



Licensee EQUIS End User License Agreement (EULA)

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The following definitions apply to the terms as used in this EULA:

- a. “Affiliate” means any entity or person controlling, controlled by, or under common control with either party, whether present or future. Licensee may be acting for itself or as agent for one or more Affiliates, as may be specified in a work authorization or purchase order.
- b. “Confidential Information” means all documents, software, reports, data, records, forms, and other materials and information obtained by either party from the other party, either verbally or in writing, during the Term of this Agreement: (i) that have been marked as confidential; (ii) whose confidential nature has been made known by the disclosing party to the receiving party; or (iii) that due to their character and nature, a reasonable person under like circumstances would treat as confidential. Notwithstanding the foregoing, Confidential Information shall, in all events and whether or not marked or communicated as being confidential, include all EQUIS source information and credential-controlled information relating to EQUIS. Confidential Information also includes each party’s business plans, customers, personnel, and personally identifiable information; computer operations; organizations; products, product development and marketing; financing; payroll; and the like; which is disclosed to the other party either directly or indirectly, electronically, in writing, or orally. A party receiving Confidential Information under this Agreement shall be referred to as “Recipient” and a party disclosing Confidential Information under this Agreement shall be referred to as “Discloser”. Recipient shall treat Confidential Information as valuable, personal, proprietary, and highly confidential information and shall not disclose any Confidential Information to any other party, in any manner or through any means without the prior written consent of Discloser, except as permitted herein. Recipient shall take proactive measures to ensure and document that all personnel it uses, including contractors, subcontractors, and agents are made aware of, understand, and agree in writing to comply with these obligations and the Data Protection, Information Security, and Confidentiality provisions prescribed by law and this Agreement.
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- d. An “Enterprise” means a specific named entity (i.e. individual, corporation, company, organization, unit of government) and is inclusive of all internal representatives and

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- g. "Software services" means services that you provide to licensees that make available, display, run, access, or otherwise interact with the EQuIS schema or licensed products. These services could be provided from one or more data centers through the Internet, a telephony network, or a private network on a rental, subscription, or services basis, regardless of if you receive a fee for these services or not. Software services exclude any services involving installation of a licensed product directly on any device to permit Licensee to interact with the licensed product. Software services include "Software as a Service (SaaS)", "Application Services Provider (ASP)", or "Hosting EQuIS" services. ***This internal end-use license strictly prohibits using EQuIS for such Software services; this Software is licensed for Licensee Enterprise Internal Use Only. Optional, additional EarthSoft licensing agreements are available for such 3rd Party purposes and use.***
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- i. "You" and "your" means Licensee (Enterprise) and any of your authorized affiliates to whom you have granted rights under this agreement. "We," "us," "our" and "EarthSoft" means the EarthSoft company and any of our affiliates. "Parties" refers to both you and us, and "party" may be used to refer to you or us, individually.

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4. SCOPE OF USE.

4.1 Licensee may:

- a. Use and display this copy of the licensed Software on any computer at a Licensee facility.
- b. Install and store Software on electronic storage device(s).
- c. Make one (1) copy of Software for archival purposes.
- d. Make routine computer backups.

4.2 Licensee may not:

- a. Sell, rent, lease, sublicense, lend, assign, host, or otherwise time-share Software. Licensee shall not act as a service bureau or commercial Application Services Provider (ASP) that allows third-party access to Software or Software services without obtaining a separate hosting license from EarthSoft (Viewer License Agreement (VLA), Service Provider License Agreement, etc.).

- b. Redistribute Software to third parties, except as licensed for such distribution, in whole or in part, including, but not limited to, the EQUIS data structure, tables, extensions, components, or DLL's without the prior written approval of EarthSoft.
- c. Modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Software.
- d. Separate, detach, or un-bundle individual or component parts of Software for independent use.
- e. Modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Documentation or written materials (subject to applicable law).
- f. Circumvent, or to the maximum extent permitted by applicable law attempt to circumvent, the technological measure(s) that control access to, log, or otherwise measure Software activity.
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- i. Use Software or EarthSoft web-based services to transfer or exchange any material where such activity is prohibited by intellectual property laws or any other applicable laws.
- j. Use Software in a network or multiple-user system or by more than one user at a time, unless you have paid for and obtained separate Software license rights for each terminal or workstation from which the Software will actually be concurrently accessed, or you have paid for and obtained an appropriate enterprise or network version of Software license.

