



Chest Agreement for Online Resources

Standard Licence Terms

v3.0 – June 2011

Standard Chest Online Resources Licence

Terms and Condition for the Standard Chest Licence for Online Resources

These terms and conditions apply to all orders for Chest online resources 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	<p>any of the following persons authorised by the Licensee to access the Licensee's information services via Secure Access.</p> <p>(i) Students which means any person undertaking education or research who for the particular course of study or research, is included in the Licensee's and not any other party's report to government authorities of student numbers and/or is registered and/or enrolled only by the Licensee. Visiting students and researchers are classed as "Students" whether or not they are reported or registered or enrolled by the Licensee. Students may access the Licensed Material on-site or off-site.</p> <p>(ii) Staff which means any personnel used by the Licensee to instruct or direct Students, the Licensee's research staff and administrative and management personnel. Staff may access the Licensed Material on-site or off-site.</p> <p>(iii) Walk-in users which means any person while they are on the premises of the Licensee who use the Licensed Material for private study or personal interest only.</p> <p>(iv) Alumni members which means a Walk-in user who is a member of the Licensee's formal alumni association. If shown on the Order, Alumni members are only Authorised Users if the Licensee has purchased the Option for Extended Educational Purposes set out in Annex A.</p>
(b) Educational Purposes	<p>education, teaching, distance learning, private study, academic research and the administration and management of the Licensee's educational or research operations. The Licensee, but not any user, may receive payment or funding from Students or third parties for activities using the Licensed Material provided that all such payments and funding are applied to the cost of running the normal educational and research operations of the Licensee and no part is distributed to third parties as profit or dividend or similar. 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.</p>
(c) Fee	<p>the sums set out on the Website, which are to be paid by the Licensee for the Licensed Material and rights under this Licence Agreement.</p>
(d) Intellectual Property Rights	<p>patents, trademarks, trade names, rights in internet domain names and website addresses, design 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.</p>
(e) Licence Agreement	<p>the binding contract between the Licensor and Licensee which is formed when the Licensor accepts an Order under clause 5.3. The Licence Agreement consists of these Terms and Conditions for the Standard Chest Licence for Online Resources, 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 these Terms and Conditions for the Standard Chest Licence for Online Resources.</p>

(f) Licensed Material	the product shown on the Order including the online resources and the associated metadata and the related documentation, support services and training materials set out in the Specification.
(g) Licensee	the party shown on the Order who is granted the rights to use the Licensed Material.
(h) Licensor	the party shown on the Order who grants the rights hereunder to the Licensee.
(i) Order	a request for Licensed Material in the form shown on the Website.
(j) Secure Access	access through a network controlled by OpenAthens authentication or SAML (Security Assertion Mark-up Language) technology based authentication, IP ranges or by another means of authentication set out in the Specification.
(k) Specification	the detailed description of the Licensed Material published on the Website.
(l) Website	EduserV's Chest internet site which sets out details about the Licensed Material and other information relevant to this Licence Agreement (see http://www.eduserV.org.uk/lms).

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 non-transferable right to use the Licensed Material and to allow Authorised Users to use this Licensed Material for the term shown on the Order.
- 2.2 Throughout the term of this Licence Agreement, the Licensee may for Educational Purposes only:
- (a) make such temporary local electronic copies of the Licensed Material as are necessary for the efficient use by Authorised Users in accordance with the terms and conditions of this Licence Agreement;
 - (b) allow Authorised Users to access the Licensed Material by Secure Access in order to search, retrieve, view, display and otherwise use the Licensed Material in accordance with this Licence Agreement;
 - (c) allow Authorised Users to electronically save parts of the Licensed Material;
 - (d) allow Authorised Users to download and/or print out copies of parts of the Licensed Material;
 - (e) allow Authorised Users to download and/or print out copies of the documentation supplied with and forming part of the Licensed Material for training purposes;
 - (f) use or allow Authorised Users to use parts of the Licensed Material in any electronic or print media or audiovisual content;
 - (g) allow Authorised Users to modify the metadata associated with the Licensed Material to create new metadata for their own use;
 - (h) allow Authorised Users to incorporate parts of the Licensed Material in printed or electronic form in coursework, assignments, portfolios, theses, papers, dissertations and in materials for presentations and workshops, copies of which may be retained in the Licensee's library or archives, or retained by the Authorised User for personal use, or provided to sponsors of the work for reference but not for commercial exploitation. Each item shall carry appropriate acknowledgement of the source and copyright owner;
 - (i) display, download and print parts of the Licensed Material for the purpose of testing or training or promoting the Licensed Material;
 - (j) incorporate parts of the Licensed Material for use by Authorised Users in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) controlled by Secure Access. Each item shall carry appropriate acknowledgement of the source and copyright owner;
 - (k) deposit in perpetuity for subsequent reference, the learning and teaching objects referred to in clause 2.2 (j) in repositories operated by the Licensee through Secure Access and/or in centrally controlled repositories such as the JORUM Repository established by UK funding authorities;
 - (l) use the Licensed Material metadata in systems to manage library operations.
 - (m) supply a single paper copy of parts of the Licensed Material to an authorised user of another library, by post, fax or secure electronic transmission, using Ariel software or its equivalent, whereby the electronic file is deleted immediately after printing.

