STATE OF UTAH - STATE COOPERATIVE CONTRACT

CONTRACT NUMBER MA 266

1. CONTRACTING PARTIES: This State Cooperative Contract ("Contract") is between the **Division of Purchasing and General Services (State)**, 3150 State Office Building, PO Box 141061, Salt Lake City, UT 84114-1061, an agency of the State of Utah, and the following CONTRACTOR:

Environmental Systems Research Institute, Inc
Name

380 New York Street
Address

Redlands | CA | 92373-8100
City | State | Zip

LEGAL STATUS OF CONTRACTOR
- ☐ Sole Proprietor
- ☐ Non-Profit Corporation
- ☒ For-Profit Corporation
- ☐ Partnership
- ☐ Government Agency

Contact Person Neil Tomlinson Phone #909-793-2853 x1340 Fax # Email ntomlinson@esri.com
Federal Tax ID# 95-2775732 Vendor #67045E Commodity Code #92005

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this Contract is to provide:
WSCA Public Cloud Hosting Services

3. CONTRACT PERIOD: Effective date: August 1, 2012 Termination date: July 31, 2015 unless terminated early or extended in accordance with the terms and conditions of this Contract. Renewal options (if any): 2 - 1 year each

4. PRICING AS PER THE ATTACHMENT C
PAYMENT TERMS: 30 Days
DAYS REQUIRED FOR DELIVERY: 10-14
MINIMUM ORDER: N/A
FREIGHT TERMS: F.O.B. Destination

5. The following documents are incorporated into this Contract by reference and attached:
ATTACHMENT A: Western States Contracting Alliance Standard Contract Terms and Conditions
ATTACHMENT B: Scope of Work
ATTACHMENT C: Contract Pricing
ATTACHMENT D: ESRI Terms and Conditions
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

6. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
   a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this Contract.
   b. Utah State Procurement Code, Procurement Rules, Solicitation #PR12063, WSCA Posting Public Cloud Hosting Services, dated 12/1/2011, including all addenda and amendments thereto; Request for Best and Final Offers, Solicitation #PR12063, dated 2/10/2012; CONTRACTOR's Proposal in response to Solicitation #PR12063, dated 1/18/2012; and CONTRACTOR's Best and Final Offer in response to Solicitation #PR12063, dated 2/28/2012.

IN WITNESS WHEREOF, the parties sign and cause this Contract to be executed.

CONTRACTOR

12/6/12
Contractor's Signature Date

CHRIS JOHNSON
Type or Print Name and Title
MANAGER, DOMESTIC CONTRACTS

STATE OF UTAH

12/7/12
Director, Div. of Purchasing & General Svs. Date

Rev 05/14/12

Attachment A
Standard Contract Terms and Conditions
Western States Contracting Alliance

DEFINITIONS:
"Participating Addendum" means an agreement to the terms and conditions set forth in this contract and any State specific terms and conditions agreed to by the Participating State and Contractor, which shall apply to Purchasing Entities within the jurisdiction of the State.

"Participating State(s)" means any State that has signed a Participating Addendum.

"Purchasing Entity(ies)" means (i) any State agency, County, City, political subdivision or other entity (including cooperatives) that is authorized by the Participating State Chief Procurement Official to procure under this contract and (ii) Federal government agencies.

"Special Terms" means Attachment D Esri Terms and Conditions.

PARTICIPANTS: The Western States Contracting Alliance (herein WSCA) is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Other States and their political subdivisions are also eligible to participate in WSCA contracts. Obligations under this contract are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

QUANTITY ESTIMATES: WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for the purposes of submitting proposals only and are not to be construed as a guarantee to purchase any amount.

SPECIFICATIONS: Any deviation from specifications must be clearly indicated by Contractor; otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the RFP states "No substitute". Proposals will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

ACCEPTANCE OR REJECTION OF PROPOSALS: WSCA reserves the right to accept or reject any or all proposals or parts of proposals, and to waive informalities therein.

SAMPLES: Generally, when required, samples will be specifically requested in the Request for Proposals. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated in testing, samples will be returned at a Contractor's request, transportation collect.

CASH DISCOUNT TERMS: Contractor may quote a cash discount based upon early payment. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

TAXES: Prices shall be exclusive of state sales and federal excise taxes. Where the Purchasing Entities are not exempt from sales taxes on sales within their state, the Contractor shall add the sales taxes on the billing invoice as a separate entry.

MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn prior to the time set for the opening of proposals. After the time set for the opening of proposals, no proposal may be modified or withdrawn unless done in response to a request for a "Best and Final Offer" from WSCA.

INFRINGEMENT INDEMNITY: The Contractor shall release, indemnify and hold the Purchasing Entity and its officers, agents and employees harmless from liability as a result of a third party claim, action, or demand that software, maintenance, training or services infringe a patent, copyright or trademark as set forth in the Special Terms.

AWARD: WSCA may award multiple contracts as the result of this solicitation. Awards shall be made to the responsible Contractor(s) whose proposal is determined to be the most advantageous to WSCA, taking into consideration price and the other evaluation factors set forth in the RFP.

NON-COLLUSION: By signing the proposal the Contractor certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition.

CANCELLATION: A Participating State may cancel its participation in the contract or Contractor may cancel a Participating State's participation in the contract upon 30 days written notice, unless otherwise limited or stated in the Special Terms. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. [TJB1]Upon cancellation, Participating States may continue to use the acquired license(s) in accordance with the terms and conditions set forth in the applicable Special Terms, which shall survive cancellation. Termination of licenses shall occur in accordance with the applicable Special Terms.

DEFAULT AND REMEDIES:
Termination for cause by WSCA. WSCA shall have the right in addition and without prejudice to any other rights or remedies, to terminate this Agreement for any material breach of this Agreement by the Contractor that is not cured within Thirty (30) days receipt by Contractor of a written notice specifying the breach and requiring its cure.

Termination for Cause by Contractor. The Contractor may terminate a Participating States' Participating Addendum or a Purchasing Entity's right to participate in this contract upon Thirty (30) days written notice to the Participating State or Purchasing Entity, as the case may be, for cause in accordance with the termination terms and conditions set forth in the applicable Special Terms.

LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

CONFLICT OF TERMS: In the event of any conflict between this Attachment A Standard Contract Terms and Conditions and any Special Terms ; Attachment A Standard Contract Terms and Conditions shall govern.

REPORTS: The Contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each agency. Contractor will provide usage reports to the extent made commercially available by the Infrastructure Host. Usage reports will include the

following: account ID, report period, product name, item description, usage amount, unit price and total spend.

