



## BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 12/20/2022

\* = Mandatory, information must be provided

or Procurement Director Award: ☐

**\*Contractor/Vendor Name/Grantor (DBA):**

Environmental Systems Research dba ESRI

**\*Project Title/Description:**

ESRI Geographic Information Systems Software ELA

**\*Purpose:**

Amendment: Master Agreement No. MA-PO-17-125, Amendment No. 07. This Amendment extends the termination date by three (3) years to 11/29/2025, updates the terms and conditions on both the ESRI Enterprise License Agreement and the County's Sole Source Procurement Agreement, and increases the not-to-exceed contract amount by \$2,900,000.00 for a cumulative not-to-exceed contract amount of \$5,783,650.00. Administering Department: Information Technology.

**\*Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.050, Sole source procurement, on 12/16/2016, the Procurement Director approved an award of contract for an initial term of three (3) years and a not-to-exceed award amount of \$240,000.00 for a cumulative not-to-exceed contract amount of \$720,000.00 with two (2) one-year renewal options.

On 01/10/2017, the Procurement Director approved Amendment No. 01, which incorporated Insights User Term Licenses for ArcGIS as Enterprise Software.

On 11/06/2018, the Board of Supervisors approved Amendment No. 02, for a one-time increase of \$249,000.00 for a cumulative not-to-exceed contract amount of \$969,000.00 to support upgrading and adding new software to the existing GIS system and incorporated the Advantage Program Agreement (EEAP).

On 01/18/2019, the Procurement Director approved Amendment No. 03, which updated the Unit-Prices Items table found in Appendix B - Enterprise License Fee Schedule by decreasing the ESRI Enterprise Advantage Program subscription fee from \$86,860.00 to \$86,000.00.

On 05/07/2019, the Board of Supervisors approved Amendment No. 04, for a one-time increase of \$200,000.00 for a cumulative not-to-exceed contract amount of \$1,169,000.00, to support upgrading and adding new software to the existing GIS system utilized by Pima County departments.

On 12/17/2019, the Board of Supervisors approved Amendment No. 05, which extended the termination date by three (3) years to 12/20/2022, removed the two one-year renewal options, and increased the not-to-exceed contract amount by \$1,714,650.00 for a cumulative not-to-exceed contract amount of \$2,883,650.00.

On 12/05/2022, the Procurement Director retroactively approved Amendment No. 06, which deleted Appendix A Software and Deployment Schedule in its entirety and replaced it with a revised Appendix A Software and Deployment Schedule. This change made available additional software products under the ELA.

PRCUID: 239183

Attachment: Contract Amendment No. 07.

**\*Program Goals/Predicted Outcomes:**

Continue maintenance and support to maintain software currently with Pima County.

**\*Public Benefit:**

Continue to provide web-based mapping systems and applications to the public through which they can interact with Pima County, municipal, and regional information that is tied to geographic features.

To Cob: 12/5/2022  
pages: 48  
version: 16

**\*Metrics Available to Measure Performance:**

Software maintenance and support which is currently deployed both remotely and on-site.

**\*Retroactive:**

No.

**THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED**

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (\*) fields

**Contract / Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
 Commencement Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☐ Expense Amount \$ \_\_\_\_\_ \* ☐ Revenue Amount: \$ \_\_\_\_\_

**\*Funding Source(s) required:** \_\_\_\_\_

Funding from General Fund? ☒ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? \_\_\_\_\_

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

**Amendment / Revised Award Information**

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 17-125

Amendment No.: 07 AMS Version No.: 16

Commencement Date: 12/20/22 New Termination Date: 11/29/2025

Prior Contract No. (Synergen/CMS): N/A

☒ Expense ☐ Revenue ☒ Increase ☐ Decrease

Amount This Amendment: \$ 2,900,000.00

Is there revenue included? ☐ Yes ☒ No If Yes \$ N/A

**\*Funding Source(s) required: General Fund**

Funding from General Fund? ☒ Yes ☐ No If Yes \$ \_\_\_\_\_ % 100

**Grant/Amendment Information** (for grants acceptance and awards)

☐ Award ☒ Amendment

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e., 15-123): \_\_\_\_\_

Commencement Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_

☐ Match Amount: \$ \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_

**\*All Funding Source(s) required:** \_\_\_\_\_

\*Match funding from General Fund? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Match funding from other sources? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Funding Source: \_\_\_\_\_

\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Procurement Officer, Troy McMaster Digitally signed by Troy McMaster  
Date: 2022.12.02 16:21:29 -0700

Division Manager, Scott Loomis Digitally signed by Scott Loomis  
Date: 2022.12.02 16:25:57 -0700

Department: Procurement Director, Terri Spencer Digitally signed by Terri Spencer  
Date: 2022.12.05 11:29:50 -0700

Telephone: 520.724.8728

Department Director Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Deputy County Administrator Signature: \_\_\_\_\_

Date: 12/15/2022

County Administrator Signature: \_\_\_\_\_

Date: 12/15/2022

**Amendment No. 7**  
**Esri Agreement No. 00138245.0 (315383)**  
**County Contract No. MA-PO-17-125**



This Amendment No. 7 is entered into by and between **Pima County** ("County" or "Customer") and **Environmental Systems Research Institute, Inc.** ("Esri" or "Contractor"). County and Esri have entered into Enterprise License Agreement number 00138245.0 (the "ELA") on December 21, 2016. The parties now amend the ELA to extend the period of performance and to update terms and conditions as follows:

1. The parties agree to update the terms and conditions in the ELA and to consolidate the changes into a new Restated Enterprise License Agreement, a copy of which is attached hereto and incorporated herein by reference.

This Amendment is effective as of December 21, 2022. The Restated Enterprise License Agreement and this Amendment are the sole and final agreement of the parties and supersede any previous agreements, understandings, and arrangements relating to Restated Enterprise License Agreement.

**ACCEPTED AND AGREED:**

**PIMA COUNTY**  
(County)

By: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature Printed

Name: \_\_\_\_\_

Title: Chair, Board of Supervisors \_\_\_\_\_

Date: \_\_\_\_\_

**ENVIRONMENTAL SYSTEMS**  
**RESEARCH INSTITUTE, INC.**  
(Esri)

By:   
[Timothy Brazeal \(Dec 2, 2022 13:57 PST\)](#)

\_\_\_\_\_  
Authorized Signature

Printed Name: Timothy Brazeal

Title: Manager, Commercial and Government Contracts

Date: Dec 2, 2022

**ATTEST**

By: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Board, Pima County

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Rachelle Barr, Deputy County Attorney

Date: 12/02/2022



**RESTATED ENTERPRISE LICENSE AGREEMENT  
(E119M)**

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

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<b>Pima County Contract Number</b> <b>MA-PO-17-125</b>	<b>Esri Contract Number</b> <b>00138245.0</b>
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This Restated Enterprise License Agreement including the documents listed below (collectively, "ELA") is between **Pima County ("County")**, with its main offices located at 130 W Congress St, Tucson, Arizona 85701, and **Environmental Systems Research Institute, Inc. ("Esri" or "Contractor")**, and is effective as of December 21, 2022 ("Effective Date"). This ELA provides for the licensing and deployment of certain Esri Software, delivery of ELA maintenance, and provision of Esri International User Conference registrations and any additional services as specified herein.

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

1. Restated Pima County Sole Source Procurement Agreement
2. Restated Enterprise License Agreement E119M
3. Enterprise License Terms and Conditions, E512GM, including;
  - Appendix A, Software and Deployment Schedule
  - Appendix B, Enterprise License Fee Schedule
  - Appendix C, ELA Points of Contact
4. Restated License Agreement—Agreement No. 315387 which includes terms and conditions for the Advantage Program

The parties acknowledge that they have read and understand this ELA and agree to be bound by the terms and conditions contained herein. In the event of conflicting terms between the incorporated documents, these conflicts will be resolved in the order established above, superior to subordinate. With respect to conflicting terms between Esri's Enterprise License Terms and Conditions and the Restated License Agreement, see Article 13.1 found in the Enterprise License Terms and Conditions.

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

**RESTATED PIMA COUNTY  
SOLE SOURCE PROCUREMENT AGREEMENT**

<b>Pima County Procurement Department</b>	
<b>Administering Department:</b>	Information Technology
<b>Project:</b>	ESRI Geographic Information Software ELA
<b>Contractor:</b>	Environmental Systems Research Institute, Inc.
	380 New York Street
	Redlands, CA 92373
<b>Amount:</b>	\$ 2,900,000.00
<b>Contract No.:</b>	MA-PO-17-125
<b>Funding:</b>	General Fund

**SOLE SOURCE PROCUREMENT AGREEMENT**

**1. Parties, Background and Purpose.**

- 1.1. Parties. This Contract is between Pima County, a political subdivision of the State of Arizona (“County”), and Environmental Systems Research Institute, Inc. (“Contractor”).
- 1.2. Purpose. The Pima County Information Technology Department requires the continued licensing and support for Contractor software previously provided under County contract number MA-PO-17-125.
- 1.3. Authority. County selected Contractor pursuant to Pima County Procurement Code 11.12.050.

**2. Term.** The term of this Contract commences on December 21, 2022 and will terminate on November 29, 2025 (“Term”). “Term,” when used in this Contract, means all prior Terms to date plus any future extensions. If the commencement date of the Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.

