

General Terms and Conditions

Including Definitions and Acceptable Use Policy



These Terms and Conditions apply to all Purchase Agreements for ChalkPort's technology, products and services (referred to below as Services) and form part of any such Purchase Agreement. A signed copy of a ChalkPort Order Form is considered a Purchase Agreement.

Use of our Services constitutes acceptance of these Terms and Conditions unless otherwise stipulated in a separate Agreement.

From herein the usage of *us, we, our, ours* shall constitute reference to ChalkPort, the usage of *you, your, they, them* or *the client* shall refer to a client/customer of ChalkPort.

Software license

We grant you a non-exclusive, non-transferrable license to use our software known as the Online Learning Centre (OLC), RTO Online, Content Manager and/or Enrolment Catalogue subject to the conditions set out in the Purchase Agreement and also in these Terms and Conditions.

Confidentiality / Restraint

Neither party can disclose, or allow to be disclosed, confidential information, related to this relationship to any third party except:

- a) with the consent of the other party; or
- b) in accordance with such government or other public regulatory requirements as legally oblige the party to so disclose.

Confidential information means the information, forms, specifications, processes, statements, formulae, trade secrets, drawings and data which are not in the public domain and which have been obtained through or by being a party to this Agreement. Both parties must take, or cause to be taken, reasonable precautions necessary to maintain secrecy and confidentiality and to prevent disclosure.

Use of Content

You understand that all information, data, text, software, music, sound, photographs, graphics, video, messages or other materials (collectively 'Content'), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Content originated. This means that you, and not us, are entirely responsible for all Content that you upload, post, email or otherwise transmit via the Service. You understand and agree that the Service is provided 'as is' and that we assume no responsibility for the timeliness, deletion, mis-delivery or failure to store any user communications or personalization settings.

Copyright

You acknowledge that the Service contains Content that is protected by copyright, trademark or other proprietary rights. In addition, the Service contains information, software and other Content provided by third parties that is protected by copyright, trademark or other proprietary rights of such parties. You are granted a non-exclusive, non-transferable license to use the Content, provided that you:

- only utilize the Content for your own personal, noncommercial use
- do not modify, publish, transmit, rent, sublicense, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit, any of the Content
- do not reverse-engineer any software contained in the Content.

Indemnity

You indemnify us against any costs and expenses arising out of, or relating to, any claims, demands or actions which may be brought against us as a direct or indirect result of the provision of the Services as set out in this Agreement.

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Intellectual property

Intellectual property includes inventions, patents, trademarks, copyright, know how, designs, trade secrets and other proprietary rights or forms of intellectual property, and information confidential to us and any alterations, additions or amendments to intellectual property.

All intellectual property inherent in, and related to, our technology, products and services belongs to us. You agree to take all reasonable steps to protect our intellectual property and ownership rights. The terms of this intellectual property clause will survive termination of this Agreement.

Learning content: If we are engaged to transfer your print learning materials into an online format then, as long as you retain the intellectual property to the print materials, you will also retain the intellectual property inherent in the online version. If we are engaged to create an online learning program and the research for the program is part of our work, then we retain the intellectual property inherent in the online program.

Renewal of service

All Support Agreements are renewed automatically at the conclusion of their timeframe, unless terminated in writing. At the conclusion of any Purchase Agreement that includes a Support Agreement the standard Support Agreement will take effect unless otherwise stipulated by you in writing 30 days prior to the renewal date.

Termination of agreement

You may terminate your Agreement in writing after the conclusion of the agreed minimum payment period. Notice of termination must be given in writing 30 days prior to renewal of the Service.

We may terminate any Agreements if you breach any of your obligations and the breach continues for more than 5 days after we have given you notice of the breach.

In the event that we cease to offer our technology, products and services in the form set out in any Agreement, we shall give 30 days notice of termination in writing prior to cessation of Service. We also undertake to provide you with a zipped copy of all your data and content.

Arbitration

If any difference arises touching the meaning of any Agreement with us, or the rights and liabilities thereto, the same shall be referred to the arbitration of two persons (one to be named by each party) or their umpire.

