

Esri UK 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:

“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 which otherwise govern the processing and use of Personal Data, and which include but are not limited to the EU General Data Protection Regulation and the Privacy and Electronic Communications Directive (2002/58/EC) (as implemented in the United Kingdom as the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2003/2426), as amended or replaced;

“Attendee” means the person nominated by Customer as identified in the Registration Form;

“Bitesize Learning” means a package of 6 Esri UK Learning Services calls (also referred to as ‘How do I’ calls) delivered remotely via Skype, which are approximately 1 hour in length;

“Course(s)” means the applicable Esri UK scheduled courses as described in the then current Esri UK Learning Services Schedule or as described on the Esri UK website;

“Course Fee” means the charges set out in the then current Esri UK Learning Services Schedule payable by the Customer to Esri UK for the Course(s);

“Customer” means the customer so named in the Registration Form;

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

“Esri Inc” means Environmental Systems Research Institute, Inc;

“GDPR” means the EU General Data Protection Regulation;

“Learning Credits” means pre-purchased amounts of credit which can be used to purchase Esri UK Learning Services;

“Learning Service(s)” means the Bitesize Learning and/or the Course(s) provided by Esri UK 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 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;

“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 Esri UK’s acceptance of Customer’s purchase order;

“Portable Solution” means provision of certain Courses by Esri UK to Customer at Customer’s premises where Esri UK 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 Bitesize Learning).

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 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 or these Learning Services Terms shall be binding unless agreed in writing between the authorised representatives of Esri UK 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 Esri UK.

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 and unless delivered on Customer’s premises or otherwise specified in the Esri UK Learning Services Schedule also includes light refreshments and buffet-style lunch.

3.2.2 For Course(s) delivered at Customer’s premises Esri UK’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 Esri UK to the Course Fee.

3.2.4 Unless otherwise agreed in writing between the parties, 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 Esri UK reserves the right to refuse an Attendee from attending the Course where payment of the Course Fee has not been received by Esri UK.

3.3 For Bitesize Learning:

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

3.3.2 Unless otherwise agreed in writing between the parties, 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 Esri UK 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 agreed in writing between the parties, 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 Esri UK 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 Esri UK in agreement with Customer, Esri UK 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 Esri UK’s maximum liability to the Customer in the event that the Course is cancelled.

4.2 Customer may with Esri UK’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, Esri UK will permit Customer to transfer a nominated Attendee to another scheduled date for the relevant Learning Service provided that Esri UK’s agreement is obtained in writing at least 10 business days or such shorter period as Esri UK 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 Customer may cancel its registration for any standard Course at an Esri UK Learning Services centre by providing Esri UK 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 Esri UK 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 Esri UK 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 Esri UK (within the related section of the Registration Form) of any special requirements relating to the Attendee. Esri UK 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 Esri UK 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 Esri UK 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, Esri UK reserve 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, Esri UK reserve the right to withhold the attendance certificate.

5.4 In relation to Course(s) to be delivered by Esri UK 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 Esri UK) 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 Skype, 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 Esri UK Learning Services call, Esri UK will allow Customer to reschedule (up to a maximum of 1 time for the Bitesize Learning 6 calls package) that Esri UK 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 Esri UK and Customer shall mutually agree the date and time of the Esri UK Learning Services calls. Such calls are usually scheduled within 10 working days of Customer’s request. Customer is responsible for ensuring that all Esri UK Learning Services calls are scheduled and undertaken within 12 months of Esri UK’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 leave’s Customer’s employment, Esri UK 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 Esri UK'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 Esri UK; 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 Esri UK'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 discounts, offers, or special promotions. 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 Esri UK, and/or any Course(s) located outside of Great Britain are all excluded.

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 Esri UK 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 Esri UK 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 Esri UK 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 Esri UK to Customer and subject to 7.4 and 7.5, Esri UK'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 Esri UK, 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, Esri UK 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 Esri UK and any related materials ("Course Materials") provided to Customer hereunder by Esri UK are owned exclusively by and hereby reserved to Esri UK and/or its third party licensors. Esri UK 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 Esri UK.

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 Esri UK in relation to Course Materials.

9. Data Protection

9.1 For the purpose of any Personal Data processing under these Learning Services Terms, the Data Processor and the Data Controller shall be as defined in the 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 the 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 Learning Services Terms:

9.3.1 Customer hereby grants to Esri UK written authorisation to use sub-processors, including: (i) Esri Inc (for the purpose of licensing and administering access, use and support of any Esri Inc products); (ii) the third party owner and/or licensor of third party software and/or third party data (for the purpose of licensing and administering access, use and support of any third party software and/or third party data); (iii) the hosting service providers which Esri UK uses for its back office systems; (iv) the providers and/or organisers of venues which Esri UK uses for the provision of external Learning Services (where you attend Esri UK external Learning Services), including: (a) Logitrain (UK) Ltd (trading as MicroTek) and Imparando City of London Learning Centre (for the purpose of Attendee's attendance at the Imparando City of London Learning Centre venue); (b) Chartered ICES (Chartered Institution of Civil Engineering Surveyors), a registered educational charity (for the purpose of Attendee's attendance at the ICES Manchester venue); (c) Edinburgh Training Centre Ltd (for the purpose of Attendee's attendance at the Edinburgh Training & Conference Venue); (d) Esri UK's subcontractors that are contracted to deliver the Course(s), for the purpose of delivering such Course(s), which include Garsdale Design Ltd (for the 'CityEngine' Course).

9.3.2 Customer shall seek Esri UK's written authorisation to engage 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 9.3 shall be bound by obligations no less onerous than those set out in 9 (Data Protection).

9.4 The subject-matter of the processing shall be as set out in writing, including in the Registration Form, any corresponding proposal and/or quotation, or in any other form. The subject-matter includes the provision of the Learning Services to Customer by Esri UK. The duration of the processing shall be for the term of these Learning Services Terms. The nature and purpose of the processing is the exchange, storage, transmission and use of Personal Data in the ordinary course of business, 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 includes: the names of the parties' employees or contractors or representatives or Attendees, their respective business email and business postal addresses, and business telephone numbers, and/or their IP addresses, any special requirements (such as dietary information). Where there are categories of data subject not covered by this clause, for example, data subjects whom are children, the parties shall enter into 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 9.2 (technical and organisational measures);

9.5.4 abide by the process and obligations in 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 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 the 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 the GDPR and make the record available to supervisory authority on request. Such records for the purposes of these Learning Services 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 9.2 (technical and 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 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. Specifically, such safeguards include one or more of the following: binding corporate rules; approved standard data protection clauses adopted by the EU Commission; or an approved certification mechanism (for example the EU-US Privacy Shield) 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 9.3 above, the appropriate safeguards comprise (i) Esri Inc's certification under the EU-US Privacy Shield; (ii) Esri Inc's data processing addendum, available at www.esri.com/legal/privacy-gdpr; and (iii) the security measures which are detailed at <https://doc.arcgis.com/en/trust/>.

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 Esri UK reserves the right to amend the content of any Learning Services without notice to Customer when, in the opinion of the Esri UK, 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. Esri UK 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 Esri UK: at the Esri UK registered address (marked for the attention of 'Esri UK Learning Services'; and any 'legal notices', marked for the attention of 'Esri UK 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 Esri UK and Customer hereby agree to submit to the exclusive jurisdiction of the English Courts 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.

10.8 Save for the interests of Esri UK'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.