

**Agreement to Participate in the Eduserv Chest/Microsoft EES Agreement 2016-2019**

By completing, signing and returning this form (“Agreement to Participate”) you are agreeing to participate in the Eduserv Chest/Microsoft EES Agreement 2016-2019, and confirming also that you have had the opportunity to read the EES Agreement between Eduserv and Microsoft, which may be found on the Eduserv Chest website.

**One copy of this form must be completed, signed and returned to Eduserv before any products can be ordered under the Eduserv Chest/Microsoft EES Agreement 2016-2019.**

**Please note that Resellers will not process your EES order until Eduserv has confirmed receipt of this form.**

Please email one completed and signed copy of this form and a purchase order (both preferably in PDF format) for the Participation Fee due (plus VAT). The purchase order must be made payable to “Eduserv”. The form and purchase order should be returned to: help@eduserv.org.uk.

Being duly authorised I confirm, on behalf of the Institution whose details appear below (“the Participant”), that we wish to participate in the Eduserv Chest/Microsoft EES Agreement 2016-2019.

Full Title of Institution .....

Address .....

.....

Title..... Forename..... Surname.....

Position .....

Department .....

Fax..... Telephone.....

Email.....

My Institution wishes to use the following Eduserv Chest/Microsoft Reseller: .....

**Note: you MUST choose a Contracted Reseller from the list displayed on the Eduserv Chest website, and place orders only with your chosen Contracted Reseller or other Contracted Resellers on that list.**

State PO number or state “PO not required”:.....

**Email address to which invoice should be sent:.....**

**Period of participation**

The Participant may elect to participate at any time during the period 1 November 2016 to 31 October 2019 inclusive for a period or periods of one or three years. The prices paid for Microsoft products during the period of participation will be fixed at the prices applicable at the date of Subscription Enrolment.

**Please complete or tick the relevant boxes overleaf to indicate your faculty and staff FTE count, your choice of period of participation (this must be the same as your enrolment period with Microsoft) and the Participation Fee payable:**

The Fee payable by the Participant (in accordance with the Terms and Conditions set out below) is as follows. Please tick to indicate Participant's preferred option:

- (1) For all eligible Participants with a faculty and staff FTE count **greater** than 300:

|   |      |                                  |
|---|------|----------------------------------|
| Participation Fee (single payment) for one year of participation: | £399 | Tick<br><input type="checkbox"/> |
| Participation Fee (single payment) for three years participation: | £912 | Tick<br><input type="checkbox"/> |

- (2) For eligible Participants with a faculty and staff FTE count **up to** 300 only:

|   |      |                                  |
|---|------|----------------------------------|
| Participation Fee (single payment) for one year of participation: | £268 | Tick<br><input type="checkbox"/> |
| Participation Fee (single payment) for three years participation: | £612 | Tick<br><input type="checkbox"/> |

- (3) For all Participants

The first Participation Fee is payable on or before the date of your first order for Microsoft products under the Agreement. Any subsequent Participation Fee is payable annually in advance of the anniversary date of your committing to participate.

**Please note that after you have submitted this form then additional years' membership only require a purchase order for the relevant Fee.**

The Participation Fees shown above are fixed and firm until October 2019 but may be increased for Fees due to be paid in periods of participation after October 2019. The Participation Fees specified above are exclusive of VAT which shall be payable in addition at the applicable rate.

Please indicate below the number of staff relating to the Participant:

|  |  |
|--|--|
| Faculty and Staff FTEs for Participant (state number): |  |
|--|--|

The Participant acknowledges that Microsoft Ireland Operations Limited ("Microsoft") and Eduserv (a company limited by guarantee with the number 3763109) ("Eduserv") have entered into the Microsoft EES Agreement (as amended, modified and supplemented to the date hereof, the "Agreement") under which the Participant desires to license software. All terms used but not defined herein will have the meanings assigned in the Agreement. A copy of the Agreement is exhibited on the Eduserv Chest website.

By signing below the Participant (acting through its authorised representative) agrees to purchase sub-licences for the use of the software, number of users and duration specified in order forms submitted pursuant to this Agreement to Participate and accepted by Eduserv, and agrees to be bound by the terms and conditions set out below.

|   |  |
|---|--|
| <b>Participant (name of Institution):</b>                       |  |
| <b>Signature (signed for and on behalf of the Participant):</b> |  |
| <b>Name of signatory (print):</b>                               |  |
| <b>Title of signatory (print):</b>                              |  |
| <b>Date:</b>  |  |

**Terms and Conditions of Participation in the Eduserv Chest/Microsoft EES Agreement 2016-2019**

Pursuant to the terms of the Agreement, Eduserv is entitled to sub-licence certain Microsoft software to the Participant at preferential rates offered by Microsoft. By signing the agreement form to which these conditions are annexed, you have agreed to purchase the number and type of licences for the software (“the Software”) specified in the order form submitted pursuant to this Agreement to Participate and accepted by Eduserv (“the Order Form”). These terms and conditions set out the basis on which Eduserv agrees to sub-licence that software.

