri Data may be used independently of Software or Online Services. Each dataset is available under one or more of the following license types:
- **Single Use**: Permits access by a single user to access the data for development or internal use on a desktop computer or server. No Internet access is permitted.
 - **Internal Site/Server—Known User**: Permits access by named (known) users for Licensee's internal use. Web access by those named users is permitted.
 - **Public website (noncommercial)—Constituent-Served Model**: Permits a municipal government Licensee to use the Data in an externally facing Value-Added Application serving a defined population, provided Licensee does not generate revenue from such use.
 - **Public website (commercial) Known User**: Permits Licensee to use the Data in an externally facing Value-Added Application for use by named users and to generate revenue from such Value-Added Application.
 - **Public website (commercial) Anonymous User**: Permits Licensee to use the Data in an externally facing Value-Added Application for general use and to generate revenue from such Value-Added Application.
6. *Data and Maps for ArcGIS*: The Data is available to licensed users of ArcGIS for Desktop, ArcGIS for Server, and ArcGIS Online. Data and Maps for ArcGIS is provided for use solely in conjunction with authorized use of ArcGIS for Desktop, ArcGIS for Server, and ArcGIS Online.
- a. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at <http://www.esri.com/legal/redistribution-rights>, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
 - b. StreetMap Data may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.

7. Reserved.
8. Reserved.
9. *MapStudio Data*: Use of this Data is subject to the following terms and conditions:
 - a. HERE data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html.
 - b. Tele Atlas/TomTom data is subject to the terms of use at http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9792-telcatlas_use_data.pdf.
 - c. Data from i-cubed is subject to the terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/j9946-icubed.pdf>.
 - d. D&B Data: May not be used for direct mailing or direct marketing purposes.
10. Licensee may include Data in hard-copy or read-only format ("Outputs") in presentation packages, marketing studies, or other reports or documents prepared for third parties. Licensee shall not resell or otherwise externally distribute Outputs in stand-alone form.
11. *ArcGIS for Transportation Analytics—HERE traffic data option*: This online data service is available as an option for use exclusively with ArcGIS for Transportation Analytics. Use of this data is subject to the following terms and conditions:
 - a. HERE traffic data is subject to the terms of use at http://corporate.navteq.com/supplier_terms.html.
 - b. No automatic routing or rerouting based on traffic conditions is permitted without the Navigation add-on.
 - c. HERE traffic data may not be archived and may be delivered only for end users' personal, near-term use, not to exceed one (1) twenty-four (24)-hour period.
 - d. HERE traffic data may not be used to display or broadcast in any FM/AM/HD radio broadcast or television broadcast or through any RDS delivery method.
 - e. HERE traffic data may not be used with or incorporated into any traffic system that provides voice traffic reports to inbound callers.
 - f. HERE traffic data may not be used to develop or commercially make available a text-to-voice e-mail alert or message or voice mail application using any portion of HERE traffic data.

**ADDENDUM 3
ONLINE SERVICES ADDENDUM
(E300-3)**

This Online Services Addendum ("Addendum 3") sets forth the terms of Licensee's use of Online Services and includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 3 takes precedence over conflicting General License Terms and Conditions of the License Agreement. Esri reserves the right to update the terms from time to time. Section 1 of this Addendum 3 contains terms applicable to all Online Services; Section 2 contains common terms applicable to specific Online Services.

SECTION 1—COMMON TERMS OF USE OF ONLINE SERVICES

ARTICLE 1—DEFINITIONS

In addition to the definitions provided in the License Agreement, the following definitions apply to this Addendum 3:

- a. "Anonymous Users" refers to anyone who has public access to any part of the Licensee's Content or Value-Added Applications, which Licensee has published through the use of the Sharing Tools, included with Licensee's licensed use of the Software or Online Services, as further described in Section 2 of this Addendum.
- b. "API" means application programming interface.
- c. "App Login Credential" means a system-generated application login and associated password, provided by registering a Value-Added Application with ArcGIS Online, which can be embedded in a Value-Added Application to enable the Value-Added Application to access and use Online Services.
- d. "ArcGIS Website" means <http://www.arcgis.com> and any related or successor websites.
- e. "Content" means Data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, software applications, and Developer Tools.
- f. "Developer Tools" means software development kits (SDKs), APIs, software libraries, code samples, and other resources.
- g. "Licensee's Content" means any Content that Licensee, a Licensee's Named User, or any other user submits to Esri in connection with Licensee's use of the Online Services, any results derived from the use of Licensee's Content with Online Services, and any Value-Added Applications Licensee builds with Developer Tools and deploys with Online Services. Licensee's Content excludes any feedback, suggestions, or requests for Product improvements that Licensee provides to Esri.
- h. "Named User(s)" means individuals to whom Licensee specifically enables private access to Online Services and Value-Added Applications through Licensee's Online Services account. Named Users can be anyone whom Licensee authorizes to access Online Services, but only for the exclusive benefit of Licensee, for example, Licensee's employees, agents, consultants, or contractors. For Education Plan accounts, Named Users may include registered students. No other third parties may be Named Users. Named Users have private access to features of Online Services that are not publicly accessible to Anonymous Users. Named Users have unique, individual login credentials.
- i. "Online Content" means Content hosted or provided by Esri as part of Online Services, including any Map Services, Task Services, Image Services, and Developer Tools and excluding Content provided by third parties that Licensee accesses through Online Services.
- j. "Service Components" means each of the following: Online Services, Online Content, ArcGIS Website, Developer Tools, Documentation, or related materials.
- k. "Sharing Tools" means publishing capabilities included with Online Services and ArcGIS Website that allow Licensee to make Licensee's Content and Value-Added Applications available to third parties and/or Anonymous Users.
- l. "Value-Added Application" means an application developed by Licensee for use in conjunction with the authorized use of any Software, Data, or Online Services.
- m. "Web Services" as used under Licensee's existing signed license agreement, if any, means Online Services and any Content delivered by such Online Services.

ARTICLE 2—USE OF ONLINE SERVICES

2.1 License to Online Services. Esri grants Licensee a personal, nonexclusive, nontransferable, worldwide license to access and use Online Services as set forth in the applicable Ordering Documents (i) for which the applicable license fees have been paid (if required), (ii) for Licensee's own internal use by Licensee and Licensee's Named Users or Anonymous Users (if applicable), and (iii) in accordance with this License Agreement and the licensed configuration on file as authorized by Esri.

