

Master Purchase Agreement between
Environmental Systems Research Institute, Inc.
and
State of Oklahoma
AGREEMENT NO. 2015MPA3035

**OKLAHOMA ENTERPRISE AGREEMENT
FOR PRODUCTS AND RELATED SERVICES**

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

This Oklahoma Enterprise Agreement for Products and Related Services (“the Contract”) is entered into among Environmental Systems Research Institute, Inc. (“Esri” or “Vendor”) with its principal place of business at 380 New York St., Redlands, California 92373-8100 and the State of Oklahoma by and through the Office of Management and Enterprise Services – Information Services Division (“State”) with its principal place of business at 3115 N. Lincoln Blvd., Oklahoma City, OK 73105, effective as of the first day of June, 2015 and modifies certain terms and conditions for Products and Related Services from Esri.

The parties agree to modify the terms and conditions as follows:

1. Scope.

This Contract incorporates the negotiated terms and conditions, 1 through 28 below, between the parties (“Contract General Terms and Conditions”). With respect to purchase transactions entered into pursuant to the Contract, the Contract General Terms and Conditions take precedence over terms of any other related document for Oklahoma based Customers to the extent modified. This Contract, incorporates by reference or attachment, General Contract Terms and Conditions, and the following Esri documents for licensing software, training and services:

Attached:

1. Esri MPA Price List, E416SHM
2. Custom Software, Technical Data, and Assistance License Addendum, E600, including Attachment A—Sample Task Order and Attachment B—Time and Materials Rate Schedule
3. Implementation Services Addendum, for Services Packages, G363D

By Reference:

4. Esri Master License Agreement comprised of:
 - a. Esri General Terms and Conditions, E204
 - b. Esri Exhibit 1- Scope of Use, E300
5. Training Terms and Conditions. E207
6. Esri Enterprise Advantage Program- E125
7. Premium Support Services-E601

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2. Order of Precedence.

In the event and to the extent any provision is in multiple documents addresses the same or substantially the same subject matter, but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier versions. All other such terms remain to the extent that they do not alter or diminish the Contract General Terms and Conditions of this Contract.

3. Definitions.

A. Customer - The defined term ("Customer" or "Licensee") shall include the State of Oklahoma and any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee department or other entity designated to act in behalf of the political subdivision; a state county or local governmental entity in its state of origin; and entities authorized to utilize contracts awarded by the State via a multistate or multi-governmental contract.

4. Term of Contract.

The term of this Contract shall be two (2) years commencing on the last date of approval by the State and Vendor. Prior to the expiration of the original term, the State and Vendor may extend the Contract, upon mutual agreement for up to five (5) optional one-year terms. Protracted contract negotiations may, the State's sole discretion, result in few optional terms.

A. Quantity

The Contract shall be for indefinite delivery and indefinite quantity for the products/services.

B. Ordering

Any products or services to be furnished under this Contract shall be ordered by the issuance of written purchase orders/ Task Orders as executed by Vendor and by the Customer. There is no limit on the number that may be issued. Delivery to multiple destinations may be required. All orders are subject to the terms and conditions of this Contract. Any purchase order dated prior to expiration of this Contract shall be performed. For Task Orders for Professional Services, the period of performance shall be as set forth in the Task Order. In the event of conflict between a Purchase Order document and this Contract, the Contract shall have precedence. The following information shall be included in each purchase order:

- a. Name or identification of Licensee, place of delivery, and the end-user name and contact information
- b. Purchase order number
- c. Primary site for maintenance if primary maintenance is not ordered

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- d. Quantity, description, and unit price
- e. On the face of the purchase order, print the following statement: "Subject to Master Purchase Agreement No. 2015MPA3035"

C. Delivery, Inspection and Acceptance of Software

All deliveries shall be F.O.B. Destination. The Vendor shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the offer shall include all such charges. All products and/or services to be delivered pursuant to the contract shall be subject to final inspection and acceptance by the State at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order, or applicable schedule thereto. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the Vendor until accepted by the receiving agency. The Vendor shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Vendor shall be required to deliver products as offered on or before the required date. Deviations, substitutions, or changes in products and services shall not be made unless expressly authorized in writing by the State. Acceptance of Professional Services shall be in accordance with Article 6 of the E600 document.

