

COE/NCES User Software License for COE/NCES Toolkit

INTRODUCTION

This document constitutes a License between TASC, Inc. (hereinafter TASC) and the Common Operating Environment/Netcentric Enterprise Services Users (COE/NCES Users; hereinafter "Users") governing the use by COE/NCES Users, as defined herein, of the COE/NCES Toolkit.

In addition to the terms hereof, this License includes the following documents as incorporated by reference herein:

1. Section I to User Software License for COE/NCES Toolkit – Definition of COE/NCES Community.
2. Section II to User Software License for COE/NCES Toolkit - Terms Governing Use of ESRI Products
3. Section III to User Software License for COE/NCES Toolkit – Term and Termination
4. Section IV to User Software License for COE/NCES Toolkit – General Provisions
5. Section V to User Software License for COE/NCES Toolkit – Export Terms and Conditions
6. Section VI to User Software License for COE/NCES Toolkit – Special License Terms and Conditions

COE/NCES Community Definition. The COE/NCES Community is defined as only those COE/NCES User(s) who utilize mission application systems that (1) are Command, Control and Intelligence (C2I) (including Department of Defense Intelligence Information System (DoDIIS) and Global Combat Support System (GCSS)) mission applications sponsored by the DoD or Coast Guard which (2) are part of the COE or NCES and which (3) are embedded applications (i.e. mission applications which embed CJMTK toolkit components into larger mission application systems). For the purpose of this agreement, Command, Control, and Intelligence (C2I) systems are defined as those systems that provide command, control, and intelligence processing in support of the operational commanders and their warfighting forces. The focus of C2I systems is the integration of information across a commander's area of operations, to include systems provided by and under the operational control of the Commander in Chiefs (CINCs), Services, and Agencies (C/S/As). C2I systems eligible for the CJMTK COE/NCES Toolkit License are those designed to provide the integration of C2I processes and applications in support of operational units involved with the forward deployment or tactical units designed to operate in theater of operations. Included in these are DODIIS and GCSS applications and systems that are used in air, land, and naval combat operations. C2 Systems are employed by a commander in planning, directing, coordinating, and controlling forces and operations in the accomplishment of the

CJMTK End User License Agreement
Final (5/15/08)

mission. Intelligence systems are employed to manage data gathering, to obtain and process the data, to interpret the data, and to provide reasoned judgments to decision makers as a basis for action. The fusion of C2 and Intelligence systems is designed to provide the commanders and staff at all levels with the information needed to derive a consistent picture of their battlespace in order to conduct coordinated and synchronized operations. However, the CJMTK COE/NCES Toolkit Community specifically excludes mission applications that are designed primarily for base or facilities management (including installation protection, emergency operation coordination, Homeland Defense, and Homeland Security), range management, environmental management, data acquisition and production, battlefield modeling and simulation, wargaming, acquisition simulation, and system testing. The excluded applications will require negotiation for a contract modification to cover use by additional User(s) of the COE/NCES Toolkit. Special Note: This License Agreement, as proposed in TASC's Final Proposal Revision (FPR), dated 24 April 2002, referenced 122 COE Systems. These 122 systems, although not separately listed here, are considered eligible with two (2) exceptions: (1) if the system is an office and not a mission application (e.g. METOC and AF Weather) and (2) if any of the systems is not currently part of the COE (or NCES), until such time as the system becomes part of the COE (or NCES), the system will be considered ineligible. These COE/NCES Community Systems or Programs shall have unrestricted use of the toolkit license. Upon written notice by the Licensee to TASC, further extension of the COE/NCES User Community within the community defined and permitted in this Section will be allowed at no additional cost to the Licensee. In no event shall, the COE/NCES Toolkit be utilized by users/system developers of any kind that seek to provide a geospatial visualization application through the addition of a simple graphical user interface (GUI).

COE/NCES Toolkit The combination of software, data and/or documentation that conforms to the specification of the product ordered by the Licensee and Sublicensees of the Licensee through Prime Contract NMA201-02-C-0014 and delivered hereunder.