GENERAL INDEMNITY: The Contractor will indemnify and hold harmless WSCA and the respective states, political subdivisions and their directors, officers, (collectively the "Indemnified Parties" from and against damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses and attorneys fees arising out of any third party action or claim for bodily injury, death, or property damage (except for databases not subject to a reasonable backup program) brought against any of the Indemnified Parties as set forth in the Special Terms, to the extent arising from any grossly negligent act, or omission or willful misconduct by Contractor, its subcontractors or their respective directors, officers, employees or agents.

ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

GOVERNING LAW: This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning an order placed against the contractor the Participating Addendum shall be in the Purchasing Entity's State.

DELIVERY: Deleted.

WARRANTY: Warranties are provided in the applicable Special Terms.

AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator and Contractor.

ASSIGNMENT/SUBCONTRACT: Neither Party shall assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the other party.

NONDISCRIMINATION: The Contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The Contractor further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Contractor agrees to comply with each individual state's certification requirements, if any, as stated in the Special Terms. This contract may be canceled if the Contractor fails to comply with the provisions of these laws and regulations. As required under applicable law, the Contractor must include this provision in every subcontract relating to purchases by the States to ensure that subcontractors and vendors are bound by this provision.

SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

INSPECTIONS: Deleted.

PAYMENT: Payment shall be made in accordance with the applicable Special Terms. Payment shall be made to the Contractor within 30 days following the date the invoice is received. After 60 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may also be made via a State or political subdivision "Purchasing Card".

FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

HAZARDOUS CHEMICAL INFORMATION: Deleted.

FIRM PRICE: Unless otherwise stated in the Special Terms, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of proposal opening. Prices must remain firm for eighteen (18) months from the execution of the contract, subject to the escalation clauses in the Special Terms.

EXTENSION OF PRICES: In the case of error in the extension of prices in the proposal, the unit prices will govern.

PROPOSAL PREPARATION COSTS: WSCA is not liable for any costs incurred by Contractor in proposal preparation.

CONFLICT OF INTEREST: The Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or Participating States to secure favorable treatment with respect to being awarded this contract.

INDEPENDENT CONTRACTOR: The Contractor shall be an independent Contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the Participating States, except as expressly set forth herein.

POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cites, etc.,) of the Participating States shall be voluntarily determined by the political subdivision and the Participating State Chief Procurement Official. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by WSCA.

RECORDS ADMINISTRATION: The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

AUDIT OF RECORDS: The Contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to usage and order records by Purchasing Entities under this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment. Audits conducted pursuant to this section shall be in accordance with generally accepted auditing standards and established procedures of the reviewing or auditing agency and shall exclude records pertaining to general and administrative expenses, and profit.

ENTITY PARTICIPATION: Use of this contract by Purchasing Entities (state agencies, political subdivisions and other entities (including cooperatives) authorized by individual State's statutes to use State contracts are subject to the approval of the respective Participating State Chief Procurement Official. Issues of eligibility for participation are solely within the authority of the respective Participating State Chief Procurement Official.

Revision date: August 2011

Attachment B

Scope of Work

Statement of Work

The purpose of this contract is to provide opportunities for Purchasing Entities to utilize commercial cloud hosting provider services in a secure and cost effective manner. The contract provides opportunities for agencies to obtain:

1. GIS Cloud Hosting Services: Includes cloud-hosting services specific to GIS services in the Participating States.
2. General Cloud Hosting Services: Includes general cloud hosting services not specific to GIS requirements.
3. Cloud Provisioning Services: Includes access to cloud provisioning stacks that may be available to government agencies for use with their internal cloud services and vendor cloud services.
4. Consulting and Design Services: Includes consulting and design services available to government agencies from the awarded vendors for implementation of cloud services.

Contract use is governed by WSCA/NASPO processes and procedures for cooperative contracts. All projects require specific engagement agreements and related Statement of Work (SOW) documentation.

Self Service Quarterly Reporting Requirement

Contractor will be required to provide quarterly usage reports to the WSCA contract manager. Contractor will provide usage reports to the extent made commercially available by the Infrastructure Host. Usage reports will include the following: account ID, report period, product name, item description, usage amount, unit price and total spend. Initiation and submission of the quarterly reports are to be the responsibility of the Contractor without prompting or notification by the WSCA contract manager. ArcGIS Online consumption reporting is available at the administrator level of the ArcGIS online login portal. The self service reporting requirement does not apply to ArcGIS Online.

Quarterly reports must coincide with the quarters in the fiscal year as outlined below:

Quarter #1: July 1 through September 30, due annually by October 30.

Quarter #2: October 1 through December 31, due annually by January 30.

Quarter #3: January 1 through March 31, due annually by April 30.

Quarter #4: April 1 through June 30, due annually by July 30.

Some Participating States may require additional reporting requirements. Those requirements will be

addressed through the individual State's Participating Addendum. Quarterly Reports are to be sent to the WSCA contract manager.

WSCA Administration Fee

The Contractor must pay a WSCA administration fee of one half of one percent (.5%) in accordance with the terms and conditions of the contract. The WSCA administration fee shall be submitted quarterly and is based on sales of products and services. The WSCA administration fee is not negotiable. WSCA Administration fee is to be payable to WSCA and submitted to the contract manager.

Some Participating States may require that an additional fee be paid directly to the Participating State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated in a Participating Addendum that is made a part of the contract. The Contractor may adjust the contract pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the State. All such agreements may not affect the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the Participating State requesting the additional fee.

Order of Precedence

The contract shall consist of the following documents:

1. Attachment A, WSCA Standard Terms & Conditions, as revised
2. Attachment D Esri Terms and Conditions
3. Participating State's Participating Addendum ("PA") including any state specific Terms & Conditions
4. Signature Page (Cover Page)
5. Attachment B, Scope of Work
6. Attachment C, Contract Pricing

These documents shall be read to be consistent and complementary. Any conflict among documents shall be resolved by giving priority to these documents in the order listed above as applicable. Attachment D Esri Terms and Conditions shall apply to all Purchasing Entities. Additional terms and conditions in a Participating Addendum will apply for purchases made by Purchasing Entities within the jurisdiction of that State.

Price Schedule Revision Summary		
Date	Revision	Comments
11/13/2012	1.0	

Discounts

Self Service pricing will be 3% below the Amazon Web Services rates published at www.aws.amazon.com as of the date consumption and billed based on the self-service products and applicable services as ordered by Purchasing Entities. Prices are variable and subject to change.

ArcGIS Online does not qualify for aggregate or additional discounting due to existing government contract rules and royalty obligations.