5. Product Service Offerings

A. Products

Products available under this Contract are to include all offerings listed in Vendor's price list, E416SHM-2Q2015, attached herein. Vendor may incorporate changes to their product offering to the State upon the State's agreement to include the new product offering;

B. Support Services

Support Services available under this Contract are to include all services and offerings as need to support products provided under maintenance. Vendor may incorporate changes to their service offering as they deem appropriate for all of Vendor's customers.

6. Pricing

Pricing provided in the attached E416SHM-2Q2015 State of Oklahoma MPA Price List.

A. Invoices and Payment

Vendor shall be paid upon submission of an accurate invoice(s) to the agency at the prices stipulated on the contract in accordance with 74 O.S. § 85.44B, which requires that payment be made only after products have been provided unless otherwise set forth in the Contract or applicable schedule thereto. Notwithstanding the above, payment for maintenance and support shall be paid at the beginning of the period of activities.

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- a. Invoices shall contain the purchase order number.
- b. Failure to provide accurate invoices may result in delay of processing invoices for payment.
- c. Interest on late payments made by the State is governed by 62 O.S. §§ 34.71—34.73.
- d. Payment against an agency contract shall be firm fixed at the quoted price.
- e. Payment of all fees hereunder shall be due within forty-five (45) days from the date of a proper invoice to issue payment to Vendor, and in accordance with provisions for payment of State acquisitions applicable under State law.
- f. If State finds that an overpayment or underpayment has been made to Vendor, State may adjust any subsequent payments to Vendor, under the Contract to correct the account. A written explanation of the adjustment will be issued to Vendor, by the State.

B. Tax Exemption

As per Section 6.A. of the Oklahoma Constitution and 68 O.S. §§ 1404, 1352 and 1356, Customers under this Contract that are Oklahoma state agencies are exempt from the assessment of State sales, use and excise taxes. Further, such Customers and Customers that are political subdivisions of the State of Oklahoma are exempt from Federal Excise Taxes, 26 U.S.C. Sections 4253(i) and G). Customers will provide Vendor with a tax exemption certificate upon request.

C. Travel

Travel in performance of orders for Professional Services issued through a statement of work under this Contract shall be reimbursed in accordance with 74 O.S. § 85.40. Travel expenses incurred by a Vendor must be included in the total acquisition price in the Vendor's bid, quotation, or proposal. Reasonable travel costs will be paid at the rates authorized under the State Travel Reimbursement Act, 74 O.S. §§ 500.1—500.37. Reasonable travel expenses are reimbursable only upon submission of the expenses within the scope of work prior to purchase and must be preapproved by the ordering Customer. Acceptance of the Vendor's proposal is deemed to be the granting of preapproval by the ordering Customer.

D. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

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E. Non-Appropriation Clause

The terms of any contract and any Purchase Order issued for multiple years under the contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other contract document, the procuring agency may terminate its obligations under the contract upon Fifteen days written notice if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) Agency's decisions as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final and binding. The State will be responsible for any and all termination expenses up to and including the date of cancellation.

F. Unauthorized Obligations

At no time during the performance of this Contract shall the Vendor have the authority to obligate the State or the Procuring Agency for payment of any goods or services over and above the awarded Contract. If the need arises for goods or services over and above the Contract for this project, Vendor shall cease the project and contact agency for approval prior to proceeding.

G. Statewide Administrative Fee

As provided in title 74 O.S. § 85.33A, the State assesses an administrative fee in the sum of one percent (1%) on all sales transacted by any entity under the Contract. Payment will be calculated for all sales, net of returns and credits. All prices quoted to Customers shall include the administrative fee. The State reserves the right to change this fee upwards or downwards during the terms of this Contract, upon 60 calendar days written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

Failure to remit the fee quarterly may result in cancellation of the Contract. Administrative Fees shall not be reflected as a separate line item in Vendor's billing to participating State Agencies and Authorized Users.

Payment shall be made via Company Check payable to OMES/ ISD Procurement within 30 calendar days from the completion of the quarterly reporting period stated under the section titled "Contract Usage Reporting.

Vendor agrees to notify OMES-ISD Procurement 24 hour in advance prior to submitting payment.

