

**THIRD AMENDATORY AGREEMENT
(311738)**

This **THIRD AMENDATORY AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.**, a California corporation, whose address is 380 New York Street, Redlands, California 92373 ("Esri" or the "Consultant") collectively, the "Parties." This Third Amendatory Agreement is effective on March 4, 2017.

WITNESSETH:

WHEREAS, the Parties entered into an Agreement dated June 26, 2008 Esri contract 2008ELA9 (the "Agreement"), relating to a City wide GIS license agreement; and

WHEREAS, the Parties amended the Agreement on April 7, 2011 and on May 24, 2014; and

WHEREAS, the Parties wish to further amend the Agreement to extend the period of performance and to update pricing, product list, terms and conditions as set forth in this Third Amendatory Agreement; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. Section 7.1 Term is modified to add the following new sentence:

"The term of the ELA is extended for an additional three-year period beginning March 4, 2017 and expiring on March 3, 3020 unless this ELA is terminated earlier as provided herein."

2. For the extended period beginning March 4, 2017 to March 3, 2020 the following Agreement documents are updated with new documents, each attached hereto and incorporated herein by reference:

- Appendix A, Products and Deployment Schedule;
- Appendix B, ELA Fee Schedule;
- Esri Maintenance and Support Program (J10044); and
- Esri Enterprise Advantage Program ("EEAP") Addendum (E125)

3. Paragraph 1 (i) of the Agreement General Terms and Conditions, entitled **MAXIMUM**

FUNDING & PAYMENT LIABILITY, is updated with the following”

“(i) Any other provision of this ELA notwithstanding, for the extended period beginning March 4, 2017 and expiring on March 3, 2020 in no event shall the City be liable for payment under the Agreement for any amount in excess of THREE MILLION TWO HUNDRED SIXTY-NINE THOUSAND THREE HUNDRED AND FIVE DOLLARS (\$3,269,305.00) (“Maximum Contract Amount”). Esri acknowledges that any work performed by it beyond that specifically authorized by the City is performed at Esri’s risk and without authorization under this Agreement.”

4. This Third Amendatory Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

5. Except as herein amended, the Agreement as previously amended is affirmed and ratified in each and every particular.

EXHIBIT LIST

Appendix A, Products and Deployment Schedule;

Appendix B, ELA Fee Schedule;

Esri Maintenance and Support Program (J10044); and

Esri Enterprise Advantage Program ("EEAP") Addendum (E125) (Esri contract #311747)

**APPENDIX A
PRODUCTS AND DEPLOYMENT SCHEDULE**

For the extended period beginning March 4, 2017 and expiring on March 3, 2020, City may Deploy the ELA Products up to the total quantity of licenses indicated below to Licensees during the term of this ELA.

Table A-1, ELA Products—Unlimited Quantities

Item	Total Qty./Seats to Be Deployed
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: 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	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	Uncapped
ArcGIS Runtime extensions: ArcGIS 3D Analyst, ArcGIS Network Analyst, and ArcGIS Spatial Analyst (single use)	Uncapped
Mapping and Charting solutions: Esri Production Mapping for Desktop	Uncapped

Table A-2, ELA Products—Limited Quantities

Product	Rolled-In Qty. (if applicable)	Qty./Seats to Be Deployed	Total
Esri Developer Network (EDN): annual subscriptions	N/A	2	2
Esri Roads and Highways Desktop Extensions	2	0	2
Esri Roads and Highways for Server Extension: (Production)	1	0	1
Esri Roads and Highways for Server Extension: (Staging)	1	0	1
ArcPad	7	0	7

Product	Number of Subscriptions	Named Users per Subscription	Annual Credits per Subscription
ArcGIS Online , Level 4 annual subscription for Year 2017 only.	1	250	37,500
ArcGIS Online , Level 5 annual subscription for Year 2018 and Year 2019 only.	1	500	62,500
Business Analyst Online : annual subscription	1	5	N/A

**APPENDIX B
ELA FEE SCHEDULE**

For the extended period beginning March 4, 2017 and expiring on March 3, 2020, the ELA Fee is \$1,080,000. The ELA Fee is in consideration of the ELA Products, ELA Maintenance, Esri Enterprise Advantage Program and Esri International User Conference registrations.

