



ENTERPRISE LICENSE AGREEMENT  
(E119G 2/07)

4600010898  
2011-0259

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

**Agreement No. 2010ELA6270**

This Enterprise License Agreement including the documents listed below (collectively, "Agreement" or "ELA") is between the City of Houston, Texas ("City" or "Licensee") and Environmental Systems Research Institute, Inc. ("Esri") and is effective upon countersignature by the City Controller ("Effective Date"). This Agreement entitles City to license Esri Software, Data, Web Services, and Documentation, and procure maintenance, over a limited, fixed period of time from the Effective Date subject to a payment of fees and the terms of this Agreement as specified herein.

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

1. Enterprise License Agreement signature page(s), E119G
2. Enterprise License Terms and Conditions, E512, including;
  - Appendix A, Software and Deployment Schedule
  - Appendix B, Enterprise License Fee Schedule
  - Appendix C, City Annual Deployment Report
  - Appendix D, ELA Points of Contact
  - Appendix E, Tier I Help Desk Authorized Individuals
3. Enterprise Advantage Program (EEAP Agreement), E125
4. License Agreement—No. 2010MLA6270
  - General License Terms and Conditions, E200 (4-19-2010)
  - Esri Exhibit 1, Scope of Use, E300 (7-16-2010)

This Agreement and all of the component documents listed above are subject to the following provisions:

**LIMITATION OF APPROPRIATION**

(1) The City's duty to pay money to Contractor for any purpose under this Agreement is limited in its entirety by the provisions of this Section ("LIMITATION OF APPROPRIATION").

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$ 715,000.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and approved by motion or ordinance of City Council in substantially the following form:

**"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"**

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature)

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$ \_\_\_\_\_, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$ \_\_\_\_\_.

SIGNED:

(Signature of the City Controller)  
City Controller of the City

REQUESTED:

(Signature of the Director)  
Director

(4) The Original Allocation plus all supplemental allocations, if any are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds, provided however that if Allocated Funds are not appropriated for the identified deliverables/payment period this Agreement may be terminated by either party pursuant to the Termination for Lack of Funds clause contained in this ELA. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If sufficient Allocated Funds are not provided or authorized Contractor's only remedy is suspension or termination of its performance under this Agreement, including termination of any grant of licenses provided and City's obligation is to cease use of this Agreement and uninstall and discontinue use of said licenses as further described in Article 7.3 Termination for Lack of Funds. Contractor has no other remedy in law or in equity against the City and no right to damages of any kind.

(5) Notwithstanding the **LIMITATION OF APPROPRIATION** requirement, Esri shall not be limited in its ability to seek all remedies under the law; and be awarded damages by an arbiter or court of competent jurisdiction for material breach by the City. The **LIMITATION OF APPROPRIATION** is not intended to limit or cap City's liability.

Except as provided in the preceding **LIMITATION OF APPROPRIATION**, Item 4 (EAP Agreement) is a stand alone agreement, the terms of which are independent from this ELA. The terms of items 2 and 3, except the foregoing paragraph, shall not apply to item 4 unless specifically provided for in the text of item 4.

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

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

ACCEPTED AND AGREED:

CITY OF HOUSTON  
(City)

By: Annise D. Parker

Mayor Matthew D. Appel

ATTEST/SEAL:

By: [Signature]

City Secretary

APPROVED:

[Signature]

Director, Department of Planning and Development

APPROVED AS TO FORM:

[Signature]  
Sr. Assistant City Attorney

COUNTERSIGNED BY:

[Signature]

City Controller [Signature]

DATE COUNTERSIGNED:

4-20-11

City Contact Information

Contact: Max Samfield, Deputy Director  
Department of  
Address: 611 Walker, 6th Floor  
City, State, ZIP: Houston, TX 77002

ENVIRONMENTAL SYSTEMS RESEARCH  
INSTITUTE, INC.  
(Esri)

By: [Signature]

Authorized Signature

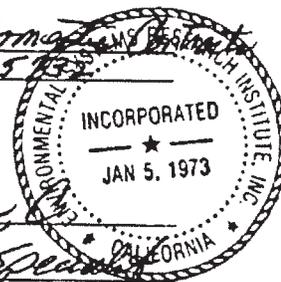
Title: Manager, Operations

Tax ID No.: 95-2995732

ATTEST/SEAL:

By: [Signature]

Title: Contract Specialist



## 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 and install or the redistribution and installation of the Enterprise License Software (and its related keycodes/registration files), or its having been redistributed and installed, by City to a Licensee's hardware.
- "ELA Maintenance" means Tier 2 Technical Support, updates, and patches to the Enterprise License Software and Rolled-In Software provided by Esri.
- "Eligible Agency" means Houston TranStar including the following consortium members: State of Texas, Harris County and Metropolitan Transit Authority of Harris County, but only when the consortium members are performing Houston TranStar responsibilities at the Houston TranStar headquarters located at 6922 Old Katy Road, Houston, Texas 77024.
- "Enterprise License Fee" means the fee set forth in Appendix B.
- "Enterprise License Software" means the Software, Data, Web Services, and Documentation identified in Appendix A.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" means the General License Terms and Conditions (E200) and Exhibit I, Scope of Use (E300).
- "Licensee" means the City and Eligible Agency of the City.
- "Rolled-In Software" means Software, Data, Web Services, and Documentation licenses identified in Table A-1 and Table A-2 that Licensee acquired for use prior to the Effective Date.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction, patches, hot fixes, 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 the point of contact from which all Tier 1 Support will be given to Licensees.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensees in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by Esri to the Tier 1 Help Desk when the Incident cannot be resolved through the Tier 1 Support.

## ARTICLE 2—GRANT OF LICENSE

**2.1 Grant of License.** Licensee's use of the Enterprise License Software is subject to the License Agreement and any additional terms set forth in this ELA. City shall remain primarily responsible to Esri for compliance by Licensees with the terms and conditions of this ELA. Rolled-In Software shall be licensed in accordance with the License Agreement.

**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.

**2.3 Consultant Access.** Section 3.4, Consultant Access in the License Agreement, is modified such that use of any Enterprise License Software is restricted to use by consultants and contractors who are (i) working on-site at Licensee's facilities, (ii) using Licensee's computers or machines, and (iii) working for the sole benefit of Licensee.

**2.4 Deployment of Software to Eligible Agency.** Before the Deployment by the City to Eligible Agency, the City, acting as purchasing agent and on behalf of the Eligible Agency, acknowledges that it has provided Eligible Agency the information and items listed below:

1. Eligible Agency has received a copy of the License Agreement and has been advised that it must abide by the terms and conditions of the License Agreement and any applicable ELA requirements for its use of the Enterprise License Software Deployed to it by City.
2. Eligible Agency may only obtain ELA Maintenance through City.
3. Licensee Consultant Access restrictions apply to the consortium members of the Eligible Agency. Consortium members (including the State of Texas, Harris County, and Metropolitan Transit Authority of Harris County) personnel, while on-site at Eligible Agency, are considered consultants of Eligible Agency and may access and use Enterprise License Software to the same extent as a consultant is authorized under the ELA.
4. Eligible Agency must comply with all Annual Deployment reporting requirement through the City of Houston.

