



TRAINING TERMS AND CONDITIONS

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Training Agreement ("Agreement") is between you (hereinafter "Client") and Environmental Systems Research Institute, Inc. ("Esri"). Client acknowledges that Client has read and understood this Agreement and agrees to be bound by the terms and conditions hereof.

RECITALS

This Agreement allows Esri to conduct training courses and provide training-related services to Client who wishes to obtain training in the use of Esri GIS software. Both parties agree to the terms and conditions contained below.

ARTICLE 1—DEFINITIONS

- a. "Client-Supplied Training Data" means any digital dataset(s) including, but not limited to, geographic, vector data, coordinates, raster, or associated tabular attributes supplied by Client for use in training.
- b. "Esri Mobile Lab" means Esri hardware shipped to domestic US Client site training events, if Client does not have the required hardware to host a scheduled training event, consisting of laptops preconfigured with Esri Software, Training Materials, hard drives, power cords, and network switches.
- c. "Esri Training Event Assistant" means Client's primary Esri liaison in organizing Client site and private training events.
- d. "Student" means a registered participant for a specific training course, Client coaching services, or training-related services.
- e. "Training Materials" means digital or print content required to complete a course, which may include, but are not limited to, workbooks, data, concepts, exercises, and exams.

ARTICLE 2—TRAINING DESCRIPTION

2.1 Instructor-led training and Client coaching services are offered by Esri in the use of Esri's GIS Software.

- a. Instructor-led training is offered online in a cloud-based environment, at a Client site, or at an Esri learning center. Course information, location, dates, number of maximum participants, and registration requirements are located in the Esri training catalog (<http://training.esri.com>). Courses are conducted in close conformance with the course description outlined in the Esri training catalog and are subject to change due to limitations or constraints including, but not limited to, technical capabilities, and Client's needs.
- b. Client coaching services are available for Client to enhance the learning experience by providing extra time to review and practice course concepts with an instructor's on-site guidance.

ARTICLE 3—ESRI'S RESPONSIBILITIES

3.1 Esri will

- a. Provide training in a manner consistent with the technical and professional standards of the industry.
- b. Provide an instructor qualified to conduct the training course(s), Client coaching services, or training-related services.
- c. Provide all necessary Training Materials for Student.
- d. Confirm class approximately ten (10) business days prior to the scheduled start date. Client site and private classes confirmation is dependent on receipt of the completed Client site training request form and intended method of payment.

ARTICLE 4—CLIENT'S RESPONSIBILITIES

4.1 Client will

- a. Ensure all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Student[s] will not be permitted to view or participate in an online classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Student[s].

- b. Confirm all registered Students meet the minimum prerequisites for the applicable training event set forth on Esri's Training website.
- c. Submit registrations with a confirmed payment commitment at least seven (7) business days prior to the scheduled start date. Registrations submitted without payment commitment will not be a guaranteed reservation and will be added to a wait list pending payment confirmation. All wait list reservations are subject to availability.
- d. Submit to the Esri Training Event Assistant a list of the names and e-mail addresses of Student[s] who are to attend a Client site or private training event at least three (3) business days before the scheduled start date. Subject to compliance with Article 14 Export Control Regulations, any Student who is a resident of a US embargoed country or is found on any of the various US Government Lists of Parties of Concern or Specially Designated Nationals lists will not be permitted to attend the training event.
- e. Be responsible for all Student travel arrangements and agrees that Esri is not responsible for losses from nonrefundable travel arrangements due to the denial of Student's participation based on US government export regulation requirements, course scheduling changes, or cancellations.
- f. Complete and submit an Esri Client site training request form, if applicable, and ensure that the class environment adheres to the requirements for Esri Training as found online at <http://training.esri.com/gateway/index.cfm?fa=classroom.requirements>.
- g. Ensure Student use of Training Materials provided by Esri complies with the terms of this Agreement.
- h. Assume full responsibility for Student attending training course(s) under this Agreement. Client agrees to indemnify Esri, its officers, directors, and employees for any and all claims, liabilities, and expenses (including reasonable legal fees) arising out of or based on any uncured material breach by Student of the terms and conditions of this Agreement.
- i. Ensure Student does not use audio and/or video recording equipment within the classroom without prior written approval from Esri.