Price Schedule Assumptions

1. Esri offers a flat 3% discount off of the Amazon Web Services rates for products and services (excludes AWS support, S3 Storage and Glacier Storage) as of when these are used and based on as they were ordered by Purchasing Entities.
2. Invoices will be based on monthly usage of services.
3. Amazon Web Services is the authoritative source for current pricing. See www.aws.amazon.com . The Amazon Simple Monthly calculator can be used for estimating usage and costs: http://calculator.s3.amazonaws.com/calc5.html
4. ArcGIS Online is the authoritative source for features, services, credit estimator and free trial period. See http://www.esri.com/software/arcgis/arcgisonline
5. Service credits are consumed when you use certain services in Esri's cloud, such as geocoding, hosted feature or tile services, or for data transfers out of ArcGIS Online

Self-Service Support requirements

	Business	Enterprise
Customer Service - 24x7x365	✓	✓
Support Forums	✓	✓
Documentation, White Papers, Best Practice Guides	✓	✓
Access to Technical Support	Phone, Chat, Email	Phone, Chat, Email, TAM
Named Contacts (what's this?)	5	Unlimited
Response Time	1 hour	15 minutes
Architecture Support (what's this?)	Use Case Guidance	Application Architecture
Best Practice Guidance	✓	✓
Client Side Diagnostic Tools	✓	✓
Direct Routing to Senior Support Engineers	✓	✓
Pricing	Greater of $100 - or - 10% of monthly AWS usage for the first $0-$10K 7% of monthly AWS usage from $10K-$80K 5% of monthly AWS usage from $80K-$250K 3% of monthly AWS usage from $250K+	Greater of $15,000 - or - 10% of monthly AWS usage for the first $0-$150K 7% of monthly AWS usage from $150K-$500K 5% of monthly AWS usage from $500K-$1M 3% of monthly AWS usage from $1M+

ArcGIS Online Organizational Plans

Customers buy a plan based on the number of anticipated Named Users in their organization.

Organization Plan	Named Users Included (up to)	Service Credits Included	Price
Level 1	5	2,500	$2,500
Level 2	50	10,000	$10,000
Level 3	100	17,500	$17,500
Level 4	250	37,500	$37,500
Level 5	500	62,500	$62,500
Level 6	1,000	110,000	$110,000

Additional ArcGIS Online User – 5 Pack

Organization Plan	Additional User 5-Pack Price (No additional Service Credits Included)
Level 1	$2,500/pack
Level 2	$1,000/pack
Level 3	$875/pack
Level 4	$750/pack
Level 5	$625/pack
Level 6	$550/pack

Additional ArcGIS Online Service Credits

Additional Service Credits can be purchased for use with any ArcGIS Online Organization Plan Account.

Service Credits (Blocks of 1000)	List Price
1 Block (1,000 credits)	$100

Consulting and Managed Services

Prime and Infrastructure Prime Rates

Labor Category	2012 Offsite Rate	2012 Onsite Rate
Technical Consultant III	$280	$330
Technical Consultant II	$250	$300
Technical Consultant I	$213	$263
Technical Analyst	$185	$235
Deployment Technician	$156	$206
Support Specialist	$120	$170

Packages

Two Week Standard Onsite Support Package	$29,700
Two Week Advanced Onsite Support Package	$36,300
Four Week Standard Onsite Support Package	$55,700
Four Week Advanced Onsite Support Package	$68,300
ArcIMS to ArcGIS for Server on Cloud Infrastructure Migration Workshop	$19,200
ArcSDE On-Premise to Cloud Infrastructure Migration Workshop	$21,300
ArcGIS for Server On-Premise to Cloud Infrastructure Migration	$11,500
Cloud System Architecture and Design Package	$30,900

ArcGIS On-Line Implementation and Configuration Package	$16,700
Self-Service Cloud Hosting for Amazon Web Services Workshop	$8,900

Managed Services

Item	Price	Description
Service Levels		
Basic	$700 one-time setup fee + $.50 per server hour	Does not include fees for cloud infrastructure
Standard	$3,300 one-time setup fee + $1.00 per server hour	Does not include fees for cloud infrastructure
Advanced	$4,400 one-time setup fee + $2.00 per server hour	Does not include fees for cloud infrastructure
Advanced Plus	$6,600 one-time setup fee + $3.00 per server hour	Does not include fees for cloud infrastructure
Hosted GIS Bundles		
Small (Standard)	$7,760 one-time setup fee + $1,455 per month	Includes up to 30k server requests, 500 GB of data storage, Standard SLA (95%)
Medium (Standard)	$11,640 one-time setup fee + $2,425 per month	Includes up to 60k server requests, 1 TB of data storage, Standard SLA (95%)
Large (Standard)	$15,520 one-time setup fee + $3,395 per month	Includes up to 120k server requests, 2 TB of data storage, Standard SLA (95%)

Small (Advanced)	$9,700 one-time setup fee + $1,940 per month	Includes up to 30k server requests, 500 GB of data storage, Advanced SLA (99%)
Medium (Advanced)	$13,580 one-time setup fee + $3,880 per month	Includes up to 60k server requests, 1 TB of data storage, Advanced SLA (99%)
Large (Advanced)	$17,460 one-time setup fee + $5,820 per month	Includes up to 120k server requests, 2 TB of data storage, Advanced SLA (99%)
Optional Items		
Additional Map Services	$485 one-time setup fee + $485 per month	Includes Up to 3 map services
Additional Server Requests	$485 one-time setup fee + $485 per month	Up to 30,000 server requests per day
Additional Data Storage	$291 one-time setup fee + $485 per month	Includes Up to 25 GB
Data Updates	$1,164 per update	Includes up to 15 layers per update
Application Updates	$1,164 per update	Includes a single web application update
Database Backups	$388 per month	Daily incremental, weekly full database backups

ATTACHMENT D

ESRI TERMS AND CONDITIONS

1. SELF-SERVICE CLOUD HOSTING OFFERING

1.1 Description

Purchasing Entities have the ability to self-provision infrastructure resources on-demand by subscribing to a Self-Service Cloud Hosting offering. Self-Service Cloud Hosting Offerings serve as the gateway for cloud administration tools that will be available to the Purchasing Entity to allow for self-provisioning of cloud application(s), GIS and database servers, as well as storage capacity. Purchasing Entity resources will have the ability to select from a variety of operating systems, database management systems, and Esri ArcGIS technologies. Purchasing Entity's technical representative is responsible for provisioning new servers, as well as deploying and managing software. The representative may choose to set up remote access to provisioned servers and is therefore free to deploy and modify databases on demand. Upon task order award, Esri will engage with its infrastructure resources host ("**Infrastructure Host**") to set up a dedicated cloud self-service account for a Purchasing Entity. If the Infrastructure Host is Amazon Web Services, then Purchasing Entity must choose an Amazon Web Services support tier at time of purchase. Esri will also train one identified individual within a Purchasing Entity for up to four hours on the cloud administration tools.

