Chest Agreement for Software

Standard Terms and Conditions

Standard Chest Software Licence

These terms and conditions apply to all orders for Chest software licences unless other terms and conditions are expressly referenced on the Chest Order Form. Therefore, please read these terms and conditions carefully and only submit a Chest Order Form if they are acceptable to your organisation.

1   Definitions

1.1   In this Licence Agreement the following terms, when starting with a capital letter, have the meanings shown:

(a)   "Authorised Users" means any of the following persons:

(i)   Students which means any person undertaking education or research for whom the Licensee is responsible. Students may access the Software from any location.

(ii)   Staff which means any personnel used by the Licensee to instruct or direct Students, the Licensee's research staff and, unless stated otherwise on the Order, administrative and management personnel. Staff may access the Software from any location.

(iii) Any other person authorised by the Licensee to have controlled access from the UK or Republic of Ireland to the Licensee's information systems.

(b)   "Educational Purposes" means education, teaching, distance learning, private study, personal development, academic research and, unless stated otherwise on the Order, the administration and management of the Licensee's educational and research operations. The Licensee, but not any user, may receive payment or funding from students or third parties for activities using the Software provided that all such payments and funding are applied to the cost of running the normal educational and research operations of the Licensee. The results of research or services funded by third parties must be published in the same way that the Licensee would publish the results of research not funded by third parties. Educational Purposes do not include funded research or consultancy services where the results of such research or services would be retained by a third party.

(c)   "Fee" means the sums set out on the Website, which are to be paid by the Licensee for the Software and rights under this Licence Agreement.

(d)   "Intellectual Property Rights" means patents, trademarks, trade names, design rights, topography rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

(e)   "Licence Agreement" means the binding contract consisting of this Standard Chest Software Licence, the Order and any documents or annexes or schedules referenced in either. In the event of conflict, the Order prevails over the referenced documents or annexes or schedules which prevail over this Standard Chest Software Licence. The Licence Agreement is formed when the Licensor accepts an Order under clause 5.3.

(f)   "Licensee" means the party shown on the Order who is granted the rights to use the Software.

(g)   "Licensor" means the party shown on the Order who grants the rights hereunder to the Licensee.

(h)   "Order" means a request for Software in the form shown on the Website.

(i)   "Software" means the product shown on the Order which includes the machine-readable computer programs and related documentation, support services and training materials set out in the Specification.

(j)   "Specification" means the detailed description of the Software published on the Website.

(k)   "Website" means Jisc's Chest internet site which sets out details about the Software and other information relevant to this Licence Agreement.

2   Licence Grant

2.1   In consideration of the Fee and subject to the terms and conditions of this Licence Agreement, the Licensor grants the Licensee a non-exclusive and non-transferable right to use the Software and to allow Authorised Users to use the Software for the term set out on the Order.

2.2   Throughout the term of this Licence Agreement and subject to its terms and conditions, the Licensee may for Educational Purposes only:

(a)   make such temporary local electronic copies of the Software as are necessary for Authorised Users to use the Software effectively;

(b)   allow Authorised Users to access and use the Software installed under clause 2.2 (a);

(c)   allow "home use" of the Software unless stated otherwise on the Order. "Home use" means that Students and Staff may install the Software on their own computer only for their own use and only for Educational Purposes. "Home use" is subject to the Licensee ensuring that each home user agrees to the terms and conditions in the annex to this Licence Agreement and/or such other terms and conditions that the Licensor may require;

(d)   allow Authorised Users to download and/or print out copies of the documentation supplied with and forming part of the Software for training purposes;

(e)   make a reasonable number of copies of the Software for back up purposes.

2.3   This Licence Agreement shall not restrict or limit the rights of the Licensee and Authorised Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 or any amending legislation.

2.4   This Licence Agreement does not assign or transfer to the Licensee any right, title or interest to the Intellectual Property Rights in the Software except for the right to use the Software in accordance with the terms and conditions of this Licence Agreement.