All terms used but not defined in these conditions will have the meanings assigned in the Agreement or this Agreement to Participate. References to “you” mean the Participant, references to “we” or “us” mean Eduserv, and references to “this agreement” mean the Agreement as amended or supplemented by these conditions.

**1 Licence Terms**

Subject to payment of the participation fee and licence fees in accordance with these conditions, we grant to you a sub-licence to use the Software for the period specified in the Order Form. The sub-licence will be on the same terms as the licence granted to us under the Agreement save as amended or supplemented by these conditions.

The sub-licence will commence on the date specified in the Order Form and terminate upon the expiry of the licence period specified in the Order Form unless terminated earlier in accordance with the terms of the sub-licence. The sub-licence will automatically terminate upon termination of the Agreement.

**2 Your obligations**

You agree to comply with your obligations under the sub-licence granted by us. You agree to indemnify us on demand against any costs, claims, liabilities or expenses that we may suffer or incur as a result of your failure to comply with those obligations or any act or omission by you which results in us being in breach of, or having any liability under, the Agreement. You agree to pay the initial participation fee to us and the licence fee to your reseller prior to the licence commencement date specified in the Order Form and any annual fees payable prior to each subsequent licence renewal date. The sub-licence will not commence until you have paid the initial participation and licence fees in full. You agree to do such things and acts as we may reasonably require in order to enable or otherwise assist us to comply with our obligations under the Agreement to the extent that they relate to the sub-licence granted to you.

**3 Claims**

The following provisions apply to any breach by Microsoft of the Agreement which specifically relates to the sub-licence of the Software granted to you (“a Microsoft Breach”) or any claim brought by Microsoft against us (whether for breach of the Agreement or otherwise) which relates to a breach by you of this Agreement to Participate (“a Microsoft Claim”):

- 3.1** you will, as soon as reasonably practicable after having become aware of the same, notify us of any Microsoft Breach or Microsoft Claim or any matter, fact or circumstance which may or is likely to give rise to the same;
- 3.2** subject to paragraph 3.4 below, we will take such steps as you may reasonably require to enforce the terms of the Agreement in respect of a Microsoft Breach or to avoid, resist, mitigate, compromise, defend or appeal against any Microsoft Claim;
- 3.3** upon your written request we will delegate to you the conduct of any proceedings arising in connection with the Microsoft Breach or Microsoft Claim and, subject to paragraph 3.4 below, give you such assistance as you may reasonably require in disputing the claim or enforcing the right;
- 3.4** you will indemnify and secure us to our reasonable satisfaction in respect of any costs, liabilities and expenses which we incur or anticipate incurring as a result of complying with paragraphs 3.2 and 3.3 above;
- 3.5** you will not accept or pay or compromise any Microsoft Breach or Microsoft Claim without our prior written consent, such consent not to be unreasonably withheld;
- 3.6** we shall account to you for any sum recovered from Microsoft in respect of a Microsoft Breach (to the extent that you have not already been compensated for the same) within a reasonable time of receipt but shall be entitled to deduct any sums which you owe to us.

#### **4 Liability**

Other than as provided in clause 3.6 above, we shall have no liability to you in respect of the operation of the Software (including in respect of its compliance with any Microsoft user documentation) or any claims that the Software or any part of it infringes the intellectual property rights of any third party. We shall have no liability to you in respect of the termination of the sub-licence or Agreement prior to the licence period specified in the Order Form and you shall not in any event have any more extensive rights against us under the sub-licence of the Software than we have against Microsoft under the Agreement insofar as it relates to the sub-licence.

Save as provided below, our total liability for any claim whatsoever arising under or in connection with the sub-licence and Agreement to Participate between us (comprising the commitment form, these terms and conditions and any documents referred to therein) shall not exceed the total participation fees paid by you to us plus an amount (if any) for which we are liable to account to you pursuant to paragraph 3.6 above.

We shall not be liable to you for any pure economic loss, loss of profits, loss of business, loss of data, loss of operation time, loss of any equipment or process suffered by you, loss of anticipated savings or depletion of goodwill in each case direct or indirect or consequential or any claims for any consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the sub-licence or this Agreement to Participate between us.

Nothing in these conditions shall operate to exclude or limit our liability for death or personal injury caused by our own negligence or for fraud or fraudulent misrepresentation.

#### **5 General**

The commitment form, these terms and conditions and any documents referred to therein contain the entire Agreement to Participate and understanding between us and supersede any previous agreement between us relating to the subject matter hereof. The sub-licence and Agreement to Participate between us shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts.