

# Subscription Service Agreement

## NOTICE TO USER:

**PLEASE READ THIS SUBSCRIPTION SERVICES AGREEMENT (“this Agreement”) CAREFULLY. BY CLICKING THE ACCEPT BUTTON, YOU ARE BECOMING A PARTY TO A CONTRACT WITH EPSILON SYSTEMS SOLUTIONS, INC. (“Epsilon Systems”) AND ARE CONSENTING TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

**DO NOT CLICK THE ACCEPT BUTTON UNLESS YOU UNDERSTAND AND AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

**IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK THE DO NOT ACCEPT BUTTON.**

### Definitions:

1. “The Product,” “Product,” “Products” or “the Products” means the maps, reports and other custom products and add-on web services, environmental, land-use and infrastructure data, renewable resource data, monthly and diurnal data then available on eSiting.
2. “Epsilon Systems” means the exclusive owner of [www.eSiting.com](http://www.eSiting.com) (“eSiting”) and all Products related thereto. Epsilon Systems is incorporated in Virginia with a principal place of business at 9242 Lightwave Avenue, #100 San Diego, CA 92123.
3. The term “Subscriber,” “you” or “your” shall mean the individual, a business or a legal entity including its employees, affiliates, partners, customers, contractors and agents using and/or accessing eSiting or the Products. If the “Subscriber” “you” or “your” is representing a business or a legal entity, the term shall also encompass its employees, affiliates, partners, customers, contractors or agents, who access and/or use in any way eSiting or the Products.

### **Acceptance of Terms**

**SUBSCRIBER AGREES THAT THIS AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY SUBSCRIBER. THIS AGREEMENT IS ENFORCEABLE AGAINST SUBSCRIBER AND ANY LEGAL ENTITY ON WHOSE BEHALF THE SERVICE IS USED: FOR EXAMPLE, SUBSCRIBER’S EMPLOYER.**

By accessing eSiting or continuing to access eSiting, this Agreement is valid and in effect.

Subscriber represents that Subscriber is 18 years of age or older and have the legal power and authority to enter into this Agreement. If you are signing up to use eSiting on behalf of a company, you represent that you have complete authority to bind the company to the terms governing the use of eSiting. If you do not agree to the terms of this Agreement, or if you do not have the authority, then you must stop using eSiting.

### **Terms and Conditions:**

**1. Payment and Taxes.** Subscription fees are due prior to activation and access to eSiting. Purchase of any Products shall require payment in full prior to order processing. For purchases up to \$20,000, payment may be made by credit card (American Express, Visa, MasterCard, or Discover).

Subscriber agrees that, except for taxes applicable to Epsilon Systems' compensation received pursuant to this Agreement that Subscriber is solely responsible for complying with and paying all sales, use, personal property and other taxes applicable to Subscriber's use of eSiting and/or purchase of Products pursuant to this Agreement.

**2. Order Rejection and Cancellation.** Epsilon Systems, in its sole discretion and without notice, reserves the right to accept, reject or cancel any order. Epsilon Systems will not be liable to you for any reason whatsoever for an acceptance, a rejection or cancellation of an order other than a refund of any monies paid for the Products ordered but not yet delivered. No prior course of dealing between you and Epsilon Systems shall create or be deemed to have created any obligation on the part of Epsilon Systems to accept any order from you.

**3. Final Sale.** All sales are final. You are solely responsible for ensuring all hardware and software requirements for use of and access to eSiting and the Products prior to purchase. The file formats used in eSiting and the Products are PDF, GeoTIFF, .gdb, and shapefile, MS Excel, MS Word, KML. Adobe and/or any other software capable of handling these types of files are required. Epsilon Systems will not be liable nor will a refund be granted for purchases made but not usable because of inadequate hardware and software capabilities. After purchasing access to eSiting, you will be provided a general timeline for when accessibility to eSiting will be granted. Epsilon Systems shall not be liable nor will a refund be granted for accessibility provided outside the general timeline. Additionally, no refunds will be granted if you do not agree in any way with the results of eSiting or the Product. Refunds are strictly limited to monies paid for access granted to eSiting and Products not delivered.

**4. Subscriptions** All subscription fees will be charged in advance. Subscribers may revise their subscription level and pay the applicable fees.

- **Annual Subscription**

Annual eSiting subscriptions allow subscribers to navigate the environmental resource and constraints maps for the regions available. Subscribers receive access to the mapping tool, reports, and project tracking as a single user. Additional licenses for named users may be purchased at any level.

Annual subscriptions have access to all map data, reports and automated analyses for one named user.

- **Single Project Subscription**

Single project subscriptions allow subscribers to navigate the environmental resource and constraints maps for the regions available. Subscribers receive access to the mapping tool, reports, and project tracking as a single user for a single project only.