2.2 Provision of Subscription Online Services. For subscription Online Services, Esri will

- a. Provide Online Services to Licensee in accordance with the Documentation;
- b. Provide customer support in accordance with Esri's standard customer support policies and any additional support Licensee may purchase; and
- c. Use commercially reasonable efforts to ensure that Online Services will not transmit to Licensee any Malicious Code, provided Esri is not responsible for Malicious Code that was introduced to Online Services through Licensee's account or through third-party Content.

2.3 Licensee's Responsibilities.

- a. Licensee shall be responsible for Named Users' compliance with this Agreement. Licensee and Licensee's Named Users or Anonymous Users (if applicable) are the only persons authorized to access Online Services through Licensee's accounts. Named Users' login credentials are for designated Named Users only and may not be shared among multiple individuals. Named Users' login credentials may be reassigned to new Named Users if the former users no longer require access to Online Services.
- b. Licensee and Licensee's Named Users are responsible for maintaining the confidentiality of Authorization Codes, Access Codes, Named Users' login credentials, or any other method that is provided that enables access to Online Services and for ensuring that unauthorized third parties do not access Licensee's account. Licensee will immediately notify Esri if Licensee becomes aware of any unauthorized use of Licensee's account or any other breach of security.
- c. Licensee is solely responsible for the development and operation of Licensee's Content and Value-Added Applications and the manner in which it chooses to allow or provide use, access, transfer, transmission, maintenance, or processing ability to or by others, including any use and access to Products, and any subsequent end user, end use, and destination restrictions issued by the US government and other governments.

2.4 Prohibited Uses of the Online Services. In addition to the prohibited uses or except as provided under the License Agreement, Licensee shall not (i) attempt to gain unauthorized access to the Online Services or assist others to do so; (ii) use Online Services for spamming, to transmit junk e-mail or offensive or defamatory material, or for stalking or making threats of physical harm; (iii) use Online Services to store or transmit software viruses, worms, time bombs, Trojan horses, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment ("Malicious Code"); (iv) mirror, reformat, or display Online Services in an attempt to mirror and/or make commercial use of Online Services except to the degree that Online Services directly enable such functionality; (v) share the client-side data cache derived from Online Content with other licensed end users or third parties; (vi) distribute the client-side data cache derived from Online Services to third parties; (vii) manually or systematically collect or scrape (screen or web scraping) Content from Online Services; (viii) use ArcGIS Online Map Services, Geocoding Services, or Routing Services in communication with any in-vehicle navigation system installed in a vehicle (this does not include portable navigation devices) or that provides real-time, dynamic routing to any device (for instance, these services may not be used to alert a user about upcoming maneuvers such as warning of an upcoming turn or to calculate an alternate route if a turn is missed); or (ix) incorporate any portion of Online Services into a commercial product or service unless the commercial product adds material functionality to Online Services. Licensee shall not use Online Services to (a) infringe or misappropriate any third-party proprietary rights or privacy rights; (b) process, store, transmit, or enable access to any information, data, or technology controlled for export under the International Traffic in Arms (ITAR) regulations; (c) violate any export law; or (d) store or process Content online that is unclassified controlled technical information (UCTI) under DFARS 204.73, or is protected health information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA). Licensee shall not attempt to (a) probe, scan, or test the vulnerability of the Online Services or to breach any security or authentication measures used by the Online Services; or (b) benchmark the availability, performance, or functionality of Online Services for competitive purposes. Licensee is responsible for any fines, penalties, or claims against Esri, including reasonable attorneys' fees, arising out of Licensee's noncompliance with any of the foregoing prohibitions.

2.5 Evaluations. Esri may provide licenses to use certain Services for Licensee's internal evaluation purposes. Such licenses continue until the stated evaluation period expires or until Licensee purchases a subscription, whichever occurs first. IF LICENSEE DOES NOT CONVERT LICENSEE'S EVALUATION LICENSE TO A SUBSCRIPTION PRIOR TO EXPIRATION OF THE EVALUATION TERM, ANY CONTENT AND CUSTOMIZATIONS THAT LICENSEE UPLOADED OR MADE DURING THE EVALUATION TERM WILL BE PERMANENTLY LOST. IF LICENSEE DOES NOT WISH TO PURCHASE A SUBSCRIPTION, LICENSEE MUST EXPORT SUCH CONTENT BEFORE THE END OF LICENSEE'S EVALUATION PERIOD.

2.6 Modifications of Online Services. Esri reserves the right to alter or modify Online Service(s) and related APIs at any time. If reasonable under the circumstances, Esri will provide thirty (30) days' prior notice of any material alterations.

2.7 Discontinuation or Deprecation of Online Services. Esri reserves the right to discontinue or deprecate an Online Service(s) and related API(s) at any time. If reasonable under the circumstances, Esri will provide ninety (90) days' prior notice of any Online Service discontinuation or deprecation. Esri will attempt to support any deprecated APIs for up to six (6) months, unless there are legal, financial, or technological reasons not to support them.

2.8 If any modification, discontinuation, or deprecation of Online Service(s) causes a material, adverse impact to Licensee's operations, Esri may at its sole discretion attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Licensee may cancel its subscription to Online Services, and Esri will issue a prorated refund.

2.9 Attributions. Licensee is not permitted to remove any Esri or Esri's licensors' logos or other attribution associated with any use of ArcGIS Online Services.

ARTICLE 3—TERM AND TERMINATION

The following supplements Article 5—Term and Termination of the License Agreement:

3.1 Term of Subscriptions. The term of any subscription will be provided in the Ordering Document under which it is purchased or in the Online Services description referenced therein.

3.2 Subscription Rate Changes. Monthly subscription rates may be increased upon thirty (30) days' notice. Esri may increase rates for subscriptions with a term greater than one (1) month by notifying Licensee at least sixty (60) days prior to expiration of the then-current subscription term.

3.3 Service Interruption. Licensee's access (including access on behalf of Licensee's customers) to and use of Online Service(s) may be temporarily unavailable, without prior notice, for any unanticipated or unscheduled downtime or unavailability of all or any portion of Online Services, including system failure or other events beyond the reasonable control of Esri or its affiliates.

