Transnational education (TNE) licensing approach

Jisc Collections agreements

This document is an update to the guidance provided as part of the TNE Licensing Pilot in January 2019. Our aim is to provide librarians and colleagues engaged in TNE activity, wishing to provide students located offshore with access to journal, database and e-book content licensed by Jisc Collections, with a clear understanding of how we are licensing for TNE access rights. We utilise a common TNE licensing approach developed with publishers through our pilot and the work of our TNE Licensing service.

Providing access to licensed content for your students

Our licensing approach starts from the premise that offshore students who are registered as your students, in the same way that your UK ‘home’ students are registered, are included as Authorised Users (AUs) in Jisc Collections agreements, and eligible to access the licensed content under the same terms.

In the context of Jisc Collections’ licence agreements a student registration is defined as:

‘a binding agreement between a student and an organisation for the delivery of educational services, within the meaning of “Stage 3: enrolment stage” in the Competition and Markets Authority’s advice for HE providers on consumer protection law.’¹

Home registered students will be recorded in the HESA Student Record. Offshore students are those registered students of your Institution, recorded in the HESA Aggregate Offshore Record (AOR) under Activity Type codes 1, 2 and/or 3 as shown below.²

<table>
<thead>
<tr>
<th>Code</th>
<th>Label</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Registered at reporting provider - studying overseas for UK HEP award at overseas campus of reporting provider</td>
</tr>
<tr>
<td>2</td>
<td>Registered at reporting provider - studying overseas for UK HEP award other than at an overseas campus of reporting provider</td>
</tr>
<tr>
<td>3</td>
<td>Registered at reporting provider - distance, flexible and distributed learning for UK HEP award where the location of the student is known to be overseas</td>
</tr>
<tr>
<td>4</td>
<td>Registered at overseas partner organisation - studying overseas for an award of the reporting provider</td>
</tr>
<tr>
<td>5</td>
<td>Any other student studying overseas for an award of the reporting provider</td>
</tr>
</tbody>
</table>

Source: HESA

¹ Full details are found here, p.37.
² Information about the HESA AOR Type of Activity codes is here.
We seek to include ‘registered’ in the definition of an AU to make it clear that, under the terms of our Model licence, used as the basis for Jisc Collections licence agreements, a current student may be legitimately located in the UK or abroad, when registered with the UK Institution. The word ‘registered’ is mentioned twice in the Definition of an Authorised User in our licenses:

"Authorised User" means an individual who is authorised by the Institution to have access to its information services (whether on-site or off-site) via Secure Authentication and who is:

- a current student registered with the Institution (including undergraduates and postgraduates);
- an alumnus of the Institution;
- a contractor of the Institution; or
- a member of staff of the Institution (whether permanent or temporary, including retired members of staff) and any teacher who teaches current students registered with the Institution; or
- without prejudice to Clause 4.2, a Walk-In User

and, unless the context otherwise requires, all references to “Authorised Users” in this Licence include “Additional Authorised Users”.

This makes it clear that both students and teachers teaching currently registered students of the UK institution are included in the licence grant.

Although HEIs may use different terminology locally to mean ‘registered’ (e.g. enrolled), and/or to define what a student is, or is not, in terms of Jisc Collections licence agreements, we have chosen to use the word ‘registered’ with the meaning adopted by HESA (and by extension, HEIs) when recording students both in the HESA Student Record (home registrations) and the HESA AOR (offshore registrations).

Benefits:

Publishers and librarians are finding this common approach brings clarity to which students are AUs in our licence agreements.

In using this approach we aim to support HESA’s Data Futures programme and other stakeholders, such as UUKi, the British Council and QAA, who are all seeking a common nomenclature in this area of activity.

Depending on your TNE profile, this approach ensures that students located abroad, who otherwise may have been charged for by some publishers are now clearly identified as AUs, included in your main licence agreement. Whereas before, you may not have provided access to content for these students due to possible cost implications, now you may confidently include them.