To ensure payment is properly credited, the Vendor must identify payment in the Contract Usage Report as an "Administrative Fee" and include the following information: the Applicable State Contract Number, Administrative Fee amount (s) paid and the reporting period covered

Administrative Fees should be mailed to:
Office of Management and Enterprise Services /ISD Procurement

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3115 North Lincoln Blvd
Oklahoma City, Oklahoma 73105

H. Statewide Administrative Fee Reporting

Vendor agrees to submit a Contract Usage Report and said report shall be submitted on a quarterly basis. "Contract Usage Report" shall include the following: the Applicable State Contract Number, report amount(s), and reporting period covered and the State agency name. Reports shall include usage of this Contract by any other Government Entities (i.e. county, city, etc.). Reports provided late will not be considered a breach of the Contract. Continuous failure to submit quarterly usage report may result in termination of the Contract.

Contract usage report shall meet the following criteria:

- a) Must be submitted electronically in Excel format
- b) Reports shall be submitted quarterly regardless of quantity
- c) Submitted within thirty (30) - calendar days upon performance completion
- d) Contract quarterly reporting periods shall be as prescribed:
January 01 through March 31
April 01 through June 30
July 01 through September 30
October 01 through December 31

Usage Reports shall be delivered to:

State of Oklahoma Office of Management and Enterprise Services-ISD Procurement
3115 N. Lincoln Blvd Oklahoma City OK 73105 or
E-mail: StatewideContractReports@omes.ok.gov

7. Notice

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

James L. Reese, II
Chief Information Officer
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

With a copy to:

ISD Deputy General Counsel
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

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If sent to ESRI:

Contract and Legal Dept. Manager

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380 New York Street

Redlands, California 92373-8100

8. Statement of Work

Services provided under this Contract shall be based on Statement of Work to be inserted into a Task Order. Customers may negotiate the terms and conditions of a SOW to suit their business needs, so long as the SOW terms and conditions do not conflict with this Contract. The format of the Statement of Work shall be as specified in Attachment A to the E600 document.

9. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), should there be any conflicting terms and conditions, the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor.

It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.

10. Choice of Law and Venue

Any claims, disputes or litigation relating to the Contract Documents, singularly or in the aggregate, or the execution, interpretation, performance, or enforcement thereof shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles.

Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents shall be in Oklahoma County, Oklahoma. Further, the State does not waive the doctrines of sovereign immunity and immunity from suit to the extent authorized by the constitution and laws of the State of Oklahoma.

11. Modification of Contract Terms and/or Amendments

1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of the State and Vendor.

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2) Customers shall not have the authority to modify the terms of the Contract; and any additional Customer terms and conditions added to a Purchase order will be void, unless agreed upon by both Customer and Vendor in writing. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

12. Invalid Term or Condition

- 1) To the extent any term or condition in the Contract conflicts with the applicable Oklahoma and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, Customer makes no representation or warranties regarding the enforceability of such term or condition and Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the Contract term or condition.
- 2) If one or more term or condition in the Contract, or application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

13. Termination for Cause

A. Vendor may terminate this Contract in the event (a) it has provided the State or Procuring Agency with written notice of material breach, and (b) the State or Procuring Agency fails to cure such material breach with thirty (30) days of receipt of written notice. The State or Procuring Agency may terminate this Contract in the event (i) it has provided Vendor with written notice of material breach, and Vendor fails to cure such material breach with thirty (30) days of receipt of written notice.

B. The State or Procuring Agency may terminate this Contract immediately, in whole, with a thirty (30) day written notice to Vendor, only if Vendor's material breach is reasonably determined (a) to be an impediment to the function of the State and detrimental to the cause of a procuring State Entity, (b) when conditions preclude the thirty (30) day notice, or (c) when the State determines that an administrative error occurred prior to Contract performance.

C. If this Contract or certain obligations hereunder are terminated, the State or Procuring Agency, shall be liable for payment for Software delivered and, if applicable, Accepted, as well as

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all services provided prior to the date of such termination and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

14. Termination for Convenience

A. The State or Procuring Agency may terminate this Contract, in whole, for convenience if the State Chief Information Officer determines that termination is in the State's best interest. The State shall terminate this Contract by delivering to the Vendor a written notice of termination for convenience specifying the terms and effective date of termination. The Contract termination date shall be a minimum of sixty (60) days from the date the notice of termination is issued by the State.

