

PARTICIPATING ADDENDUM
(hereinafter "Addendum")
WESTERN STATES CONTRACTING ALLIANCE
PUBLIC CLOUD HOSTING SERVICES
Administered by the State of Utah
(hereinafter "Lead State")

STATE OF UTAH STATE COOPERATIVE CONTRACT ("Contract")
Environmental Systems Research Institute, Inc.
(hereinafter "Contractor")
Utah Contract Number: MA 266

And

State of Washington, Department of Enterprise Services
(hereinafter "Participating State")
Participating Entity Contract Number: 08713

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1. Scope: This Addendum between Contractor and the Participating State, acting by and through the Department of Enterprise Services ("Participating Entity"), (collectively with Contractor, the "Parties") modifies and amends the Contract between the Contractor and Lead State for WSCA PUBLIC CLOUD HOSTING SERVICES for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize WSCA contracts. This Addendum is not for personal use.

2. Participation: Use of specific WSCA cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by the Participating State's statutes to use WSCA contracts are subject to the prior approval of the Participating Entity. Issues of interpretation and eligibility for participation are solely within the authority of the Participating Entity.

INDIVIDUAL CUSTOMER: Each agency and political subdivision of the Participating State that purchases products/services under this Addendum will enter into a contractual document issued by a Purchasing Entity and executed between Purchasing Entity and the Contractor (each a "Statement of Work" or SOW"). Each Purchasing Entity will be treated as if they were an Individual Customer. Except to the extent modified by this Addendum, each Purchasing Entity will be responsible to follow the terms and conditions of this Addendum; and they will have the same rights and responsibilities for their purchases as Participating State has in this Addendum and the Contract. Each Purchasing Entity will be responsible for their own charges, fees, and liabilities. Each Purchasing Entity will have the same rights to any indemnity or to recover any costs allowed for their purchases. The Contractor will apply the charges to each Purchasing Entity individually.

3. Participating State Modifications or Additions to Contract:

A. Modifications to the Contract

1. The section titled CANCELLATION is hereby **deleted and replaced** with the following:

Termination for Convenience. This Addendum may be terminated by either party upon forty-five (45) days' written notice. Contractor, at its sole election, may terminate the right of any Purchasing Entity to participate in this Addendum in accordance with this provision without terminating this Addendum with respect to Participating State or any other Purchasing Entity. Contractor will notify Participating Entity when a Purchasing

Entity is terminated.

Termination for Breach. Without prejudice to any other right or remedy available, this Addendum may be terminated for breach provided the breaching party is given forty-five (45) days written notice and opportunity to cure. If a breach is caused by Purchasing Entity's disclosure of any trade secret or other information proprietary to Contractor in breach of this Addendum, termination shall be effective upon written notice to Participating Entity. Contractor, at its sole election, may terminate the right of any Purchasing Entity to participate in this Addendum in accordance with this provision without terminating this Addendum with respect to Participating State or any other Purchasing Entity. Termination of the License Agreement with a Purchasing Entity shall be conducted in accordance with Article 5-Term and Termination of Exhibit B to Attachment D.

Termination for Withdrawal of Authority. In the event that the authority of Participating Entity to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Addendum and prior to normal completion, the Participating Entity may terminate this Addendum under the Termination for Convenience section. No penalty shall accrue to Participating Entity for exercising its rights under this section. This section shall not be construed to permit Participating Entity to terminate this Addendum to acquire similar products from a third party. By mutually signed written amendment only, Participating Entity may assign its rights and responsibilities under this Addendum; provided that such assignee is bound by the terms of this Addendum and has the authority to enter into the Addendum on behalf of the Purchasing Entities.

Termination for Non-Allocation of Funds. If funds are not allocated to continue this Addendum in any future period, the Participating Entity may terminate this Addendum and will not be obligated to procure additional products. For avoidance of doubt, the Participating Entity and/or the Purchasing Entities are not obligated to procure a minimum quantity or minimum dollar value of products to maintain this Addendum.