	Year 4 March 4, 2017 to March 3, 2018	Year 5 March 4, 2018 to March 3, 2019	Year 6 March 4, 2019 to March 3, 2020	ELA Fee
Payments	\$360,000	\$360,000	\$360,000	\$1,080,000

*Esri Enterprise Advantage Program (EEAP) annual subscription includes: -100 Technical Advisory hours; -100 Learning and Services Credits; -One day planning session	1
Number of Esri International User Conference Registrations per Year	10
Number of Tier 1 Help Desk Individuals	5
Number of Sets of Backup Media, if Requested	5
Support Incidents for EDN	One 10-Pack/Year
Term of ELA pursuant to Section 7.1	Three years from March 4, 2017

*Unused Learning and Services Credits expire 24 months after the expiration of the ELA.
Unused Technical Advisor hours terminate upon expiration of the ELA.



ESRI MAINTENANCE AND SUPPORT PROGRAM

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

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

In addition to Maintenance, customers in the United States of America may purchase Premium Support Services (PSS), which enhance the benefits of Maintenance, including access to a designated Technical Account Manager (TAM), the ability for Premium LAC to convert a Case into a PSS Case at any time, priority Case management, and additional enhanced support and services. For Premium Support Services details, contact Esri or visit Esri's Premium Support web page at <http://support.esri.com/other-resources/SupportServices>.

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

ARTICLE 1—DEFINITIONS

The terms used are defined as follows:

- a. "**Authorized Caller(s)**" means the Customer-designated individual who may contact Esri to request standard technical support (e.g., to report technical issues or request product assistance).
- b. "**Case**" previously referred to as Incident, means the Esri record that contains technical notes and documentation of all related interactions between Customer and Esri Support Services for a given technical issue. Depending on how the request was initiated, Esri will provide phone, email, or chat confirmation of the Case creation. The Case will be given a unique identification number for reference and tracking.
- c. "**Customer**" means Licensee as defined in the License Agreement.
- d. "**Customer Number**" means a unique number created by Esri to identify each Customer office or site and that will be included on the invoice and/or packing list with any shipment.
- e. "**Hot Fix(es)**" means a single fix in one of the specific functional areas that is critical to Customer (e.g., Customer's production has stopped) Esri will send the Hot Fix to Customer as soon as Esri completes a technical feasibility assessment. With the Hot Fix, Esri will deliver documentation that will clearly identify the technical problems addressed and any limitations. Esri will conduct limited testing on Hot Fixes before providing them to Customer. Esri will incorporate Hot Fixes into subsequent service packs. Hot Fixes do not provide new functionality. Hot Fixes will only function with the associated Esri product type and release.

- f. **"Patch(es)"** means a single fix (see Hot Fix[es]) or a set of related fixes that are in a specific functional area of the Esri product and will apply to multiple Esri customers. Once a Patch is released, it will be incorporated into a subsequent service pack release. Esri conducts limited testing on Patches before providing them to customers. Patches do not provide new functionality. Patches will only function with the associated Esri product type and release.
- g. **"Premium LAC"** means up to two (2) individuals selected by Customer to report a PSS Case and work directly with the TAM.
- h. **"PSS Case(s)"** means a Case that is opened as or elevated to PSS via Customer request or technical support's elevation process.
- i. **"Qualifying Product(s)"** means Esri's unmodified Products or Products that were modified by Esri or under Esri's direction and are eligible for some or all of the Maintenance benefits licensed to Customer subject to the terms and conditions of the License Agreement signed by Esri and Customer.
- j. **"Self-Paced E-Learning"** means a collection of self-paced learning resources for the ArcGIS Platform, accessible from the Esri Training website.
- k. **"Software Updates"** means a collection of files that enhance or correct a Qualifying Product and that will be available for Customer to download during the Maintenance term.
- l. **"TAM"** means the Technical Account Manager who will be the primary point of contact for the coordination and escalation of PSS Cases.

ARTICLE 2—PAYMENT, EXPIRATION, RENEWAL, AND REINSTATEMENT

2.1 Payment. Esri will automatically provide Maintenance for the first twelve (12) consecutive months from the licensed date of Qualifying Products. Thereafter, Customer can purchase Maintenance and/or PSS in advance, on an annual basis with payment terms of net thirty (30) days, unless otherwise agreed to in another agreement between Customer and Esri. Customer may issue a purchase order for its initial PSS order at any time during a Maintenance term.

