

Learning Services Terms

Definitions and Interpretation

1.1 In these Learning Services Terms, the following expressions shall have the meanings set opposite them, unless the context otherwise requires:

"Attendee" means the person nominated as such by Customer;

"Bitesize Learning" means a package of 6 Learning Services calls (also referred to as 'How do I' calls) delivered remotely via Teams, which are approximately 1 hour in length;

"Course(s)" means the applicable Supplier scheduled courses as described in the then current Supplier Learning Services Schedule or as described on the Supplier website;

"Course Fee" means the charges set out in the then current Learning Services Schedule payable by the Customer to Supplier for the Course(s);

"Customer" means the customer so named in the Registration Form or in the applicable quotation or proposal;

"Customer Advantage Programme" means the Supplier programme which enables Customer to access a range of Supplier services at a discounted rate, as further described on the Supplier website;

"Esri Inc" means Environmental Systems Research Institute, Inc;

"Esri Ireland" means Environmental Systems Research Institute Ireland Limited, registered in the Republic of Ireland under company number 353903, whose registered office is Riverside One, Sir John Rogersons Quay, Dublin 2;

"Esri UK" means ESRI (UK) Limited, registered in England under company number 01288342, whose registered office is Millennium House, 65 Walton Street, Aylesbury, Buckinghamshire HP21 7QG;

"Learning Credits" means pre-purchased amounts of credit which can be used to purchase Learning Services;

"Learning Service(s)" means the Bitesize Learning and/or the Course(s) provided by Supplier to Customer;

"Learning Services Terms" means these Learning Services Terms, any accepted Registration Form and any document which is supplemental hereto or which is collateral herewith or which is entered into pursuant to or in accordance with the terms hereof;

"Personal Learning Passport" means a 12 month package of 4, or 5, or 6 (as purchased by Customer) days attendance on Course(s), which commences on the date of Supplier's acceptance of Customer's purchase order;

"Portable Solution" means provision of certain Courses by Supplier to Customer at Customer's premises where Supplier is to provide (for the duration of the Course) appropriate hardware to enable Customer's Attendees to participate in the Course;

"Registration Form" means the registration form which is expressed to be subject to these Learning Services Terms and which relates to Attendee's participation in the Learning Services; save that the Registration Form is not required for and does not apply to (i) Bitesize Learning, (ii) Learning Services where the Supplier is Esri Ireland;

"Supplier" means the party with whom Customer contracts for the provision of the Learning Services, either Esri UK or Esri Ireland.

1.2 The headings are for convenience only and shall not affect the interpretation of these Learning Services Terms.

1.3 If a Customer comprises of more than one person or entity, all obligations of such Customer shall be joint and several as regards such persons and entities.

1.4 Reference to the singular includes the plural and vice versa and reference to a gender includes the other genders unless the context requires otherwise.

2.0 Registration

2.1 Where the Supplier is Esri UK, a Registration Form constitutes an offer by Customer to participate on the Course(s) specified in such Registration Form. Such offer shall not be deemed to be accepted by Esri UK unless and until Esri UK expressly confirms acceptance in writing.

2.2 These Learning Services Terms shall apply to the exclusion of any other terms and conditions on which any purchase order is placed or purported to be placed by Customer.

2.3 No variation to the Registration Form (where applicable) or these Learning Services Terms shall be binding unless agreed in writing between the authorised representatives of Supplier and Customer. For the avoidance of doubt, no variation to the Registration Form agreed via telephone shall be binding unless confirmed in writing to Customer by Supplier.

3.0 Price and Payment

3.1 All fees are exclusive of any Value Added Tax, which shall be payable in addition by Customer at the rate then prevailing.

3.2 For Course(s):

3.2.1 The Course Fee includes standard documentation appropriate to the relevant Course.

3.2.2 For Course(s) delivered at Customer's premises Supplier's reasonable expenses shall be chargeable at cost in addition to the specified Course Fee.