5. Deployments shall be made to Houston TranStar facilities for equipment only. Deployments to Houston TranStar consortium members are prohibited.

### ARTICLE 3—SCOPE OF USE

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

- a. For the term of the ELA, City may copy and Deploy the Enterprise License Software up to the quantities of licenses granted to Licensees, as identified in Appendix A. No other Licensee has a right to copy (except as permitted in the License Agreement) or Deploy the Enterprise License Software.
- b. Licensee may roll-in specific quantities of pre-existing licenses, current on paid maintenance, as identified in Appendix A. All Rolled-in Software shall be subject to the terms and conditions of the ELA.

**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. Licensee shall not use, transfer, redistribute, or Deploy the Enterprise License Software outside of the United States territories and outlying areas without the prior written permission of Esri and agreement on additional fees, if any. Any such export shall be subject to U.S. Export Control Regulation requirements of the License Agreement.
- b. Hard-copy Documentation may not be copied.

### ARTICLE 4—MAINTENANCE

**4.1 ELA Maintenance.** ELA Maintenance is included in the Enterprise License Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable Esri U.S Software Maintenance Policy (found at [www.esri.com/legal](http://www.esri.com/legal)) as modified in this Section 4.1. ELA Maintenance does not include Technical Support for Web Services.

**a. Tier 1 Support Provided by City**

- (1) City shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensees.
- (2) The Tier 1 Help Desk shall use analysts fully trained in the Software they are supporting.
- (3) At a minimum, Tier 1 Support shall 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 shall be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from the Licensee. This may include obtaining any customizations, code samples, or Data involved, if applicable, to the Incident. The analyst shall also use any other information and databases it may develop to satisfactorily resolve Incidents. It is expected that approximately ninety percent (90%) of all Incidents shall be handled at the Tier 1 Support level by the Tier 1 Help Desk.
- (5) If the Tier 1 Help Desk can not resolve the Incident, an authorized Tier 1 Help Desk individual may contact Esri Technical 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 Licensees.
- (6) City may assign up to twelve (12) named Tier 1 Help Desk individuals identified in Appendix E who are the only individual 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 attempt to resolve the Incidents by assisting the Tier 1 Help Desk individuals and not the Licensees.
- (3) When the Incident is resolved, Esri shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the Licensee.
- (4) Esri may, at Esri's sole discretion, make patches, hot fixes, updates, or upgrades available for downloading from Esri's web site or deliver them on media.

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

### 5.1 Orders, Delivery, and Deployment

- a. Thirty days after the Effective Date of the ELA and annually thereafter the City shall pay fees in accordance with the fee schedule in Appendix B, subject to the **LIMITATION OF APPROPRIATION**.
- b. Within 5 days of the Effective Date and Esri's receipt of a copy of the fully executed Agreement, Esri shall deliver five (5) sets of media containing the Enterprise License Software to City for Deployment to Licensees. Esri shall ship the media to the ship-to address identified in Appendix D, with shipping charges prepaid. City may purchase additional media sets at the prices in effect at the time of purchase, subject to **LIMITATION OF APPROPRIATION**.
- c. Esri shall provide City with up to one hundred (100) hardware keys and registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Software to operate. Additional hardware keys may be ordered at the prices in effect at the time of purchase.
- d. City shall Deploy, install, configure, and track the Enterprise License Software. City shall obtain keycodes and registrations from Esri to facilitate Deployment of any Enterprise License Software that employs a License Manager.

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

**5.3 Esri International User Conference Registration.** City shall receive complimentary Esri International User Conference registrations annually for the term of this ELA in the quantities set forth in Appendix B. City is responsible for distributing the registrations to Licensees. Third parties may not represent City or Eligible Agency at any Esri International User Conferences.

## 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 D.

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

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

as listed on the signature page

## ARTICLE 7—TERM, TERMINATION, AND EXPIRATION

**7.1 Term.** The term of this ELA, unless terminated earlier as provided by 7.3 or 7.4 below, shall be three (3) years from the Effective Date.

**7.2** Unless terminated by city or Esri due to lack of funds as described below, the ELA may not be terminated for convenience.

**7.3 Termination for Lack of Funds—**City's obligation to pay the amounts due for following fiscal years is contingent upon appropriation of funds for this ELA in accordance with the **LIMITATION OF APPROPRIATION**. City or Esri may terminate this ELA in the event Original or supplemental 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 and the effective date of termination. In all cases the effective date of the termination shall be prior to the annual anniversary date for the next payment.

Under no circumstances may City 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 shall apply:

- a. A Licensee must uninstall, remove, and destroy all Deployed Software, Data, or Documentation and any whole or partial copies deployed hereunder, however Licensee(s) may continue to use Rolled-In Software, at the version level they have been upgraded to at the time of termination subject to its compliance with the License Agreement;
- b. A Licensee may continue to use Deployed Enterprise License Software, Data, or Documentation licensed under Agreement 2006ELA6270 provided;
  - (i) Licensee shall report the quantity and types of Deployed Enterprise License Software, and Esri shall determine the quantity and type of Software, Data, or Documentation that Licensee may continue to use under the License Agreement, based on the value of the software Deployed at commercial list prices versus the amount paid for licenses (portion of ELA Fee) and Licensee shall uninstall, remove, and destroy the Deployed Enterprise Software in excess of the authorized quantities and types. The remaining authorized quantities and types of software ("Remaining Software") shall be licensed in accordance with the License Agreement; and.
  - (ii) Rolled-In licenses shall 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 licenses shall be in accordance with the License Agreement.
- c. Maintenance on Remaining Software may be acquired at then current standard commercial rates.

Within thirty (30) days of termination of the ELA for Lack of Funds, city must document in writing to Esri the total quantity and type (e.g., Product) of Enterprise License Software Licenses originally Deployed; the quantity and type that city will pay Maintenance on; and the quantity and type of Deployed Enterprise License Software, Data, or Documentation uninstalled to reach the maintenance fee payment level. Payment of maintenance fees for Enterprise License Software, Data, or Documentation shall be made within sixty (60) days of termination. Use and licensing for Rolled-In licenses shall be in accordance with the License Agreement included in the ELA.

Other items that may be included in this ELA such as EAP, Virtual Campus training access/credits, User Conference Registrations shall also terminate if this ELA is terminated for Lack of Funds.

**7.4 Termination for a Material Breach.** Either party may terminate this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach. Upon termination of this ELA by Esri for a material breach of Licensee, all licenses Deployed shall also terminate. City or Licensee shall uninstall, remove, and destroy all Enterprise License Software, training materials, and any whole or partial copies, modifications, or merged portions in any form. City shall execute and deliver evidence of such destruction to Esri, which evidence shall be in a form acceptable to Esri. Licensee may continue to use Rolled-In Software, subject to compliance with the License Agreement. Upon termination of this Agreement for a material breach by Esri, the Agreement shall be terminated in accordance with the Termination for Lack of Funds clause and Esri shall also refund to the City a percentage of the advance payments made by the City in the year terminated equal to the percentage of the period remaining related to the payment made to Esri that year and any unused Esri allocation at the time of breach.

