

**STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
STATE TERM SCHEDULE**

**THIS CONTRACT** is between the STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS"), OFFICE OF INFORMATION TECHNOLOGY, IT GOVERNANCE DIVISION, ON BEHALF OF THE STATE OF OHIO ("State"), with offices at 30 East Broad Street, Columbus, Ohio 43215 and ESRI ("Contractor") with offices at 380 New York Street Redlands, California 92373-8100.

**BACKGROUND**

The Contractor has entered into a contract with the Federal Government under the Federal Government's Supply Schedule Contract Program administered by the General Services Administration ("GSA"). That program allows a contractor and the GSA to negotiate in advance of actual purchases the terms and conditions under which a contractor will supply goods or services to the Federal Government. Such a Federal schedule contract is not a commitment to purchase any goods or services; it is only a convenient way to do so should a Federal agency so choose during the contract's term.

The State has determined that it is in the interest of efficiency and economy to rely on some Federal schedule contracts of the Federal Government, with certain changes, as the basis for some state term contracts, which operate in a manner very similar to Federal schedule contracts. The Department of Administrative Services has also determined that the Contractor's Federal schedule contract offers goods or services that may be of interest to various state agencies and has therefore decided to use the Contractor's Federal contract as a basis for a State Term Contract with the Contractor. This State Term Contract (the "Contract") establishes terms and conditions under which a state agency may acquire the Contractor's goods or services, but it in no manner obligates any state agency to do so.

**TERMS & CONDITIONS**

**COMPOSITION OF CONTRACT.** This Contract consists of the terms of the Contractor's Federal Schedule Contract, Number GS-35F-5086H (the "Federal Schedule Contract" or "Schedule Contract"), currently through modification no. 99, as amended by this Contract (see Entire Agreement Section below). The Contractor's Schedule Contract consists of all the documents and materials incorporated in that agreement with the Federal Government. Those documents include, among possible others, the Federal Government's original solicitation, the Contractor's offer to the Federal Government, with amendments, the Contractor's best and final offer letter, the final award, and the Contractor's most current version of its Authorized Schedule Price List. Additionally, all representations, clarifications, and certifications submitted by the Contractor as a part of that contracting process are also included. And it includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Contractor's Schedule Contract, including all FAR, DFAR, FIRMR, FIPS PUB, FED-STD and USC provisions, among others, except as otherwise modified by this Contract. By way of example, such would include all cited FAR and DFAR provisions relating to warranties, liabilities, and rights in data, and the GSA's Price Reduction Clause, among many others, excluding those provisions modified or deleted by this Contract.

**CERTIFICATION OF ACCURACY.** The Contractor hereby certifies that all copies of the Contractor's Authorized Schedule Price List that were submitted to the State as part of the negotiation of this Contract are true, correct, current, and complete copies of that Price List. The Contractor further represents and warrants that all future Price Lists submitted to revise this Contract will also be true, correct, current, and complete copies of the then-current Price List under the Contractor's then-current Federal Contract.

**FEDERAL REPRESENTATIONS.** The Contractor warrants that all certifications and representations made to the Federal Government as a basis for obtaining or as a part of its GSA Schedule Contract were and still

are true and accurate. The Contractor further agrees that such representations are a basis for the State entering into this Contract and that such representation and certifications inure to the State's benefit.

**FUTURE NOTICES.** The Contractor acknowledges that any continuing obligation to notify the Federal Government of changes affecting its GSA Schedule Contract, including by way of example, notices required under the price reduction provisions of its Schedule Contract, must be provided in the same manner to the State. And the State's rights under those notices will be the same as the rights of the Federal Government. Additionally, the Contractor agrees to notify the State within thirty (30) days of all changes in the status of or amendments to its Federal Schedule Contract.

**PARTIES TO THE CONTRACT.** For purposes of this Contract, all references to "Government," "Federal Government," "GSA," or similar terms meaning the Federal Government in the Contractor's Schedule Contract will mean the "State." And references to the "Contracting Officer" will mean the State representative, or their successor or designee, who signed this Contract on behalf of the State. Additionally, for purposes of this Contract, all rights and obligations of the Contractor and the Federal Government under the Contractor's Schedule Contract, except to the extent that such would create an absurdity, or are otherwise clearly inappropriate, or would violate state or federal law, will be rights and obligations between the Contractor and the State. This Contract may be relied on by Ohio counties, townships, municipalities and other political subdivisions of the State, collectively, Political Subdivisions. Whenever a Political Subdivision relies upon this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract. Any order placed by a Political Subdivision under this contract will be between the Contractor and the Political Subdivision. The Contractor will look solely to the Political Subdivision for performance, including but not limited to payment, and will hold the State harmless with regard to such orders. The State, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision where the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

**CONTRACT COMPLIANCE.** Any authorized State agency that uses this Contract will be responsible for the administration of this Contract with respect to the orders that it places and should monitor the Contractor's performance and compliance with this Contract. If an agency becomes aware of any material noncompliance with the terms of this Contract, the agency should document the material noncompliance and convey it to the Contractor for immediate correction. If the Contractor fails to cure the material noncompliance, the agency should notify the State through DAS, Office of Information Technology, Acquisitions Management, by executing a Complaint to Vendor form (CTV) to help resolve the issue and submitting a copy of the CTV to Contractor. If Contractor fails to cure a material Contract nonconformance within twenty (20) days of receipt of the CTV, DAS may then apply the Termination section of this Contract and seek such other remedies as may be available to the State.

**PRODUCT RECALL.** In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify the State through DAS, Office of Information Technology, Acquisitions Management and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

**TERMINATION.** The State may terminate this Contract or any order under this Contract if the Contractor materially defaults in meeting its obligations and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy has been filed by or against the Contractor. The State may also terminate this Contract or any order if the Contractor violates any law or regulation while performing under this Contract, or it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In such case, the termination will be for cause.

On written notice, the Contractor will have thirty (30) days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within thirty (30) days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract or the applicable order(s). The State may also terminate this Contract in the case of breaches that are cured within thirty (30) days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three (3) times. After the third such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three (3) notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than thirty (30) days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

With a thirty (30) day notice the State may also terminate this Contract or any order under this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any order under this Contract. If a third party is providing funding for a Deliverable, the State may also terminate this Contract or any order should that third party fail to release any funds.

The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. On receipt of the notice of termination, the Contractor will immediately cease all work on any Deliverables affected by the termination and take all steps necessary to minimize any costs the Contractor will incur related to the affected orders. The Contractor will also immediately prepare a report and deliver it to the State. The report must detail all open orders at the time of termination.

If the State terminates this Contract or any order for cause, it will be entitled to cover for any affected orders by using another contractor on such commercially reasonable terms and conditions as it and such covering contractor may agree. The Contractor will be liable to the State for all costs related to covering for any affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract. The Contractor will also be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable and any preauthorized expenses incurred on the State's behalf that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.

The State will have the option of suspending rather than terminating this Contract where the State believes that doing so would better serve its interest.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault.

The notice of suspension, whether with or without cause will be effective immediately on the Contractor's receipt of the notice. The Contractor will immediately prepare a report and deliver it to the State as is required in the case of termination.

The Contractor may terminate any license granted under this Agreement if the Agency fails to materially comply with any term of this Agreement with respect to the license and such noncompliance remains uncured for more than 30 days after written notice. If the breach remains uncured after the 30 day period, the termination will be effective as to only the Deliverable that is the subject of the breach, except that termination may be immediate for a material breach of a nature that it is impossible to cure.

**RETURN GOODS POLICY.** The State will apply the following Return Goods Policy on all purchases made under the Contract. The Contractor acknowledges to have read, understood, and agrees to this Policy.

- (A) Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The State shall contact Contractor's Customer Service to obtain a Returned Merchandise Authorization (RMA) Number and instructions for the return of the products. The Contractor shall not apply any restocking or other charges to the ordering agency provided that the products are returned within the product's warranty period. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification.
- (B) Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

**FORCE MAJEURE.** If the State or Contractor is unable to perform any part its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party will use commercially reasonable efforts to remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightening; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; arrests; restraint of government and people; war; strikes; and other like events; or any other cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.