Termination for Conflict of Interest. Participating Entity may terminate this Addendum by written notice to Contractor if Participating Entity determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

Purchasing Entity Obligations Upon Termination. On termination of this Addendum, all accounts and payments will be processed according to financial arrangements set forth herein for performance rendered to the date of termination including all prepayments. After termination, Purchasing Entities shall no longer be permitted to place orders under this Addendum.

SOW Survival. Upon expiration of this Addendum or voluntary termination of this Addendum for the convenience of Participating Entity, SOWs may continue until terminated or expiration, provided Purchasing Entities adhere to the terms and conditions

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contained herein. Purchasing Entities may then directly and separately contract for products or services pursuant to their applicable procurement authority.

2. The second paragraph of the section titled DEFAULT AND REMEDIES is hereby **deleted**.

3. The section titled GENERAL INDEMNITY is **deleted** and **replaced** with the following:

Contractor will indemnify and hold harmless Participating State, Participating Entity, and Purchasing Entities and each of its directors and officers (collectively the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorney's fees, arising out of any action or claim for bodily injury, death, or property damage (except for Managed Services as defined in Exhibit A to Attachment D 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 by Contractor or its directors, officers, employees, or agents while engaged in or as a result of services provided by Contractor pursuant to this Addendum while on an Indemnified Parties' site.

4. The following is **added** to the section titled ASSIGNMENT/SUBCONTRACT:

Except that Participating Entity may assign the Addendum to any State of Washington public agency, commission, board, or the like, within the political boundaries of the Participating State, provided that such assignment shall not operate to relieve Participating Entity of any of its duties and obligations hereunder. Participating Entity will notify Contractor of any assignment.

5. All periods of retention described in the section titled RECORDS ADMINISTRATION are **changed** to six (6) years for records related to this Addendum or any Statement of Work entered into hereunder.

6. The following is **added** to the section titled AUDIT OF RECORDS: "All books, records, documents and other evidence relating to this Addendum or a SOW shall be subject at mutually agreed to times, and upon fourteen (14) calendar days written notice, to examination, inspection, copying, or audit by personnel so authorized by the Participating Entity's contract administrator and/or the Participating State's Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost. Audits conducted pursuant to this provision shall be in accordance with established procedures of the reviewing agency. This right to audit shall not extend to Contractor's overhead rates, general and administrative expenses, or profit percent(s). During this Addendum's term, Contractor shall provide access to these items within Thurston County; provided, however, that if the Participating Entity wishes to review original records, and such originals are stored in the normal course of Contractor's business outside of such county, such review shall be at Contractor's location or as otherwise agreed to by the parties. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors."

7. The section titled ENTITY PARTICIPATION is **deleted** in its entirety.
8. The following section is **added** to the Contract:

LIMITATION OF LIABILITY. ANY LIMITATIONS ON THE CUMULATIVE LIABILITY OF CONTRACTOR INCLUDED IN ANY DOCUMENT INCORPORATED INTO THIS CONTRACT SHALL NOT APPLY TO CONTRACTOR'S OBLIGATIONS FOR INFRINGEMENT INDEMNITY, NOR SHALL THEY APPLY TO CONTRACTOR'S OBLIGATION TO PAY THE MANAGEMENT FEES, WHICH SHALL BE LIMITED TO THE MANAGEMENT FEES OWED UNDER THE PARTICIPATING ADDENDUM.

B. Modifications to Attachment D, Exhibit A to the Contract

1. The following definitions are **added** to Section 1.1, *Definitions*.

"Deliverables" shall mean any tangible Services Output produced and customized as a result of the Services provided by Esri under this Addendum. Deliverables can include, but are not limited to, reports, training materials and custom software code. Deliverables shall be considered Pre-Existing Materials, if through customization during the course of work under this Addendum, the customization(s) do not result in Substantive and Value Added Content.

"Pre-Existing Materials" means any work product produced by either Esri or Customer prior to rendering services under this Addendum. Pre-Existing Materials can include, but are not limited to, reports, training materials, data, and software code. Pre-existing works, if applicable, shall be identified on a specific work order.

"Substantive and Value Added Content" can include, but is not limited to, instructive text, graphics, document design and new custom code created under a specific work order for the State of Washington.