2.2 Term Expiration. Esri will send Customer a notice of expiration one hundred twenty (120) days before the term expires. Esri will issue a quote ninety (90) days before the expiration date ("Renewal Quote"). The Renewal Quote will be sent via email or fax and provide Customer with a breakdown of the Products licensed and PSS due to expire and the associated fees to renew. If Esri does not receive a purchase order or payment prior to the expiration date, Esri will notify Customer that the term has expired. Esri will continue to provide standard technical support for an additional thirty (30) days, but Customer will no longer receive Software Updates released after the Maintenance term's expiration, or have access to PSS. If Customer does not reinstate Maintenance within thirty (30) days after the expiration date, Customer will no longer receive technical support. All other Maintenance benefits and Premium Support Services will end with the expiration of the Maintenance term.

2.3 Prorating Renewal Terms. If Customer has acquired multiple Qualifying Products throughout the course of a year, Esri will provide a single Renewal Quote with prorated fees and a common renewal term for all Qualifying Products and PSS (if applicable). The common renewal term will start on the earliest of the Qualifying Products' renewal dates.

2.4 Reinstatement Fee for Past Due Renewals. Esri will reinstate Maintenance and PSS (if applicable) if Customer sends a purchase order or payment within thirty (30) days of the expiration date. If Customer does not renew Maintenance or PSS (either as a stand-alone order or through the Esri Enterprise Advantage Program) within thirty (30) days of the expiration date but at a later date wants to reinstate Maintenance, Maintenance fees will include the Maintenance fees that Customer would have paid since the expiration date. Renewal Maintenance and PSS will be reinstated at the then-current pricing.

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

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

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

ARTICLE 4—STANDARD TECHNICAL SUPPORT

4.1 Scope of Standard Technical Support. During the Maintenance term, Qualifying Products will receive the level of technical support corresponding to the respective life cycle phase. Information on the Qualifying Product life cycle phase and the ArcGIS Product Life Cycle Support Policy can be found at <http://support.esri.com/en/content/productlifecycles>. Esri does not provide technical support for (a) sample applications; (b) patches received outside of a life cycle; or (c) hardware, graphics cards, monitors, plotters, graphics printers, digitizers, modems, or similar peripherals that are not provided by Esri. However, Esri does answer questions about how to interface Esri products with supported devices.

4.2 Authorized Callers. Customer may designate a limited number of Authorized Callers per Qualifying Product. Customer may replace Authorized Callers at any time by notifying Esri Support Services or through the My Esri site. If Customer has an enterprise agreement or site license agreement with Esri, Authorized Callers will be identified by name in the corresponding agreement.

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

- a. *By Telephone.* Each technical support request will be logged as a Case. After a Case is logged, the caller will be connected to a technical specialist who will be dedicated to work on the technical issue. If a technical specialist is unavailable, the Case will be placed in a dispatch queue for the next available technical specialist.

- b. *By Chat.* To initiate a chat consultation, click the Chat with an Analyst button at <http://support.esri.com/en/webform-chat>. Chat-based requests can only be made during Esri Support Services operating hours, listed in Article 7 below. Each technical support request will be logged as a Case. After a Case is logged, Authorized Caller will be connected to a technical specialist. If a technical specialist is unavailable, Authorized Caller can opt to receive an email notification when the next technical specialist is available.
- c. *By Web Form.* Authorized Caller may request technical support by completing an online web form available at <http://support.esri.com/en/webform>. Requests made through this channel are received twenty-four (24) hours a day, seven (7) days a week, but are logged and assigned to a technical specialist the next business day. Esri will respond on a first come, first served basis. All Cases reported by web form are given the same priority and level of attention as those reported by telephone.

4.4 Esri Online Support Center and My Esri. Esri has created a self-help support website center for Authorized Caller to submit technical issues; chat with technical specialists; track technical support Cases through the Esri Customer Care portal; and view technical articles, updated product documentation, blogs, links to forums, and technology announcements. The Esri Support website can be found at <http://support.esri.com>. My Esri can be found at <https://my.esri.com>.