4.3 Both Parties Hereby Agree to the following Confidential Information handling and use requirements:

- a. **Permitted Disclosure.** Recipient may disclose Confidential Information to any of the following recipients who are bound by confidentiality and use obligations at least as stringent as those in this Agreement:
 - i. To Affiliates, subcontractors and employees of Recipient and its Affiliates, but only to the extent that those parties need to know the Confidential Information for the performance of, or to exercise rights or responsibilities under this Agreement.
 - ii. To professional advisors of Recipient, but only to the extent necessary for the provision of professional advice needed by Recipient in relation to this Agreement.

*A **Licensee EQUIS Protection Agreement Form** is available; completion and filing of this form with EarthSoft are optional, but it is required for EarthSoft to acknowledge, and confidentially communicate with, any third party claiming to be authorized by Licensee for these purposes.*

- b. **Required Disclosure.** If a Recipient, or any party who receives Confidential Information (directly or indirectly) through a Recipient, is required by law or by lawful order of any administrative or judicial proceeding (Court Order) to disclose any Confidential Information, or any party applies for a Court Order against them for the disclosure of Confidential Information, the Recipient shall: a) promptly notify the other party of the details of the Court Order or application, and all relevant future activities thereto, in a timely fashion so that they may seek a protective order; b) if a protective order or other remedy is not obtained, then use its best efforts to disclose as little of the Confidential Information as is needed to comply with the purpose and requirements of the Court Order; and c) to make all such disclosures and filings in

full and proper accordance with all lawful provisions and opportunities for ensuring the continued confidential handling and use of Confidential Information and Business Trade Secrets that are disclosed by virtue of the Court Order.

- c. **Use of Confidential Information.** Recipient, and all other parties who receive Confidential Information through them, are to be properly informed of these Confidentiality Requirements and that they are bound to use Confidential Information exclusively for the purpose of supporting authorized EQuIS use. Recipient shall not disassemble, decompile or otherwise reverse engineer or attempt to derive the composition or underlying information, structure, or ideas of any Confidential Information, except to the extent permitted by authorized license uses, without the prior written consent of Discloser. Recipient shall abide by all instructions given or restrictions stipulated by Discloser with respect to Confidential Information.
- d. **Exceptions.** Confidential Information does not include information which: (i) is or becomes publicly available without a breach of an obligation of confidentiality and through no wrongful act of the Recipient; (ii) is independently developed by Recipient without access to the disclosed Confidential Information; or (iii) is received by Recipient from a third party without restriction and without a breach of an obligation of confidentiality; provided, however, that the occurrence of the above will not be construed to grant any rights, express or implied, under any patents, trade secrets or copyrights relating to any such information.
- e. **Equitable Relief.** Due to the unique nature of the Confidential Information, there may be no adequate remedy at law for any breach of these obligations, and that any breach of these obligations may allow Recipient or another party to compete unfairly with Discloser resulting in irreparable harm to Discloser. Accordingly, Recipient agrees that upon a breach, Discloser is entitled to seek immediate equitable relief, including a restraining order and preliminary injunction, and Discloser may seek indemnification from Recipient for any loss or harm in connection with any breach or enforcement of Recipient's obligations provided in this Agreement and for any resulting unauthorized use or release of such Confidential Information. Recipient agrees to notify Discloser immediately should there be any occurrence of an unauthorized release of Confidential Information or other breach of these requirements.
- f. **No License.** Other than the right to use Confidential Information to support licensed EQuIS use, nothing herein shall be construed as conferring to Recipient by implication, estoppel, or otherwise, any right, title or interest in, or any license under any patent, patent application, trade secret, or other intellectual property now or subsequently owned by Discloser.
- g. **Return of Materials.** Except for Confidential Information that is properly disclosed and received to exercise license rights granted under this Agreement, including a secured archival thereof, Recipient shall return or deliver to Discloser, or destroy all files, copies, extracts, drawings and other materials or records that, in whole or in part, contain, incorporate, embody or reflect any Disclosure Confidential Information within five days of Termination; and shall upon request of Discloser certify to the destruction under penalty of perjury.
- h. **Term.** Unless terminated for cause, these confidentiality provisions shall continue in full force and effect while the licensed products are being supported by EarthSoft under a current Licensee EQuIS Software Maintenance Agreement and said force and effect shall cease upon the termination thereof, subject to the continuing obligations therein created by the Parties.
- i. **Survival of Obligations.** The obligations of both Parties to this Agreement to protect Confidential Information shall survive any expiration, termination, or cancellation hereof.

5. **TERM AND TERMINATION.**

This EULA is effective and binding upon acceptance; it shall supersede and replace all previous EULA, in effect at the time of acceptance. This EULA and any Software license granted hereunder shall continue

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- c. EarthSoft has set its prices and entered into this Agreement in reliance on the limitations set forth in this EULA; that this is a fair maximum risk allocation between the parties; and that it is the economic basis of the relationship; however, created, between the parties.

THE FOREGOING STATES THE ENTIRE LIMITATION OF LIABILITY OF EARTHSOFT AND SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, FOR ANY APPLICATION OF LIABILITY TO, WITH OR FOR ANY PARTY.

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- c. Licensee will abide by the Confidentiality provisions stipulated herein as a condition of the licenses granted and pursuant to the purchase of Software, Documentation, Services, and SMA Renewals.
- d. Licensee will abide by these ***EQUS Database Modification Compliance Requirements***. Licensed users of EarthSoft's EQUS family of data management systems are authorized to modify project

database or database template structures. However, changes to core data structures or relationships ("core" refers to the default database structures distributed by EarthSoft) may result in unpredictable performance or the failure of EQuIS to function as expected. Adhering to the following rules is a requirement of the standard support specifications; these guidelines will help ensure EQuIS Database Compliance, proper functionality, and satisfactory performance:

- i) Custom/client-specific database objects (tables, views, stored procedures, etc.) should **not** be added to the standard "equis" schema (within the database); instead, custom/client-specific database objects should be added to a custom/client-specific schema (see <https://docs.microsoft.com/en-us/sql/relational-databases/security/authentication-access/create-a-database-schema?view=sql-server-2017>).
- ii) Custom/client-specific tables may be added to the databases.
- iii) Custom/client-specific fields may be added to core tables; **however, we strongly recommend that custom/client-specific fields be added to custom/client-specific tables to simplify database maintenance and support.**
- iv) Custom/client-specific indexes may be added to core tables when appropriate (note that improper use of indexes may adversely affect performance).
- v) Core table names **may not be changed**.
- vi) Fields within core tables **may not be changed (including field name, length, data type, and nullability)**.

Due to the in-place nature of the database update process, any custom objects (tables, fields, queries, etc.) added to project databases will persist. Rather than migrating data to a new structure during the update process, EQuIS uses T-SQL code to make in-place modifications to existing project databases. If a significant change in the standard EQuIS database structure prevents preservation of custom database objects, users will be notified and provided with guidelines on migrating custom objects to the new structure. Please note that in rare circumstances, certain customization of the data structure within these guidelines may affect the functionality of EQuIS. If this is determined to be the case, EarthSoft will handle this situation on a case-by-case basis and determine the best means of resolving any technical issues. For example, if a custom field is added to a table and EarthSoft subsequently adds a field of the same name to the core structure, database updates may not be successful. **Please communicate requests for additional tables/fields and we will advise.**

If any database modifications are made beyond what is explicitly stated as acceptable, EarthSoft will not be liable for any remediation, loss, or damage of any sort whatsoever; nor will EarthSoft be responsible for the proper function and operation of any EQuIS software connecting to these databases. Services required to correct or to customize for any non-conformity with the EQuIS Database Requirements are not covered by warranty nor are they included in the EQuIS Software Maintenance Agreement (SMA) support specifications and will only be provided if requested and authorized by Licensee under an additional services agreement.

