

AN ESRI
PROPOSAL

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Proposal for Esri Managed Cloud Services

Prepared for:

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Esri Proposal # P17-21351

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Introduction

Environmental Systems Research Institute, Inc. (Esri) offers a variety of hosting options that are designed to be scalable, reliable, cost-effective, and secure. Esri Managed Cloud Services offers cloud infrastructure support for custom GIS data and applications. Esri is pleased to submit this Managed Cloud Services proposal to Santa Clara Valley Water District (SCVWD) for hosting their Enterprise Geographical Information System (GIS) in a cloud environment.

Scope of Managed Cloud Services

Esri will provide the following Managed Services to support the GIS for SCVWD.

Table 1. Managed Cloud Services

Item	Unit	Description
Hosting Period	12 months	Duration of the period in which Esri will host the GIS. The hosting period begins when the application is deployed to production.
Cloud Infrastructure	4 cloud servers	<u>Customer Managed Production</u> Portal for ArcGIS: 1 cloud server with 4 virtual computing units and 16 GB of virtual memory ArcGIS Server: 1 cloud server with 2 virtual computing units and 7.5 GB of virtual memory ArcGIS Server: 1 cloud server with 4 virtual computing units and 16 GB of virtual memory ArcGIS Datastore: 1 cloud server with 4 virtual computing units and 16 GB of virtual memory
Virtual Desktop	5 virtual desktops	5 virtual desktops with 2 virtual computing units and 7.5 GB of virtual memory each.
Data Storage	Up to 1.5 TB	Storage allocation available for all data content associated with the GIS.
Backups	Weekly	Full backups of the hosting server.
	Daily	Incremental backups of the hosting servers.
	Retention	7 days Production, 3 days for Staging and Development, as applicable.
Operating System	Esri Provided	Microsoft Windows Server (2016)
Database Software	Esri Provided	File Geodatabase (10.5.1)

Item	Unit	Description
ArcGIS Software	Customer provided licenses	ArcGIS for Server (10.5.1)
System Monitoring	24/7	24/7 monitoring of cloud infrastructure and Esri COTS software hosted in the cloud environment
Support	Monday – Friday, 5am – 5pm Pacific Time	Existing Esri tech support agreement plus business hour operational support for the underlying virtual cloud infrastructure.

Managed Cloud Services Description and Assumptions

- **Hosting Environment Setup and Deployment** – Esri will setup and manage a hosting environment based on Esri ArcGIS technology.
- **System Monitoring and Operational Support** – Esri will provide system monitoring and operational support associated with the cloud infrastructure. Operational support includes troubleshooting issues associated with the availability and performance of the GIS that are escalated by SCVWD helpdesk support staff or detected by system monitors. Esri will undertake commercially reasonable efforts in the identification of potential resolutions or suggested workarounds associated with an incident. Esri’s support does not include helpdesk support activities and it is assumed that SCVWD will provide its users with the first point of contact or “helpdesk support” to address any issues associated with training or the functionality of the GIS deployment.
- **Virtual Desktops** – The following assumptions were made in support of virtual desktops for this proposal:
 - EMCS will configure and maintain any needed software. The desktop will come with ArcGIS Desktop, Chrome, Firefox, and SQL Server Manager or PG Admin III (as applicable). Any additional requirements will require a review by EMCS.
 - EMCS will provide a secure method for moving objects between Workspace and on-premises network. SCVWD will not be allowed to install OneDrive, Box, Dropbox, or similar file synchronization application. Web page based access will be permitted.
 - Any resource intensive tasks will need to be reviewed by EMCS, these activities include, but are not limited to running geoprocessing tools, models, recurring maintenance tasks, or other potentially resource-intensive processes.
 - Specifically, EMCS is concerned with any process which threatens the local RAM and CPU by consuming more than 70% of either for a duration of more than five minutes.