Once a server is provisioned, the Purchasing Entity has the ability to load data, publish web services, deploy web applications, and take advantage of other cloud administration tools, such as elastic load balancing and auto-scaling. It is the Purchasing Entity's responsibility to provision, administer and manage the system in accordance with their desired security and operational standards. There is no Service Level Agreement associated with data, services, or applications hosted with Self-Service Cloud Hosting. Organizations can use existing ArcGIS for Server licenses or choose from convenient, renewable 1-, 3-, and 12-month term licensing. Additional terms apply to use Esri Software.

1.2 Terms of Use

Self-Service Cloud Hosting infrastructure is provided exclusively under the terms of use set forth by the Infrastructure Host. Purchasing Entities' access to and continued use of the Self-Service Cloud Hosting is conditioned upon (a) compliance with all laws, rules and regulations, (b) compliance and agreement with the policies, provisions, materials and instructions under which the Self-Service Cloud Hosting infrastructure is made available by the Infrastructure Host to its customers in general and (c) conformance with Esri training provided for the use of the cloud administration tools. Esri reserves the right to prospectively update these terms and conditions at any time as promulgated by Infrastructure Host.

The Purchasing Entity agrees to comply with all Infrastructure Host terms and conditions of use of the Self-Service Cloud Hosting infrastructure.

ESRI DOES NOT WARRANT OR ASSUME ANY LIABILITY FOR THE PERFORMANCE OR OPERATION OF SELF-SERVICE CLOUD HOSTING, AND IS NOT RESPONSIBLE FOR ANY CLAIMS ARISING OUT OF THE USE OF SELF-SERVICE CLOUD HOSTING.

1.3 Excluded Offerings

The Amazon Web Services listed below are excluded from the Scope of this Agreement:

- Mechanical Turk
- Amazon DevPay
- Flexible Payment Services

The Purchasing Entity will not access such Services through its Self-Provisioning Account without Esri's prior written consent. Esri reserves the right to add or exclude future Amazon Web Services offerings from the Scope of this Agreement.

1.4 Escalation Clause

Esri reserves the right to change pricing for Self-Provisioned Cloud Services at any time to the extent required to offset price changes from the Infrastructure Host.

2. MANAGED SERVICES OFFERINGS

Attachment D, Exhibit A provides the relevant terms and conditions applicable to Managed Services, Consulting Services and Services Packages.

3. ArcGIS ONLINE OFFERINGS

3.1 Description

Esri's secure, multitenant cloud that's scalable and ready to use. No additional hardware or software has to be purchased or installed. ArcGIS Online gives users in the organization access to tools, basemaps, and other content to make and share maps and applications. Users can catalog and discover maps and applications; set up groups to collaborate; and share items with each other, the entire organization, or publicly. For example, without any programming, any user that's part of an ArcGIS Online organizational account can quickly share maps by embedding them in a website or blog, through social media, or by using a preconfigured web application template.

3.2 Terms of Use

The relevant terms and conditions applicable to Esri Online Services are provided in the attached Exhibit B (Online Services Terms of Use, E204OLS, dtd. 10-18-12).

ATTACHMENT D

Exhibit A

ESRI TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES AND MANAGED SERVICES

Self Service Cloud Hosting Offering Description -General

Purchasing Entities have the ability to self-provision infrastructure resources on-demand by subscribing to a Self-Service Cloud Hosting offering. Self-Service Cloud Hosting Offerings serve as the gateway for cloud administration tools that will be available to the Purchasing Entity to allow for self-provisioning of cloud application(s), GIS and database servers, as well as storage capacity. Purchasing Entity resources will have the ability to select from a variety of operating systems, database management systems, and Esri ArcGIS technologies. Purchasing Entity's technical representative is responsible for provisioning new servers, as well as deploying and managing software. The representative may choose to set up remote access to provisioned servers and is therefore free to deploy and modify databases on demand. Upon task order award, Esri will engage with its infrastructure resources host (**"Infrastructure Host"**) to set up a dedicated cloud self-service account for a Purchasing Entity. If the Infrastructure Host is Amazon Web Services, then Purchasing Entity must choose an Amazon Web Services support tier at time of purchase. Esri will also train one identified individual within a Purchasing Entity for up to four hours on the cloud administration tools.

Once a server is provisioned, the Purchasing Entity has the ability to load data, publish web services, deploy web applications, and take advantage of other cloud administration tools, such as elastic load balancing and auto-scaling. It is the Purchasing Entity's responsibility to provision, administer and manage the system in accordance with their desired security and operational standards. There is no Service Level Agreement associated with data, services, or applications hosted with Self-Service Cloud Hosting. Organizations can use existing ArcGIS for Server licenses or choose from convenient, renewable 1-, 3-, and 12-month term licensing. Additional terms apply to use Esri Software.

1. CONSULTING SERVICES/ MANAGED SERVICES / SERVICE PACKAGE OFFERINGS

WSCA Entities may engage with Esri to procure various Professional Services offerings in support of the WSCA agreement.

<u>Professional Services (PS)</u>-Consulting Services and Service Packages being provided on a firm fixed price or time and material basis by Consultant.

<u>Managed Services (MS)</u>-Purchasing Entities have the ability to procure hosted infrastructure as an Esri managed service.

The following terms and conditions will be applicable to the WSCA entities:

Items marked as (PS) include provisions applicable to all Esri's Service Offerings. Items marked (MS) are specific to Managed Services.

1.1 Definitions

(a) "Base Services" shall mean the provision of system monitoring and support associated with providing the Managed Services Environment and Customer Content within the specified service levels.

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

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

(d) "Customer Website" shall mean Customer Content viewed through a user interface and made available via the Internet under the domain name reserved for the website.

(e) "End User" shall mean any third party or entity that accesses or uses any Customer Content via Customer Website.

(f) "Esri Data" means any Esri or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes.

(g) "Hosting" means the business of housing and making accessible Customer Content via the Internet.

(h) "Managed Services" shall mean Hosting and provision of the Managed Services Environment and related Base Services required to make Customer Content available to Customer or Customer's End Users.

(i) Map Data means any digital dataset(s) including geographic, vector data, coordinates, raster, or associated tabular attributes supplied by either party for use in the performance of this Agreement.
(j) "Managed Services Environment" shall mean the hardware, COTS Software, Esri Data, and network that Esri, or its third-party suppliers/partners make available as the underlying environment for Hosting Customer Content.
(k) Services Output means any work product produced by Esri as a result of Services provided under this Agreement. Services Output can include, but is not limited to, reports, training materials, and custom software code.

2. OWNERSHIP AND GRANT OF LICENSE

2.1 **(PS) Deliverables/Services Output**--Except as specifically granted in this Agreement, Esri or its licensors own and retain all right, title, and interest in the Deliverables and/or Services Output. Subject to the terms and conditions set forth in this Agreement, Esri hereby grants to Customer a nonexclusive, royalty-free, worldwide license to use, modify, and/or reproduce the Deliverables and/or Services Output in connection with Customer's authorized use of the Esri COTS Software.