- 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 The Licensee acknowledges that this Licence Agreement does not assign or transfer to the Licensee any right, title or interest to the Intellectual Property Rights in the Licensed Material except for the right to use the Licensed Material 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, lease, sublicense, rent or hire, loan (except for inter-library loans under clause 2.2 (m)), transfer, or substantially or systematically reproduce, retain or redistribute the Licensed Material;
 - (b) remove, obscure or modify copyright notices, text or other means of identification or disclaimers appearing in the Licensed Material;
 - (c) alter, adapt, modify, disassemble, decompile or reverse engineer the Licensed Material 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) display or distribute any part of the Licensed Material on any electronic network except by Secure Access;
 - (e) use the Licensed Material other than for Educational Purposes.

4 Licensee Responsibilities

- 4.1 The Licensee will:
- (a) comply with all computer security procedures agreed with the Licensor and implement reasonable measures to prevent unauthorised access to or use of the Licensed Material;
 - (b) issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not disclose passwords or other access information to any third party;
 - (c) 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;
 - (d) use all reasonable efforts to monitor compliance and notify the Licensor immediately and provide full details upon becoming aware of any unauthorised use of any of the Licensee's or Authorised Users' passwords or of any material breach by an Authorised User of the terms of this Licence Agreement. The Licensee shall promptly and diligently investigate any such breach 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;
 - (e) keep the Licensor informed of all valid IP addresses and other information required by the Licensor in order to make the Licensed Material available as set out in this Licence Agreement;
 - (f) 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 Licensed Material is owned by or licensed to the Licensor and does not infringe the Intellectual Property Rights or other rights of any third party;
 - (c) the content of the Licensed Material is not unlawful or false or misleading or offensive or pornographic or obscene or derogatory or discriminatory or racist or defamatory or inflammatory;
 - (d) the Licensed Material complies with the Specification;
 - (e) the availability of the Licensed Material will be as stated in the Specification;
 - (f) the documentation, support services and training materials shown in the Specification are not less than that which the Licensor provides with the Licensed Material 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) it will make updates and new versions available in accordance with the descriptions and frequencies shown in the Specification. In any event, the Licensor shall make updates and new versions available to the Licensee whenever it makes the same updates and new versions available to its other customers;
 - (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 content of the Licensed Material is correct or complete but warrants that the Licensed Material and its content have been reasonably checked and are not known to contain material errors. The Licensor will make reasonable attempts to promptly correct errors discovered by the Licensor or brought to its attention. Content errors may be corrected by publishing errata.
- 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 Licensed Material for any purpose.
- 5.3 The Licensor shall make the Licensed Material available to the Licensee by the date requested on the Order or, before such date, inform the Licensee when the Licensed Material will be made available or inform the Licensee of the reasonable grounds why the Order cannot be accepted.
- 5.4 The Licensor shall ensure that its server and systems are sufficient for the Licensed Material to be used by Authorised Users without unreasonable service delays.
- 5.5 The Licensor shall reasonably endeavour not to materially change or reduce the content of Licensed Material during the course of this Licence Agreement. The Licensor will give the Licensee reasonable prior notice of any such material change or reduction and shall refund the Licensee a reasonable proportion of the Fees already paid and similarly reduce the Fees for the remaining term of the Licence Agreement.
- 5.6 The Licensor shall promptly and diligently act on information provided by the Licensee under clause 4.1 (e).
- 5.7 The Licensor will nominate technical contacts for matters arising under this Licence Agreement.