3.2.3 The time period scheduled for each Course allows for meal and refreshment breaks and for questions on aspects of the Course content. Should the Course content be completed within the allocated time period resulting in an early finish, no adjustment will be made by Supplier to the Course Fee.

3.2.4 Unless otherwise confirmed in writing (or in the applicable quotation or proposal) by the Supplier, Customer shall pay the Course Fee:

3.2.4.1 no later than 14 calendar days prior to the relevant Course(s) commencement date; or

3.2.4.2 if relevant course commencement date is within 14 days of the relevant Course(s) commencement date, the course fee is due immediately.

3.2.5 Supplier reserves the right to refuse an Attendee from attending the Course where payment of the Course Fee was payable prior to the Course but which has not been received by Supplier.

3.3 For Bitesize Learning:

3.3.1 The Bitesize Learning fee includes remote attendance via Teams on up to 6 Learning Services calls.

3.3.2 Unless otherwise confirmed in writing (or in the applicable quotation or proposal) by the Supplier, Customer shall pay the Bitesize Learning fee within 30 days of invoice, such invoice to be issued upon receipt of Customer's purchase order. Payment of the full Bitesize Learning fee is required prior to the first Learning Service call.

3.4 For Personal Learning Passport:

3.4.1 The Personal Learning Passport fee includes attendance at Course(s) up to the number of days purchased by Customer.

3.4.2 Unless otherwise confirmed in writing (or in the applicable quotation or proposal) by the Supplier, Customer shall pay the Personal Learning Passport fee within 30 days of invoice, such invoice to be issued upon receipt of Customer's purchase order. Payment of the full Personal Learning Passport fee is required prior to the relevant Course(s) commencement date.

3.4.3 Customer may use its Learning Credits and/or its credits under the Customer Advantage Programme towards the Personal Learning Passport fees, but when doing so Customer shall not be entitled to exercise any discount thereunder. No other discount, offer, special promotion may be used to discount the Personal Learning Passport fees.

3.5 For Learning Credits:

3.5.1 Unless otherwise agreed in writing between the parties, Customer shall pay the Learning Credits fee within 30 days of invoice, such invoice to be issued upon receipt of Customer's purchase order. Payment of the full Learning Credits fee is required prior to the Learning Credits being used in relation to Learning Services.

4.0 Cancellation and Transfer

4.1 Supplier reserves the right to cancel or re-arrange any allocated dates or times for the Learning Services at any time and for any reason without incurring any liability. Bitesize Learning shall be rearranged for a mutually convenient time. If a Course is not rearranged by Supplier in agreement with Customer, Supplier shall provide Customer with a full refund of the relevant Course Fee paid by the Customer for the cancelled Course. Notwithstanding anything else stated to the contrary in these Learning Services Terms, such refund shall be Supplier's maximum liability to the Customer in the event that the Course is cancelled.

4.2 Customer may with Supplier's agreement at no additional charge substitute an alternative Attendee. In the case of Course(s) purchased through a Personal Learning Passport, substitution shall only be permitted in the circumstances detailed in 5.6.1.

4.3 Where possible, Supplier will permit Customer to transfer a nominated Attendee to another scheduled date for the relevant Learning Service provided that Supplier's agreement is obtained in writing at least 10 business days or such shorter period as Supplier may accept in advance of the scheduled Course commencement date. Where the Course is purchased through a Personal Learning Passport, any transfer shall be subject to 5.6.1.

4.4 Save in relation to Course(s) delivered at Customer premises or for any bespoke Course(s) (for which 4.5 below shall apply), Customer may cancel its registration for any standard Course by providing Supplier with a minimum of 10 business days' written notice. If Customer's notice for such cancellation is less than the minimum of 10 business days, the full Course Fee for such Course shall remain chargeable.

4.5 For Course(s) delivered at Customer premises, or for any bespoke Course(s), Customer may cancel its registration by providing Supplier with a minimum of 15 business days' written notice. If Customer's notice for such cancellation is less than the minimum of 15 business days, the full Course Fee for such Course shall remain chargeable.

