

COUNTY OF MONTEREY STANDARD AGREEMENT (NOT TO EXCEED \$100,000)
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This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and Environmental Systems Research Institute, Inc. (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to provide, the training courses described in Exhibit A in conformity with the terms of this Agreement and with the terms found in Exhibits A and B. The training courses are listed in CONTRACTOR's current catalogue, as identified in Exhibit B, paragraph 2.1 and include but are not limited to:

1. Collaboration and Sharing (ArcGIS for Server), which includes:
ArcGIS 4: Sharing Content on the Web
ArcGIS for Server: Site Configuration and Administration
Deploying Portal for ArcGIS
2. Collaboration and Sharing, which includes:
User Workflows for ArcGIS Online Organizations
3. Foundation, which includes
ArcGIS 1: Introduction to GIS
ArcGIS 2: Essential Workflows (or ArcGIS Pro: Essential Workflows)

For purposes of clarity, the training courses provided by CONTRACTOR are commercial-off-the-shelf products. There are no personal professional services provided under this Agreement.

2.0 PAYMENT PROVISIONS.

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibits A and B, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$45,000, excluding sales tax if applicable.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is May 15, 2017 through May 14, 2020 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

3.02 Either party may terminate this agreement, as specified in Exhibit B, paragraph 7.1.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

- Exhibit A, Scope of Services/Payment Provisions; and
- Exhibit B, comprised of CONTRACTOR Training Terms and Conditions.

4.02 Exhibits A and B apply to the training listed in Contractor's current web based catalog (located at <https://www.esri.com/training/>), from which County will select training as needed. CONTRACTOR's pricing for training will not increase more than 7.5 percent annually during the term of the Agreement. All training pricing will be provided at CONTRACTOR's then existing commercial price list, as set forth in its current web based catalog.

4.03 Exhibit B - CONTRACTOR'S Training Terms and Conditions are based on CONTRACTOR'S standard publicly available terms and conditions and have been negotiated between CONTRACTOR and County. CONTRACTOR may change its standard publicly available training terms and conditions. In the event that such changes are made, then changes to Exhibit B may be required. Any changes to Exhibit B must be accomplished by a formal amendment to this Agreement. CONTRACTOR will not be required to provide training if CONTRACTOR and County do not amend this Agreement with a revised Exhibit B that conforms with CONTRACTOR'S standard publicly available terms and conditions.

5.0 PAYMENT CONDITIONS.

5.01 The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.

5.02 Reserved.

5.03 Invoice amounts shall be billed directly to the ordering County department, as specified in Exhibit A, section IV.B.

5.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

5.05 Accepted payment methods are set forth in Exhibit B, paragraph 9.1, to this Agreement.

If COUNTY is invoiced and pays that invoice prior to the scheduled training event, then COUNTY has one (1) calendar year (twelve [12] consecutive months) from the date of the invoice to consume the training days. Because this is a multiyear order, the training days must be consumed by May 14, 2020. Thereafter, all prepaid fees are forfeited.

6.0 TERMINATION.

6.01 The County may cancel and terminate this Agreement in accordance with Exhibit B, paragraph 7.1. If County terminates this Agreement for material breach, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper.

6.02 For Contractor's termination rights, see Exhibit B, paragraph 7.1.

7.0 INDEMNIFICATION.

7.01 Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, any action or claim for bodily injury, death, or property damage brought against any of the indemnified parties to the extent arising from any negligent act or omission or willful misconduct by Contractor and/or its agents, employees or sub-contractors while engaged in or as a result of the training or coaching services provided by Contractor, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement. Contractor's obligation to indemnify County survives the termination or expiration of this Agreement and extends to the expiration of the statute of limitations applicable to claims arising out of this Agreement.

8.0 INSURANCE REQUIREMENTS.

8.01 Evidence of Coverage:

Contractor shall provide a "Certificate of Insurance" (valid ACORD form or equivalent) certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate.

