

Version: 0.9 - July 2017

Introduction

All users of the Jisc Liberate Service are required to comply with these Terms and Conditions, and any applicable policies and technical requirements they may be notified of by Jisc.

1. Definitions and Interpretation

Account	A particular set of credentials.
Business Day	A day other than a Saturday, Sunday or public holiday in England when banks in England are open for business.
Credentials	Information providing for authentication of one or more End Users.
End User	Persons or systems associated with an organisation that issues them with Credentials.
Good Practice	Good business practice as generally accepted within the IT industry.
Identity Provider	An organisation responsible for issuing Credentials and securely authenticating these Credentials to enable access to resources offered by a Service Provider.
Intellectual Property Rights	any patent, trade mark, service mark, registered design, copyright, design right, database right, rights protecting confidential information, any applications for or rights to apply for any of the above and any other intellectual property right recognised in any part of the world, whether or not now existing or applied for, and all accrued rights of action in respect of any such rights.
Janet CSIRT	Jisc's Computer Security Incident Response Team handling and managing security incidents on the Janet network.
Jisc	Jisc Collections and Janet Limited (Company no. 2881024), trading as "Janet(UK)".
Jisc Liberate Service/Service	The service provided by Jisc to qualifying Subscribers which facilitates access by users associated with an Identity Provider to resources offered by a Service Provider.

Management Contact	An individual notified as such to Jisc by the Subscriber, whose role is to manage the Jisc Liberate Service at that Subscriber's organisation; including enrolment, provision and maintenance of service information, and nomination of other Management and/or Security Contacts.
Resources	Information and/or services offered by a Service Provider to authorised End Users.
Security Contact	An individual or general-purpose email address nominated by the Subscriber (and notified as such to Jisc), who/which will receive security-related information, updates or incident advisories on behalf of that Subscriber.
Service Provider	An organisation providing access to Resources using Credentials authenticated by an Identity Provider.
Signatory	The authorised individual within a Subscriber who has agreed to these Terms and Conditions on behalf of such Subscriber, and who has responsibility for nominating the Management Contact(s) and Security Contact(s) for such Subscriber.
Subscriber	Any subscribing organisation using the Jisc Liberate Service, whether as an Identity Provider and/or Service Provider.
Subscription Charges	the charges payable by the Subscriber to Jisc for the Jisc Liberate Service as set out in Schedule [insert schedule no.].
Subscriber Data	the data input by the Subscriber or Jisc on the Subscriber's behalf for the purpose of using the Service or facilitating the Subscriber's use of the Jisc Liberate Service.
Subscription Term	has the meaning given in clause 7 (being the Initial Subscription Term together with any subsequent Renewal Periods).
Technical Specification	A technical specification is a document that defines a set of requirements that a product or assembly must meet or exceed.

Terms and Conditions

These terms and conditions, relating to the provision of the Jisc Liberate Service by Jisc.

2. Subscribers

- 2.1 The Subscriber must, through its Signatory, nominate and provide the contact details of at least one person as its Management Contact and one person or general-purpose email address as its Security Contact. The Subscriber will maintain an up-to-date list of its Management Contacts and Security Contacts and will notify Jisc if it wishes to make any changes.
- 2.2 The Subscriber agrees to delegate the authority for Jisc to act on their behalf in the Subscriber's use of the Jisc Liberate Service with Assent, eduroam(UK), the UK Access Management Federation, and any other access management service operated by Jisc.
- 2.3 The Subscriber acknowledges that participating in the Jisc Liberate Service does not itself grant it, or its End Users automatic access to the resources of other participating subscribers or other organisations. Such access is conditional upon the Subscriber agreeing appropriate terms with the relevant Service Provider governing that access. Jisc will not be responsible for, nor have any liability in respect of, the performance or otherwise of those terms and will not be required to resolve any disputes in relation to those terms.
- 2.4 The Subscriber agrees not to act in any manner that damages, is likely to damage or otherwise adversely affect the reputation of Jisc or the Jisc Liberate Service.
- 2.5 The Subscriber acknowledges that Jisc may take any action as is necessary in its opinion to protect the legitimate interests of other participating subscribers, the reputation of Jisc, or ensure the efficient operation of the Jisc Liberate Service. This will be without incurring liability to the Subscriber, and without prejudice to any other defined rights and remedies.
- 2.6 The Subscriber grants Jisc the right to hold, process, publish and use any data necessary for administering and operating the Jisc Liberate Service.
- 2.7 The Subscriber undertakes that:
 - 2.7.1 it will take the responsibility for the supporting its End Users in their use of the Jisc Liberate Service, and resources offered by Service Providers;
 - 2.7.2 it will provide all necessary cooperation to allow Jisc to support the Subscriber in adopting and using the Jisc Liberate Service;
 - 2.7.3 all and any data when provided by it or its Signatory to Jisc or any other subscriber participating in the Jisc Liberate Service is accurate and up-to-date;

