

THIS AGREEMENT is made on

(to take effect from 1st August 2019)

BETWEEN:

1. THE COPYRIGHT LICENSING AGENCY LIMITED of Shackleton House, Hay's Galleria, 4 Battle Bridge Lane, London SE1 2HX (hereinafter called "CLA") and
2. THE HIGHER EDUCATION INSTITUTION known as

of:

Address

City

County

Postal Code

(hereinafter called "the Licensee")

WHEREAS:

- A. CLA acts on behalf of a substantial number of owners and/or mandating publishers of Licensed Material (as defined below) and is willing to grant a licence in respect of the reproduction and use of Licensed Material and to grant an indemnity for such reproduction and use.
- B. CLA is willing to grant, and the Licensee is willing to take, a licence for the photocopying and scanning of Licensed Material and the copying, storage, communication and use of Digital Copies and Digital Material (as both such terms are defined below).
- C. The making of such reproduction is not intended to substitute directly or indirectly for the purchase of original Licensed Material or for the commissioning, reproduction, hire or any other use of an original artistic work appearing within Licensed Material.
- D. This Agreement is without prejudice to any acts which the Licensee or an Authorised Person (as defined below) is permitted to carry out by the terms of the Copyright, Designs and Patents Act 1988 (as amended) and nothing herein shall be construed as affecting or diminishing such permitted acts in any way whatsoever, 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.

The Copyright
Licensing Agency Ltd

London Office:
Tel 020 7400 3100
Email cla@cla.co.uk
www.cla.co.uk

Edinburgh Office:
Tel 0131 272 2711
Email clascotland@cla.co.uk

Registered in England
Reg no. 1690026

NOW IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

In this Agreement and its Schedules the following words and expressions shall have the following meanings:

"Authorised Persons":

all students and employees of the Licensee including all individuals who, although not employed by the Licensee, are engaged by it to provide research or consultancy services or who would fall within the meaning of "workers" as defined by the Employment Rights Act 1996. It shall also include all Emeritus Professors and other honorary staff and visiting academics and, solely in connection with their inspections, persons engaged in inspections for the Quality Assurance Agency or the Research Excellence Framework or for other bodies or exercises which may replace the same and/or perform similar functions;

“CCC Electronic Rights-Works”:

those works published by a Participating US Publisher identified on CLA’s website or other electronic means controlled by or on behalf of CLA as being available for digital use or re-use;

“CLA’s website”:

cla.co.uk or such other site as may be notified to the Licensee. A reference to information on, or which can be accessed via, CLA’s website or other electronic means controlled by or on behalf of CLA shall include:-

- i) any such information which is stated to be of general application to all CLA licences and any stated to apply specifically to CLA licences for higher education institutions; and
- ii) information as periodically amended by CLA, any such amendment taking effect one (1) month after notice of such amendment is first posted;

“Commercial Copies”:

copies made for a commercial purpose pursuant to clause 2.5 and which may take the form either of Paper Copies or of Digital Copies;

“Commencement Date”:

1st August 2019;

“Course Collection”:

those Digital Copies placed on the Secure Network for a particular Course of Study, access to which for the purpose of downloading or printing out is restricted to Course Users on that Course of Study by whatever means may be used to achieve that;

“Course of Study”:

any whole course of study or any module or segment of a student’s studies which is normally regarded by the Licensee as a discrete and self-contained unit for the purposes of examination or assessment or, in the case of a non-credit bearing course, that particular course;

“Course Users”:

in respect of any Course of Study: an Authorised Person who is:

- i) a student enrolled on that Course of Study; or
- ii) a tutor, lecturer, supervisor or other person providing teaching to students in respect of that Course of Study; or
- iii) a visiting academic teaching or auditing that Course of Study;

“the Data Collection Scheme”:

the scheme as periodically agreed between CLA and UUK/GuildHE and which shall be available on CLA’s website;

“Digital Copies”:

electronic copies of Material Licensed for Scanning, in whole or in part, in the form either of digital bitmap copies or made by other processes including those processes involving optical character or font recognition or electronic copies made in the course of, or as a result of, the access or use of Digital Material by Authorised Persons and which, save as may be permitted hereunder, are direct unaltered copies of the work copied in all cases being made pursuant to, and in accordance with, the terms of this Agreement;