6 Usage data

- 6.1 The parties shall reasonably co-operate in gathering data on usage of the Licensed Material and shall provide such data to each other upon request but no more than once in any three month period. Notwithstanding the foregoing, the parties shall not compile data from which an individual user could be identified.

7 Fee

- 7.1 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.

8 Intellectual Property Rights Indemnity

- 8.1 The Licensor shall indemnify and hold the Licensee harmless from all damages, claims, legal fees and costs incurred by Licensee in respect of any third party claim or action concerning the ownership or use of the Licensed Material or the Intellectual Property Rights in the Licensed Material, 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 8 shall not apply to the extent that the infringement arises out of any use of the Licensed Material 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.
- 8.2 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 Licensed Material; or
 - (b) promptly modify or amend the Licensed Material so that the infringement is removed and reasonably rebate the Licensee in accordance with clause 5.5; or
 - (c) promptly replace the Licensed Material or infringing part so that the Licensed Material becomes non-infringing and reasonably rebate the Licensee in accordance with clause 5.5.

Modified, amended or replacement Licensed Material provided under clause 8.2 (b) or (c) shall be treated as Licensed Materials for all purposes under this Agreement.

9 Liability

- 9.1 Except as set out in clauses 8, 9.2 and 9.3, 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 due under this Licence Agreement.
- 9.2 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.
- 9.3 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.

10 Term and Termination

- 10.1 This Licence Agreement shall commence on the date shown on the Order provided that the Licensee allows at least five 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.
- 10.2 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.
- 10.3 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.
- 10.4 By giving the Licensor not less than sixty days' prior written notice and paying any termination fee shown on the Order, the Licensee may terminate this Licence Agreement without cause on any anniversary of the commencement date set out in clause 10.1.
- 10.5 Upon termination of this Licence Agreement and subject to any Fee shown on the Website, the Licensee may retain an electronic copy of the Licensed Material in its archives for reference only. Copies of parts of the Licensed Material already made and/or used by the Licensee or Authorised Users in accordance with clause 2.2 may be retained and used in accordance with the terms of this Licence Agreement.
- 10.6 All rights and obligations of the parties under this Licence Agreement automatically cease upon termination except for such rights of action that accrue 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.
- 10.7 Immediately upon giving the Licensee written notice, the Licensor shall be entitled to suspend the Licensee's access to the Licensed Material for any period where the Licensee is in breach of any of material conditions set out in clause 2, 3 or 4. No refund of Fees shall be due in respect of any such period of suspension.

11 Dispute Resolution

- 11.1 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.

12 Assignment

- 12.1 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.

13 Waiver

- 13.1 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.

14 Changes

- 14.1 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, alterations to Fees that are allowed under this Licence Agreement and also to alterations or additions to the Specification.

15 Severability

- 15.1 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.

16 Notices

- 16.1 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.
- 16.2 Notices to the Licensor must be copied to EduserV whose details appear on the Order.

17 Force Majeure

- 17.1 Except for the obligation to make payments properly due, neither party will be liable for delay or failure to perform obligations caused by the acts or omissions of reputable utility providers or ISPs or caused by any other 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.

18 Legal Construction of this Licence Agreement

- 18.1 The parties agree to use the English language for all matters relating to this Licence Agreement.
- 18.2 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.
- 18.3 This Licence Agreement represents the entire agreement and understanding between the parties in respect of its subject matter.
- 18.4 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 Licensed Material are part of an unavoidable administrative process only and do not form part of nor prevail over the Licence Agreement even if such "click-wrap" or "shrink-wrap" terms contain any statement to the contrary.
- 18.5 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.