- Individual users will not distribute or share the Workspace desktop credentials with others.
- **Other Assumptions** – The following assumptions were also made in support of developing pricing for this proposal:
 - SCVWD will have direct access to the hosting environment via remote desktop. SCVWD will be responsible for all data loading, configuration, and publishing, activities within the hosting environment.
 - SCVWD will have access to the hosting environment to perform updates to the data content in the hosting environment.
 - Due to the first two assumptions, Esri is not responsible for any Service Level Agreement or guaranteed uptime.
 - ArcGIS Enterprise out of the box security protocols will be used to secure the hosting environment. Pricing does not include services associated with certifying the hosting environment to comply with specific IT security regulations pertaining to sensitive data (e.g. HIPAA, PCI, FISMA, etc.).
 - Esri ArcGIS Enterprise licensing fees are not included in this proposal. SCVWD will be responsible for supplying the necessary license(s) to be used in the hosting environment.
 - Esri will use SCVWD provided data content as-is. Esri is not responsible for cleansing or correcting any erroneous data.
 - There will be up to 40 light map services published in production.
 - There will be up to 750 named users (approximately 200 active at any given time) consuming the services published in this cloud environment.

Pricing

The price for this proposed Scope of Managed Cloud Services described above has been estimated based upon an anticipated award of a firm-fixed-price (FFP) contract subject to the terms and conditions contained in the attached Implementation Services Firm Fixed Price Agreement (G363FP dated 08/14/2014) document as well as Esri's standard terms and conditions for hosting as set forth in the Managed Cloud Services Addendum (G595 dated 03/12/2013). Esri proposes a total firm-fixed price of \$64,600 U.S. Dollars to complete the project as defined in this proposal is based on the referenced attached Esri terms and conditions.

Table 2. Managed Cloud Services Pricing

Description	Unit Price	Quantity	Total Price
Cloud Environment Setup	\$19,000	1	\$19,000
System Monitoring and Support	\$3,800	12 months	\$45,600
Total Firm Fixed Price:			\$64,600

Purchasing

The proposed price is exclusive of applicable state and local taxes for which SCVWD shall remain responsible. Esri will invoice SCVWD a one-time setup fee upon receipt of the items listed below. Esri will invoice SCVWD for on a monthly basis for the Managed Cloud Services to be provided in the following month. Invoices are to be paid within forty-five (45) days of receipt of invoice. This proposal is valid for ninety (90) days from the submittal date above.

To order these services as proposed, please email the following three (3) items to Lauren Villanueva at lvillanueva@esri.com or fax to (909) 798-2003.

1. Purchase Order:
 - In the amount of the Total FFP in Table 2 above.
 - Referencing this proposal (P17-21351)
2. Attached Implementation Services Firm Fixed Price Agreement and Managed Services Addendum signed by an authorized member of your organization.
3. Copy of this proposal.

When we receive these completed documents, Esri will contact you to discuss staff assignment and schedule. We look forward to supporting you.

Contact:

Lauren Villanueva, Program Specialist
Esri Managed Cloud Services
380 New York Street
Redlands, CA 92373
(909) 793-2853 ext. 5244
<http://www.esri.com/arcgis/services/managed-cloud>

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Notice of Proprietary Information:

The information in the attached document is proprietary to Esri and contains commercial or financial information or trade secrets that are confidential and exempt from disclosure to the public under the Freedom of Information Act. This information shall not be disclosed outside of Customer's organization (except for consultants under a confidentiality obligation who are involved in the proposal evaluation process) without Esri's prior permission, and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate this proposal. If, however, a contract is awarded to Esri as a result of this information, the Customer shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Customer's right to use information contained in this data if it is obtained from another source without restriction.

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IMPLEMENTATION SERVICES FIRM FIXED PRICE AGREEMENT

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

1. DEFINITIONS

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

"Custom Software" means all or any portion of the computer software code, components, dynamic-link libraries (DLLs), and programs delivered on any media type; provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder; or subsequently supplied under this Agreement, exclusive of COTS Software.