3.4 Service Suspension. Esri and its affiliates shall be entitled, without any liability to Licensee, to suspend access to any portion or all of Online Services at any time on a service-wide basis (a) if Licensee breaches the License Agreement; (b) if Licensee exceeds usage limits and fails to purchase additional license capacity sufficient to support Licensee's continued use of Online Services as described in Article 5 of this Addendum; (c) if there is reason to believe that Licensee's use of Online Service(s) will adversely affect the integrity, functionality, or usability of the Online Service(s); (d) if Esri and its licensors may incur liability by not suspending Licensee's account; (e) for scheduled downtime to conduct maintenance or make modifications to Online Service(s); (f) in the event of a threat or attack on Online Service(s) (including a denial-of-service attack) or other event that may create a risk to the applicable part of Online Services; or (g) in the event that Esri or its affiliates determine that Online Services (or portions thereof) are prohibited by law or otherwise that it is necessary or prudent to do so for legal or regulatory reasons. If feasible under these circumstances, Licensee will be notified of any Service Suspension beforehand and allowed reasonable opportunity to take remedial action.

3.5 Esri is not responsible for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Licensee or any Licensee customer may incur as a result of any Service Interruption or Service Suspension.

ARTICLE 4—LICENSEE'S CONTENT, FEEDBACK

4.1 Licensee's Content. Licensee retains all right, title, and interest in Licensee's Content. Licensee hereby grants Esri and Esri's licensors a nonexclusive, nontransferable, worldwide right to host, run, and reproduce Licensee's Content solely for the purpose of enabling Licensee's use of Online Services. Without Licensee's permission, Esri will not access, use, or disclose Licensee's Content except as reasonably necessary to support Licensee's use of Online Services, respond to Licensee's requests for customer support, or troubleshoot Licensee's account or for any other purpose authorized by Licensee in writing. If Licensee accesses Online Services with an application provided by a third party, Esri may disclose Licensee's Content to such third party as necessary to enable interoperation between the application, Online Services, and Licensee's Content. Esri may disclose Licensee's Content if required to do so by law or pursuant to the order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure. It is Licensee's sole responsibility to ensure that Licensee's Content is suitable for use with Online Services and for maintaining regular offline backups using the Online Services export and download capabilities.

4.2 Removal of Licensee's Content. Licensee will provide information and/or other materials related to Licensee's Content as reasonably requested by Esri to verify Licensee's compliance with this License Agreement. Esri may remove or delete any portions of Licensee's Content if there is reason to believe that uploading it to, or using it with, Online Services violates this License Agreement. If reasonable under these circumstances, Esri will notify Licensee before Licensee's Content is removed. Esri will respond to any Digital Millennium Copyright Act take-down notices in accordance with Esri's Copyright Policy, available at http://www.esri.com/legal/dmca_policy.

4.3 Sharing Licensee's Content. If Licensee elects to share Licensee's Content using Sharing Tools, then Licensee acknowledges that it has enabled third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Licensee's Content through Online Services. **ESRI IS NOT RESPONSIBLE FOR ANY LOSS, DELETION, MODIFICATION, OR DISCLOSURE OF LICENSEE'S CONTENT RESULTING FROM USE OR MISUSE OF SHARING TOOLS OR ANY OTHER SERVICE COMPONENTS. LICENSEE'S USE OF SHARING TOOLS IS AT LICENSEE'S SOLE RISK.**

4.4 Retrieving Licensee's Content upon Termination. Upon termination of the License Agreement or any trial, evaluation, or subscription, Esri will make Licensee's Content available to Licensee for download for a period of thirty (30) days unless Licensee requests a shorter window of availability or Esri is legally prohibited from doing so. Thereafter, Licensee's right to access or use Licensee's Content with Online Services will end, and Esri will have no further obligations to store or return Licensee's Content.

ARTICLE 5—LIMITS ON USE OF ONLINE SERVICES; SERVICE CREDITS

Esri may establish limits on the Online Services available to Licensee. These limits may be controlled through Service Credits. Service Credits are used to measure the consumption of ArcGIS Online services made available through Licensee's account. The maximum Service Credits provided with Licensee's ArcGIS Online account will be addressed in the applicable Ordering Document. Esri will notify Licensee's account administrator when Licensee's Service consumption reaches approximately seventy-five percent (75%) of the Service Credits allocated to Licensee through Licensee's subscription. Esri reserves the right to suspend Licensee's account when consumption reaches one hundred percent (100%) of the Service Credits allocated to Licensee's subscription. Licensee's access to the account will be restored immediately upon the completion of Licensee's purchase transaction for additional Service Credits for the subscription account.

ARTICLE 6—ONLINE CONTENT; THIRD-PARTY CONTENT AND WEBSITES

6.1 Online Content. ArcGIS Online Data is included as a component of Online Services and is licensed under the terms of the License Agreement.

6.2 Third-Party Content and Websites. Online Services and ArcGIS Website may reference or link to third-party websites or enable Licensee to access, view, use, and download third-party Content. This Agreement does not address Licensee's use of third-party Content, and Licensee may be required to agree to different or additional terms in order to use third-party Content. Esri does not control these websites and is not responsible for their operation, content, or availability; Licensee's use of any third-party websites and third-party Content is *as is*, without warranty, and at Licensee's sole risk. The presence of any links or references in Online Services to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

SECTION 2—TERMS OF USE FOR SPECIFIC ONLINE SERVICES

The following table is a list of Esri Products that have specific Terms of Use in addition to the general Terms of Use as set forth in the General License Terms and Conditions of the License Agreement. Additional Terms of Use are listed immediately below this table and are referenced by number(s), shown in parentheses, immediately following each Product name in the following table (in some cases, the Additional Terms of Use referenced may be found in a separate Addendum, as noted):

<ul style="list-style-type: none"> ▪ ArcGIS Online (1; 2; Addendum 2, Note 1; Addendum 2, Note 6) ▪ Esri Business Analyst Online (3; Addendum 2, Note 1; Addendum 2, Note 4) ▪ Business Analyst Online Mobile (3; Addendum 2, Note 1; Addendum 2, Note 4) ▪ Esri Business Analyst Online API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (5; Addendum 2, Note 1; Addendum 2, Note 4) ▪ Community Analyst (3; Addendum 2, Note 1; Addendum 2, Note 4) 	<ul style="list-style-type: none"> ▪ Esri Community Analyst API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (5; Addendum 2, Note 1; Addendum 2, Note 4) ▪ Esri Location Analytics API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (5; Addendum 2, Note 1; Addendum 2, Note 4) ▪ Esri Redistricting Online (Addendum 2, Note 1) ▪ Esri MapStudio (4; Addendum 2, Note 1; Addendum 2, Note 9)
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Notes:

- If you do not license any of the Products in the table above, these Additional Terms of Use do not apply to you.
- Additional Terms of Use for Products ONLY APPLY to the Products that reference them by number in the table above.