Law

All Agreements with us will be governed by the laws of Queensland and both parties will conduct any litigation or other proceedings in the Courts or tribunals of Queensland.

DEFINITIONS AND INTERPRETATIONS

Administrator support

This refers specifically to support for users with Administrator level access. It covers issues resulting from unfamiliarity, user error or other general help issues. It does not cover support for users who have other access levels.

Administrator help: email & ticket assistance

Email and tickets requesting functional assistance can be submitted at any time. Responses to tickets can be expected within 48 hours of an email/ticket submission. An electronic request for assistance is considered submitted as of 10am of the next working day.

Administrator help: phone assistance

Phone calls requesting assistance related to software functionality can be submitted from 10am-5pm Monday to Friday. Responses to phone calls can be expected within 48 hours. An electronic request for assistance is considered submitted as of 10am of the next working day.

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Backups

A backup refers to the saving of core data of the client's software, records and content, to another source to protect against the eventuality of complete data loss or instability. It does not refer to the backup of any other form of information. It does not refer to a *ghost* or *cloned* image of information. Restoration from backups requires a complete reconstruction of all information found in the backup, it cannot be merely restored.

Backup: server support

Should any error occur on the backup server's hardware underpinning the offsite backups, we agree to find the problem and restore the backup server to a state that allows the software to continue functioning. This does not include the purchasing of materials and hardware unless the server is owned by us.

Backup: critical restore

Should a critical loss of data occur resulting in complete loss of data or data instability to the point where operation of the software is no longer possible we agree to reconstruct your software to the best of our ability from the most current available backups. We do not guarantee complete restoration of all information stored in the software and take no responsibility for any incidental loss of data.

Backup: incremental fortnightly offsite backup

We agree to maintain a backup server at a different location from the learning server to be used specifically for the purpose of receiving backups from the learning server. An incremental fortnightly backup only of information that has changed since last backup will be written to this server. Should the backup server become damaged or fail in any way we will recreate the software and hardware relationship so that automatic backups can continue. This does not include the purchasing of materials and hardware unless the server is owned by us. This agreement is voided should the backup server be tampered with or serviced in any other way other than by personnel authorised by us.

Backup: real time automated (Raid 1)

We agree to maintain a RAID 1 array within the learning server. A Raid 1 array automatically copies all information from a primary disk to a secondary disk in real time as the information is written. Should the array become damaged or fail in any way we will recreate the array so that automatic backups can continue. This does not include the purchasing of materials and hardware unless the server is owned by us.

Backup: tertiary drive weekly full backup

We agree to maintain a tertiary drive within the learning server. A full backup once per week will be written to this tertiary drive. Should the drive or backup software become damaged or fail in any way we will recreate the software and hardware relationship so that automatic backups can continue. This does not include the purchasing of materials and hardware unless the server is owned by us.

Content manager

This refers to proprietary software embedded in a website to enable the management of web content.

Consultancy

Strategic advice and expert knowledge relating to e-learning, m-learning, RTO services, implementation and change management of an initiative.

Customization

We provide customization as an optional service to clients with needs that fall outside of the current scope of our proprietary software. Customization is the improvement of, or creation of, additional functionality of our proprietary software to meet client needs. It is not the creation of a separate proprietary product specifically for clients wishing additional functionality. We retain the rights to all intellectual property created as part of any customization process. We also reserve the right to refuse any customization requests that may adversely affect the product or sit outside the scope of our business.

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e-Learning readiness training

This is training in the use of the software. It may be delivered face-to-face, by telephone or video.

e-Learning readiness training: One session: Administrator

A single training session in the use and functions associated with Administration of an OLC. It may be delivered face-to-face, by telephone or video.

e-Learning readiness training: One session: Manager

A single training session in the use of functions associated with the management of content and assessment within an OLC. It may be delivered face-to-face, by telephone or video.

e-Learning readiness training: One session: Facilitator

A single training session in the use of functions associated with facilitation of students within an OLC. It may be delivered face-to-face, by telephone or video.

Enrolments catalogue

This refers to our proprietary software plug-in to the OLC software. It allows enrolment applications to be made online.