COE/NCES Users. Those members of the COE/NCES Users, as defined herein, who may use the COE/NCES Toolkit as described herein, but are expressly prohibited from distributing the COE/NCES Toolkit as also described herein.

Additional COE/NCES Users. COE/NCES Users added to the COE/NCES Community, as requested by National Geospatial-Intelligence Agency (NGA), will be allowed to use the COE/NCES Toolkit in accordance with this User License and Attachments hereto, provided for herein.

WARRANTY EXCLUSION

TASC AND ITS THIRD PARTY SUPPLIERS (INCLUDING ESRI AND AGI) DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING (WITHOUT LIMITATION) THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TASC DOES NOT WARRANT THAT USE OF THE COE/NCES TOOLKIT OR ANY SOFTWARE, DATA DOCUMENTATION OR OTHER PRODUCTS DELIVERED TO LICENSEE AND SUBLICENSEES OF THE LICENSEE WILL BE UNINTERRUPTED OR THAT THE COE/NCES TOOLKIT, OR ANY

SOFTWARE, DATA, DOCUMENTATION, OR OTHER PRODUCTS DELIVERED HEREUNDER ARE ERROR-FREE. TASC AND ITS THIRD PARTY SUPPLIERS DOES NOT REPRESENT OR WARRANT THAT USE OF ANY SOFTWARE LICENSED HEREUNDER, INCLUDING ANY CONTRACTOR SOFTWARE, WILL NOT INFRINGE THIRD PARTY INTELLECTUAL PROPERTY.

Maintenance. TASC shall provide its maintenance services for the COE/NCES Toolkit.

SECTION I: User Software License for COE/NCES Toolkit

The COE/NCES Users, as defined in the Introduction, and as Sublicensees of the Licensee, shall have non-exclusive, worldwide, perpetual, limited right and license to use the COE/NCES Toolkit license delivered hereunder. Upon written notice by User to TASC, further extension of the COE/NCES User Community within the community defined and permitted in this Section will be allowed at no additional cost to the Licensee. In no event shall, the COE/NCES Toolkit be utilized by users/system developers of any kind that seek to provide a geospatial visualization application through the addition of a simple graphical user interface (GUI).

SECTION II: User Software License Agreement for COE/NCES Toolkit- Terms Governing Use of ESRI Products, General User License Terms and Conditions (“COE/NCES User License Agreement”)

1.0 DEFINITIONS

As used herein, the following words, phrases, or terms in this Agreement shall have the following meanings:

- (a) "Software" means the actual copy of all or any portion of any third parties proprietary geographic information system (GIS) software technology, computer software code, components, dynamic link libraries (DLLs), and programs delivered on any media, including, but not limited to, alpha, beta, prerelease, restricted version(s), or final commercial release provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied hereunder. Software shall include ESRI proprietary Commercial off the shelf software and Software developed by TASC, Inc., and delivered hereunder.
- (b) "Data" means any third party data vendor(s) digital data set(s) including, but not limited to, geographic, vector data coordinates, raster, or associated tabular attributes in ESRI® GIS software compatible format(s) supplied under this Agreement.

- (c) "Documentation" means all of the printed and digital materials including, but not limited to, user documentation, training documentation, or technical information and briefings supplied under this Agreement.
- (d) "License Manager" means the nondestructive license management software program, comprised of a confidential software keycode or hardware key, which controls the distribution of the licensed number of Software copies to requesting end user(s) of Licensee.
- (e) "Contractor" shall mean TASC, Inc. "COE/NCES Community" shall only mean those COE/NCES User(s) determined to be part of the COE/NCES CJMTK baseline community, as defined in the introduction, .
- (f) "Licensee" shall mean the United States Government, acting through its National Geospatial-Intelligence Agency and shall include the COE/NCES Community as Sublicensees to the Licensee.
- (g) "COE/NCES User(s)" shall mean those members of the COE/NCES Community as agreed upon by the parties herein, and more fully described in the definition of the COE/NCES Community in the Introduction.