**7.5 License Term and Use Upon Expiration.** Upon expiration of this ELA, Licensee may continue to use the Deployments, including any updates to Rolled-In Software, in accordance with the terms and conditions set forth in the License Agreement. Licensee shall notify Esri as to which licenses for which Licensee elects to purchase standard maintenance. If maintenance lapses, Licensee must pay back maintenance fees to reinstate maintenance. City shall not Deploy additional copies of the Enterprise License Software beyond the quantities in use upon termination or as of the date of expiration.

#### **ARTICLE 8—RESERVED**

#### **ARTICLE 9—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, cyber-attack, or other violence; any law, order, proclamation,

regulation, ordinance, demand, or requirement of any government Agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, or interference for the duration of the Force Majeure.

If the Force Majeure lasts more than 180 days, either party may terminate this ELA (inclusive of the License Agreement and EAP Agreement) with no further obligation except to return a portion of the unused amounts (unused Learning and Services credits or the portion of the current year ELA fee payment excluding EAP from the date of Force Majeure termination forward) of any advance payments made by the other party.

For example, if a Force Majeure termination occurs 185 days into year 1 or years 2 or 3,

(a) all unused Learning and Services credits will be refunded; and

(b) A prorated portion of the year 1 ELA Fee payment (excluding year 1 EAP fee payment) will also be refunded.

(e.g.) \$715K minus \$65K = \$650K.  $180 \text{ days} / 365 \text{ days} = .49315$ .  $.49315 \times \$650,000 = \$320,548$ . The amount to be refunded will be \$320,548, plus unused credits. This example assumes year 1 payment has been made.

#### ARTICLE 10—RELATIONSHIP OF THE PARTIES

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

#### ARTICLE 11—REFERENCE AND PUBLICITY

If requested by Esri, City shall act as a reference for other Esri customers and potential customers as long as the ELA remains in effect. This ELA shall not be construed or interpreted as an exclusive dealings agreement and City and Eligible Agency reserve the right to purchase from third parties any of their requirements for GIS software.

City agrees that Esri may publicize the existence of this ELA.

#### ARTICLE 12—ADMINISTRATIVE REQUIREMENTS

**12.1 OEM Licenses.** If Licensee obtains Software, Data, Web Services, Documentation, or any component thereof as part of an original equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of Esri, Licensee 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, Web Services, or Documentation as Enterprise License Software under this ELA. In addition, such Software, Data, Web Services, Documentation, 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 Royalty Bearing Software Not Included.** Software, Data, Web Services, and Documentation that contain third-party intellectual property that requires a unit-based royalty fee is not covered under this ELA. The City may order under separate terms as unit priced items.

**12.3 Obsolescence.** During the term of this Agreement, 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. Licensee 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. Esri's Product Life Cycle Support Policy, available at <http://support.esri.com/knowledgebase/relatedDocs/ProductLifeCycle.pdf>, defines the support phases and overall support plans.

### ARTICLE 13—GENERAL PROVISIONS

The General Provisions, the **LIMITATION OF APPROPRIATION** and Limitations of Liability of the License Agreement shall 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 shall be as follows: (1) E119 Signature Page, (2) E512 ELA Terms and Conditions, (3) E300 Scope of Use, and (4) E200 General License Terms and Conditions. In the event City requires Enterprise Advantage Program Services, the terms and conditions of the Enterprise Advantage Program Agreement (E125) are intended to be interpreted independent of the ELA and the aforementioned order of precedence. Except as otherwise expressly provided herein, any amendment or Addendum to this ELA must be in writing and signed by an authorized representative of Esri and the governing body of the City.

**APPENDIX A  
SOFTWARE AND DEPLOYMENT SCHEDULE**

The unlimited Enterprise License Software provided under this Agreement shall include all ELA eligible Esri products that are non-royalty bearing and include the following production non-royalty bearing products and that becomes available for licensing during the three year term of this ELA.

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

<b>Product</b>	
<b>Desktop &amp; Desktop Extension Software</b>	<b>Server and Extension Software</b>
ArcInfo	ArcGIS Server (Advanced, Standard, Basic/Workgroup and Enterprise)
ArcEditor SU or CU	ArcIMS
ArcView SU or CU	ArcGIS Server Spatial Extension
ArcGIS Spatial Analyst	ArcGIS Server Network Extension
ArcGIS 3D Analyst	ArcGIS Server 3D Extension
ArcGIS Network Analyst	ArcIMS
ArcGIS Geostatistical Analyst	ArcIMS Route Server
ArcGIS Publisher	RouteMap IMS
ArcScan	
ArcGIS StreetMap	<b>Mapping and Charting Solutions</b>
Maplex	Esri Production Mapping
Schematics	
Data Reviewer	<b>Other</b>
Workflow Manager	ArcLogistics Route (without data)
<b>ArcGIS Engine Runtime Deployments</b>	
ArcGIS Engine Runtime with Network, 3D, Spatial, Schematics, Maplex, Tracking, and GeoDatabase Update Extensions	

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

<b>Item</b>	<b>Total Qty./Seats to Be Deployed</b>
Esri Developer Network (EDN)	10 Annual Subscriptions
ArcPad	Two (2) Licenses

**Table A-3  
Rolled-in Software**

<b>Product</b>	<b>Rolled-In Quantities</b>
<b>Desktop &amp; Desktop Extension Software</b>	
ArcInfo	69
ArcEditor SU or CU	6
ArcView SU or CU	176
ArcGIS Spatial Analyst	23
ArcGIS 3D Analyst	23
ArcGIS Network Analyst	27
ArcGIS Geostatistical Analyst	8
ArcGIS Publisher	8
ArcPress	0
ArcGIS StreetMap	0
<b>Server Software</b>	
ArcGIS Server	29
Advanced Enterprise	1
Standard Enterprise	13
Basic Enterprise	11
Standard Workgroup	4
ArcGIS Server Spatial Extension	0
ArcGIS Server Network Extension	0
ArcGIS Server 3D Extension	0
ArcIMS	0
ArcIMS Route Server	0
RouteMap IMS	0
<b>Developer Software</b>	
ArcGIS Engine Runtime	0
ArcGIS Engine Runtime with Network, 3D, Spatial, Schematics, Maplex, Tracking, and GeoDatabase Update extensions	0
MapObjects Windows – MapObjects Java	7
MapObjects Java Internet Deployment Kit	0
<b>Other</b>	
Esri Developer Network (EDN) Annual Subscription	1
Image Server	0

**APPENDIX B  
ENTERPRISE LICENSE FEE SCHEDULE**

The Enterprise License Fee is \$2,145,000. The Enterprise License Fee is in consideration for the Enterprise License Software, ELA Maintenance, Esri International User Conference Registrations, one Enterprise Advantage Program (EEAP) subscription for each year.

