

IMPORTANT – PLEASE READ CAREFULLY: This Licence is a legal agreement between you (on behalf of the Authorised Organisation to which you belong) and The Learning and Skills Council of Cheylesmore House, Quinton Road, Coventry, CV1 2WT (“we”, “us” or “our”) for the use of Quest. By installing, copying, distributing, transmitting or using Quest you agree to be bound by the terms of this Licence. If you do not agree to be bound by all of the terms below, do not install, copy, distribute, transmit or use Quest. By accepting the terms of this Licence, you confirm that you are a member of an Authorised Organisation and that you are acquiring the right to use Quest on behalf of such Authorised Organisation.

You must acknowledge and accept these Licence terms in order to gain access to Quest.

1. Interpretation

1.1 In this Licence the following words and phrases shall, unless the context otherwise requires, have the following meanings:

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| “Authorised Organisation” | those organisations detailed in Schedule 2; |
| "Intellectual Property Rights" | means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights, actual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world; |
| “Learning and Teaching” | the provision or receipt of education, training, knowledge, information and skills ; |
| “Quest” | the computer software and any associated material reproduced in physical form as altered by us from time to time. |

1.2 Unless the context otherwise so requires:

- (a) references to us or we and to you include our or your permitted successors;
- (b) references to statutory provisions include those statutory provisions as amended or re-enacted; and
- (c) references to any gender include all genders.

2. Grant of Licence

In consideration of you agreeing to fulfil your obligations under this Licence we hereby grant you a non-exclusive licence to use Quest for the purposes of Learning and Teaching.

3. Scope of Use

3.1 Members of your organisation i.e.:

- (a) teachers, lecturers, trainers and anyone carrying out an equivalent role within your organisation;
- (b) anyone else within your organisation (e.g. managers, librarians, other support staff, administrators, etc); and
- (c) learners, students, trainees and equivalent people within your organisation,

are permitted to use Quest for the purposes of Learning and Teaching as long as they fulfil the obligations of this Licence.

3.2 Quest is available to you free of financial charge provided that you comply with your obligations under this Licence.

3.3 We acknowledge that you may use Quest as part of the services for which you receive income from your normal funding sources but it is a condition of this Licence that Quest is not used in any manner which independently creates any other sources of income for your organisation.

3.4 You are specifically prohibited from charging, soliciting donations or otherwise obtaining financial benefit other than that described in Clause 3.3 from use of Quest no matter how it is used or distributed. This includes providing access via any hyperlink, bundling with other software of any kind, or other method that allows a user to store, deliver or transfer copies of Quest.

3.5 You may, however, disaggregate Quest for the purpose of presenting and using fragments of it and for combining it with or incorporating it in other materials, providing our copyright is not infringed and is acknowledged in the resulting material and providing you do not charge, solicit donations or otherwise obtain financial advantage other than that described in Clause 3.3 from the resulting material.

3.6 We reserve the right to revoke any or all distribution rights at any time, for any reason.

3.7 All rights of any kind in Quest which are not expressly granted in this Licence are entirely and exclusively reserved to and by us. Quest is protected by the copyright laws of England and other applicable national and international laws and treaties.

3.8 The Licence granted hereunder includes no rights in or to the source code version of Quest.

4. Assignment and Sub-licensing

4.1 You shall have no right to grant sub-licences.

4.2 You shall have no right to assign the benefit or burden of this Licence in whole or in part or to allow Quest to become the subject of any charge, lien or encumbrance.

5. Termination

5.1 This Licence may be terminated only:

- (a) by you at any time by written notice to us; or
- (b) by us immediately, by written notice to you, if you are in breach of any of the provisions of this Licence and either that breach is incapable of remedy or you shall have failed to remedy that breach within thirty (30) days after receiving written notice requiring you to remedy that breach; or
- (c) by us at any time if your organisation is no longer an Authorised Organisation.

5.2 Termination by either party in accordance with the rights contained in Clause 5.1 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

6. Warranties

6.1 Quest and any and all accompanying documentation, software, files, data and materials, are distributed and provided “as is” and with no warranties of any kind, whether express or implied, including, without limitation, any warranty of satisfactory quality or fitness for a particular purpose. We do not warrant, guarantee, or make any representations regarding the use of, or the results of the use of, Quest.

6.2 You warrant that:

- (a) your organisation is an Authorised Organisation and that you accept (and have authority to accept) the terms of this Licence on behalf of your organisation;

- (b) you will ensure all users within your organisation are aware of the terms and conditions of this Licence, particularly Clauses 3 and 4; and
 - (c) the NLN Material shall only be used in accordance with the terms of the Licence.
- 6.3 You will indemnify and keep us indemnified against all actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities arising from any breach of any warranties given by you in accordance with this Licence.

7. Limitation of Liability

- 7.1 Except as expressly stated in this Licence, we shall not have any liability to you (or any person claiming under or through you) for any loss or damage whatsoever arising from or in connection with this Licence or the use of Quest (whether or not in the manner permitted by this Licence) or the development, modification or maintenance of the same.
- 7.2 Without prejudice to the generality of Clause 7.1, we shall have no liability for any losses or damages which may be suffered by you (or any person claiming under or through you), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:
 - (a) special damage even though we were aware of the circumstances in which such special damage could arise;
 - (b) loss of profits, anticipated savings, business opportunity or goodwill; or
 - (c) loss of data.
- 7.3 The above exclusions shall apply to the fullest extent permissible at law but we do not exclude liability for death or personal injury caused by our negligence or for fraud.
- 7.4 In addition, in no event do we authorise you or anyone else to use Quest in applications or systems where their failure to perform can reasonably be expected to result in a physical injury, or in loss or property, or loss of life. Any such use is entirely at your own risk, and you agree to hold us harmless from any and all claims or losses relating to such unauthorised use.

8. Force Majeure

- 8.1 No party shall be liable to the other for any delay or non-performance of its obligations under this Licence arising from any cause or causes beyond its reasonable

control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion.

9. Waiver

- 9.1 No forbearance or delay by us in enforcing our rights will prejudice or restrict our rights, and no waiver of any such rights or of any breach of any contractual terms by us will be deemed to be a waiver of any other right or of any later breach by you.

10. Severability

- 10.1 If any provision of this Licence is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

11. Amendments

- 11.1 Any amendment, waiver or variation of this Licence shall not be binding on the parties unless set out, expressed to amend this Licence and signed by or on behalf of each of the parties.

12. Notices

- 12.1 Notices shall be in writing, and shall be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within twenty-four (24) hours by a first-class mail copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered seventy-two (72) hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

13. Entire Agreement

- 13.1 This Licence represents the entire agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

14. Governing Law and Jurisdiction

- 14.1 This Licence shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.

SCHEDULE 1

Authorised Organisations

The following is a list of UK organisations which are authorised to enter into the Licence and use Quest in accordance with the terms of the Licence:

1. Further Education and Higher Education institutions
2. Specialist colleges
3. 6th form colleges
4. Schools with Sixth Forms
5. All other secondary schools
6. Work Based Learning providers contracted with us
7. Adult and Community Learning providers and Community and Voluntary Organisations
8. Any organisation contracted with us or a Regional Development Agency as part of the Train to Gain service
9. Prisons and other Offender Institutions
10. The Probation Service
11. UK online centres via Ufi Ltd
12. Museums, libraries and archives
13. Regional Development Agencies
14. Sector Skills Councils
15. Ministry of Defence
16. Department of Health and the National Health Service
17. Social Care via the Social Care Institute for Excellence
18. Royal Mail

as amended from time to time by us.