2. The definition of "Services Output" in Section 1.1(k) is hereby **deleted** and **replaced** with the following:

(k) "Services Output" shall mean any work product produced by Esri as a result of Services provided under this Agreement. Services Output may consist of either Deliverables, Pre-Existing Material, or some combination of the two.

3. Section 2.1 of the Exhibit A is hereby **deleted** and **replaced** with the following:

2.1 (PS) Services Output – Each party shall retain all rights, title and interest in their respective Pre-Existing Materials. Except as specifically granted in this Addendum, or if specified in a work order, Customer owns and retains all rights, title, and interest in Deliverables. Subject to the terms and conditions in this Addendum, each Party grants to the other, a nonexclusive, perpetual, royalty-free, worldwide license to use, modify, and/or reproduce Pre-Existing Materials included as Services Output. Nothing herein shall

preclude Esri from developing, using or marketing services or other materials that are similar or related to, based on, or derived from, Deliverables provided to a Customer.

4. In Section 7.B., *General Limitation of Liability*, the four (4) month time period is hereby **amended** to eight (8) months.
5. Section 9.2, *License to Customer Content*, is **amended** as indicated in the paragraph below:

9.2 License to Customer Content. During the term of the ordering agreement, Customer hereby grants to Esri and its affiliates permission to use Customer Content to provide 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 environment in any reasonable manner needed to provide Managed Services.

6. Sections 9.4, *Risk of Loss*, and 9.7, *Monitoring*, are hereby **deleted** in their entirety.

C. Modifications to Attachment D, Exhibit B to the Contract

1. The following is **added** to the end of Section 3.1, *Grant of License*:

For all Products, Esri grants to Licensee a personal, nonexclusive, nontransferable license solely to access and use any secure Esri web site resources made available to Licensee for Licensee's own internal use, provided that Licensee follows Esri's terms of use policy specified therein. All password or controlled access information provided by Esri shall be treated as Esri confidential information.

2. Article 4, SCOPE OF USE, is **deleted** and **replaced** with the following:

ARTICLE 4-SCOPE OF USE

4.1 Permitted Uses

- a. For Products and Online Services made available to Licensee, Licensee may access and use Products and Online Services as provided herein.
- b. Licensee may use, copy, or prepare derivative works of Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portion(s) of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this License Agreement. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors: "Portions of this document include intellectual property of Esri and its licensors and are used herein under license. Copyright© [Insert the actual copyright date(s) from the source materials] Esri and its licensors. All rights reserved."
- c. As part of Licensee's own internal use, Licensee may provide its maps and digital images to other agencies of state government and other tax-supported entities, provided no one other than the Licensee has access to the Products without prior written permission from Esri.
- d. For Products made available to Licensee, Licensee may access and use Products as provided

herein.

e. Subject to Section 3.1, Esri grants Licensee the right to permit Licensee's consultants or contractors to use the Products exclusively for Licensee's benefit. Licensee shall be solely responsible for compliance by consultants and contractors with this License Agreement and shall ensure that the consultant or contractor discontinues Product use upon completion of work for Licensee. Access to or use of Products by consultants or contractors not exclusively for Licensee's benefit is prohibited.

4.2 Uses Not Permitted

a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share Products. Licensee shall not act as a service bureau or commercial application service provider ("ASP") that allows third-party access to Products. Except as mutually agreed to in a written amendment for a specific product, Licensee shall not use Products for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service).

b. Except as provided herein, Licensee shall not redistribute Products to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs.

c. Licensee shall not reverse engineer, decompile, or disassemble Products except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.

d. Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent the technological measure(s) that controls access to or use of Products.

e. Except as provided herein, Licensee shall not redistribute Online Services access codes to third parties. For avoidance of doubt, this does not preclude Participating Entity or a broker used by Participating Entity to procure Products on behalf of Authorized Entities.

f. Licensee shall not use Online Services to transfer or exchange any material where such transfer or exchange is prohibited by intellectual property laws or any other applicable laws.

g. Licensee shall not remove or obscure any Esri or its licensors' patent, copyright, trademark, or proprietary rights notices contained in or affixed to Products.

h. Licensee shall not unbundle individual or component parts of Data for independent use.