	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Total</b>
<b>Software Licensing</b>	\$650,000	\$650,000	\$650,000	\$1,950,000
ESRI Enterprise Advantage Program (EEAP) subscription (includes 100 EAP Learning & Services credits per year)	\$65,000	\$65,000	\$65,000	\$195,000
<b>Total Annual Fee</b>	<b>\$715,000</b>	<b>\$715,000</b>	<b>\$715,000</b>	<b>\$2,145,000</b>

<b>Number of Esri International User Conference Registrations per Year</b>	<b>30</b>
<b>Number of Esri Developer Summit Registrations per Year</b>	<b>5</b>
<b>Number of Tier 1 Help Desk Individuals</b>	<b>12</b>
<b>Number of Sets of Media</b>	<b>5</b>
<b>Maximum Number of Hardware Keys</b>	<b>100</b>
<b>Term of ELA pursuant to Section 7.1</b>	<b>3 years</b>

Invoices for year two and three are to be provided by Esri to City approximately thirty (30) days prior to the anniversary of the Effective Date. Payment shall be net 30 days.

This ELA provides EAP subscription fees for each of the three years of the ELA term. Unused amounts of EAP credits may be rolled over to the following year and be used through the last year of the ELA and up to six (6) months after the term of the ELA ends. Six months after the end of the term of this ELA, any unused EAP credits shall be refunded to City. Any portion of funds related to professional services acquired through Master Services Agreement that have been funded via the supplemental allocation pursuant to the **LIMITATION OF APPROPRIATION** clause, prepaid by City to Esri and not performed by the end of the term of this ELA shall be refunded to the City.



**APPENDIX D  
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 Redlands  
380 New York Street  
Redlands, CA 92373-8100  
E-mail: [service@esri.com](mailto:service@esri.com)  
Phone: 909-793-2853, ext. 2001  
Fax: 909-307-3083

2. Esri Contact for Technical Support issues:

E-mail: [support@esri.com](mailto:support@esri.com)  
Phone: 909-739-3774 (domestic US only)  
Fax: 909-782-0960  
Web: [support@esri.com](mailto:support@esri.com)

3. City Centralized Point of Contact for order release and administrative issues:

Name: Jackie Smith, Information Systems Administrator  
E-mail: [Jackie.smith@houstontx.gov](mailto:Jackie.smith@houstontx.gov)  
Phone: 713-837-7983  
Fax: 713-837-7832

4. All deliverables to City shall be shipped to the address listed below:

City Office: Planning and Development Department  
Name: Jackie Smith  
Address: 611 Walker, 6th Floor  
Houston, Texas 77002

**APPENDIX E  
TIER I HELP DESK AUTHORIZED INDIVIDUALS**

<p>Name: Ms. Jackie Smith Address: 611 Walker, 6th Floor, Houston, Tx 77002 Phone: 713-837-7983 Fax: 713-837-7832 E-mail: Jackie.smith@houstontx.gov</p>	<p>Name: Judy Zhou Address: 611 Walker, Houston, Tx 77002 Phone: (713) 837-0166 Fax: E-mail: Xiuju.Zhou@houstontx.gov</p>
<p>Name: Dr. Lu-chia Chuang Address: 611 Walker, 6th Floor, Houston, Tx 77002 Phone: 713-837-7946 Fax: 713-837-7832 E-mail: lu-chia.chuang@houstontx.gov</p>	<p>Name: Larry Savage Address: 1200 Travis Street, Houston, TX 77002 Phone: (713) 247-5434 Fax: E-mail: Larry.Savage@houstontx.gov</p>
<p>Name: Cheng-Hua Edward Feng Address: 611 Walker, 21st Floor, Houston, Tx 77002 Phone: (832) 395-2873 Fax: E-mail: cheng-hua.feng@houstontx.gov</p>	<p>Name: Edward Loomis Address: 5320 N Shepherd Dr, Houston, Tx 77091 Phone: (713) 884-4569 Fax: E-mail: Edward.Loomis@houstontx.gov</p>
<p>Name: Mr. Larry Nierth Address: 611 Walker, 6th Floor, Houston, Tx 77002 Phone: 713-837-7941 Fax: 713-837-7832 E-mail: larry.nierth@houstontx.gov</p>	<p>Name: Hiroyuki Matsuda Address: 16930 JFK Boulevard Houston, Tx 77032 Phone: (281) 233-1966 Fax: E-mail: Hiroyuki.matsuda@houstontx.gov</p>
<p>Name: Mr. Chris McPhilamy Address: 611 Walker, 6th Floor, Houston, Tx 77002 Phone: 713-837-7831 Fax: 713-837-7832 E-mail: chris.mcphilamy@houstontx.gov</p>	<p>Name: Address: Phone: Fax: E-mail:</p>
<p>Name: Ms. Maria Vera Address: 6922 Katy Road, Houston, Texas 77024 Phone: 713-881-3278 Fax: E-mail: mvera@houstontranstar.org</p>	<p>Name: Address: Phone: Fax: E-mail:</p>



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(E300 10/15/2010)

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  - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
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- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iOS (1, 25, and 33)
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- ArcGIS Server Extensions
  - ArcGIS Server Geoportals Extension (either 3, 4, or 5 and 7 and 52)
  - ArcGIS Server Image Extension (7, 8, and 42)
  - ArcGIS Server Image Extension Service Editor (1)
  - Other Extensions (7)
- ArcGIS Web Mapping (including SharePoint, JavaScript, Adobe Flex, Microsoft Silverlight/WPF, SOAP, and REST) (6, 33, 35, and 53)
- ArcIMS
  - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
  - Desktop (either 1 or 2 and 25)
  - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
  - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
  - Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
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- Esri Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
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- Geoportals Clients for ArcGIS (7, 20, and 52)
- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Tracking Server (either 4 or 5 and 31)

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- Business Analyst Online (6, 25, 33, 48, 56, 57, and 58)

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9. User-developed ArcGIS Server administration tools may be copied throughout Licensee's organization, but the ArcCatalog application (found in ArcGIS Desktop) may not be copied.
10. The ArcIMS license includes the right to deploy MapObjects—Windows Edition applications on the Internet or intranet. Licensee shall not develop client/server solutions with the ArcIMS—Java Archive (JAR) files without a license for the MapObjects—Java Edition developer kit.
11. Licensee may install and use the Software to provide services to multiple users on the same or other computer(s). The Software is licensed per server. The licensed server is the server on which Licensee installs the Spatial Data Service.
12. Software is only licensed for navigational use when used in conjunction with ArcLogistics.
13. "Dual Use License" means the Software may be installed on a desktop computer and used simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any one (1) time.
14. Developers must include the following attribution with any deployed MapObjects application: "Portions of this computer program are owned by LizardTech, Inc., and are Copyright © 1995–2002 LizardTech, Inc., and/or the University of California. All rights reserved. U.S. Patent No. 5,710,835."
15. Deployment licenses for desktop or Internet application(s) may be subject to payment of additional license fees.
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  - b. Sublicensee may not use any Esri Software, Data, Web Services, or Documentation, in whole or in part, separate from Licensee's executable application; and
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19. MapObjects—Java Edition contains Java Archive files, which indicate they are authentic Esri-certificated files when used over the Internet. Licensee shall not use Esri certification or reference Esri as a source of trusted content in any modified MapObjects—Java Archive files. Licensee may deploy the unmodified Java class Esri-certified libraries as an integral part of the Licensee's application(s).
20. Licensee may reproduce and deploy the Software provided all the following occur: (a) the Software is reproduced and deployed in its entirety; (b) a license agreement accompanies each copy of the Software that protects the Software to the same extent as the Esri License Agreement, and the recipient agrees to be bound by the terms and conditions of the license

