



## DCS Terms of Use

### WHEREAS:

- (A) CLA and your Higher Education Institution ("the Licensee") have entered into a licence for the purpose of reproducing from print and digital books, journals and magazines extracts from Licensed Material and the copying, storage, communication and use of Digital Copies and Digital Material (the "**HE Licence**").
- (B) CLA has developed an online repository for content and workflow tool application called the Digital Content Store (the "**DCS**") that is intended to streamline access to content and permissions for users under the HE Licence, including by: (i) removing the need for licensee usage reporting; and (ii) facilitating the exchange of digital copies between licensees; in each case through the storage of digital copies for secure online access by users on behalf of multiple licensees, in accordance with the terms of the HE Licence and subject to the operational terms of the SLA (the "**Service Level Agreement**" as defined below) and the other provisions set out below.
- (C) CLA has agreed to make available to the Licensee the Digital Content Store (as defined below) subject to and in accordance with these Terms of Use.

### 1. DEFINITIONS

- 1.1. All definitions used in the HE Licence shall apply in these Terms of Use. The following additional definitions shall also apply. Where there is any conflict between these Terms of Use and the HE Licence in respect of access to and use of the DCS, these Terms of Use shall take priority. In all other respects, including in relation to rights in Licensed Material and any actual or alleged infringement of such rights, the terms of the HE Licence shall take priority.

**"Commencement Date":** 1st August 2016.

**"Administrators":** those persons authorised by CLA to use the DCS to make digital content available to End Users.

**"Digital Content Store" or "DCS":** the online repository for content and workflow tool application made available to the Licensee as part of their HE Licence which can be

accessed via the following URLs: <https://contentstore.cla.co.uk> or <https://demo-dcs.cla.co.uk>.

**"End User"** any individual user of the Licensee who is accessing Licensed Material as an Authorised User under the terms of the HE Licence or who is lawfully accessing Licensee Content on the DCS as permitted hereunder.

**"Licensee Content"** any content uploaded to the DCS by the Licensee excluding Licensed Material.

**"Licensee Data"**: the course information and other data inputted by the Licensee, or by CLA on the Licensee's behalf, for the purpose of using the DCS or facilitating the Licensee's use of the DCS but excluding Usage Data.

**"Service Level Agreement (SLA)"**: the agreement between CLA and the Licensee outlining the support CLA will provide to the Licensee and its Administrators.

**"Software"**: the code, databases and other elements of the DCS excluding Licensed Material, the Licensee Content, the Licensee Data and the Usage Data.

**"Supplier"**: CLA's technology partner(s).

**"Usage Data"**: data generated by or on behalf of CLA in relation to usage of the DCS including its records of the number of times access is made to each item of content.


- 1.2. All references to the singular may include the plural and vice versa as the context so requires and references to any gender shall include both genders. References to **"include"** and **"including"** shall be for illustrative purposes and not be construed to limit the sense of the preceding words.

## **2. ACCESS TO DCS**

- 2.1 CLA shall make available the DCS to the Licensee subject to and in accordance with these Terms of Use and the HE Licence.
- 2.2 CLA grants the Licensee a revocable, non-exclusive, non-transferable, limited licence to use the Software solely in accordance with these Terms of Use.
- 2.3 In order to facilitate End User access to the DCS, each Administrator will be issued with login details which must not be disclosed to or used by anyone else at any time (whether on a temporary or permanent basis). The Licensee shall ensure that each Administrator maintains their login details securely and shall notify CLA immediately if such details have or may have been disclosed to anyone else or subject to misuse. The Licensee may request multiple Administrators, each with different logins, as reasonably necessary for its usage of the DCS.
- 2.4 CLA will provide the Licensee with support services for the DCS in accordance with the SLA. CLA may amend the SLA in its sole and absolute discretion from time to time.

## **3. CLAAIMS, RIGHTS AND OBLIGATIONS**

- 3.1 CLA aims to ensure that the DCS is available and operates correctly at all times and that content and data within the DCS are securely backed up in accordance with the SLA, however, it is agreed and acknowledged by CLA and the Licensee that:
  - 3.1.1 CLA makes no guarantee, representation or warranty that the DCS is or will be up to date, free from errors or omissions, always available or uninterrupted, secure or free from bugs or viruses or that the content and data within the DCS are or will be recoverable from backups;
  - 3.1.2 CLA reserves the right to limit or suspend the DCS and/or any service to which it connects (in whole or in part) at any time with or without notice and without liability. Although CLA makes no commitment about any notice period, it aims to notify the Licensee in advance of such non-availability;
  - 3.1.3 the DCS is offered on an "as is" basis and CLA does not guarantee, represent or warrant that the DCS will be fit for any particular purpose or that the DCS and/or the use of any content or data accessible through the DCS will meet the Licensee's requirements or that the DCS or such content and data will be compatible and/or interoperable with the Licensee's own hardware and software systems, internet connection and network functionality; and
  - 3.1.4 CLA 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 Licensee acknowledges that the DCS may be subject to limitations, delays and other



problems inherent in the use of such communications facilities.

- 3.2 CLA warrants that it has and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under these Terms.
- 3.3 CLA reserves the right to suspend access for some or all Administrators and End Users to the DCS immediately if CLA becomes aware of any activity which will or is likely to compromise the security or performance of the DCS. In such event, an Administrator will be notified by CLA within two hours of the suspension occurring and the Licensee shall co-operate in good faith with CLA in order to seek to resolve said event as soon as possible.
- 3.4 CLA reserves the right, at its sole discretion, to modify, add to or replace any element of the DCS at any time with or without notice and without liability. Although CLA makes no commitment about any notice period, it aims to notify the Licensee in advance of such change in specifications but CLA does not guarantee, represent or warrant that DCS compatibility and/or interoperability with the Licensee's own hardware and software systems, internet connection and network functionality will not be adversely affected.

#### **4. LICENSEE OBLIGATIONS**

- 4.1 The Licensee shall at all times:
  - 4.1.1 only use the DCS for the making available of digital content to End Users in accordance with the HE Licence and these Terms of Use and not for any other purpose;
  - 4.1.2 seek to protect the security and integrity of the DCS including by procuring that passwords and other login details for the DCS are maintained securely in accordance with Clause 2.3 above;
  - 4.1.3 provide CLA with all reasonable co-operation as CLA may request and all reasonable access to such information as may be required by CLA including security access information and configuration services in order to enable CLA to make the DCS available;
  - 4.1.4 comply with all applicable laws and regulations with respect to its activities in relation to the DCS;
  - 4.1.5 carry out all Licensee responsibilities set out in these Terms of Use in a timely and efficient manner;


- 4.1.6 without prejudice and in addition to its obligations to ensure compliance under and in accordance with the HE Licence, procure that its Administrators and End Users are notified of these Terms of Use and require all Administrators and End Users to only use the DCS in compliance with them;
- 4.1.7 obtain and maintain all necessary licences, consents, and permissions necessary for the Licensee, its contractors and agents to perform their obligations under these Terms of Use; and
- 4.1.8 be solely responsible for procuring and maintaining its own hardware and software systems, internet connection and network functionality necessary to connect with and use the DCS subject always to Clauses 3.1.3 and 3.4 above.

## **5. DIGITAL COPIES AND LICENSEE CONTENT**

- 5.1 Copyright in all Licensed Material uploaded to the DCS remains with the Rightsholder.
- 5.2 Digital Copies of Licensed Material may only be stored on the DCS subject to and in accordance with the terms of the HE Licence or by direct permission from the Rightsholder. Copies made pursuant to permitted acts under the Copyright, Designs and Patent Act 1988 (as amended), including those related to multiple copies for education and to visually impaired and disabled persons, may also be stored in the DCS (it being recognised that such permitted acts must be construed in accordance with the principles set out in Article 9(2) of the Berne Convention, as already reflected in the legislation applicable in the UK).
- 5.3 The Licensee shall require that its Administrators only upload content to the DCS in accordance with Clause 5.2 above or, in the case of any Licensee Content, where the Licensee has the lawful right to do so (whether by direct permission or as a permitted act above or otherwise). CLA and the Licensee agree and acknowledge that the Licensee shall be solely responsible for ensuring it has such lawful right and that CLA is not granting nor purporting to grant any right, licence or permission in relation to Licensee Content under these Terms of Use, the HE Licence or otherwise.


## **6. INTELLECTUAL PROPERTY**

- 6.1 The Licensee acknowledges and agrees that CLA and/or its licensors and development partners own all intellectual property rights in the DCS including all software, features, developments, adaptations, amendments, additions, derivative works and customisations designed, created, implemented or applied by CLA in respect of the DCS whether or not at the request of the Licensee or jointly with the Licensee. Except as expressly stated herein, these Terms of Use do not grant the Licensee any rights to such intellectual property rights, or any other rights or licences in respect of the DCS.