2. Sections 6.1 *Limited Warranties* and 6.5 *Exclusive Remedy* are **deleted and replaced** with the following:

6.1 Limited Warranties. Except as otherwise provided in this Article 6, Esri warrants from the date Esri issues the Authorization Code enabling use of Online Services that the Online Services will substantially conform to the Documentation.

6.5 Exclusive Remedy. Licensee's exclusive remedy and Esri's entire liability shall be limited:

a. for breach within ninety (90) days of the limited warranties set forth in this Article 6, at Esri's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Online Services; (iii) return of the license fees paid by Licensee for Online Services that do not meet Esri's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Documentation; ceases using Online Services; and executes and delivers evidence of such actions to Esri; or

b. for breach after ninety (90) days of the limited warranties set forth in this Article 6, a

prorated refund of fees paid by Licensee for Online Services, and a refund of any unused service credits, if Online Services do not substantially conform to the Documentation, provided that Licensee uninstalls, removes, and destroys all copies of Documentation; ceases using Online Services; and executes and delivers evidence of such actions to Esri.

3. The following paragraph is **added** to the end of Section 7.1, *Disclaimer of Certain Types of Liability*:

EXCEPT FOR LICENSEE'S INFRINGEMENT OR MISAPPROPRIATION OF ESRI'S OR ESRI'S LICENSORS' INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL LICENSEE BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

4. The following paragraph is **added** to the end of Section 7.2, *General Limitation of Liability*:

EXCEPT FOR DAMAGES FOR LICENSEE'S INFRINGEMENT OR MISAPPROPRIATION OF ESRI OR ITS LICENSOR'S INTELLECTUAL PROPERTY RIGHTS, LICENSEE'S BREACH OF ARTICLE 3-GRANT OF LICENSE, ARTICLE 4-SCOPE OF USE, IN NO EVENT WILL LICENSEE'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND EXCEED THE AMOUNTS PAID AND/OR OWED TO ESRI BY LICENSEE FOR PRODUCTS PURSUANT TO THIS LICENSE AGREEMENT.

5. Subsection c. of Section 8.1 is **deleted** and **replaced** with the following:

c. The Licensee uses best efforts to encourage the Office of the Washington Attorney General to provide approval to Esri to defend Licensee, which a decision shall be timely given so as not to prejudice Esri's ability to defend the claim. Upon approval by the Office of the Washington Attorney General, Esri will have sole control of the defense of any actions and negotiations related to the defense or settlement of any claim and will provide updates to the Office of the Washington Attorney General, as may be reasonably requested by Licensee; and

6. The second sentence of the first paragraph of Article 10, UNIQUE PROVISIONS, Addendum 2, DATA TERMS OF USE, is **deleted** and **replaced** with the following:

New or updated Data and Online Services may require additional or differing terms for use and shall be governed by the then current Esri license terms and conditions. Updated versions of the license terms and conditions will be available on Esri's Web site, included with a quote, or included with the deliverable Data and Online Services.

7. Section 2.2.c. of Addendum 3, ONLINE SERVICES ADDENDUM, is hereby **deleted** and **replaced** with the following:

Use commercially reasonable efforts to ensure that Online Services will not transmit to Licensee any Malicious Code, provided Esri is not responsible for Malicious Code that

was introduced to Online Services by Licensee or a third-party through Licensee's account. Esri and Licensee will work together to remove any Malicious Code introduced in such manner.

8. Subsections (v) and (vi) of Section 2.4 of Addendum 3 are hereby **deleted and replaced** with the following:

Prohibited Uses of the Online Services. In addition to the prohibited uses under the License Agreement, Licensee shall not (i) attempt to gain unauthorized access to the Online Services or assist others to do so; (ii) use Online Services for spamming, to transmit junk e-mail or offensive or defamatory material, or for stalking or making threats of physical harm; (iii) use Online Services to store or transmit 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 ("Malicious Code"); (iv) mirror, reformat, or display Online Services in an attempt to mirror and/or make commercial use of Online Services except to the degree that Online Services directly enable such functionality; (v) distribute the client-side data cache derived from Online Services to third parties; (vi) manually or systematically collect or scrape (screen or web scraping) Content from Online Services; (vii) use ArcGIS Online Map Services, Geocoding Services, or Routing Services in communication with any in-vehicle navigation system installed in a vehicle (this does not include portable navigation devices) or that provides real-time, dynamic routing to any device. For instance, these Services may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed; or (viii) incorporate any portion of Online Services into a commercial product or service unless the commercial product adds material functionality to Online Services.