2.2 **(MS) Customer's Property**--All Customer Content that Customer gives to Esri under this Agreement shall at all times remain the Intellectual Property Rights of Customer or its licensor(s). Esri shall have no rights to such Customer Content other than the limited right to use such content for the purposes expressly set forth in this Agreement.

2.3 **(MS) Esri's Property**--Esri or its affiliates shall retain at all times the right, title, and interest in and to all Base Services components.

3. PATENTS AND INVENTIONS

Esri and Customer shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors ("Inventors") during the term of this Agreement. Esri and Customer shall jointly own any Inventions made or conceived jointly by Inventors from both parties.

4. COMPENSATION

Pricing for all Service offerings shall be in accordance with Attachment C to this contract as well as the following provisions.

4.1 T&M Services will be performed and invoiced on a time and materials basis. Labor, including travel time, will be invoiced on a monthly basis for actual hours expended during the previous month. Other direct costs (ODCs), such as travel-related expenses, will be invoiced at actual cost plus Esri's discounted fifteen percent (15%) general and administrative burden. Meals and incidental expenses will be invoiced on a per diem basis in accordance with the most current Federal Travel Regulations.

FFP Services will be invoiced on a percent-complete or milestone basis as described in the applicable Participating Agency addendum. Service Packages will be invoiced in full upon receipt of Customer purchase document. If the Scope of Work specifies percent-complete invoicing, Esri will prepare and submit monthly invoices based on the percent complete for each Deliverable as of the end of the preceding month. If the Scope of Work specifies milestone invoicing, Esri will prepare and submit an invoice after the completion of each milestone. Upon acceptance of all Deliverables under this Agreement, the unpaid balance of the total Agreement value will be due. Esri may reallocate authorized funding between contracted activities, labor categories, and ODCs as necessary to facilitate the work requirements, provided the overall authorized funding is not exceeded. If Services are required beyond the period of performance stated in the original proposal or resultant order, Esri reserves the right to escalate labor rates up to five percent (5%) per calendar year. Unused labor hours or travel remaining after the performance of a Services Package will expire and not be available for performance at a later date.

4.2. Payment Customer shall pay each invoice no later than thirty (30) days after receipt.

5. ACCEPTANCE (PS)

For firm-fixed price services, customer shall complete its acceptance review within ten (10) working days of receiving each Deliverable. Acceptance for Deliverables will be categorized by Customer as follows:

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

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

6. LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

6.1 **(PS)** Esri warrants for period of (90) days that Services will conform substantially to the professional and technical standards of the software industry. If Services do not substantially conform to these standards, Customer may require Esri to reperform Services at no additional cost to Customer. Services Output is provided as is without warranty of any kind.

6.2 **(MS)** Esri warrants for a period of (90) days that there is no outstanding contract, commitment, or agreement to which Esri is a party or legal impediment of any kind known to Esri that conflicts with this Agreement or might limit, restrict, or impair the rights granted to Customer hereunder.

6.3 **(MS)** Customer warrants and represents that Customer has the full authority and right from the owner or any third party to grant permission(s) to use Customer Content offered and submitted herein to Esri. Customer also warrants that Customer Content does not:

(a) Infringe on any proprietary rights of third persons or contain any information that is deemed unlawful, libelous, violates another person's right to privacy and/or publicity, obscene, pornographic, or indecent;
(b) Violate any law, statute, ordinance, or regulation, including, without limitation, the laws and regulations governing export control, personally identifiable information, unfair competition, antidiscrimination, or false advertising; or
(c) Contain any viruses, Trojan horses, trap doors, back doors, worms, time bombs, cancel bots, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, corrupt, or expropriate any system, data, or personal information.

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 OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE MANAGED SERVICES WILL OPERATE WITHOUT INTERRUPTION AND ARE COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS. IN ADDITION TO AND WITHOUT LIMITING THE PRECEDING PARAGRAPH, ESRI DOES NOT WARRANT IN ANY WAY MAP DATA, OR THAT MAP DATA MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET CUSTOMER'S NEEDS OR EXPECTATIONS. CUSTOMER SHOULD NOT RELY ON ANY MAP DATA UNLESS CUSTOMER HAS VERIFIED MAP DATA AGAINST ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE INTERNET (INCLUDING, WITHOUT LIMITATION, THE WEB) IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) ESRI HAS NO CONTROL OVER THE INTERNET, AND (iii) 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 WEB SITE.

7. LIMITATION OF LIABILITY

A. **Disclaimer of Certain Types of Liability.** ESRI AND ITS LICENSORS WILL NOT BE LIABLE TO CUSTOMER FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DELIVERABLES, SERVICES OUTPUT OR MANAGED SERVICES, 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.

B. **General Limitation of Liability.** IN NO EVENT WILL ESRI'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DELIVERABLES OR SERVICES OUTPUT 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,

EXCEED THE AMOUNTS PAID TO ESRI BY CUSTOMER FOR THE DELIVERABLES, SERVICE PACAKGES OR SERVICES OUTPUT FROM WHICH THE LIABILITY DIRECTLY AROSE. FOR MANAGED SERVICES, ESRI'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR USE OF THE MANAGED SERVICES SHALL NOT EXCEED THE AMOUNTS PAID OR PAYABLE TO ESRI BY CUSTOMER FOR GOODS OR SERVICES RENDERED DURING THE PERIOD OF 4 MONTHS IMMEDIATELY PRECEDING THE BREACH.

C. **Applicability of Disclaimers and Limitations.** CUSTOMER AGREES THAT THE LIMITATIONS OF LIABILITY AND DISCLAIMERS SET FORTH IN THIS AGREEMENT WILL APPLY REGARDLESS OF WHETHER CUSTOMER HAS ACCEPTED THE DELIVERABLES, OR ANY OTHER PRODUCT OR SERVICE DELIVERED BY ESRI. THE PARTIES AGREE THAT ESRI HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE DISCLAIMERS AND LIMITATIONS SET FORTH HEREIN, THAT THE SAME REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE OR CAUSE CONSEQUENTIAL LOSS), AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

8. CONFIDENTIALITY

Deliverables and Services Output that are confidential to Esri will be marked as Esri confidential information, and Customer shall preserve and protect the confidentiality of Deliverables and Services Output. Customer agrees not to reverse engineer or decompile custom software delivered in object code, executable code, or similar formats (collectively, "Secure Formats"). For custom software delivered in source code or other human-readable formats, Customer shall have met its obligations if its disclosure of custom software is limited to custom software in Secure Formats, provided that the means for reverse engineering, decompiling, or disassembling the custom software is withheld from such disclosure, and the person or entity in receipt of the custom software similarly agrees not to perform the prohibited acts described above or allow others to do so.