Enrolments catalogue: link to OLC

This is the process of integrating the OLC software and the enrolment catalogue to allow the OLC to accept applications for enrolment made via the catalogue.

Enrolments catalogue: link to website

This refers to the creation of a hyperlink that users may click on to access the catalogue software.

Hardware faultfinding & support

Should any error occur on the learning server's hardware which underpins the proprietary software, we agree to find the problem and restore the learning server to a state that allows the software to continue functioning. This does not include the purchasing of materials and hardware unless the server is owned by us.

Hosting

Hosting is the provision of internet access to the learning server that houses your copy of the software.

Hosting: unlimited downloads

Downloads refers to downstream traffic from the server. There is no charge based upon the amount of download traffic as part of this Agreement. However, we reserve the right to renegotiate this aspect of the Agreement if your use of the server creates traffic that exceeds normal usage.

Hosting: upload per month

This refers to the amount of traffic sent upstream to the server. Charges for upstream data are dependant upon the type of Agreement you have with us. We reserve the right to renegotiate this aspect if your use of the server creates traffic that exceeds normal usage.

Hosting: dedicated bandwidth (100mbps)

Dedicated bandwidth means that the learning server being supplied with hosting will only hold your copy of our software.

Hosting: shared bandwidth

Shared bandwidth means that the learner server being supplied with hosting may hold several copies of the software.

Learning server

A learning server refers to the underpinning hardware on which your copy of our software has been installed on your behalf.

Learning server: dedicated

This means that your copy of our software will be the only copy that is on the server.

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Learning server: shared

This means that your copy of the software may be on a learning server that holds several copies of the software.

Linux setup

An open source Operating System for the use and management of computer hardware. We will install Linux on the learning server.

Linux administration for learning server

Our software runs on a Linux platform. We agree to perform Linux administrative duties as necessary on the learning server to ensure its continued functionality.

Linux faultfinding & support for learning server

Should any Linux error occur on the learning server's Linux platform, we agree to find the problem and restore it to a state that allows your software to continue functioning.

Linux kernel security maintenance

Regular updates are made available as security issues are found within the Linux operating system. The Linux operating system therefore has to be regularly updated to remain protected from these vulnerabilities. We agree to update, and install these updates, on a regular basis to maintain the kernel's security.

Online Learning Centre (OLC)

This refers to our proprietary learning and content management software.

OLC Setup & branding

This refers to the initial steps taken to prepare the software for general use by the Client.

OLC software install

This refers to the creation of a new copy of the software on a learning server for the Client.

OLC linking to website

This refers to the creation of a hyperlink that users may click on to open a login window that allows access to your copy of the software.

OLC banner design

We will create a headline banner in your copy of the Online Learning Centre and/or RTO Online, no more than 2cm wide. This will carry your name/logo and the text Online Learning Centre or RTO Online and be placed at the top of each page of the supplied software. This service is dependant on the provision of logo, colours and name being supplied by you.

OLC client user account creation

The creation of a series of usernames and passwords with the appropriate access levels to allow initial access to the software.

Security

Security refers to the elements directly related maintaining data integrity against unauthorized attempts at accessing any and all information located on learning server.

Security: Analysis and response

We agree to monitor and respond to any security threats or unusual activity related to your copy of the software.

Security: Firewall setup and monitoring

Our software is underpinned by the Linux Operating System which includes the firewall elements Netfilter and IP Tables. We agree to receive regular log event notification on your behalf and respond to any unusual or threatening activity associated with the learning server.

Security: Password encryption

We agree to encrypt the passwords of any OLC accounts to provide additional security.

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RTO Online

This refers to our proprietary content management software designed specifically to hold Content relevant to a Registered Training Organisation.

Technical support

Technical support relates specifically to issues resulting from software bugs and similar discrepancies. Technical support does not cover maintenance of any online content, material or documents that the client may choose to upload to, create, add or edit inside the software. It does not include issues related to user error, software unfamiliarity or other general user help issues.

Technical support: email & ticket assistance

Email and tickets requesting technical assistance can be submitted at any time. Responses to tickets can be expected within 48 hours of an email/tickets submission. An electronic request for assistance is considered submitted as of 10am of the next working day.