B. If this Contract or certain obligations hereunder are terminated pursuant to this section, the State or Procuring Agency, shall be liable for Software delivered and if applicable, Accepted, as well as any services provided prior to the date of such termination and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

15. Termination of Maintenance and Support Services

For Maintenance and Support Services, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- a. Customer permanently removes the eligible Program/Product, for which the Maintenance and Support Services are provided, from productive use within Customer's Enterprise; or
- b. The eligible location, for which the Maintenance and Support Services are provided, is no longer controlled by Customer (for example, because of sale or closing of the facility.)
- c. If Customer chooses to renew maintenance after maintenance has lapsed, Customer may choose to pay the additional fees associated with renewing a licenses after maintenance has lapsed, or purchase a new license.

The Contract does not create an employment relationship. Individuals performing services required by contract are not employees of the State of Oklahoma or the procuring agency. The Vendor's employees shall not be considered employees of the State of Oklahoma nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to State employees.

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16. Compliance with Applicable Laws

In connection with its performance of obligations under the terms of this Contract, the Vendor shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, including but not limited to the following:

- a) Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;
- b) Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;
- c) Prospective participant requirements set forth at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
- d) 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990 and Executive Orders 11246 and 11375;
- e) Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;
- f) Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Circular A-133 with approval and work paper examination rights of the applicable procuring entity;
- g) Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 compliant and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) available at www.dhs.gov/E-Verify; and
- h) Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit and be current on franchise tax payments to the State, as applicable.

The Vendor shall maintain all applicable licenses and permits required in association with its obligations hereunder.

If requested under a specific Statement of Work, the Vendor shall inform its employees or agents who perform services under this Contract of the Vendor's obligations hereunder and shall use reasonable efforts to comply accordingly. At the request of the State or Procuring Agency, Vendor shall promptly provide adequate evidence that such persons are its employees or agents and have been informed of their obligations hereunder

17. Accessibility/VPAT

Vendor and Customer shall comply with federal and Oklahoma laws, rules and regulations related to information technology accessibility, as applicable to Vendor as the provider of information technology products and services under this Contract, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at

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http://www.ok.gov/cio/documents/isd_itas.pdf. If products furnished by Vendor do not require additional development or customization, Vendor shall, upon request, but not later than thirty (30) calendar days after the State of Oklahoma's request, provide a Voluntary Product Accessibility Template ("VPAT") describing such compliance and any exceptions to the Standard, which may be provided via a URL linking to the VPAT. Vendor's VPATs are found at <http://www.esri.com/legal/section508>. If the products will require development or customization, the Vendor shall provide a VPAT describing such compliance without additional request by Customer. In such case, additional requirements and documentation may be required and compliance shall be necessary by Vendor. Such requirements may be stated in appropriate documents including but not limited to state bids, request for proposals, statements of work, riders, agreements, purchase orders and Amendments. Accordingly, in each statement of work or similar document issued pursuant to this Contract, Vendor shall describe such compliance and identify, if and as applicable, (i) which exception to the Standards applies or (ii) a description of the tasks and estimated cost to make the proposed products and/or services compliant with applicable Standards.

All representations contained in the VPAT provided will be relied upon by the Customer for accessibility compliance purposes.

18. Records and Audit

As used in this clause, "records" includes invoice, Statement of Work, purchase order records or such other relevant documents regardless of whether such items are in written form, in the form of computer data, or in any other form, in relation to this Contract. In accepting any contract with the Customer, the Vendor agrees any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Contract. Audits conducted under this provision shall be in accordance with established procedures of the auditing agency and shall exclude Vendor's overhead, administrative and profit expenses.

The Vendor is required to retain records relative to this Contract for a period of seven (7) years from the effective date of each transaction document provided under the use of this Contract. If an audit, litigation, or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

19. Indemnification,

1) Independent contractor

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF OKLAHOMA.

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2) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Oklahoma and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, (collectively the Indemnified Parties) FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, SUITS, OR ATTORNEY'S FEES AWARDED AGAINST THE STATE OF OKLAHOMA, AND ALL REASONABLE COSTS, AND EXPENSES arising out of, or resulting from any action or claim for bodily injury, death or property damage (except for databases not subject to a reasonable backup program) brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct of the Vendor or its agents, employees, or subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. IN CONNECTION WITH INDEMNIFICATION OF CUSTOMER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA, OR THE ATTORNEY GENERAL OF OKLAHOMA MAY AUTHORIZE THE VENDOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS PROVIDED HOWEVER VENDOR MAY NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OKLAHOMA ATTORNEY GENERAL. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS TO VENDOR, VENDOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION BUT VENDOR SHALL REMAIN RESPONSIBLE TO INDEMNIFY THE CUSTOMER IN ACCORDANCE WITH AND TO THE EXTENT VENDOR PROVIDES AN INDEMNITY IN THE AGREEMENT.