"Deliverable(s)" means Custom Software, Technical Data, or Map Data specified for delivery to or use by Customer in the Scope of Work for this Agreement.

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

"Technical Data" means, without limitation, all technical materials including formulas, compilations, software code or programs, methods, techniques, know-how, technical assistance, processes, algorithms, designs, data dictionaries and models, schematics, user documentation, training documentation, specifications, drawings, flowcharts, briefings, test or quality control procedures, or other similar information supplied or disclosed by Esri under this Agreement.

2. OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, Esri owns and retains all rights, title, and interest in Custom Software delivered under this Agreement. Subject to the terms and conditions in this Agreement, Esri grants to Customer a nonexclusive, royalty-free, worldwide license to use, modify, and/or reproduce Custom Software in connection with Customer's authorized use of Esri's COTS Software.

3. PATENTS AND INVENTIONS

Esri and Customer will retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors ("Inventors") during the term of this Agreement. Esri and Customer will jointly own any Inventions made or conceived jointly by Inventors from both parties. Where Inventions are jointly owned, each joint owner will share equally the costs of acquiring protection for the Inventions and furnish the other joint owner with assistance reasonably required for acquiring protection. Neither Esri nor Customer may license, transfer, or sell its interest in jointly owned Inventions without the written consent of the other party, which will not be unreasonably withheld.

4. COMPENSATION

Esri will invoice on a percent-complete or milestone basis as described in the Scope of Work. If the Scope of Work specifies percent-complete invoicing, Esri will prepare and submit monthly invoices based on the percent complete for each Deliverable as of the end of the preceding month. If the Scope of Work specifies milestone invoicing, Esri will prepare and submit an invoice after the completion of each milestone. Upon acceptance of all Deliverables under this Agreement, the unpaid balance of the total Agreement value will be due. Payment will be made to the Esri address identified on original Esri invoices. Customer will pay each invoice no later than forty-five (45) days after receipt. If the Esri credit history established by Customer does not support this provision, Esri reserves the right to require full or partial prepayment.

5. ACCEPTANCE

Customer will complete its acceptance review within ten (10) working days of receiving each Deliverable. Acceptance for Deliverables will be categorized by Customer as follows:

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

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

6. LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

Esri warrants for a period of ninety (90) days from the date of acceptance of a Deliverable that the Deliverable will substantially conform to the professional and technical standards of the software industry and to the applicable written specifications referenced in the Scope of Work. If a Deliverable does not substantially conform to these standards or specifications, Esri will reperform the Deliverable at no additional cost to Customer.

Disclaimer of Warranties. With the exception of the limited warranty set forth in this article, Esri disclaims and this Agreement expressly excludes all other warranties, express or implied, oral or written, including, without limitation, any and all warranties of merchantability or fitness for a particular purpose.

In addition to and without limiting the preceding paragraph, Esri does not warrant in any way Map Data. Map Data may not be free of nonconformities, defects, errors, or omissions; be available without interruption; be corrected if errors are discovered; or meet Customer's needs or expectations. Customer should not rely on any Map Data unless Customer has verified Map Data against actual data from documents of record, field measurement, or observation.

7. LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

In no event will Esri be liable to Customer for procurement of substitute goods or services; lost profits; lost sales; business expenditures; investments; business commitments; loss of 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.

8. CONFIDENTIALITY

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

Except as provided in the preceding paragraph, Customer must not disclose the Deliverables to third parties without the advance written consent of Esri. Customer may make disclosures to Customer's employees to the extent reasonably required to allow Customer to use the Deliverables in a manner authorized under the applicable software licenses. Before disclosing all or any portion of the Deliverables to employees or third parties as permitted in the preceding sentence, Customer will inform its employees or third parties of the obligations in this Agreement and obtain their agreement to be bound by them. Customer must comply with Article 8 in making any permitted disclosures.

9. EXPORT CONTROLS

Customer must comply with all applicable laws and regulations of the United States including, without limitation, its export control laws. Customer expressly acknowledges and agrees not to export, reexport, transfer, or release the Deliverables, in whole or in part, to

(i) any US embargoed country (including to a 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 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.