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12. SOFTWARE MAINTENANCE SERVICES – EQuIS Software Maintenance Agreement (SMA)

Software maintenance services will be provided by EarthSoft to Licensee under the terms of this section. EarthSoft will support and maintain the Software, including providing Licensee with access to

all updates, fixes, and patches for the Software. Software support and maintenance will only apply to commercially released unmodified Software and to Software modified in compliance with the EQUIS Database Modification Compliance Requirements and for which Licensee has paid the applicable fees. Software updates are provided only for Software installed on standard hardware platforms and operating systems supported by EarthSoft as described in this and other Software documentation. Licensee is responsible for making or arranging updates to interfaces for nonstandard devices or custom modifications, configurations, or integration of other applications. An EQUIS Licensee with properly executed agreements and current on its financial obligations is also known as an EarthSoft Client in Good Standing (CIGS). Being a CIGS is required in order to receive these services and all EQUIS SMA benefits and privileges as described in these provisions.

EarthSoft will provide reasonable amounts of support to Licensee for the installation and maintenance of EarthSoft Software, assistance in solving problems arising from the use of the Software, hardware interfacing of peripheral devices, and logging of enhancement requests and bugs submitted by Licensee. Licensee will designate one (1) point of contact (POC) to call the EarthSoft Help Desk for support services; EarthSoft Help Desk will generally provide a response within twelve (12) business hours for serious or critical software problems. Additional POCs and/or alternate response times may be negotiated and must be specified in the EarthSoft Price Quotation to be binding. If Licensee does not purchase and continue maintenance services, it will not be entitled to, and EarthSoft will not provide, installation assistance, Help Desk support, further releases of the Software, or any other maintenance service or benefit.

This Agreement shall be for the licensed Software described in the Licensee **EQUIS License Portfolio** (included as **Appendix 1**) and kept on file with EarthSoft. **Software maintenance services will be provided for the listed products during the coverage period at the fees noted in the EarthSoft Price Quotation.** Licensee may continue the service with a current EQUIS Online Hosting Agreement or in annual increments for maintenance of perpetual product licenses, which shall be quoted in advance by EarthSoft. Should Licensee decide to extend the SMA, Licensee shall issue a purchase order in advance of the renewal date at the quoted price; upon receipt of payment all maintenance services, benefits, and obligations of both parties will continue until the next SMA Renewal Date. Payment is due in advance. Licensee agrees to pay EarthSoft invoices within thirty (30) days of receipt.

New releases of EQUIS software products will be announced via the discussion forum within the EarthSoft Community Center web page. Download links will be provided to Licensee POCs within the EarthSoft Community Center.

From time to time, you may require the assistance of Help Desk where you desire to submit data to EarthSoft Help Desk. If upon review of your data, it is determined that you have corrupt, inaccurate, or problem data or have modified the EQUIS database, you shall be charged on an hourly basis (at least ½ hour) and agree to pay EarthSoft at the then-current rate for data analysis.

Licensee may contact EarthSoft Help Desk for technical support at:

Telephone: (800) 649-8855 • (503) 345-0212

Email: support@earthsoft.com

Hours: 8:00 AM - 8:00 PM EST

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 - i) **EQUIS software solutions Price Quotations itemize** the SMA fee for the License Portfolio of EQUIS Products covered during the subscription term. The software maintenance services

begin with the product registration and continue during the initial and all subscription renewal periods.

- ii) EQuIS Enterprise Viewer License Agreement (**VLA**) and Application Programming Interface (**API**) Subscriptions require an appropriate EQuIS Enterprise License. The VLA fees and API are in addition to the EQuIS Enterprise license and maintenance fees. The Licensee supports those 3rd party users.
- b. EQuIS maintenance services subscriptions include access to EQuIS software support materials:
 - i) EQuIS software support materials are virtual resources (no physical materials provided); they include all digital materials received or accessed by Licensee in conjunction with or in continuing support of the licensed product, including but not limited to, all user reference materials, help files, training materials and other technical or contractual documentation pertaining to EQuIS.
 - ii) EQuIS software support materials are copyrighted works of EarthSoft, Inc. and are distributed with all rights reserved. Licensee may authorize applicable users to view, print, copy, archive, distribute, and use exclusively for the support of Licensee EQuIS products that are then covered for support; all other uses are prohibited without the written, use-specific permission of EarthSoft, Inc.
 - iii) EarthSoft will maintain an online Community Center for Licensees authorized users to access (currently at <http://community.earthsoft.com/>) which contains EQuIS support dashboards:
 - EQuIS Data Dictionary – a searchable and browsable dictionary of standard EQuIS data tables and fields;
 - EQuIS Discussion Forum – a venue for Licensee users to receive product release announcements and participate in EQuIS-centric discussions with and amongst EarthSoft staff and the EQuIS user community;
 - EQuIS Downloads – access to a repository of EQuIS software, EQuIS Academy Training videos, and EQuIS Office Hours recordings presented by EQuIS experts; and
 - EQuIS Online Documentation – online documentation for EQuIS software products.
- c. EarthSoft will provide software technical support, including an automated support system for the logging of feature requests, enhancements, and software bugs submitted by Licensee, and for the routine implementation of these EQuIS software support services during the Subscription Term.
 - i) EarthSoft will maintain a system for recording and managing the Licensee authorized POC's and designated agents for support.
 - ii) EarthSoft will provide general technical support and documentation to assist Licensee with configuration, updates, and upgrades of EQuIS software.
 - iii) EarthSoft (through its EQuIS Online software-as-a-service) will coordinate and install all applicable updates, fixes, and patches for EOL Hosted EQuIS Software Subscriptions.
- d. EarthSoft provides software technical support to assist Licensee as per the following process:
 - i) Business days shall mean Monday through Friday, excluding U.S. and Canadian National Holidays; and business hours shall mean 8 am to 8 pm Eastern Time (UTC -0500) on such business days (U.S. daylight savings time will apply).
 - ii) Licensee POC initiates EarthSoft Help Desk support by emailing support@earthsoft.com or by placing a call to the EarthSoft Help Desk at +1 (503) 345-0212;
 - iii) Licensee requests for support services shall include all relevant information and shall specify what type of assistance is being requested from EarthSoft;
 - iv) Emails and telephone calls are tracked in our online ticket [##xxxx##] tracking system via a unique Ticket number (ticket [##xxxx##]) which is emailed to Licensee and thereafter is used to automatically log each email communication (**subject field of email must include "ticket [##xxxx##]"**);
 - v) EarthSoft Help Desk will respond by email or scheduled web meeting to answer questions generally within twelve (12) business hours as may be applicable in accordance with the Severity Level Action

Table below; and

- vi) Licensee may, if applicable, propose a Severity Level assessment to a service request based on the Severity Level criteria described below. Licensee must identify its proposed Severity Level in the subject of the email and include a reasonably complete description of the issue and provide sufficient files and data for EarthSoft to recreate and resolve the specific problem. If EarthSoft disagrees with the Severity Level proposed by Licensee, the parties will mutually reassess the problem in good faith to agree on what Severity Level to assign to the problem. EarthSoft has the final determination as to all Severity Level assignments. EarthSoft will, following its own internal protocol and using its own staff and resources, attempt to resolve each such problem in accordance with the Severity Level Action Table:

	Description	Target Response Time	Target Workaround Time	Target Resolution Time	Target Update frequency until resolution
Critical - 1	A problem in the software has been identified that makes the continued use of one or more functions impossible (or severely restricted) on a critical system and prevents Licensee from continued production or otherwise severely risks critical business operations.	Within one (1) business hour of receipt of a service request, a request is acknowledged as a critical severity issue.	6 hours	24 hours	Every 4 business hours
High - 2	A problem in the software has been identified that severely affects or restricts major functionality. The problem is important to productivity but is not causing work stoppage; operations continue in a restricted fashion.	Within four (4) Business hours of receipt of a service request, the request is acknowledged as high severity issue.	1 business day	3 business days	Every 1 business day
Medium - 3	A minor problem in the software has been identified that does not have a major effect on business operations but may warrant repair or a reasonable workaround.	Within two (2) Business Days of receipt of a service request, the request is acknowledged as a medium-severity issue.	5 business days	10 business days	Every 2 business days
Low - 4	Minor condition or documentation error that has no significant effect on the operations, requests for a new feature, or suggestions that are defined as new functionality in the existing software.	Within five (5) Business Days of receipt of a service request, any service requests without a proposed Severity Level will be assumed a low severity issue.	N/A	Addressed in the next release	N/A

e. Premium EQUIS support services:

- i) These standard software benefits and detailed support service processes are included with the

Licensee EQuIS Software Maintenance Subscription Fee; if you purchase enhanced operational support, those optional specifications and fees will be supplemental to these.