4.6 For Bitesize Learning, Customer may cancel its registration by providing Supplier with a minimum of 3 business days' written notice. If Customer's notice for such cancellation is less than the minimum of 3 business days, the entitlement to that Bitesize Learning hour will be forfeited and no refund shall be provided.

5.0 Provision of Learning Services, including duties of Customer

5.1 Customer is responsible for advance notification to Supplier (within the related section of the Registration Form (if applicable) of any special requirements relating to the Attendee. Supplier will endeavour to accommodate such notified needs if it is considered both reasonable and practical to do so.

5.2 Customer shall ensure that Attendee shall have adequate competence, knowledge and skill to interpret and benefit from the Learning Services.

5.3 Supplier reserves the right to exclude Attendee from any Learning Services due to Attendee's disorderly conduct or failure to fulfil the prerequisites as published by Supplier or otherwise notified to Customer. The relevant fees shall remain chargeable to Customer in such circumstances. If an Attendee arrives more than 1 hour late for a Course, Supplier reserves the right to refuse admission as this can cause disruption to other attendees. If an Attendee is permitted entry after arriving late no special arrangements will be made to cover the subject matter missed. If an Attendee misses a substantial amount of the Course, Supplier reserve the right to withhold the attendance certificate.

5.4 In relation to Course(s) to be delivered by Supplier on Customer's premises:

5.4.1 If a Portable Solution is to be provided, Customer shall be responsible for ensuring that all reasonable and necessary accommodation and facilities, including a suitable room (with adequate Internet connection and power sockets) are fulfilled and maintained throughout the duration of the Course.

5.4.2 If the Course does not involve a Portable Solution, Customer is responsible for ensuring that all reasonable and necessary facilities (including but not limited to the adequate provision of suitable accommodation, hardware, software and other reasonable requirements pre-notified by Supplier) are fulfilled and maintained throughout the duration of the Course.

5.4.3 The number of Attendees may not exceed a maximum of 12.

5.5 In relation to Bitesize Learning:

5.5.1 Customer shall ensure that the Attendee has access to Teams, including the ability to use screenshare functionality.

5.5.2 Customer shall be responsible for maintaining an internet connection of sufficient speed to receive the Bitesize Learning. Where Customer is not able to maintain such an internet connection to enable provision of the Learning Services call, Supplier will allow Customer to reschedule (up to a maximum of 1 time for the Bitesize Learning 6 calls package) that Learning Services call. Where Customer has rescheduled a call hereunder, no further rescheduling will be allowed in the event that Customer is not able to maintain the required internet connection.

5.5.3 Supplier and Customer shall mutually agree the date and time of the Learning Services calls. Such calls are usually scheduled within 10 working days of Customer's request. Customer is responsible for ensuring that all Learning Services calls are scheduled and undertaken within 12 months of Supplier's

acceptance of Customer's purchase order. Any unused calls remaining after that period will be forfeited and no refund shall be provided.

5.6 In relation to Personal Learning Passports:

5.6.1 Customer shall nominate a sole named employee for each Personal Learning Passport purchased. That sole named employee shall be the only personnel of Customer entitled to attend Course(s). In the event that the named employee leaves Customer's employment, Supplier shall permit Customer to nominate a substitute. Substitution may only be made once in relation to each Personal Learning Passport.

5.6.2 Customer is responsible for ensuring that all days purchased under the Personal Learning Passport are scheduled and undertaken within 12 months of Supplier's acceptance of Customer's purchase order. Any unused days remaining after that period will be forfeited and no refund shall be provided.

5.6.3 Course(s) provided by third party providers on behalf of Supplier; and/or any Course(s) located outside of Great Britain are all excluded.

5.7 In relation to Learning Credits:

5.7.1 Customer is responsible for ensuring that all Learning Credits are used within 12 months of Supplier's acceptance of Customer's purchase order. Any unused Learning Credits remaining after that period will be forfeited and no refund shall be provided.

5.7.2 Learning Credits may be used to purchase Learning Services at the applicable published rates. Learning Credits cannot be used in conjunction with any other discount, offer, or special promotion. In the event that Course modification is required to meet Customer's requirements such modification will be quoted for separately and may be drawn from Customer's Learning Credits or charged separately.