3   Restrictions

3.1   The Licensee and Authorised Users may not:

(a)   sell, resell, sublicense, lease, rent, hire, loan or transfer the Software or redistribute it to any third party;

(b)   remove, obscure or modify copyright notices, disclaimers, means of identification or other text appearing in the Software;

(c)   alter, adapt, modify, disassemble, decompile, reverse engineer or create any derivative works of the Software except to the extent necessary to make it readable on a computer screen, or as otherwise permitted in this Licence Agreement or by law;

(d)   use the Software other than for Educational Purposes.

4   Licensee Responsibilities

4.1   The Licensee will:

(a)   use the Software only as set out in the user documentation or instructions provided or published and referred to by the Licensor;

(b)   use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Licence Agreement;

(c)   use all reasonable efforts to ensure compliance by Authorised Users with the terms of this Licence Agreement and with the Licensee's security processes and to prevent and monitor for unauthorised use of the Software. The Licensee shall promptly and diligently investigate any material breach of the foregoing and initiate disciplinary procedures in accordance with the Licensee's standard practice and shall use all reasonable effort to bring an end to the breach as quickly as possible, to mitigate its effect and to prevent any recurrence;

(d)   not more than once a year, reasonably co-operate with any request from the Licensor to demonstrate compliance with the terms and conditions of this Licence Agreement;

(e)   nominate technical contacts for matters arising under this Licence Agreement.

4.2   The Licensee shall not be liable for breach of this Licence Agreement by any Authorised User if the Licensee has diligently observed its obligations under clause 4.1 and did not cause the breach or knowingly assist or condone the breach after becoming aware of its occurrence.

5   Licensor Responsibilities

5.1   The Licensor warrants that:

(a)   it has all authority and rights necessary for the purposes of this Licence Agreement;

(b)   the Software has been developed and tested with not less than the skill and care of a competent supplier of similar products;

(c)   the Software is owned by or licensed to the Licensor and does not infringe the Intellectual Property Rights or other rights of any third party;

(d)   the Software will perform in all material respects as set out in the Specification and any documentation provided or published and referred to by the Licensor;

(e) the Licensor cannot warrant that the Software is free from common viruses, spyware, malware, trojan horses and other damaging code or devices but the Licensor confirms that it has applied commercially reasonable efforts to check for and remove the same;

(f) the documentation, support services and training materials shown in the Specification are not less than that which the Licensor provides with the Software to its other customers;

(g) the documentation, support services and training materials shown in the Specification have been prepared and will be supplied with the skill and care of a competent provider of similar documentation, services and materials;

(h) unless shown otherwise in the Specification, it will make all updates and new versions available to the Licensee whenever it makes the same available to its other customers. The Licensor will use all reasonable endeavours to ensure that updates and new versions do not reduce any material functionality or features of the Software;

(i) it will provide or arrange for a service provider to provide on its behalf, the support services set out in the Specification via phone and email. Support services for major incidents must be available for at least two normal business hours on normal business days in the UK.

(j) The Licensor does not warrant that the Software is error-free but warrants that the Software has been reasonably checked and is not known to contain material errors. The Licensor will promptly correct errors that are discovered by the Licensor or brought to its attention.

5.2 The undertakings in clause 5.1 replace all conditions and warranties which may otherwise be implied by statute, common law or otherwise. The Licensor makes no representation express or implied with regard to the fitness of the Software for any particular purpose.

5.3 The Licensor shall make the Software available to the Licensee by the date requested on the Order or, before such date, inform the Licensee when the Software will be made available or inform the Licensee of the reasonable grounds why the Order cannot be accepted.

5.4 The Licensor will identify contacts for the support services and for other matters relating to this Licence Agreement.

6 Fee

6.1 The Licensee will pay the Fee as set out in the Order. Unless otherwise shown on the Order, Fees are due within thirty days of invoice receipt.

7 Intellectual Property Rights Indemnity

7.1 The Licensor shall indemnify and hold the Licensee harmless from all damages, claims, legal fees and costs incurred by the Licensee in respect of any third-party claim or action concerning the ownership or use of the Software or the Intellectual Property Rights in the Software, provided that:

(a) the Licensee gives the Licensor prompt notice of any claim made against the Licensee and the Licensor shall have the right to defend any such claims and make settlements thereof at its own discretion;

(b) the Licensor's obligations under this clause 7 shall not apply to the extent that the infringement arises out of any use of the Software which is not compliant with this Licence Agreement;

(c) the Licensee does not knowingly make or intimate any admission, settlement, opinion or undertaking that may be detrimental to the Licensor's defence;

(d) the Licensee, at the Licensor's cost, gives such assistance as the Licensor may reasonably require to settle or oppose any such claims but does not otherwise engage in settlement negotiations.