“Distance Learners”:

those Course Users on Courses of Study designed to be studied away from the Licensee’s premises. For the avoidance of doubt, this does not include any students based at an overseas campus of the Licensee or of an organisation with which the Licensee is in partnership, some or all of whom the Licensee may elect to declare for coverage as Overseas Campus-Based Students;

“Digital Material”:

still images and texts from publications distributed in electronic form published by a Participating Digital Material Publisher, CCC Electronic-Rights Works and any electronic publications originating in other countries as identified on, or which can be accessed via, CLA’s website or other electronic means controlled by or on behalf of CLA and Website Material except any Excluded Material;

“Excluded Categories”:

those categories of works listed in Schedule 1;

“Excluded Material”:

any works within the Excluded Categories and Excluded Works;

“Excluded Works”:

those individual works which are identified as Excluded Works for the HE Licence on CLA’s website or other electronic means controlled by or on behalf of CLA. For the avoidance of doubt, individual works may be excluded from Material Licensed for Photocopying, from Material Licensed for Scanning or from Digital Material or from any combination thereof;

“FTES”:

- i) Full Time Equivalent Students, both full and part time including all undergraduates and taught postgraduates (but excluding research postgraduates who are supervised but not taught), including Distance Learners, the figures for whom are provided by the Higher Education Statistics Agency (“HESA”) (or any successor body that undertakes the same or similar tasks as HESA); and
- ii) students on non-credit-bearing courses (“Non-Credit-Bearing Students”) whose Full Time Equivalence shall be calculated by dividing Non-Credit-Bearing Course Hours by 300, to be reported to CLA by the Licensee either by declaring their exact Full Time Equivalence or by selecting the relevant band within which their Full Time Equivalence falls as shown on CLA’s website; and
- iii) optionally, any or all Overseas Campus-Based Students of the Licensee.

Each Distance Learner and Overseas Campus-Based Student shall be deemed to constitute a single FTES though for the avoidance of doubt where a Course of Study is made up of segments or modules which are all component parts of the same single course, such a student will still be treated as a single FTES and, for the further avoidance of doubt, any Non-Credit-Bearing Student shall not be counted as a single FTES but shall be counted as set out in (ii) above;

“International Mandating Publisher”:

a publisher who has agreed to permit the use under the Licence of publications published anywhere in the world in which it owns or controls the copyright and who has not withdrawn such permission as identified on CLA’s website or other electronic means controlled by or on behalf of CLA;

“Licence”:

the licence granted by clause 2;

“Licensed Copies”:

Paper Copies or Digital Copies (and including Commercial Copies) as appropriate;

“Licensed Material”:

any and all Material Licensed for Photocopying, Material Licensed for Scanning and Digital Material. For the avoidance of doubt, unpublished material, including theses, are not the subject of this Licence;

“Material Licensed for Photocopying”:

original published editions of books, looseleaf works, law reports, periodicals and journals in which copyright subsists published in printed form in the Photocopying Mandate Territories or by an International Mandating Publisher except any Excluded Material;

“Material Licensed for Scanning”:

original published editions of books, looseleaf works, law reports, periodicals and journals in which copyright subsists published in printed form in the Scanning Mandate Territories or by an International Mandating Publisher and CCC Electronic-Rights Works and, in both cases, Paper Copies derived therefrom except any Excluded Material;

“Non-Credit-Bearing Course Hours”:

the contact hours for all students studying on courses which do not lead to a qualification or institutional credit, or on credit-bearing programmes of study but on a not-for-credit basis, who are registered/enrolled with the Licensee, excluding the hours of those students who come within the scope of the HESA individualised student return and which hours are thus already included in FTES;

“Overseas Campus-Based Students”:

those Course Users based at an overseas campus of the Licensee or a campus of a third-party organisation with which the Licensee is in partnership, and which the Licensee has declared to CLA for coverage together with the name of the corresponding overseas branch campus or partnership organisation, its location, and the name of the course on which each such student is registered;