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21. Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the individual's place of residence, as profiled in the Tapestry Segmentation system.
  22. (a) ArcGIS Engine Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an ArcGIS Engine application on one (1) computer; and (c) the ArcGIS Engine Runtime extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. A single user can have multiple applications installed on one (1) computer for use only by that end user.
  23. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at <http://www.esri.com/legal/>, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
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  25. Use of included third-party owned data shall be subject to the Use of Data Restrictions found at <http://www.esri.com/legal/> for the specific Data accessed. The Use of Data Restrictions may be modified by Esri from time to time. If a modification is unacceptable to Licensee, Licensee may cancel a subscription upon written notice to Esri, or discontinue use of the Data or Web Services, as applicable. If Licensee continues to use the Data or Web Services, Licensee will be deemed to have accepted the modification.
  26. An ArcSDE Personal Edition geodatabase is restricted to ten (10) gigabytes of Licensee data.
  27. ArcGIS Server Web ADF Runtime Software may not be deployed independent of Licensee's ArcGIS Server Enterprise configuration.
  28. Use is limited to ten (10) concurrent end users of applications other than ArcGIS Server applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Server geodatabase. There are no limitations on the number of connections from Web applications.
  29. Software can only be used with SQL Server 2005/2008 Express.
  30. Use is restricted to a maximum of ten (10) gigabytes of Licensee data.
  31. Redundant Software installation(s) for failover operations is allowed but can only be operational during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
  32. No redundant Software installation is permitted.
  33. Licensee's access to and use of Cloud Bundle, ArcGIS Online Services, Business Analyst Online, Business Analyst Online API, or Microsoft Bing Maps are conditioned upon Licensee's acceptance of the Esri Web Site and Service Terms of Use Agreement and the terms and conditions specific to Cloud Bundle, ArcGIS Online Services, Business Analyst Online, Business Analyst Online API, or Microsoft Bing Maps found at <http://www.esri.com/legal/>.
  34. Licensee's organization is limited to the number of specified credits, transactions, geography, or number of users as described in the online product description.
  35. Licensed end users shall not share the client-side data cache derived from ArcGIS Online Services with other licensed end users or third parties.
  36. Reserved.
  37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
  38. The ArcGIS Server 3D extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D extension Software is permitted with ArcGIS Server Standard.
  39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
  40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
  41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
  42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.

43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.
44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
45. Data licensed with Esri Business Analyst and Esri Business Analyst Server is restricted for use only in conjunction with the respective Business Analyst extension.
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48. Licensee may include reports and maps created from the Software or Data in hard-copy or read-only format for presentation packages or marketing studies for subsidiaries and customers. The total content of the Esri reports and maps must be less than twenty percent (20%) of Licensee's total content of the presentation package or marketing study. Full, complete, stand-alone reports or maps created from the Software or Data and not part of a presentation package or marketing study cannot be resold, sublicensed, or otherwise transferred without prior written permission of Esri. Licensee's third-party customer may only receive reports and maps generated by Licensee and may only use the maps and reports received from Licensee for internal purposes. In no case shall Licensee redistribute the Data in digital formats.
49. Esri MapIt Silverlight Web or WPF applications may not be deployed independent of Licensee's MapIt deployment configuration.
50. Licensee has the right to one (1) desktop deployment of Spatial Data Assistant for each Esri MapIt server license.
51. Esri Business Analyst Server Developer and Data may only be installed on one (1) server per license solely for the purposes of research, development, testing, and demonstration of a prototype application.
52. Source code is the intellectual property of Esri. Licensee shall treat any source code file identified as "Software" in a README file or at <http://www.esri.com/legal/> as a trade secret for Licensee's own internal use only and not for further redistribution or access by unlicensed third parties. Licensee shall not modify the Software, Documentation, Data, or source code to incorporate, embed, link, or otherwise include any code, libraries, or data licensed or distributed under an open source licensing or distribution models similar to Free Software Foundation's GNU General Public License (GPL) or GPL-compliant licenses, including, without limitation, the Artistic License (e.g., Perl), the Mozilla Public License, the Netscape Public License, and the Sun Community or Industry Standards License, that could require a user to make its proprietary source code available to a requesting third party.
53. Deployment license options are as follows:
  - a. A license for Web applications is per the principal registered unique domain identifier. Domain is the Internet domain name registered with a domain name registrar. For example, in example.com, example.com is the registered unique domain identifier. Similarly, in example.com.xx, where xx is a registered country code, example.com.xx is the registered unique domain identifier.
  - b. A license for desktop applications or SharePoint is per organization. For the purposes of this license, organization is equivalent to a principal registered unique domain identifier (as described above). For example, desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.
54. ArcGIS Mobile is licensed for use with ArcGIS Server Advanced (Enterprise or Workgroup) and ArcGIS Desktop (ArcInfo, ArcEditor, ArcView, and ArcGIS Engine applications).
55. Licensee may develop software or Web applications that use the Business Analyst Online API to access, query, create, display, and redistribute Reports and resulting static, electronic maps to end user(s) of Licensee's software or Web applications. End user(s) of Licensee's software or Web applications may use the Reports and maps for internal purposes only and not for further redistribution. "Report" means any formatted output created by the Business Analyst Online API, which includes PDF, CSV, Excel, HTML, and XML formats. Licensee shall not redistribute any Data in vector formats.
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ENTERPRISE ADVANTAGE PROGRAM  
AGREEMENT (E125)

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

**EAP Agreement No. 2010EAP6270**

This Enterprise Advantage Program Agreement ("EAP Agreement") is entered into by and between **Environmental Systems Research Institute, Inc. ("Esri")**, a California corporation, at 380 New York Street, Redlands, California 92373-8100 and the licensee listed below ("Licensee").

Esri offers an Enterprise Advantage Program to Licensees current on Esri software maintenance that are implementing or have implemented a geographic information system (GIS) enterprise solution based on Esri software. Licensee agrees to contract with Esri for and Esri agrees to provide Licensee with certain enhanced consulting services, training, and support available under the Enterprise Advantage Program for the authorized Licensee location as described herein. The Enterprise Advantage Program is not designed for Esri to provide project specific consulting services (e.g., application or database development for solutions or applications).