10. GENERAL PROVISIONS

10.1 Nonsolicitation. Neither party will directly solicit for hire any employee of the other party who is associated with the Deliverables called for under this Agreement during, and for a period of one (1) year after, project completion. In the event this provision is breached, liquidated damages equal to twelve (12) months of the employee's compensation, plus any legal expenses associated with the enforcement of this provision, will be paid by the breaching party to the aggrieved party. The foregoing will in no way restrict the parties from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

10.2 Taxes. Services are quoted exclusive of all state, local, value-added, or other taxes; customs; duties; or other charges (other than income taxes payable by Esri). In the event such taxes and/or charges become applicable to Esri's services or Deliverables, Customer will pay the applicable tax upon receipt of written notice that it is due.

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

10.4 Order of Precedence. These terms and conditions will take precedence over any Customer terms and conditions included in Customer ordering or authorizing documents, such as purchase orders. Any additional terms or conditions in Customer ordering or authorizing documents will be void and may be incorporated into this Agreement only by written amendment signed by both parties.

10.5 Equitable Relief. Customer agrees that any breach of this Agreement by Customer may cause Esri irreparable damage. In the event of a breach, in addition to any and all remedies at law, Esri will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction to prevent violation of these terms without the requirement of posting a bond or undertaking or proving injury as a condition of relief.

10.6 Claim Must Be Filed within One (1) Year. Any claim related to this Agreement or the services or Deliverables may not be brought unless brought within one (1) year. The one (1)-year period begins on the date when the party knew or should have known of the claim. If it is not filed during the one (1)-year period, that claim will be permanently barred. This applies to Customer's and Customer's successors and/or assigns. It also applies to Esri and/or Esri's successors and assigns.

10.7 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California without reference to its conflict of laws principles.

10.8 Electronic Signatures. The parties agree that this Agreement and any modifications may be executed by electronic means and will be legally binding upon the parties and admissible in court as the legal equivalent of a written manual signature. An executed

Agreement will constitute a duplicate if it is transmitted through electronic means, such as, but not limited to, fax, e-mail, FTP transfer, or multimedia message, and reflects the signing of the document by any party. Duplicates are valid and binding even if an original paper document bearing the original signature is not delivered.

10.9 Entire Agreement. This Agreement is the sole and entire agreement of the parties for services and supersedes any previous agreements, understandings, and arrangements between the parties relating to the subject matter. The undersigned 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.

By: _____

Date: _____

Print Name: _____

Phone: _____

Organization ("Customer"): _____

Address: _____

City: _____

State: _____

ZIP Code: _____

Incorporating by reference Esri Proposal Number P17-21351 Dated 10/31/2017

Addendum to Agreement No. _____

Esri will provide Customer with the Esri Managed Cloud Services specified in the applicable proposal or task order under the following supplemental terms and conditions:

1.0—DEFINITIONS

The capitalized terms used in this Addendum that are not defined below have the same meaning ascribed to them in the Agreement.

- (a) "Customer Content" means items including, but not limited to, custom software applications owned or licensed by Customer, photos, journal text, geospatial data, nongeospatial data, user interfaces, graphics components and icons, plus any personally identifiable information supplied by or on behalf of Customer.
- (b) "Customer Website" means Customer Content viewed through a user interface and made available, via the Internet, under the domain name reserved for the website.
- (c) "EMCS Environment" means the hardware, Software, Data, and network platform that Esri or its third-party supplier provides as part of Esri Managed Cloud Services (EMCS).
- (d) "End User" means any third party or entity that accesses or uses any Customer Content via Customer Website.
- (e) "Esri Data" means any Esri or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster data, data reports, or associated tabular attributes.
- (f) "Esri Managed Cloud Services" or "EMCS" means the Hosting and provision of the Esri Managed Cloud Services Environment and related system monitoring and support services required to make Customer Content available to Customer or Customer's End Users.
- (g) "Hosting" means the business of housing and making accessible Customer Content via the Internet.
- (h) "License Agreement" means the license agreement incorporated by this reference that is applicable to the COTS Software and/or Esri Data leveraged in the provision of Managed Services and is either (i) found at <http://www.esri.com/legal/software-license>; composed of the General License Terms and Conditions (E204) and Exhibit 1, Scope of Use (E300); and available in the installation process requiring acceptance by electronic acknowledgment, or (ii) a signed license agreement between Esri and Licensee that supersedes such electronically acknowledged license agreement.