7.2 If any such infringement occurs or may occur, by giving written notice to the Licensee, the Licensor may act as follows before the Licensee can take any other course of action:

(a) promptly secure the right for the Licensee to continue using the Software; or

(b) promptly modify or amend the Software so that the infringement is removed without any material reduction in functionality or features; or

(c) promptly replace the Software or infringing part so that the Software becomes non-infringing without any material reduction in functionality or features.

Modified, amended or replacement Software provided under clause 7.2 (b) or (c) shall be treated as Software for all purposes under this Licence Agreement.

8   Liability

8.1   Without prejudice to clauses 7, 8.2 and 8.3, the Licensor's aggregate liability to the Licensee for direct loss or damage, whether arising in contract, law or tort, shall not exceed 110% of the Fees payable under this Licence Agreement.

8.2   The Licensor shall have no liability to the Licensee for any indirect, special or consequential loss or damage, loss of profits, business, revenue or goodwill whether arising in contract, law or tort.

8.3   Notwithstanding any of the foregoing, neither party excludes or limits liability for death or personal injury caused by its negligence or for liability resulting from its wilful misconduct or fraud.

9   Term and Termination

9.1   This Licence Agreement shall commence on the date shown on the Order provided that the Licensee allows at least ten working days between the date the Order is submitted and the commencement date requested and provided that the Licensor does not reject the Order or agree some other commencement date in accordance with clause 5.3.

9.2   Unless terminated in accordance with its other provisions, this Licence Agreement will continue for the period shown on the Order. The Licensor will reasonably endeavour to give the Licensee at least ninety days' notice, and in any event as much notice as it reasonably can, where it does not intend to offer renewal of this Licence Agreement on broadly similar terms and prices.

9.3   Either party may terminate this Licence Agreement by written notice if the other:

(a)   is in breach of any material term, condition or provision of this Licence Agreement or of any material provision required by law, or is in persistent breach of any other term, condition or provision and fails to remedy the same within thirty days of written notice;

(b)   ceases to carry on the business relevant to this Licence Agreement, or receives a court order or passes a resolution for winding-up (other than for the purpose of solvent amalgamation or reconstruction), or is declared insolvent; or initiates any arrangement or composition with its creditors; or has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or is deemed by any relevant statutory provisions to be unable to pay its debts.

9.4   Except in the case of perpetual licences, upon termination of this Licence Agreement, the Licensee shall promptly de-install all copies of the Software. The Licensee will allow the Licensor reasonable access to verify compliance with the foregoing obligation.

9.5   All rights and obligations of the parties under this Licence Agreement will automatically cease upon termination except for such rights of action that have accrued prior to termination and any rights or obligations under this Licence Agreement or at law, which expressly or by implication come into or continue in force on or after termination.

10   Dispute Resolution

10.1   The chief executive of the Licensor and the head of the Licensee, or their nominees, will have thirty days to resolve any dispute before either party may resort to any other course of action.

11   Assignment

11.1   Neither party may assign or transfer all or part of this Licence Agreement, or any of its rights or obligations or appoint any agent to perform such obligations without the other's prior written consent. However, by giving the Licensee not less than sixty days' prior written notice, the Licensor may transfer all of its rights and obligations to a wholly owned subsidiary, or to a wholly owned subsidiary of its parent company, or to its parent company.

12   Waiver

12.1   Failure by either party to enforce any of the provisions of this Licence Agreement will not represent a waiver of such rights and will not affect the validity of this Licence Agreement nor affect that party's rights to take subsequent action.

13   Changes

13.1   This Licence Agreement may only be changed by the written agreement of the parties; such written agreement shall state that it is intended to be an amendment to this Licence Agreement. The foregoing applies to renewals and alterations to Fees that are allowed under this Licence Agreement and also to alterations or additions to the Specification.