**Software, Data, Web Services, and Documentation**, as those terms are defined in the MLA, shall continue to be licensed under Master License Agreement No. 2010MLA6270 ("MLA" or "License Agreement"), entered into by Licensee and Esri.

This EAP Agreement may be executed in duplicate by the parties. An executed EAP Agreement, modification, amendment, or separate signature page shall constitute a duplicate if it is transmitted through electronic means, such as fax or e-mail, and reflects the signing of the document by any party. Duplicates are valid and binding even if an original paper document bearing each party's original signature is not delivered.

This EAP Agreement consists of this signature page and the attached terms and conditions. This EAP Agreement constitutes the sole and entire agreement of the parties as to Enterprise Advantage Program and supersedes any previous agreements, understandings, and arrangements between the parties relating to the Enterprise Advantage Program. Additional or different terms contained on Licensee's purchase order shall not apply. Any modifications or amendments to this EAP Agreement must be in writing and signed by an authorized representative of each party.

The parties acknowledge that they have read and understand this EAP Agreement and agree to be bound by its terms and conditions.

All Licensee contact regarding EAP activities shall be through the point of contact identified below.

**Authorized EAP Contact Information**  
(to be completed by Licensee)

Contact: Jackie Smith

Telephone: 713-837-7983 direct

Address: 611 Walker, 6<sup>th</sup> Floor

Fax: 713-837-7832

City, State, ZIP: Houston, TX 77002

E-mail: jackie.smith@houston.tx.gov

## ARTICLE 1—DEFINITIONS

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

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

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

"PSS" means Premium Support Services.

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

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

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

"Work Product" means reports, documented analysis, sample code, prototype/unsupported code, or technical memorandums provided under this EAP Agreement.

## ARTICLE 2—ENTERPRISE ADVANTAGE PROGRAM

**2.1 Enterprise Advantage Program Description.** The Enterprise Advantage Program is a menu of services, training, and support that provides Licensee with the flexibility to select components that best meets its needs. The Enterprise Advantage Program components include the following:

- a. *Assigned Technical Advisor.* An Esri Technical Advisor who has expertise in Esri GIS software capabilities and has the ability to analyze and assess optimal solutions in the context of GIS enterprise implementation will be assigned to Licensee. Licensee will receive up to the number of ordered Technical Advisor Hours. Licensee may elect to retain additional Technical Advisor Services blocks (100 hour blocks) for a supplemental price. Technical Advisors are not substitutes for services provided by Esri Support Services or Professional Services Division. Licensee will continue to contact Esri Support Services as the first point of contact for all technical support inquiries. If a custom application or other services are required, Licensee will need to use Esri Professional Services. If Licensee requests the Technical Advisor to come to Licensee's site, Licensee will pay reasonable travel costs. The assigned Technical Advisor in coordination with the assigned Account Manager shall
  - (1) Advise Licensee on GIS strategies, architectures, and product selection;
  - (2) Advise Licensee on training needs, available business partner solutions, and business case development;
  - (3) Act as Licensee's technical advocate in dealing with Esri;
  - (4) Participate in annual account reviews; and
  - (5) Serve as point of escalation if Licensee is not satisfied with the resolution of an incident through Esri Support Services.
- b. *Annual Account Review.* Licensee may attend a one (1)-day annual GIS strategy and account review with Licensee's Account Manager and Technical Advisor at Esri headquarters in Redlands, California. Key Esri technical and industry specialists may also attend the review to answer questions and discuss Licensee's ideas and suggestions regarding Esri software and support strategies. Licensee is responsible for its own travel expenses. As an option to hosting the review in Redlands, Esri may conduct the review at the appropriate Esri regional office to suit Licensee's convenience, and Esri's Redlands staff will have the option to participate either by telephone or by webcast.
- c. *System Environment Profile.* Esri will provide Licensee access to Esri's Premium Support Services Web site to enable Licensee to complete and maintain an inventory of Licensee's relevant GIS technical environment to assist the Technical Advisor(s) and PSS Coordinator in supporting Licensee's environment as appropriate.

d. *Learning and Services Credits*

- (1) Licensee will receive the number of ordered Learning and Services Credits. Licensee may use the credits toward any combination of consulting services support, training, premium support, or related travel expenses as described below.
- (2) Licensee may order, for an additional price, one (1) additional block of Learning and Services Credits during the initial term of the EAP Agreement and one (1) additional block of Learning and Services Credits for each Renewal Term.
- (3) If Licensee requests additional blocks of Learning and Services Credits over and above the initial additional block provided for in the preceding paragraph, Licensee must order the Learning and Services Credits and Technical Advisor Services bundle.
- (4) Learning and Services Credit may be exchanged as follows:

Technical Consulting Services Support consisting of review of technology strategy, systems design, prototyping, and other general technical consulting services support activities (Any project-related activities requiring a deliverable other than consulting time will be scoped, budgeted, and scheduled through a separate agreement.)	1 credit = 2 hours
Annual Premium Support Limited	15 credits = 5 Incidents
Annual Premium Support Limited	22 credits = 10 Incidents
Annual Premium Support Unlimited	75 credits = Unlimited Incidents
Instructor-led Training for one person at an Esri Facility or Virtual Classroom	1 credit = 1 day
Licensee site Instructor-led Training (up to 12 people)	9 credits = 1 day
Including Mobile Lab	1 credit = 1 day
Phone Support (client site setup)	1 credit = 1 course
Virtual Campus Dollars	1 credit = 480 Virtual Campus dollars
Related Esri travel and per diem expenses	as quoted

Note: Offerings above may be added or removed from time to time in conformance with the EAP requirements.

- (5) Unused Learning and Services Credits may be carried over to future years as long as Licensee remains an Esri Enterprise Advantage Program customer. If this EAP Agreement expires (exclusive of termination for default), any unused credits will expire six (6) months after the expiration of this EAP Agreement; however, the Technical Advisor Services will not be available during this post-Term period.
  - (6) Esri will provide EAP Contact with a monthly report outlining usage of Enterprise Advantage Program Learning and Services Credits to date of usage.
- e. *Exclusive Enterprise Webcast.* Esri will provide an e-mail invitation to the EAP Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.

## 2.2 Learning and Services Credit Use

- a. *Current on Maintenance.* Licensee must remain current on standard maintenance during the term of this EAP Agreement. Standard maintenance is described at <http://www.esri.com/legal>, which may be changed from time to time.
- b. *Authorization of Credit Use.* Licensee will contact its Account Manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit to Licensee a Learning and Services Credit estimate by e-mail for confirmation and authorization for use of the credits.
- c. *Travel and Per Diem.* Any Esri travel and per diem will be quoted separately. Licensee may direct Esri to use credits for travel and per diem as stated in Enterprise Advantage Program Description, Section 2.1 above, or Licensee will issue a purchase order and Esri will invoice Licensee for the travel and per diem expenses as described below in Article 6.
- d. *Notification of Consumed Credits.* Esri will notify Licensee in the event the authorized Learning and Services Credits are consumed prior to completion of the requested work. Licensee may elect to direct use of additional credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to discontinue work when the authorized credits are consumed.