Licensing access for other offshore students

Universities arrange partnership agreements to deliver programmes and courses. In some countries they may need to set up their own separate legal entity in order to develop a campus abroad. These students are often recorded in Codes 4 and 5 of the HESA AOR (see table on page 1) reflecting more complex partnership arrangements, ones where the students are registered with the overseas partner rather than the UK institution.

In such cases those students are not covered by Jisc Collections agreements under the Jisc model licence terms, as AUs and are identified as Additional Authorised Users (AAUs).

Our TNE licensing approach aims to provide transparency from publishers on their pricing for these AAUs and to be clear on the circumstances when an additional fee to include access for these students does or does not apply. We have established a set of ‘AAU price exceptions’, which outlines scenarios where we think a fee is not considered appropriate. These exceptions are:

- **Sites with less than 1,000 students**: established student cohorts under 1,000 full person equivalent (FPE) (or an agreed higher level at any single site), unless the publisher can show a risk in terms of current subscription loss from the partner organisation concerned. Our research analysing the HESA AOR data showed that TNE arrangements are typically small, with almost 90% of HESA AOR scenarios reporting less than 250 offshore students and ~ 95% of them involving less than 1,000
students. When larger in scale than this, they are anomalous within the wider TNE population. Larger scale scenarios are often a sign of maturity, and/or a branch campus type of provision scenario.

- **Sites with over 1,000 students and 50%+ UK HEI ownership:** where users are reported in relation to a campus arrangement / joint campus, with over 1,000 students and the UK HEI has at least 50% ownership, with students receiving a UK award. For example, HEIs registered on the C-BERT listing.

- **New partnerships** being established or planned for implementation in the following year when student numbers are anticipated as very low and full details of the arrangement are not yet known.

The publishers we have engaged with to date understand these exceptions and the majority agree with them.

If you are engaging in new partnerships and wish to provide access to licensed content for your TNE students and need to understand the implications, we can provide an audit and further licensing advice and guidance for TNE transnational education service subscribers and on a consultancy basis for other members.³

### AAU Addendum

The Jisc model licence accommodates the possibility of licensing-in AAUs to an established agreement (whether for a fee, or for no fee / peppercorn fee, as agreed with the publisher), via an AAU licence addendum to the main licence agreement. Whether or not an AAU fee applies, a student identified as an AAU and licensed into the main agreement via the AAU addendum, then has the same rights as an AU under the terms of the main agreement. The template AAU addendum is shown in **Annex 1**. Hence, we encourage all TNE licensing service subscribers to order an available TNE AAU addendum via Licence subscriptions manager to ensure the terms agreed with the Publisher for those students where no AAU Fee applies.

### Secure authentication

To maintain the security of a Publisher’s content, the Jisc model licence makes it clear to the UK subscribing institution that any access to licensed material (i.e. the content) must be via a secure network only or a network which is only accessible to AUs by secure authentication. Secure authentication is defined as access by UK Access Management Federation compliant technology, Internet Protocol (“IP”) ranges or by username and password provided by the institution or by other authentication means reasonably agreed between the Publisher and the institution. The Jisc Model Licence also imposes specific responsibilities on the institution. Section 8 outlines the security of the licensed material and the behaviour of its AUs (who will include, by definition, any AAUs):

#### 8 RESPONSIBILITIES OF INSTITUTION

8.1 The Institution shall:

8.1.1 provide passwords and other confidential Authentication Information only to Authorised Users and take reasonable steps to prevent Authorised Users from providing such Authentication Information to anyone else;

8.1.2 provide to the Publisher lists of valid IP addresses for the purpose of managing access to the Licensed Material and update those lists regularly as agreed by the parties from time to time;

8.1.3 use reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Material;

8.1.4 inform the Authorised Users about the conditions of use of the Licensed Material provided for in this Licence and to the extent that such terms apply to them, use reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Licence; and

8.1.5 configure the computer system through which the Licensed Material used by the Institution and Authorised Users, and put in place procedures, in accordance with reasonably appropriate accepted standards, for the purpose of preventing access to the Licensed Material by any person other than an Authorised User.