8.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VIII, according to the current Best's Key Rating Guide or a company of equal financial stability.

8.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance. including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Workers' Compensation Insurance. if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

As provided in Exhibit A, paragraph I, Contractor will provide the services specified by this agreement online, deliver Training Materials to County premises or perform training at ESRI training sites; thus, ESRI agents and personnel will not travel to County premises to deliver services. The parties accordingly agree that Contractor need not provide proof of automobile liability insurance.

8.04 Other Requirements:

All insurance required by this Agreement shall be with a company issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given prompt notice of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof, provided that no such notice is required if Contractor buys a replacement policy that ensures continuous coverage and otherwise complies with the requirements of this section 8.0, Insurance Requirements. Each policy shall provide coverage for Contractor and additional

insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance.

Policies to which this Section 8.0 refers have a blanket endorsement honoring contractual requirement to add another entity as an additional insured or to identify the coverage as primary. In these cases the certificate of insurance will be annotated to confirm that the County is covered under the blanket endorsement.

CONTRACTOR has filed certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall promptly file a new or amended certificate of insurance after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

9.0 RECORDS AND CONFIDENTIALITY.

- 9.01 Confidentiality. Each party and its officers, employees, agents, and subcontractors shall comply with any and all applicable federal, state, and local laws, which provide for the confidentiality of records and other information. Personally identified information (PII) will not be disclosed under this Agreement. CONTRACTOR and COUNTY shall not disclose any confidential records or other confidential information received from the other, without prior written permission to disclose such records or information. The receiving party shall promptly transmit to the other any and all requests for disclosure of any such confidential records or information. The receiving party shall not use any confidential information gained by the other in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement. The disclosing party shall identify the information as confidential information at the time of

disclosure. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the other party's confidential information.

9.02 County Records. When this Agreement expires or terminates, each party shall return or destroy the other party's confidential information used or received to perform training services under this Agreement.

9.03 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

10.0 NON-DISCRIMINATION.

10.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

11.0 INDEPENDENT CONTRACTOR.

11.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

12.0 NOTICES.

12.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Mais Shelor, Information Technology Business Manager	Diane Wagner,
ADDRESS: Monterey County, Information Technology Department 1590 Moffett Street, Salinas, CA 93905	ADDRESS: Esri, Incorporated 380 New York Street Redlands, CA 92373-8100
PHONE: (831) 759-6900	PHONE: (909) 793-2853

12.0 MISCELLANEOUS PROVISIONS.

12.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

12.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

12.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

12.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

12.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.

12.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

12.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or

delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

12.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

12.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

12.10 Reserved.

12.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California. Venue of litigation arising from this Agreement shall be in the Superior Court of California, Monterey County.

12.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

12.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

12.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

12.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

12.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.

12.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

13.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day
and year written below.

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Manager

Date: _____

By: _____
Department Head (if applicable)

Date: _____

Approved as to Form

By: _____
County Counsel

Date: _____

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: _____

Approved as to Liability Provisions

By: _____
Risk Management

Date: _____

CONTRACTOR

Esri, Inc.

Contractor's Business Name*

By: _____
(Signature of Chair, President, or Vice-
President)*

Name and Title

Date: _____

By: _____
(Signature of Secretary, Asst. Secretary,
CFO, or Asst. Treasurer)*

Name and Title

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be

set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

EXHIBIT A

SCOPE OF SERVICES/PAYMENT PROVISIONS

I. Service Delivery Sites

- A. The service delivery sites for Classroom Courses are Esri Training Sites in California:
1. 757 West Redlands Blvd, Redlands, CA 92373
 2. 1600 K Street, Suite 4C, Sacramento, CA 95814
- B. The service delivery site for Online Courses is the Monterey County Information Technology Department (ITD) Facility at 1590 Moffett Street, Salinas CA 93905. The County ITD Facility will be equipped with desktop or laptop computers with internet connectivity, USB ports and access to a printer.