5.7.3 Course(s) provided by third party providers on behalf of Supplier, and/or any Course(s) located outside of Great Britain are all excluded (save that where the Supplier is Esri Ireland, Learning Credits are valid for the Republic of Ireland and Northern Ireland only).

5.7.4 If Customer uses Learning Credit for onsite or one-2-one Learning Services at Customer's own premises, such may be subject to additional requirements and charges/expenses in relation to use of Supplier portable training equipment and the trainer's attendance. Additional charges/expenses may be drawn from Customer's Learning Credits or charged separately.

6.0 Travel and Accommodation

6.1 Customer is responsible for all travel arrangements, accommodation requirements and other costs incurred by Attendee relating to attendance at Course(s).

6.2 Supplier shall have no responsibility for any non-refundable costs arising under 6.1 and resulting from Course(s) scheduling changes or cancellations howsoever arising.

7.0 Warranties and Liability

7.1 Supplier will use reasonable endeavours to ensure that the Learning Services provided are performed using reasonable skill and care and will follow practices consistent with the professional standards in the industry.

7.2 In relation to the provision of the Learning Services by Supplier to Customer and subject to 7.4 and 7.5, Supplier's total liability in contract, tort or otherwise shall not exceed 110% of the fees paid by Customer for the Learning Services in respect of which the claim is made.

7.3 Customer shall indemnify and hold harmless Supplier, its officers, directors, agents and employees, from and against all claims, actions, demands, losses, costs, expenses (including, without limitation, all legal fees and disbursements), damages, liabilities and lawsuits arising from any breach of Customer's obligations under these Learning Services Terms.

7.4 Notwithstanding any other provision of these Learning Services Terms, Supplier does not accept liability for any loss of profits, or goodwill or for any special or indirect or consequential damages arising under these Learning Services Terms in delivering the Learning Services.

7.5 Neither party excludes or seeks to limit or exclude its liability in respect of death or personal injury or for fraud.

7.6 All conditions and warranties not expressly set forth in these Learning Services Terms and whether expressed or implied are excluded to the fullest extent permissible by law.

8.0 Intellectual Property Rights

8.1 The copyright in and all other intellectual property rights relating to the Course(s) software, data and documentation employed by Supplier and any related materials ("Course Materials") provided to Customer hereunder by Supplier are owned exclusively by and hereby reserved to Supplier and/or its third party licensors. Supplier hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable licence to use such Course Materials solely for the purpose of receiving the Course(s). For the avoidance of doubt, Course Materials are not provided in relation to Bitesize Learning.

8.2 Under no circumstances may the whole or any part of the Course Materials be produced or copied in any form or by any means or translated into another language by Customer without the prior written permission of Supplier.

8.3 Customer shall not delete, amend, alter or deface any confidentiality or proprietary notices on the Course Materials.

8.4 The Customer shall and shall ensure that Attendee shall keep confidential the Course Materials and comply fully with all use restrictions notified to Customer by Supplier in relation to Course Materials.

9. Data Protection

Definitions:

"Applicable Data Protection Law" means all applicable and relevant laws and regulations relating to Personal Data which are implemented in or are binding on the United Kingdom or the Republic of Ireland (as applicable), or which otherwise govern the processing and use of Personal Data, and which include but are not limited to the Data Protection Act 2018, GDPR (defined below) and the Privacy and Electronic Communications Regulations, as amended or replaced.

"GDPR" means the UK and/or the EU 'General Data Protection Regulation', as applicable.

"Personal Data" is information defined as such in the Applicable Data Protection Law and/or information treated as such under any other law or regulation applicable to it.

"Privacy Notice" means the Esri UK or the Esri Ireland (as applicable) privacy notice which sets out how and why we process Personal Data, which is available via <https://www.esriuk.com/en-gb/legal/notices/privacy>.