14   Severability

14.1   If any competent authority finds any part of this Licence Agreement to be invalid, unlawful or unenforceable, this Licence Agreement will be deemed to be amended to the extent required to remove the competent authority's finding but so as to allow the rest of this Licence Agreement to remain valid and unaffected to the fullest possible extent.

15   Notices

15.1   Any notice or written agreement may be given as follows:

(a)   by delivery recorded mail or courier to the other party's authorised representative at any address shown in this Licence Agreement, or to any other address as one party has notified the other of, and will be valid on the date of recorded receipt, or

(b)   by fax to the other party's authorised representative to any fax number shown in this Licence Agreement, or to any other fax number as one party has notified the other of, and will be valid at the time shown on a successful transmission report, or

(c)   by email to the email address of the other party's authorised representative and will be valid at the time of sending but will not be deemed served if the email system has generated an unsuccessful transmission or unsuccessful delivery report.

15.2   Notices to the Licensor must be copied to Jisc Services Ltd whose details appear on the Order.

16   Force Majeure

16.1   Except for the obligation to make payments properly due, neither party will be liable for delay or failure to perform obligations caused by circumstances beyond its reasonable control, provided that the affected party promptly gives the other written notice of such delay or failure and circumstances and that the affected party uses reasonable endeavours to mitigate the delay or failure.

17   Legal Construction

17.1   The parties agree to use the English language for all matters relating to this Licence Agreement.

17.2   This Licence Agreement is governed by English law and subject to the exclusive jurisdiction of the English courts. The United Nations' Convention on Contracts for the International Sale of Goods does not apply to this Licence Agreement.

17.3   This Licence Agreement represents the entire agreement and understanding between the parties in respect of its subject matter.

17.4   The terms and conditions of any purchase orders, invoices, receipts, acknowledgements or similar documentation put forward by either party in connection with this Licence Agreement, shall have no effect whether or not they are expressly rejected by the party to whom they are presented. The Licensor agrees that any "click-wrap" or "shrink-wrap" terms which may need to be acknowledged by the Licensee in order to access the Software are part of an unavoidable administrative process only and do not form part of nor prevail over this Licence Agreement even if such "click-wrap" or "shrink-wrap" terms contain any statement to the contrary.

17.5   The Licensee accepts these terms and conditions by submitting an Order. The Licensor accepts these terms and conditions by accepting the Order in accordance with clause 5.3.

Standard Chest Software Licence Annex: Home Use Undertakings

Subject to the Home User accepting the following provisions, the Licensor grants the Home User the right to Home Use of the Software.

1: Definitions

- "Home Use" means a Home User may install the Software on a single computer of their own, which shall only be used by the Home User and only for the purposes of their own education, learning, private study, personal development or academic research or in connection with teaching the Licensee's students.
- "Home User" means any student or staff for whom the Licensee is responsible.
- "Licensee" means the party who has licensed the Software from the Licensor.
- "Licensor" means the party who allows Home Use of the Software.
- "Software" means the product shown on Jisc's Chest website.

2: Undertakings

The Home User agrees:

- to adhere to the terms and conditions of this Annex and/or such other terms and conditions that the Licensor may require;
- to use the Software for Home Use only;
- not to receive any payment, consideration or concession of any kind from Home Use nor to use the Software for any commercial purpose;
- not to sell, resell, sublicense, lease, rent, hire, loan or transfer the Software or make it available to any other person or party;
- not to remove, obscure or modify copyright notices, disclaimers, text or means of identification appearing in the Software;
- not to alter, adapt, modify, disassemble, decompile, reverse engineer or create any derivative works of the Software except to the extent necessary to make it readable on a computer screen, or as otherwise permitted by law;
- that the Software is made available "as is" without warranty, except for any statutory warranty that may not be excluded by law;
- that no support is available for Home Use from the Licensor;
- to co-operate as required by the Licensee and/or the Licensor, at any reasonable time and subject to reasonable notice, in order to demonstrate compliance with these undertakings;
- that these undertakings are given to the Licensee and Licensor, either or both of whom may enforce the same.