Single project subscriptions have access to all map data, reports and automated analyses for session single project only.

**5. Technical Support.** If you have any technical problems or questions with eSiting or a Product please contact Epsilon Systems at (760) 446-6400 x1004 or via e-mail at support@esiting.com during normal business hours (9:00am to 5:00pm Pacific Time Zone). Epsilon Systems shall have no duties to provide such technical support except as explicitly set forth herein and upon payment of the appropriate subscription fee.

**6. Ownership and Intellectual Property.** Epsilon Systems exclusively owns and retains all right, title and interest in and to all intellectual property rights in eSiting and the Products, including patent and copyright. You have only those rights to use eSiting and the Products expressly given to you in this Agreement. You acknowledge and agree that any use of eSiting or any other of Epsilon Systems proprietary computer software, databases, designs, methodology, procedures, trade secrets, copyrights, patents, trademarks, logos, or other proprietary information in connection with this Agreement shall not be deemed as a transfer of rights with respect thereto. Nothing in this Agreement is intended to grant or confer any rights by license or otherwise to you under any patent or copyright of Epsilon Systems except as expressly set forth herein.

You shall not translate, reverse engineer, reverse assemble, change, modify, alter, disassemble, decompile or otherwise attempt to derive the underlying ideas, algorithms, structure or organization of any trade secrets, proprietary processes or configurations of eSiting or the Products..

Access to eSiting and the Products are for internal or non-commercial company use within Subscriber's organizations. Without Epsilon Systems' prior express written consent, you shall not write or develop any derivative work or provide, disclose, divulge or make available to, or permit use of eSiting or the Product by, persons other than those affiliates, subsidiaries, officers, employees, subcontractors and consultants ("Representatives") with an absolute need to use eSiting or the Products in connection with your lawful business purposes. Notwithstanding the following, Subscriber shall be permitted to use reports in presentation to a third party to secure business or as part of a submittal to a government agency to qualify for incentives or permits.

The alteration, removal or obliteration of any patent, copyright, trademark or proprietary notices on eSiting or the Products is strictly prohibited.

**7. Limited License.** Epsilon Systems hereby grants an individual, non-exclusive, non-transferable license to Subscriber for the right and license to use e-Siting.com and to download, save and print the Products Subscriber purchases subject to the limitations set forth in this Agreement. The individual, non-exclusive, non-transferable license granted herein is exclusive to Subscriber as set forth herein, and is not transferable or assignable to any other party without Epsilon Systems' prior written consent. Subscriber may not sublicense any rights or obligations, without the prior written consent of Epsilon Systems. Any other use of all or part of eSiting or any Product, including, without limitation, (i) as part of a service you would provide others, commercial timesharing, or rental or sharing arrangements, (ii) uploading to a public web site, (iii) reproducing in a published report, or (iv) transmitting electronically to non-Subscribers is a violation of Epsilon Systems' intellectual property rights and is strictly prohibited. Furthermore, you acknowledge and agree that you will be liable for any violation of the limitations on use set forth in this Agreement by you or any Representatives. Epsilon Systems shall be held harmless for any misuse of the eSiting or any Products and for any use of eSiting or the Products which has been altered, modified or tampered with after initial access to eSiting by Subscriber. .

**Subscriber acknowledges and agrees that Epsilon Systems retains exclusive ownership throughout the world of eSiting, including portions or copies, and all rights not expressly granted to the Subscriber are reserved by Epsilon Systems.**

#### **8. Acknowledgement of Public Data Sources:**

Epsilon Systems **does not** warrant, guaranty, or represent that e-Siting or any Product or other feature you download from eSiting or access via eSiting will be secure, uninterrupted, error-free, or free of viruses, contamination, or other potentially destructive features.

Bing Maps is used as a data source in some Products. The Bing Maps home page is <http://www.bing.com/maps/>

The Bureau of Land Management (BLM) is used as a data source in some Products. The BLM home page is <http://www.blm.gov/>

Environmental Systems Research Institute (Esri) is used as a data source in some Products. The Esri home page is <http://esri.com/>

The Federal Aviation Administration (FAA) is used as a data source in some Products. The FAA home page is <http://www.faa.gov/>

The Federal Emergency Management Agency (FEMA) is used as a data source in some Products. The FEMA home page is <http://www.fema.gov/>

Google Maps is used as a data source in some Products. The Google Maps home page is <https://maps.google.com/>

MapSearch is used as a data source in some Products. The MapSearch home page is <http://www.mapsearch.com/>

The National Oceanic and Atmospheric Administration (NOAA) is used as a data source in some Products. The NOAA home page is <http://www.noaa.gov/>

The National Renewable Energy Laboratory (NREL) is used as a data source in some Products. The NREL home page is <http://www.nrel.gov/>

The Office of the Secretary of Defense (OSD) is used as a data source in some Products. The OSD home page is <http://www.defense.gov/osd/>

The Nature Conservancy (TNC) is used as a data source in some Products. The TNC home page is <http://www.nature.org/>

The U.S. Fish and Wildlife Service (USFWS) is used as a data source in some Products. The USFWS home page is <http://www.fws.gov/>

The U.S. Forest Service (USFS) is used as a data source in some Products. The USFS home page is <http://www.fs.fed.us/>

The US Geological Survey (USGS) is used as a data source in some Products. The USGS home page is [http://www.usgs.gov.](http://www.usgs.gov/)

Various U.S. States, Counties and Cities are used as a data source in some Products.

**9. No Warranty.** Subscriber expressly acknowledges and agrees that use of eSiting or any Product is at Subscriber's sole risk. **eSiting and the Products are provided "as is" and Epsilon Systems expressly and unequivocally disclaims all warranties, express or implied, of merchantability, fitness for a particular purpose and non-infringement and regarding the accuracy, currency, availability, reliability, completeness or performance of eSiting or any Products.** No oral or other written communications shall be deemed to create a warranty with respect to eSiting or any Products.

**10. LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOT WITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EPSILON SYSTEMS' TOTAL LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY SUBSCRIBER UNDER THIS AGREEMENT FOR THE MONTH IMMEDIATELY PRECEDING THE ACT OF INJURY THAT GAVE RISE TO THE LIABILITY. EPSILON SYSTEMS SHALL NOT BE LIABLE TO ANYONE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS AND REVENUE) ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR SERVICES PROVIDED BY EPSILON SYSTEMS, EVEN IF EPSILON SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11. INDEMNIFICATION.** SUBSCRIBER AGREES TO INDEMNIFY, DEFEND AND HOLD EPSILON SYSTEMS HARMLESS FROM ANY DEMANDS, LOSS, LIABILITY, CLAIMS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES), MADE AGAINST EPSILON SYSTEMS, ITS DIRECTORS, SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AND AGENTS BY ANY THIRD PARTY DUE TO OR ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUBSCRIBER'S PURCHASE OR USE OF EPSILON SYSTEMS OR THE PRODUCTS AND/OR SUBSCRIBER'S BREACH OF THIS AGREEMENT UNLESS CAUSED SOLELY AND EXCLUSIVELY BY EPSILON SYSTEMS' GROSS NEGLIGENCE OR WILLFUL AND INTENTIONAL WRONGDOING.

The indemnity provided by this Section 11 shall survive termination or expiration of this Agreement.

**12. Injunctive Relief.** Subscriber agrees that any violation or threatened violation of this Agreement may cause irreparable injury to Epsilon Systems, entitling Epsilon Systems to injunctive relief in addition to all legal remedies.

**13. Permitted Disclosures.** Epsilon Systems reserves the right to disclose any information concerning your subscription or Products, including but not limited to, identity and payment method, to the extent required by law or judicial or government order.

**14. Compliance with Export Control Laws.** Subscriber agrees to comply strictly with all U.S. export laws and controls and assumes sole responsibility for obtaining licenses or permits for export or re-export as may be required. Subscriber will defend, indemnify, and hold Epsilon Systems harmless in the event of any legal action of any nature occasioned by a violation of this Section 14. The indemnity provided by this Section 14 shall survive termination or expiration of this Agreement.

**15. Governing Law.** This Agreement shall be governed by, enforced and construed exclusively in accordance with the domestic laws of the State of California, without giving effect to its principles of conflicts of laws. Any litigation based hereon or arising out of or in connection with this Agreement shall be brought and maintained exclusively in the United States District Court for the Southern District of California or the courts of the State of California with a venue in San Diego, California (USA) and the parties hereby irrevocably

waive all jurisdictional defenses and irrevocably agree to submit to the jurisdiction of such courts for the purpose of any such litigation.

**16. Severability/Unenforceable Provision.** If any term of this Agreement should be found illegal or unenforceable by any court of competent jurisdiction, the illegal or unenforceable provision shall be reformed to the extent required to render such provision legal and enforceable

**17. Notices; Amendments.** Any notice given under this Agreement shall be in writing and sent by registered, certified, or electronic mail, or delivered by a reputable overnight courier. All notices to you may be made to the address listed in Epsilon Systems' records. All notices to Epsilon Systems shall be delivered to: Epsilon Systems Solutions Inc., 9242 Lightwave Ave., Suite 100, San Diego, CA (USA) 92123, Attention: Legal Department. No provision of this Agreement may be waived, modified, amended, discharged or terminated unless by an instrument in writing expressly referring to this Agreement executed by an authorized representative of Epsilon Systems and then only to the extent set forth in such instrument. Epsilon Systems waiver of any breach of this Agreement is not a waiver of any other breach.

**18. No Assignments or Sublicenses.** Subscriber may not assign or sublicense any of Subscriber's rights or obligations under this Agreement without the express prior written consent of Epsilon Systems. Subscriber agrees that any assignment or sublicense of this Agreement constitutes a material breach of this Agreement.

**19. Billing & Billing Errors.** Subscriber agrees to provide Epsilon Systems with accurate billing and contact information, including legal name, company name (if applicable), street address, telephone number, and Email address. Subscriber also agrees to notify Epsilon Systems of any changes to this information within a period not to exceed 30 days. Epsilon Systems reserves the right to terminate Subscriber's access to eSiting, if the Subscriber provides false or fraudulent contact or billing information.

In case Subscriber identifies a billing error, Subscriber must contact Epsilon Systems in writing within 30 days of receiving an invoice or billing receipt containing the amount in question in order to be eligible to receive a credit or adjustment. Upon verification and validation of reported billing error by Epsilon Systems and in the outcome that Epsilon Systems finds the billing error to be true, the maximum credit that Subscriber could be entitled to, shall not exceed the total amount of the bill in question.

**20. Entire Agreement.** This Agreement constitutes the entire and final agreement and understanding between you and Epsilon Systems with respect to eSiting and the Products and supersedes all prior agreements or understandings, whether written or oral.

**21. Attorneys' fee.** If, on account of any breach or default by Subscriber in Subscriber's obligations under the terms and conditions of this Agreement, it shall become necessary or appropriate for Epsilon Systems to employ or consult with an attorney concerning or to enforce or defend any of Epsilon Systems' rights or remedies arising under this Agreement

or to collect any sums due from Subscriber, Subscriber agrees to pay all costs and fees so incurred by Epsilon Systems, including, without limitation, reasonable attorneys' fees and costs.

**22. Confidentiality of Subscriber Data** Subscriber's account data is considered confidential. Epsilon Systems will not share, rent, sell, or trade Subscriber information. Epsilon Systems may, however, use the Subscriber's contact information to contact Subscriber to provide support, evaluate the satisfaction of service, enhance Subscriber's experience or ensure proper billing and payment for Epsilon Systems' service.

**23. Subscribers Data Backup and Security** Epsilon Systems shall use commercially reasonable efforts to protect Subscriber's information, however it remains Subscriber's responsibility to secure and maintain your personal information.

**24. Inappropriate Use** Subscriber is strictly prohibited from using eSiting or the Products in any way for any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind. Subscriber agrees to defend, indemnify, and hold Epsilon Systems harmless against any claim or action, civil or criminal that arises from Subscriber's inappropriate use of eSiting or the Products. The indemnity provided by this Section 24 shall survive termination or expiration of this Agreement.

**25. Force majeure** Epsilon Systems shall not be liable for any failure in performance due to causes beyond either reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the accessibility of eSiting or the delivery of the Products)). This Section will not, however, apply to your payment obligations under this Agreement.

**26. Modification of Agreement.** Epsilon Systems reserves the right to change the terms and conditions of this Agreement, and all policies relating to any eSiting services, at any time. Epsilon Systems shall notify the Subscriber by posting an updated version of this Agreement on eSiting. Subscriber is responsible for regularly reviewing this Agreement on eSiting. Continued use of eSiting or the Products after any such changes shall constitute Subscriber's consent to such changes.

**27. Termination of Service Agreement** Subscriber or Epsilon Systems may terminate this Agreement by notifying the other party in writing at least 30 days prior to the beginning of the next billing cycle. Upon termination of this Agreement for any reason, Subscriber will immediately cease all use of the eSiting. After termination, Epsilon Systems will remove all data in the Subscriber's account. Epsilon Systems will make a file of Subscriber's data available to Subscriber for a fee if Subscriber makes such a request in writing at the time notice of termination is given and Subscriber's charges are paid in full upon termination. Subscriber acknowledges, and agrees, that Epsilon Systems is not



obligated to retain Subscriber's data after termination, and will delete the data after such time.

Additionally, Epsilon Systems may immediately terminate this Agreement if (1) Subscriber fails to make any timely payment (2) Subscriber fails to adhere to any provisions of this Agreement, or (3) Epsilon Systems determines in its sole and exclusive judgment that terminating Subscriber's access to eSiting is advisable for security reasons, to protect Epsilon System from liability, or for the continued normal and effective operation or eSiting.