**3. Scope of Products and Services.** Contractor will continue to provide County with the software and services described in the Contractor’s Restated Enterprise License Agreement which includes the Enterprise License Terms and Conditions, **E512GM**.

**4. Compensation and Payment.**

- 4.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Appendix B** to Enterprise License Terms and Conditions, **E512GM**. Those rates will remain in effect during the Term of the Contract.
- 4.2. Not-To-Exceed (NTE) Amount. County’s total payments to Contractor under this Contract, including any sales taxes, may not exceed \$2,900,000.00 (the “NTE Amount”). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County’s total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor’s own risk.
- 4.3. Sales Taxes. The payment amounts or rates in **Appendix B** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.
- 4.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in **Appendix B**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.
- 4.5. Reserved.
- 4.6. Invoice Submittal. Invoices are to be sent to:

Pima County Finance & Risk Management – Accounts Payable  
P.O. Box 791  
Tucson, AZ 85702

Invoice Adjustments. County may question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.

5. Insurance. The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII, unless otherwise approved by County. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency. Policies to which this section 5 Insurance refers have a blanket endorsement honoring any contractual requirement to add another entity as an additional insured, to include a waiver of subrogation in favor of such entity, or to identify the coverage as primary. In these cases the certificate of insurance will be annotated to confirm that the County is covered under the blanket endorsement.
- 5.1. Minimum Scope and Limits of Insurance. Contractor will procure and maintain at its own expense, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.
- 5.1.1. Commercial General Liability (CGL). Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.
- 5.1.2. Reserved.
- 5.1.3. Workers' Compensation (WC) and Employers' Liability. Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers' Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each person - disease.
- 5.1.4. Technology Errors and Omissions (E&O) including Network Security & Privacy. This insurance is required when the Professional Liability or any other coverage is excluded from the above CGL policy. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance policy shall cover
- **Technology Errors and Omissions:** any loss caused by an error, omission or negligence by the primary insured. Amended to include software copyright infringement
  - **Communications and Media Liability**
    - Communications & Media Liability (TM, Copyright, infringement, plagiarism)
    - Copyright and TM infringement claims in advertising, internet, and other material excluding infringement of copyrighted software.
  - **Network & Information Security Liability**
    - Virus transmission,
    - denial of service,
    - breach of privacy or confidentiality obligations
- 5.2. Additional Insurance Requirements. The policies shall include, or be blanket endorsed to include, as required by this written agreement, the following provisions.

- 5.2.1. Claims Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than two (2) years following Contract expiration, termination or cancellation.
- 5.2.2. Additional Insured Blanket Endorsement. The General Liability, Technology Errors and Omissions (E&O) including Network Security & Privacy policies must each have a blanket endorsement to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds.
- 5.2.3. Subrogation Blanket Endorsement. The General Liability, Workers' Compensation and Technology Errors and Omissions (E&O) including Network Security & Privacy Policies shall each contain a waiver of subrogation endorsement in favor of County and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- 5.2.4. Primary Insurance Blanket Endorsement. Except for Technology Errors and Omissions (E&O) including Network Security & Privacy, the Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).
- 5.2.5. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 5.2.6. Reserved.
- 5.3. Notice of Cancellation. Each Required Insurance policy must provide, and certificates specify, that County will receive prompt advance written notice of any policy cancellation. Notice must be mailed, emailed, hand-delivered or sent via facsimile transmission to the County Contracting Representative, and must include the County project or contract number and project description. Notice under this paragraph is not required if Contractor buys a replacement policy that ensures continuous coverage and otherwise complies with the requirements of section 5 Insurance.
- 5.4. Verification of Coverage. Contractor shall furnish County with certificates of insurance (valid ACORD form or equivalent) as required by this Contract. An authorized representative of the insurer shall sign the certificates. Each certificate must include.
- 5.4.1. The Pima County tracking number for this Contract, which is shown on the first page of the Contract in the body of the Certificate.
- 5.4.2. A notation of policy deductibles or SIRs relating to the specific policy.
- 5.4.3. Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County.
- 5.5. All certificates and blanket endorsements, as required by this written agreement, are to be received and approved by County before, and be in effect not less than 15 days prior to, commencement of work. A renewal certificate must be provided promptly to County prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 5.6. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the County project or contract number and project description on the certificate. County reserves the right to require complete copies of all insurance policies required by this Contract at any time.
- 5.7. Approval and Modifications. County's Risk Manager may request a modification to the Insurance Requirements at any point during the Term of this Contract. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements. Any modifications under this section 5.7 Approval and Modifications requires a written amendment to this Agreement signed by the parties.
- 6. Indemnification.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnatee") from and against any and all third party claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively,



"Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property (excluding databases not covered under a reasonable backup program) to the extent caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors while on County premises. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

**7. Laws and Regulations.**

- 7.1. Compliance with Laws. Both parties will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.
- 7.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.
- 7.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

**8. Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

**9. Reserved.**

**10. Assignment.** In the event that this contract is assigned by Contractor then County may terminate the contract for its convenience.

**11. Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

**12. Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

**13. Authority to Contract.** Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

**14. Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

**15. Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

**16. Termination by County.** For termination, see Article 7 Term, Termination, and Expiration found in the Enterprise License Agreement Terms and Conditions E512GM.

**17. Notice.** Except as described in Appendix C of the Enterprise Agreement License Terms and Conditions E512GM, any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County

Contractor

Terri Spencer, Procurement Director  
Pima County Procurement Department  
150 W Congress St., 5<sup>th</sup> Floor  
Tucson, AZ 85701  
540.724.3722  
terri.spencer@pima.gov

Esri  
Attn: Manager, Contracts and Legal Services  
380 New York Street  
Redlands, CA 92373

- 18. Remedies.** Except for the exclusions, disclaimers, and limitations of liability in the License Agreement, either party may pursue any remedies provided by law for the breach of this Contract. Except as provided herein no right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
- 19. Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.
- 20. Reserved.**
- 21. Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
- 22. Public Records.**
- 22.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents related to this Contract are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 22.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.
- 23. Legal Arizona Workers Act Compliance.**
- 23.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 23.2. Pursuant to A.R.S. 41-4401, County has the right to inspect the papers of any contractor or subcontractor employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph 1 of A.R.S. 41-4401.
- 23.3. Remedies for Breach. Any breach of compliance with the State and Federal Immigration Laws is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract.
- 23.4. County shall not deem Contractor or applicable subcontractor in material breach of this Agreement if Contractor or applicable subcontractors establish that it has complied with State and Federal Immigration Laws.
- 23.5. Reserved.
- 24. Written Orders.** County will order products or services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail or telephone.

Contractor must not supply materials or services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for materials or services not documented by a County Delivery Order (DO).

- 25. Counterparts.** The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.
- 26. Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
- 27. Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394 if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Contract that the Contractor is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.
- 28. Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.
- 29. Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.



## ENTERPRISE LICENSE TERMS AND CONDITIONS (E512GM)

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

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### ARTICLE 1—DEFINITIONS

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

- "Deploy," "Deployment," or "Deployed" means to redistribute, or the redistribution of, the Enterprise License Software (and its related keycodes/registration files), or its having been redistributed, by Customer, during the term of this ELA for installation and use on Customer's hardware.
- "ELA Fee" means the fee set forth in Appendix B, ELA Fee Schedule.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by Esri for Enterprise License Software.
- "Enterprise License Software" means the Software (including Data, Online Services, and Documentation provided with the particular item) identified in Table A-1 and Table A-2 of Appendix A, Software and Deployment Schedule. Enterprise License Software does not include unit priced item(s) or Esri technology that may be embedded in third-party products purchased by Customer.
- "Case" means a failure of the Product to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" means Esri's Restated License Agreement contract number 315387, a copy of which is attached hereto and incorporated herein by reference. The License Agreement includes terms and conditions for the Advantage Program.
- "Customer" means County. For avoidance of doubt, the definition of Customer will not include consultants or contractors.
- "Rolled-In Software" means Products (excluding Term licenses or subscriptions) of the same type as EA Products that Customer acquired for use prior to the Effective Date, that are current on paid maintenance (as shown in Esri's customer service records), and that receive EA Maintenance during the term of the EA. If this EA is extended or renewed, Rolled-In Software shall include EA Products Deployed prior to the then-current renewal period.
- "Technical Support" means a process to attempt to resolve reported Cases through error correction, patches, hot fixes, and workarounds; replacement deliveries; or any other type of Software, Data, or Documentation corrections or modifications specified in the most current applicable Esri U.S. Software Maintenance Program.
- "Tier 1 Help Desk" means Customer point of contact from which all Tier 1 Support will be given to Customer.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Customer in its attempted resolution of reported Cases.
- "Tier 2 Support" means the Technical Support provided by Esri to the Tier 1 Help Desk when the Case cannot be resolved through Tier 1 Support.
- "Unit-Priced Item(s)" means separately orderable Products or maintenance that is available subject to a per-unit license fee, subscription fee, or maintenance fee.

### ARTICLE 2—GRANT OF LICENSE

**2.1 Grant of License.** Customer's use of the Enterprise License Software is subject to the License Agreement and any additional terms set forth in this Article 2 and in Article 3 below.