II. Scope of Services

- A. CONTRACTOR shall provide training courses for County staff to attend Online or at Esri Training sites.
1. Training courses are as described in Exhibit B Training Terms and Conditions.
 2. The catalog of courses are available on the Esri Training site, URL:
<https://www.esri.com/training/catalog/>.
 3. For purposes of clarity, the training courses provided by CONTRACTOR are commercial-off-the-shelf products. There are no personal professional services provided under this Agreement.
- B. CONTRACTOR shall provide training courses in conformity with the terms of this Agreement and with the terms found in Exhibit B Training Terms and Conditions.

III. Term of the Agreement

The term of this Agreement shall be from May 15, 2017 to May 14, 2020 unless sooner terminated pursuant to the terms of this Agreement.

IV. Payment Provisions

- A. For the services described in this Agreement, CONTRACTOR shall bill the County at the completion of each course delivery as follows:

Description	Current Rate
Instructor-led training class (Online)	\$565/day per student
*Private Instructor-led class (Online or Client Site)	\$5,095/per day of training for up to 12 students (2-day class = \$10,190) (3-day class = \$15,285)
Additional Student per 2-day private class	\$380/per student – maximum of three additional students (2-day class = \$760) (3-day class = \$1,140)
Client Coaching Services (day added on to a	\$4,630/per day

private class)	
Instructor-led half-day workshop	\$185/per student
*Private Instructor-led half-day workshop	\$2,780/half-day per class of up to 20 students

*Travel may be charged if Client Site

The sum total of all billing will not exceed the **maximum amount of \$45,000.00, at \$15,000** per year. The payment conditions as specified in Section 5.0 of the body of this Agreement and Exhibit B, paragraph 9.1 shall apply. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT. For purposes of clarity, the maximum billing described in this paragraph is subject to number of courses selected by County and the applicable rate schedule. Maximum billing amount does not provide County with unlimited number of courses.

Monterey County Information Technology
1590 Moffett Street
Salinas, CA 93905
Attn: Accounts Payable



TRAINING TERMS AND CONDITIONS

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

IMPORTANT—READ CAREFULLY

Unless superseded by a signed training agreement between you and Esri, Esri is willing to provide training to you only if you accept all terms and conditions contained in this Training Agreement. Please read the terms and conditions carefully. You may not obtain training until you have agreed to the terms and conditions of this Training Agreement. If you do not agree to the terms and conditions as stated, click "I disagree with the above terms" and exit the registration screen.

This Training Agreement ("**Agreement**") is between you (hereinafter "**Client**") and **Environmental Systems Research Institute, Inc. ("Esri")**. Client acknowledges that Client has read and understood this Agreement and agrees to be bound by the terms and conditions hereof.

RECITALS

This Agreement allows Esri to conduct training courses and provide training-related services to Client who wishes to obtain training in the use of Esri GIS software. Both parties agree to the terms and conditions contained below.

ARTICLE 1—DEFINITIONS

- a. "**Client-Supplied Training Data**" means any digital dataset(s) including, but not limited to, geographic, vector data, coordinates, raster, or associated tabular attributes supplied by Client for use in training.
- b. "**Esri Mobile Lab**" means Esri hardware shipped to domestic US Client site training events, if Client does not have the required hardware to host a scheduled training event, consisting of laptops preconfigured with Esri Software, Training Materials, hard drives, power cords, and network switches.
- c. "**Esri Training Event Assistant**" means Client's primary Esri liaison in organizing Client site and private training events.
- d. "**Student**" means a registered participant for a specific training course, Client coaching services, or training-related services.
- e. "**Training Materials**" means digital or print content required to complete a course, which may include, but are not limited to, workbooks, data, concepts, exercises, and exams.

ARTICLE 2—TRAINING DESCRIPTION

2.1 Instructor-led training and Client coaching services are offered by Esri in the use of Esri's GIS Software.

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

ARTICLE 3—ESRI'S RESPONSIBILITIES

3.1 Esri will

- a. Provide training in a manner consistent with the technical and professional standards of the industry.
- b. Provide an instructor qualified to conduct the training course(s), Client coaching services, or training-related services.
- c. Provide all necessary Training Materials for Student.