Additional Terms of Use for Products listed above:

1. In addition to the common terms of use of Online Services:
 - a. Licensee may use Licensee's Esri Online Services account to build a Value-Added Application(s) for Licensee's internal use.
 - b. Licensee may also provide access to Licensee's Value-Added Application(s) to third parties, subject to the following terms:
 - i. Licensee may allow Anonymous Users to access Licensee's Value-Added Application(s).
 - ii. Licensee shall not add third parties as Named Users to Licensee's ArcGIS Online account for the purpose of allowing third parties to access Licensee's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
 - iii. Licensee shall not provide a third party with access to ArcGIS Online Services enabled through Licensee's ArcGIS Online account other than through Licensee's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
 - iv. Licensee is responsible for any fees accrued through the use of Licensee's ArcGIS Online account by third parties accessing Licensee's Value-Added Application(s). This includes Service Credits required to support third-party Online Services usage and any additional subscription fees for Online Services as required.
 - v. Licensee is solely responsible for providing technical support for Licensee's Value-Added Application(s).
 - vi. Licensee will restrict third-party use of Online Services as required by the terms of this Agreement.
 - vii. Licensee may not remove or obscure any trademarks or logos that would normally be displayed through the use of the Online Services without written permission. If Licensee is using non-Esri application development tools to build applications that access Esri's Online Services, Licensee must include attribution acknowledging that its application is using Online Services provided by Esri. Guidelines are provided in the Documentation.
 - viii. Licensee may not embed a Named User credential into a Value-Added Application. For all ArcGIS Online Plan accounts other than Public Plan accounts and ArcGIS for Developer Plan accounts, an App Login Credential may only be embedded into Value-Added Applications that are used to provide public, anonymous access to ArcGIS Online. Licensee may not embed or use ArcGIS Online App Login Credentials in Value-Added Applications for internal use. Value-Added Applications used internally require Named User login credentials.

- c. For ArcGIS Online ELA, ArcGIS Online for Organizations, and paid Developer Plan accounts:
- i. Licensee is also permitted to:
 - (1) Charge an additional fee to third parties to access Licensee's Value-Added Application(s), subject to the terms of this License Agreement; and
 - (2) Transfer Licensee's Value-Added Application(s) to a third party's ArcGIS Online account, subject to the following:
 - (a) Licensee may charge third parties a fee for Licensee's Value-Added Application(s).
 - (b) Licensee is not obligated to provide technical support for the third party's general use of its ArcGIS Online account not related to Licensee's Value-Added Application(s).
 - (c) Licensee is not responsible for any fees accrued through the third party's use of Licensee's Value-Added Application(s) that have been transferred to or implemented on the third party's ArcGIS Online account.
 - (d) Licensee is not permitted to invite licensees of an ArcGIS Online Public Plan to participate in private groups. This restriction also applies to licensees of Education Plan accounts and NPO/NGO Plan accounts.
- d. For ArcGIS Online Public Plan accounts, Development and Testing Plan accounts, Education Plan accounts, and NPO/NGO use of ArcGIS Online for Organizations accounts: Licensee is not permitted to charge an additional fee to third parties to access Licensee's Value-Added Application(s) or generate more than incidental advertising revenue as a consequence of the deployment or use of the Value-Added Application(s). Charging a fee to access Licensee's Value-Added Application(s) or generating more than incidental advertising revenue requires an ArcGIS Online ELA, ArcGIS Online for Organizations, or paid Developer Plan account.
- e. For ArcGIS Online Public Plan accounts:
- i. Public Plan accounts are licensed for the personal use of an individual. Any use of Public Plan accounts by an individual for the benefit of a for-profit business or a government agency is prohibited.
 - This restriction does not apply to educational institutions when used for teaching purposes only, qualified NGO/NPO organizations, and press or media organizations. Individuals affiliated with these specific types of organization are permitted to use ArcGIS Online Public Plan accounts for the benefit of their affiliated organization(s).
 - ii. Public Plan account Licensees are not permitted to create private groups or participate in any private group created by licensees of ArcGIS Online for Organizations, Education, NGO/NPO, or ELA Plans.
- f. For ArcGIS Online Development and Testing Plan accounts:
- i. Subject to the terms of this License Agreement, Licensee is permitted to:
 - (1) Allow third parties to access Licensee's Value-Added Application(s) powered by their Development and Testing Plan account, but only if the Value-Added Application(s) is published for public access and is not used for the benefit of a for-profit business or government agency.
 - This restriction does not apply to educational institutions when used for teaching purposes only, qualified NGO/NPO organizations, and press or media organizations. Individuals affiliated with these specific types of organizations are permitted to use ArcGIS Online Development and Testing Plan accounts for the benefit of their affiliated organization(s).
 - ii. Development and Testing Plan account licensees are not permitted to create private groups or participate in any private group created by licensees of ArcGIS Online for Organizations, Education, NGO/NPO, or ELA Plans.

- g. For ArcGIS Online paid Developer Plan accounts or Development and Testing Plan accounts:
- i. Licensee is limited to one million (1,000,000) basemap and one million (1,000,000) geosearch Transactions per month in conjunction with Licensee's account. "Transaction" is defined in the Documentation at ArcGIS Resources at <http://links.esri.com/agol/transactiondef>.
 - h. Licensee is not permitted to be the licensee of an ArcGIS Online account for or on behalf of a third party.
 - This restriction does not apply to education institutions that are permitted to be licensees of ArcGIS Online Public Plan accounts on behalf of registered students of the education institution for teaching purposes only. Education institutions are also permitted to provide access to a single ArcGIS Online Public Plan account to more than one (1) registered student when used for teaching purposes only.
 - i. The terms "Online ELA account," "Organizations Plan account," "Developer Plan account," "Public Plan account," "Development and Testing Plan account," and "Education Plan account" refer to different types of ArcGIS Online accounts.
2. Terms of Use for ArcGIS Online Services:
- a. World Geocoding Service: Licensee may not store the geocoded results generated by the service without an ArcGIS Online account.
 - b. Infographics Service: Licensee may use the data accessible through this service for display purposes only. Licensee is prohibited from saving any data accessible through this service.
3. Licensee may not display or post any combination of more than one hundred (100) Esri Business Analyst Online or Community Analyst Reports and maps on Licensee's external websites.
4. Licensee may create, publicly display, and distribute maps in hard copy and static electronic format for news-reporting purposes, subject to any restrictions for ArcGIS Online Data set forth in [Addendum 2, Note 1](#).
5. Licensee may develop Value-Added Applications that use Business Analyst Online API, Community Analyst API, or Location Analytics API to access, query, create, display, and redistribute Reports and resultant static, electronic maps to end user(s) of Licensee's Value-Added Applications. If Licensee has an anonymous user subscription, Licensee may provide access to Licensee's Value-Added Application(s) to anonymous end users, limited to the number of Reports Licensee has paid for. End user(s) of Licensee's Value-Added Applications may use Reports and maps for internal purposes only and not for further redistribution. "Report(s)" means any formatted output created by the Business Analyst Online API, Community Analyst API, or Location Analytics API Products, which includes PDF, CSV, Excel, HTML, and XML formats. Licensee shall not redistribute any Data in vector formats. Licensee and Licensee's end users are prohibited from using Reports or other output generated by Business Analyst Online API, Community Analyst API, or Location Analytics API as a substitute for Business Analyst Online API, Community Analyst API, or Location Analytics API, including, but not limited to, (i) combining and including such output in one or more files or databases and (ii) making such output available through a multiuser computer application. For clarity, end users may save Reports locally for their own internal use. For publicly facing Value-Added Applications developed with Business Analyst Online API (Canadian Edition), Reports and Data may be produced or exported in static formats only (e.g., JPEG, PDF); Licensee must ensure that Licensee's Value-Added Application does not allow Canadian Edition Reports to be exported as CSV, XML, HTML, or XLS files or in any other format that readily enables extraction or manipulation of the file's contents. Licensee is solely responsible for providing technical support for Licensee's Value-Added Application(s).