**2.2 Beta License.** Beta licenses are not available under this ELA. Therefore, Section 3.2, Beta License, in the License Agreement is deleted in its entirety. Beta Software, Beta Data, and Beta Web Services, if requested and provided, will be licensed separately and individually under the terms of the License Agreement only. No other benefits, grants or rights provided in this ELA shall apply or be provided/granted.

**2.3 Consultant Access.** License Agreement is modified to add the restriction that access to and use of any Enterprise License Software is restricted to use by consultants and contractors for the sole benefit of Customer while (i) working on-site at Customer's facilities; (ii) remotely accessing or using Enterprise License Software from Customer's on-site computers or machines; or (iii) remotely using/accessing Enterprise License Software from a third party's computers or machines under contract to Customer. Customer shall require consultant or contractor to discontinue access to and use of Enterprise Software upon completion of work for Customer.

## ARTICLE 3—SCOPE OF USE

There are Additional Restrictions, Permitted Uses, and Uses Not Permitted for Customer incorporated into this ELA. The Permitted Uses and Uses Not Permitted sections of the General License Terms and Conditions portion of the License Agreement, are modified by Sections 3.1 and 3.2 as follows:

**3.1 Additional Permitted Uses.** The following additional Permitted Uses are hereby granted to Customer for the Enterprise License Software:

For the term of the ELA, Customer may copy and Deploy the Enterprise License Software up to the quantities of licenses granted in Appendix A. No other entity or person has a right to copy or Deploy the Enterprise License Software.

**3.2 Uses Not Permitted.** In addition to the restrictions set forth in the License Agreement, the following Uses Not Permitted apply to the Enterprise License Software:

- a. Customer shall not transfer, redistribute, or Deploy the Enterprise License Software outside the United States or its territories or possessions without the prior written permission of Esri and agreement on additional fees, if any.
- b. Customer shall not use the Enterprise License Software outside the United States or its territories or possessions without the prior written permission of Esri and agreement on additional fees, if any. Any such export will be subject to U.S. Export Control Regulation requirements of the License Agreement.
- c. Reserved.
- d. Customer shall not transfer, redistribute, consolidate, outsource, merge, or assign (collectively herein “Transfer”) Enterprise License Software to any third party without prior Esri written permission which Esri shall not unreasonably withhold. The ELA Fee may be increased as a result of the Transfer in an amount mutually agreed upon, reflective of the increase in Deployments. Any ELA Fee increases pursuant to this subsection will be cumulative.

## ARTICLE 4—MAINTENANCE

**4.1 ELA Maintenance.** ELA Maintenance is included in the ELA Fee. Enterprise License Software will receive ELA Maintenance, provided that standard maintenance is available for each item. ELA Maintenance includes benefits specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>) as modified by this Section 4.1.

### a. Tier 1 Support Provided by Customer

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

### b. Tier 2 Support Provided by Esri

- (1) Esri shall log the calls received from the Tier 1 Help Desk individuals.

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

**4.2 Maintenance for Unit-Priced Items.** Annual maintenance fees for Unit-Priced Items are not included in the EA Fee, and if ordered, additional fees will apply.

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

### **5.1 Purchase Orders, Invoicing, Delivery, and Deployment**

- a. Esri does not require Customer to issue Delivery Orders (hereinafter referred to as “purchase orders”). Customer may submit a purchase order in accordance with its own process requirement, provided that Customer issues its initial purchase order on or before December 21, 2022. Subsequent purchase orders are due on November 21, 2023 and November 21, 2024 for each additional year. Invoices will be due and payable within thirty (30) days of invoice.
- b. Any purchase orders that Customer issues will reference, incorporate, and be subject to the terms and conditions of this ELA. No additional, conflicting, or different terms contained in a quote, purchase order, invoice, or other ordering document will be binding. Customer will process all orders and deliveries pertaining to this ELA through Customer's centralized point of contact.
- c. Customer will include the following information in each purchase order:
  - (1) Esri customer number, the ship-to address, and bill-to address as identified in Appendix C.
  - (2) Purchase order number.
  - (3) Applicable annual payment due.
  - (4) On the face of the purchase order, the following printed statement: "Governed by and subject to Customer contract No. MA-PO-17-125."
- d. Esri will provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download, operate, or allow access to the Enterprise License Software listed in Appendix A.
- e. Delivery of updates/new versions of Enterprise License Software will be made in the same manner. If requested by Customer, Esri will deliver a limited number of sets of backup media as provided in Appendix B to the ship-to address identified in Appendix C—ELA Points of Contact, FOB destination with shipping charges prepaid. Customer may purchase additional backup media sets at the prices in effect at the time of purchase. Delivery or receipt of tangible media could cause prior and future license fees to be subject to taxes. Esri may invoice for and Customer agrees to pay any such sales or use tax associated with receipt of tangible media.
- f. Esri reserves the right to suspend Customer's access to and use of EA Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the overdue balance.
- g. Certain Esri Offerings are consumption-based and allow Customer to sign up for payment in arrears; such consumption-based Esri Offerings will be billed separately and are not included in the EA Fees.

### **5.2 Reserved.**

**5.3 Annual Report of Deployments.** At each anniversary date and ninety (90) days prior to the expiration date of this ELA, Customer shall provide a written report to Esri in a form provided by Esri detailing all Deployments made, including

preexisting and Rolled-In Software (each a "Deployment Report"). The report will be subject to audit by an authorized representative of Esri.

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

## **ARTICLE 6—POINTS OF CONTACT; NOTICES**

**6.1 Points of Contact.** Each party shall identify points of contact for administrative and technical issues in Appendix C.

**6.2 Notices.** Except as set forth in Section 6.1, any notice, report, demand, or other communication will be properly given when made in writing in English and sent by courier; registered or certified airmail; or facsimile or other electronic transmission and confirmed by courier or by registered or certified airmail, properly addressed to the appropriate party at the address set forth above, until changed by notice in writing by either party hereto. If sent by courier or airmail, notice will be effective seven (7) days from the date of deposit with the courier service or post office. If sent by electronic transmission, notice will be effective upon receipt, provided confirmation is given as specified herein. Notices will be given at the following addresses:

To: Esri  
380 New York Street  
Redlands, CA 92373-8100  
Attn.: Manager, Contracts and Legal Services

To: Customer  
as listed in Appendix C

## **ARTICLE 7—TERM, TERMINATION, AND EXPIRATION**

**7.1 Term.** The term of the ELA will be for a period of three (3) years, commencing on the Effective Date unless this ELA is terminated earlier as provided herein.

**7.2 Termination for a Material Breach.** Either party may terminate this ELA for a material breach by the other party. The breaching party will be given a period of ten (10) days from date of written notice to cure any material breach. If either party disagrees with any notice received from the other party alleging that it is in breach of the terms of this ELA, it shall, within ten (10) days of receiving such notice, provide a full response with a full explanation of the reasons it objects to the notice of alleged material breach, so that the party sending notice is able to fully investigate the matter without reference back to the alleging breaching party. If, following review of such notice, the party-sending-notice does not agree with the explanation from the alleged breaching party, the matter shall be referred, as soon as practical, to the individuals noted as signatories at the end of this ELA (or other persons of equivalent or greater responsibility within the party's entity). If those individuals cannot reach ELA within five (5) working days of reference of the matter to them, either party shall be free to pursue any of its remedies hereunder. Notwithstanding the above notice and review requirements, termination is immediate for a material breach of a nature that is impossible to cure.

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

Upon termination of this ELA by Customer for a material breach, all licenses Deployed will also terminate, and Esri shall refund any paid ELA Fees, prorated to the date of notice of the material breach. Customer shall uninstall, remove, and destroy all Enterprise License Software; training materials; and any whole or partial copies, modifications, or merged portions in any form. Customer shall deliver evidence of such destruction to Esri, which evidence will be in a form

acceptable to Esri. Customer Content shall be returned to Customer pursuant to Section B.8.3 of the General Terms and Conditions.

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

**7.5 Termination for Non-Appropriation of Funds or Lack of Funds.** Customer's obligation to pay the amounts due for following fiscal years is contingent upon appropriation of funds for this ELA. Customer or Esri may terminate this ELA in the event such funding is not made available ("Lack of Funds"). If either party terminates for Lack of Funds, it will give the other party written notice of termination prior to the ELA anniversary date. In all cases, the effective date of the termination will be the last day of that payment period immediately prior to the annual anniversary date for the next payment.

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

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

- a. Customer must uninstall, remove, and destroy all Deployed Software, Data, or Documentation and any whole or partial copies identified in Appendix A, Table A-2, however Customer may continue to use Rolled-In Software, subject to its compliance with the License Agreement;
- b. Customer may continue to use Deployed Enterprise License Software, Data, or Documentation identified in Appendix A, Table A-1, provided:
  - i. Customer shall report the quantity and types of Deployed Enterprise License Software identified in Appendix A, Table A-1, and Esri shall determine the quantity and type of Software, Data, or Documentation that Customer may continue to use under the License Agreement terms. This determination will be based on multiplying the commercial list price of the Deployed Enterprise License Software identified in Table A-1 by the reported quantity and types and subtracting that amount from a portion of the ELA Fee amounts paid (portion of ELA Fee applicable to Enterprise License Software licenses identified in Table A-1 hereinafter referred to as "Offset Amount"). Customer shall uninstall, remove, and destroy Deployed Enterprise License Software valued in excess of the Offset Amount to reach an authorized quantity and type level. The remaining authorized quantities and types of software ("Remaining Software") will be licensed in accordance with the License Agreement; and
  - ii. Rolled-In Software licenses of the type identified in Table A-1 will not terminate and may be used at the version level they have been upgraded to at the time of termination. Use and licensing of Rolled-In Software licenses will be in accordance with the License Agreement.
- c. No refund will be provided to Customer for payments made prior to termination.