2.0—ESRI MANAGED CLOUD SERVICES

2.1 Requirements Planning. It is Customer's responsibility to plan for and confer with Esri regarding changes to Customer's requirements, such as the need for additional storage capacity, the update of an application or dataset, or the increased level of system availability.

2.2 Limitations. The EMCS Environment is set up based on usage parameters defined by Customer. If actual usage exceeds those parameters, the system may experience degradation in performance (e.g., slow response time). In such situations, Esri reserves the right to approach Customer to recommend additional resource capacity (CPU and/or memory). If Customer does not follow this recommendation and the EMCS offering continues to experience performance degradation, Esri assumes no liability for such performance degradation.

2.3 License to Customer Content. Customer hereby grants to Esri and its subcontractors permission to use Customer Content to support the provision of EMCS under this Addendum. Such permission shall include, but not be limited to, the grant of rights and license to manipulate, publish, distribute, and implement Customer Content within the EMCS Environment in any reasonable manner needed to support the provision of EMCS.

2.4 Compensation and Expenses. Esri will invoice Customer for the one-time setup fee upon execution of the Agreement or ordering document. Thereafter, Esri will invoice Customer on a monthly basis for EMCS to be provided the following month. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the EMCS Environment.

2.5 Risk of Loss. Customer is responsible for taking action to maintain appropriate security, protection, and backup of Customer Content, which may include the use of encryption technology to protect Customer Content from unauthorized access and to routinely archive Customer Content. Risk of loss for all Customer Content shall at all times remain with Customer, and it is solely Customer's responsibility to maintain regular backups of Customer Content. Risk of loss for the EMCS Environment shall at all times remain with Esri.

2.6 Personally Identifiable Information. Prior to providing any Customer Content under this Addendum, Customer shall notify Esri if Customer Content includes personally identifiable information, personal data (such as that protected by Health Insurance Portability and Accountability Act of 1996 [HIPAA] or European Union [EU] regulations); Customer Proprietary Network Information (CPNI); or data, components, or information related to critical infrastructure. Esri reserves the right to refuse these types of data until the appropriate EMCS Environment is discussed and, if appropriate, a change order is negotiated and executed to address additional infrastructure requirements.

2.7 Public Software. Customer may not use, and may not authorize its end users to use, any software, documentation, or other material that contains or is derived (in whole or in part) from any software, documentation, or other material distributed as free software; open-source software (e.g., Linux); or other, similar licensing or distribution models, including, but not limited to, software, documentation, or other material licensed or distributed under any of the following license or distribution models or license or distribution models similar to (i) the GNU General Public License (GPL), the Lesser/Library GPL (LGPL), or the Free Documentation License; (ii) the Artistic License (e.g., Perl); (iii) the Mozilla Public License; (iv) the Netscape Public License; (v) the Sun Community Source License (SCSL); (vi) the Sun Industry Standards License (SISL); (vii) the Berkeley Software Distribution (BSD) License; or (viii) the Apache License ("Public Software") in connection with the Customer Content in any manner that requires, pursuant to the license applicable to such Public Software, that any component of EMCS be (a) disclosed or distributed in source code form, (b) made available free of charge to recipients, or (c) modifiable without restriction by recipients.