9. Section 3.2 of Addendum 3 is **deleted and replaced** with the following:

Service Interruption. Licensee's access (including access on behalf of Licensee's customers) to and use of Online Services may be interrupted, without prior notice, for any unanticipated or unscheduled downtime or unavailability of all or any portion of Online Services resulting solely from events beyond the reasonable control of Esri or its affiliates.

10. The following is **added** to the end of Section 4.4, Retrieving Licensee's Content Upon Termination, of Addendum 3:

During such period described above, Esri will provide at no additional cost commercially reasonable assistance to Licensee to assist Licensee in downloading any of Licensee's Content. Prior to the expiration of such period, Licensee shall have the option to extend, with notice to Esri, the period for downloading Licensee's Content for up to sixty (60) additional days. Any assistance provided to Licensee by Esri during this extension will be at the rates set forth herein.

11. The last sentence of Article 7, LICENSEE'S WARRANTIES, Addendum 3, ONLINE

SERVICES ADDENDUM is hereby ~~deleted~~.

D. Additions to the Contract

1. *Ownership/Rights in Data.* Rights of Ownership of Managed Services offerings shall be as set forth in the Attachment D, Exhibit A for Managed Services, Professional Services and Services Packages. All other engagements shall be governed by the following: The parties agree that all data and work products produced by Contractor under this Addendum or a SOW ("Work Product") shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by Purchasing Entity. Contractor agrees to assign, and hereby does assign and transfer, to Purchasing Entity, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof. Contractor shall execute all documents and perform such other proper acts as may be necessary to secure for the Purchasing Entity the rights pursuant to this section.

Material that is delivered by Contractor under this Addendum, but that does not originate herefrom ("Preexisting Material"), shall be transferred to Purchasing Entity with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so, except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchasing Entity shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Addendum.

2. *Privacy.* Contractor warrants that it complies with all state and federal data protection and privacy laws applicable to Contractor. Contractor will not use or disclose Purchasing Entity Data for any purpose other than to provide services to the Purchasing Entity, including any disclosure to enable interoperation between the applicant and the Online Services. Contractor will not disclose Purchasing Entity Data to law enforcement unless required by law. Contractor will attempt to redirect the law enforcement agency to request Purchasing Entity Data directly from Purchasing Entity. If compelled to disclose Purchasing Entity Data to law enforcement, Contractor will use reasonable efforts to notify Purchasing Entity in advance of a disclosure unless legally prohibited.

3. *Data Breach Notice.* Excluding the Self-Service Cloud Hosting Offering, Contractor shall report, in a writing to Purchasing Entity, any actual unauthorized use or disclosure of Purchasing Entity Data, including any reasonable belief that an unauthorized individual has accessed Purchasing Entity Data ("Notification Event"). Contractor shall make the report to Purchasing Entity immediately, in the most expedient time possible and without unreasonable delay, following discovery of the Notification Event. Contractor's report shall identify, to the best of its ability: (i) the nature of the use or disclosure, (ii) the Purchasing Entity Data targeted, used or disclosed, (iii) who attempted or made the unauthorized use or received the unauthorized disclosure (if known), (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action

Contractor has taken or will take to prevent future unauthorized attempts, uses or disclosures. Contractor will cooperate in investigation or mitigation efforts of Purchasing Entity following a Notification Event, including cooperating with any third party identified by a Purchasing Entity in connection with such mitigation or investigation efforts. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of information or other event requiring notification, including RCW 19.255.010.

4. *Washington Public Records Act*: Contractor acknowledges that Participating Entity and Purchasing Entities under this Addendum are subject to chapter 42.56 RCW and that this Addendum shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be confidential must be clearly identified as such by Contractor ("Proprietary Information"), which, for avoidance of doubt, may be identified in Attachment D of the Contract or in an SOW. If a public disclosure request is made to view Contractor's Proprietary Information, the requested entity will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, such entity will release the requested information on the date specified.