**ADDENDUM 4
LIMITED USE PROGRAMS
(E300-4)**

This Limited Use Programs Addendum ("Addendum 4") applies to any Licensee that has been qualified by Esri or its authorized distributor to participate in any of the programs described herein. This Addendum 4 includes the Licensee's existing master license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> (as applicable, the "License Agreement"), which is incorporated by reference. This Addendum 4 takes precedence over conflicting terms of the License Agreement. Esri reserves the right to update the terms from time to time.

<ul style="list-style-type: none">▪ Educational Programs (1)▪ Grant Programs (2)	<ul style="list-style-type: none">▪ Home Use Program (3)▪ Other Esri Limited Use Programs (4)
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Notes

1. **Educational Programs:** Licensee agrees to use Products solely for educational purposes during the educational use Term. Licensee shall not use Products for any administrative use unless Licensee has acquired an administrative use Term License. Licensee shall not use Products for revenue-generating or for-profit purposes.
2. **Grant Programs:** Licensee may use Products only for Noncommercial purposes. Except for cost recovery of using and operating the Products, Licensee shall not use Products for revenue-generating or for-profit purposes.
3. **ArcGIS for Home Use Program:**
 - a. All ArcGIS for Home Use Program Products are provided as Term Licenses and are identified on Esri's Home Use Program website found at <http://www.esri.com/software/arcgis/arcgis-for-home> or Licensee's authorized distributor's website.
 - b. Esri grants to Licensee a personal, nonexclusive, nontransferable, Single Use License, without the authorization to install or use a second copy, solely to use the Products provided under the ArcGIS for Home Use Program as set forth in the applicable Ordering Documents (i) for which the applicable license fees have been paid, (ii) for Licensee's own Noncommercial internal use, (iii) in accordance with this License Agreement and the configuration ordered by Licensee or as authorized by Esri or its authorized distributor, and (iv) for a period of twelve (12) months unless terminated earlier in accordance with the License Agreement. "Noncommercial" means use in a personal or individual capacity that (i) is not compensated in any fashion; (ii) is not intended to produce any works for commercial use or compensation; (iii) is not intended to provide a commercial service; and (iv) is neither conducted nor funded by any person or entity engaged in the commercial use, application, or exploitation of works similar to the licensed Products.
 - c. **Installation Support.** Installation Support for a period of ninety (90) days is included with ArcGIS for Home Use. As discussed further on the Esri or authorized distributor's website, Esri provides technical support in response to specific inquiries. Installation Support will apply only to unmodified Software. Software is provided only for standard hardware platforms and operating systems supported by Esri as described in the Software Documentation. Esri is not responsible for making or arranging for updates to interfaces for nonstandard devices or custom applications.

Esri Installation Support will be provided in compliance with the Esri ArcGIS for Home Use Installation Support document on the Esri website at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/home-use-installation-support.pdf>. Esri supports users solely with the installation of Esri Software. Esri's Support website is at <http://support.esri.com/en/support>. Support provided by an authorized distributor will be in accordance with the distributor's technical support program terms and conditions.

4. **Other Esri Limited Use Programs:** If Licensee acquires Products under any limited use program not listed above, Licensee'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 Addendum 4. All such program terms are incorporated herein by reference.



ENTERPRISE ADVANTAGE PROGRAM AGREEMENT (E125M)

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

ARTICLE 1—DEFINITIONS

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

"Incident" means a communication via telephone or e-mail by Licensee to Support Services regarding technical problems with Software, Data, or Documentation.

"Map Data" means any digital dataset(s), including geographic data, vector data coordinates, raster data, or associated tabular attributes supplied or used in the performance of this EAP Agreement.

"PSS" means Premium Support Services.

"Renewal Period" means any one (1)-year extension of this EAP Agreement.

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

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

ARTICLE 2—ENTERPRISE ADVANTAGE PROGRAM

2.1 Enterprise Advantage Program Description. The Enterprise Advantage Program is provided on an order-by-order, annual subscription basis. EAP is a menu of services, training, and support that provides Licensee with the flexibility to select components that best meet its needs. The Enterprise Advantage Program components include the following:

- a. *Technical Advisor.* An Esri Technical Advisor who has expertise in Esri GIS software capabilities and has the ability to analyze and assess optimal solutions in the context of GIS enterprise implementation will be assigned to Licensee. Licensee will receive up to the number of ordered Technical Advisor hours. Licensee may elect to retain additional Technical Advisor Services for a supplemental price. Technical Advisors are not substitutes for services provided by Esri Support Services or Professional Services. Licensee will continue to contact Esri Support Services as the first point of contact for all technical support inquiries. If a custom application or other services are required, Licensee will need to enter into an agreement for use of Esri Professional Services. If Licensee requests the Technical Advisor to come to Licensee's site, Licensee will pay reasonable travel costs. The Technical Advisor in coordination with the Account Manager shall
 - (1) Advise Licensee on GIS strategies, architectures, and product selection;
 - (2) Advise Licensee on training needs, available business partner solutions, consulting support requirements, and business case development;
 - (3) Act as Licensee's technical advocate in dealing with Esri;
 - (4) Participate in annual account reviews; and
 - (5) Serve as point of escalation if Licensee is not satisfied with the resolution of an incident through Esri Support Services.