- d. Confirm class approximately ten (10) business days prior to the scheduled start date. Client site and private classes confirmation is dependent on receipt of the completed Client site training request form and intended method of payment.

ARTICLE 4—CLIENT'S RESPONSIBILITIES

4.1 Client will

- a. Ensure all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Student[s] will not be permitted to view or participate in an online classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Student[s].
- b. Confirm all registered Students meet the minimum prerequisites for the applicable training event set forth on Esri's Training website.
- c. Submit registrations with a confirmed payment commitment at least seven (7) business days prior to the scheduled start date. Registrations submitted without payment commitment will not be a guaranteed reservation and will be added to a wait list pending payment confirmation. All wait list reservations are subject to availability.
- d. Submit to the Esri Training Event Assistant a list of the names and e-mail addresses of Student[s] who are to attend a Client site or private training event at least three (3) business days before the scheduled start date. Subject to compliance with Article 14 Export Control Regulations, any Student who is a resident of a US embargoed country or is found on any of the various US Government Lists of Parties of Concern or Specially Designated Nationals lists will not be permitted to attend the training event.
- e. Be responsible for all Student travel arrangements and agrees that Esri is not responsible for losses from nonrefundable travel arrangements due to the denial of Student's participation based on US government export regulation requirements, course scheduling changes, or cancellations.
- f. Complete and submit an Esri Client site training request form, if applicable, and ensure that the class environment adheres to the requirements for Esri Training as found online at <http://training.esri.com/gateway/index.cfm?fa=classroom.requirements>.
- g. Ensure Student use of Training Materials provided by Esri complies with the terms of this Agreement.
- h. Assume full responsibility for Student attending training course(s) under this Agreement. Client agrees to indemnify Esri, its officers, directors, and employees for any and all claims, liabilities, and expenses (including reasonable legal fees) arising out of or based on any uncured material breach by Student of the terms and conditions of this Agreement.
- i. Ensure Student does not use audio and/or video recording equipment within the classroom without prior written approval from Esri.

4.2 If the Esri Mobile Lab is used, Client will

- a. Immediately report any existing damage to Esri Mobile Lab equipment to Training Event Assistant, upon receipt of the equipment.
- b. Keep Esri Mobile Lab equipment in a secure, locked area between training event sessions.
- c. Ensure that only registered Student[s] use Esri Mobile Lab equipment.
- d. Be responsible for loss of, damage to, and/or theft of Esri Mobile Lab equipment while in Client's possession.
- e. Warrant that it maintains sufficient insurance coverage obligations created by this Agreement and by law.
- f. Allow the Esri instructor to check all Esri Mobile Lab equipment following the completion of training. Any damage to Esri Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Client by written notice. Client hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
- g. Make Esri Mobile Lab equipment available for freight pickup upon the conclusion of the training event.

ARTICLE 5—INSURANCE AND INDEMNIFICATION

5.1 Insurance. Esri carries, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with minimum coverage of one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, including death, and property damage liability, to include the following:
 - 1. Premises and operations
 - 2. Blanket contractual liability

3. Broad form property damage
4. Independent contractors
5. Personal injury, with employee exclusion deleted
6. Completed operations

b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

5.2 Indemnification. Esri will indemnify and hold harmless Client and each of its directors and officers (collectively the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys' fees, arising out of any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents while engaged in or as a result of the training or coaching services provided by Esri pursuant to this Agreement while on Client's site.

ARTICLE 6—LICENSING AND MATERIALS

6.1 Training Materials Reservation of Ownership. This Agreement gives Student certain limited rights to use electronic and tangible versions of the Training Materials. Esri and its licensor(s) retain exclusive rights, title, and ownership to the copy of Training Materials, software, data, and documentation licensed under this Agreement. Training Materials are protected by United States copyright laws and applicable international copyright treaties and/or conventions. All rights not specifically granted in this Agreement are reserved to Esri and its licensor(s).