Except as provided in the preceding paragraph, Customer may make disclosures to Customer's employees to the extent reasonably required to allow Customer to use the Deliverables or Services Output in a manner authorized under the applicable software licenses. Before disclosing all or any portion of the Deliverables or Services Output to employees or third parties as permitted in the preceding sentence, Customer shall inform its employees or third parties of the obligations in this Addendum and obtain their agreement to be bound by them.

9. ADDITIONAL CLAUSES (MS)

9.1 Managed Services. It is the responsibility of Customer to determine whether Base Components, Base Services, Customer Content, or the combination of the three meets Customer's needs and service levels, if applicable, as set forth in the applicable Task Order. It is Customer's responsibility to plan for and request additional capacity to support anticipated growth, utilization, and peaks in demand.

9.2 License to Customer Content. During the term of the ordering agreement, Customer hereby grants to Esri and its affiliates permission to use Customer 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 Customer Content within the environment in any reasonable manner needed to support the provision of Managed Services.

9.3 Expenses. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri, or removal of Customer Content from the Esri Data Center, unless otherwise set forth in a separate agreement.

9.4 Risk of Loss. Risk of loss for all Customer Content shall at all times remain with Customer. Risk of loss for all Base Components shall at all times remain with Esri.

9.5 Personally Identifiable Information. Prior to Esri providing Managed Services utilizing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information (as defined in regulations such as HIPAA, GLB, or SSI).

9.6 Public Software. Customer may not use, and may not authorize End Users to use, any Public Software in connection with Base Services in any manner that requires, pursuant to the license applicable to such Public Software, that any Base Services be (i) disclosed or distributed in source code form, (ii) made available free of charge to recipients, or (iii) modifiable without restriction by recipients.

9.7 Monitoring. Customer will provide information and/or other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's and/or Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may crawl or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

9.8 Prohibited Content. In the event that Esri reasonably believes that any Customer Content violates the law, infringes or misappropriates the rights of any third party, or otherwise violates a material term of this Agreement ("Prohibited Content"), Esri will notify Customer of Prohibited Content in accordance with Esri's standard Digital Millennium Copyright Act ("DMCA") "take down" notice processing procedures and may request that such content be removed from Base Services or access to it be disabled. Notwithstanding, Esri may remove or disable access to any Prohibited Content without prior notice pursuant to the DMCA or as required to comply with any judicial, regulatory, or other governmental order. In the event that Esri removes content without prior notice, Esri will provide prompt written notice to Customer in accordance with Esri's standard DMCA take down notice processing procedures unless prohibited by law.

10. GENERAL PROVISIONS

10.1 Non-solicitation. Neither party will directly solicit for hire any employee of the other party who is associated with the Services called for under this Agreement during and for a period of one-year after. project completion. The foregoing shall in no way restrict the parties from publicly advertising positions for hire in newspapers. professional magazines, or Internet postings.

10.2 Equitable Relief. Customer agrees that any breach of this Agreement by Customer may cause Esri irreparable damage. In the event of a 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 to prevent violation of these terms without the requirement of posting a bond or undertaking or proving injury as a condition of relief.

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

LICENSE AGREEMENT
(E204OLS 10/18/2012)

This License Agreement is between you ("Licensee") and **Environmental Systems Research Institute, Inc.** ("Esri"), a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

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. Reserved
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. Reserved
g. "Documentation" means all user reference documentation that is delivered with the Online Services.
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. "Product(s)" means Data, and Online Services, and Documentation licensed under the terms of this License Agreement.
k. "Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.
l. "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).
m. Reserved
n. "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.

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 publication. Esri and its third-party licensors reserve all rights not specifically granted in this License Agreement including the right to change and improve Products.

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) for Licensee's own 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 the applicable Term or, if no Term is

applicable or identified, until terminated in accordance with Article 5. In addition to the Scope of Use in Article 4, Article 10—Unique Provisions applies to specific Products. Addendum 1, Addendum 2, and Addendum 3 collectively comprise Article 10—Unique Provisions.

a. Addendum 1 reserved
b. *Data.* Data terms of use are set forth in Addendum 2, which is incorporated by reference.
c. *Online Services.* Terms of use for Online Services are set forth in Addendum 3, which is incorporated by reference.

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

a. For Products made available to Licensee, Licensee may access and use Products as provided herein.
b. *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.

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, assign, or time-share Products;
b. Reserved
c. Use Data, for a site or service and operate the site or service for profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service);
d. Redistribute Data, or Online Services to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs; or
e. Redistribute Authorization Codes;
f. Reverse engineer, decompile, or disassemble Products;
g. Make any attempt to circumvent the technological measure(s) that controls access to or use of Products;
h. Store, cache, use, upload, redistribute, 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;
i. 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;
j. Unbundle or independently use individual or component parts of Online Services, or Data;
k. Reserved
l. Publish the results of benchmark tests run on Beta without the prior written permission of Esri and its licensors; or

ARTICLE 5—TERM AND TERMINATION

This License Agreement is effective upon acceptance. Licensee may terminate this License Agreement or any Product license at any time upon written notice to Esri. Either party may terminate this License Agreement or any license for a material breach that is not cured within ten (10) days of written notice to the breaching party, except that termination is immediate for a material breach that is impossible to cure. Upon termination of the License Agreement, all licenses granted hereunder terminate as well. Upon termination of a license or the License Agreement, 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.

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 Online Services that the Online Services will substantially conform to the Documentation .

6.2 Special Disclaimer. CONTENT, DATA, SAMPLES, AND ONLINE SERVICES PROVIDED ON A NO-FEE BASIS, 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.

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. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

6.5 Exclusive Remedy. Licensee's exclusive 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 Online Services; or (iii) return of the license fees paid by Licensee for Online Services that do not meet Esri's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Documentation; ceases using Online Services; and executes and delivers evidence of such actions to Esri or its authorized distributor.

ARTICLE 7—LIMITATION OF LIABILITY

7.1 Disclaimer of Certain Types of Liability. ESRI, ITS AUTHORIZED DISTRIBUTOR, 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 AND ITS AUTHORIZED DISTRIBUTOR 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. Licensee agrees that the limitations of liability and disclaimers set forth in this License Agreement will apply regardless of whether Licensee has accepted Products or any other product or service delivered by Esri. 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.