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

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

### ARTICLE 3—LICENSE GRANT

**3.1 Training.** The terms of the Esri License Agreement shall be applicable to all Licensee course participants and for all Software, Data, Web Services and Documentation licensed for use in any training course to be conducted. For on-site training, temporary Software licenses may be issued by Esri where there is an insufficient number of Software licenses available at the training facility. Licensee shall uninstall the temporary Software licenses at the conclusion of the training course.

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

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

### ARTICLE 4—WARRANTIES AND DISCLAIMERS

#### 4.1 Warranties and Disclaimers

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

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

### ARTICLE 5—LIMITATION OF LIABILITY

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

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

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

#### **ARTICLE 6—COMPENSATION**

**6.1** Upon execution of this EAP Agreement or the inception of a Renewal Period, Esri shall invoice Licensee as quoted for the Enterprise Advantage Program annually in advance. Fees for additional Learning and Services Credits or Technical Advisor Services will be invoiced upon receipt of Licensee's order. Licensee shall pay Esri within thirty (30) calendar days of receipt of invoice.

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

**6.3** Licensee may elect to use Learning and Services Credits for actual travel expenses plus a standard burden, or to be invoiced at the actual cost for travel expenses plus a standard burden. Meals will be charged on a per diem basis.

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

**7.1** The Term of this EAP Agreement is one year from the last date of signature on the signature page. Prior to the end of the Term, Esri may provide Licensee with a quotation for an additional one year Renewal Period. If Licensee accepts the quote, Esri will submit an invoice to Licensee for the quoted annual Enterprise Advantage Program price and this EAP Agreement will automatically extend for the Renewal Period.

**7.2** Either party may elect not to renew the EAP Agreement for its sole convenience at the end of any term upon thirty (30) days written notice to the other party, in which event the EAP shall expire.

**7.3** Either party may terminate this EAP Agreement for a material breach that is not cured within ten (10) days after written notice to the other party or for bankruptcy or insolvency of the other party.

**7.4** Upon termination or expiration of this EAP Agreement

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

#### **ARTICLE 8—CONFIDENTIALITY**

**8.1 Confidential Information.** It may be necessary for Esri or Licensee to disclose to the other party certain confidential information under this EAP Agreement. The access code or password for the PSS Web site and any Work Product are confidential information of Esri. Licensee data contained in the Esri PSS Web site database is confidential information of Licensee. Each party shall use the confidential information described above only for exchanging information needed to provide the PSS contemplated by this EAP Agreement. Within sixty (60) days of termination of this EAP Agreement, each party shall return or destroy and provide a certification of destruction of the confidential information of the other party.

## 8.2 Work Product

- a. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Work Product delivered only in Secure Formats. For Work Product delivered in source code or other human-readable formats, Licensee shall have met its obligations under this EAP Agreement if its disclosure of Work Product is limited to such items in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.
- b. Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advanced written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.
- c. The disclosures permitted under this Section 8.2 shall not relieve Licensee of its obligation to maintain the Work Product in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Work Product to employees or third parties as permitted in the preceding paragraph, Licensee shall inform such employees or third parties of the obligations in this EAP Agreement and obtain their agreement to be bound by them.

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

## ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

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

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

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

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

The PSC shall

- a. Be familiar with Licensee's GIS software architecture and infrastructure to perform the scope of support pursuant to this Article 9;
- b. Verify that all open Premium Support Incidents of Licensee are prioritized above Incidents opened pursuant to standard maintenance;
- c. Work closely with Senior Support Analysts toward the resolution of all open Premium Support Incidents; and
- d. Provide LAC with a daily status update on all open Premium Support Incidents or as agreed upon by PSC and Licensee.

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

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

- a. LAC may open an Incident by calling Support Services or logging the Incidents via the PSS Web site. An e-mail acknowledgment shall be sent to LAC for a new Incident logged via the PSS Web site. The assigned PSC shall use

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

The number of Incidents a Licensee may open is dependent on the number of Premium Support Incidents purchased, that is, either unlimited, limited to five (5), or limited to ten (10) Incidents. Unused Incidents purchased as a block of five (5) or ten (10) Incidents will carry over in the case of a renewal of the EAP.

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

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

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

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

Details of all PSS offerings can be found at [www.esri.com/services/pss/components.html](http://www.esri.com/services/pss/components.html).

**9.8 PSS Restrictions and Exclusions**

- a. *Excluded Software.* PSS is not available for third-party software. Esri is not responsible for errors attributable to third-party software used in conjunction with or built upon Software.
- b. *English Language.* All communications will be conducted in the English language except by agreement of both parties.
- c. *Acknowledgment.* Licensee acknowledges and agrees that the report of an error or defect of any Software is not a guarantee that it can or will be corrected. At Esri's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by Esri.
- d. *Hardware Support.* Esri does not provide support for hardware, including but not limited to, graphics cards, monitors, plotters, graphics printers, digitizers, and modems, except to answer questions regarding how standard, supported devices interface with Software.
- e. *Exceptions to PSS.* The following are not covered by PSS:
  - i) Any problem resulting from Licensee's misuse, improper use, unauthorized modification, or damage of the Software or Licensee's combining or merging the Software with any hardware or software not supplied or identified as compatible by Esri;
  - ii) Any problem resulting from third party hardware or software;
  - iii) Errors in any version of the Software other than the officially supported version of Software; and

- iv) Any on-site support or implementation services on-site or otherwise, including, but not limited to, those provided by Esri Professional Services or any third party.

## **ARTICLE 10—CONSULTING SERVICES SUPPORT TERMS AND CONDITIONS**

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

### **10.2 Patents and Inventions**

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

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

## **ARTICLE 11—TRAINING TERMS AND CONDITIONS**

**11.1 Training.** Should Licensee choose to use Learning and Services Credits for training, the terms of this Article 11 shall also apply.

**11.2 Training Location.** Training may be conducted at Licensee's site or at an Esri learning center.

**11.3 Course Descriptions.** The Esri Software training courses offered, location, dates during which the courses are to be conducted, number of participants, and prices to be paid to Esri are as set forth in the Esri Course Catalog or at Esri's training Web site (<http://training.esri.com>). Licensee Site pricing and schedule information are available on request. All courses shall be conducted in substantial conformity with the Esri training Web site (<http://training.esri.com>). Esri reserves the right to modify course content when necessary due to Software technical capabilities or limitations.

### **11.4 Esri's Responsibility**

- Esri shall provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants. Esri will provide each student with a course manual.
- Esri's Training Event Assistant, through whom all course(s), dates, and locations shall be confirmed, can be reached via the contact information as listed in the Licensee Site Training Request Form, found at <http://downloads2.esri.com/Campus/documents/regapp.pdf>.
- Scheduled dates for the learning center training class shall be confirmed by the Training Event Assistant approximately ten (10) business days prior to the start date.
- Licensee Site classes shall be confirmed by the Training Event Assistant upon receipt of payment/order information and completed Licensee Site Training Request Form.