- ii) EarthSoft will allow multiple POC's for direct Help Desk Support by designated contacts from Licensee support team (primary or secondary POC's) for purposes of feature requests (i.e., configuration, report, or other changes). For general inquiries, Help Desk is available to other contacts or users from within the Licensee Enterprise.
- iii) EarthSoft may offer optional EQuIS support service contracts to satisfy different alternate requirements; fee proposals will be prepared in response to detailed specification requests.
- f. Licensee responsibilities – compliance, competence, and performance requirements:
 - i) Licensee is responsible for its end- users being appropriately trained and reasonably proficient with the EQuIS software, the EQuIS software support materials, and the matters presented herein.
 - ii) Licensee is responsible for implementing version updates to their software as well as specific fixes, patches, and workarounds that are provided by EarthSoft and to cooperate in a timely and professional manner to realize the benefits described herein; failure by Licensee to perform such operational solutions relieves EarthSoft of further support requirements on the specific ticket issues.
- g. EQuIS Product Version Policies: enhancement, compatibility, and obsolescence policies:
 - i) EarthSoft continuously develops and improves EQuIS software to best satisfy the requests of the EQuIS community at large and in accordance with company practices. This continuous development process is implemented in cycles that result in an average of three or four new releases per year (minimum of one new release per year).
 - ii) EarthSoft develops EQuIS software in a manner such that each new release also maintains backward compatibility (unless technically infeasible) with the two most recently released previous versions of the EQuIS software.
 - iii) EarthSoft practices regarding EQuIS version obsolescence are to ensure that each new product will be supported for a minimum of eighteen (18) months from its initial release and that Licensee will be notified not less than six (6) months in advance of the planned end of support for any such product. If prior releases require severity one (1) fixes, those fixes may be distributed (at EarthSoft's discretion) as either an in-place hotfix (e.g. replacing an individual file) or a new release.
- h. EQuIS maintenance services subscriptions also include upon request:
 - i) Confidential Help Desk support for authorizing access to and use of Licensee EQuIS by outside agents – requires authorized POC and Agent to complete an **EQuIS Protection Agreement Form**.
 - ii) No charge, optional, access to source code for qualified Software – requires authorized POC to complete an **EQuIS Source Code License Request Form**.
 - iii) No charge, optional, non-production licenses for qualified Training and Testing Server Environments – requires authorized POC to complete an **EQuIS Non-Production License Request Form**.

13. EQuIS ONLINE (EOL) HOSTING PROVISIONS (These provisions apply to EOL Subscription Products only).

EarthSoft will provide Software hosting services on Microsoft Azure for Licensee to use purchased EOL hosted EQuIS product licenses and services as specified and in accordance with the following:

- a. Activation Date, EarthSoft, and Licensee Obligations:
 - i) It is hereby agreed for contractual purposes, to the Activation Date as stated in the EarthSoft Price Quotation; the specified Software and services will be available on or before such date.
 - ii) EarthSoft shall provide Hosted Software as a service (SaaS) to the Licensee and its end-users via the internet to use for its internal business requirements as authorized herein.
 - iii) Licensee hereby acknowledges that the title of and intellectual property rights to all such Software is and shall remain in the ownership of EarthSoft and its Suppliers. The Licensee agrees to promptly