Annex A - Option for Extended Educational Purposes

- A1** At any time during the term of the Licence Agreement, the Licensee may extend its rights by submitting an Order for this Option and by paying the Fee shown on the Website.
- A2** Under this Option the definition of “Authorised User” in clause 1.1 (a) of the Main Body shall additionally include any person authorised by the Licensee to access its information services via Secure Access and to use the Licensed Material on-site or off-site, in connection with any Educational Purpose of the Licensee which is not already covered by the rights granted under clause 2 of the Main Body.
- “The Main Body” means clauses 1 to 18 of the Terms and Conditions for the Standard Chest Licence for Online Resources.
- A3** All other terms and conditions of the Licence Agreement are unaffected and continue to apply with full effect.

Annex B - Licence Extension for Commercial Projects

B1 Definition

B1.1 A Commercial Project is:

- (a) any right granted under the Main Body or granted under the Option for Extended Educational Purposes except that the Licensee and/or any user, may receive payment or funding from third parties for activities using the Licensed Material and where such payment or funding need not be applied to the cost of running the normal educational and research operations of the Licensee. Any portion of such payment or funding may be retained by the Licensee and/or any user or distributed to third parties as profit or dividend or similar. The results of activities being undertaken may be retained by any third party without being published; or
- (b) any non-academic research carried out by the Licensee but not any non-academic research carried out privately by any user; or
- (c) any consultancy services undertaken by the Licensee on a commercial basis; or
- (d) any activity where the Licensee sets up or joins a trading company, partnership, joint venture or other collaborative vehicle provided that the Licensee can demonstrate that it has a majority or controlling interest in the trading company, partnership, joint venture or other collaborative vehicle.

B1.2 “The Main Body” means clauses 1 to 18 of the Terms and Conditions for the Standard Chest Licence for Online Resources.

B2 Process

B2.1 The Licence Extension for Commercial Projects cannot be purchased unless the Option for Extended Educational Purposes is also purchased by the Licensee at the same time or has already been purchased by the Licensee.

B2.2 At any time during the term of the Licence Agreement, the Licensee may request and the Licensor shall reasonably consider the right for the Licensee to extend its rights to cover Commercial Projects or to add further Commercial Projects to those already approved by the Licensor.

B2.3 The Licensee’s request shall include such details of the Commercial Projects as the Licensor may reasonably require.

B2.4 The Licensor may decline any request from the Licensee, or require specified Commercial Projects to be removed from the request, if in the Licensor’s reasonable opinion:

- (a) any Commercial Project is too far removed from the Licensee’s educational and research objectives and/or the circumstances make it appropriate for a normal commercial licence to be purchased; or
- (b) the Licensor has other established channels which are more appropriate for responding to any particular Commercial Projects; or
- (c) the number, size or type of the Commercial Projects is unreasonable in the light of the discounts applying under the main body of the Terms and Conditions for the Standard Chest Licence for Online Resources; or
- (d) other reasonable and similar grounds justify the rejection.

B2.5 If the Licensor agrees to the Licensee’s request, the Licensee shall submit an Order for this licence extension and shall pay the Fee shown on the Website upon receipt of which the Licence Agreement shall be deemed to be amended as follows and the Licensor shall grant the rights set out in clause B3.1 (c) and (d) below.

B3 Amendments to terms and conditions

B3.1 The Main Body is amended as follows but only where the Licensed Material is used in connection with the agreed Commercial Projects:

- (a) the definition of Commercial Projects set out in clause B1.1 of this Annex B is added to clause 1.1;
- (b) clause B2 of this Annex B is added to clause 2.2;
- (c) in clause 1.1 (a), the definition of Authorised User shall additionally include any other person authorised by the Licensee to access the Licensed Material on-site or off-site, in connection with the agreed Commercial Projects;
- (d) in clause 2.2, in addition to Educational Purposes, the Licensed Material may be used for Commercial Projects;
- (e) clause 3.1 (e) does not apply;
- (f) clause 4.2 does not apply;
- (g) any termination of the Licence Agreement under clause 10 automatically applies to this licence extension. This licence extension may be terminated independently of the rest of the Licence Agreement in accordance with any of the provisions of clause 10.

B3.2 All other terms and conditions of the Licence Agreement are unaffected and continue to apply with full effect.