3) Infringements

a) Vendor shall indemnify and hold harmless the State of Oklahoma and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the Contract. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES AWARDED AGAINST THE STATE OF OKLAHOMA. IN CONNECTION WITH INDEMNIFICATION OF CUSTOMER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA, OR THE ATTORNEY GENERAL OF OKLAHOMA WILL AUTHORIZE THE VENDOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS PROVIDED HOWEVER SUCH APPROVAL SHALL BE GIVEN IN A TIMELY MANNER AS NOT TO PREJUDICE VENDOR'S ABILITY TO DEFEND THE CLAIM. VENDOR MAY NOT AGREE TO ANY SETTLEMENT OF CLAIMS

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AGAINST THE STATE OF OKLAHOMA PROVIDED THAT VENDOR WILL NOT AGREE TO ANY SETTLEMENT OR COMPROMISE WHICH REQUIRES ADMISSION REGARDING STATE OF OKLAHOMA, OR CUSTOMERS ADMISSION REGARDING OR INFERRING VENDOR'S WRONGDOING (EXCLUDING INFRINGEMENT) WITHOUT NOTICE TO STATE OF OKLAHOMA ATTORNEY GENERAL. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS TO VENDOR, VENDOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION BUT VENDOR SHALL REMAIN RESPONSIBLE TO INDEMNIFY THE CUSTOMER IN ACCORDANCE WITH AND TO THE EXTENT VENDOR PROVIDES AN INDEMNITY IN THE AGREEMENT.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed or stated in the Documentation, (ii) any modification made to the product other than by Vendor, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement, or (iv) continued use of, or request to return, an infringing product after Vendor has provided modifications to avoid such infringement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing. If neither alternative is commercially reasonable, the license shall terminate, and Customer shall cease using and accessing infringing products and shall uninstall and return to Esri or its authorized distributor any infringing item(s). Esri's entire liability shall then be to indemnify Customer pursuant to Section 18 (3a) above and (i) refund the Perpetual License fees paid by Customer to Esri or its authorized distributor for the infringing items, prorated on a five (5)-year, straight-line depreciation basis beginning from the initial date of delivery, and (ii) for Term Licenses and maintenance, refund the unused portion of the fees paid. *THE FOREGOING STATES THE ENTIRE OBLIGATION OF VENDOR WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.*

4) Property Damage

TO THE EXTENT ESRI IS FOUND LIABLE FOR LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR AND THE STATE SHALL MUTUALLY NEGOTIATE AN EQUITABLE SETTLEMENT AMOUNT TO REPAIR, OR REPLACE THE PROPERTY. SUCH COST SHALL BE

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INVOICED BY THE CUSTOMER, AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT OF AN INVOICE FOR THE NEGOTIATED SETTLEMENT AMOUNT.

Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF OKLAHOMA AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES FINALLY AWARDED AGAINST THE STATE OF OKLAHOMA, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. IN CONNECTION WITH INDEMNIFICATION OF CUSTOMER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA, OR THE ATTORNEY GENERAL OF OKLAHOMA MAY AUTHORIZE THE VENDOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS PROVIDED HOWEVER VENDOR MAY NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OKLAHOMA ATTORNEY GENERAL. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS TO VENDOR, VENDOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION BUT VENDOR SHALL REMAIN RESPONSIBLE TO INDEMNIFY THE CUSTOMER IN ACCORDANCE WITH AND TO THE EXTENT VENDOR PROVIDES AN INDEMNITY IN THE AGREEMENT.

20. Enforcement of Contract and Dispute Resolution

A party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision.

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21. Confidentiality

1) Vendor acknowledges that state agency and certain affiliate Customers are subject to the Oklahoma Open Records Act. Vendor also acknowledges that such Customers will comply with the Oklahoma Open Records Act and with all opinions of the Oklahoma Attorney General concerning this Act.

3) Under the terms of this Contract, the State of Oklahoma may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

22. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Customer Data") belonging to the Customer. Vendor shall use their commercially reasonable efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Customer Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

23. Background and/or Criminal History Investigations

Prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. If additional background checks are required beyond Vendor's normal hiring practices, they shall be noted at the time of the proposal effort. The costs of additional background checks shall be the responsibility of the State. Vendor will coordinate with the State and its employees in the event the additional background checks are a requirement for a specific project. Should any employee or subcontractor of the Vendor who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order or related Statement of Work/ Task Order or request replacement of the employee or subcontractor in question.