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

**7.6 Termination for Convenience.** This ELA may not be terminated for convenience.

## **ARTICLE 8—RESERVED**



## ARTICLE 9—RELATIONSHIP OF THE PARTIES

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

## ARTICLE 10—FORCE MAJEURE

If the performance of any obligation under this ELA is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, threat of or actual terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any government agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.

## ARTICLE 11—GIS STANDARD

**11.1** Customer may act as a reference for other Esri customers and potential customers as long as the ELA remains in effect. This ELA will not be construed or interpreted as an exclusive dealings agreement, and Customer reserves the right to purchase from third parties any of their requirements for GIS software, or related services.

Customer agrees that Esri may publicize the existence of the ELA.

## ARTICLE 12—ADMINISTRATIVE REQUIREMENTS

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

**12.2 Conversion of Enterprise License Software—Limited Quantity or unit priced item.** Newer or updated Enterprise License Software may contain or be developed with (i) newly acquired technology obtained through a significant investment which ESRI markets to all its new and existing customers as Successor Products or New Versions or (ii) third-party intellectual property that requires a unit-based royalty fee or prohibits Deployment under a site or enterprise license. Esri reserves the right to exclude such Successor Products or New Versions of the Enterprise License Software from the list of items eligible to be Deployed in unlimited quantities provided that usage of such Successor Products or New Versions by other ESRI customers is subject to additional license fees. Such items can be made available to Customer on a limited quantity basis or as unit priced item(s). In such event, Customer may continue to use the older (previous) version Deployed, and Esri will provide Technical Support in accordance with <https://support.esri.com/en/other-resources/product-life-cycle>. "Successor Products" and "New Versions" as used in this section 12.2 shall mean any commercially released version of the Software that ESRI releases to replace previous versions which adds new or changed functionalities or features to the Software and/or allows the Software to be compatible with another operating system. The Successor Products and New Versions will be provided to Customer subject to the product migration plans described in <https://support.esri.com/en/other-resources/product-life-cycle>.

**12.3 Obsolescence.** During the term of this ELA, some of the items listed in Appendix A may become obsolete or will no longer be commercially offered or may no longer be available for Deployment. Customer may continue to use Enterprise License Software that has been Deployed, but support and upgrades for older items may not be available. ELA Maintenance and availability of Enterprise License Software identified in Appendix A will be subject to each item's Life Cycle Support Status, which can be found at <http://support.esri.com/index.cfm?fa=knowledgebase.productlifecycles.gateway>

by selecting the product type and clicking the Product Life Cycle link for specific product plans. Appendix F, Esri Product Life Cycle Support Policy defines the support phases and overall support plans.

## **ARTICLE 13—GENERAL PROVISIONS**

**13.1** The General Provisions and Limitations of Liability of the License Agreement will apply to the entire ELA. If there is a conflict among any of the other terms and conditions in the various documents, the order of descending precedence will be as follows: (1) Pima County Sole Source Procurement Agreement (2) E512GM Enterprise License Agreement Terms and Conditions, and (3) License Agreement. For the avoidance of doubt, Article 7—Term, Termination, and Expiration of this EA supersedes any termination language in the License Agreement with respect to all Products and Services provided under this EA. If Customer subscribes to the Advantage Program, the Advantage Program terms and conditions take precedence over the provisions of this EA with respect to products or services provided under Advantage Program. Except as otherwise expressly provided herein, any amendment or Addendum to this ELA must be in writing and signed by an authorized representative of each party.

**13.2 Survival of Certain ELA Clauses.** The provisions of Article 7.4 of this Enterprise License Terms and Conditions document (E512GM) will survive the expiration or termination of this ELA.

**APPENDIX A**  
**SOFTWARE AND DEPLOYMENT SCHEDULE**

For the period December 21, 2022 through November 29, 2025, Customer may Deploy the Enterprise License Software up to the total quantity of licenses indicated below.

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

<b>Product</b>	<b>Total Qty. to Be Deployed</b>
<b>ArcGIS Desktop:</b> Advanced, Standard, Basic (Single and Concurrent Use)	Uncapped
<b>ArcGIS Desktop Extensions:</b> ArcGIS 3D Analyst, ArcGIS Data Reviewer, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Pipeline Referencing, ArcGIS Publisher, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager (Single and Concurrent Use)	Uncapped
<b>ArcGIS Enterprise:</b> Enterprise and Workgroup (Advanced and Standard)	Uncapped
<b>ArcGIS Enterprise Extensions:</b> ArcGIS 3D Analyst, ArcGIS Data Reviewer, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager	Uncapped
<b>ArcGIS GIS Server:</b> Advanced, Standard, Basic	Uncapped
<b>ArcGIS Enterprise Additional Capability Servers:</b> ArcGIS Image Server, ArcGIS GeoEvent Server	Uncapped
<b>ArcGIS Monitor</b>	Uncapped
<b>Mapping and Charting Solutions:</b> Esri Production Mapping for Desktop	Uncapped
<b>ArcGIS Runtime Advanced</b>	Uncapped
<b>ArcGIS Runtime Analysis Extension</b>	Uncapped

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

<b>Item</b>	<b>Rolled-In Qty. (if applicable)</b>	<b>Qty. to Be Deployed</b>	<b>Total</b>
<b>ArcGIS Data Interoperability Desktop Extension:</b> Concurrent Use Licenses	0	2	2
<b>ArcGIS Image Analyst Desktop Extension:</b> Concurrent Use Licenses	2	0	2
<b>ArcGIS Roads &amp; Highways Desktop:</b> Concurrent Use Licenses	6	0	6
<b>ArcGIS Business Analyst Desktop:</b> Single-Use Licenses with One State Dataset	3	0	3
<b>ArcGIS Roads and Highways ArcGIS for Server Advanced:</b> (up to Four Cores)	1	0	1
<b>ArcGIS Roads and Highways ArcGIS for Server Advanced Staging:</b> (up to Four Cores)	1	0	1
<b>ArcGIS Notebook Server Advanced</b>	0	1	1
<b>ArcGIS Notebook Server Advanced for Staging:</b> Staging License	0	1	1
<b>ArcGIS Mission Server</b>	0	1	1
<b>ArcGIS Mission Server for Staging</b>	0	1	1
<b>ArcGIS Workflow Manager</b>	0	1	1
<b>ArcGIS Workflow Manager for Staging:</b> Staging License	0	1	1

<b>ArcGIS Image User Type Extension for ArcGIS Online:</b> Term Licenses	0	5	5
<b>ArcGIS Business Analyst Web App Advanced Online:</b> Term Licenses	0	2	2
<b>ArcGIS Community Analyst Web App Online:</b> Term Licenses	0	5	5
<b>ArcGIS Insights for ArcGIS Online:</b> Term Licenses	0	10	10
<b>ArcGIS Navigator for ArcGIS Online:</b> Term Licenses	0	100	100
<b>ArcGIS Tracker for ArcGIS Online:</b> Term Licenses	0	100	100
<b>ArcGIS Drone2Map Advanced for ArcGIS Online:</b> Term License	0	5	5
<b>ArcGIS Parcel Fabric User Type Extension for ArcGIS Enterprise:</b> Term Licenses	0	50	50
<b>ArcGIS Workflow Manager User Type Extension for ArcGIS Enterprise:</b> Term Licenses	0	100	100
<b>ArcGIS Utility Network Service User Type Extension for ArcGIS Enterprise:</b> Term Licenses	0	50	50
<b>ArcGIS Insights for ArcGIS Enterprise:</b> Term Licenses	0	10	10
<b>ArcGIS Navigator for ArcGIS Enterprise:</b> Term Licenses	0	50	50
<b>ArcGIS Tracker for ArcGIS Enterprise:</b> Term Licenses	0	50	50
<b>ArcGIS Drone2Map Advanced for ArcGIS Enterprise:</b> Term License	0	5	5
<b>ArcGIS Mission Manager for ArcGIS Enterprise:</b> Term Licenses	0	10	10
<b>ArcGIS Developer Subscription:</b> Professional Term Licenses	0	2	2
<b>ArcGIS Developer Subscription:</b> Enterprise Term Licenses	0	1	1
<b>ArcGIS Hub Premium ArcGIS Online Community:</b> Term License	0	1	1
<b>ArcGIS Hub Premium Additional Community Identities:</b> Blocks of 1,000	0	5	5
<b>Site Scan for ArcGIS Custom 1 Year License (not to exceed 50,000 Images per year):</b> Term License	0	1	1
<b>ArcGIS Indoors Maps:</b> Term License	0	1	1
<b>ArcGIS Indoors Spaces:</b> Term License	0	1	1
<b>ArcGIS Indoors IPS:</b> Term License	0	1	1
<b>StreetMap Premium for ArcGIS Concurrent Use:</b> Full Use State Licenses	0	2	2

Table 2 continued on next page.