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³ Jisc Collections does not offer legal advice.
8.2 The Institution shall use reasonable efforts to monitor compliance with the terms of this Licence and shall promptly notify the Publisher, providing full particulars (to the extent that it is not prohibited by law or contractual obligation from doing so), on becoming aware of any of the following:

8.2.1 any unauthorised access to or use of the licensed material or unauthorised use of authentication information; or

8.2.2 any act by an AU which gives rise to a breach of this Licence.

8.3 As soon as the institution is aware of any breach of the terms of this Licence, the institution shall:

8.3.1 take reasonable steps to investigate such breach for the purpose of ensuring that the relevant activity ceases and preventing any recurrence; and

8.3.2 if the institution considers this appropriate, take steps against the individual concerned in accordance with the institution’s disciplinary procedure but the Institution shall not have any other liability for any breach relating to the security of the secure network or use by AUs of any licensed material.

We make it clear to our members that in accepting the terms and conditions of our licences they are taking responsibility for maintaining the security of the Publisher’s content, preventing its misuse, and policing their users, wherever they are based.
Annex 1

ADDITIONAL AUTHORISED USERS AND PARTNER ORGANISATIONS

LICENCE ADDENDUM ("Addendum")

This Addendum is an amendment to the NAME OF AGREEMENT WITH PUBLISHER (the “Licence”) between:

PUBLISHER, a company incorporated under the laws of England and Wales, ADDRESS and its parent and affiliates ("Publisher");

and

You (the “Institution”)

in respect of

NAME OF COLLECTION/LICENSED MATERIAL/CONTENT

relating to additional authorised users under the Licence, permission to access the Licensed Material and use such material only on the terms and conditions as set out in the Licence.

This Addendum has been accepted and agreed by the Publisher and Institution on the Jisc Collections Online Ordering Service, as confirmed by the applicable Order Confirmation Email.

The parties agreed that the Licence is hereby amended with effect from the date of this Addendum as set out below:

1 Definitions:

(a) The following terms shall be defined as set out below:

“AAU Fee” means the fee for access and use of the Licensed Material by Additional Authorised Users at a Partner Organisation calculated in accordance with this Addendum, including the Pricing Model set out in the Addendum Schedule. For the avoidance of doubt, the AAU Fee could be set at zero.

“AAU Fee Quotation” means the quotation of the AAU Fee, provided by the Publisher to the Institution at the request of the Institution to include Additional Authorised Users from Partner Organisations.

“Additional Authorised Users” means individuals who qualify as authorised users and can perform the same activities as Authorised Users under this Sub-Licence (subject to the payment of the AAU Fee, if any) but for monetary purposes are not
included in the Licence Fee. Additional Authorised Users are users at a Partner Organisation for which the Institution has agreed with the Publisher or, where applicable, with Jisc Collections, to pay the AAU Fee.

“Partner Organisation” means any organisation for which the Institution has agreed with the Publisher in writing or by placing an Order on the Jisc Ordering Platform or otherwise with Jisc Collections (if applicable), to pay the AAU Fee(s) or that there is no AAU Fee.

(b) Subject to the terms of this Addendum, defined terms in the Licence shall have the same meaning in this Addendum.

2 Unless already agreed between the Publisher and the Institution, or defined in the Pricing Model set out in the Addendum Schedule, the Publisher shall provide the AAU Fee Quotation promptly on written request by the Institution.

3 Subject to the payment of the AAU Fee to the Publisher by the Institution, and, unless the context otherwise requires, all references to “Authorised Users” in the Licence include “Additional Authorised Users” and all references to the “Institution” include “Partner Organisations”.