**OWNERSHIP OF DELIVERABLES.** Except for the Contractor's or its Licensor's commercial off-the-shelf software and data, identified in the Contractor's Schedule Contract, and related documentation and materials supplied as part of annual support services for the commercial software and data, described in the Contractor's attached Schedule Contract, the Contractor's Deliverables supplied as part of any services under this Contract will fall within the following categories:

- (a) "Pre-existing Materials" are tools, templates, methodologies, techniques, and other Contractor knowledge, including any enhancements and/or modifications thereto.
- (b) "Custom Materials" are processes, analytical frameworks, algorithms, custom software (both object and source code), related documentation, recommendations, studies, general reports, and all

other items, all of which were originally developed by Contractor during the course of any services engagement (other than annual support services) and supplied as a Deliverable.

The parties' rights in Deliverables supplied by Contractor will be as follows:

- (1) Pre-existing Materials. The Contractor will continue to own all Pre-existing Materials supplied to the State under an order. Upon final payment, State will have a perpetual, nontransferable, fully paid right and license to use, copy, modify, and prepare derivative works from the pre-existing Materials subject to the confidentiality terms herein.
- (2) Custom Materials. Upon final payment, the State and the Contractor will be joint owners of all intellectual property rights pertaining to Custom Materials, whether individually developed by the Contractor or jointly with State. Each party will have the right to use the Custom Materials in its business or other activities, and each party will have the right to modify, enhance, and improve any Custom Materials for its business or other use without any obligation to account to the other, provided (i) a party may not convey its ownership interest in the Custom Material to any third party without the prior written consent of the other party, and (ii) to the extent any Custom Material contains Confidential Information of a party, the other party's rights will be subject to the confidentiality terms herein.

The parties will cooperate with each other and execute such other documents as may be appropriate to achieve the objectives of this section.

Subject to the limitations and obligations of the State with respect to Pre-existing Materials and Confidential Information described above, the State may make all Custom Materials available to the general public without any proprietary notices of any kind.

The State will treat any Pre-existing Materials that are marked as confidential as Confidential Information under the Confidentiality Section of this Contract. Insofar as its rights may be legally restricted, the State agrees not to reverse engineer or decompile the Pre-existing Materials delivered only in object code, executable code, or formats subject to similar or greater means of access control (collectively, "Secure Formats"). Notwithstanding anything to the contrary in the Confidentiality Section of this Contract, for Pre-existing Materials delivered in source code or other human-readable formats, the State shall have met its obligations under this Article if its disclosure of Pre-existing Materials is limited to Pre-existing Materials in Secure Formats, provided that the State does not provide the means for reverse engineering, decompiling, or disassembling such Pre-existing Materials.

**SPECIFIC CHANGES.** The State and the Contractor agree to the following changes to specific provisions of the Contractor's Federal Schedule Contract, notwithstanding anything to the contrary contained in the Contractor's Federal Contract:

All equipment will be new, and replacement parts will be new.

The ordering and payment addresses under this Contract will be those contained in the Contractor's offer letter to the State.

Payments and invoicing will be done according to the terms below.

All shipping of equipment under warranty for repairs will be at the Contractor's expense.

All references to hours of the day will be deemed to be references to Eastern Standard Time.

The State will not purchase goods or services using credit cards, order goods or services for overseas delivery, or provide the Contractor with overseas support.

The State has the specific right to use any software licensed to it at one (1) remote, third-party disaster recovery site for disaster recovery and disaster recovery testing. The redundant Software installation shall

remain dormant except for system maintenance, testing, and updating of databases while the primary site is operational.

Except for PC software, the license fee for which is less than \$5,000.00 per copy and for which maintenance is not made generally available, software maintenance will be available to the State under the terms of this Contract for the longer of the period the Contractor is required to make it available under its Federal Contract or the period the Contractor makes it generally available to its customer base. Further, the State will be entitled to software maintenance at the then-current price it is made available to the Federal Government or, if the Contractor does not make maintenance available to the Federal Government under a federal contract through the GSA, at a price that represents an annual increase in the maintenance fee from the last Federal contract price for such of no more than five percent. For purposes of this section, the Contractor's last Federal contract means the last GSA federal supply schedule contract covering the applicable maintenance program.

The Contractor will not sell to the State any notebook computers with less than a 1.2 GHz internal clock speed. And the Contractor will not sell to the State any PCs or servers using CPUs with less than a 1.6 GHz internal clock speed. All such items listed in the Contractor's Price List are deleted for purposes of this contract.

The Contractor will not sell to the State any term software licenses. All such items listed in the Contractor's Price List are deleted for purposes of the State.

The Contractor will not offer to the State any product's that are not Year 2000 compliant. All such items listed in the Contractor's Price List are deleted for purposes of the State.

The Contractor will not sell to the State any Microsoft Products. All such items listed in the Contractor's Price List are deleted for purposes of the State.

As this Contract refers to a GSA schedule contract for convenience, orders under this Contract are not orders under the GSA schedule program. The Federal Supply Schedules for blanket purchase agreements, contractor team arrangements and purchase of incidental, non-schedule items, therefore, are not applicable to this Contract.

The following amendments to the terms and conditions of the ESRI's GSA Contract are hereby incorporated into this agreement between the Contractor and the State.

Modify paragraph (5) page 5 FOB: ORIGIN by replacing the wording with FOB: DESTINATION, shipping prepaid and charged back.

Delete paragraph (12)(d) page 7 Use of Federal Supply Service Information Technology Schedule Contracts, Blanket Purchase Agreement (BPA's), in its entirety.

Modify paragraph 14(b) page 8 Contractor Task/Special Requirement (C0-FSS-370 Nov 2001) by replacing the wording "Travel: may be requested in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub.L.99-234 and Far Part 21, and are reimbursable by the ordering agency or can be priced as a fixed price item on order placed under the Multiple Award Schedule. The Industrial Funding Fee does NOT apply to travel and per diem charges." with

"Travel: may be requested in performance of orders issued under this contract. Allowable travel and per diem charges are governed in accordance with Section 126-1-02 of the Ohio Administrative Code."

Delete paragraph (17) page 9 Purchase of Open Market Items in its entirety

Delete paragraph (19) pages 9 and 10 Overseas Activities in its entirety.

Delete paragraph (20) page 10 Blanket Purchase Agreements (BPAs) in its entirety.

Delete paragraph (21) page 10 Contractor Team Arrangements in its entirety.

**TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSE (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSE (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE.**

Delete paragraph (1.)(1.1)(a) page 12 Remedy in its entirety.

Delete paragraph (1.1.1)(b) page 12 Limitation in its entirety.

Delete paragraph (4) page 13 Periods of Term License – (132-32) and Renewal (132-32) in its entirety.

Delete paragraph (5)(b)(5) page 14 Utilization Limitation – (132-32, 132-33, and 132-34) in its entirety.

Delete paragraph (5)(b)(6) page 14 Utilization Limitation – (132-32, 132-33, and 132-34) in its entirety.

Modify paragraph (5.1)(a)(paragraph 3) page 15 Additional Utilization Limitations – 132-32, 132-33 and 132-34) by replacing the wording “The GSA Terms and Conditions and this Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matters. Any modification(s) or amendment (s) to this Agreement must be in writing and signed by an authorized representative of each party.” with

“The State Term Schedule constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matters. Any modification(s) or amendment (s) to this Agreement must be in writing and signed by an authorized representative of each party.”

Delete paragraph (5.1)(a)(paragraph 4) page 15 Additional Utilization Limitations – 132-32, 132-33 and 132-34) in its entirety.