4.2 If the Esri Mobile Lab is used, Client will

- a. Immediately report any existing damage to Esri Mobile Lab equipment to Training Event Assistant, upon receipt of the equipment.
- b. Keep Esri Mobile Lab equipment in a secure, locked area between training event sessions.
- c. Ensure that only registered Student[s] use Esri Mobile Lab equipment.
- d. Be responsible for loss of, damage to, and/or theft of Esri Mobile Lab equipment while in Client's possession.
- e. Warrant that it maintains sufficient insurance coverage obligations created by this Agreement and by law.
- f. Allow the Esri instructor to check all Esri Mobile Lab equipment following the completion of training. Any damage to Esri Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Client by written notice. Client hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
- g. Make Esri Mobile Lab equipment available for freight pickup upon the conclusion of the training event.

ARTICLE 5—INSURANCE AND INDEMNIFICATION

5.1 Insurance. Esri carries, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with minimum coverage of one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, including death, and property damage liability, to include the following:
 - 1. Premises and operations
 - 2. Blanket contractual liability
 - 3. Broad form property damage
 - 4. Independent contractors
 - 5. Personal injury, with employee exclusion deleted
 - 6. Completed operations
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

5.2 Indemnification. Esri will indemnify and hold harmless Client and each of its directors and officers (collectively the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys' fees, arising out of any action or claim for bodily injury, death, or property

damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents while engaged in or as a result of the training or coaching services provided by Esri pursuant to this Agreement while on Client's site.

ARTICLE 6—LICENSING AND MATERIALS

6.1 Training Materials Reservation of Ownership. This Agreement gives Student certain limited rights to use electronic and tangible versions of the Training Materials. Esri and its licensor(s) retain exclusive rights, title, and ownership to the copy of Training Materials, software, data, and documentation licensed under this Agreement. Training Materials are protected by United States copyright laws and applicable international copyright treaties and/or conventions. All rights not specifically granted in this Agreement are reserved to Esri and its licensor(s).

6.2 Grant of License. Esri grants to Student a personal, nonexclusive, nontransferable license to use Training Materials for Student's own training purposes. Student may run and install one (1) copy of Training Materials and reproduce one (1) copy of Training Materials. Student may make one (1) additional copy of the original Training Materials for archive purposes only, unless Esri grants in writing the right to make additional copies.

6.3 Training Materials are intended solely for the use of the training of the individual Student who registered and attended a specific training course. Student may not (i) separate the component parts of the Training Materials for use on multiple systems or in the cloud, use in conjunction with any other software package, and/or merge and compile into a separate database(s) or documents for other analytical uses; (ii) make any attempt to circumvent the technological measure(s) (e.g., software or hardware key) that effectively controls access to Training Materials; (iii) remove or obscure any copyright, trademark, and/or proprietary rights notices of Esri or its licensor(s); or (iv) use audio and/or video recording equipment during a training course.

6.4 Client-Supplied Training Data. Client will retain ownership of any Client-Supplied Training Data.

6.5 Software. Client's existing license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> will cover all applicable terms of use for Esri provided software, data, documentation, and content used by Student during a training event. Esri may issue temporary Esri software licenses for Client site training if Client has an insufficient number of Esri software licenses available at Client's training facility. Client must uninstall all temporary Esri software licenses and return any media provided by Esri upon conclusion of the training event.