- 2.7.4 it will observe Good Practice for the authentication and authorisation of users of online resources and services;
- 2.7.5 it will observe Good Practice in relation to the configuration, operation and security of its networks and systems, including the ability to trace activity to a user account;
- 2.7.6 it will observe Good Practice in relation to the exchange and processing of any data, and in obtaining and managing the DNS names, digital certificates and private keys;
- 2.7.7 it holds and will continue to hold all necessary licenses, authorisations and permissions required to access, use and meet its obligations with respect to the Jisc Liberate Service;
- 2.7.8 it will give reasonable assistance to any other organisation investigating misuse of the Jisc Liberate Service; and
- 2.7.9 it will promptly inform Janet CSIRT of any apparent breaches of security affecting the privacy of End User Credentials.
- 2.7.10 The Subscriber agrees that Jisc may use the subscriber's name and logo for the purposes of promoting the Jisc Liberate Service

3. Jisc's Role

- 3.1 Jisc shall provide the Jisc Liberate Service in accordance with the service levels set out in Schedule [insert number].

Jisc undertakes to provide technical support to Subscribers in their adoption and use of the Jisc Liberate Service.

- 3.2 Jisc undertakes to protect the security of the Service by implementing Good Practice and encouraging its adoption by Subscribers.
- 3.3 Jisc may reduce or suspend the Jisc Liberate Service without notice and without liability where in Jisc's opinion this is necessary for operational or security reasons.
- 3.4 Jisc will record authentication attempts and keep records of the same for at least a 3-month period, and provide relevant extracts of this record to Subscribers or Janet CSIRT when requested.
- 3.5 Jisc will promptly inform Janet CSIRT of any apparent breaches of security affecting the privacy of End User Credentials.

- 3.6 Jisc shall not be liable for any non-conformance which is caused by use of the Jisc Liberate Service contrary to Jisc's instructions or modification or alteration of the Jisc Liberate Service by any party other than Jisc or Jisc's duly authorised contractors or agents.
- 3.7 Jisc does not warrant that the Subscriber's use of the Jisc Liberate Service will be uninterrupted or error-free or that the Jisc Liberate Service will meet the Subscriber's requirements.
- 3.8 Jisc is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet and the Subscriber acknowledges that the Jisc Liberate Service may be subject to limitations, delays and other problems in the use of such communications facilities.

4. Limitation of Liability

- 4.1 The Subscriber agrees that Jisc has no liability whatsoever in respect of:
 - 4.1.1 authentication and/or authorisation of End Users by Identity Providers;
 - 4.1.2 the provision of resources or services by Service Providers; or
 - 4.1.3 errors or faults in the registration or publication of services.
- 4.2 Nothing in these Terms and Conditions limits or excludes the liability of a Subscriber or Jisc for death or personal injury caused by its negligence, or for fraud.
- 4.3 Jisc provides the Jisc Liberate Service on an *as is* basis.,
- 4.4 Subject to Clause 4.3 and without prejudice to Clause 4.4, Jisc shall not be liable whether in tort (including for negligence or breach of statutory duty), contract,, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, loss of anticipated savings, loss of goods, loss of contracts (whether direct or indirect), loss of use, loss of opportunity, loss, spoiling or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, charges or expenses.
- 4.5 Jisc's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Charges paid during the 12 months immediately preceding the date on which the claim arose.

4.6 The Subscriber will indemnify, defend, and hold harmless Jisc and its affiliates, officers, directors, employees, successors and assigns from and against all claims, suits, demands and actions brought against these indemnified parties, and for all damages, losses, costs, and liabilities in relation thereto, that result or arise from the acts or omissions of the Subscriber (or its employees or agents) or otherwise result or arise directly or indirectly from the Subscriber's access to and/or use of the Jisc Liberate Service.

4.7 Except as expressly provided in these Terms and Conditions, all representations, conditions and warranties in relation to Jisc's provision of the Jisc Liberate Service, whether express or implied (by statute or otherwise) are excluded to the fullest extent permitted by law.

