



**STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT**

AMENDMENT #: 1

CONTRACT #: AR2482

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Environmental Systems Research Institute, Inc. (Referred to as CONTRACTOR).

**BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:**

The Master Agreement AR2482 Attachment E is amended to include the attached Managed Services Addendum (G595M).

Effective Date of Amendment: 9/30/2016

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect. IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**

**STATE OF UTAH**

3.1.2017

Contractor's Signature \_\_\_\_\_ Date \_\_\_\_\_

Kent Beers Director \_\_\_\_\_ Date \_\_\_\_\_  
State of Utah Division of Purchasing

Contractor's Name (Print) William C. Fleming  
Managing Business Attorney

**FEB 28 2017**

Title (Print) \_\_\_\_\_

Purchasing Agent	Phone #	e-mail	Contract #
Solomon Kingston	801-538-3228	skingston@utah.gov	AR2482



## MANAGED SERVICES ADDENDUM

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

This Managed Services Addendum ("Addendum") is appended to and made part of the Master Services Agreement No. <#> ("Agreement") made between **Environmental Systems Research Institute, Inc. ("Esri")**, and <Customer Name> ("Customer").

### SECTION 1—DEFINITIONS

- (a) "Base Services" means the provision of system monitoring and support associated with providing the Managed Services Environment and Customer Content within the specified service levels.
- (b) "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.
- (c) "Customer Website" means Customer Content viewed through a user interface and made available via the Internet under the domain name reserved for the website.
- (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 reports, or associated tabular attributes.
- (f) "Hosting" means the business of housing and making accessible Customer Content via the Internet.
- (g) "Managed Services" means Hosting and provision of the Managed Services Environment and related Base Services required to make Customer Content available to Customer or Customer's End Users.
- (h) "Managed Services Environment" means the hardware, COTS Software, Esri Data, and network that Esri or its third-party suppliers/partners make available as the underlying environment for Hosting Customer Content.

### SECTION 2—MANAGED SERVICES

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

**2.2 License to Customer Content.** During the term of the Task Order issued under the Agreement, Customer hereby grants to Esri and its affiliates permission to use Customer Content to support the provision of Managed Services. 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 Managed Services Environment in any reasonable manner needed to support the provision of Managed Services.

**2.3 Compensation and Expenses.** Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer on a monthly basis for the Managed

Services to be provided the following month. Customer will pay invoices within thirty (30) days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the Managed Services Environment.

**2.4 Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the Managed Services Environment shall at all times remain with Esri.

**2.5 Personally Identifiable Information.** Prior to providing any Customer Content under this Addendum, Customer shall notify Esri if Customer Content includes personally identifiable information.

**2.6 Public Software.** Customer may not use, and may not authorize 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 any of the following: (i) the GNU General Public License (GPL), Lesser/Library GPL (LGPL), or 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; and (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 the Managed Services be (i) disclosed or distributed in source code form, (ii) made available free of charge to recipients, or (iii) modifiable without restriction by recipients.

**2.7 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.

**2.8 Prohibited Content.** In the event that Esri reasonably believes that any Customer Content violates the law, infringes or misappropriates the rights of any third party, or otherwise violates a material term of this Addendum ("Prohibited Content"), Esri will notify Customer of Prohibited Content in accordance with Esri's standard Digital Millennium Copyright Act (DMCA) takedown notice processing procedures and may request that such content be removed from Base Services or access to it be disabled. Notwithstanding, Esri may remove or disable access to any Prohibited Content without prior notice pursuant to the DMCA or

as required to comply with any judicial, regulatory, or other governmental order. In the event that Esri removes content without prior notice, Esri will provide prompt written notice to Customer in accordance with Esri's standard DMCA takedown notice processing procedures unless prohibited by law.

### **SECTION 3—OWNERSHIP RESERVED**

**3.1 Esri's Property.** Esri or its affiliates shall retain at all times the right, title, and interest in the Managed Services Environment.

### **SECTION 4—TERMINATION**

In the event of takedown of Prohibited Content, as set forth in Subsection 2.8 of the Addendum or due to expiration, termination, or an applicable Task Order while Esri is providing Managed Services, 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.

### **SECTION 5—LIMITED WARRANTIES**

**5.1** 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** During the term of the Managed Services as described in the applicable Task Order, the Managed Services will conform to the scope, descriptions, and assumptions for Managed Services incorporated into the Task Order. 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 the Managed Services or (ii) return of the Managed Services fees paid for up to three (3) months prior to Customer's invocation of the limited warranty, provided Customer ceases to use the Managed Services.

**5.3** 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.

### **SECTION 6—DISCLAIMER OF WARRANTIES**

**6.1** WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN SUBSECTION 5.1 ABOVE, ESRI DISCLAIMS, AND THIS ADDENDUM EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, THAT THE MANAGED SERVICES WILL OPERATE WITHOUT INTERRUPTION, ARE 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 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 MIGHT RESTRICT OR PROHIBIT THE OPERATION OF CUSTOMER WEBSITE.

### **SECTION 7—EXCLUSIVE REMEDY AND LIMITATION OF LIABILITY**

**7.1 General Limitation of Liability.** FOR THE PURPOSES OF THIS ADDENDUM, THE GENERAL LIMITATION OF LIABILITY IN THE AGREEMENT APPLIES TO LIMIT ESRI'S LIABILITY TO THE AMOUNTS PAID OR PAYABLE TO ESRI BY CUSTOMER FOR MANAGED SERVICES RENDERED DURING THE PERIOD OF FOUR (4) MONTHS IMMEDIATELY PRECEDING THE BREACH.

**7.2 Disclaimer of Certain Types of Liability.** THE LIABILITY DISCLAIMERS IN THE AGREEMENT APPLY TO DAMAGES RELATED TO THIS ADDENDUM OR USE OF THE BASE SERVICES OR HOSTING OF PERSONALLY IDENTIFIABLE INFORMATION PROVIDED BY CUSTOMER IN THE CUSTOMER CONTENT.

**7.3 Applicability of Disclaimers and Limitations.** Customer agrees that the limitations of liability and disclaimers set forth in this Addendum will apply regardless of whether Customer has accepted the goods or services delivered by Esri. The parties agree that Esri has set its prices and entered into this Addendum in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail in its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

## SECTION 8—GENERAL PROVISIONS

### **.1 Relationship of the Parties.** RESERVED

**8.2 Export Regulations.** The parties acknowledge that this Addendum and the performance thereof may be subject to compliance with any and all applicable United States laws, regulations, or orders relating to the export of Customer Content. Customer expressly acknowledges and agrees to be responsible for the Customer Content hosted in the Managed Services Environment. Customer agrees not to export, reexport, transfer, or release the Customer Content, in whole or in part, to (i) any US embargoed country (or a national or resident of any US embargoed country) or (ii) 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 control laws.

**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 in 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. The purchasing entity will be in compliance with this section if 1) it maintains an approved self-insurance program that provides for retention of up to the coverage amounts specified and otherwise complies with the requirements of this paragraph and (2) provides a certificate of self-insurance verifying Esri as an additional insured under such program and confirming the programs' compliance with the requirements of this section.

**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 1, 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 supersede those of the Agreement for the subject matter not specifically addressed within the Master Agreement.