<b>Product</b>	<b>Number of Subscriptions</b>	<b>Total Number of Named Users</b>	<b>Annual Credits per Named User</b>
<b>ArcGIS Enterprise Term License User Types*</b>	1	300 Editor 1000 Field Worker 500 Creator Use Types	N/A
<b>ArcGIS Online User Types*:</b> Organizational Subscription	1	1000 Viewer 300 Editor 1000 Field Worker 40 Storyteller 500 Creator Use Types	203,000

\*The value of this ELA is based on the maximum estimated usage of 64 Viewers, 5 Editors, 30 Field Workers, and 114 Creator User Types in ArcGIS Online and 16 Field Workers and 82 Creator User Types in ArcGIS Enterprise. Customer may deploy additional User Types with any number above the estimated usage to be considered at renewal.

**APPENDIX B**  
**ELA FEE SCHEDULE - CONFIDENTIAL**  
**(SUBJECT TO SECTION 4 – PUBLIC INFORMATION PROVISION)**

For the period December 21, 2022 through November 29, 2025, the ELA Fee is \$2,396,400.00. The ELA Fee is in consideration of the Enterprise License Software, ELA Maintenance, Esri International User Conference registrations, and the Advantage Program.

	<b>Year 2022</b>	<b>Year 8 2023</b>	<b>Year 9 2024</b>	<b>ELA Fee</b>
<b>Payments</b>	<b>\$798,800</b>	<b>\$798,800</b>	<b>\$798,800</b>	<b>\$2,396,400</b>

<b>Advantage Program (AP)</b>	<b>100 Technical Advisor hours per year 200 Learning and Services credits per year</b>
<b>Premium Support Services (PSS) annual subscription</b>	<b>2 authorized callers per year 10 incidents per year</b>
<b>Number of Esri User Conference Registrations per year</b>	<b>20</b>
<b>Number of Tier 1 Help Desk Callers That May Contact Esri for Tier 2 Support</b>	<b>5</b>
<b>Number of Sets of Backup Media, if Requested</b>	<b>1</b>
<b>Term of ELA</b>	<b>Three years from December 21, 2022 through November 29, 2025</b>

**APPENDIX C**  
**ELA POINTS OF CONTACT**

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

1. Esri point of contact for order processing issues:

Name: Customer Service  
Esri  
380 New York Street  
Redlands, CA 92373-8100  
Email: [service@esri.com](mailto:service@esri.com)  
Phone: 888-377-4575  
Fax: 909-307-3083

2. Esri contact for Tier 2 Support issues:

MyEsri: <https://my.esri.com>  
Phone: 909-793-3774 (within the United States only)  
Web: <https://support.esri.com>

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

Name: Steve Whitney  
Email: steve.whitney@pima.gov  
Phone: 520-720-6729  
Fax: 520-791-6588

4. All invoices to Customer will be mailed to the address listed below:

Customer Office: Pima County Finance & Risk Management  
Name: Accounts Payable  
Address: P.O. Box 791  
Tucson, AZ 85701

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

Customer Office: Pima County ITD  
Name: Software Administrator  
Address: 33 N Stone Avenue, 17<sup>th</sup> Floor  
Tucson, AZ 85701

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

Customer Office: Pima County Procurement  
Name: Terri Spencer, Procurement Director  
Address: 150 W Congress, 5<sup>th</sup> Floor  
Tucson, AZ 85701



RESTATED LICENSE AGREEMENT  
No. 315387

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

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This Restated License Agreement ("**Agreement**") is between **Pima County ("Customer")** and **Environmental Systems Research Institute, Inc. ("Esri")**, a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA. This Agreement adds additional terms and conditions to Esri contract 315383 with respect to the access and use of Esri Products and Maintenance.

This Agreement is the sole and entire agreement of the parties as to the subject matter of this Agreement and supersedes any previous agreements, understandings, and arrangements relating to such subject matter. All attachments and addendums to this Agreement are incorporated and made part of this Agreement. The Agreement comprises this signature page, the terms and conditions that begin on the following page, and all referenced attachments and addendums. Additional or conflicting terms in any Ordering Documents exchanged during the ordering process, other than the terms of this Agreement, Product or Service descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Neither party has relied on any statement, representation, or warranty not expressly stated in this Agreement. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by both parties.

## 1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

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

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

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

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

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

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

**1.4 Evaluation and Beta Licenses.** Products acquired under an evaluation license or subscription or under a Beta program are intended for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the evaluation term, Customer may lose any content and customizations made during the evaluation term. If



Customer does not wish to purchase a license or subscription, Customer should export such content before the end of Customer's evaluation period.

**1.5 Educational Programs.** Customer agrees to use Esri Offerings provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "**Administrative Use**" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.

**1.6 Grant Programs.** Customer may use Esri Offerings provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Esri Offerings, Customer shall not use Esri Offerings for revenue-generating or for-profit purposes.

**1.7 Other Esri Limited-Use Programs.** If Customer acquires Esri Offerings under any limited-use program not listed above, Customer's use of the Esri Offerings may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the non-conflicting terms of this Agreement.

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

## **2.0 SOFTWARE AND ONLINE SERVICES TERMS OF USE**

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

- a. "**Anonymous Users**" means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Customer's Value-Added Applications.
- b. "**App Login Credential(s)**" means a system-generated application login and associated password, provided when registering a Value-Added Application with Online Services, which when embedded in a Value-Added Application allows the Value-Added Application to access and use Online Services.
- c. "**Commercial App Deployment**" means a license to distribute Value-Added Applications to third parties for a fee.
- d. "**Concurrent Use License**" means a license to install and use the Software on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
- e. "**Deployment License**" means a license to incorporate ArcGIS Runtime components in Value-Added Applications and distribute the Value-Added Applications to Customer's end users.
- f. "**Deployment Server License**" means a license to use Software under a Server License for all uses permitted in the Agreement and as described in the Documentation.
- g. "**Development Server License**" means a license to use Software under a Server License only to build and test Value-Added Applications as described in the Documentation.
- h. "**Development Use**" means a license to install and use Products to build and test Value-Added Applications as described in the Documentation.
- i. "**Dual Use License**" means a license to install the Software on a desktop computer and use it simultaneously with either a personal digital assistant (PDA) or handheld mobile device as long as the Software is only used by a single individual at any time.
- j. "**Failover License**" means a license to install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
- k. "**Named User**" is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique secure named user login credential (identity) enabling access to a Product that requires such identity in order to enable access to identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.
- l. "**Named User Credential**" means an individual person's login and associated password enabling that person to access and use Products.
- m. "**Named User License or Subscription**" means a license or subscription for use by a single Named User.

- n. **"Redistribution License"** means a license to reproduce and distribute the Software provided that
  - 1. Customer reproduces and distributes the Software in its entirety;
  - 2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
  - 3. Customer reproduces all copyright and trademark attributions and notices; and
  - 4. Customer does not charge others a fee for the use of the Software.
- o. **"Server License"** means a license to install and use Software on any computer being used as a server. Server Licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use rights, each Server License includes a Failover License.
- p. **"Service Credit(s)"** means a unit of exchange for consumption of services that can be used with an Online Services Subscription.
- q. **"Sharing Tools"** means publishing capabilities included with Customer's authorized use of Online Services or ArcGIS Enterprise that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.
- r. **"Single Use License"** means a license for a single authorized end user to install and use the Software on a single computer. The single authorized end user may also to install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.
- s. **"Staging Server License"** means a license to use the Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.

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

### 2.3 Software Terms of Use.

- a. Customer may
  - 1. Install, access, or store Software and Data on electronic storage device(s);
  - 2. Make archival copies and routine computer backups;
  - 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use does not apply to Software licensed for Development Use.
  - 4. Move Software in the licensed configuration to a replacement computer;
  - 5. Distribute to third parties Software and any associated Authorization Codes required for use of a Deployment License; and
  - 6. Governmental or not-for-profit organizations that operate a website or offer Internet services may use server Software for revenue-generating purposes on a cost-recovery basis and not for profit.
- b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries, but only to the extent that such customization is described in the Documentation.
- c. Customer may use all fonts provided with the Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
- d. Esri publishes Product-specific Software terms of use at <https://www.esri.com/legal/scope-of-use>, a current copy of which is attached hereto as Addendum 1.

## 2.4 Online Services Terms of Use.

- a. **Online Services Descriptions.** Esri publishes Online Services Subscription-specific terms of use at <https://www.esri.com/legal/scope-of-use>, a current copy of which is attached hereto as Addendum 1. Use of Online Services is also subject to the Cloud Services terms found in Attachment B.
- b. **Modifications of Online Services.** Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and when applicable, Esri will issue a prorated refund.
- c. **Sharing Customer Content.** Sharing Customer Content using Sharing Tools enables third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools. Customer's use of Sharing Tools is at Customer's sole risk.
- d. **Limits on Use of Online Services; Service Credits.** Each Online Services subscription includes Service Credits as described in the applicable Ordering Document. Each Service Credit entitles Customer to consume a set amount of Online Services, the amount varying depending on the Online Services that Customer is using. As Customer consumes Online Services, Service Credits are automatically debited from Customer's subscription, up to the maximum number of Service Credits available. Customer may purchase additional Service Credits as needed. Esri will notify Customer's subscription account administrator when Customer's Service consumption reaches approximately 75% of the Service Credits allocated to Customer through Customer's subscription. Esri reserves the right to suspend Customer's access to Online Services that consume Service Credits when Customer consumes all its Service Credits. Esri will promptly restore Customer's access to its Online Services once Customer has purchased additional Service Credits.