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- 6.2 CLA confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, these Terms of Use. CLA indemnifies and holds harmless the Licensee and its directors, officers and employees from and against any cost, claim or demand (including legal fees and costs) in respect of any infringement of intellectual property rights arising out of the Licensee's use of the Software in accordance with these Terms of Use.
- 6.3 Subject to the provisions of Clause 7 below, CLA may use the Licensee Data and the Usage Data for the purposes of distribution of royalties to Rightsholders in accordance with the terms of the HE Licence and to inform the development of new products and services for the HE sector.
- 6.4 Except as may otherwise be permitted by these Terms of Use or applicable law, the Licensee shall not:
- 6.4.1 sell, resell, sublicense, lease, rent, hire, loan or transfer the Software or redistribute it to any third party;
  - 6.4.2 remove, obscure or modify copyright notices, disclaimers, means of identification or other text appearing in and pertaining to the Software;
  - 6.4.3 make copies of the Software;
  - 6.4.3 use the Software except in accordance with the documentation or instructions provided or published by CLA; or
  - 6.4.4 attempt to use the Software in excess of the rights permitted hereunder.

## **7. LICENSEE DATA AND LICENSEE CONTENT**

- 7.1 The Licensee shall own all right, title and interest in their Licensee Data and Licensee Content subject to a grant of such rights in their Licensee Data and Licensee Content to CLA as is reasonably necessary for CLA to provide the DCS in accordance with these Terms of Use. The Licensee shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of their Licensee Data and Licensee Content.
- 7.2 In the event of any loss or damage to their Licensee Data and Licensee Content and to any Digital Copies of Licensed Material, the Licensee's sole and exclusive remedy shall be for CLA to instruct its Supplier to restore the lost or damaged data from the latest available back-up of such material in its possession or control. CLA shall not be responsible for any loss, destruction, alteration or disclosure of Licensee Data or Licensee Content.
- 7.3 The Licensee indemnifies and holds harmless CLA and its directors, officers and employees (on its own behalf and on behalf of its Administrators and End Users) from any cost, claim or demand (including legal fees and costs) due to or arising out of the Licensee Data and the



Licensee Content including for infringement of any intellectual property or other right of any person or entity.


- 7.4 CLA and the Licensee shall each comply with applicable data protection law in relation to the provision and use of the DCS. Where possible Licensee Data and Usage Data shall be processed by CLA in an anonymized and aggregated form. If CLA processes any personal data on the Licensee's behalf in connection with the DCS under these Terms of Use, the parties record their intention that the Licensee shall be the data controller and CLA shall be a data processor and in any such case:
- 7.4.1 the Licensee acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Licensee and the End Users are located in order to provide access to the DCS and otherwise permit the performance of the contractual terms of these Terms of Use;
- 7.4.2 the Licensee shall ensure that it is entitled to transfer the relevant personal data to CLA so that CLA may lawfully use, process and transfer the personal data in accordance with these Terms of Use on the Licensee's behalf;
- 7.4.3 the Licensee shall ensure that the relevant third parties have been informed of, and where necessary have given their consent to, such use, processing, and transfer as required by all applicable data protection law;
- 7.4.4 CLA shall process the personal data only in accordance with these Terms of Use and any lawful instructions reasonably given by the Licensee from time to time; and
- 7.4.5 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.

## **8. FORCE MAJEURE**

Neither party shall be responsible for any delay or failure to perform any obligation under these Terms of Use due to any cause that is outside the control of the party and could not be avoided by the exercise of due care, provided it shall notify the other party as soon as possible of such occurrence. Notwithstanding any such occurrence, each party shall at all times use reasonable efforts to perform its obligations in a timely manner, taking account of the existing circumstances.

## **9 LIMITATION OF LIABILITY**

- 9.1 CLA and the Licensee acknowledge and agree that CLA is making the DCS available to the Licensee without charge, that the DCS may not meet the Licensee's particular requirements



and that the Licensee may wish to consider alternative solutions which may involve additional cost.

9.2 Except as expressly and specifically provided in these Terms of Use, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Terms of Use.

9.3 Nothing in these Terms of Use excludes the liability of any party:

9.3.1 for death or personal injury caused by that party's negligence; or

9.3.2 for fraud or fraudulent misrepresentation;

9.3.3 for any matter for which it would be unlawful to limit liability.