### **11.5 Client Responsibilities**

- Licensee must ensure that Esri copyrights are observed and that neither Licensee nor any third party copies or distributes any training materials provided for training purposes.

- Licensee is not authorized to resell Esri training seats, unless explicitly authorized by Esri in writing.
- Licensee is responsible for confirming that all registered students meet the applicable minimum prerequisites for the applicable class set forth on Esri's training Web site.
- Licensee shall submit to the Training Event Assistant a list of student names at least three (3) business days before the class start date for export license compliancy check purposes.
- Travel is Licensee's responsibility. Esri assumes no responsibility for nonrefundable travel arrangement losses resulting from denial of a student's(s') participation due to U.S. government export licensing requirements, course scheduling changes, or cancellations. Even though Esri strives to confirm all classes, class cancellations are sometimes unavoidable.
- Licensee must notify the Training Event Assistant of any cancellation, rescheduling, or participant substitution requirements and receive confirmation of change(s) prior to the class start date.

**11.6 Unique Esri Learning Center Terms.** Where courses are to be conducted at Esri facilities, the following restrictions and requirements apply:

Seating is limited in some classes. Registrations are always processed, using a standard student registration application, on a first-come, first-served basis. Waiting lists are used when necessary. Class schedules and registration applications are attached to every course catalog and are available on the Web at <http://training.esri.com>. Registrations must be submitted in advance.

**11.7 Unique Licensee Site Terms.** Where courses are to be conducted at Licensee's facilities, Licensee shall provide physical training facilities that meet the following minimum requirements or modifications as mutually agreed to by both parties:

- Licensee shall, where possible, provide a one (1)-room facility, sufficient for a training course for up to twelve (12) persons (or such other number as may be agreed to by Esri's Training Event Assistant). The facility shall have appropriate climate control and lighting as well as sufficient power and number of outlets to accommodate the required number of computers and other equipment to be used.
- Where the Esri Mobile Lab is utilized for a scheduled class:
  - Licensee shall be responsible for any and all loss, damage, or theft to the Mobile Lab while in Licensee's possession. Licensee should immediately report any damage or missing items, upon receipt, to the Training Event Assistant.
  - Licensee shall keep the Mobile Lab equipment in a secure, locked area between class sessions.
  - Licensee shall sign release form at completion of course that outlines status of Mobile Lab and makes the Mobile Lab equipment available for freight pickup immediately on conclusion of the Esri course(s).
  - Licensee shall ensure no one except registered students uses the Mobile Lab equipment.
  - Licensee warrants that it shall maintain sufficient insurance coverage to enable it to meet its obligations created by this agreement and by law.
- Where the Esri Mobile Lab is not utilized for a scheduled class:
  - Licensee shall supply all computer hardware for the training course(s). Computers must be platforms fully supported by Esri. All computer hardware shall be configured with an appropriate release of an operating system to run the current release version of the Esri required Software.
  - There shall be a minimum of one (1) computer and color monitor for every participant.
  - Esri will not be liable for any damage or loss to Licensee computer hardware or software where Esri has provided telephone support to Licensee for its computer hardware configuration for the scheduled class.
- Licensee shall provide other peripheral devices including, but not limited to, digitizers and plotters/printers, as required by the training course being conducted, and they should be fully supported by Licensee.
- Licensee shall be responsible for providing one (1) high-resolution PC projector and screen as well as one (1) large writing board. Where Licensee cannot make a PC projector available, it must contact the Training Event Assistant no less than ten (10) business days prior to start date.
- Licensee shall limit the number of course participants to twelve (12) students per course. Additional students, up to a maximum of fifteen (15), may be added to some classes for an additional fee.
- Licensee shall complete and submit an Esri Licensee Site Training Request Form, as provided by the Training Event Assistant, no less than four (4) weeks prior to the start of any course. Final schedule is subject to mutual agreement.

**11.8 Software Licenses.** The terms of the Esri license agreement shall be applicable to all Licensee course participants and for all Software and Documentation licensed for use in any training course to be conducted. For Licensee Site training, temporary Software licenses may be issued by Esri where there is an insufficient number of Software licenses available at the training facility. Licensee shall uninstall the temporary Software licenses at the conclusion of the training courses.

**11.9 Cancellation and Rescheduling Policy.** Licensee may cancel or reschedule student attendance in a learning center class or a Licensee Site class up to three (3) working days before the scheduled class start date. In such event, Licensee will be responsible for any reasonable travel and shipping expenses incurred by Esri. Where Licensee does not notify Esri at least three (3) days prior to the scheduled training date for a learning center class or a Licensee Site class, Licensee will be liable for the full payment of the student enrollment or Esri will deduct the appropriate number of Learning and Services Credits.

In the event that Esri is unable to conduct the training on the scheduled date, Esri will make reasonable efforts to notify Licensee at least three (3) business days before the scheduled date. Esri will either reschedule the training or cancel the order without Esri incurring any liability.

Class participants may transfer to another class up to two (2) times at no additional charge. Subsequent transfers will be assessed an additional nonrefundable transfer fee. Student substitutions, when a student's place in class is filled by another person from the same organization, are allowed provided that the Esri Training Event Assistant is notified three (3) business days in advance of class start date.

## **ARTICLE 12—GENERAL PROVISIONS**

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

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

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

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

**12.5 Applicable Laws.** This EAP Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of laws principles.

**12.6 Non-solicitation of Contractor Personnel.** Licensee shall not solicit for hire any Esri employee who is associated with efforts called for under this Agreement during the term of this EAP Agreement and for a period of one (1) year thereafter. In the event the foregoing provision is breached, Licensee shall pay Esri liquidated damages for recruiting and training costs equal to twelve (12) months of the employee's compensation plus any legal expenses associated with the enforcement of this provision.

**12.7 Taxes.** Services provided are quoted exclusive of all state, local, value-added or other taxes, customs, or duties, or other charges (other than income taxes payable by Esri). In the event such taxes and/or charges become applicable to Esri's services, applications, or data, Licensee shall pay any such applicable tax upon receipt of written notice that such taxes are due.

**12.8 UCC Inapplicability.** Any services provided under this EAP Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

**12.9 Assignment and Delegation.** Esri may, in whole or in part, assign any of its rights or delegate any performance under this EAP Agreement, provided that Esri shall remain responsible for the performance it delegates. This EAP Agreement binds and benefits successors or assigns permitted under this Section 12.9.

**12.10 Export Control.** Esri's technology is subject to U.S. export control laws and regulations—Esri's Software, data, documentation, and any underlying information or technology may not be exported, reexported, or provided in whole or in part to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Department of the Treasury list of Specially Designated Nationals; (iii) any person or entity on the U.S. Department of Commerce Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation.

**12.11 Headers.** Headers are for convenience only and are not to be used in the interpretation of this EAP Agreement.