



LICENSEE EQUIS End User License Agreement (EULA)

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- c. Make one (1) copy of Software for archival purposes.
- d. Make routine computer backups.

4.2 Licensee may not:

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 - 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 is 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.
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- 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 EQUS to function as expected. Adhering to the following rules is a requirement of the standard support specifications; these guidelines will help ensure EQUS 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 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, EQUS uses T-SQL code to make in-place modifications to existing project databases. If a significant change in the standard EQUS 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 EQUS. 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 EQUS software connecting to these databases. Services required to correct or to customize for any non-conformity with the EQUS Database Requirements are not covered by warranty nor are they included in the EQUS 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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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 customer 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. This is usually accomplished via EarthSoft's file transfer web page (<https://earthsoft.wetransfer.com>). We strongly encourage you to password protect your submissions. 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

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

Email: support@earthsoft.com

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 - ii) **EQuIS Online Subscriptions itemize** the SMA fee for the License Portfolio of EQuIS **Enterprise**, EQuIS **Professional**, EQuIS **EDGE**, and EQuIS **Decision Support** Products covered during the Subscription Term. **Perpetual License** fees do not include maintenance, **SMA** fees are quoted separately. Licensee POC's will receive software maintenance services beginning with the Product Registration and during the initial and all SMA Subscription Renewal periods.
 - iii) EQuIS Enterprise **VLA** and **API** Subscriptions require an appropriate EQuIS Enterprise License, the VLA fees are in addition to the EQuIS Enterprise license and maintenance fees. There are no additional SMA Fees for VLA Products; 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 Point of Contact (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 case tracking system via a unique case number (case 1234321) which is emailed to Licensee and thereafter is used to automatically log each email communication (**subject field of email must include "case 1234321"**);

- v) EarthSoft Help Desk will respond by email or scheduled web meeting to answer questions generally within 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 above. 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:

<u>Severity Level Definition</u>	<u>EarthSoft Begins as follows:</u>	<u>Resolution Effort</u>
SEVERITY LEVEL 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 acknowledged as Severity Level 1 problem.	EarthSoft to use best efforts to verify, diagnose, replicate, and resolve the problem as quickly as possible. Status reports will be provided to Licensee POC within every four (4) business hours until resolution. The Severity Level 1 case is closed upon resolution.
SEVERITY LEVEL 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 eight (8) Business hours of receipt of a service request acknowledged as Severity Level 2 request.	EarthSoft to use best efforts to verify, diagnose, replicate, and successfully fix the problem as quickly as possible. The Severity Level 2 case is closed upon resolution.
SEVERITY LEVEL 3 - a minor problem in the software has been identified that does not have major effect on business operations but may warrant repair or reasonable workaround.	Within two (2) Business Days of receipt of a service request acknowledged as Severity Level 3 request.	EarthSoft will use reasonable efforts to fix the problem, or provide a reasonable workaround, within ninety (90) days or within the next release of the software, whichever comes later. The Severity Level 3 case is closed upon resolution.
SEVERITY LEVEL 4 - minor condition or documentation error that has no significant effect on the operations, requests for new feature or suggestions which 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 Severity Level 4.	EarthSoft will notify requestor regarding EarthSoft's plans to correct a minor problem or not or to address requests for new features or suggestions for Enhanced software. The Severity Level 4 case is closed upon reply.

- e. Premium EQuIS support services:
 - i) These standard software benefits and detailed support service process 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 Customer 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 Customer 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 case 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 18 months from its initial release, and that Licensee will be notified not less than 6 months in advance of the planned end of support for any such product. If prior releases require severity 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) Access to a no charge non-production EQuIS Online Hosted Training site.
 - ii) 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**.
 - iii) No charge, optional, access to source code for qualified Software – requires authorized POC to complete an **EQuIS Source Code License Request Form**.
 - iv) 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 Customer 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 Customer and its end-users via the internet to use for its internal business requirements as authorized herein.
 - iii) Customer 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 Customer agrees to promptly pay all amounts due and to renew SaaS or remove data prior to the Subscription expiry date.

- b. Term & Duration: Customer 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. Customer 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 Customer 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 datacenters 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 Customer location(s) and the datacenter. 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 Customer feels that the hosting is not being met as defined here in, EarthSoft agrees to work with the Customer towards a reasonable resolution.
- h. Disaster Recovery: In the event of a server failure, a database back up will be restored as soon as EarthSoft can commission a new hosting resources; 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 Customer shall include a Severity Level designation made by the Customer. 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 Customer will be made by EarthSoft as soon as practical.
 - ii) Problem Reports are to be submitted via email at support@earthsoft.com
 - iii) Customer POC shall notify their EarthSoft Account Manager in writing, via email.
 - iv) Customer 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 subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at 52.227-7013. The Contractor/Manufacturer is EarthSoft, Inc., 9455 Pensacola Boulevard, Suite B, Pensacola, FL 32534-1237.
- 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:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title : _____

Title: _____

E-mail: _____

E-mail: _____

Phone: _____

Phone: _____

Date: _____

Date: _____

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