ARTICLE 8—INFRINGEMENT INDEMNITY

8.1 Esri shall defend, indemnify, and hold Licensee harmless from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, that Licensee incurs as a result of any claims, actions, or demands by a third party alleging that Licensee's licensed use of Online Services infringe a US patent, copyright, or trademark, provided

a. Licensee promptly notifies Esri in writing of the claim;
b. Licensee provides documents describing the allegations of infringement;
c. Esri has sole control of the defense of any action and negotiation related to the defense or settlement of any claim; and
d. Licensee reasonably cooperates in the defense of the claim at Esri's request and expense.

8.2 If Online Services are found to infringe a US patent, copyright, or trademark, Esri, at its own expense, may either (i) obtain rights for Licensee to continue using the Online Services or (ii) modify the allegedly infringing elements of Online Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, the license shall terminate, and Licensee shall cease accessing infringing Online Services and shall uninstall and return to Esri any infringing item(s). Esri's entire liability shall then be to indemnify Licensee pursuant to Section 8.1 and refund the unused portion of the fees paid.

8.3 Esri shall have no obligation to defend Licensee or to pay any resultant costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement to the extent arising out of (i) the combination or integration of Online Services with a product, process, or system not supplied by Esri or specified by Esri in its Documentation; (ii) material alteration of Online Services by anyone other than Esri or its subcontractors; or (iii) use of Online Services after modifications have been provided by Esri for avoiding infringement or use after a return is ordered by Esri under Section 8.2.

8.4 THE FOREGOING STATES THE ENTIRE OBLIGATION OF ESRI WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Updates. New or updated Products and subscription renewals may require revised, updated or different terms. Licensee agrees to update this License Agreement for revised terms utilized in the license agreement customarily provided to other typical users (standard license agreement) for the same Products. Renewal of subscription, purchase of additional service credits may be delayed to incorporate such updated terms.

9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, import, transfer, or release Products, in whole or in part, 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, 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.

9.3 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this License Agreement shall survive the expiration or termination of this License Agreement.

ARTICLE 10—UNIQUE PROVISIONS

This Article 10—Unique Provisions applies to specific Products. Addendum 1, Addendum 2, and Addendum 3 collectively comprise Article 10—Unique Provisions. Any conflict between the terms of this Article 10 and any other terms of this License Agreement will be resolved in favor of Article 10.

ADDENDUM 1
RESERVED

ADDENDUM 2
DATA TERMS OF USE

This Data Terms of Use Addendum ("Addendum 2") sets forth additional terms of Licensee's use of Data. Esri reserves the right to modify the Data terms of use referenced below at any time. Licensee may cancel a 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:

▪ ArcGIS Online Data (1) ▪ Business Analyst/Location Analytics Data (2)	▪ Data and Maps for ArcGIS (3) ▪ MapStudio Data (4)

Notes

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

    a. NAVTEQ data is subject to the terms of use at http://www.esri.com/~/media/Files/Pdfs/legal/pdfs/j9791-navteq_use_data.pdf.
    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/.

2. *Business Analyst Data; Location Analytics Data:* Business Analyst Data is provided with Esri's 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. Business Analyst Data is 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. Licensee's use of Canadian Edition Data with Business Analyst (Server, Desktop), Business Analyst Online API, Community Analyst API, or Location Analytics API is subject to the Use of Data Restrictions specific to Esri Business Analyst (Canadian Edition) Data.

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) cobranding or otherwise providing the product or service on behalf of any third party; (ii) sublicensing or reselling the Infogroup database; (iii) 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; (iv) using the Infogroup database in any service or product not specifically authorized in this License Agreement or offering it through any third party; (v) 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 (vi) using the Infogroup database for any direct marketing purposes.

d. NAVTEQ data is subject to the terms of use at http://www.esri.com/~/media/Files/Pdfs/legal/pdfs/j9791-navteq_use_data.pdf.

e. 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 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.

4. *MapStudio Data:* Use of this Data is subject to the following terms and conditions:

a. NAVTEQ data is subject to the terms of use at http://www.esri.com/~/media/Files/Pdfs/legal/pdfs/j9791-navteq_use_data.pdf.

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. 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) cobranding or otherwise providing the product or service on behalf of any third party; (ii) sublicensing or reselling the Infogroup database; (iii) 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; (iv) using the Infogroup database in any service or product not specifically authorized in this License Agreement or offering it through any third party; (v) 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 (vi) using the Infogroup database for any direct marketing purposes.

ADDENDUM 3
ONLINE SERVICES ADDENDUM

This Online Services Addendum ("Addendum 2") sets forth additional terms of Licensee's use of Online Services. 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. "API" means application programming interface.
b. "ArcGIS Website" means http://www.arcgis.com and any related or successor websites.
c. "Content" means Data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, software applications, and Developer Tools.
d. "Developer Tools" means software development kits (SDKs), APIs, software libraries, code samples, and other resources.
e. "Named Users" means Licensee's employees; agents; consultants; contractors; or, for education accounts, registered students whom Licensee authorizes to access Online Services for Licensee's exclusive benefit through Licensee's ArcGIS Online account, to which they are explicitly linked through unique, individual user names and passwords.
f. "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.
g. "Service Components" means each of the following: Online Services, Online Content, ArcGIS Website, Developer Tools, Documentation, or related materials.
h. "Licensee's Content" means any Content that Licensee or Licensee's Named Users submit 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 applications Licensee builds with Developer Tools and deploy with Online Services. Licensee's Content excludes any feedback, suggestions, or requests for Product improvements that Licensee provides to Esri.
i. "Value-Added Application" means an application using the Developer Tools and Online Services and that includes functions or features not inherent in the Online Services.
j. "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, (ii) for Licensee's own internal use by Licensee and Licensee's Named Users, 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. Licensee or Licensee's Named Users are the only persons authorized to access Online Services through Licensee's accounts. Authorization Codes may not be shared among multiple individuals but may be reassigned for absences of one (1) month or longer. Licensee and Licensee's Named Users are responsible for maintaining the

confidentiality of Authorization Codes 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.

2.4 Prohibited Uses of the Online Services. In addition to the prohibited uses 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 Services with other licensed end users or third parties; (vi) distribute the client-side data cache, routes, or geocodes derived from Online Services to third parties; (vii) manually or systematically harvest information and data contained within Online Services; (viii) use ArcGIS Online Map Services, Geocoding Services, or Routing Services in connection with any products, systems, or applications installed or otherwise connected to or in communication with vehicles capable of vehicle navigation, positioning, dispatch, real-time route guidance, fleet management, or similar applications; or (ix) incorporate any portion of Online Services into a commercial product or service unless it adds material functionality to the Online Services.

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, modify, deprecate, or discontinue Online Services and related APIs at any time. If reasonable under the circumstances, Esri will provide prior notice of any material alterations. 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.

2.7 Attributions. Licensee is not permitted to remove any Esri or its 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 Service Interruption. Licensee's access (including access on behalf of Licensee's customers) to and use of Online Services may be suspended, 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.

