

END USER LICENCE AGREEMENT

[20th July 2021]

IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE INSTALLING THE SOFTWARE:

This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and Public Health England (an executive agency of the Department of Health) acting through its Centre for Radiation, Chemical and Environmental Hazards Chilton, Didcot, Oxon OX11 0RQ, UK, (**Licensor, us** or **we**) for:

PACE™ computer software and any data supplied with the software (**Software**); and

Any printed materials and electronic documentation (**Technical Documentation**).

We licence use of the Software and Technical Documentation to you on the basis of this Licence. We do not sell the Software or Technical Documentation to you. We remain the owners of the Software and Technical Documentation at all times.

OPERATING SYSTEM REQUIREMENTS CAN BE FOUND ON [<https://www.phe-protectionservices.org.uk/PACE>]. YOU ARE ADVISED TO CHECK THESE REQUIREMENTS BEFORE PURCHASING THE SOFTWARE.

IMPORTANT NOTICE TO ALL USERS:

BEFORE INSTALLING YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR EMPLOYEES. THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CONDITION 8.

IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE WILL NOT LICENSE THE SOFTWARE AND TECHNICAL DOCUMENTATION TO YOU AND YOU MUST DISCONTINUE THE INSTALLATION PROCESS.

You should print a copy of this Licence for future reference.

1. DEFINITIONS

Under this Licence, unless the context otherwise requires, the following expressions have the following meanings;

Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Licence means this End User Licence Agreement.

Licence Fee means the fee, as specified in the order form and as payable by you to us in accordance with condition 5.

PACE means the software, an add-in within ESRI ArcGIS, to perform off-site probabilistic safety assessment calculations and together with a supporting set of default data known as the PACE RUN SET.

PACE RUN SET is a set of default data that can be used with PACE software, and is included as a part of PACE.

Support Services means the services provided by us to you specified in condition 4.

2. GRANT AND SCOPE OF LICENCE

2.1. In consideration of the payment of the Licence Fee, the Licensor hereby grants to you a non-exclusive, non-transferable licence to use the Software and the Technical Documentation on the terms of this Licence.

2.2. If you have purchased:

2.2.1. single user licence of the Software, then this Licence permits up to a maximum of one user who may install and use the Software for your internal business purposes only;

2.2.2. multiple user licence of the Software, then this Licence permits up to a maximum of three users who may install and use the Software for your internal business purposes only;

2.3. We may at our discretion permit only single users to the Licence provided that we notify you prior to the payment of the Licence Fee by you.

2.4. You agree that where there are more than the permitted users, you shall request more than one Licence and shall pay any additional Licence Fee as set out in the order form.

2.5. You may:

2.5.1. load, install and use the Software on a portable, lap-top or home computer where the Software is permanently installed on the hard disk(s) or other storage device(s) of the Licensee's Systems (but not a file server) for use by your relevant employee(s) or persons contracted by you to use the Software and Technical Documentation to perform calculations on your behalf (**Contractor**);

2.2.1. provided you comply with the provisions in condition 3, make up to 2 copies of the Software for back-up purposes;

2.2.2. receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by us to you from time to time;

2.2.3. use any Technical Documentation in support of the use permitted under condition 2.2 and make up to 2 copies of the Technical Documentation as may be reasonably necessary for its lawful use.

2.6. If you are purchasing the Software on behalf of a third party user of the Software, both you, as the purchaser, and the third party, as the user, shall be bound by the terms and conditions set out in this Licence.

3. RESTRICTIONS

Except as expressly set out in this Licence or as permitted by any local law, you undertake:

- (a) not to copy the Software or Technical Documentation except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security;
- (b) not to rent, lease, sub-license (except as permitted by this Licence), loan, translate, merge, adapt, vary or modify the Software or Technical Documentation;
- (c) not to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:
 - (i) is used only for the purpose of achieving inter-operability of the Software with another software program;
 - (ii) is not disclosed or communicated without our prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
 - (iii) is not used to create any software which is substantially similar to the Software;
- (e) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- (f) to scan the Software for all viruses prior to installation;
- (g) to supervise and control use of the Software and ensure that the Software is used by your employees and representatives in accordance with the terms of this Licence;

- (h) to include our copyright notice on all entire and partial copies of the Software in any medium;
- (i) not to provide, or otherwise make available, the Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person other than your employees or persons contracted by you to perform calculations in support of your work without prior written consent from us;
- (j) to ensure that your Contractor:
 - (i) registers with us and obtains our written permission to use the Software and Technical Documentation;
 - (ii) enters into an agreement with us to the effect that, on termination of the agreement between you and the Contractor that requires the Contractor to use the Software for calculations; (i) the Contractor shall, within fourteen (14) days after the date of such termination, return the Software and Technical Documentation to you; and (ii) the Contractor shall retain no copies of the Software and Technical Documentation. On being granted our written permission, the Contractor shall then be entitled to use the Software and Technical Documentation, but expressly and only in support of your work.
- (k) to replace the current version of the Software with the updated version forthwith upon receipt;
- (l) to comply with all applicable technology control or export laws and regulations;
- (m) not to make create any software that is substantially similar in its expression to the Software; and
- (n) to only use the PACE Run Set as an input to the PACE Software and for no other purpose.

4. SUPPORT SERVICES

- 4.1. For a period of one calendar year after initial delivery of the Software, we shall use reasonable endeavours to provide you with Support Services, limited to assistance with installation, and/or operation, of the Software, and/or correction of critical errors, at no additional cost to you.
- 4.2. As part of the Support Services, we shall provide a Help Desk accessed by emailing us at pace@phe.gov.uk.
- 4.3. We may at our discretion determine that any support requested by you does not fall within the Support Services as set out in condition 4.4.

- 4.4. For the avoidance of doubt, the following support is not included in the Support Services:
- 4.4.1. support of other software, accessories, attachments, machines, systems or other devices not supplied by us under this Licence;
 - 4.4.2. rectification of lost or corrupted data arising for any reason other than our negligence;
 - 4.4.3. attendance to faults caused by using the Software outside its design or other specifications or outside the provisions laid down in any Technical Documentation;
 - 4.4.4. diagnosis and/or rectification of problems not associated with the Software;
 - 4.4.5. loss or damage caused directly or indirectly by your error or omission.
- 4.5. If you require the Support Services beyond the initial one-year period as set out in condition 4.1 and/or any additional technical and/or scientific support related to applications of the Software during or after the initial one year period (**Additional Services**), we may, at our sole discretion provide such Additional Services subject to an additional charge. Any Additional Services shall be embodied in an order and the order shall be made under, and shall incorporate, the terms of this Licence.

5. LICENCE FEE AND SUPPORT CHARGES

- 5.1. Upon receipt of your order, we will send you an invoice for the Licence Fee, which is payable in advance.
- 5.2. The Software, accompanied by the Technical Documentation, will be dispatched to you as a digital download, upon payment of the License Fee by you.
- 5.3. Charges for any Additional Service shall be agreed in writing prior to the performance of such service by us and shall be invoiced to, and payable by, you in advance.
- 5.4. We may, at our sole discretion, offer to provide the Support Services and/or Additional Services, on a renewable annual basis, subject to an additional charge, payable in advance.
- 5.5. All amounts and fees stated or referred to in this Licence are exclusive of value added tax, which shall be added to our invoice(s) at the appropriate rate.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. You acknowledge that all intellectual property rights in the Software and the Technical Documentation throughout the world belong to us, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Technical Documentation other than the right to use them in accordance with the terms of this Licence.
- 6.2. You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments.
- 6.3. The integrity of this Software is protected by technical protection measures (**TPM**) so that the intellectual property rights, including copyright, in our Software are not misappropriated. You must not attempt in any way to remove or circumvent any such TPM, nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or expose for sale or hire, nor have in your possession for private or commercial purposes, any means whose sole intended purpose is to facilitate the unauthorised removal or circumvention of such TPM.
- 6.4. Any new inventions, designs or processes that evolve in performance of or as a result of this Licence shall be our sole property unless otherwise agreed in writing by us.

7. LIMITED WARRANTY

7.1. We warrant that:

7.1.1. the Software will, when properly used and on an operating system for which it was designed, perform substantially in accordance with the functions described in the Technical Documentation; and

7.1.2. that the Technical Documentation correctly describes the operation of the Software in all material respects

for a period of 180 days from the date of installation of the Software (**Warranty Period**).