9.1 For the purposes of this clause, the Data Processor and the Data Controller shall be as defined in Applicable Data Protection Law. The Data Controller and the Data Processor shall comply with their respective obligations as prescribed by Applicable Data Protection Law.

9.2 The Data Processor shall implement and maintain appropriate technical and organisational measures in order to meet the requirements of GDPR and to ensure the rights of data subjects. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, to ensure a level of security appropriate to the risk, the Data Processor shall take the following measures: the pseudonymisation and/or encryption of the Personal Data; the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident; a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

9.3 The Data Processor shall not engage another data processor (a "sub-processor") without the Data Controller's written authorisation. So far as is necessary for the purposes and/or performance of these terms:

9.3.1 Where Esri UK or Esri Ireland (as applicable) is the Data Processor: Esri UK or Esri Ireland (as applicable) will process Personal Data in accordance with its Privacy Notice. The Data Controller hereby grants the Data Processor written authorisation to use sub-processors. Details of Esri UK's / Esri Ireland's sub-processors are set out in its Privacy Notice.

9.3.2 Where you are the Data Processor: the Data Processor shall seek Esri UK's or Esri Ireland's (as applicable) written authorisation to use any sub-processors.

Where a party wishes to make any changes to its use of sub-processors, including any additional or replacement sub-processors, it shall notify the other party so that the other party may object to such change. All sub-processors engaged pursuant to this Clause 9.3 shall be bound by obligations no less onerous than those set out in this Clause 9 (Data Protection).

9.4 The subject-matter of the processing shall be the provision of services and/or deliverables (as applicable) under this agreement, or as otherwise set out or supplemented in writing. The duration of the processing shall be for the term of this agreement. The nature and purpose of the processing is the exchange, storage, transmission and use of Personal Data for the purpose of contract performance in relation to the subject-matter. The type of Personal Data and applicable categories of data subjects that will be processed shall be the names of the parties' employees or contractors or representatives, their respective business email and business postal addresses, and business telephone numbers, or as otherwise set out in writing. Certain categories of data subject, for example data subjects whom are children, shall be subject to a supplemental written agreement detailing additional rights and obligations.

9.5 The Data Processor shall:

9.5.1 process the Personal Data in accordance with the Data Controller's documented instructions, including with regard to transfers to international organisations or to a third country, unless required to do so by law (in which case the Data Processor will inform the Data Controller of such legal requirement prior to the processing, unless prohibited from doing so on legal grounds);

9.5.2 ensure that any person processing the Personal Data is bound by obligations of confidentiality;

9.5.3 take the measures detailed in Clause 9.2 (technical and organisational measures);

9.5.4 abide by the process and obligations in Clause 9.3 (engagement of sub-processors); and shall be responsible and liable to the Data Controller for the performance of such sub-processor's obligations;

9.5.5 taking into account the nature of the processing, assist the Data Controller in its obligations to respond to data subject requests to exercise their rights (including transparency, information and access, rectification, erasure, restriction, data portability, to object and automated individual decision-making; all subject to any of the restrictions provided by Applicable Data Protection Law);

9.5.6 assist the Data Controller in ensuring compliance with Clause 9.2 (technical and organisational measures);

9.5.7 where a data protection impact assessment has indicated that the processing will result in high risk, assist the Data Controller in undertaking prior consultation with the supervisory authority;

9.5.8 at the choice of the Data Controller, delete or return to the Data Controller all of the Personal Data after the end of the provision of services relating to processing, and delete existing copies unless the law requires storage of the Personal Data;

9.5.9 make available to the Data Controller all information necessary to demonstrate compliance with the obligations detailed in this Clause 9, and shall immediately inform the Data Controller if, in the Data Processor's opinion, an instruction infringes GDPR. Upon the Data Controller's request the Data Processor shall and allow for and contribute to audits, including inspections, conducted by the Data Controller or the Data Controller's approved auditor;

9.5.10 notify the Data Controller without undue delay after becoming aware of a Personal Data breach, and in any event within 24 hours;

9.5.11 where required, maintain a written record of all categories of processing activities that it carries out on behalf of the Data Controller in accordance with GDPR and make the record available to supervisory authority on request. Such records for the purposes of these terms should include: (i) the name and contact details of the Data Processor (including any relevant sub-processors) and of the Data Controller, together with details of their representatives and any data protection officer; (ii) the categories of processing being carried out; (iii) any transfers of Personal Data to a third country or international organisation, including identifying the third country or international organisation and the suitable safeguards; and (iv) the measures detailed in Clause 9.2 (technical / organisational measures);

9.5.12 cooperate, on request, with the supervisory authority in the performance of its tasks.