2.0 INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

The Software, Data, and Documentation are owned by Contractor and its licensor(s) and are protected by United States laws and applicable international laws, treaties, and conventions regarding intellectual property or proprietary rights. Contractor and its licensor(s) retain all rights, title, and ownership not granted herein to all copies of the Software, Data, and Documentation licensed and delivered under this Agreement. From the date of receipt, Licensee and Sublicensees of the Licensee agree to use reasonable effort to protect the Software, Data, and Documentation from unauthorized use, reproduction, distribution, or publication. All rights not specifically granted in this Agreement are reserved to Contractor and its licensor(s).

3.0 SCOPE OF USE

3.1 PERMITTED USES

- 3.1.1** Licensee and Sublicensees of the Licensee may (i) install and store copies onto electronic storage device(s) and (ii) only use the Software, Data, and Documentation as described in Section VI set forth herein and in accordance with the COE/NCES Community configuration agreed upon in writing by the parties and made a part of this Agreement.
- 3.1.2** Licensee and Sublicensees of the Licensee may make one (1) copy of the Software, Data, and Documentation for archival purposes during the term of this Agreement. Additionally, Licensee and Sublicensees of the Licensee may make routine computer backups of the Software, Data, and Documentation. Licensee and Sublicensees of the Licensee may establish a redundant server for failover operations in the event the primary site fails.
- 3.1.3** Licensee and Sublicensees of the Licensee may customize the Software using any (i) macro or scripting language, (ii) open application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
- 3.1.4** Licensee and Sublicensees of the Licensee may use the Data only as described in the Distribution Rights section of the help or metadata files delivered with the Software, Data, and Documentation.

3.1.5 Licensee and Sublicensees of the Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee and Sublicensees of the Licensee's own internal use. The portion(s) of the Documentation supplied in digital format merged with other software and printed or digital documentation shall continue to be subject to the terms and conditions of this Agreement and shall provide the following copyright attribution notice acknowledging the proprietary rights of ESRI and its licensor(s) in the Documentation supplied in digital format: "Portions of this document include intellectual property of ESRI and its licensor(s) and are used herein under license. Copyright © [*Insert the actual copyright date(s) from the source materials*] Environmental Systems Research Institute, Inc., and its licensor(s). All rights reserved."

3.2 USES NOT PERMITTED

3.2.1 Licensee and Sublicensees of the Licensee shall not sell; rent; lease; sublicense; lend; assign; time-share; or act as a service bureau or Application Service Provider (ASP) that allows third party access to the Software, Data, and Documentation except as provided herein; or transfer, in whole or in part, access to prior or present versions of the Software, Data, or Documentation, any updates, or Licensee and Sublicensees of the Licensee 's rights under this Agreement.

3.2.2 Licensee and Sublicensees of the Licensee shall not redistribute the Software, in whole or in part, including, but not limited to, extensions, components, or DLLs without the prior written approval of Contractor as set forth in an appropriate redistribution license agreement.

3.2.3 Licensee and Sublicensees of the Licensee shall not reverse engineer, decompile, or disassemble the Software, Data, or Documentation, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction in order to protect Contractor and its licensor(s) trade secrets and proprietary information contained in the Software, Data, or Documentation.

3.2.4 Licensee and Sublicensees of the Licensee shall not make any attempt to circumvent the technological measure(s) (e.g., License Manager, etc.) that controls access to or use of the Software, Data, and Documentation, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.

3.2.5 Licensee and Sublicensees of the Licensee shall not use the Software to transfer or exchange any material where such transfer or exchange is prohibited by copyright or any other law.

3.2.6 Licensee and Sublicensees of the Licensee shall not remove or obscure any Contractor or its licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Software, Data, or Documentation.

SECTION III: Term and Termination

The license granted to Licensee and Sublicensees of the Licensee by this Agreement shall commence upon the acceptance of this Agreement and shall be perpetual notwithstanding the fact that this agreement has either expired or has been terminated

by the Licensee and Sublicensees of the Licensee as set forth herein. Contractor may terminate this Agreement upon prior written notice to Licensee and Sublicensees of the Licensee for Licensee and Sublicensees of the Licensee's material breach, and Licensee and Sublicensees of the Licensee's failure to cure such material breach within sixty (60) days after it receives notice from Contractor specifying the material breach. Any dispute arising between Licensee and Sublicensees of the Licensee and ESRI arising out of the Licensee and Sublicensees of the Licensee shall be settled in accordance with the terms set forth in Section IV, 4.5 below. Upon the final determination of Licensee and Sublicensees of the Licensee's breach of this Agreement, Licensee and Sublicensees of the Licensee shall uninstall, remove, and destroy all Software, Data, and Documentation, and any whole or partial copies, modifications, or merged portions in any form and execute and deliver evidence of such destruction to Contractor, which evidence shall be in a form acceptable to Contractor in its sole discretion.

SECTION IV: General Provisions

4.1 EXPORT CONTROL REGULATIONS

Licensee and Sublicensees of the Licensee expressly acknowledges and agrees that Licensee and Sublicensees of the Licensee shall not export, reexport, or provide the Software, Data, or Documentation, in whole or in part, to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation. Licensee and Sublicensees of the Licensee shall not export the Software, Data, and/or Documentation or any underlying information or technology to any facility in violation of these or other applicable laws and regulations. Licensee and Sublicensees of the Licensee represents and warrants that it is not a national, resident, located in or under the control of, or acting on behalf of any person, entity, or country subject to such U.S. export controls.

4.2 SUCCESSOR AND ASSIGNS

Licensee or its authorized Sublicensees (COE/NCES USER(s)) shall not assign, sublicense, or transfer ESRI, TASC or the Licensee and Sublicensees of the Licensee's rights or delegate its obligations under this Agreement, except to a government entity into which it has merged, or who has otherwise succeeded to all or substantially all of the assets or interests of the assignor and who has assumed by operation of law its obligations under this Agreement. Licensee and Sublicensees of the Licensee shall provide ESRI with prior written notice of any such attempted assignment or transfer which shall identify the user, and ESRI shall provide Licensee and Sublicensees of the Licensee with written acknowledgement and consent to the assignment or transfer. This Agreement shall be binding upon the respective successors and assigns of the parties to this Agreement.

4.3 SURVIVAL OF TERMS

The provisions of Section IV 4.2, 4.3, and 4.4 of this Agreement shall survive the expiration or termination of this Agreement for any reason.

4.4 EQUITABLE RELIEF

Licensee and Sublicensees of the Licensee agrees that any breach of this Agreement by Licensee and Sublicensees of the Licensee will cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Contractor shall have the right to an injunction, specific performance, or other equitable relief in any court of competent jurisdiction to prevent violation of these terms and without the requirement of posting a bond or undertaking or proving injury as a condition for relief.

4.5 GOVERNING LAW, ARBITRATION

Licensee and Sublicensees of the Licensees in the United States of America, Its Possessions, and Territories—This Agreement shall be governed by and construed in accordance with the laws of the United States of America. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613).

SECTION V: Export Terms and Conditions

5.0 UNITED STATES EXPORT CONTROL

5.1 EXPORT RESTRICTIONS

Licensee and Sublicensees hereby agree and warrant to TASC, ESRI and AGI that they do not intend to and will not knowingly, without the prior written consent, if required, of the Office of Export Licensing of the U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044, transmit directly or indirectly:

- 5.1.1** This COE/NCES Toolkit, or any software, data or documentation delivered hereunder;
- 5.1.2** Any product (including processes and services) produced directly by the use of this COE/NCES Toolkit, software, data or documentation delivered hereunder; or
- 5.1.3** Any commodity produced by such product if the immediate product of the COE/NCES Toolkit;;

To any country or entity designated in the Export Administration Regulations (EAR) as either Restricted, Denied, Embargoed, or Prohibited.