**GENERAL LICENSE TERMS AND CONDITIONS (E200 5/04M)**

Modify paragraph (d)(1) page 16 Grant of License by replacing the wording “In consideration of the mutual promises and covenants provided herein and for other good and valuable consideration, and conditioned upon compliance with all of the terms and conditions set forth in the Agreement including, but not limited to, subparagraph 5.1. SCOPE OF USE below, ESRI grants to License a personal, nonexclusive, nontransferable license to:” with

“In consideration of the mutual promises and covenants provided herein and for other good and valuable consideration, and conditioned upon compliance with all of the terms and conditions set forth in the Agreement including, but not limited to, subparagraph 5.1. SCOPE OF USE below, ESRI grants to Licensee a perpetual (unless terminated as provided herein), nonexclusive, nontransferable license to:”

Delete paragraph (d)(1)(c)(iv) page 16 Grant of License in its entirety.

Modify paragraph (e)(1)(2<sup>nd</sup> bullet) page 17 Scope of Use by replacing the wording “Licensee may make one (1) copy of the Software, Data and Documentation for archival purposes during the term of this Agreement. Additionally, Licensee may make routine computer backups for the Software, Data, and

Documentation. Licensee may establish a redundant server for failover operations in the event the primary site fails.” with

“Licensee may make one (1) copy of the Software, Data and Documentation for archival purposes. Additionally, Licensee may make routine computer backups for the Software, Data, and Documentation. Licensee may establish a redundant server for failover operations in the event the primary site fails.”

Modify paragraph (e)(1)(5<sup>th</sup>) bullet page 17 Scope of Use by replacing the wording “Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee’s own internal use. The portion(s) of the Documentation supplied in digital format merged with other software and printed or digital documentation shall continue to be subject to the terms and conditions of this Agreement and shall provide the following copyright attribution notice acknowledge the proprietary rights of ESRI and its licensor(s) in the Documentation supplied in digital format: “Portions of this document include intellectual property of ESRI and its licensor(s) and are used herein under license. *Copyright {Insert the actual copyright date(s) from the source materials}* Environmental Systems Research Institute, Inc., and its licensor(s). All rights reserved.” with

“Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee’s own internal use. The portion(s) of the Documentation supplied in digital format merged with other software and printed or digital documentation shall continue to be subject to the State Term Schedules terms and conditions of this State Term Schedule and shall provide the following copyright attribution notice acknowledge the proprietary rights of ESRI and its licensor(s) in the Documentation supplied in digital format: “Portions of this document include intellectual property of ESRI and its licensor(s) and are used herein under license. *Copyright {Insert the actual copyright date(s) from the source materials}* Environmental Systems Research Institute, Inc., and its licensor(s). All rights reserved.”

Delete paragraph (g)(1) page 18 Limited Warranties and Disclaimers in its entirety.

Delete paragraph (h)(1) pages 19 and 20 Limitation of Liability in its entirety.

Delete paragraph (h)(2) page 19 General Limitation of Liability in its entirety.

Delete paragraph (h)(3) page 19 General Limitation of Liability in its entirety.

Delete paragraph (i) pages 20 Infringement Indemnity in its entirety.

Delete paragraphs (j) pages 20 through 22 Additional Clauses Specific to ArcWeb Services in its entirety.

Delete paragraphs (k) pages 22-25 Additional Provisions For Use Of Specific Third Party Data With ArcWeb Services Subscription Agreement (Addendum) in its entirety.

Modify the paragraph on page 27 The license grant is conditioned as follows by replacing the wording “Licensee shall not translate, modify, or edit in any way the software name “ArcLogistics Route,” software logo, any third party software, any text other than the Dictionary, or any Data other than GDT’s.” with

“Licensee shall not translate, or edit in any way the software name “ArcLogistics Route,” software logo, any third party software, any text other than the Dictionary, or any Data other than GDT’s.”

Delete paragraph (13) page 27 Subject to an annual renewal fee in its entirety.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING RELATED TO GENERAL PURPOSE INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (SPECIAL ITEM NUMBER 132—50)**

Modify paragraph (2) page 30 Order by replacing the wording "A written order, EDI (*GSA Advantage!* and FACNET) and credit card orders shall be the basis card orders shall be the basis for the purchase of training in accordance with the terms of this contract. The written order shall include the student's name, student's address, student's daytime phone number, student's fax number, course title, course date and time, and contracted dollar amount of the course." with

"A written order shall be the basis for the purchase of training in accordance with the terms of this contract. The written order shall include the student's name, student's address, student's daytime phone number, student's fax number, course title, course date and time, and contracted dollar amount of the course."

Modify paragraph (4)(b) page 30 Cancellation and Rescheduling by replacing the wording "In the event the Government fails to cancel or reschedule a training course within the time frame specified in paragraph a. above, the Government will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the Government will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the Government to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge, if space is available." with

"The Contractor agrees to permit the State to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge, if space is available."

Modify paragraph (5) page 31 *Price for Training* by replacing the wording "The price that the Government will be charged will be the Government purchase price in effect at the time the order placement, or the Government price in effect at the time the training course is conducted, whichever is less." with

"The price that the Government will be charged will be the State Term Schedule purchase price in effect at the time the order placement, or the Government price in effect at the time the training course is conducted, whichever is less."

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 132-51)**

Delete paragraph (2) PAGE 32 Performance Incentives in its entirety.

Delete 2<sup>nd</sup> paragraph of paragraph (3) page 32 Ordering Procedures for Service (Requiring a Statement of Work) in its entirety.

Modify paragraph (3)(a)(1)(ii) page 33 Ordering Procedures for Service (Requiring a Statement of Work) by replacing the wording "The request should include the statement of work and request the contractors to submit either a firm-fixed price or a ceiling price to provide the services outlined in the statement of work. A firm-fixed price order shall be requested; unless the ordering activity makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work to anticipate cost with any reasonable degree of confidence. When such a determination is made, a labor hour or time-and-materials proposal may be requested. The firm-fixed price shall be based on the rates in the schedule contract and shall consider the mix of labor categories and level of effort required to perform the services described in the statement of work. The firm-fixed price of the order should also include any travel costs or other incidental costs related to performance of the services ordered, unless the order provides for reimbursement of the travel costs at the rates provided in the Federal Travel or Joint Travel Regulation. A ceiling price must be established for labor hour and time-and-materials orders." with

“The request should include the statement of work and request the contractors to submit either a firm-fixed price or a ceiling price to provide the services outlined in the statement of work. A firm-fixed price order shall be requested; unless the ordering activity makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work to anticipate cost with any reasonable degree of confidence. When such a determination is made, a labor hour or time-and-materials proposal may be requested. The firm-fixed price shall be based on the rates in the schedule contract and shall consider the mix of labor categories and level of effort required to perform the services described in the statement of work. The firm-fixed price of the order should also include any travel costs or other incidental costs related to performance of the services ordered, unless the order provides for reimbursement of the travel costs in accordance with Section 126-1-02 of the Ohio Administrative Code.”

Delete paragraph (3)(b) pages 33 and 34 Ordering Procedures for Service (Requiring a Statement of Work in its entirety).

Modify paragraph (4)(a) page 34 Order by replacing the wording “Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for task, which extend beyond the fiscal year for which funds are available, shall include FAR 52.232-19 Availability of Funds for the Next Fiscal Year, The purchase order shall specify the availability of funds and the period for which funds are available.” with

“Agencies may use written orders, EDI orders, individual purchase orders, or task orders for ordering services under this contract. All services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for task, which extend beyond the fiscal year for which funds are available, shall include FAR 52.232-19 Availability of Funds for the Next Fiscal Year, The purchase order shall specify the availability of funds and the period for which funds are available.”

Modify paragraph (4)(b) page 34 Order by replacing the wording “All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.” with

“All task orders are subject to the State Term Schedule terms and conditions. In the event of conflict between a task order and the contract, the State Term Schedule will take precedence.”

Modify paragraph (5)(d) page 34 Performance of Service by replacing the wording “Any Contractor travel required in the performance of IT Professional Services must comply with the Federal Travel Regulations or Joint Travel Regulations, as applicable, in effect on the date the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.” With

“Any Contractor travel required in the performance of IT Professional Services must comply in accordance with Section 126-1-02 of the Ohio Administrative Code.”

Delete page 37 USA Commitment to Promote small business participation procurement programs in its entirety.

Delete pages 38 through 40 Best Value Blanket Purchase Agreement Federal, Supply Schedule in their entirety.

Delete page 41 Basic Guidelines for using Contractor Team Arrangements in its entirety.

**SIN NO. 132-32 TERM SOFTWARE LICENSE**

Delete page 64 All Term Software in its entirety,

Those terms and conditions of the Contractor's offering documentation not specifically referenced by the Amendments delineated under this heading shall remain unchanged.

**CONTRACTOR QUARTERLY SALES REPORT.** The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract by calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.

The Contractor shall be required to report the quarterly dollar value of sales to the State on a form prescribed by DAS. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period.

The Contractor shall also submit a close - out report within one hundred and twenty (120) days after the expiration of this Contract. The contract expires upon the physical completion of the last, outstanding task or delivery order of the Contract. The close - out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close - out report.

The Contractor must forward the Quarterly Sales Report to the Following address:

Department of Administrative Services  
IT Governance Division  
Acquisitions Management  
30 East Broad Street, Suite 4099  
Columbus, Ohio 43215 - 3414

If the Contractor fails to submit sales reports, falsifies sales reports or fails to submit sales reports in a timely manner the State may terminate or cancel this Contract.

**CONTRACTOR REVENUE SHARE.** The Contractor must pay the State a revenue share of the sales transacted under this Contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals .0075 of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering activities.

The Contractor must remit any monies due as the result of the close - out report at the time the close - out report is submitted to DAS.

The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the following information with the payment:

Applicable State Term Schedule Number, report amount(s), and reporting period covered.

Contractor must forward the check to the following address:

Department of Administrative Services  
Office of Finance  
30 East Broad Street, Suite 4060

Columbus, Ohio 43215 - 3414

Please make check payable to: Treasurer, State of Ohio.

If the full amount of the revenue share is not paid within thirty (30) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off of payments or employ the remedies available under Ohio law for the non-payment of the revenue share.

If the Contractor fails to pay the revenue share in a timely manner the State may terminate or cancel this Contract.

**CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:

- (1) The location(s) where all services will be performed; and
- (2) The location(s) where any state data applicable to the contract will be maintained or made available; and
- (3) The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

**CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** Contractor warrants that it is not subject to an unresolved finding for recovery under ORC 9.24. If the warranty was false on the date the parties sign this Contract, the Contract is void *ab initio*.

**GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:

- (1) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
- (2) Contractor's commercial off-the-shelf software, data and documentation will not infringe on the intellectual property rights of any third party, and if any commercial off-the-shelf software, data or documentation is alleged to infringe on the intellectual property rights of a third party, such will be handled in accordance with the indemnity provision in this Contract. No other Deliverable (i.e., pre-existing materials or custom materials) will infringe on the intellectual property rights of any third party, and if any such Deliverable does infringe on the intellectual property rights of any third party, such will be handled in accordance with the indemnity provision section of this Contract. This is the State's sole remedy for breach of this warranty. However, the representation with regard to pre-existing and custom materials applies to a Deliverable only to the extent it remains unmodified.
- (3) All warranties are in accordance with Contractors standard warranties.
- (4) That the Deliverables shall substantially conform to the Documentation and specifications during the warranty period.

Except for the express warranties stated in this Contract, Contractor disclaims all other warranties either express or implied.

**Additionally**, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

- (1) The Contractor has the right to enter into this Contract.
- (2) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
- (3) The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
- (4) The Contractor shall not provide any goods, other than commercial-off-the-shelf software, data, documentation, preexisting materials or custom materials, to the State under this Contract.
- (5) The Contractor has the right and ability to grant the license granted in any Deliverable.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties. Notwithstanding, the State's sole remedy for breach of the infringement warranty item (2) of the General Representations and Warranties shall be as prescribed in the Indemnity provision, below.

**INDEMNITY.** The Contractor will indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property (excluding databases not subject to a reasonable backup program) arising out of the performance of this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. Subject to Ohio Revised Code Section 109.02, the Contractor will also indemnify and defend the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement is based on the modification. The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable and the State agrees that the Contractor shall have the responsibility for the defense or settlement of any claim, but no claim may be settled that affects the State without the approval of the Office of the Ohio Attorney General. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one, (1) of the following four (4) things:

- (1) Modify the Deliverable so that is no longer infringing.
- (2) Replace the Deliverable with an equivalent or better item.
- (3) Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or
- (4) Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

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

**HIGH RISK ACTIVITIES.**

- A. DELIVERABLES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE FOR USE FOR INSURANCE UNDERWRITING OR WITH CRITICAL HEALTH AND SAFETY OR ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS THAT REQUIRE FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, EMERGENCY RESPONSE, TERRORISM PREVENTION OR RESPONSE, LIFE SUPPORT, OR WEAPONS SYSTEMS ("HIGH RISK ACTIVITIES"). CONTRACTOR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.
- B. THE STATE MAY NOT USE, DISTRIBUTE, OR RESELL DELIVERABLES FOR HIGH RISK ACTIVITIES AND MUST ENSURE THAT ITS CUSTOMERS AND END USERS OF THE DELIVERABLES ARE PROVIDED WITH THE NOTICE IN SECTION A OF THIS ARTICLE.

**DISTRIBUTORS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address(es) and Federal tax identification number. The Contractor must also submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Deputy Director of DAS' Division of Computer & Information Services.

In doing so, the Contractor warrants that: (a) The dealer has been given a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract. (b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor. (c) The Contractor agrees to remain liable under this Contract for any failure of the dealer to perform and any breach of the dealer under this Contract. (d) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer. (e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. One or more distributors may be identified in the authorizing letter. In such cases, information regarding tax-payer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

**ADDITIONAL OFFERINGS.** If the Contractor supplements the products or services it offers to the Federal Government under its Federal Contract, then the following provisions are applicable.

This Contract includes the additional products and/or supplies offered in the price list(s) or catalog(s) identified below. The Contractor agrees to provide these products and/or services to the State under the same terms as those products and/or services listed in the Contractor's GSA Price List. The Contractor certifies that these products and/or services are "commercial" items, in accordance with the definition of "commercial" items in the Contractor's Federal Contract, and the Contractor agrees that the requirements of the GSA's Price Reduction Clause are applicable to these additional products. Further, the Contractor warrants that these products and/or services are being offered to the State at the most favorable prices it

has made them available to any other customer within the year immediately preceding the date these products and/or services were added to this Contract under similar terms and conditions.

The additional products and/or services are identified in the following price list(s) and/or catalog(s) (insert "none" if this provision is inapplicable): None.

If the price list(s) and/or catalog(s) contain suggested retail prices or undiscounted, direct customer pricing, indicate by individual item or service, or by category of item or service, the applicable discount to the State (insert none if no additional product(s) or service(s) are being offered or see price list/catalog if the prices include the applicable State discount): None.

**LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY LIMITATION PROVISIONS CONTAINED IN THE DOCUMENTS AND MATERIALS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR UP TO THREE (3) TIMES THE COST OF THE PRODUCT/SERVICE OR EIGHT MILLION DOLLARS (\$8,000,000) PER PURCHASE EVENT, WHICHEVER IS GREATER. THE PARTIES FURTHER AGREE THAT THE CONTRACTOR SHALL REMAIN LIABLE FOR ALL DIRECT DAMAGES UP TO THREE (3) TIMES THE COST OF THE PURCHASE EVENT FOR SERVICE ENGAGEMENTS VALUED AT TWO MILLION DOLLARS (\$2,000,000) OR LESS.
3. THE CONTRACTOR SHALL NOT BE LIABLE FOR DAMAGES (A) ARISING OUT OF THE USE OF THE PRODUCT OR SERVICES AS DESCRIBED IN THE HIGH RISK ACTIVITIES CLAUSE OR (B) TO DATABASES NOT SUBJECT TO A REASONABLE BACKUP PROGRAM.

**PAYMENT DUE DATE.** Payments will be due on the thirtieth (30th) calendar day after the later of: (a) the date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it or (b) the date the State accepts the products or services. The date the State issues a warrant (the State's equivalent to a check) in payment of an invoice will be considered the date payment is made. Without diminishing the Contractor's right to timely payment, the payment will be overdue only if it is not received by the thirtieth (30th) day after the payment's due date. If the State has not issued payment by then, interest will begin to accrue under Ohio Revised Code Section §126.30.

**INVOICE REQUIREMENTS.** The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information and/or attachments:

- (1) Name and address of the Contractor as designated in this Contract.
- (2) The Contractor's Federal tax identification number as designated in this Contract.
- (3) The Contractor's invoice remittance address as designated in this Contract.
- (4) The purchase order number authorizing the delivery of products or services.
- (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements or if the Contractor fails to give proper notice of a price increase (see the next section), the State will send the Contractor written notice with the improper invoice to the address designated for receipt of purchase orders within fifteen (15) calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice.

If such notification has been sent, the payment due date will be thirty (30) days after the State receives a proper invoice and has accepted the Contractor's product or service.

**OHIO PAYMENT CARD.** Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$1,000 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the DAS, Office of State Purchasing website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

**NOTIFICATION OF PRICE INCREASES.** If this Contract permits any price increases, notification of such must be given to the Deputy Director of the Division of Computer and Information Services and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). The Contractor must give these notices no later than thirty (30) days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

**NON-APPROPRIATION OF FUNDS.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for the payments due under an order referencing this Contract, the order will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments.

**CONFIDENTIALITY.** The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor agrees to treat such Confidential Information as secret if it is so marked, or otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor agrees not to disclose any Confidential Information to third parties unless otherwise authorized in writing by the State to do so and to use such Confidential Information solely to perform under this Contract.

The State acknowledges that, in connection with Contract and its relationship with Contractor, it may obtain information relating to the Products or to the Contractor that is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, financial information, and sales and marketing plans or information which the State knows or has reason to

know is confidential, proprietary or trade secret information of Contractor. The State shall at all times, during the term of this Contract and for a period of at least three (3) years after its termination, keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by Contractor under this Contract, nor shall the State disclose any such Confidential Information to third parties without Contractor's written consent.

The parties' obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the possession of the receiving party before disclosure by the disclosing party, and was received by the receiving party without obligation of confidence; (2) is independently developed by the receiving party, provided documentary evidence exists to support the independent development; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the receiving party from a third party without obligation of confidence; (5) is disclosed by the receiving party with the written consent of the disclosing party; or (6) is released under a valid order of a court or governmental agency, provided that the receiving party (a) notifies the disclosing party of the order immediately upon receipt of it and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. Except for Deliverables that contain Confidential Information and in which the State has a perpetual license in the commercial-off-the-shelf software, Pre-existing Materials or in which either party has joint ownership, the receiving party will return all originals of any Confidential Information and destroy any copies it has made for its own internal use on termination or expiration of this Contract or as requested by the disclosing party.

The parties agree that the disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party shall be entitled to temporary and permanent injunctive relief to enforce the provisions hereof without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

**OBM CERTIFICATION.** This Contract is subject to Ohio Revised Code Section §126.07. Any orders under this Contract are void until the Director of the Office of Budget and Management certifies that there is a balance in the appropriation available to pay for the order.

**TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.

**LEASES/FINANCING.** The State may elect to obtain equipment and software on a finance/lease basis subject to the terms of the State of Ohio, Department of Administrative Services, Master Financing Agreement -- Revised September 2001, when the parties execute that agreement.

**CANCELLATION.** The State or the Contractor may cancel this Contract without cause and on thirty (30) days written notice. But, in the case of any lease of goods or services or any license of software or other intangible property entered into before the effective date of the termination, the State will have the right to continue such lease or license after termination on the same terms.

**CONTRACT RENEWAL.** This Contract may be renewed solely at the discretion of DAS for a period of one month. Any further renewals will be by agreement any number of times for any period of time as mutually agreed by both parties. The cumulative time of all renewals may not exceed two years.

**DELIVERIES.** All deliveries will be F.O.B. Destination prepaid and charged back.

**EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all Ohio laws regarding equal employment opportunity, including Ohio Revised Code Section §125.111, and all related Executive Orders of the Governor of Ohio.

**DRUG FREE WORKPLACE.** The Contractor will make a good faith effort to ensure that none of its employees are under the influence of or possess illegal drugs or alcohol or abuse prescription drugs while they are on State property.

**OHIO ETHICS AND ELECTIONS LAW.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics law, Ohio Revised Code Section §102.04. The Contractor affirms that, as applicable to the Contractor, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

**PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

**CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board's continuing authorization to use GSA schedule contracts and negotiate state term contracts. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate, and the Contractor may not take any more orders under this Contract. The Controlling Board's withdrawal of its authorization will not affect existing licenses, leases, warranty commitments, and maintenance obligations.

**TRAVEL EXPENSES.** Any travel or per diem required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. All travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with §126-1-02 of the Ohio Administrative Code.

**HEADINGS.** The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

**ASSIGNMENT.** The Contractor will not assign this Contract without the written consent of the State.

**ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.

**ENTIRE AGREEMENT.** This Contract consists of the Contractor's Schedule Contract (see Composition of Contract Section above), this Contract document, the Contractor's state offer letter, and, if applicable, the Contractor's letter(s) designating dealers (and/or distributors), and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

**SUBCONTRACTING.** The State through DAS, Office of Information Technology, and Acquisitions Management recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under any Task Order to this Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Task Order. If any changes occur during the term of the Task Order, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State through DAS, Office of Information Technology, and Acquisitions Management reserves the right to reject any subcontractor submitted by the Contractor.

**LAW.** This Contract is governed by and will be construed under Ohio law, and venue for any dispute will be with the appropriate court in Franklin County, Ohio.

TO SHOW THEIR AGREEMENT, the parties have executed this Contract on the date(s) below and unless otherwise indicated is effective as of the date of signature by the State.

THE CONTRACTOR

STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE SERVICES,  
IT GOVERNANCE DIVISION

By: *Laura Dangermond*

LAURA DANGERMOND  
Vice President

Title: \_\_\_\_\_

Date: APR 14 2005

By: *Mary F. Carroll*

Mary F. Carroll  
Interim State Chief Information Officer  
Ohio Office of Information Technology

By: *Cynthia J. Dougherty*

Cynthia J. Dougherty  
Interim Deputy State Chief Information Officer  
Investment and Governance Division

Date: 5-09-05

Revised: 2-16-05



**OHIO-ESRI  
STATE TERM SCHEDULE  
SCHEDULE NO. 533197-3  
(Esri Agreement No. 2003MPA1955)**

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

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**ENTERPRISE LICENSE AGREEMENT  
TERMS AND CONDITIONS  
(E512G)**

An Enterprise License Agreement including the documents listed on the signature page (collectively, "Agreement" or "ELA") will be between the purchasing entity ("Licensee"), and Environmental Systems Research Institute, Inc. ("Esri"), and is effective as of the later date of the signatures on the signature page when signed by both parties ("Effective Date"). When both parties are ready to execute an ELA, Esri will fill-in the Appendices and sign. Then, Esri will send the signature page and Appendices to Licensee for counter signature. Licensee will follow the ordering process detailed in Article 5 below.

**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 ELA Products (and its related keycodes/registration files), or its having been redistributed, by Licensee, during the term of this ELA for installation and use by Licensee.
- "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 ELA Products and Rolled-In Software.
- "ELA Products" means the Products identified in Table A-1 and Table A-2 of Appendix A, Products and Deployment Schedule. ELA Products does not include Rolled-In Software or Esri technology that may be embedded in third-party products purchased by Licensee.
- "Incident" means a failure of the Product to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" means the General License Terms and Conditions, and Exhibit 1, Scope of Use, E300. The Exhibit 1, Scope of Use, E300 will be automatically updated as provided in Esri's GSA Schedule and as referenced in the State of Ohio State Term Schedule 533197-3. The General License Terms and Conditions, as revised in Esri's current GSA Schedule and as further revised by the State of Ohio State Term Schedule 533197-3, shall apply for ELA Products except the Enterprise License Agreement Terms and Conditions shall take precedence.
- "Rolled-In Software" means Products of the same type as ELA Products that Licensee acquired for use prior to the Effective Date that is current on paid maintenance (as shown in Esri's customer service records) and that receives ELA Maintenance during the term of the ELA.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction, patches, hot fixes, and workarounds; replacement deliveries; or any other type of Products corrections or modifications specified in the most current applicable Esri US Software Maintenance Program.
- "Tier 1 Help Desk" means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in its 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 Tier 1 Support.