9.6 Where the Data Processor transfers Personal Data to a third country / international organisation in accordance with Clause 9.3 (engagement of sub-processors) it shall ensure that appropriate safeguards are in place and that enforceable data subject rights and effective legal remedies for data subjects are available. Such safeguards may include one or more of the following: binding corporate rules; approved standard data protection clauses adopted by the applicable data protection authority; or an approved certification mechanism; together with binding and enforceable commitments of the sub-processor in the third country to apply the safeguards (including data subjects rights). Where Personal Data is transferred to Esri Inc (located in the United States of America) pursuant to Clause 9.3 above, the appropriate safeguards and other relevant information can be found at: <https://www.esri.com/en-us/privacy/overview> and <https://trust.arcgis.com/en/>.

9.7 The Data Controller will ensure that it has a sufficient and valid lawful basis for providing any Personal Data to and authorising the Data Processor to perform its obligations, activities and exercise its rights under this Clause 9.

10 General

10.1 Supplier reserves the right to amend the content of any Learning Services without notice to Customer when, in the opinion of the Supplier, such amendment does not fundamentally change the content of such Learning Services.

10.2 Neither party shall be held in breach of its obligations hereunder (except in relation to obligations to make payments) nor be liable to the other party for any loss or damage which may be suffered by the other party due to any cause beyond its reasonable control including, without limitation, any act of God, failure, interruption of power supplies, failure of a network(s), flood, drought, lightning or fire, strike, lockout, or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), environmental hazards, acts of terrorism, acts or omissions of Government, highway authorities or other circumstances beyond the control of the parties.

10.3 Either party may assign or transfer these Learning Services Terms to a third party with the written consent of the other party and that consent will not be unreasonably withheld or delayed. Supplier may subcontract the Learning Services without consent but shall be liable for the acts and omissions of its subcontractors.

10.4 Any notice required or permitted to be given by either party to the other under these Learning Services Terms shall be in writing and delivered by hand or sent by first class post and addressed:

10.4.1 if to Supplier: to the Supplier registered address, marked for the attention of 'Learning Services'; and any 'legal notices', to the Esri UK registered address, marked for the attention of 'Esri UK & Ireland Legal Department';

10.4.2 if to the Customer at the address given in either Customer's purchase order or the Registration Form;

or such other address as may have been notified pursuant to this clause 10.4 to the party giving the notice and shall be deemed received on actual receipt by hand or 3 business days after posting.

10.5 If any provision of these Learning Services Terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions and the remainder of the provision in question shall not be affected thereby. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of these Learning Services Terms, the parties shall immediately commence good faith negotiations to remedy such invalidity, illegality or unenforceability or to achieve an alternative provision acceptable to both parties.

10.6 Neither party has relied on any representation or warranty except as expressly set out in these Learning Services Terms and Supplier and Customer hereby agree to submit to the exclusive jurisdiction of: the English Courts, where the Supplier is Esri UK; the Republic of Ireland Courts, where the Supplier is Esri Ireland; in respect of any dispute in relation to these Learning Services Terms.

10.7 These Learning Services Terms shall be governed by and interpreted in accordance with the laws of: England, where the Supplier is Esri UK; the Republic of Ireland, where the Supplier is Esri Ireland.

10.8 Save for the interests of Supplier's third party licensor(s) in relation to their respective elements of Course Materials, nothing in these Learning Services Terms is intended to be for the benefit of and shall not be enforceable by any person who is not named at the date of these Learning Services Terms as a party to it and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply.