

# General Terms of Business for Use of Software of CampusSource Initiative

## 1. Introductory

The following terms shall regulate the legal relations between the state Nordrhein Westfalen, Germany, represented by the FernUniversitaet (Open University) Hagen, in turn represented by the office of the CampusSource Initiative at the FernUniversitaet Hagen, Universitätsstraße 11, D-58097 Hagen, Germany (hereafter "licensor") and the user of CampusSource software (hereafter "licensee"). These terms as well as the GNU General Public License (see also [chapter 4 "License"](#)) are part of the agreement between licensor and licensee.

For GNU General Public License (hereafter "GPL") please visit the internet at [www.gnu.org/copyleft/gpl.html](http://www.gnu.org/copyleft/gpl.html).

## 2. Object of the Agreement

The object of the offer made by licensor is the software of the CampusSource project (hereafter "software") on this server and related materials.

After registration has been effected licensor will provide the following services at licensee's option:

1. Licensor will provide to licensee an electronic access to the software and its documentation as well as to practice reports allowing licensee to get an overview of the software offered.
2. Licensor will allow licensee to (physically) download the software.
3. Licensor will transfer the right to use the products - further described in [section 4 "Licence"](#) - to licensee.

Licensor and licensee agree that the use of the services stated under 1.) to 3.) will be free of charge. This however does not mean that licensor agrees to pay any costs resulting from use of the products.

**Provided licensee modifies the software making the modifications accessible to third parties he is liable to distribute a free copy of the modifications to licensor or provided the modifications are available to the public and free of charge to inform licensor about the source.**

The additional obligations stipulated by the general terms of business do not represent a service in return as defined by the (German) Civil Code and are binding on licensee.

Excluded from this agreement are any installation, maintenance or consulting services regarding the software. In particular no consulting agreement is offered by the information and documentation that comes with or is made available for the software.

If you wish for such a service please contact the office of the CampusSource Initiative.

Licensor reserves for himself to discontinue his services at any time. From this liabilities on both sides regarding services already received remain unaffected. In particular this does not mean that the additional obligations stated in the general terms of business will no longer be applicable. The general terms of business shall also apply when licensee only uses parts of the above-mentioned service package.

## 3. Duty of Care of Licensee

Licensee shall keep his password in a safe place making it inaccessible to third parties. Licensee will be liable for any damages resulting from neglecting that obligation.

## 4. License

Licensee shall have the right to use the products as described in GNU General Public License. The right to use in rem - in accordance with the German copyright law - is connected to the software and also applies if licensee does not take note of it. For GNU General Public License (hereafter "GPL") please visit the internet at [www.gnu.org/copyleft/gpl.html](http://www.gnu.org/copyleft/gpl.html).

The GPL was specially drawn up that you may distribute and modify the software under this license. If you modify and distribute the software you have to publish the source code of the revised software under

the GPL, so that other people may benefit from your work in the same way as you have benefitted from the software you received. This way a system shall be created that will offer free software to everyone. Licensor points out to licensee that the GPL was drawn up in the USA and that therefore some terms are not effective under German law or are legally judged differently in Germany:

1. Under German law the wording "you may charge a fee for the physical act of transferring a copy" in section 1 of the GPL means that only a reasonable market fee may be charged for the production of a copy. Provided the fee for the production of a copy exceeds the market service in return this not only means a possible license violation but also that the privileges regarding liability granted by free distribution could cease to apply and that in case of defects licensee would be liable for damages like a seller or entrepreneur.
2. Sections 11 and 12 of the GPL (exclusion of liability) violate German law (see "Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen") and do not apply under German law. They are replaced by the corresponding regulations of the German civil law §§ 521ff (liability of the donator).

The following is only a brief and incomplete summary of the GPL. Licensee is obliged to observe all regulations of the GPL. It is pointed out to licensee that the GPL includes some conditions which when violated will automatically lead to an irreversible annulation of the right to use the products. Any further use of the program thereafter will be an offence against copyright.

1. Licensor grants to licensee the execution of the programs for any purpose. Legal restrictions are not touched by this.
2. Licensee may make and distribute unmodified copies of the source code on condition that he will include an appropriate notice regarding copyright as well as exclusion of liability on all copies and that all references to the GPL are passed on unchanged. A fee can only be charged for the production of copies or for a warranty. For further details please see §1 GPL.
3. Licensee may modify the program. He may also copy and distribute the modifications on condition (I) that he includes a notice regarding the modifications, (II) that he distributes the copies of his work free of charge and under the GPL, (III) and that he makes sure that the program includes a copyright notice for interactive use. For further details please see § 2 GPL.
4. Under the obligations set forth in the last two sections licensee may copy or distribute the program or a modification of it as object code or as an executable version on condition that he includes the source code or that he fulfills one of the alternatives stated in § 3 GPL. For further details please see § 3 GPL.
5. If - as a result of a court decision or a court settlement - licensee has to fulfill any condition contradicting the GPL he is not released from the obligations of the GPL. For further details please see § 7 GPL.
6. Should the distribution or use of the programs be restricted in certain states by patent rights or copyright it is up to licensee to exclude certain states from the distribution of the programs by including an appropriate notice. For further details please see § 8 GPL.

## 5. Third Party Rights

Licensor assumes that the possession and use of the software as stipulated in the agreement does not restrict any rights of a third party in Germany.

In conjunction with any possible restrictions of third party rights the following additional obligations are agreed upon:

1. Licensee undertakes to neither use the software on his own behalf nor on behalf of a third party to scrutinize or have it scrutinized for violations of third party.
2. Licensee undertakes to immediately inform licensor should a third party claim the violation of its rights.
3. If licensee believes that the software violates patents or other rights of a third party he is obliged to immediately inform licensor in writing including an exact description of the act of the violation. Licensee is not allowed to inform other natural persons or legal entities without written permission of licensor.

If licensee violates any one of the additional obligations above he undertakes to pay compensation to licensor for all damages caused by the violation (including any legal costs). If the violation of such an additional obligation has been established it will do if licensor can make it clear that the damage has been caused by the violation. The burden of proof for the contrary lies entirely with licensee. Licensee undertakes to disclose all necessary information to licensor in conjunction with the violation of any of the additional obligations above.

Licensor points out that the software of other manufacturers who co-operates with CampusSource software or software necessary to operate CampusSource software are not part of the CampusSource software. (e.g. WWW-servers, libraries, tool boxes, database management systems). The licenses for this

software have to be purchased from the relevant manufacturers. In general the GPL does not apply to this software.

## **6. Data Protection**

Licensor undertakes to keep to the relevant data protection regulations under provincial and federal law with regard to the data stated at the time of registration. All connections to the server's download and registration area are saved in a LOG-file.

## **7. In Writing**

Any supplementary agreements between licensor and licensee are required to be drawn up in writing. A change or cancellation of this clause also requires to be drawn up writing.

## **8. Court Venue**

The court venue for all disputes regarding this agreement shall be Hagen, Germany, if licensee is a businessman, a company or a public legal person.

The parties agree to apply German law.

If international law permits the applicability of a German court the parties agree on the court venue to be Hagen, Germany.

With reference to the additional obligations of licensee set forth in section 5 "Third Party Rights" licensor may - deviating from sentence 3 - apply to any international court competent to deal with this case.

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