- b. *Annual Account Review.* Licensee may attend a one (1)-day annual GIS strategy and account review with Licensee's Account Manager and Technical Advisor at Esri headquarters in Redlands, California. Key Esri technical and industry specialists may also attend the review to answer questions and discuss Licensee's ideas and suggestions regarding Esri software and support strategies. Licensee is responsible for its own travel expenses. As an option to hosting the review in Redlands, Esri may conduct the review at the appropriate Esri regional office as mutually agreed, and Esri's Redlands staff will have the option to participate either by telephone or by webcast.

c. *Learning and Services Credits*

- (1) Licensee will receive the number of ordered Learning and Services Credits. Licensee may use the credits toward any combination of consulting services support, training, premium support, or related travel expenses as described below.
- (2) Licensee may order, for an additional price, additional Learning and Services Credits either (i) as a block of fifty (50) credits or (ii) as a block of one hundred (100) credits, not to exceed a total of two hundred (200) credits during the Term or each Renewal Period of this EAP Agreement. If Licensee requests additional Learning and Services Credits over and above the initial two hundred (200) credits provided for in this paragraph, Licensee must order Learning and Services Credits along with additional Technical Advisor Services.
- (3) Learning and Services Credits may be exchanged as follows:

Technical Consulting Services Support consisting of review of technology strategy, systems design, prototyping, and other general technical consulting services support activities (Any project-related activities requiring a deliverable other than consulting time will be scoped, budgeted, and scheduled through a separate agreement.)	1 credit = 2 hours
Annual Premium Support Unlimited	75 credits = Unlimited Incidents
Instructor-Led Training (one [1] person at an Esri Facility) or Virtual Classroom	1 credit = 1 day
Client Site or Private Esri Site Training Event (for up to twelve [12] people)	9 credits = 1 day
Additional Student	0.75 credits = 1 day
Coaching Services (for up to fifteen [15] people)	9 credits = 1 day
Virtual Campus Annual User License	1 credit = 480 Virtual Campus dollars
Related Esri travel and per diem expenses	as quoted

- (4) Unused Learning and Services Credits may be carried over to future years as long as Licensee remains an Esri Enterprise Advantage Program member. If this EAP Agreement expires (exclusive of termination for default), any unused credits will expire six (6) months after the expiration of this EAP Agreement; however, the Technical Advisor Services will not be available during this post-Term period.
- (5) Esri will provide EAP Contact with a monthly report outlining usage of Enterprise Advantage Program Learning and Services Credits to date.

d. *Exclusive Enterprise Webcast.* Esri will provide an e-mail invitation to the EAP Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.

2.2 Learning and Services Credit Use

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

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

ARTICLE 3—LICENSE GRANT

3.1 Training. The terms of the Esri License Agreement shall be applicable to all Licensee course participants and for all of Esri's Software, Data, Web Services, and Documentation licensed for use in any training course to be conducted. Esri may issue temporary Software licenses when there is an insufficient number of Software licenses available at Licensee's training facility. Upon conclusion of the training event, Licensee shall uninstall the temporary Software licenses and return to Esri any media provided.

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

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

ARTICLE 4—WARRANTIES AND DISCLAIMERS

4.1 Warranties and Disclaimers

- a. All services, training, and Work Products will be provided in a professional and workerlike manner.
- b. Esri warrants for a period of thirty (30) days after delivery of the services that the services will conform to professional and technical standards of the software industry.
- c. **Map Data Disclaimer.** Map Data may contain some nonconformities, defects, errors, or omissions. MAP DATA IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, Esri and its licensors do not warrant that the Map Data will meet Licensee's needs or expectations, that the use of the Map Data will be uninterrupted, or that all nonconformities can or will be corrected. Esri and its licensors are not inviting reliance on the Map Data and Licensee should always verify actual Map Data.

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

ARTICLE 5—LIMITATION OF LIABILITY

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

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

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

5.4 Notwithstanding anything above Esri and Licensee agree that Article 5, Sections 5.1, 5.2 & 5.3 above are subject to the State of Tennessee Terms and Conditions, Event Number 32110-8228, Paragraph 13

ARTICLE 6—COMPENSATION

6.1 The fees for the initial term of the EAP are set forth in the MPA Price List. Esri shall invoice Licensee as quoted for the Enterprise Advantage Program upon receipt of Licensee's order and annually in advance. Fees for additional Learning and Services Credits or Technical Advisor Services will be invoiced upon receipt of Licensee's order. Licensee shall pay Esri within thirty (30) calendar days of receipt of invoice.

6.2 Pricing for annual program renewals and new or additional Esri service offerings are at the catalog price submitted with Esri's bid on Event #8228. Any additional Esri service offerings not included in the catalog at the time of bid may be submitted and reviewed and approved by the State, if applicable.

6.3 Licensee may elect to use Learning and Services Credits for actual travel expenses of Esri employees plus a standard burden. Meals will be charged on a per diem basis. Esri travel will be in accordance with the Federal Travel Regulation (FTR) limits.

ARTICLE 7—TERM AND TERMINATION

7.1 Reserved.

7.2 Licensee may terminate this EAP Agreement at any time without cause or may simply choose not to renew the Enterprise Advantage Agreement relationship.

7.3 Licensee may terminate this EAP Agreement for Esri's breach of a material term upon thirty (30) days' notice to Esri and opportunity to cure. If termination is due solely to Esri's failure to perform a material term of this EAP Agreement, Esri will refund a prorated share of amounts paid to Esri equal to the credits not used by Licensee.

7.4 Esri may terminate this agreement for Licensee's breach of a material term upon thirty (30) days' notice to Licensee and opportunity to cure, or terminate this EAP Agreement in the event of termination or expiration of the Enterprise Advantage Agreement relationship as set forth in that Enterprise Advantage Agreement. In such event, Esri is not obligated to refund any amounts paid for credits not used.

7.5 Upon termination or expiration of this EAP Agreement

- a. Except when termination results from non-renewal, all outstanding Learning and Services Credits shall be subject to cancellation, acceptance, or rejection at the sole discretion of Esri.
- b. In the event of termination for a material breach, the due dates of all invoices for amounts owed by Licensee to Esri shall be accelerated automatically so that such amounts become due and payable on the effective date of termination, regardless of the payment term provisions set forth in this EAP Agreement.
- c. Except where a provision specifically provides otherwise, any cause of action or claim of one (1) party accrued to or to accrue because of any breach or default of the other party and any accrued license rights shall survive to the degree necessary to permit their complete fulfillment or discharge.