9.4 Subject to Clause 9.3 above neither party shall in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

9.4.1 loss of profits; or

9.4.2 loss of business; or

9.4.3 depletion of goodwill or similar losses; or

9.4.4 loss of anticipated savings; or

9.4.5 loss of goods; or

9.4.6 loss of use; or


9.4.7 loss or corruption of data or information; or

9.4.8 any special, indirect, consequential, or pure economic loss, costs, damages, charges or expenses.

## **10. TERMINATION**

10.1 These Terms of Use shall commence on the later of either the date the Licensee confirms its binding acceptance of these Terms of Use or the Commencement Date and shall continue for the duration of the HE Licence subject to the following provisions of this Clause 10.

10.2 Upon the suspension, expiry or termination of the HE Licence in accordance with its terms, these Terms of Use shall automatically be deemed suspended, expired or terminated



accordingly and in no event shall these Terms of Use continue in effect after such suspension, expiry or termination of the HE Licence. For the avoidance of doubt, suspension or termination of these Terms of Use under Clauses

10.3 or 10.4 below shall not affect the continuation of the HE Licence in accordance with its terms.

10.3 Should either party commit any material breach of any of its obligations under these Terms of Use and remain in breach fourteen (14) days after receiving written notice from the other party to remedy the same, the latter may by written notice to that effect delivered to the former forthwith:

10.3.1 terminate these Terms of Use; or

10.3.2 suspend the operation of these Terms of Use and access to or use of the DCS until the party not in breach shall be reasonably satisfied the breaches will not recur.

10.4 CLA may decide to cease providing the DCS to its licensees generally at any time without liability but CLA will give at least one (1) academic year's notice before discontinuing the DCS or transferring its operation to a third party.

10.5 Termination or suspension of these Terms of Use pursuant to this Clause 10 shall be without prejudice to any rights or remedies of the parties.

10.6 Upon suspension, expiry or termination of these Terms of Service, for whatever reason:

10.6.1 access to and use of the DCS by the Licensee and its Administrators and End Users shall immediately cease; provided that

10.6.2 for so long as the HE Licence continues CLA shall procure access to any Digital Copies within the online repository element of the DCS or reasonable equivalent for the Authorised Users of the Licensee until the end of the academic year in which suspension, expiry or termination has occurred; and

10.6.3 within thirty (30) days of such suspension, expiry or termination CLA shall instruct its Supplier to make available to the Licensee in such form as is reasonably agreed the latest available copies in its possession or control of the Licensee Data and Licensee Content and CLA shall then procure that its Supplier delete such material from the DCS (save to the extent CLA is required to retain copies for the purposes of reporting to Rightsholders or by order of a court or regulator or otherwise by law).

## **11. SEVERABILITY**

If any provision of these Terms of Use is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

## **12. NOTICES**

All notices given under these Terms of Use shall be in writing by electronic mail. In the case of there being no valid contact, notices shall be sent by first class post, in the case of the Licensee to the address shown on the HE Licence, and in the case of CLA to Barnard's Inn, 86 Fetter Lane, London, EC4A 1EN and shall be deemed to have been served on the second working day (which shall exclude weekends and English public holidays) following the date of posting.

## **13. VARIATION OF TERMS**

These Terms of Use embody all the terms agreed between the parties and no oral representations, warranties or promises shall be implied as terms hereof. These Terms of Use may be varied by CLA by written notice to the Licensee but CLA shall only make material changes to these Terms of Use following due consultation with the UUK/GuildHE Copyright Working Group (or any equivalent or successor body).

## **14. DISPUTES AND GOVERNING LAW**

These Terms of Uses shall be governed by and construed in accordance with English Law and subject to the exclusive jurisdiction of the English Courts. If any dispute arises out of these Terms of Use the parties will attempt to settle it by mediation in accordance with Centre for Dispute Resolutions ("CEDR") Model Mediation Procedures. To initiate a mediation a party must give notice in writing ("ADR Notice") to the other party to the dispute requesting mediation. If there is any point on the conduct of the mediation upon which the parties cannot agree within fourteen (14) days from the date of the ADR Notice, CEDR will, at the request of any party, decide that point for the parties having consulted with them. The mediation will start not later than twenty eight (28) days after the date of the ADR Notice. The commencement of a mediation will not prevent the parties commencing or continuing Court or where appropriate Copyright Tribunal proceedings nor will it prevent CLA exercising its rights under these Terms of Use generally.