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

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

## 2.6 Value-Added Applications.

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

**2.7 Maintenance.** Esri will provide Maintenance in accordance with the Esri Maintenance and Support Program. .

### **3.0 RESERVED**

### **4.0 DATA TERMS OF USE**

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

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

### **4.2 Permitted Uses**

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

### **4.3 Use Restrictions**

- a. Customer may not act directly or authorize its customers to cobrand Data, use the Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. *Business List Data.* Unless authorized in writing, Customer may not use Business Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. *Street Data.* Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for
  - 1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
  - 2. Synchronized multivehicle routing; or
  - 3. Synchronized route optimization.

- e. *Business Analyst Data*. Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.
- f. *Partial Dataset Licenses*: If Customer orders a subset of a dataset (e.g., a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. *Michael Bauer Research International Boundaries Data ("MBR Data")*. Customer's right to use data downloaded to Customer's premises (e.g., MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

**4.4 Supplemental Terms and Conditions for Data.** Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These flow-down terms are available at <http://www.esri.com/legal/third-party-data>.

## 5.0 PROFESSIONAL SERVICES

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

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

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

### 5.3 Task Orders and Project Schedule.

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

### 5.4 Ownership of Deliverables and Inventions.

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

## 5.5 Acceptance.

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

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

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

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

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

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

## 5.9 Payment; Invoices.

- a. **For Firm Fixed Price Task Orders.** Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.
- b. **For Professional Service Packages.** Esri will submit an invoice for Professional Service Packages on receipt of an agreed-upon Task Order. Esri may, at its sole discretion, stop work to avoid exceeding the total labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of the Esri invoice date.

c. **For Time and Materials Task Orders.**

1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) incurred as authorized under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri will invoice meals on a per diem basis in accordance with the full daily limits specified on the government Defense Travel website at <https://www.defensetravel.dod.mil/site/perdiemCalc.cfm>. Esri and Customer may include hourly labor rates in this Agreement; if the parties elect to do so, Attachment D will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; any increase in the first 5 years will not exceed 5 percent per year. Esri will invoice ODCs, including travel-related expenses incurred, plus a 15 percent burden.
2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

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

## **6.0 ESRI MANAGED CLOUD SERVICES**

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

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

### **6.2 Provision of Esri Managed Cloud Services.**

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

## 7.0 TRAINING

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

- a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
- b. **"Esri Academy LMS Integration Subscription"** means an optional term-limited subscription to Esri Academy enabling a specific number of unique Customer student(s) access to Self-Paced E-Learning through the customer's Learning Management System.
- c. **"Esri E-Learning Content (SCORM Format) License"** means an optional term-limited license that provides Esri customers with Esri's e-learning content in SCORM (Shareable Content Object Reference Model) format to import into their Learning Management System.
- d. **"Esri Mobile Lab"** means a service in which Esri will deliver and set up a training environment at the Customer's site for use in conjunction with scheduled Esri Training Events only. The Esri Mobile Lab will include certain hardware, software, power cords, and network switches necessary for the instructor to set up the environment.
- e. **"Esri Training Event(s)"** means an Esri site class, Esri instructor-led online class, a Customer site/private class, workshop, or coaching services.
- f. **"Esri Training Representative"** means Customer's primary Esri liaison in organizing private Esri Training Events.
- g. **"Student(s)"** means a Customer employee or agent who is a registered participant in a specific Esri Training Event or Training-related services. If Customer is an individual, then Student means Customer.
- h. **"Training Pass"** means a nonrefundable, nontransferable block of prepaid training days with a fixed price per day throughout the Term of the Training Pass.
- i. **"Esri Mobile Router"** means a service in which Esri will deliver and setup a mobile router at the Customer's site for use in conjunction with a scheduled Esri Training Event only. The mobile router provides high-speed wireless internet access needed to run the Esri Training Event.
- j. **"Learning Management System" or "LMS"** shall mean third-party software acquired separately by Customer that allows Customer to consume E-Learning Content (SCORM Format) for the purpose of re-serving it to the Customer's internal employees.

## 7.2 Permitted and Prohibited Uses.

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

## 7.3 Esri's Responsibilities.

Esri will

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



## 7.4 Customer's Responsibilities.

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training Event. Esri reserves the right to disconnect any Student who permits unregistered student access to an online classroom Esri Training Event. In such case, the full Esri Training Event fee will be invoiced and payable;
- b. Ensure that all Students meet the minimum prerequisites for the applicable Esri Training Event as listed on Esri's training website;
- c. Submit Student registrations with payment method information at least 15 business days before the scheduled start date;
- d. Provide the Esri Training Representative with a list of names and email addresses of any Students who are to attend an Esri Training Event at least 3 business days before the scheduled start date, for compliance with the US embargoed country lists and the various US Government Lists of Parties of Concern or Specially Designated Nationals lists;
- e. For classes held at the Customer-designated facility, complete a client-site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
- f. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
- g. Assume full liability and responsibility for Student attending Training course(s) under this Agreement.
- h. If the Esri Mobile Lab or Mobile Router is used, Customer will
  1. Take delivery of the Esri Mobile Lab or Mobile Router from the shipping agent, and keep it in a secure, locked area at all times;
  2. Immediately report any previously damaged Esri Mobile Lab or Mobile Router equipment to the Esri Training Representative upon receipt of the shipment; and
  3. Be financially responsible for loss of, damage to, or theft of Esri Mobile Lab or Mobile Router equipment while in Customer's possession.

## 7.5 Student Registration and Training Event Change Policy.

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

## 7.6 Invoicing; Prepaid Fees.

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

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

## 7.7 Availability and General Provision of Wireless Service

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

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

- a. Esri E-Learning Content (SCORM format) License, specific terms of use incorporated by reference are found at <https://www.esri.com/content/dam/esrisites/en-us/media/legal/scorm-lms/scorm-terms-and-conditions.pdf>
- b. Esri Academy LMS Integration Subscription, specific terms of use incorporated by reference are found at <https://www.esri.com/content/dam/esrisites/en-us/media/legal/scorm-lms/lms-terms-and-conditions.pdf>

## 8.0 ADVANTAGE PROGRAM

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

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

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

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

**8.3 Authorized Contact Information.** Customer identifies the following person as its initial Authorized Contact.

**(to be completed by Customer):**

Contact Name: Steve Whitney  
Address: 33 N Stone Avenue, 17<sup>th</sup> Floor  
City, State, ZIP: Tucson, AZ 85701  
Email: steve.whitney@pima.gov  
Telephone: 520-720-6729  
Fax: 520-791-6588

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

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

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

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

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

**8.7 Travel and Per Diem Expenses.** Any Esri travel and per diem expenses will be quoted separately. Travel expenses will include a 15 percent burden, and per diem will be determined in accordance with the full daily limits specified on the government Defense Travel website at <https://www.defensetravel.dod.mil/site/perdiemCalc.cfm>. Customer will use Learning and Services Credits for travel and per diem expenses.

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

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

#### **8.10 Invoicing.**

- a. Esri shall invoice Customer as quoted for the Advantage Program subscription, additional Learning and Services Credits, or Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 30 days in

advance of the Advantage Program subscription expiration date. Esri will extend the Advantage Program subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Advisor services upon receipt of Customer's order.

- b. Pricing for program renewals and new or additional Services will be in accordance with Esri's standard pricing at the time of purchase or renewal.

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

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

## ATTACHMENT A GLOSSARY OF TERMS

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

**"API"** means application programming interface.

**"ArcGIS Website"** means <http://www.arcgis.com> and any related or successor websites.

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

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

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

**"Content"** means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software applications, software development kits (SDKs), APIs, software libraries, code samples, and other resources used in connection with Esri Offerings and Services.

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

**"Data"** means any commercially available digital dataset(s), including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes, that Esri bundles with other Esri Offerings or delivers independently. Data excludes any Content that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

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

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

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

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

**"GIS"** means geographic information system.

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

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

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

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

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

**"Product(s)"** means Software, Data, and Cloud Services licensed or subscribed to under the terms of this Agreement.

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

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

**"Services"** means the technical support provided under Maintenance. If Esri provides Esri Managed Cloud Services, Training, or Professional Services directly to Customer, then Services also include Esri Managed Cloud Services, Training, and Professional Services.

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

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

**"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.

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

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

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

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

## **ATTACHMENT B GENERAL TERMS AND CONDITIONS**

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

### **ARTICLE B.1—GENERAL USE RESTRICTIONS**

Except as expressly permitted in this Agreement, Customer will not

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

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

### **ARTICLE B.2—TERM AND TERMINATION**

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

**B.2.2** If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions in Esri Offerings. If Customer terminates this Agreement for any reason, then Customer may, at its election, also terminate Customer's licenses or subscriptions in Esri Offerings.