4. The Institution shall pay to the Publisher the AAU Fee in the amounts set out in, or calculated in accordance with, the AAU Fee Quotation and this Schedule.

5. Upon receipt of the Order for Additional Authorised Users in respect of a Partner Organisation, the Publisher shall issue an invoice for the AAU Fee for the amount calculated in accordance with this Schedule or otherwise agreed with the Institution.

6. The Institution shall pay the AAU Fee within 45 days on receipt by the Institution of the Publisher’s invoice.

7. All sums specified under this Addendum, unless otherwise stated, are exclusive of VAT and any other similar or equivalent taxes or duties, where applicable, and any applicable VAT will be payable in addition.

8. On any termination by the Institution of the Licence under Clause 15.2 of the Licence, the Publisher shall reimburse such part of the Partner Fee which has been paid by the Institution and is in respect of any remaining part of the Subscription Period.
ADDENDUM SCHEDULE

Publisher’s Pricing Model for Additional Authorised Users (AAUs)

Publisher:
Product:
Term:
Addendum to:

AAU Product Content Group: Transnational Education

Publisher endorses the TNE consortium licensing approach for establishing Authorised Users and Additional Authorised Users

Authorised Users are students registered with the UK HEI and these students are all included in the Main Agreement fee.

‘A student registration is a binding agreement between a student and an organisation for the delivery of educational services, within the meaning of “Stage 3: enrolment stage” in the Competition and Markets Authority’s advice for HE providers on consumer protection law.’

Product Content Option 1 scenarios where no AAU Fee Applies: Publisher accepts the following ‘Code 4 exceptions’ scenarios.

- Sites with less than 1000 students. Established student cohorts under 1000 Full Person Equivalent (FPE), or an agreed higher level at any single site, unless the publisher can show a risk in terms of current subscription loss from the partner organisation concerned. Our research analysing the HESA AOR data shows that TNE arrangements are typically, small, with almost 90% of HESA AOR scenarios reporting less than 250 offshore students and ~ 95% of them involving less than 1000 students. When larger in scale than this, they are anomalous within the wider population. Larger scale scenarios are often a sign of maturity, and/or a branch campus type of provision scenario

- Sites with over 1000 students and 50%+ UK HEI ownership: Where users are reported in relation to a campus arrangement/joint campus, with over 1000 students and the UK HEI has at least 50% ownership, with students receiving a UK award. For example, HEIs registered on the C-BERT listing.

- New partnerships being established or planned for implementation in the following year when student numbers are anticipated as very low and full details of the arrangement are not known.

Product Content Option 2 scenarios where an AAU Fee applies:

Where the HEI is interested in licensing for the AAU student cohort(s) with over 1000 Full Person Equivalent (FPE) at any site, not identified as ‘Code 4 exceptions’, the Publisher will look at each AAU scenario on a case by case basis for users identified in codes 4 or 5 of the HESA AOR. Where there is a decision to accept the AAUs and charge for access, Publisher will charge according to the agreed methodology below:

[INSERT AGREED METHODOLOGY/ FEE]

Example:

[ADD HERE]

Quotation

Quotations for Product Content Option 2 should be requested via the Jisc Online Ordering Service: Licence Subscriptions Manager.

If you do not know these figures please contact the Helpdesk: help.digitalresources@jisc.ac.uk

The Publisher will provide a copy of your quotation to Jisc Collections and you will be alerted that the Quotation is available. You can then decide whether to accept the Quotation and order the access rights for these additional users.

Orders and AAU Licence Acceptance

Quotation acceptance/orders must be made via the Jisc Online Ordering Service/Licence subscription manager. The HEI will accept the pricing and AAU Addendum via the Jisc Collections website.

Payment

You can select to pay the AAU Fee directly to the Publisher, via Jisc, or via your chosen subscription agent. [TO BE AGREED WITH PUBLISHER]