6.2 Grant of License. Esri grants to Student a personal, nonexclusive, nontransferable license to use Training Materials for Student's own training purposes. Student may run and install one (1) copy of Training Materials and reproduce one (1) copy of Training Materials. Student may make one (1) additional copy of the original Training Materials for archive purposes only, unless Esri grants in writing the right to make additional copies.

6.3 Training Materials are intended solely for the use of the training of the individual Student who registered and attended a specific training course. Student may not (i) separate the component parts of the Training Materials for use on multiple systems or in the cloud, use in conjunction with any other software package, and/or merge and compile into a separate database(s) or documents for other analytical uses; (ii) make any attempt to circumvent the technological measure(s) (e.g., software or hardware key) that effectively controls access to Training Materials; (iii) remove or obscure any copyright, trademark, and/or proprietary rights notices of Esri or its licensor(s); or (iv) use audio and/or video recording equipment during a training course.

6.4 Client-Supplied Training Data. Client will retain ownership of any Client-Supplied Training Data.

6.5 Software. Client's existing license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> will cover all applicable terms of use for Esri provided software, data, documentation, and content used by Student during a training event. Esri may issue temporary Esri software licenses for Client site training if Client has an insufficient number of Esri software licenses available at Client's training facility. Client must uninstall all temporary Esri software licenses and return any media provided by Esri upon conclusion of the training event.

ARTICLE 7—TERM AND TERMINATION

7.1 This Agreement is effective upon acceptance. Either party may terminate this Agreement at any time upon written notice to the other party or for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination is immediate for a material breach that is impossible to cure. Upon termination of this Agreement for breach, Esri may request Client to return or destroy all copies of Training Materials in its possession, and any whole or partial copies, in any form and deliver evidence of such destruction to Esri, which evidence shall be in a form acceptable to Esri in its sole discretion. The parties agree that all provisions that operate to protect the rights of Esri and its licensor(s) shall remain in force should breach occur. Termination does not relieve Client from payment for any current or outstanding training registrations. Upon termination, Client agrees to pay Esri all current and outstanding invoices for training. Student[s] who are currently registered for a training course are granted the right to continue to attend the training course subject to the terms and conditions of this Agreement.

ARTICLE 8—STUDENT REGISTRATION AND TRAINING EVENT CHANGE POLICY

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

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

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

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

8.3 If cancellation of a training event is necessary due to force majeure as described in Article 11 below, the affected party is released in full from the three (3)-business day notification. The affected party will either reschedule or cancel the training without incurring any liability.

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

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

ARTICLE 9—PAYMENT

9.1 Payments

- a. Accepted payment methods are found at <http://training.esri.com/gateway/index.cfm?fa=catalog.paymentdetails>.
- b. Esri will invoice Client upon completion of each training course. Client's payment will be due no later than thirty (30) days after receipt of the invoice.
- c. If Client is invoiced and pays that invoice prior to the scheduled training event, then Client has one (1) calendar year (twelve [12] consecutive months) from the date of the invoice to consume the training days. For a multiyear order, the training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.

ARTICLE 10—CONFIDENTIAL INFORMATION

10.1 Except for any personally identified information (PII), any data or information controlled for export under the United States International Traffic in Arms Regulations (ITAR), or other classified data, Esri or Client may disclose to the other party certain confidential information under this Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the other party's confidential information.

ARTICLE 11—FORCE MAJEURE

11.1 If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, threat of or actual terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, or demand; or any act or condition whatsoever beyond the reasonable control of the affected party, the

party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.

ARTICLE 12—WARRANTY

12.1 Limited Warranty. Esri warrants that the media upon which Training Materials is provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt.