5. *Confidentiality*. Contractor agrees that the information that must be kept confidential under this Addendum includes information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). For avoidance of doubt, this section applies to the exchange of information between the parties, but does not apply to the uploading/posting of information to Contractor's cloud offerings. Purchasing Entity will not send Contractor any medical data or information that may be subject to HIPPA regulations.

Confidential Information may be in any form, including, without limitation, tangible information (hard copy, electronic, or other tangible form); information disclosed orally and by demonstration; and information observed by Contractor during a visit to the Participating State's or Purchasing Entity's facility. Tangible Confidential Information must be conspicuously marked identifying it as "Confidential," "Proprietary," "Trade Secret," or other similar term, unless it is reasonably clear to Contractor that such information should be treated as Confidential Information, and provided in connection with this Addendum or the performance of services hereunder. Confidential Information disclosed orally or by demonstration, or observed by Contractor during a visit to the Participating State's or Purchasing Entity's facility, must be designated orally as such by the Participating State or Purchasing Entity at the time of disclosure or observation, unless it is reasonably clear to Contractor that such information should be treated as Confidential Information, and provided in connection with this Addendum or the performance of services hereunder.

The following information shall not be subject to the obligations in this Section: a) information that is or becomes lawfully available to the public through no breach of this Addendum; b) information that is already known to Contractor and can be shown to lawfully be in its possession at the time of disclosure; c) information that was received by Contractor without any duty of confidentiality; d) information that is received by Contractor from a third party that is not under a nondisclosure obligation to the Participating State or Purchasing Entity; and e)

information that is independently developed by Contractor without reference to Confidential Information.

Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance under this Addendum or any SOW; to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this Addendum or any SOW; and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchasing Entity's express written consent or as provided by law. Contractor agrees to protect the Confidential Information using the same degree of care, but no less than reasonable care, as what Contractor uses to protect its own confidential information of a similar nature.

Upon request after expiration or termination of this Addendum or any SOW, Contractor shall, as applicable, within thirty (30) days (i) confirm in writing that Contractor has destroyed all Confidential Information, excluding Confidential Information in backup tapes or other archival records that will not be accessed by Contractor's personnel; or (ii) return all Confidential Information. Contractor agrees to take whatever other steps are required of Contractor to protect such Confidential Information included in backup tapes or other archival records that are not destroyed or returned as provided herein.

Participating Entity and Purchasing Entities reserve the right to, at mutually agreed to times, and upon fourteen (14) calendar days written notice, monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Addendum or any Statement of Work.

6. *Contract Activity Report:* Contractor shall pay Participating Entity a fee equal to 0.74% ("Management Fee") of the total invoice price, less any taxes, returns, credits, or adjustments, of all sales ("Total Net Sales") under this Addendum. Contractor shall hold the Management Fee in trust for Participating Entity until such fees are remitted.

The Management Fee will be included in Contractor's pricing, as set forth in the Contract (including all amendments), and will not be included as a separate line item on any invoice submitted to a Purchasing Entity.

Participating Entity may, at its sole discretion, increase, decrease, or eliminate the Management Fee upon thirty (30) days written notice to Contractor. Any decrease to, or elimination of, the Management Fee, shall be reflected in Contract pricing commensurate with the adjustment. Participating Entity reserves the right to negotiate Contract pricing with the Contractor in the case of an upward adjustment of the Management Fee.

Contractor will provide Participating Entity with a sales report detailing Total Net Sales for the preceding calendar quarter ("Sales Report") using the schedule set forth below. Participating Entity will send an invoice for the Management Fee within thirty (30) days after each quarter, based on the Sales Report. Payment of the Management Fee is due within thirty (30) days of the date of such invoice.

Participating Entity reserves the right to audit, or have a designated third party audit, applicable records to ensure that Purchasing Entities have been properly invoiced and all Management Fees have been paid. Failure to accurately report Total Net Sales, to submit a timely Sales Report, or remit timely payment of the Management Fee, may be cause for termination of this Addendum, the charging of interest or penalties, or the exercise of other remedies provided by law.