4.5 Technical Support Case Reporting/Logging. For most Qualifying Products, Authorized Caller may contact Esri as many times as needed. All requests for technical support must contain detailed information about the technical issue. Authorized Caller must be prepared to provide as much of the following information as possible:

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

4.6 Standard Technical Support Response Time. Esri will respond to a technical support request during Esri Support Services operating hours. Esri will make commercially reasonable efforts to respond and provide status updates to Authorized Caller according to the severity level of the technical issue as shown in the table below. Authorized Caller may request that the technical specialist change a technical issue severity level, but requests for critical- and high-severity levels must be made via telephone.

Severity	Criteria	Response Time	Status Updates
Critical	<ul style="list-style-type: none"> ▪ Causes a severe impact to business operations (e.g., critical business processes are disabled) ▪ No workaround available 	Six (6) business hours	Esri will provide status every business day until closure of the Case.

High	<ul style="list-style-type: none"> ▪ Causes a noncritical impact to business operations (e.g., significant degradation of quality or handling of data) ▪ No stable workaround available 	Eight (8) business hours	Esri will provide status every business day until closure of the Case.
Medium	<ul style="list-style-type: none"> ▪ Causes a minor impact to business operations 	Two (2) business days	Esri will provide status every three (3) business days until closure of the Case.
Routine	<ul style="list-style-type: none"> ▪ Causes little or no impact to business operations 	Two (2) business days	Esri will provide status every five (5) business days until closure of the Case.

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

ARTICLE 5—PREMIUM SUPPORT SERVICES (US CUSTOMERS ONLY)

If Customer pays for and utilizes Premium Support Services, Customer will receive (i) access to a designated TAM, (ii) the ability for Premium LAC to convert a Case into a PSS Case at any time, (iii) priority Case management, and (iv) additional enhanced support and services.

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

- a. TAM will (i) become familiar with Customer's geographic information system (GIS) software architecture and infrastructure; (ii) verify that all open PSS Cases are prioritized above Cases opened under Maintenance; (iii) work closely with Premium LAC and Esri senior support analyst toward the resolution of all open PSS Cases; (iv) provide Premium LAC with a daily status update on all PSS Cases or as agreed to by TAM and Customer; and (v) make reasonable efforts to be available from 5:00 a.m. to 5:00 p.m. (Pacific time), Monday through Friday, except on Esri holidays.
- b. Esri may replace TAM with another TAM of similar skill and background, by written notice to Customer.
- c. All communications will be conducted in the English language unless by written agreement of both parties.

5.2 Priority Case Management. Priority Case management will include the following protocol:

- a. Cases reported by Premium LAC and converted to a PSS Case will be given priority handling after the initial Case is created and documented (excluding chat Cases); and
- b. The Customer advocacy group within Esri support services, created to improve Esri's ability to understand and respond to technical issues, will give priority to Qualifying Product defects affecting Customer.

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

ARTICLE 6—CONFIDENTIALITY

All data, conversations, and Cases are confidential in nature. Esri will treat all Cases (including PSS Cases) as confidential, using the same degree of care, but no less than reasonable care, as Esri uses to protect its own confidential information. Within ninety (90) days of closing a Case, Esri will delete or destroy all information provided within a Case, unless otherwise requested by Licensee, in writing, to delete specific datasets more than ninety (90) days closing a Case. This obligation to delete or destroy excludes information retained in backup media or other archival records maintained in the ordinary course of business that are not readily accessible by Esri personnel, or information retained for future review by Esri's development team.

ARTICLE 7—CONTACTING ESRI

Esri Support Services

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

Tel.: 909-793-3774

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

Support Web Form:

<http://support.esri.com/en/webform>

Email: support@esri.com

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

Esri Corporate Offices Esri Customer Service

Tel.: 909-793-2853

Tel.: 888-377-4575,

Fax: 909-793-5953

extension 5

Email: info@esri.com

Email: service@esri.com

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

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



**ESRI ENTERPRISE ADVANTAGE PROGRAM
(EEAP)
ENTERPRISE AGREEMENT (EA)
ADDENDUM (E125M-EA)**

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

EEAP Agreement No. 311747

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

Esri offers the Esri Enterprise Advantage Program to Licensees that are current on Esri software maintenance and implementing or have implemented a geographic information system (GIS) enterprise solution based on Esri technology. Licensee agrees to contract with Esri for and Esri agrees to provide Licensee with certain enhanced consulting services, training, Premium Support Services (PSS), and Managed Services available under the Esri Enterprise Advantage Program for the authorized Licensee location as described herein. The Esri Enterprise Advantage Program is not designed for Esri to provide project-specific professional services such as custom application or database development for solutions or applications. If these types of professional services are required, Licensee will need to enter into an agreement for use of Esri Professional Services.