- pay all amounts due and to renew SaaS or remove data prior to the Subscription expiry date.
- b. Term & Duration: Licensee agrees to the length of the Subscription (Term) and is financially obligated to pay the Total Contract Value of the Subscription as stated in the EarthSoft Price Quotation; the specified Software and services will be available during the Subscription Term up until the Subscription Expiration Date. EOL Subscription Renewals need to be discussed, quoted, ordered, and paid for prior to Subscription Expiration to avoid service interruption.
 - c. Database: Each active EQuIS Online database will be hosted as a Microsoft Azure SQL Database with backup retention of no less than fourteen (14) days according to EarthSoft standard secure archival practices unless otherwise mutually agreed upon and specified in the Subscription Order.
 - d. Firewall Security: All database connections are secured via SSL encryption and authenticated via appropriate credentials. Upon written request from Licensee POC, EarthSoft may establish database firewall rules to limit direct database connections to specific IP addresses or ranges.
NOTE: Limiting database connections to specific IP addresses/ranges may limit the ability for EarthSoft to provide technical support.
 - e. Service Availability: EQuIS Online hosted environments are powered by a global network of Microsoft-managed data centers that meet or exceed industry standards for availability and reliability. Other than regular maintenance or unexpected outages, the service will be available 365 days per year, 24 hours per day (minimum of 166 hours per week).
NOTE: Neither EarthSoft nor Microsoft can control the Internet connection between the Licensee location(s) and the data center. Isolated Internet congestion, latency, or other connection outages will not reduce the assessed availability of the service.
 - f. Data Encryption: Data encryption allows for secure transmission and storage of your data in the public cloud. 2048-bit SSL certificate is used to encrypt EQuIS data as it transmits between Azure and the end-user (EQuIS Enterprise and Professional connections).
 - g. EOL Hosting Performance: If the Licensee feels that the hosting is not being met as defined herein, EarthSoft agrees to work with the Licensee towards a reasonable resolution.
 - h. Disaster Recovery: In the event of a server failure, a database backup will be restored as soon as EarthSoft can commission a new hosting resource; it is expected that new services will be restored in 24 hours.
 - i. Problem Reporting: EarthSoft will provide maintenance services as set out in the Maintenance Section 12.d. and the Severity Level Schedule. For problems regarding operation of the EOL Product Software (SQL Server, Web App Services, and EQuIS Products):
 - i) All problems reported by the Licensee shall include a Severity Level designation made by the Licensee. However, EarthSoft reserves the right, within reasonable discretion, to change the Severity Level as described herein or as may otherwise be deemed appropriate; notification to the Licensee will be made by EarthSoft as soon as practical.
 - ii) Problem Reports are to be submitted via email at support@earthsoft.com
 - iii) Licensee POC shall notify their EarthSoft Account Manager in writing, via email.
 - iv) Licensee may notify EarthSoft via the designated telephone line.

14. GENERAL PROVISIONS.

- a. Software, documentation, and services are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in The Rights in Technical Data and Computer Software clauses found in 48 CFR 252.227-7013. The Contractor/Manufacturer is EarthSoft, Inc., 125 S Alcaniz St, Suite 2, Pensacola, FL 32502-6004.
- b. The failure of either party to enforce any provision of this EULA shall not be deemed a waiver of any of the provisions or of the rights of such party thereafter to enforce that or any other provision. A

waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.

- c. The parties agree that if a court holds any provision of this agreement to be illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement to give effect to the stricken clause to the maximum extent possible.
- d. Sections of this agreement that, by their terms, require effect or enforcement after the termination or expiration of this agreement will survive, including "RESERVATION OF OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS," "DISCLAIMERS," "LIMITATIONS OF DAMAGES," "LIMITATION OF LIABILITY," "LICENSEE RESPONSIBILITIES" and these "GENERAL PROVISIONS".
- e. This agreement will be governed by and construed in accordance with the laws of the State of Delaware, U.S.A. and applicable federal laws of the United States; any disputes shall be resolved in the State of Delaware. Furthermore, any action to enforce this agreement will be filed in the State of Delaware. This choice of jurisdiction and venue does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.
- f. Any general terms and conditions you have in a purchase order or other documents do not apply. This agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding whether oral or written, relating to the subject of this EULA. This EULA may only be modified by a written agreement signed by EarthSoft.
- g. EarthSoft is not responsible for nonperformance or delay in performance under this EULA due to any force majeure event, including without limitation acts of God, acts of government, wars, civil disturbances, strikes, or other labor unrest, telecommunications failures, or other cause beyond the reasonable control of EarthSoft.

IN WITNESS WHEREOF, this Agreement has been executed by the following duly authorized representatives of the parties and shall be in full force and effect as of the date of the signatures below.

On Behalf of Licensor, EarthSoft, Inc.:

On Behalf of Licensee, LICENSEE NAME:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Email: _____

Email: _____

Phone: _____

Phone: _____

Date: _____

Date: _____

SHOULD YOU HAVE A QUESTION ABOUT THIS AGREEMENT OR WISH TO CONTACT US, PLEASE EMAIL AGREEMENTS@EARTHSOFT.COM