24. Limitation of Liability

a. To the extent permitted by applicable law, any claim or cause of action arising under or related to the Contract: i) none of the parties shall be liable to the other for costs of procurement substitute goods or services, lost profits, lost sales or business expenditures, investments, commitments in connection with any business, loss of any goodwill, or for any indirect, incidental, punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) each party's total cumulative liability for damages of any kind, including but not limited to, contract, tort (including negligence), strict liability, breach of

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warranty, misrepresentation, or otherwise, shall be limited to the total amount paid to Vendor by Customer under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. For Professional Services this limitation shall be solely the value of the specific Deliverable or Service under a particular Task Order. Notwithstanding anything to the contrary in this Contract, the foregoing provisions of this Section shall not apply to or limit damages, expenses, costs, actions, claims, and liabilities arising from or related to (A) property damage, bodily injury or death caused by a party while on the other party's site, (B) the party's indemnity obligations under this Contract, (C) the bad faith, gross negligence or intentional misconduct of the party, its subcontractors or their respective personnel, or (D) Customer's misuse or misappropriation of Esri's or Esri's licensor's intellectual property rights.

b. The limitations of liability and disclaimers set forth in this Contract will apply regardless of whether Customer has accepted products or services delivered by Vendor. The parties agree that Vendor has set its fees and entered into this Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN CUSTOMER'S JURISDICTION. CUSTOMER MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. VENDOR DOES NOT SEEK TO LIMIT CUSTOMER'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

25. Data Ownership

All right, title and interest in and to data provided by the Customer is owned exclusively by Customer. Nothing in these terms prevents or restricts Vendor from developing and/or using pre-existing intellectual property, Vendor confidential information, any ideas, concepts, know-how, information, techniques, inventions and improvements developed during the course of the Implementation Services and relating to methods or processes of more general application, including those in the field of information technology and business processes, for itself or other customers.

26. Assignment

Except for a sale of all or substantially all of the assets of Vendor, neither Vendor, nor State may assign or transfer to any other person, firm, or corporation its obligations under this Contract without prior written consent from the other party, which will not be unreasonably withheld, and any attempt to do so will be null and void.

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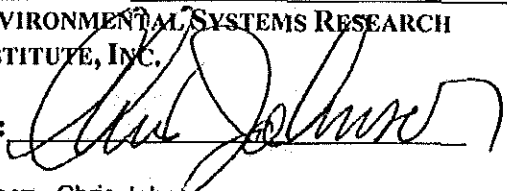
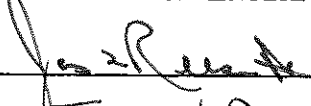
27. Subcontractors

a. If Esri is permitted to utilize subcontractors in support of this Agreement, Esri shall remain solely responsible for its obligations under the terms of this Agreement and for its actions and omissions and those of its agents, employees and subcontractors. Any proposed subcontractor shall be identified by entity name and by employee name in the applicable proposal and shall include the nature of the services to be performed. Prior to a subcontractor being utilized by Esri in connection with provision of the products, Esri shall obtain written approval of the State of such subcontractor proposed for use by Esri. Acceptance of Esri's proposal shall constitute written approval by the State. Such approval is within the sole discretion of the State. Upon request, Esri shall provide a copy of the special considerations flowed down to the Subcontractors which sets forth that such potential subcontractor is bound by and agrees to perform the same covenants and be subject to the same conditions, and make identical certifications to the same facts and criteria, as Esri under the terms of all applicable contract documents. Esri agrees that maintaining such agreement with any subcontractor and obtaining prior approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee upon written notification to Esri. Esri will then use reasonable efforts to replace the personnel with that of an equally or similarly qualified person.

b. All payments for products shall be made directly to Esri.

28. Severability

If any provision for this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.	STATE OF OKLAHOMA (BY AND THROUGH THE OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES)
BY: 	BY: 
NAME: <u>Chris Johnson</u>	NAME: <u>James L Reese II</u>
TITLE: <u>Manager, Commercial & Government Contracts</u>	TITLE: <u>Chief Information Officer</u>
DATE: <u>May 15, 2015</u>	DATE: <u>5-22-15</u>