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

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

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

## **ARTICLE B.3—LIMITED WARRANTIES AND DISCLAIMERS**

**B.3.1 Limited Warranties.** Esri warrants:

- a. For a period of 90 days,
  1. Software will substantially conform to the Documentation under normal use and all media will be free from defects in materials and workmanship from the date of delivery;
  2. Services will substantially conform to the professional and technical standards of the software industry from the date of performance; and
- b. During the applicable subscription term,
  1. Online Services will substantially conform to the Documentation under normal use;
  2. Maintenance will substantially conform to the professional and technical standards of the software industry; and

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

**3.3 General Disclaimer.** Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and no infringement of intellectual property rights. Esri is not responsible for any nonconformities with Specifications or loss, deletion, modification, or disclosure of Customer Content caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected. Esri Offerings are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

**B.3.4 Disclaimers**

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

**B.3.5 Exclusive Remedy.** Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be limited, at Esri's sole discretion, to (i) replace any defective media; (ii) repair, correct, or provide a workaround for the applicable Esri Offering or Services; or (iii) return the fees paid by Customer for Esri Offerings or Services that do not meet Esri's limited warranties, provided that Customer uninstalls, removes, and destroys all copies of the



applicable Esri Offerings; ceases accessing and using the applicable Cloud Services; and executes and delivers evidence of such actions to Esri or its authorized distributor.

#### **ARTICLE B.4—LIMITATION OF LIABILITY**

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

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

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

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

#### **ARTICLE B.5—INDEMNIFICATIONS**

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

##### **B.5.2 Infringement Indemnity.**

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

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

**B.5.4 Conditions for Indemnification.** As conditions for indemnification, but for those defined as Infringement Claims (see B.5.2 c.), Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Claim, and (iv) reasonably cooperate in the defense of the Claim at Esri's request and expense.

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

## **ARTICLE B.6—INSURANCE**

If Esri is providing Services, Esri will carry, at a minimum, the following coverage:

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

## **ARTICLE B.7—SECURITY AND COMPLIANCE**

**B.7.1 Export Compliance.** Each party will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access, transfer, or use of Services or Esri Offerings to any United States embargoed countries currently including Iran, Syria, North Korea, Cuba, Crimea region of Ukraine, the Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR), or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Esri will not perform Services or provide Esri Offerings related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.31, 120.32, and 120.33, respectively, until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying and obtaining an export license if needed. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

**B.7.2 Security.** Esri publishes its security capabilities at <http://doc.arcgis.com/en/trust/security/security-overview.htm>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share controlled Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations.

**B.7.3 Malicious Code.** Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through Third-Party Content.

**B.7.4 Privacy.** Esri will process personal data according to the terms of the Data Processing Addendum available at <https://www.esri.com/en-us/privacy/overview>.

## ARTICLE B.8—CLOUD SERVICES

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

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

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

### **B.8.3 Customer Content.**

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

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

**B.8.4 Removal of Customer Content.** Esri may remove or delete any portions of Customer Content if there is reason to believe that uploading Customer Content to, or using it with, Cloud Services violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before Customer Content is removed. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at [http://www.esri.com/legal/dmca\\_policy](http://www.esri.com/legal/dmca_policy).

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

Esri is not responsible for any damage, liabilities, or losses that may result from any interruption or suspension of Online Services or removal of Customer's content as described above.

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

## ARTICLE B.9—GENERAL PROVISIONS

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

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

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

**B.9.4 Taxes and Fees; Shipping Charges.** Fees quoted to Customer are exclusive of any and all applicable taxes or fees, including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; and shipping and handling charges, and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing.

**B.9.5 Compliance Review.** Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 7 business days' written notice, or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

**B.9.6 No Implied Waivers.** The failure of either party to enforce any provision of this Agreement will not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

**B.9.7 Severability.** The parties agree that if any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make the intent of the language enforceable.

**B.9.8 Successor and Assigns.** Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement. Upon mutual agreement, Esri's affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the affiliate as the party that provides the Services. Esri's authorized distributors are not affiliates of Esri.

**B.9.9 Survival of Terms.** The Glossary of Terms and provisions of Articles 3, 4, 5, and 9 of these General Terms and Conditions will survive the expiration or termination of this Agreement.

**B.9.10 US Government Customer.** The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of the Products under applicable public procurement law, such rights will extend only to the portions affected.

**B.9.11 Governing Law.** US federal law and the law of the State of Arizona govern this Agreement, excluding their respective choice of law principles. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

**B.9.12 Dispute Resolution.** The parties will use the following dispute resolution processes:

- a. *Equitable Relief.* Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. *US Government Agencies.* This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
- c. *Other Government Entities.* Esri will comply with mandatory dispute resolutions under applicable law.
- d. *Arbitration.* Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

**B.9.13 Force Majeure.** A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

**B.9.14 Independent Contractor.** Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

**B.9.15 Notice.** Customer may send notices required under this Agreement to Esri at the following address:

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

## **ADDENDUM 1**

### **PRODUCT-SPECIFIC TERMS OF USE**

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

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

#### **Desktop Products**

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

#### **Server Products**

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

#### **Developer Products**

- ArcGIS Developer Subscription
  - All Plans (16; 24; 26; 66; 68; 89; 91; 97; 103)
    - Active subscriptions with an effective start date prior to January 27, 2021 (79)
    - Active subscriptions with an effective start date after January 26, 2021 (88)
  - Builder, Professional, Premium, or Enterprise Plans (77, 92)
  - Essentials Plan (90)
  - ArcGIS AppStudio Developer Edition (11; 16; 19)
  - ArcGIS Runtime SDK for Android, iOS, Java, macOS, .NET, Qt, or WPF (16; 19)
  - ArcGIS Engine Developer Kit and Extensions (16; 19; 22; 26)
  - ArcGIS API for JavaScript (16; 64)
  - ArcGIS CityEngine SDK and Procedural Runtime (16; 19)
- ArcGIS Runtime Deployment License for Android, iOS, Java, Mac OS X, .NET, Qt, or WPF
  - Lite (15)
  - Basic or Standard (1; 14; 15; 18)
  - Advanced (14; 15; 18)

- ArcGIS Engine Deployment License for Windows/Linux and Extensions (15; 22; 26)
- Esri File Geodatabase API (47)

#### **Mobile**

- ArcGIS Navigator (14)

#### **Other**

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

#### **Online Services**

- ArcGIS Online subscriptions are available through multiple Selling Programs:
  - Commercial Retail, EAs; and Government Programs (23; 66; 68; 69; 70; 82; 96; 103)
  - Education Programs (23; 66; 68; 69; 70; 71; 82; 96; 103)
  - Non-profit Programs (23; 66; 68; 69; 70; 71; 82; 96; 103)
- Public Plan (66; 68; 74; 75; 76; 80)
  - Customers under the following categories have these additional rights:
    - Commercial Retail (72)
    - enterprise agreements (72)
    - Government (72)
    - NGO/NPO (72)
    - Press/Media Programs (72)
    - Education Programs (71)
- ArcGIS AEC Project Delivery Subscription (83)
- ArcGIS Velocity (103)
- ArcGIS for Microsoft Planetary Computer—Pro Machine (104)

#### **Footnotes:**

1. May not be used to edit an enterprise geodatabase via Direct Connect.
2. Not for use in navigation.
3. Licensed for personal, noncommercial use only.
4. — Limited to 1 four-core server.
  - Can be installed on a separate machine.
- 5–10. Reserved.
11. Applications built with ArcGIS AppStudio Developer Edition are subject to the terms of use for ArcGIS Runtime Deployment License.
12. Reserved.
13. Licensed as a Dual Use License.
14. May be used for navigational purposes.
15. Licensed as a Deployment License.
16. Customer may use the SDKs or APIs to create Value-Added Applications and distribute and license those Value-Added Applications to its end users to use anywhere not prohibited under applicable export regulations.
17. Customer shall not redistribute Oracle Instant Client libraries or their documentation that is included with this Product. Oracle is a third-party beneficiary of this Agreement solely with respect to Customer's use of the Oracle Instant Client libraries. The Uniform Computer Information Transaction Act (UCITA) shall not apply to Customer's use of the Oracle Instant Client libraries.
18. The Deployment License is per Value-Added Application per computer for stand-alone applications.
19. License may not be used to develop Internet or server-based Value-Added Applications.