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

ARTICLE 1—DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

through Esri's support processes.

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

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

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

ARTICLE 2—ESRI ENTERPRISE ADVANTAGE PROGRAM

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

- a. *Technical Advisor.* Licensee will receive up to the number of Technical Advisor hours ordered. Licensee may elect to retain additional Technical Advisor hours for a supplemental price.
- b. *Annual Account Planning Session.* A one (1)-day annual account planning and review meeting.
- c. *Technical Work Plan.* A collaboratively developed document designed to drive the program's implementation through definition of Licensee's GIS vision, goals, and objectives.
- d. *Learning and Services Credits.* Licensee will receive the number of Learning and Services Credits ordered. Licensee may use the credits toward any combination of consulting services support, training, PSS, or related travel expenses. Licensee may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the following website: <http://www.esri.com/services/eeap/components#learning>. Esri will provide the Authorized EEAP Contact with a monthly report outlining usage of Esri Enterprise Advantage Program Learning and Services Credits to date.
- e. *Quarterly Technology Webcast.* Esri will provide an email invitation to the Authorized EEAP Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.

2.2 Learning and Services Credit Use

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

2.2.2 Authorization of Credit Use. Licensee will contact its Account Manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit to Licensee a Learning and Services Credit estimate by email for confirmation and authorization to

use the credits. This confirmation email or document is hereafter referred to as an Activity Description. The total credits quoted in the Activity Description will be drawn from the unused Learning and Services Credits available, in a single transaction, upon Esri's receipt of approval via email from the Authorized EEAP Contact.

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

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

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

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

ARTICLE 3—OWNERSHIP; LICENSE GRANT

3.1 For Training

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

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

additional copies.

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

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

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

3.2 For Work Product

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

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

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

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

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

interest in the Managed Services Environment.

3.5 Licensee Content

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

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

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

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

ARTICLE 4—WARRANTIES AND DISCLAIMERS

4.1 Warranties

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

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

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

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

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

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

4.1.5 Licensee warrants that Licensee Content will not

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

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

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

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

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

ARTICLE 5—LIMITATION OF LIABILITY

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

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

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

ARTICLE 6—COMPENSATION

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

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

6.3 For Esri travel-related expenses, Licensee may elect to do one of the following: (1) use Learning and Services Credits to pay for Esri travel-related expenses including Esri's standard handling fee or (2) request a separate invoice for Esri's travel-related expenses including Esri's standard handling fee. Esri will invoice for all meals (excluding incidental expenses) on a per diem basis in accordance with the per diem rates specified on the government General Services Administration (GSA) website at <http://gsa.gov/>.

ARTICLE 7—TERM AND TERMINATION

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

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

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

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

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

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

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

- their purchase date, or termination of the EEAP EA Addendum, whichever comes first;
- c. Unless Esri terminates this EEAP EA Addendum for Licensee's breach, Licensee retains the right to use any Training Materials and Work Product.

ARTICLE 8—CONFIDENTIALITY OBLIGATIONS

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

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

8.3 Obligations Pertaining to Work Product

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

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

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

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

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

ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

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

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

9.3 Premium Support Description. PSS shall provide

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

9.4 PSS Restrictions and Exclusions

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

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

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

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

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

ARTICLE 10—TRAINING TERMS AND CONDITIONS

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

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

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

10.3 Esri's Responsibilities. Esri will

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

10.4 Licensee's Obligations; Limitations

10.4.1 Licensee will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered student(s) will not be permitted to view or participate in an Online Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered student(s).

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

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

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

written notice. Licensee hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.

- g. Make the Esri Mobile Lab equipment available for freight pickup upon the conclusion of the training event.