7.2. If, within the Warranty Period, you notify us in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Technical Documentation, we will, at our sole option, either repair or replace the Software, provided that you make available all the information that may be necessary to help us to remedy the defect or fault, including sufficient information to enable us to recreate the defect or fault.

7.3. The warranty does not apply:

7.3.1. if the defect or fault in the Software results from you having amended the Software; or

7.3.2. if the defect or fault in the Software results from you having used the Software in contravention of the terms of this Licence.

8. LIMITATION OF LIABILITY

- 8.1. You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Technical Documentation meet your requirements.
- 8.2. We only supply the Software and Technical Documentation for internal use by your business, and you agree not to use the Software or Technical Documentation for any re-sale purposes.
- 8.3. We shall not under any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for:
 - 8.3.1. loss of profits, sales, business, or revenue;
 - 8.3.2. business interruption;
 - 8.3.3. loss of anticipated savings;
 - 8.3.4. loss or corruption of data or information;
 - 8.3.5. loss of business opportunity, goodwill or reputation; or
- 8.4. any indirect or consequential loss or damage.
- 8.5. Notwithstanding condition 8.3, our maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the Licence Fee.
- 8.6. Nothing in this Licence shall limit or exclude our liability for:
 - 8.6.1. death or personal injury resulting from our negligence;
 - 8.6.2. fraud or fraudulent misrepresentation;
 - 8.6.3. any other liability that cannot be excluded or limited by English law.
- 8.7. This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the Software and the Technical Documentation. Except as expressly stated in this Licence, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Software and the Technical Documentation which might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

9. TERMINATION

- 9.1. We may terminate this Licence immediately by written notice to you if you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.
- 9.2. Upon termination for any reason:
 - 9.2.1. all rights granted to you under this Licence shall cease;
 - 9.2.2. you must cease all activities authorised by this Licence;
 - 9.2.3. you must immediately delete or remove the Software from all computer equipment in your possession and immediately destroy or return to us (at our option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to us in writing or by e-mail that you have done so.

10. COMMUNICATIONS BETWEEN US

- 10.1. If we have to contact you or give you notice in writing, we will do so by e-mail to the address you provide to us in your order for the Software.
- 10.2. Any notice given by you to us, or by us to you, will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

11. OTHER IMPORTANT TERMS

- 11.1. We will only use your personal information as set out in our [privacy policy](#):
- 11.2. We may transfer our rights and obligations under this Licence to another organisation, but this will not affect your rights or our obligations under this Licence.
- 11.3. You may only transfer your rights or your obligations under this Licence to another person if we agree in writing.
- 11.4. This Licence and any document expressly referred to in it constitute the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of the us which is not set out in this Licence or any document expressly referred to in it.

- 11.5. If we fail to insist that you perform any of your obligations under this Licence, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 11.6. Each of the conditions of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 11.7. All information, data, drawings, specifications, documentation, listings, or object code which we may have imparted and may from time to time impart to you relating to the Software (other than the ideas and principles underlying the same) or Technical Documentation or procedures or modems is confidential. You hereby agree that it shall use the same solely in accordance with the provisions of this Licence and that it shall not at any time during or after expiry or termination of this Licence (in whole or with respect to the Support Services only), disclose the same, whether directly or indirectly to any third party without our prior written consent. We may grant permission for any disclosure required by a governmental agency having regulatory authority over you.
- 11.8. We shall not be liable to you for any delay in performing, or for failure to perform, our obligations under this Licence if the delay or failure results from any cause or circumstance beyond our reasonable control (**Force Majeure Event**), provided the same arises without our fault or negligence. If a Force Majeure Event occurs, the date(s) for performance of the obligation affected shall be postponed for as long as is made necessary by the Force Majeure Event, provided that, if any Force Majeure Event continues for a period of or exceeding three months, either party may terminate this Licence immediately by written notice to the other party. We shall use our reasonable endeavours to minimise the effects of any Force Majeure Event.
- 11.9. This Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both agree to the exclusive jurisdiction of the courts of England and Wales.