20. Licensed as a Redistribution License.
21. See Master Agreement <https://www.esri.com/legal/software-license> for additional terms of use for Named User Licenses.
22.
  - a. An end user must acquire a license in either ArcGIS Engine for Windows/Linux Software or other ArcGIS Desktop Software (Basic, Standard, or Advanced) to obtain the right to run an ArcGIS Engine application on 1 computer; and
  - b. The ArcGIS Engine for Windows/Linux extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine Value-Added Applications. A single user can have multiple ArcGIS Engine Value-Added Applications installed on 1 computer for use only by that end user.
23. System to System Communication
  - a. Customer may use a basic service login to enable one-way, read-only, system-to-system communications from ArcGIS Enterprise or ArcGIS Online to other third-party, enterprise business system(s) in the customer's organization. Customer may use a Viewer Named User Credential or Level 1 Named User Credential as a basic service login until Esri implements an actual service login credential. A specific Viewer Named User Credential or Level 1 Named User Credential used as a basic service login credential may only be used for system-to-system integration purposes and may not also be used by a Named User to access the system.
  - b. Customer may use a standard service login to enable two-way, read-write, system-to-system communications between ArcGIS Enterprise or ArcGIS Online and other third-party, enterprise business system(s) in the customer's organization. Customer may use an Editor (or higher) Named User Credential or Level 2 Named User Credential as a standard service login until Esri implements an actual service login credential. A specific Editor (or higher) Named User Credential or Level 2 Named User Credential used as a standard service login credential may only be used for system-to-system integration purposes and may not also be used by a Named User to access the system.
24. Software may be used only for the purposes of development, testing, and demonstration of a prototype Value-Added Application and creating map caches. Customer may use Value-Added Applications and map caches with ArcGIS Enterprise Staging Server Licenses and Deployment Server Licenses. Software and Data may be installed on multiple computers for use by any ArcGIS Developer Subscribers with Builder or higher plan subscriptions; all other Software is licensed as a Single Use License.
25. Reserved.
26. The geodatabase is restricted to 10 gigabytes of Customer's data.
27. May not be used to generate revenue by providing services to third parties.
28. Use is limited to 10 concurrent end users of applications other than ArcGIS Enterprise Workgroup or ArcGIS GIS Server Workgroup applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Enterprise Workgroup or ArcGIS GIS Server Workgroup geodatabase. There are no limitations on the number of connections from web applications.
29. Software requires a supported version of SQL Server Express. Supported versions are listed with the system requirements for the product on the Esri website.
30. Use is restricted to a maximum of 10 gigabytes of Customer's data. All components must be installed on a single server.
31. Includes a Failover License.
32. The use of this Software does not include a pilot's license (e.g., FAA, EASA, etc.) to operate a drone.
33. Customer may only use online storage provided with this Software to store Customer Content collected or processed through this Software.
- 34–38. Reserved.
39. Any editing functionality included with ArcGIS GIS Server is not permitted for use with ArcGIS GIS Server Basic and ArcGIS GIS Server Workgroup Basic.
- 40–46. Reserved.
47. Customer may develop and distribute Value-Added Applications that use Esri File Geodatabase API to Customer's end users.
- 48–63. Reserved.
64. Value-Added Applications for web deployment must be used in conjunction with other Esri Products. Third-party technologies may also be used in conjunction with Value-Added Applications as long as the Value-Added Applications are always used in conjunction with other Esri Product(s).
65. May only be used in conjunction with other Esri Product(s). Third-party technologies may also be used in conjunction with ArcGIS Earth as long as ArcGIS Earth is always used in conjunction with other Esri Products.



66. Only Customers with an active paid Online Services subscription may store geocoded results generated by World Geocoding Service.
67. Limited to 250,000,000 geocodes per annual subscription.
68. Customer may use the data accessible through Infographics Service for display purposes only and may not save any data accessible through this service.
69. May be used for any business purpose of Customer's organization.
70. May be used for development and test purposes for Customer's organization.
71. May be used for teaching purposes in educational organizations.
72. May be used for the internal business purposes of Customer's organization.
73. Reserved.
74. May be used for personal use.
75. Customer may enable third-party use of Value-Added Applications only by publicly sharing the Value-Added Application(s) using Sharing Tools. Customer may not use this subscription to power a Value-Added Application for its own internal business use unless Customer is an educational institution using the Value-Added Application for teaching purposes only, a qualified NGO/NPO organization, or a media or press organization.
76. Customer is not permitted to create private groups or participate in any private groups.
77. Includes a Commercial App Deployment license.
  - A Commercial App Deployment license is required when:
    - Customer deploys revenue-generating Value-Added Applications that are not for use solely with an ArcGIS Online or ArcGIS Enterprise license and have not yet migrated to use ArcGIS Platform location services Authentication.
  - A Commercial App Deployment license is not required when:
    - Customer deploys revenue-generating Value-Added Applications solely for use with an ArcGIS Online and/or ArcGIS Enterprise license. Such Value-Added Applications are not required to use ArcGIS Platform location services Authentication.
78. Includes a Commercial App Deployment license.
79. Each subscription is limited to 1,000,000 geosearch transactions per month in conjunction with Customer's subscription. Transactions include both basemap data and geocode search transactions. One basemap data transaction is equivalent to eight 256x256 tile requests. One geocode search transaction is equivalent to one address or place. If the results are stored in any manner such as after batch geocoding, the stored results are not counted toward the transaction limit. However, storage does consume ArcGIS Online credits. For transactions greater the 1,000,000 per month, call Esri Sales or your local distributor for details.
80. May permit registered students of an education institution to directly access the Online Services and share a single subscription between more than 1 registered student for teaching purposes only.
81. Reserved.
82. A Named User may embed its Named User Credential in an ArcGIS API for Python script solely for the purpose of automating a workflow to be used exclusively by the Named User whose Named User Credential is embedded in the script.
83. Customer must use a separate AEC Project Delivery Subscription for each Customer client ("Client"). Customer may (i) use the AEC Project Delivery Subscription solely to collaborate on project work with its Client; and (ii) provide Client with Named User access to the AEC Project Delivery Subscription to enable Client to access the AEC Project Delivery Subscription to collaborate on project work that Customer performs for Client. Client may not use the Named User License for any other purpose. Customer is solely responsible for Client's compliance with these terms of use and will ensure that Client stops using the AEC Project Delivery Subscription when the project ends.
84. Reserved.
85. Software licenses and subscriptions included with ArcGIS Hub may only be used to support the community initiatives enabled by ArcGIS Hub. Customer may allow 3rd parties to be Named Users of ArcGIS Hub for the sole purpose of engaging in community activities. Customers may allow employees, agents, consultants, or contractors to be Named Users of ArcGIS Hub for the sole purpose of administering, configuring, maintaining, and supporting community initiatives through ArcGIS Hub. No other use of software licenses and subscriptions included with ArcGIS Hub is permitted.
86. Customer may use the software licenses and subscriptions included with ArcGIS Indoors solely to enable the capabilities of ArcGIS Indoors as defined in the ArcGIS Indoors Documentation. No other use of software licenses and subscriptions included with ArcGIS Indoors is permitted.
87. Reserved.

88. Subscription limits are determined as defined by the available Service Request Plans.
89. Customer may distribute directly, or through its sales channels, revenue-generating Value-Added Applications, that access ArcGIS Platform location services through Authentication, to third parties. All revenue-generating Value-Added Applications are required to use Authentication when accessing ArcGIS Platform location services. Except as set forth in footnote 77 above, Customers who are in the process of migrating their revenue-generating Value-Added Applications to use ArcGIS Platform location services must have a Commercial App Deployment license until the migration to ArcGIS Platform location services is complete.
90. Customer may have multiple subscriptions within their organization for development and test purposes. Customer may only use one subscription within their organization for use with deployed Value-Added Applications.
91. Application migration—a developer who has Value-Added Applications built with:
  - a. The client APIs (including JavaScript 4.x and Runtime SDKs (any version), REST, Esri's open source mapping libraries, supported 3<sup>rd</sup> party open source mapping libraries) is required to use the ArcGIS Platform location services in their applications by April 30, 2022.
  - b. The JavaScript 3.x API are required to use the ArcGIS Platform location services in their applications by December 31, 2022
92. Customer is only permitted to create private groups or participate in private groups within the development and test ArcGIS Online Organization Subscription included with the ArcGIS Developer Subscription.
93. Reserved.
94. Reserved.
95. Reserved.
96. Customer may use ArcGIS Image services for interactive, non-programmatic access by Named Users only. Programmatic use of the ArcGIS Image services (e.g., batch classification, deep learning, etc., or exporting volumes of data larger than 10MB at a time) are not permitted.
97. Customer's end users who are prompted for an API key for use with a third party's Value-Added Application must generate such API keys through an ArcGIS Developer Subscription. API keys generated through an ArcGIS Online account are not permitted in this scenario.
98. Reserved.
99. The user types included with ArcGIS Indoors Maps are licensed solely for use to enable the capabilities as defined in the product documentation for ArcGIS Indoors Maps, ArcGIS Indoors Spaces, and ArcGIS IPS.
100. Customer may only develop Value-Added Applications for use by user types provided with ArcGIS Indoors Maps with functionality relating to indoor mapping, way finding, navigation, routing, or positioning.
101. An ArcGIS Indoors Spaces license is required to use either Workspace Reservations or Space Planner.
102. Each Disconnected Plan is limited to one production cluster.
103. Includes Online Services, or capacity, that can be utilized through a consumption model. Customer may purchase additional subscription options as needed to enable the continued use of applicable Online Services or capacity. Esri will provide Customer's subscription account administrator with advance notification of subscription consumption and expiration. Esri reserves the right to suspend Customer's access to Online Services or capacity when subscription consumption reaches 100 percent of total allocated or pre-paid capacity or Online Services. If overages are enabled, Esri will invoice monthly in arrears and Customer is responsible for paying the associated costs incurred at the applicable rates. Esri reserves the right to suspend Customer's access to Esri Offerings if Customer has a past due amount. Esri will promptly restore Customer's access to Esri Offerings once Customer funds access to the Esri Offerings.
104. ArcGIS Cloud Store connection files (ASC files) pre-installed on virtual Pro Machines may not be copied or otherwise transferred to any other device.






# Pima County - EA

Final Audit Report

2022-12-02

Created:	2022-12-02
By:	Joe Collins (jcollins@esri.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA7enWO0xyd9iYOFa1dQqqPmjOA2emocDJ

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