10.5 Student Registration and Training Event Change Policy

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

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

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

- a. Training event reschedules and cancellations that occur without the three (3) business days' advance notice are subject to the full training event fee. Licensee will be responsible for all of Esri's reasonable travel expenses and shipping costs (including Esri Mobile Lab), for all rescheduled or canceled training events.
- b. Student substitutions that occur without the three (3) business days' advance notice are subject to a fee. Substitute Students must be from the same organization as the student being replaced.

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

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

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

10.7 Indemnification. Esri will indemnify and hold harmless Licensee and each of its directors and officers (collectively, the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys' fees, arising out of any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent

act or omission or willful misconduct by Esri or its directors, officers, employees, or agents while engaged in or as a result of the training or coaching services provided by Esri pursuant to this EEAP EA Addendum while on Licensee's site.

ARTICLE 11—MANAGED SERVICES TERMS AND CONDITIONS

11.1 Documentation. The Activity Description must define the following:

- a. The Hosting term—This is the duration in which the Managed Services Environment is available to Licensee via HTTP or HTTPS access through the Internet. The Hosting term does not begin until setup and deployment of the data and application are complete.
- b. Targeted system availability—"System availability" means that Licensee and associated End Users are able to have external HTTP or HTTPS access to the application and associated data content through the Internet. Examples of supported levels of system availability are ninety-five percent (95%), ninety-nine percent (99%), and ninety-nine point nine percent (99.9%). Not all Managed Services offerings include a targeted system availability.
- c. Number of anticipated requests—A request is made by an End User through a client (e.g., desktop computer, web application, mobile device) and sent to the server(s) that is set up in the Managed Services Environment by Esri and performs computational tasks on behalf of End User. An example of a common request used in a GIS is a map request. A map request is made every time a user pans, zooms, or queries a map service.
- d. Amount of data storage—"Data storage" refers to the components required to retain digital data, which is to be used and consumed in Licensee GIS applications and/or Online Services, and
- e. The quote for the applicable price in terms of Learning and Services Credits.

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

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

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

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

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

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

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

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

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

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

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

If feasible under these circumstances, Licensee will be notified of any service suspension

beforehand and allowed reasonable opportunity to take remedial action. In the event that Esri removes Licensee Content or suspends access to Managed Services Environment without prior notice, Esri will provide prompt written notice to Licensee unless prohibited by law.

ARTICLE 12—GENERAL PROVISIONS

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

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

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

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

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

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

12.8 Taxes. Licensee is exempt from state sales/use tax. The Certificate of Exemption for Colorado State Sales/Use Tax will be issued to Esri by Licensee. Services provided pursuant to this EEAP EA Addendum shall be free of such taxes. Licensee's excise tax exemption user account number is 98-02890-0000.

12.9 UCC Inapplicability. Any services provided under this EEAP EA Addendum will not be

governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

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

12.11 Insurance. Each party shall, throughout the term of this EEAP EA Addendum, obtain and maintain at its own cost and expense from a qualified insurance company an appropriate commercial general liability (CGL) insurance policy, including coverage for products liability, or a funded self-insurance program providing equivalent loss protection. Such policy shall provide protection against any and all claims, demands, and causes of action arising out of any error, omission, failure to perform, or defect, alleged or otherwise, of goods and services used in connection therewith or any use thereof. In accordance with the Colorado Governmental Immunity Act 24-10-101 et seq., as from time to time amended the amount of coverage or self-funding shall be in the minimum amount of \$350,000 per person/\$990,000 per occurrence.

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

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

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

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

Authorized EEAP Contact Information
(to be completed by Licensee)

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, ZIP: _____

Email: _____

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

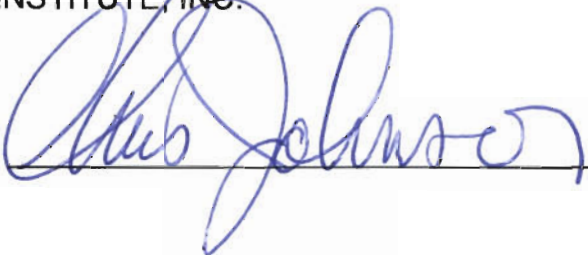
By _____

By _____



Contract Control Number: TECHS-CE84013-03

Contractor Name: ENVIRONMENT SYSTEMS RESEARCH
INSTITUTE, INC.

By:  _____

Name: Chris Johnson
(please print)

Title: Manager, Commercial & Government Contracts
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