Technical support: phone assistance

Phone calls requesting technical assistance can be submitted from 10am-5pm Monday to Friday. Responses to phone calls can be expected within 48 hours. A request for assistance is considered received as of the time of the call.

Technical support: 24 hour turnaround on critical issues

We aim to provide solutions to all critical issues resulting in downtime in less than 24 hours.

Technical support: all bug fixes included

We agree to fix all bugs reported to us, or found by us, for the duration of the Agreement at no additional charge.

Technical support: upgrades

Upgrades refer to programming code used to replace or improve the existing functions within a proprietary piece of software.

Technical support: all upgrades included & automatically installed

We maintain and upgrade software functionality regularly. These rollouts occur once every month. We will deliver and install these updates into your licensed software at no additional charge for the duration of the Agreement. This does not cover any software other than OLC and RTO Online or any additional "plug-ins" or "modules" developed for use in conjunction with OLC or RTO Online.

ACCEPTABLE USE POLICY

Use of our Services constitutes acceptance of this AUP unless otherwise stipulated in a separate Agreement. Failure to meet these provisions may result in re-negotiation or termination of our Agreement with you. Any attempt to undermine or cause harm to our network(s) is strictly prohibited.

Change from shared to dedicated

ChalkPort reserves the right to upgrade a shared service agreement to a dedicated service agreement if your usage of the shared service is deemed to causes undue strain or disruptive service to the other users of the service. This would be determined by any of the following:

- Upload limit is exceeded more than twice in a year
- Storage exceeds allocated hard drive space
- More than 50 concurrent users are a regular occurrence in your service

Content

You are responsible for any and all content in your software at all times. Transmission, storage, or presentation of any information, data or material in violation of any Australian Federal, State or City law is prohibited. We are not responsible for any claims resulting from the use of our Services.

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Hardware

1. All computer hardware and/or servers remain our property.
2. Administration, maintenance and interaction with our servers in any way other than lawful use of the software provided to you by us may only be executed by personnel authorised by us.
3. Servers may not be used for any other purpose other than for the provision of our proprietary software and the holding of data therein.

Software: Unless otherwise stipulated in a separate agreement:

1. All software provided by us remains our property.
2. Accessing our proprietary code will constitute an infringement of this Agreement and may result in termination of the Agreement and/or legal action.
3. All software provided by us may only be used for lawful purposes.

Hosting

Hosting is only provided to our servers. We provide unlimited downloads (downstream data) and limited uploads (upstream data) provided that your use of the service does not:

1. cause undue strain on the network
2. Infringe on our ability to deliver the hosting service
3. Cause harm to us or our clients
4. Result in financial strain to us

Backups

We perform backups on all of our servers to ensure critical files are never lost. We do not restore a file any user has accidentally deleted or modified. The back-up restoration is for emergency procedures only.

1. In the event of a critical failure we shall take all reasonable measures to attempt to rebuild and restore the data.
2. In the event of data failure we are not responsible for lost data, time, income or any other resource.

Security

You are responsible for any misuse of your usernames and passwords to any secure environment including any proprietary software or the ticketing system, even if the inappropriate activity was committed by a friend, family member, guest or employee. Therefore, you must take steps to ensure that others do not gain unauthorised access to these accounts. You may not attempt to circumvent user authentication or security of any host, network or account. Users who violate systems or network security may incur criminal or civil liability. Unless otherwise stipulated in a separate agreement we agree to:

1. Provide each of our servers with a firewall
2. Monitor the security logs of our servers for suspicious activity and respond accordingly
3. Regularly update and maintain the proprietary and underpinning software found on any of our servers to ensure the integrity of these items
4. Encrypt the passwords of any OLC accounts to provide additional security

Changes to AUP

We reserve the right to revise, amend, or modify this AUP and our other policies and Agreements at any time and in any manner. Changes will be published via our website. You understand that these changes by us shall not be grounds for early contract termination or non-payment.

Refusal of Service

If this Acceptable Use Policy is breached we reserve the right to refuse, cancel or suspend any and all Services at our sole discretion.