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

2.9 Prohibited Use. Customer may not access or use EMCS to do any of the following, which hereafter will collectively be referred to as "Prohibited Use":

- (a) Spam, spoof, phishing, or transmit junk email or offensive or defamatory material;
- (b) Stalk or make threats of physical harm;
- (c) Store or transmit any software viruses; worms; time bombs; Trojan horses; or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment;
- (d) Violate any law;
- (e) Infringe or misappropriate the rights of any third party;
- (f) Process, store, or transmit any data, information, or technology that is controlled for export under the International Traffic in Arms (ITAR) regulations, is unclassified controlled technical information (UCTI) under DFARS 204.73, or is protected health information (PHI) under HIPAA; or
- (g) Otherwise violate a material term of this Agreement.

2.10 Removal of Customer Content. Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with EMCS is a Prohibited Use. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act (DMCA) takedown notices in accordance with Esri's DMCA policy, available at www.esri.com/legal/dmca_policy.

3.0—OWNERSHIP

3.1 Customer's Property. All Customer Content submitted by Customer to Esri under this Addendum shall, at all times, remain the intellectual property of Customer or its licensor(s). Rights maintained in intellectual property by Customer or its licensor(s) shall mean any and all now known or hereafter known tangible and intangible (i) rights associated with works of authorship throughout the universe, including, but not limited to, (a) copyrights, moral rights, and mask works; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patents, designs, algorithms, and other industrial property rights; and (e) all other intellectual and industrial property rights of every kind and nature and however designated (including logos, "rental" rights, and rights to remuneration), whether arising by operation of law, contract, license, or otherwise; and (ii) all registrations, initial applications, renewals, extensions, continuations, divisions, or reissues hereof now or hereafter in force (including any rights in any of the foregoing). Esri shall have no rights to such Customer Content other than the limited right to use such content for the purposes expressly set forth in Subsections 2.3 and 2.8 of this Addendum.

3.2 Esri's Property. Esri or its affiliates shall retain at all times the right, title, and interest in the EMCS Environment.

4.0—TERM; TERMINATION

4.1 Term. The Hosting term will begin on the date that Customer confirms that it has access to the Hosting Environment ("Go Live") and will expire on the date specified in the ordering document. If no such date is specified, then the Hosting term will expire on the day following the passage of the number of months specified in the quotation or proposal for EMCS.

4.2 Takedown or Termination of EMCS. Upon either (a) expiration of the Hosting term; (b) termination of the Agreement or Addendum; or (c) takedown of Prohibited Content, as set forth in Subsection 2.10 of the Addendum while Esri is providing EMCS, Esri will download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer. Customer will be responsible for any unpaid fees due through the date of termination.

5.0—LIMITED WARRANTIES

5.1 Conflict. Esri warrants that there is no outstanding contract, commitment, or agreement to which Esri is a party, or legal impediment of any kind known to Esri, that conflicts with this Addendum or might limit, restrict, or impair the rights granted to Customer hereunder.

5.2 General. During the term of EMCS as described in the applicable ordering document, EMCS will conform to the scope, descriptions, and assumptions for EMCS specified in the applicable ordering document. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranty set forth in this article shall be limited, at Esri's sole discretion, to (i) providing a correction or a workaround for EMCS or (ii) return of the EMCS fees paid for up to three (3) months prior to Customer's invocation of the limited warranty, provided Customer ceases to use EMCS.

5.3 Customer Warranty. Customer warrants that Customer Content will not (i) infringe or misappropriate any third-party intellectual property rights or proprietary rights; (ii) violate any third party's privacy rights or any applicable law; or (iii) contain or transmit to a third party any software viruses; worms; time bombs; Trojan horses; or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment. Except as prohibited by applicable law, Customer agrees to defend, indemnify, and hold Esri harmless from and against any claim, action, liability, or demand arising out of a breach of the foregoing warranties.

6.0—DISCLAIMER OF WARRANTIES

6.1 WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN SECTION 5 ABOVE, ESRI DISCLAIMS, AND THIS ADDENDUM EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, THAT STATE THAT THE EMCS

ENVIRONMENT WILL OPERATE WITHOUT INTERRUPTION, IS COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS, OR WILL OPERATE OUTSIDE THE UNITED STATES.

6.2 Data Disclaimer. ESRI DATA HAS BEEN OBTAINED FROM SOURCES BELIEVED TO BE RELIABLE, BUT ITS ACCURACY AND COMPLETENESS ARE NOT GUARANTEED. ESRI DATA MAY CONTAIN SOME NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS. IN THE EVENT THAT ANY ESRI DATA IS PROVIDED UNDER THIS ADDENDUM, ESRI DOES NOT WARRANT THAT ESRI DATA WILL MEET CUSTOMER'S NEEDS OR EXPECTATIONS, THAT THE USE OF ESRI DATA WILL BE UNINTERRUPTED, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. ESRI IS NOT INVITING RELIANCE ON ESRI DATA, AND CUSTOMER SHOULD ALWAYS VERIFY ACTUAL ESRI DATA INCLUDING, BUT NOT LIMITED TO, MAP, SPATIAL, RASTER, AND TABULAR INFORMATION.

6.3 Internet Disclaimer. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE INTERNET (INCLUDING, WITHOUT LIMITATION, THE WORLD WIDE WEB) IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) ESRI HAS NO CONTROL OVER THE INTERNET, AND (iii) ESRI IS NOT LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MAY RESTRICT OR PROHIBIT THE OPERATION OF CUSTOMER WEBSITE.

7.0—EXCLUSIVE REMEDY AND LIMITATION OF LIABILITY

Disclaimer of Certain Types of Liability. THE LIABILITY DISCLAIMERS IN THE AGREEMENT APPLY TO DAMAGES RELATED TO THIS ADDENDUM, THE USE OF EMCS, AND THE HOSTING OF PERSONALLY IDENTIFIABLE INFORMATION PROVIDED BY CUSTOMER IN CUSTOMER CONTENT.

8.0—GENERAL PROVISIONS

8.1 Licenses. Esri may provide COTS Software or Esri Data as part of EMCS. Unless the applicable ordering document specifies otherwise, Esri provides such COTS Software or Esri Data under the terms of the License Agreement and solely for use as needed with the hosted Customer Content during the EMCS term. If the ordering document does not specify that Esri will provide any COTS Software or Esri Data, Customer will be responsible for supplying the licenses for any COTS Software or Esri Data used in the EMCS Environment.

8.2 Export Regulations. Customer will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's ITAR, and other applicable export laws. Customer will not upload Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will not export, reexport, resell, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Managed Cloud Services to any United States embargoed countries, denied entities, or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not use Managed Cloud Services for the development, design, manufacture, use, or production of missiles or nuclear, chemical, or biological weapons without proper authorization from the US

government. Customer will immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges.

8.3 Insurance. Each party shall, throughout the term of this Addendum, obtain and maintain at its own cost and expense from a qualified insurance company, an appropriate commercial general liability (CGL) insurance policy, including coverage for products liability. Such policy shall provide protection against any and all claims, demands, and causes of action arising out of any error, omission, failure to perform, or defect, alleged or otherwise, of goods and services used in connection therewith or any use thereof. The amount of coverage shall be for the minimum amount of one million US dollars (US\$1,000,000). The policy shall provide for thirty (30) days' notice, delivered on a reasonable-efforts basis, to the other party from the insurer by registered or certified mail, with return receipt requested, in the event of any modification, cancellation, or termination thereof.

8.4 Consents. Any consent required under this Addendum shall not be unreasonably withheld or delayed by the respective party.

8.5 Survival of Terms. The provisions of Sections and Subsections 2.3, 2.4, 3, 5, 6, 7, and 8 of this Addendum shall survive the expiration or termination of this Addendum for any reason.

8.6 Order of Precedence. In the event of a conflict between the terms and conditions of this Addendum and those of the Agreement, the terms and conditions of this Addendum will supersede those of the Agreement.