ARTICLE 7—TERM AND TERMINATION

7.1 This Agreement is effective upon acceptance. Either party may terminate this Agreement at any time upon written notice to the other party or for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination is immediate for a material breach that is impossible to cure. Upon termination of this Agreement for breach, Esri may request Client to return or destroy all copies of Training Materials in its possession, and any whole or partial copies, in any form and deliver evidence of such destruction to Esri, which evidence shall be in a form acceptable to Esri in its sole discretion. The parties agree that all provisions that operate to protect the rights of Esri and its licensor(s) shall remain in force should breach occur. Termination does not relieve Client from payment for any current or outstanding training registrations. Upon termination, Client agrees to pay Esri all current and outstanding invoices for training. Student[s] who are currently registered for a training course are granted the right to continue to attend the training course subject to the terms and conditions of this Agreement.

ARTICLE 8—STUDENT REGISTRATION AND TRAINING EVENT CHANGE POLICY

8.1 Individual Student Seats. Client will provide written notice to Esri's Customer Service department at service@esri.com of any Student transfer, cancellation, or substitution requests at least three (3) business days before the scheduled start date.

- a. Multiple requests and any requests that occur without the three (3) business days advance notice are subject to a fee, as determined by Esri.
- b. Cancellation of Student registrations that occur without the three (3) business days advance notice are subject to the full training event fee.
- c. Substitute Student must be from the same organization as Student being replaced.

8.2 Client Site/Private Class/Coaching Services (Training Event). Client will provide written notice to Esri's Customer Service department at service@esri.com of any training event reschedule, cancellation, or Student substitution requirements at least three (3) business days before the scheduled start date.

- a. Training event reschedules and cancellations that occur without the three (3) business days advance notice are subject to the full training event fee. Client will be responsible for all of Esri's reasonable travel expenses and shipping costs (including Esri Mobile Lab) for all rescheduled or canceled training events.
- b. Student substitutions that occur without the three (3) business days advance notice are subject to a fee. Substitute Student must be from the same organization as Student being replaced.

8.3 If cancellation of a training event is necessary due to force majeure as described in Article 11 below, the affected party is released in full from the three (3)-business day notification. The affected party will either reschedule or cancel the training without incurring any liability.

8.4 If Esri is unable to conduct the training on the scheduled date, Esri will notify Client at least three (3) business days before the scheduled start date.

8.5 Unless specifically authorized in writing by Esri, Client is not authorized to resell seat(s) to an Esri training event.

ARTICLE 9—PAYMENT

9.1 Payments

- a. Accepted payment methods are found at <http://training.esri.com/gateway/index.cfm?fa=catalog.paymentdetails>.
- b. Esri will invoice Client upon completion of each training course. Client's payment will be due no later than thirty (30) days after receipt of the invoice.
- c. If Client is invoiced and pays that invoice prior to the scheduled training event, then Client has one (1) calendar year (twelve [12] consecutive months) from the date of the invoice to consume the training days. For a multiyear order, the training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.

ARTICLE 10—CONFIDENTIAL INFORMATION

10.1 Except for any personally identified information (PII), any data or information controlled for export under the United States International Traffic in Arms Regulations (ITAR), or other classified data, Esri or Client may disclose to the other party certain confidential information under this Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the other party's confidential information.

ARTICLE 11—FORCE MAJEURE

11.1 If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, threat of or actual terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, or demand; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.

ARTICLE 12—WARRANTY

12.1 Limited Warranty. Esri warrants that the media upon which Training Materials is provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt.

12.2 Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE TRAINING AND TRAINING MATERIALS CONTAINED THEREIN ARE PROVIDED "AS-IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. ESRI DOES NOT