**ARTICLE 2—GRANT OF LICENSE**

**2.1 Grant of License.** Licensee's use of the ELA Products is subject to the License Agreement and any additional terms set forth in this Article 2 and in Article 3 below. Rolled-In Software will be licensed in accordance with the License Agreement.

**2.2 Beta License.** Beta licenses are not available under this ELA as ELA Products. Beta Software, Beta Data, and Beta Online Services, if requested and provided, will be licensed separately and individually under the terms of the License Agreement (see Beta License in Section 3.2 of the General License Terms and Conditions—E204) only. No other benefits, grants, or rights provided in this ELA shall apply or be provided/granted.

**2.3 Consultant Access.** The definition of Licensee will not include consultants or contractors. Esri grants Licensee the right to permit Licensee's consultants or contractors to use the ELA Products exclusively for Licensee's benefit. Licensee shall be solely responsible for compliance by consultants and contractors with this License Agreement and shall ensure that the consultant or contractor discontinues ELA Product use upon completion of work for Licensee. Access to or use of ELA Products by consultants or contractors not exclusively for Licensee's benefit is prohibited. Licensee may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations except for the purpose of hosting the Software or Data on Contractor Servers for the benefit of Licensee.

## ARTICLE 3—SCOPE OF USE

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

**3.1 Additional Permitted Uses.** The following additional Permitted Uses are hereby granted to Licensee for the ELA Products:

For the term of the ELA, Licensee may copy and Deploy the ELA Products up to the quantities of licenses granted in Appendix A.

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

- a. Licensee shall not transfer, redistribute, or Deploy the ELA Products outside the United States or its territories or possessions without the prior written permission of Esri and agreement on additional fees, if any.
- b. Licensee shall not use the ELA Products outside the United States or its territories or possessions without the prior written permission of Esri and agreement on additional fees, if any. Any such export will be subject to US Export Control Regulation requirements of the License Agreement.
- c. Licensee shall not transfer, redistribute, or assign ELA Products to any third party without prior Esri written permission. Notwithstanding anything to the contrary in the Enterprise License Agreement Terms and Conditions, Licensee may transfer fully paid licenses in the event the State merges or consolidates state entities. Should a merger or consolidation of state entities require the transfer of an Enterprise License Agreement and all of the licenses associated with that Enterprise License Agreement, the parties agree to renegotiate the pricing and deployment limits for the remaining term of the Enterprise License Agreement.

## ARTICLE 4—MAINTENANCE

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

### a. Tier 1 Support Provided by Licensee

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

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

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

- a. Licensee shall issue a purchase order along with an executed copy of the ELA. Annually thereafter, Licensee shall issue a purchase order in accordance with the fee schedule in Appendix B. Payments will be due on the thirtieth (30<sup>th</sup>) calendar day after the later of: (a) the date Licensee actually receives a proper invoice at the office designated in the applicable purchase order to receive it or (b) the date Licensee accepts the products or services. The date Licensee issues a warrant (the State's equivalent to a check) in payment of an invoice will be considered the date payment is made. Without diminishing Esri's right to timely payment, the payment will be overdue only if it is not received by the thirtieth (30<sup>th</sup>) day after the payment's due date. If Licensee has not issued payment by then, interest will begin to accrue under Ohio Revised Code Section §126.30.
- b. Upon receipt of the initial purchase order from Licensee, Esri shall authorize Licensee to download ELA Products listed in Appendix A. Delivery of updates/new versions of ELA Products will be made in the same manner. If requested by Licensee, Esri will deliver a limited number of sets of backup media as provided in Appendix B to the ship-to address identified in Appendix D, ELA Points of Contact, FOB destination with shipping charges prepaid. Delivery or receipt of tangible media could cause prior and future license fees to be subject to taxes. Licensee acknowledges that Esri has a right to invoice.
- c. Esri shall provide registration/authorization numbers or access codes, as applicable, to activate the nondestructive copy protection program that enables the ELA Products to operate or allow access.
- d. Licensee shall track the Deployment status of ELA Products.

**5.2 Purchase Order Requirements**

- a. Any purchase orders issued by Licensee will reference, incorporate, and be subject to the terms and conditions of this ELA. No additional, conflicting, or different terms contained in a purchase order or ordering document will be binding. All orders and deliveries pertaining to this ELA will be processed through Licensee's centralized point of contact.
- b. The following information will be included in each purchase order:
  - (1) Esri customer number and the ship-to address as identified in Appendix D.
  - (2) Purchase order number.
  - (3) Applicable annual payment due.
  - (4) A copy of the fully executed Enterprise License Agreement.

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

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

## ARTICLE 6—TERM, TERMINATION, AND EXPIRATION

**6.1 Term.** The term of the ELA will be for the period listed in Appendix B, commencing on the Effective Date unless this ELA is terminated earlier as provided herein.

**6.2 Termination for a Material Breach.** Esri may terminate this ELA for a material breach by Licensee. Licensee will be given a period of thirty (30) days from date of written notice to cure any material breach. Upon termination of this ELA by Esri for a material breach by Licensee, all licenses Deployed will also terminate, and if Licensee has not paid ELA Fees for that year, that annual ELA Fee will be due and payable within thirty (30) days from the date of termination. Licensee will not be entitled to a refund of ELA Fees for a termination for a material breach by Licensee. Licensees shall uninstall, remove, and destroy all ELA Products; training materials; and any whole or partial copies, modifications, or merged portions in any form. Licensee shall deliver evidence of such destruction to Esri (e.g., certification letter). Licensee may continue to use Rolled-In Software, provided Licensee complies with the terms and conditions of the License Agreement. Further, Esri agrees that Licensee is not required to pay a maintenance reinstatement fee for lapsed maintenance for Rolled-In Software if Licensee orders maintenance at time of ELA termination. Other items that may be included in this ELA such as Esri Enterprise Advantage Program, Virtual Campus annual user license, access codes, Virtual Campus dollar credits, and Esri International User Conference registrations, will also terminate if this ELA is terminated.

**6.3 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 Licensee may continue to use the Deployed ELA Products and Rolled-In Software in accordance with the terms and conditions set forth in the License Agreement. Licensee shall notify Esri of the quantity and type of licenses for which Licensee elects to purchase standard maintenance. If maintenance is not ordered for Rolled-In Software or ELA Products upon expiration of the ELA, it lapses. If, at a later date, Licensee decides to reinstate maintenance, Licensee must pay maintenance reinstatement fees from the date of ELA expiration (e.g., back maintenance fees). Licensee shall not Deploy additional copies of the ELA Products beyond the quantities in use upon termination or as of the date of expiration. Despite any language in the State of Ohio State Term Schedule, term licenses or subscriptions terminate upon expiration of this ELA. Term licenses or subscriptions can only be provided with an Enterprise License Agreement.

**6.4 Termination for Non-Appropriation of Funds or Lack of Funds.** Licensee's obligation to pay the amounts due for following fiscal years is contingent upon appropriation of funds for this ELA. Licensee 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 Licensee deploy additional copies of the ELA Products after 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. Subscription or term licenses will terminate.
- b. Licensee may continue to use Deployed ELA Software identified in Appendix A, provided:
  - i. Licensee shall report the quantity and types and Esri shall determine the quantity and type of Software that Licensee may continue to use under the License Agreement terms ("Remaining Software"). This determination will be based on the portion of the ELA Fees paid that are applicable to Software.
  - ii. Licensee shall uninstall, remove, cease use or access and destroy Deployed ELA Software and any whole or partial copies, modifications, or merged portions in any form in excess of the Remaining Software.
- c. No refund will be provided to Licensee for payments made prior to termination.