ARTICLE 8—CONFIDENTIALITY

8.1 Confidential Information. It may be necessary for Esri or Licensee to disclose to the other party certain confidential information under this EAP Agreement. The access code or password for the PSS website, information disclosed at review sessions, and any Work Product are confidential information of Esri. Licensee data contained in the Esri PSS website database is confidential information of Licensee. Each party shall use the confidential information described above only for

exchanging information needed to provide the PSS contemplated by this EAP Agreement. Within sixty (60) days of termination of this EAP Agreement, each party shall return or destroy and provide a certification of destruction of the confidential information of the other party. Licensee will comply with this Article 8 to the extent that it is not in conflict with TN Public Records Act and if Licensee receives a public records request, Licensee will provide Esri with an opportunity to provide a legal argument as to why this information should not be released.

8.2 Work Product

- a. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Work Product delivered only in Secure Formats. For Work Product delivered in source code or other human-readable formats, Licensee will have met its obligations under this EAP Agreement if its disclosure of Work Product is limited to such items in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling such Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.
- b. Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advance written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.
- c. The disclosures permitted under this section shall not relieve Licensee of its obligation to maintain the Work Product in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Work Product to employees or third parties as permitted in the preceding paragraph, Licensee shall inform such employees or third parties of the obligations in this EAP Agreement and obtain their agreement to be bound by them.

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

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

ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

9.1 Premium Support Services. Should the Licensee choose to use Learning and Services Credits for PSS, the terms of this Article 3 shall also apply.

9.2 Premium Support Availability. Licensee may use Learning and Services Credits for PSS (annually) for any product covered under Esri's standard maintenance subscription, provided that Licensee is current on maintenance for applicable Esri Software. Esri shall provide PSS for the Term of the EAP Agreement.

9.3 Premium Support Description. PSS shall provide (1) a designated Premium Support Coordinator ("PSC"); (2) unlimited telephone and e-mail support accessible to Licensee twenty-four hours per day, seven days per week, three hundred sixty-five days per year (24/7/365); (3) Priority Incident Management; and (4) other additional enhanced support and services.

9.4 Premium Support Coordinator. Esri shall assign a PSC to Licensee. The assigned PSC shall work directly with Licensee's Authorized Contact ("LAC") and shall oversee all of Licensee's Premium Support Incidents. Licensee may select up to two (2) individuals to report Premium Support Incidents to Support Services and work directly with PSC regarding all such Incidents.

The PSC shall

- a. Be familiar with Licensee's GIS software architecture and infrastructure to perform the scope of support pursuant to this Article 3;

- b. Verify that all open Premium Support Incidents of Licensee are prioritized above Incidents opened pursuant to standard maintenance;
- c. Work closely with Senior Support Analysts toward the resolution of all open Premium Support Incidents; and
- d. Provide LAC with a daily status update on all open Premium Support Incidents or as agreed upon by PSC and Licensee.

Esri may replace PSC during the Term of the EAP Agreement with a written notification to Licensee.

9.5 Telephone and E-mail Support. Esri shall provide support to Licensee for Software by telephone or e-mail and shall include the following:

- a. LAC may open an Incident by calling Support Services or logging the Incidents via the PSS website. An e-mail acknowledgment shall be sent to LAC for a new Incident logged via the PSS website. The assigned PSC shall use commercially reasonable efforts to call or send an e-mail response within one (1) hour of receipt of a new Incident to notify Licensee that the logged Premium Support Incident is in the initial stage of review;
- b. LAC shall have the ability to log Premium Support Incidents via the telephone. Incidents logged in this manner will receive personalized messaging and Priority Incident Management; and
- c. PSC shall be available to LAC from 5:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, except on Esri holidays. In the event that PSC is not available during such time, LAC's telephone calls and e-mails will be routed to a Senior Support Analyst who can assist LAC. PSC will be notified of the Incident. Telephone calls and e-mails during all other times (after hours, weekends, and Esri holidays) will be routed to Senior Support Analysts.

9.6 Priority Incident Management. Priority Incident Management shall include the following:

- a. Premium Support Incidents reported by LAC will be given priority handling after the initial Premium Support Incident is created and documented;
- b. Software defects affecting Licensee will be a priority for discussion of the User Advocacy Group; and
- c. For identified Software defects that are approved for an out-of-cycle hot fix or patch, PSC shall assist in presenting the hot fix or patch to LAC and verify that the delivered hot fix or patch addresses the reported issue.

9.7 Other Additional Enhanced Support and Services. Esri shall provide additional offerings to Licensee as a part of PSS, which include, but are not limited to, the following:

- a. *Premium Support Website Access.* LAC shall have access to the PSS website. LAC shall have the ability to log and track the status and completion of all identified Premium Support Incidents on this website. LAC may log and view their Incidents and access other PSS-related tools and information through this website.
- b. *System/Environment Profile.* Through the PSS website, Licensee shall have access to an Esri database to enter and maintain data regarding Licensee's equipment, applications, and skill sets associated with Esri technology.
- c. *PSS Software Alert Newsletter.* Esri shall provide to Licensee a news bulletin that discusses key current issues in Software being investigated by Esri.
- d. *Quarterly Teleconference Meeting.* Esri and Licensee shall conduct a quarterly teleconference meeting to discuss Licensee's Premium Support Incidents. Esri shall make available the assigned Account Manager, PSC, Premium Support Manager, and other Esri staff as deemed necessary by Esri.

Details of all PSS offerings can be found at www.esri.com/services/pss/components.html.

9.8 PSS Restrictions and Exclusions

- a. *Excluded Software.* PSS is not available for third-party software. Esri is not responsible for errors attributable to third-party software used in conjunction with or built upon Software.
- b. *English Language.* All communications will be conducted in the English language except by agreement of both parties.
- c. *Acknowledgment.* Licensee acknowledges and agrees that the report of an error or defect of any Software is not a guarantee that it can or will be corrected. At Esri's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by Esri.
- d. *Hardware Support.* Esri does not provide support for hardware, including but not limited to, graphics cards, monitors, plotters, graphics printers, digitizers, and modems, except to answer questions regarding how standard, supported devices interface with Software.

e. **Exceptions to PSS.** The following are not covered by PSS:

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

ARTICLE 10—CONSULTING SERVICES SUPPORT TERMS AND CONDITIONS

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

10.2 Patents and Inventions

- a. Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of this Agreement. The parties shall jointly own any Invention(s) made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Software, Licensee hereby grants and agrees to grant to Esri an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use.
- b. Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.
- c. A joint owner ("Assigning Owner") electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such its rights in such Inventions to the other joint owner ("Beneficial Owner") as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.
- d. Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party which is hereby given to Esri for Inventions relating to the Software and shall otherwise not be unreasonably withheld by either party.

