

Mutual Nondisclosure Agreement



Agreement No. 00332645.0

This Nondisclosure Agreement ("Agreement") is between

Legal Entity Name	Legal Entity Address
Environmental Systems Research Institute, Inc. ("Esri")	380 New York Street, Redlands, CA 92373, United States

and

Counterparty Legal Name	Counterparty Address
San Bernardino County (" County ")	670 E Gilbert St, San Bernardino, CA, 92415-0912, United States

Esri and County agree as follows:

1. DEFINITIONS

1.1. "Effective Date" means date of last signature below.

1.2. County and Esri may be collectively referred to as "Parties" or individually as a "Party."

1.3. "Purpose of this Agreement" is to disclose information from the SOC2 report in relation to the proposed Esri Managed Cloud Services project to determine the feasibility of entering into a potential business relationship or to facilitate performance in furtherance of an existing business relationship, including provision of technical support.

1.4. "Disclosing Party" means a Party disclosing Confidential Information.

1.5. "Receiving Party" means a Party receiving Confidential Information.

1.6. "Regulations" means the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 7920.005)

1.7. "Confidential Information" means confidential, proprietary, or trade secret information confidential, proprietary, or trade secret information that is non-public information that is disclosed by Disclosing Party to Receiving Party in writing and conspicuously marked by the Disclosing Party or disclosed orally and confirmed in writing within thirty (30) days of disclosure as "Confidential," "Proprietary," "Trade Secret," or similar term, and falls within a recognized exemption to the Regulations, provided that Esri financial information, Esri security information, and information that Esri as prime contractor receives from a customer and provides to County as a prospective subcontractor does not require such marking and is deemed "Confidential Information."

2. FORM OF CONFIDENTIAL INFORMATION

2.1. 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 the Receiving Party during a visit to Disclosing Party's facility.

2.2. Confidential Information may include, without limitation, sales and marketing plans, business forecasts, financial information, customer lists, security information, source code, software source documents, techniques,

methodologies, sketches, drawings, models, inventions, know-how, processes, algorithms, formulas, data models, object models, software technology and tools, information concerning research, experimental and development work, design details, patent applications, unpublished specifications and engineering information.

2.3. Personally identifiable information (other than contact information of the Parties) will be aggregated and anonymized prior to disclosure.

3. NONDISCLOSURE OBLIGATIONS

3.1. Receiving Party will use Confidential Information only in connection with the Purpose of this Agreement. Receiving Party will protect the Confidential Information using the same degree of care, but no less than reasonable care, as Receiving Party uses to protect its own confidential information of a similar nature. Without limiting the foregoing, Receiving Party will protect the Confidential Information at all times by

- a. Not disclosing to any third party either (i) the Disclosing Party's Confidential Information or (ii) the fact that Disclosing Party has provided such Confidential Information to Receiving Party;
- b. Limiting any discussion and exchange of security information and financial information to the Disclosing Party's designated points of contact for financial information and security information shown below in this Agreement;
- c. Not publishing or disclosing Esri's security information and financial information to any other person or entity, except the designated County point of contact shown below in this Agreement, without the prior written approval of Disclosing Party; and
- d. Restricting the disclosure of Confidential Information to only those employees (including the employees of affiliated companies) who have a need-to-know and who are aware of their nondisclosure obligations regarding Confidential Information and have agreed to be bound by the terms and conditions of this Agreement.

As the Receiving Party, if Esri receives Confidential Information from the Disclosing Party that was provided to Esri for technical support purposes, including ongoing troubleshooting, bug testing, and performance testing, and to maintain consistency with future version releases, Esri may continue to store, access, and use the Confidential Information for follow-on technical support purposes.

3.2. Notwithstanding anything to the contrary in this Agreement, Confidential Information may be disclosed (i) as required by law; (ii) to a court pursuant to a court order; and (iii) to internal or external legal, financial, or tax advisors under an appropriate nondisclosure obligation. If the Receiving Party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the Disclosing Party, the Receiving Party will, to the extent legally permissible, promptly notify the Disclosing Party and if requested by the Disclosing Party, tender to the Disclosing Party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the Receiving Party will then be entitled to comply with the request to the extent permitted by law. Esri represents that it has a good faith belief that its Confidential Information is exempt from disclosure under the Regulations and agrees to reimburse County for, and to indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including without limitation, attorneys' fees, expenses, and court costs of any nature arising from or relating to County's non-disclosure of any such information.

3.3. The obligations in this Agreement do not apply to the following information:

- a. Information that is or becomes available to the public through no breach of this Agreement;
 - b. Information that is already known to Receiving Party and can be shown to be in its possession at the time of disclosure;
 - c. Information that was received by Receiving Party without any duty of confidentiality;
 - d. Information that is received by Receiving Party from a third party that is not under a nondisclosure obligation to Disclosing Party;
 - e. Information that is independently developed by either Party without reference to Confidential Information;
- and

- f. Information that the Disclosing Party permits the Receiving Party to disclose, provided the permission is in writing from the contact in Section 9 Points of Contact.

3.4. The following will not be exchanged between the Parties under this Agreement:

- a. Information, data, or technology controlled for export under the International Traffic in Arms Regulations (ITAR);
- b. Unclassified controlled technical information (UCTI) or Covered Defense Information (CDI) under DFARS Subpart 204.73 (Safeguarding Covered Defense Information and Cyber Incident Reporting); and
- c. Protected health information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA).

4. OWNERSHIP; NO LICENSE

4.1. The disclosure of Confidential Information to Receiving Party will not transfer any rights to Confidential Information, except for the right to use Confidential Information for the Purpose of this Agreement.

4.2. The disclosure of Confidential Information does not imply, convey, or grant a license, right, title, or ownership interest in the Confidential Information to Receiving Party.

5. NO WARRANTY

Confidential Information is provided as is without warranty of any kind. Confidential Information will not constitute a representation or a warranty of accuracy, suitability, or completeness, nor serve as an inducement of reliance.

All implied warranties, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, and noninfringement are hereby disclaimed.

6. INDEPENDENT DEVELOPMENT

Each Party develops products and services related to the general subject matter of the Confidential Information. Receiving Party may develop products and services without the use of the Disclosing Party's Confidential Information. Neither Party will be liable for payment of royalties, license fees, or any other amounts from such independent development.

7. RETURN OF CONFIDENTIAL INFORMATION

Except as required by law, upon the Disclosing Party's written request, Receiving Party will promptly return to Disclosing Party or destroy any materials or documents, whether or not furnished by Disclosing Party, containing Confidential Information together with all copies made by Receiving Party. Receiving Party will provide written confirmation to Disclosing Party that materials or documents containing Confidential Information have been returned or destroyed. The obligation to return or destroy excludes Confidential Information retained in backup media or other archival records maintained in the ordinary course of business that are not readily accessible by Receiving Party personnel.

8. TERM AND TERMINATION

This Agreement terminates as to the exchange of any new Confidential Information one (1) year from the Effective Date. Either Party may terminate the right to exchange Confidential Information by providing written notice to the other Party specifically referencing this Agreement. Receiving Party will maintain the confidentiality indefinitely for financial information, security information, trade secrets, and anything marked as "Trade Secret." Receiving Party will maintain the confidentiality of all other Confidential Information for three (3) years after termination.

9. POINTS OF CONTACT

The designated points of contact for receiving Confidential Information (except as stated below) are as follows:

For Esri
Name: Noelle Keefer
Address: 380 New York Street,
Redlands, CA 92373,
United States

E-mail: nsantos@esri.com

For County
Name: Steven Raughley
Address: 670 East Gilbert Street, San
Bernardino, CA-92415, United
States

E-mail: steven.raughley@itd.sbcounty.gov

County will only contact the following individuals regarding Esri security information:

Corporate Security

Name: Corporate Security Team
Address: 380 New York Street
Redlands, CA 92373
Telephone: 909-793-2853
E-mail: security@esri.com

Product Security

Name: Software Security and Privacy Team
Address: 380 New York Street
Redlands, CA 92373
Telephone: 909-793-2853
E-mail: SoftwareSecurity@esri.com

County will only contact the following individual regarding Esri financial information:

Name: Lance Lenhert
Address: 380 New York Street
Redlands, CA 92373
Telephone: 909-793-2853
E-mail: LLenhert@esri.com

10. GENERAL PROVISIONS

10.1. Equitable Relief. Any breach of this Agreement by Receiving Party may cause irreparable damage to Disclosing Party. In the event of such breach, in addition to any and all remedies at law, Disclosing Party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction to prevent violation of these terms. Disclosing Party does not have to post a bond or prove injury as a condition for relief. Disclosing Party will have the right to bring independent causes of action to protect the Confidential Information, and Receiving Party will not seek to or support any action to preempt one cause of action over another.

10.2. Export Control Regulations. Receiving Party will not export, reexport, or provide Confidential Information, in whole or in part, to (i) any country to which the United States has embargoed goods; (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List; or (iv) any person or entity where such export, reexport, or provision violates any US export control law or regulation. Receiving Party will not export Confidential Information to any facility in violation of these or other applicable laws and regulations.

10.3. Governing Law. This Agreement will be governed by the laws of the State of California without reference to its conflict of laws principles.

10.4. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes any prior agreements or understandings between the Parties regarding the same subject matter. No amendment, alteration, or waiver of this Agreement will be valid or binding unless made in writing and signed by both Parties.

The Parties below have caused this Agreement to be executed by authorized representatives as of the Effective Date.

SAN BERNARDINO COUNTY
(Company)

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature: _____

Signature: _____

Printed Name: Dawn Rowe

Printed Name: _____

Title: Chair, Board of Supervisors

Title: _____

Date: _____

Date: _____