5. Auditing and Compliance

5.1 Subscribers acknowledge and agree that Jisc will, on reasonable notice, have the right to audit their systems, processes and documentation (either remotely or in person) to verify that the Subscriber is complying with these Terms and Conditions, any other applicable policies and technical requirements, or general Good Practice in the area of operational security.

5.2 A Subscriber shall co-operate with and provide such assistance as reasonably required by Jisc in connection with such audit.

6. Notification of Non-Compliance and Suspension of Service

6.1 If Jisc has reasonable grounds for believing that a Subscriber is not complying with these Terms and Conditions or any applicable policies and technical requirements, then Jisc may:

6.1.1 notify the Subscriber of such non-compliance in sufficient detail to allow it to take appropriate remedial action; and

6.1.2 at Jisc's discretion, immediately suspend the Subscriber's use the Jisc Liberate Service.

Following receipt of such notice, the Subscriber must promptly remedy the non-compliance.

6.2 Jisc shall lift the suspension on a Subscriber under Clause 6.1 above if the Subscriber remedies the notified non-compliance to the satisfaction of Jisc.

7. Term and Termination of Service

7.1 The agreement shall commence on the date on which it has been signed by all the parties and shall continue for a minimum period of 12 months (the Initial Subscription Term) and thereafter, be automatically renewed for successive periods of 12 months (each a Renewal Period) unless:

7.1.1 either party notifies the other party of termination in writing at least [60] days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

7.1.2 otherwise terminated in accordance with the provisions of these Terms;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term

7.2 A Subscriber may voluntarily terminate its participation in the Jisc Liberate Service upon at least 1 month's written notice to Jisc. For the avoidance of doubt, the Subscriber shall not receive any refund of Subscriber Charges paid in advance if it terminates this agreement under this clause prior to the end of a Subscription Term.

7.3 Jisc may terminate the operation of the Jisc Liberate Service upon no less than 12 months' notice to all Subscribers.

7.4 Jisc may immediately terminate the participation of a Subscriber in the Jisc Liberate Service by giving written notice, without any compensation or damages due to the Subscriber, but without prejudice to any other rights or remedies which either the Subscriber or Jisc may have, if the Subscriber:

7.4.1 has materially breached these Terms and Conditions or any applicable policies or technical requirements and such breach is incapable of remedy; or

7.4.2 has a receiver, administrative receiver, administrator or other similar officer appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the Subscriber becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business or is unable to pay its debts or is deemed by section 123 of the Insolvency Act 1986 to be unable to pay its debts, or undergoes or is subject to any analogous acts or proceedings under any foreign law, including, but not limited to, bankruptcy proceedings.

- 7.5 If Jisc has notified a Subscriber that is not complying with these Terms and Conditions or any applicable policies and technical requirements and required it to remedy the same, and the Subscriber has not remedied the non-compliance to the reasonable satisfaction of Jisc within 30 days of the notice, Jisc may terminate their use of the Jisc Liberate Service.
- 7.6 Jisc may terminate this agreement with immediate effect by giving written notice to the Subscriber if the Subscriber fails to pay any amount due under this agreement on the due date for payment and remains in default not less than [15] days after being notified in writing to make such payment.
- 7.7 Where a Subscriber ceases to use or ceases to be entitled to use the Jisc Liberate Service for whatever reason Jisc will remove that Subscriber's access to the Jisc Liberate Service.

8. Charges and Payment

- 8.1 The Subscriber shall pay the Subscription Charges to Jisc for the Jisc Liberate Service in accordance with this Clause 8 and the Quotation provided by Jisc.
- 8.2 The Subscriber Charges will be charged 12 months in advance. Jisc shall invoice the Subscriber on the Effective Date for the Subscription Charges payable in respect of the Initial Subscription Term and at least [30] days prior to each anniversary of the Effective Date for the Subscription Charges payable in respect of the next Renewal Period.
- 8.3 The Subscriber shall pay each invoice within [30] days of the date of such invoice.
- 8.4 If Jisc has not received payment within [30 days] after the due date, and without prejudice to any other rights and remedies of Jisc:
- 8.4.1 Jisc may, without liability to the Subscriber, disable the Subscriber's access to all or part of the Jisc Liberate Service and Jisc shall be under no obligation to provide any or all of the Jisc Liberate Service while the invoice(s) concerned remain unpaid; and
- 8.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of HSBC Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.5 All amounts and fees stated or referred to in this agreement:
- 8.5.1 shall be payable in pounds sterling;
- 8.5.2 are non-cancellable and non-refundable;

8.5.3 are exclusive of value added tax, which shall be added to Jisc's invoice(s) at the appropriate rate.