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

ARTICLE 11—TRAINING TERMS AND CONDITIONS

11.1 Training. Should Licensee choose to use Learning and Services Credits for training or coaching services, the terms of this Article 4 shall also apply.

11.2 Training Location. Training may be conducted at Licensee's site, at an Esri Learning Center or via the web.

11.3 Course Descriptions. The Esri Software training courses to be conducted, their location, the dates during which the courses are to be conducted, the number of participants, and registration requirements are set forth in the *Esri Training* catalog located on the Esri training website (<http://training.esri.com>). All courses shall be conducted in substantial conformity with the course descriptions outlined on the Esri training website. Esri reserves the right to modify course content when necessary due to Software technical capabilities or limitations. Licensee may utilize coaching services immediately before or immediately following an Esri training course to familiarize Licensee's student with the software or to review and practice course concepts with an instructor's guidance.

11.4 Esri's Responsibilities

- a. Esri shall provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Students") on scheduled dates. Esri will provide each student with a course manual, where applicable.
- b. Esri will confirm Learning Center training event scheduled dates approximately ten (10) business days prior to the training event start date.
- c. Esri will confirm Licensee Site training events upon receipt of completed Client-Site Training Request Form and intended payment method.

11.5 Licensee's Responsibilities

- a. Licensee must ensure the protection of Esri's copyrights. Licensee shall not copy or distribute, or permit a third party to copy or distribute, any of Esri's training material(s).
- b. Licensee is not authorized to resell seats to an Esri training event unless explicitly authorized in writing by Esri.
- c. Licensee must ensure that all Students have received confirmation from Esri to participate in an Esri training event. An unregistered Student is not permitted to view or participate in a Virtual Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Students.
- d. Licensee must confirm that all registered Students meet the applicable minimum prerequisites for the applicable training event set forth on Esri's training website.
- e. Licensee must submit registration with a confirmed payment commitment at least seven (7) business days before the training event start date. If Licensee submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- f. US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List). To meet these export requirements, Licensee must submit to the Esri Training Event Assistant a list of the names of Students who are to attend any training event. Licensee must submit the list of Student names to Esri at least three (3) business days before the training event start date. Any Student whose name is found on any of the various US Government Denied Persons lists will not be permitted to attend training.
- g. Licensee is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export licensing requirements, course scheduling changes, or cancellations.
- h. Licensee must provide written notice to Esri's Customer Service at service@esri.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of such change(s) prior to the training event start date.
- i. Students may not use audio or video recording equipment within the classroom without prior written approval from Esri. Esri reserves the right to record a classroom training event for future rebroadcast.
- j. Licensee is responsible to ensure that it adheres to the course, facility, and equipment as well as Internet bandwidth and connectivity requirements for Esri Training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.
- k. Where the Esri Mobile Lab equipment is utilized at Licensee's domestic site, the following terms apply:
 - Upon receipt, Licensee must immediately report any damage to the Mobile Lab equipment to the Training Event Assistant.
 - Licensee must keep the Mobile Lab equipment in a secure, locked area between training event sessions.
 - Licensee must ensure that only registered Students use the Mobile Lab equipment.
 - Licensee is responsible for any and all loss of, damage to, or theft of the Mobile Lab equipment while in Licensee's possession.
 - Licensee warrants that it maintains sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law.
 - The Esri instructor will check all Mobile Lab equipment following the completion of training. Any damage to the Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Licensee by written notice. Licensee hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
 - Licensee shall make the Mobile Lab equipment available for freight pickup immediately upon conclusion of the Esri training event.

11.6 Cancellation and Rescheduling Policy

Individual Student Seats

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without three (3) business days' notification, an additional, nonrefundable transfer and data processing fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center training event to another one (1) time at no additional charge provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a training event provided Esri's Customer Service is notified three (3) business days in advance. If three (3) business days' notification is not provided, Student may be charged the full Student Seat fee.

Client Site/Private Class/Coaching Services (Training Event)

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service is notified three (3) business days in advance of the training event start date.
- A training event may be rescheduled by the Licensee provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. If appropriate notice of rescheduling is provided, Licensee is responsible for reasonable travel expenses and shipping costs.
- A training event may be canceled by the Licensee provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. If appropriate notice of cancellation is provided, Licensee is responsible for any reasonable travel expenses and shipping costs. If a training event is canceled without appropriate notice, Licensee is responsible for the full training event fee.

If cancellation of a training event is necessary due to Force Majeure as described in Article 12 below, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

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

ARTICLE 12—GENERAL PROVISIONS

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

12.2 Nonsolicitation of Contractor Personnel. Neither Party shall solicit for hire any of the other Parties employees who are associated with efforts called for under this contract during the term and for a period of one (1) year thereafter. The foregoing shall in no way restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

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Special Terms and Conditions

1. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason; the State is obligated to pay Contractor for the EA Fee that applies annually in the year of such termination. For example: if the fee each year of a 3 year term is \$235,000.00, and the State terminates the Contract under this Article 1 in month 6 of the first year of the term, the State is obligated to pay Contractor \$235,000.00. The State shall give the Contractor at least thirty (30) days written notice before the termination date. In no event shall the State be liable to the Contractor for compensation for any goods or services not requested by the State. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
2. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
3. Assignment and Subcontracting. Except for a sale of all or substantially all of the assets of Contractor, the Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
4. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

5. Insurance. Contractor shall maintain an appropriate level of insurance under this Contract and provide the State a certificate of insurance ("COI") evidencing such coverages. The COI shall be provided promptly after request.

6. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
7. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
 - a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

8. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
9. Deleted.
10. Deleted.
11. The following terms and conditions replace the terms and conditions in Addendum NO. 1 to The State of Tennessee Sourcing Event ID No. 32110-000008228 Esri Agreement No. 2014MPA1439

Section 2. STATE OF TENNESSEE, STANDARD TERMS AND CONDITIONS, EVENT NO. 32110-00000828

Term and Condition# 13 is deleted and replaced with:

The Parties agree that this modified paragraph below shall replace the standard term and condition #13:

In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the value of the Contract, which is stated in Appendix B EA FEE SCHEDULE, as may be amended by written agreement of the parties, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intention torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.

Section 3. STATE OF TENNESSEE, SPECIAL TERMS AND CONDITIONS, EVENT NO. 32110-00000828 is deleted in its entirety.