WARRANT THAT THE TRAINING OR TRAINING MATERIALS WILL MEET CLIENT'S NEEDS OR EXPECTATIONS; THAT THE USE OF TRAINING MATERIALS WILL BE UNINTERRUPTED; OR THAT ALL NONCONFORMITIES, DEFECTS, OR ERRORS CAN OR WILL BE CORRECTED. THE TRAINING DATABASE HAS BEEN OBTAINED FROM SOURCES BELIEVED TO BE RELIABLE, BUT ITS ACCURACY AND COMPLETENESS, AND THE OPINIONS BASED THEREON, ARE NOT GUARANTEED. THE TRAINING DATABASE MAY CONTAIN SOME NONCONFORMITIES, DEFECTS, ERRORS, AND/OR OMISSIONS. ESRI AND ITS LICENSOR(S) DO NOT WARRANT THAT THE TRAINING DATABASE WILL MEET CLIENT'S NEEDS OR EXPECTATIONS, THAT THE USE OF THE TRAINING DATABASE WILL BE UNINTERRUPTED, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. ESRI AND ITS LICENSOR(S) ARE NOT INVITING RELIANCE ON THIS TRAINING DATABASE, AND CLIENT OR STUDENT SHOULD ALWAYS VERIFY ACTUAL DATA, WHETHER MAP, SPATIAL, RASTER, TABULAR INFORMATION, AND SO FORTH. THE DATA CONTAINED IN THIS PACKAGE IS SUBJECT TO CHANGE WITHOUT NOTICE. IN ADDITION TO AND WITHOUT LIMITING THE PRECEDING PARAGRAPH, ESRI DOES NOT WARRANT IN ANY WAY TRAINING DATA. TRAINING DATA MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET CLIENT'S NEEDS OR EXPECTATIONS. NEITHER CLIENT NOR STUDENT SHOULD RELY ON ANY TRAINING DATA UNLESS CLIENT HAS VERIFIED TRAINING DATA AGAINST ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

12.3 Exclusive Remedy. Client's exclusive remedy and Esri's entire liability for breach of the limited warranties set forth in this Article 12 shall be limited, at Esri's sole discretion, to (i) replacement of any defective Training Materials; (ii) repair, correction, or a workaround for Training Materials, or (iii) return of the fees paid by Client for Training Material that do not meet Esri's limited warranty, provided that Client uninstalls, removes, and destroys all copies of the Training Materials; and executes and delivers evidence of such actions to Esri.

ARTICLE 13—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

13.1 EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO CLIENT FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY CLIENT FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 14—EXPORT CONTROL REGULATIONS

14.1 Client must comply with all applicable laws and regulations of the United States including, without limitation, its export control laws. Client expressly acknowledges and agrees not to export, reexport, transfer, or release Esri provided Training Materials, in whole or in part, to (i) any US embargoed country (including to a resident of any US embargoed country); (ii) any person or entity on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Lists of Parties of Concern; or (iv) any person or entity where such export, reexport, or provision violates any US export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to US export laws.

ARTICLE 15—TAXES

15.1 Training provided is quoted exclusive of all state, local, value-added, or other taxes; customs; or duties or other charges (other than income taxes payable by Esri). In the event such taxes or charges become applicable to Esri's training or deliverables, Client shall pay any such applicable tax upon receipt of written notice that such taxes or charges are due.

ARTICLE 16—UCC INAPPLICABILITY

16.1 Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

ARTICLE 17—GOVERNING LAW

17.1 This Agreement is governed by and construed in accordance with the laws of the state in which training is being held or, in the case of training provided over the Internet, the laws of the State of California, without reference to its conflict of laws principles.

ARTICLE 18—ENTIRE AGREEMENT

18.1 This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements (including any attached purchase order terms and conditions) between the parties relating to such subject matter. The undersigned hereby acknowledges and represents that he/she has read and understands this Agreement and has the authority to bind his/her organization to these terms and conditions. An executed Agreement shall constitute a duplicate if it is transmitted through electronic means, such as fax or e-mail, and reflect the signing of the document by Client. Duplicates are valid and binding even if an original paper document bearing Client's original signature is not delivered.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the last date written below.

Village of Lombard
(Client)

By: [Signature]
Authorized Signature

Printed Name: SCOTT NIEHAUS

Title: VILLAGE MANAGER

Date: December 17, 2015

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____