8.6 Jisc shall be entitled to increase the Subscription Charges at the start of each Renewal Period upon [90 days'] prior notice to the Subscriber and Schedule [] shall be deemed to have been amended accordingly

9. Dispute Resolution

9.1 If any dispute arises between a Subscriber and Jisc with respect to these Terms and Conditions, both parties will refer the dispute to their respective representatives in respect of the Jisc Liberate Service, who will promptly discuss the dispute with a view to its resolution.

9.2 If any dispute cannot be resolved in accordance with Clause 9.1 within 10 working days, the matter will be referred for consultation between senior executives of the Subscriber and Jisc. If such senior executives are unable to resolve the matter, they will refer the dispute to their respective chief executives.

9.3 If a dispute cannot be resolved in accordance with Clause 9.2 within ten 10 working days of escalation to such chief executives, the parties may proceed to mediation provided by the Centre for Dispute Resolution ("CEDR") under its Model Mediation Procedure (or such other body as the Parties may agree). Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation the parties will send a joint notice in writing ("ADR notice") to CEDR requesting mediation. The mediation will start not later than 30 days after the date of the ADR notice, or such later date as the mediator is available.

9.4 If a process for mediation is not agreed in accordance with Clause 9.3 within a period of 15 working days from a request by either party for mediation or from the discussions between the parties' executive directors, and the dispute remains unresolved, both parties shall be entitled to pursue the matter in law

10. Data Protection

10.1 A Subscriber must comply with any applicable legislation in relation to data protection and privacy, including the Data Protection Act 1998 (as may be updated, renamed or re-enacted from time to time).

10.2 The Subscriber shall own all right, title and interest in and to all the Subscriber Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Subscriber Data.

10.4 If Jisc processes any personal data on the Subscriber's behalf when performing its obligations under this agreement, the parties record their intention that the Subscriber shall be the data controller and Jisc shall be a data processor and in any such case:

- 10.4.1 the Subscriber acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Subscriber and the Authorised Users are located in order to carry out the Services and Jisc's other obligations under this agreement;
 - 10.4.2 the Subscriber shall ensure that the Subscriber is entitled to transfer the relevant personal data to Jisc so that Jisc may lawfully use, process and transfer the personal data in accordance with this agreement on the Subscriber's behalf;
 - 10.4.3 the Subscriber shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - 10.4.4 Jisc shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Subscriber from time to time; and
 - 10.4.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 10.5 In this clause the following words and expressions shall have the following meanings. "personal data" shall have the meaning set out in section 1(1) of the Data Protection Act 1998, "processing and process" shall have the meaning set out in section 1(1) of the Data Protection Act 1998 and "data controller" shall have the meaning set out in section 1(1) of the Data Protection Act.

11. Intellectual Property Rights

- 11.1 The Subscriber acknowledges and agrees that Jisc and/or its licensors own all Intellectual Property Rights in the Service and the Documentation. Except as expressly stated herein, this agreement does not grant the Subscriber any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Service or the Documentation.
- 11.2 Jisc confirms that it has all the rights in relation to the Service and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

12. Service Management and Assignment

- 12.1 Jisc has the right to assign its rights and benefits under these Terms and Conditions. If the management function of the Jisc Liberate Service is transferred from Jisc to another body, the participation of a Subscriber will continue unaffected and these Terms and Conditions will be enforceable by such successor body.

- 12.2 The Subscriber shall not, without the prior written consent of Jisc, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

13. General

Updates and Variations

- 13.1 These Terms and Conditions, the Technical Specification and any other policies or technical requirements referred to in these Terms and Conditions may be updated or amended by Jisc from time to time. Subject to Clause 8, any such updates or variations shall be notified in writing to Subscribers (which may include by email) at least 30 days in advance of the relevant changes taking effect. If a Subscriber cannot or is not prepared to accept such changes, it should notify Jisc within 10 working days of receipt of Jisc's notice of such change accordingly and its participation in the Jisc Liberate Service shall be treated as terminated from the date on which such change(s) take(s) effect.

Force Majeure

- 13.2 Jisc shall have no liability to the Subscriber under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Jisc or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Subscriber is notified of such an event and its expected duration.

Severance

- 13.3 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

Governing Law

- 13.4 These Terms and Conditions will be governed and construed in accordance with the laws of England and Wales, and both Jisc and the Subscriber irrevocably agree to the exclusive jurisdiction of the Courts of England and Wales.

DRAFT