- 5.1.4** Licensee and Sublicensee further agree that they will review the Federal Register and/or the Internet website for the Bureau of Export Administration (BXA) of the United States Department of Commerce at <http://www.bxa.doc.gov> within the twenty-four (24) hour time period immediately prior to signing any agreement involving export or re-export of the Software to ensure that any posted additions to such lists are considered and excluded from export or re-export of the STK module or any product resulting from the use of the STK module in any way and that you will maintain documentation attesting to same for a period of five (5) years.
- 5.1.5** Additionally, Licensee and Sublicensee agree that they will review the website mentioned in 4.1.4 above in the twenty-four (24) hour period prior to shipping of the COE/NCES Toolkit or software, data or documentation. The documentation requirement stated in 5.1.4 above shall also apply in this instance.

- 5.1.6** Licensee and Sublicensee further warrant that neither the United States Department of Commerce, Department of State, Department of Treasury nor any other United States federal agency has suspended, revoked, cancelled, or otherwise restricted your export privileges and that, in the event your export privileges are suspended, revoked, cancelled, or otherwise restricted by any United States federal agency, they will notify TASC, in writing, within twenty-four (24) hours of receipt of such status.

SECTION VI: Special License Terms and Conditions

6.1 ADDITIONAL COE/NCES COMMUNITY SYSTEMS OR PROGRAMS

Use of the COE/NCES Toolkit by other programs not permitted in the definition of the COE/NCES Community (Introduction), will require a negotiation for a contract modification to cover additional use of ESRI technology and only be permitted for embedded systems. In no event shall the C/JMTK COE/NCES Toolkit be utilized by users/system developers of any kind which seek to provide a geospatial visualization application through the addition of a simple GUI. Additional COE/NCES Toolkit software may be added following the Licensee's prior written notice to ESRI and appropriate negotiations during which the Licensee would make a good faith estimate of the number of future seats to be deployed. The costs of including the new Systems would be based on these estimates, not the actual deployments or downloads as set forth in the appropriate CLINS.

6.2 ESRI ArcGIS SERVER ADDITIONAL TERMS:

- 6.2.1** "Server license" means a license for (server-side) ESRI Software that (i) resides on a server computer and provides services to multiple users and/or client computers in a distributed computing environment, or (ii) resides on an individual desktop computer and provides services to that computer in conjunction with ESRI ArcGIS Desktop or other ESRI Server Software.
- 6.2.2** A "Server Deployment license" grants the right to Licensee and Sublicensees of the Licensee to redistribute an application via a network, the Internet, or Intranet to end users of the application (also known as an "Internet Redistribution license"). The Server Deployment license does not require payment of additional deployment or redistribution.
- 6.2.3** Extensions to ESRI Software programs follow the same scope of use as that granted for the corresponding ESRI Software programs. For example, if Licensee and Sublicensees of the Licensee, orders Concurrent Use ESRI ArcInfo, then any associated extension is also licensed for concurrent use or if Licensee and Sublicensees of the Licensee orders an ESRI ArcGIS Server extension, that extension is also licensed for use on a server.
- 6.2.4** Server licenses include the rights to develop, test, and deploy applications to ultimate end users via a network, the Internet, or Intranet on or from the same licensed server, provided the source and object code are not accessible to ultimate end users of the application and that Licensee and Sublicensees of the Licensee does not generate revenue directly by charging for access to the site or

CJMTK End User License Agreement
Final (5/15/08)

service by selling data, pay-per-view, subscription fee, or similar means by utilization of the ESRI Software. Licensee and Sublicensees of the Licensee shall not use any type of development or testing licenses, including those licenses installed in a staging server environment (Staging Server licenses) to deploy applications for production use by end users. The administration tools for ESRI Software such as ArcIMS, ArcSDE, and MapObjects—Java Edition may be copied and redistributed throughout the particular Licensee and Sublicensees of the Licensee's organization. User developed ESRI ArcGIS Server administration tools may be copied throughout Licensee and Sublicensees of the Licensee's organization, but the ESRI ArcCatalog application (found in the ArcGIS Desktop (ArcView, ArcEditor, or ArcInfo) may not be copied unless part of a licensed ESRI ArcGIS Desktop installation.

- 6.2.5** ESRI Server Software may be used in logical, virtual, and "on-demand" server configurations.