Management Fee payment must reference this Addendum's number, SOW number (if applicable), the year and quarter for which the Management Fee is being remitted, and the Contractor's name as set forth above, if not already included on the face of the check. All payments must be sent to:

Name:	State of Washington, Dept. of Enterprise Services Finance Dept
Address:	1500 Jefferson Street Mail Stop 41460 Olympia WA 98501

Contractor will provide Sales Reports and Management Fees quarterly, per the following schedule:

FOR ACTIVITY IN THESE MONTHS:	SALES REPORTS DUE	MANAGEMENT FEES DUE
January, February and March	April 30 th of same year	Within 30 days of DES Invoice date
April, May and June	July 31 st of same year	Within 30 days of DES Invoice date
July, August and September	October 31 st of same year	Within 30 days of DES Invoice date
October, November and December	January 31 st of following calendar year	Within 30 days of DES Invoice date

7. *Invoice Information.* Contractor will submit properly itemized invoices to the person identified by Purchasing Entity at the address provided by Purchasing Entity. Invoices shall provide and itemize, as applicable:

- i. Addendum number;
- ii. Purchasing Entity's name, address and SOW Number;
- iii. Contractor name, address, phone number, and Federal Tax Identification Number;
- iv. Description of Managed Services Offering products, including quantity ordered, model and serial numbers (if applicable);
- v. Description of all Managed Services Offering services provided, including hourly rate and total hours for each labor category employed (if applicable);
- vi. Date(s) of delivery of products or services ;
- vii. Price for each item;

- viii. Total purchase price;
- ix. Applicable taxes;
- x. Other applicable charges;
- xi. Total invoice amount; and
- xii. Payment terms including any available prompt payment discounts.

For Self-Service Cloud Hosting Offering, Contractor will submit properly itemized invoices to the person identified by Purchasing Entity at the address provided by Purchasing Entity. Invoices shall include, as applicable:

- i. Addendum number;
- ii. Purchasing Entity's name and address;
- iii. Account ID;
- iv. Report period;
- v. Product name;
- vi. Item description;
- vii. Usage amount;
- viii. Unit price; and
- ix. Total spend.

8. *Publicity.* The award of this Addendum to Contractor is not in any way an endorsement of Contractor or Contractor's products by the Participating State, the Participating Entity, or any Purchasing Entity, and shall not be so construed by Contractor in any advertising or other publicity materials. Contractor agrees to use reasonable efforts to submit to a Purchasing Entity any advertising, sales promotion, or other publicity materials relating to this Addendum wherein the name of such Purchasing Entity is mentioned, language is used, or Internet links are provided. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of Purchasing Entity prior to such use which shall not be unreasonably withheld.

With prior written consent and execution of a separate agreement, either party may use the other party's name and logo (except for the seal of the State of Washington) in advertising, sales promotion, and other publicity materials relating to this Addendum, without royalty, provided that this Addendum and the relationship between the parties is not misrepresented.

9. *Security.* Additional security requirements, such as compliance with the "Securing Information Technology Assets" policy published by the State Office of the Chief Information Officer, and any other security documents and best practices provided by the Participating Entity (collectively, "Security Policies"), may be set forth in either an Engagement Agreement or Statement of Work under this Addendum.

10. *Governing Law.* Notwithstanding anything to the contrary in the Contract, this Addendum and any SOW made hereunder will be governed in all respects by the law and statutes of the state of Washington, without reference to its conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. Except for the Self-Service Cloud Hosting Offering (terms and conditions found at

http://aws.amazon.com/serviceterms/ which are incorporated by reference), the venue of any action hereunder shall be in the Superior Court for Thurston County or the county in which Purchasing Entity is located within the Participating State.

11. *Amendments.* No modification, amendment, alteration, addition, or waiver of any section or condition of this Addendum shall be effective or binding unless it is in writing and signed by Contractor and Participating Entity, except as provided in Attachment D of the Contract.

4. (Purposely Left Blank)

5. Primary Contacts: The primary contact individuals for this Addendum are as follows (or their named successors):

Lead State

Name	Pam Rugg
Address	State of Utah, Division of Purchasing and General Services 3150 State Office Building, Capitol Hill PO Box 141061 Salt Lake City, UT 84114-1061
Telephone	801-538-3232
Fax	801-538-3882
E-mail	prugg@utah.gov

Contractor

Name	Environmental Systems Research Institute, Inc.
Address	380 New York Street Redlands, CA 92373
Telephone	909.793.2853
Fax	909.307.3038
E-mail	WSCA_admin@esri.com

Participating Entity

Name	
Address	1500 Jefferson Street SE P.O. Box 4____ Olympia, WA 98504-
Telephone	(360) 407-

Fax	(360) 407-9174
E-mail	@des.wa.gov

6. Subcontractors:

With the prior express written consent of the Participating Entity, the Contractor may use subcontractors; however, the Contractor will be responsible for any agreements with the subcontractors. The Participating Entity is not agreeing to and may not be held responsible for complying with any terms and conditions of any agreement entered into between Contractor and a subcontractor.

7. (Purposely Left Blank)

8. Contract Number:

All Statements of Work issued by Purchasing Entities within the jurisdiction of the Participating State shall include the Addendum Number: 08713 and the Contract Number: MA 268.

9. Incorporation of Documents:

Each of the documents listed below is, by this reference, incorporated into this Addendum as though fully set forth herein.

- a) The Contract;
- b) Any Engagement Agreement entered into between Contractor and the Participating State's Office of the Chief Information Officer;

10. Order of Precedence:

In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

- a) Applicable federal and state statutes, laws, and regulations;
- b) Self-Service Cloud Hosting Offering Section of Attachment D Esri Terms and Conditions
- c) Sections of this Addendum
- d) Sections of any Engagement Agreement;
- e) The terms and conditions of any Statement of Work;
- f) The terms and conditions of the Contract, including all documents incorporated therein;

This Addendum and the Contract together with its exhibits, set forth the entire agreement between the Parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Other than as provided herein, terms and conditions inconsistent with, contrary or in addition to, the terms and conditions of this Addendum, together with its exhibits, shall not be added to or incorporated into this Addendum and its exhibits, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

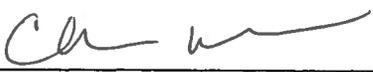
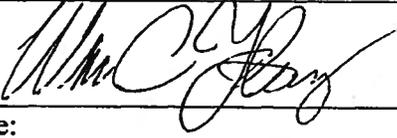
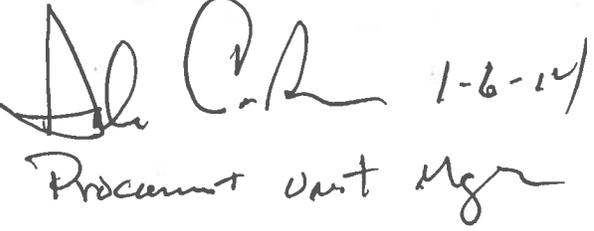
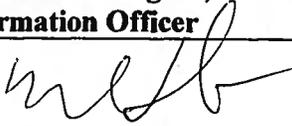
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WSCA Contract No. MA 266 between Environmental Systems Research Institute, Inc and the State of Washington, Department of Enterprise Services

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WSCA Contract No. MA 266 between Environmental Systems Research Institute, Inc and the State of Washington, Department of Enterprise Services
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IN WITNESS WHEREOF, the Parties have executed this Addendum as of the date of execution by both Parties below.

State of Washington, Department of Enterprise Services	Environmental Systems Research Institute, Inc.
By: 	By: 
Name: <i>Christine Warrack</i>	Name: William C. Fleming
Title: Chief Procurement Officer	Title: Managing Business Attorney
Date: <i>1/13/14</i>	Date: DEC 23 2013
State of Washington, Office of the Chief Information Officer	 <i>Procurement Unit Mgr</i>
By: 	
Name: <i>MICHAEL DEANGELO</i>	
Title: Chief Information Officer	
Date: <i>1/6/14</i>	

[Additional signatures as required by Participating State]