Within thirty (30) days of termination of the ELA for Lack of Funds, Licensee will document in writing to Esri the total quantity and type of Remaining Software and Rolled-In Software for which Licensee desires to obtain maintenance, if any. Payment of maintenance fees will be effective from the date of the ELA termination. 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.

## ARTICLE 7—RELATIONSHIP OF THE PARTIES

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

## ARTICLE 8—ADMINISTRATIVE REQUIREMENTS

**8.1 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. 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 Products as ELA Products under this ELA. Licensee shall not be entitled to or seek to decouple Esri's technology or products/services from the partner's bundle or solution. In addition, such Products, or any component thereof included in the OEM software program or product, will be licensed through the license agreement provided by the OEM business partner and not through this ELA.

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

**8.3 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 ELA Products that has been Deployed, but support and upgrades for older items may not be available. ELA Maintenance and maintenance and availability of ELA Products identified in Appendix A will be subject to each item's Product Life Cycle Support Status, which can be found at <http://support.esri.com/en/content/productlifecycles> by selecting the product type and clicking the Product Life Cycle link for specific product plans. Esri's Product Life Cycle Support Policy, available at <http://downloads2.esri.com/support/TechArticles/ProductLifeCycle.pdf>, covers the support phases and overall support plans.

## ARTICLE 9—GENERAL PROVISIONS

**9.1** 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) E512G Enterprise License Terms and Conditions, (2) State of Ohio State Term Schedule Terms & Conditions and (3) the License Agreement. The terms and conditions of the Esri Enterprise Advantage Program Addendum will take precedence over the provision of the ELA with respect to the Esri Enterprise 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.

**9.2 Survival of Certain ELA Clauses.** The provisions of Section 6.3 of this Enterprise License Terms and Conditions document (E512G) will survive the expiration or termination of this ELA.



## ARTICLE 1—DEFINITIONS

Capitalized terms that have not been defined in this EAP Addendum 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 EAP subscriptions under this EAP Addendum.

"PSS" means Premium Support Services.

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

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

## ARTICLE 2—ENTERPRISE ADVANTAGE PROGRAM

**2.1 Enterprise Advantage Program Description.** This EAP Addendum supersedes any previous agreements or understandings related to the Enterprise Advantage Program. Licensee shall identify a point of contact for all EAP activities. The Enterprise Advantage Program is a menu of services, training, and support that provides Licensee with the flexibility to select components that best meet its needs. The Enterprise Advantage Program is not designed for Esri to provide project-specific professional services (e.g., application or database development for solutions or applications). The Enterprise Advantage Program components include the following:

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

c. *Learning and Services Credits*

- (1) Licensee will receive the number of ordered Learning and Services Credits. Licensee may use the credits toward any combination of consulting services support, training, premium support, or related travel expenses as described below.
- (2) Licensee may order, for an additional price, additional Learning and Services Credits either (i) as a block of fifty (50) credits or (ii) as a block of one hundred (100) credits, not to exceed a total of two hundred (200) credits during the subscription term or each Renewal Period of this EAP Addendum. If Licensee requests additional Learning and Services Credits over and above the initial two hundred (200) credits provided for in this paragraph, Licensee must order Learning and Services Credits along with additional Technical Advisor Services.
- (3) Learning and Services 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 Unlimited	75 credits = Unlimited Incidents
Instructor-Led Training (one [1] person at an Esri Facility) or Virtual Classroom	1 credit = 1 day
Client Site or Private Esri Site Training Event (for up to twelve [12] people)	9 credits = 1 day
Additional Student	0.75 credits = 1 day
Coaching Services (for up to fifteen [15] people)	9 credits = 1 day
Virtual Campus Annual User License	1 credit = 480 Virtual Campus dollars
Related Esri travel and per diem expenses	as quoted

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

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

## 2.2 Learning and Services Credit Use

- a. *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.
- b. *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 travel-related expenses in accordance with the established rates in the Ohio Office of Budget Management policy.
- c. *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.
- d. *Review of Proposed Activities.* Any activities proposed to be completed under the Enterprise Advantage Program will be subject to review and approval by Esri to ensure alignment with the intent of the program.

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

## ARTICLE 3—LICENSE GRANT

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

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

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

## ARTICLE 4—WARRANTIES AND DISCLAIMERS

### 4.1 Warranties and Disclaimers

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

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

IN THE EVENT A WORK PRODUCT CREATED AS A RESULT OF AN EEAP ENGAGEMENT IS FOUND TO BE INFRINGING, THE PARTIES AGREE THAT THE SOLE REMEDIES AVAILABLE TO THE LICENSEE SHALL BE LIMITED TO THAT SPECIFIED IN THE ARTICLE ENTITLED INDEMNITY IN THE STATE OF OHIO STATE TERM SCHEDULE 533197-3 DATED 05-09-2005.

## ARTICLE 5—LIMITATION OF LIABILITY

**5.1 Disclaimer of Certain Types of Liability.** RESERVED.

**5.2 General Limitation of Liability.** For General Limitation of Liability, the provisions incorporated in the State of Ohio State Term Schedule 533197-3 are applicable. For indirect, incidental loss or damage the below applies:

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR UP TO THREE (3) TIMES THE COST OF THE PRODUCT/SERVICE OR EIGHT MILLION DOLLARS (\$8,000,000) PER PURCHASE EVENT, WHICHEVER IS GREATER.

3. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR UP TO THREE (3) TIMES THE COST OF THE PURCHASE EVENT FOR ENTERPRISE ADVANTAGE PROGRAM SERVICE ENGAGEMENTS.
4. THE CONTRACTOR SHALL NOT BE LIABLE FOR DAMAGES (A) ARISING OUT OF THE USE OF THE PRODUCT OR SERVICES AS DESCRIBED IN THE HIGH RISK ACTIVITIES CLAUSE OR (B) TO DATABASES NOT SUBJECT TO A REASONABLE BACKUP PROGRAM.
5. THESE LIMITATIONS DO NOT APPLY TO THIRD PARTY CLAIMS ARISING FROM DEATH, PERSONAL INJURY OR PROPERTY DAMAGE.

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

#### **ARTICLE 6—COMPENSATION**

**6.1** If EAP is included in an ELA, EAP Fees will be included in Appendix B of the ELA. 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 the time frames established in the STS schedule.

**6.2** Pricing for new or additional Esri service offerings will be in accordance with the pricelist incorporated in the State of Ohio State Term Schedule 533197-3.

**6.3** Licensee may elect to use Learning and Services Credits for actual travel expenses of Esri employees plus a standard burden or to be invoiced in accordance with agreed upon rates specified in the Ohio Office of Budget and Management Policy.

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

**7.1** The term of each EAP subscription shall be one (1) year. If an EAP is included with an ELA, the term and number of subscriptions will be noted in Appendix B of the ELA. Otherwise, the subscription term shall be identified in a corresponding quote.

**7.2** This EAP Addendum may be amended from time to time. If the parties cannot agree to amend this EAP Addendum, Esri retains the right to deny future EAP subscriptions.

**7.3** Either party may terminate this EAP Addendum for a material breach that is not cured within thirty (30) days after written notice to the other party or for bankruptcy or insolvency of the other party.

**7.4** Upon termination of this EAP Addendum

- a. Except when termination results from nonrenewal, 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 State will pay for work performed and approved travel expenses prior to termination.
- 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 related to EAP services. The access code or password for the PSS website, information disclosed at review sessions, and any Work Product are confidential information of Esri. Licensee data contained in the Esri PSS website database is confidential information of Licensee. Each party shall use the confidential information described above only for

exchanging information needed to provide the PSS contemplated by this EAP Addendum. Within sixty (60) days of a subscription expiration or termination of this EAP Addendum, 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 will have met its obligations under this EAP Addendum if its disclosure of Work Product is limited to such items in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling such Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.
- b. Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advance written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.
- c. The disclosures permitted under this section shall not relieve Licensee of its obligation to maintain the Work Product in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Work Product to employees or third parties as permitted in the preceding paragraph, Licensee shall inform such employees or third parties of the obligations in this EAP Addendum and obtain their agreement to be bound by them.