3.3 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 this License Agreement or exceeds Licensee's usage limits and fails to purchase additional Service Credits sufficient to support Licensee's continued use of Online Services as described in Article 5 of this Addendum; (b) if there is reason to believe that Licensee's use of Online Services will adversely affect the integrity, functionality, or usability of the Online Services or that Esri and its licensors may incur liability by not suspending Licensee's account; (c) for scheduled downtime to conduct maintenance or make modifications to Online Services; (d) in the event of a threat or attack on Online Services (including a denial-of-service attack) or other event that may create a risk to the applicable part of Online Services; or (e) 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 warranted under these circumstances, Licensee will be notified of any Service Suspension beforehand and allowed reasonable opportunity to take remedial action.

3.4 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 is solely responsible for the development, operation, and maintenance of Licensee's Content and for all materials that appear on or in any of Licensee's Content. Licensee retains all right, title, and interest in Licensee's Content. Licensee hereby grants Esri and its 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 and Online Services. 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 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. Online Services and ArcGIS Website include publishing capabilities that allow Licensee to make Licensee's Content available to third parties ("Sharing Tools"). Licensee hereby grants to any third parties with whom Licensee elects to share Licensee's Content using such Sharing Tools the right and license to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Licensee's Content subject to any terms of use and access restrictions that Licensee provides with Licensee's Content. ESRI IS NOT RESPONSIBLE FOR ANY LOSS, DELETION, MODIFICATION, OR DISCLOSURE OF LICENSEE'S CONTENT RESULTING FROM LICENSEE'S NAMED USERS' MISUSE OF SUCH SHARING TOOLS OR ANY OTHER SERVICE COMPONENTS. LICENSEE'S USE OF SUCH SHARING TOOLS IS AT LICENSEE'S SOLE RISK.

4.4 Retrieving Licensee's Content upon Termination. Upon termination of this License Agreement or any 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 resources available to Licensee with Online Services. 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. The overage limits for a particular Service and options to address overages will be provided in the Service description and specified in the Ordering Document. Esri reserves the right to suspend Licensee's account until Licensee pays all outstanding overage fees in accordance with this License Agreement.

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.

ARTICLE 7—LICENSEE'S WARRANTIES

Licensee warrants that Licensee's Content or use of Online Services with a product, process, or system not supplied by Esri or specified by Esri in its Documentation will not (i) infringe or misappropriate any third-party intellectual property rights or proprietary rights, (ii) violate any third party's privacy rights or any applicable law, or (iii) contain or transmit to a third party any Malicious Code. Except as prohibited by applicable law, Licensee agrees to defend, indemnify, and hold harmless Esri from and against any claim, action, liability, or demand arising out of a breach of the foregoing warranties.

SECTION 2—TERMS OF USE FOR SPECIFIC ONLINE SERVICES

Specific Online Services are subject to the terms of use set forth in the notes referenced below:

• ArcGIS Online (1; 2; 3; Addendum 2, Note 1; Addendum 2, Note 3) • Business Analyst Online (4; Addendum 2, Note 1; Addendum 2, Note 2) • Business Analyst Online Mobile (4; Addendum 2, Note 1; Addendum 2, Note 2) • Esri Business Analyst Online API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6; Addendum 2, Note 1; Addendum 2, Note 2)	• Community Analyst (4; Addendum 2, Note 1; Addendum 2, Note 2) • Esri Community Analyst API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6; Addendum 2, Note 1; Addendum 2, Note 2) • Esri Location Analytics API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6; Addendum 2, Note 1; Addendum 2, Note 2) • Redistricting Online (3; Addendum 2, Note 1) • MapStudio (5; Addendum 2, Note 4)

Notes

1. In addition to the common terms of use of Online Services:

   a. Licensee may use Licensee's ArcGIS Online account to build a Value-Added Application(s).
   b. Licensee may provide access to Licensee's Value-Added Application(s) to third parties, subject to the following terms:

      i. Licensee may allow anonymous user access to 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.

c. For ArcGIS Online ELA and Organization Plan accounts: Licensee is also permitted to

i. Charge an additional fee to third parties to access Licensee's Value-Added Application(s), subject to the terms of this License Agreement; or
ii. Transfer Licensee's Value-Added Application(s) to a third party's ArcGIS Online account, subject to the following:

(1) Licensee may charge third parties a fee for Licensee's Value-Added Application(s).
(2) 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).
(3) 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. For Personal Plans, Education and Not-for-Profit use of ArcGIS Online 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 or Organization Plan account.

2. Licensee is not permitted to be the licensee of an ArcGIS Online account for or on behalf of a third party.
3. Terms of Use for ArcGIS Online Services: The following ArcGIS Online Services are not subject to ArcGIS Online fee-based Service Credit consumption usage. There is no fee (unless otherwise noted) to use these services up to the predefined maximum usage limits shown below. Use of these services beyond the predefined usage limits requires an additional fee. These services may be used only in conjunction with ArcGIS Software or an ArcGIS Online account.

a. *Map Services, Imagery Services, and Geometry Services:* Licensee may put these services to any use consistent with these terms of use, subject to an aggregate limit of fifty million (50,000,000) transactions during any twelve (12)-month period. "Transaction" is defined in the Documentation at the ArcGIS Online Content resource center at http://links.esri.com/agol/transactiondef.
b. *Standard Task Services (available at http://tasks.arcgisonline.com):* Licensee may put these services to any use consistent with these terms of use, subject to the following:

- *Standard Geocoding Services:* Licensee may use these services for search capabilities only, and results may not be stored for later use. Whenever results are stored for later use, a subscription is required.
- *Standard Routing Services:* Licensee is subject to a limit of five thousand (5,000) routing requests (as defined in the Documentation) during any twelve (12)-month period.

c. *Subscription Task Services (available at http://premiumtasks.arcgisonline.com):* Upon Licensee's payment to Esri of the applicable fee(s), Licensee may put these services to any use consistent with these terms of use. Licensee may store results for later use.
d. *Sample Services:* Licensee may use these services for internal evaluation and development purposes only. All licenses for ArcGIS Online Services are subject to these terms of use and any additional restrictions or requirements identified in the Documentation.

The following ArcGIS Online Service is subject to fee-based ArcGIS Online Service Credit consumption usage:

a. *ArcGIS Online World Geocoding Service (available at http://geocode.arcgis.com):* Licensee may use this service for search capabilities at no cost, but results may not be stored for later use. Upon Licensee's payment for an ArcGIS Online subscription or Service Credits, Licensee may batch geocode and store results for later use.

4. 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.

5. Licensee may create, publicly display, and distribute maps in hard copy and static electronic format for news-reporting purposes.
6. Licensee may develop software or web 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 software or web 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 software or web 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 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 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)