12.2 Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE TRAINING AND TRAINING MATERIALS CONTAINED THEREIN ARE PROVIDED "AS-IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. ESRI DOES NOT WARRANT THAT THE TRAINING OR TRAINING MATERIALS WILL MEET CLIENT'S NEEDS OR EXPECTATIONS; THAT THE USE OF TRAINING MATERIALS WILL BE UNINTERRUPTED; OR THAT ALL NONCONFORMITIES, DEFECTS, OR ERRORS CAN OR WILL BE CORRECTED. THE TRAINING DATABASE HAS BEEN OBTAINED FROM SOURCES BELIEVED TO BE RELIABLE, BUT ITS ACCURACY AND COMPLETENESS, AND THE OPINIONS BASED THEREON, ARE NOT GUARANTEED. THE TRAINING DATABASE MAY CONTAIN SOME NONCONFORMITIES, DEFECTS, ERRORS, AND/OR OMISSIONS. ESRI AND ITS LICENSOR(S) DO NOT WARRANT THAT THE TRAINING DATABASE WILL MEET CLIENT'S NEEDS OR EXPECTATIONS, THAT THE USE OF THE TRAINING DATABASE WILL BE UNINTERRUPTED, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. ESRI AND ITS LICENSOR(S) ARE NOT INVITING RELIANCE ON THIS TRAINING DATABASE, AND CLIENT OR STUDENT SHOULD ALWAYS VERIFY ACTUAL DATA, WHETHER MAP, SPATIAL, RASTER, TABULAR INFORMATION, AND SO FORTH. THE DATA CONTAINED IN THIS PACKAGE IS SUBJECT TO CHANGE WITHOUT NOTICE. IN ADDITION TO AND WITHOUT LIMITING THE PRECEDING PARAGRAPH, ESRI DOES NOT WARRANT IN ANY WAY TRAINING DATA. TRAINING DATA MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET CLIENT'S NEEDS OR EXPECTATIONS. NEITHER CLIENT NOR STUDENT SHOULD RELY ON ANY TRAINING DATA UNLESS CLIENT HAS VERIFIED TRAINING DATA AGAINST ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

12.3 Exclusive Remedy. Client's exclusive remedy and Esri's entire liability for breach of the limited warranties set forth in this Article 12 shall be limited, at Esri's sole discretion, to (i) replacement of any defective Training Materials; (ii) repair, correction, or a workaround for Training Materials, or (iii) return of the fees paid by Client for Training Material that do not meet Esri's limited warranty, provided that Client uninstalls, removes, and destroys all copies of the Training Materials; and executes and delivers evidence of such actions to Esri.

ARTICLE 13—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

13.1 EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO CLIENT FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY CLIENT FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 14—EXPORT CONTROL REGULATIONS

14.1 Client must comply with all applicable laws and regulations of the United States including, without limitation, its export control laws. Client expressly acknowledges and agrees not to export, reexport, transfer, or release Esri provided Training Materials, in whole or in part, to (i) any US embargoed country (including to a resident of any US embargoed country); (ii) any person or entity on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Lists of Parties of Concern; or (iv) any person or entity where such export, reexport, or

provision violates any US export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to US export laws.

ARTICLE 15—TAXES

15.1 Training provided is quoted exclusive of all state, local, value-added, or other taxes; customs; or duties or other charges (other than income taxes payable by Esri). In the event such taxes or charges become applicable to Esri's training or deliverables, Client shall pay any such applicable tax upon receipt of written notice that such taxes or charges are due.

ARTICLE 16—UCC INAPPLICABILITY

16.1 Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

ARTICLE 17—GOVERNING LAW

17.1 This Agreement is governed by and construed in accordance with the laws of the state in which training is being held or, in the case of training provided over the Internet, the laws of the State of California, without reference to its conflict of laws principles.

ARTICLE 18—ENTIRE AGREEMENT

18.1 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 (including any attached purchase order terms and conditions) between the parties relating to such subject matter. Client hereby acknowledges and represents that he/she has read and understands this Agreement and has the authority to bind his/her organization to these terms and conditions.