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

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

## 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 Licensee is current on maintenance for applicable Esri Software. Esri shall provide PSS for the EAP subscription term.

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

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

The PSC shall

- a. Be familiar with Licensee's GIS software architecture and infrastructure to perform the scope of support pursuant to this Article 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 EAP subscription term with a written notification to Licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **11.4 Esri's Responsibilities**

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

### **11.5 Licensee's Responsibilities**

- a. Licensee must ensure the protection of Esri's copyrights. Licensee shall not copy or distribute, or permit a third party to copy or distribute, any of Esri's training material(s).
- b. Licensee is not authorized to resell seats to an Esri training event unless explicitly authorized in writing by Esri.
- c. Licensee must ensure that all Students have received confirmation from Esri to participate in an Esri training event. An unregistered Student is not permitted to view or participate in a Virtual Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Students.
- d. Licensee must confirm that all registered Students meet the applicable minimum prerequisites for the applicable training event set forth on Esri's training website.
- e. Licensee must submit registration with a confirmed payment commitment at least seven (7) business days before the training event start date. If Licensee submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- f. US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List). To meet these export requirements,

Licensee must submit to the Esri Training Event Assistant a list of the names of Students who are to attend any training event. Licensee must submit the list of Student names to Esri at least three (3) business days before the training event start date. Any Student whose name is found on any of the various US Government Denied Persons lists will not be permitted to attend training.

- g. Licensee is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export licensing requirements, course scheduling changes, or cancellations.
- h. Licensee must provide written notice to Esri's Customer Service at [service@esri.com](mailto:service@esri.com) of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of such change(s) prior to the training event start date.
- i. Students may not use audio or video recording equipment within the classroom without prior written approval from Esri. Esri reserves the right to record a classroom training event for future rebroadcast.
- j. Licensee is responsible to ensure that it adheres to the course, facility, and equipment, as well as Internet bandwidth and connectivity requirements for Esri Training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.
- k. Where the Esri Mobile Lab equipment is utilized at Licensee's domestic site, the following terms apply:
  - Upon receipt, Licensee must immediately report any damage to the Mobile Lab equipment to the Training Event Assistant.
  - Licensee must keep the Mobile Lab equipment in a secure, locked area between training event sessions.
  - Licensee must ensure that only registered Students use the Mobile Lab equipment.
  - Licensee is responsible for any and all loss of, damage to, or theft of the Mobile Lab equipment while in Licensee's possession.
  - Licensee warrants that it maintains sufficient insurance coverage to enable it to meet its obligations created by this Addendum and by law.
  - The Esri instructor will check all Mobile Lab equipment following the completion of training. Any damage to the Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Licensee by written notice. Licensee hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
  - Licensee shall make the Mobile Lab equipment available for freight pickup immediately upon conclusion of the Esri training event.

## 11.6 Cancellation and Rescheduling Policy

### *Individual Student Seats*

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service is notified five (5) business days in advance of the training event start date. Substitutions outside of the five day window will be mutually agreed upon between the Parties. .
- A Student may transfer from one (1) scheduled Esri Learning Center training event to another one (1) time at no additional charge provided Esri's Customer Service is notified Five (5) business days in advance of the training event start date.
- Students may cancel their enrollment in a training event provided Esri's Customer Service is notified Five (5) business days in advance. If Five (5) business days' notification is not provided, Student may be charged the full Student Seat fee.

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

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service is notified three (3) business days in advance of the training event start date.
- A training event may be rescheduled by the Licensee provided Esri's Customer Service is notified Five (5) business days in advance of the training event start date. If appropriate notice of rescheduling is provided, Licensee is responsible for reasonable travel expenses and shipping costs.
- A training event may be canceled by the Licensee provided Esri's Customer Service is notified Five (5) business days in advance of the training event start date. If appropriate notice of cancellation is not provided, Licensee may be responsible for any reasonable travel expenses and shipping costs. If a training event is canceled without appropriate notice, Licensee is responsible for the full training event fee.

If cancellation of a training event is necessary due to Force Majeure, the affected party is released in full from the Five (5)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

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

Esri agrees that it will include the above information in each Order.

## **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 Addendum and shall take other necessary steps to protect Esri's or its licensor's intellectual property rights.

**12.2 Nonsolicitation of Contractor Personnel.** Licensee shall not solicit for hire any Esri employee who is associated with efforts called for under this EAP Addendum during the term of the subscription and for a period of one (1) year thereafter

**12.3 Export Control Regulations.** Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release Software, Data, Web Services, or Documentation, in whole or in part, to (i) any US embargoed country (or to a national or resident of any US embargoed country); (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity where such export or reexport violates any US export control laws or regulations including, but not limited to, the terms of any export license or license exemption and any amendments and supplemental additions to US export laws as they may occur from time to time.



**ENTERPRISE LICENSE AGREEMENT**  
**Signature Page**

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

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State of Ohio State Term Schedule 533197-3  
**ELA Agreement No.** \_\_\_\_\_

This Enterprise License Agreement including the documents listed below (collectively, "Agreement" or "ELA") is between \_\_\_\_\_ ("**Licensee**"), and **Environmental Systems Research Institute, Inc.** ("**Esri**"), and is effective as of the later date of the signatures below when signed by both parties ("Effective Date"). This Agreement 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 Agreement is comprised of the following documents, which are incorporated herein by reference:

1. Terms and Conditions for Enterprise License Agreement, E512G as located in the State of Ohio State Term Schedule 533197-3.
2. This ELA signature page and the following:
  - Appendix A, Software and Deployment Schedule
  - Appendix B, Enterprise License Fee Schedule
  - Appendix C, Licensee Annual Deployment Report
  - Appendix D, ELA Points of Contact
  - Appendix E, Tier 1 Help Desk Authorized Individuals
3. License Agreement—the terms of Esri’s Federal Schedule Contract, Number GS-35F-5086H as amended and incorporated into the State of Ohio State Term Schedule 533197-3.
4. Enterprise Advantage Program (EAP) Addendum, E125 as located in the State of Ohio State Term Schedule 533197-3.

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, except for any modifications or amendments to the foregoing documents incorporated by reference shall apply equally to this Agreement.

ACCEPTED AND AGREED:

\_\_\_\_\_  
(Licensee)

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(Esri)

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



**APPENDIX B  
ELA FEE SCHEDULE**

The ELA Fee is \$\_\_\_\_\_. The ELA Fee is in consideration of the ELA Products, ELA Maintenance, Esri International User Conference registrations, and Esri Enterprise Advantage Program.

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>ELA Fee</b>
<b>Payments</b>				

<b>Number of Esri International User Conference Registrations per Year</b>	<b>(TBD)</b>
<b>Number of Tier 1 Help Desk Individuals</b>	<b>(TBD)</b>
<b>Number of Sets of Backup Media, if Requested</b>	<b>5</b>
<b>Term of ELA pursuant to Section 7.1</b>	<b>3 years from Effective Date</b>
<b>Support Incidents for EDN</b>	<b>One 10-Pack/Year</b>
<b>Esri Enterprise Advantage Program (EEAP)*</b>	<b>One (1) Annual Subscription for each year of the ELA Term with ____ Technical Advisory hours per year ____ Learning and Services credits per year to be used at any time during the Term of the ELA.</b>

\*Unused technical advisory hours expire upon the expiration of the ELA Term.  
Unused learning and services credits expire six months after the ELA Term.



**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: 888-377-4575  
Fax: 909-307-3083

2. Esri contact for Tier 2 Support issues:

E-mail: [support@esri.com](mailto:support@esri.com)  
Phone: 909-793-3774 (domestic US only)  
Fax: 909-792-0960  
Web: [support@esri.com](mailto:support@esri.com)

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

Name: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

4. All deliverables to Licensee will be shipped to the address listed below:

Licensee Office: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

5. All notices to Licensee will be mailed to the address listed below:

Licensee Office: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**APPENDIX E**  
**TIER 1 HELP DESK AUTHORIZED INDIVIDUALS**

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

1. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

2. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_