“Paper Copies”:

photocopies onto paper from Material Licensed for Photocopying, paper printouts of Digital Copies (but excluding any copy in electronic form) and which photocopies and printouts are made pursuant to and in accordance with the terms of this Agreement;

“Participating Digital Material Publisher”:

a Rightsholder identified as a Participating Digital Material Publisher on CLA’s website or other electronic means controlled by or on behalf of CLA;

“Participating US Publisher”:

a publisher participating in the agreement between Copyright Clearance Center (CCC) and CLA as identified on CLA’s website or other electronic means controlled by or on behalf of CLA;

“Photocopying Mandate Territories”:

the United Kingdom, Argentina, Australia, Austria, Barbados, Belgium, Canada (including Quebec), Chile, Denmark, Finland, France, Germany, Ghana, Greece, Hong Kong, Iceland, India, Ireland, Italy, Jamaica, Japan, Luxembourg, Malawi, Mexico, the Netherlands, New Zealand, Norway, the Philippines, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Trinidad and Tobago, Turkey and the United States of America as this list may be amended on CLA’s website;

“Rightsholder”:

any person owning or controlling the relevant rights comprising all or part of the copyright in any Licensed Material;

“Scanning Mandate Territories”:

the United Kingdom, Argentina, Australia, Belgium, Canada (including Quebec), Chile, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Jamaica, Japan, the Netherlands, New Zealand, Norway, the Philippines, Singapore, South Korea, South Africa, Spain, Switzerland and Turkey as this list may be amended on CLA’s website;

“Secure Authentication”:

access to Digital Copies by a process of authentication which, at the time of login, identifies each user whether by user name and password or by some other equally secure method and which identifies the user’s status as being a Course User or other Authorised Person;

“Secure Network”:

a network which is only accessible by those Authorised Persons who are approved by the Licensee for access by means of Secure Authentication;

“UUK/GuildHE”:

Universities UK representing also, for the purposes of this Agreement, Universities Scotland and Higher Education Wales and GuildHE; and

“Website Material”:

material in the form of still images and text created and posted on Participating Digital Material Publishers’ websites except Excluded Material.

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.

2. GRANT OF LICENCE

CLA hereby grants the non-exclusive right for the Licensee on, and subject to, the terms and conditions herein and for the benefit of Authorised Persons to:

2.1 make, or permit, the making of:

2.1.1 multiple Paper Copies; and

2.1.2 copies from Paper Copies;

and to distribute, or permit the distribution of, Paper Copies to Authorised Persons;

2.2 authorise the scanning of Material Licensed for Scanning to make, or permit the making of, Digital Copies and to make those Digital Copies available via Secure Authentication and to permit Authorised Persons to access, download and print such Digital Copies in each case for any of the Licensee’s internal information purposes (including, for example, the creation of and circulation and provision of multiple access to press cuttings taken from Material Licensed for Scanning via the Secure Network) as well as the specific uses (including in relation to Course Collections) set out in clause 4.1 subject to and in accordance with the conditions applying to all Digital Copies generally as set out in clause 4.2 and the conditions applying to Course Collections in particular as set out in clause 4.3;

2.3 make available, or permit the making available of, Digital Copies where such Digital Copies are made in the course of, or as a result of, the access or use by Authorised Persons of Digital Material in accordance with the provisions of clauses 4.2 and 4.3 and to print out the same;

- 2.4 to make and distribute Paper Copies and Digital Copies in accordance with clause 8 (copying for those with a disability); and
- 2.5 to make or permit the making by Authorised Persons of copies for a commercial purpose in connection with the research activities of the Licensee subject to the conditions of clause 9.

3. CONDITIONS APPLYING TO PHOTOCOPYING, SCANNING AND USE OF DIGITAL COPIES

It is a condition of the Licence that:

- 3.1 no Licensed Copies may be sold, hired out or otherwise disposed of for valuable consideration except that Paper Copies may be provided to Authorised Persons at a price set to recoup only the cost of production and not for profit;
- 3.2 with the exception of any part of Website Material that is 'free to view', the Licensee must own or have subscribed to an original or a copy on which it has paid a copyright fee (which shall include material supplied either in hard copy or electronic form by a supplier licensed by CLA or by the Rightsholder to provide such a service such as, but without limitation, a document delivery or press cuttings service) of any Licensed Material it copies or scans. In the case of Digital Material, it must own or have lawful access under contract or licence to any such material which it uses in any way permitted under the terms of the Licence unless it has written permission from the relevant rightsholder for such copying;
- 3.3 the number of multiple Paper Copies of any one item of Licensed Material made for any one Course of Study shall not exceed the number needed to ensure that each recipient of instruction or student and each teacher has one Paper Copy;
- 3.4 the Licensee shall ensure that Licensed Copies which are distributed or made available to Authorised Persons or made by Authorised Persons do not for any single occasion or purpose or, in the case of Course Collections, during any one Course of Study, exceed either singly or in aggregate the greater of ten (10) per cent of any published edition, or
 - 3.4.1 in the case of a book, one complete chapter;
 - 3.4.2 in the case of an article in an issue of a serial publication or in a set of conference proceedings, one whole article;
 - 3.4.3 in the case of an anthology of short stories or poems, one short story or poem not exceeding ten (10) pages in length; and
 - 3.4.4 in the case of a published report of judicial proceedings, the entire report of a single case;

for Digital Material that is not made available or otherwise structured as a conventional book, journal, magazine or other periodical or where the Digital Material is not divided into distinct sections identifiable as the equivalent of a book chapter or of an article in a journal, magazine or other periodical, the Licensee shall ensure that copying is limited to small extracts that are equivalent to the limits set out above, at all times bearing in mind the principle contained in Recital C to this Agreement that no copying shall substitute for the purchase of original Licensed Material.

For the avoidance of doubt:-

- i) chapter-specific footnotes or bibliographic references shall be deemed to form part of a "chapter" (wherever located in a book);
 - ii) the use of different editions of the same book to make copies of more than one (1) chapter during any one Course of Study shall be a breach of the Licence; and
 - iii) where pages of an extract contain substantial white spaces or advertisements, the calculation or the percentage of content copied may be adjusted accordingly.
- 3.5 the Licensee shall notify CLA in writing by 1st August for the immediately preceding academic year either the total FTES of its Non-Credit Bearing Students or the relevant banding into which the total FTES of its Non-Credit-Bearing Students falls, which total shall also be used for invoicing in subsequent years of the Licence unless the Licensee informs CLA otherwise; and
- 3.6 the Licence does not extend to the making of Licensed Copies outside of the United Kingdom except as may be permitted by clause 4.2.6. Licensed Copies made by or for Authorised Persons may be sent outside the United Kingdom to overseas Distance Learners, to Overseas Campus-Based Students, and, in respect of such Overseas Campus-Based Students, to staff teaching those courses that are taken by such students and declared by the Licensee to CLA, provided that nothing herein shall be deemed to authorise any further copying of Licensed Copies outside of the United Kingdom by an overseas Distance Learner, Overseas Campus-Based Student or member of staff teaching Overseas Campus-Based Students. Each overseas Distance Learner, Overseas Campus-Based Student and member of staff teaching Overseas Campus-Based Students shall be responsible for complying with all local laws.

4. FURTHER PROVISIONS APPLYING TO SCANNING AND USE OF DIGITAL MATERIAL

- 4.1 Scanning and making Digital Copies:

The Licensee may:-

- 4.1.1 authorise Authorised Persons to make, or cause the making of, Digital Copies for the purposes of a Course of Study and to place them on the Course Collection for that Course of Study and to retain, for back-up purposes, a Digital Copy on the Secure Network which Digital Copy may be retrieved and added to another Course Collection for the purposes of a different Course of Study;
- 4.1.2 make available via Secure Authentication, or display or supply, Digital Copies in Course Collections to Course Users;
- 4.1.3 permit Course Users to access the Course Collection, to download a Digital Copy, to print out from a Digital Copy and to retain an electronic copy of a Digital Copy for the full duration of the Course User's degree programme (or equivalent programme of study) of which the Course of Study for which such Digital Copy has been provided forms a part; and
- 4.1.4 supply a Digital Copy to, or receive a Digital Copy from, another Higher or Further Education Institution which also has entered into an agreement with CLA granting a licence for such supply or receipt (as appropriate) on terms similar to the Licence including, in particular, the provisions of clause 3.2 regarding ownership of, or subscription to, an original or a copyright fee-paid copy of the original work.
- 4.2 Conditions applying generally to Digital Copies:
 - 4.2.1 notwithstanding the provisions of clause 2.2, the Licensee may only scan, or permit the scanning of hard copies of, a CCC Electronic-Rights Works under the Licence where the same is not reasonably available in digital form for the Licensee to purchase whether by subscription or otherwise. The use of CCC Electronic-Rights Works is subject to such special limitations as are applicable to any individual work as identified on CLA's website or other electronic means controlled by or on behalf of CLA;
 - 4.2.2 the Licensee will use all reasonable endeavours to ensure that, in making a Digital Copy, the structure, layout, authenticity and integrity of the original is preserved and, except as may be permitted by clause 4.2.9 or by clause 8 or by statute and to the extent necessary to make Digital Copies perceptible on a computer screen to an Authorised Person, no digital manipulation, morphing, colour or shade adjustment or otherwise may be made of Digital Copies. Electronic notation superimposed on, or electronic marking up of, a Digital Copy which clearly distinguishes such notation or marking-up from the original text (such as the use of different colours) shall not be a breach of this condition;

- 4.2.3 Digital Copies shall not be placed on any computer or computer network on the publicly accessible internet in such a way as to be publicly accessible or accessible otherwise than by Secure Authentication;
- 4.2.4 except as specified herein nothing in this Licence shall be taken as permitting any other copying, dissemination, publication, communication or making available to the public, repackaging, distribution, in any form of Digital Copies, in whole or in part;
- 4.2.5 the Licensee will delete from the hard drives of all its central and local servers any and all Digital Copies which may be stored there upon notice from CLA that the copyright holder believes that the Licensed Material contained in the Digital Copies infringes copyright or is, or may be, defamatory, obscene or otherwise unlawful;
- 4.2.6 the Licensee may subcontract the making of Digital Copies to third parties, provided that:
- (A) the Licensee takes all reasonable steps to ensure that any such third party operates appropriate management and security procedures so as to ensure compliance with the terms of this Licence;
 - (B) a record is kept of all such subcontracts, and the Digital Copies made thereunder, and that such record is provided on request to CLA;
 - (C) all such subcontracts require the sub-contractor to comply, as appropriate, with the conditions of the Licence relating to Digital Copies and which, in particular, prohibit the sub-contractor from retaining any Digital Copy (or any intermediate copy involved in the production of the same) and shall include a clause conferring on CLA the right to take action directly against any such sub-contractor pursuant to the Contracts (Rights of Third Parties) Act 1999; and
 - (D) the use of a sub-contractor located outside of the United Kingdom shall be deemed not to be a breach of clause 3.6;
- 4.2.7 for the avoidance of doubt, this Licence does not authorise scanning by Authorised Persons for their own private study or research or any purpose other than making Digital Copies available in accordance with the Licence
- 4.2.8 for the further avoidance of doubt, except as may be permitted by this Licence, Digital Copies may not be stored, or systematically indexed, with the intention of creating an electronic library or similar educational learning resource;
- 4.2.9 notwithstanding anything to the contrary, extracts of Licensed Material may be altered solely for pedagogic purposes, for example by blanking out parts, annotating or translating extracts provided that the author's moral rights are respected and it is made clear on the face of the extract that the original work has been so altered;
- 4.2.10 nothing in this Licence shall be taken to override or restrict rights granted to the Licensee under other contracts or licences, in particular those granting ownership of or access to Digital Material; and where such other licence permits reuse of such material the Licensee is free to decide to do so under the terms of that licence in which case the terms and conditions of this Licence shall not be applicable; and
- 4.2.11 the Licensee may exercise the rights granted in this Licence in relation to Digital Material subject to and under the conditions of this Licence notwithstanding any conditions specified in the contract or licence under which it acquires ownership of or has access to such Digital Material.

4.3 Conditions applying to a Course Collection:

4.3.1 Maintenance of Course Collection:

the Licensee shall ensure that each Course Collection contains only Digital Copies in respect of the Course of Study for which the Course Collection in question is designated, and in particular that:

- (A) the Digital Copies in the Course Collection, when taken as a whole, do not exceed the extent limits of clause 3.4;
- (B) Digital Copies of works which, during the Licence, become Excluded Material are removed from the Course Collection by the end of the academic year in which they became Excluded Material (except when the provisions of clause 4.2.5 apply in which case the Excluded Material must be removed from the Course Collection immediately upon receiving notice under that clause from CLA);
- (C) relevant bibliographic and other records are kept in respect of each Digital Copy to enable the Licensee to comply with the provisions of the Licence and, in particular, the provisions of clause 7; and
- (D) if a Course of Study is not likely to be repeated in a future teaching session, Digital Copies made under this Licence are removed from the Course Collection and that, before that Course of Study is again taught, a detailed check is made to ensure that the copies made available to Course Users comply with the conditions of this Licence;

the Licensee shall check each Course Collection as often as may be necessary to ensure that it is complying with the above obligations.

4.3.2 Access to Course Collection:

the Licensee shall ensure that appropriate controls are maintained to ensure compliance with the terms of this Licence and in particular that:

- (A) only Authorised Persons may make, or cause the making of, Digital Copies and place them on the Course Collection; and
- (B) whilst all Authorised Persons may view Digital Copies held in the Course Collection, only Course Users may download and print out Digital Copies.

4.3.3 Copyright Notice for Course Collection:

All Digital Copies held in the Course Collection shall contain in a prominent place (which may be on a front sheet attached thereto) or have displayed before they are viewed a Copyright Notice in accordance with Schedule 2 (as the same may be periodically amended by agreement between CLA and UUK/GuildHE) containing at least the title of the work from which it is made, the name of the author and of the publisher. Where material to be scanned or copied already contains a Copyright Notice placed by a Rightsholder on a document, the Licensee shall not be required to add a further notice to the document

5. DURATION

The Licence shall come into effect on and shall endure for a period of three years from the Commencement Date until the 31st July 2022.

6. PAYMENTS

6.1 In consideration of the grant of the Licence by CLA to the Licensee upon the terms and conditions hereof the Licensee shall pay to CLA a fee per annum per FTES comprising:

- 6.1.1 £7.51 plus:
- 6.1.2 £5.63 in respect of each Overseas Campus-Based Student declared by the Licensee for coverage plus:

- 6.1.3 an amount to reflect the full-time equivalent number of staff funded from the commercial income of the Licensee calculated in accordance with the following formula:

$$\text{£A/B} \times \text{C} \times \text{£46.55}$$

where:

“A” is the Licensee’s income from UK industry, commerce and public corporations as identified by HESA);

“B” is the total income of the Licensee as identified by HESA;

“C” is the full-time equivalent number of academic staff of the Licensee as identified by HESA;

- 6.2 The most up-to-date totals for the Licensee’s FTES shall be used for the invoice which is payable within thirty (30) days of its presentation.

- 6.3 All invoices raised by CLA shall be subject to Value Added Tax calculated at the rate for the time being in force.

7. DATA COLLECTION

- 7.1 The Licensee agrees and acknowledges that the purpose of a data collection exercise is to establish what is being copied and that:

7.1.1 if selected for the purpose of carrying out a data collection exercise pursuant to the Data Collection Scheme the Licensee shall during the period of the data collection exercise ensure that it and all Authorised Persons co-operate fully with the requirements of CLA relating to the data collection exercise; and

7.1.2 CLA shall on giving reasonable notice have the right of access throughout the Licensee’s premises at any reasonable time or times in order to organise and carry out a data collection exercise.

- 7.2 If selected to participate in a census data collection exercise for Digital Copies, the Licensee shall ensure that, during the relevant reporting period, records are kept of each and every Digital Copy made or used pursuant to a Course of Study. Such records are to be in a form agreed between CLA and UUK/ GuildHE and sent to CLA in accordance with the Data Collection Scheme.

- 7.3 CLA may (but shall have no obligation to) provide or procure the provision of, and permit third parties to provide or procure the provision of, software application(s) or other technology solution(s) that may perform some or all of the Data Collection Scheme on behalf of the Licensee. Such application(s) and solution(s) shall be made available subject to the Licensee’s agreement to CLA’s or the third parties’ terms and conditions which are additional to and separate from this Agreement. The application(s) and solution(s) may be introduced, amended and withdrawn and otherwise made available at any time in accordance with such terms and conditions and without prejudice to the terms of this Agreement.

- 7.4 All relevant data received by CLA from the Licensee, along with data from other licensees, as part of the Data Collection Scheme shall be made available at a reasonably agreed time and in a reasonably agreed form to the UUK/Guild HE Copyright Negotiating and Advisory Committee (subject to the provision of appropriate confidentiality undertakings to CLA) to assist in negotiations with CLA for any successor or replacement to this Agreement.

8. PRINT DISABLED PERSONS

- 8.1 The provisions of this clause shall only apply where an Authorised Person is a Print Disabled Person in accordance with clause 8.3.

- 8.2 Notwithstanding the provisions of clause 3.4 the Licensee, and as appropriate, Authorised Persons may make and supply a copy of part or the whole of any work within Licensed Material in an alternative manner or form that gives a Print Disabled Person access to the work including allowing for the Print Disabled Person to have access as feasibly and comfortably as a person without a visual impairment or any of the disabilities referred to in clause 8.3 (an “Accessible Format Copy”) but must respect the integrity of the work and not include any changes to the work which are not necessary in order to make an Accessible Format Copy for the exclusive use of the Print Disabled Person for whom it is intended on, and subject to, the following conditions:

8.2.1 the Licensee must have lawful possession of an original copy of any work from which it makes an Accessible Format Copy;

8.2.2 each Accessible Format Copy that exceeds the limits set out in clause 3.4 shall contain:

(i) a statement that it is a copy of the original work made under a CLA Licence for the personal use of a Print Disabled Person and that it may not be further copied (including any electronic copying or transmission) or dealt with without permission or save as may be permitted by law; and (ii) the title, as well as the name of the author and publisher, of the original work and the published edition from which it is copied;

8.2.3 the Licensee may only charge for the supply of an Accessible Format Copy an amount which does not exceed the cost of making and supplying it;

8.2.4 that the Accessible Format Copy is only for the personal use of a Print Disabled Person (or a person acting on behalf of a Print Disabled Person) who is an Authorised Person; and

8.2.5 Accessible Format Copies may only be distributed in the United Kingdom except that Accessible Copies of works published within the United Kingdom may be distributed elsewhere in the European Union and a third country that is a party to the Marrakesh Treaty 2013.

- 8.3 An Authorised Person is to be regarded as a “Print Disabled Person” for the purposes of this clause if he or she is a person who:

8.3.1 is blind;

8.3.2 has a visual impairment which cannot be improved so as to give that person visual function substantially equivalent to that of a person who has no such impairment;

8.3.3 has a perceptual or reading disability, including dyslexia, and is, as a result, unable to read printed works to substantially the same degree as a person without an impairment or disability;

8.3.4 is otherwise unable, due to physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading; or

8.3.5 would otherwise be regarded as having a disability in accordance with s.6 of the Equality Act 2010.

- 8.4 This clause is without prejudice to and does not purport to prevent or restrict the doing of any act which by virtue of and in accordance with the Copyright, Designs and Patents Act 1988 (“the Act”) would not infringe copyright including where the Licensee is an authorised body under the Act, i.e. is an educational establishment or a body that is not conducted for profit, which may make, communicate, make available or lend accessible copies (and make intermediate copies in order to do so) subject to and in accordance with the relevant terms of the Act.

9. COMMERCIAL COPIES

- 9.1 Notwithstanding clause 3.1, Commercial Copies may be supplied to employees of companies or of other organisations who have provided research funding to the Licensee in connection with the research project for which the funding was supplied subject to the limitation that (save as may be permitted by statute, or without the prior permission of the copyright holder or under the terms of a CLA licence):

- 9.1.1 a single Paper Copy may only be supplied on the condition that it may not be further copied or reproduced;
 - 9.1.2 a Digital Copy may only be opened once and a single Paper Copy printed out (which single Paper Copy may not itself be further copied) following which the Digital Copy must be deleted; and
 - 9.1.3 a copyright legend in the form set out in Schedule 3 must be attached to each Paper or Digital Copy;
- 9.2 For the avoidance of doubt, Commercial Copies may not be used for the purposes of a document supply service and the terms and conditions of the Licence apply to the making of Commercial Copies.

10. INDEMNITY

- 10.1 In the case of any claim, CLA will indemnify the Licensee in respect of all reasonable and proper legal costs, expenses and damages (and ex gratia payments made with the prior written consent of CLA) awarded against or incurred by the Licensee. For the purposes of this clause, "claim" shall mean any claim made in writing that the Licensee while acting in pursuance of the Licence has infringed copyright in Licensed Material or has breached the terms of the primary licence under which it acquired the Digital Material from which it made or used Digital Copies under this Licence. For the avoidance of doubt this indemnity applies whether or not the claim is made by a copyright owner who has mandated CLA to enter into the Licence on its behalf.
- 10.2 The indemnity conferred by clause 10.1 will not apply:
- 10.2.1 if the Licensee is in material breach of any term of the Licence; or
 - 10.2.2 if the Licensee has not given CLA due notice of any claim within ten (10) working days or of any Claim Form within five (5) working days of the same having been received by the Licensee.
- 10.3 Subject to the conditions of clause 10.2 CLA will take over responsibility for any negotiations for the settlement of any claim and if such claim cannot be resolved by negotiation CLA shall be entitled to assume full responsibility for the conduct of the defence of such claim.
- 10.4 CLA shall consult the Licensee prior to the conclusion of any negotiations on the settlement of any claim and (subject to CLA's overall responsibility for the conduct of the defence of any action) take into account such views and comments as the Licensee may make.
- 10.5 The Licensee shall use all reasonable endeavours to ensure that every relevant letter, Claim Form, application and process received by it at the Licensee's premises shall immediately be forwarded to CLA and shall ensure that no admission, offer, promise, payment or indemnity shall be made or given by or on its behalf or on behalf of CLA without CLA's written consent.
- 10.6 For the avoidance of doubt the Licensee acknowledges that it must obtain permission from the respective rights owners to reproduce Licensed Material outside the limits permitted by the Licence.
- 10.7 For the further avoidance of doubt, the Licensee shall be entitled to rely on any information, including that supplied by any information system such as an automated look-up system for individual publications, which may be provided by CLA whether on the CLA website or otherwise, for the purposes of determining the scope of Licensed Material.

11. TERMINATION

- 11.1 Should either party commit any material breach of any of its obligations hereunder and remain in breach fourteen (14) days after receiving notice from the other party to remedy the same, the latter may by notice to that effect delivered to the former forthwith:
- 11.1.1 terminate the Licence; or
 - 11.1.2 suspend the operation of the Licence until the party not in breach shall be reasonably satisfied the breaches will not recur;
- and any such termination or withdrawal shall be without prejudice both to any sums already paid or then due or payable under the terms and conditions of the Licence to or by either party from or to the other and to any other rights of either party accrued hereunder;
- 11.2 Either party may terminate the Licence by notice in writing to the other if and when a supervisor, receiver, administrative receiver or other encumbrancer takes possession of, or is appointed over the whole or any substantial part of the other party's assets or if and when the other party enters into any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement under the Insolvency Act 1986) or if and when a petition is presented for the purpose of the making of an administration order or the winding-up of the other party which is not discharged within seven (7) days of the presentation of such a petition or if the other party is placed into liquidation or administration or if the other party is dissolved or if a resolution for the winding-up of the other party is passed (other than a voluntary liquidation for the purpose of reconstruction in which all creditors' claims will be discharged in full) or if a bankruptcy petition is presented against the other party which is not discharged within seven (7) days of its presentation;
- 11.3 Following termination under this clause, CLA shall refund to the Licensee any unused portion of the Licence Fee calculated by reference to the unexpired portion of the Licence but subject to clause 11.4;
- 11.4 Termination of the Licence pursuant to clause 11 shall be without prejudice to any rights or remedies of the parties under the Licence;
- 11.5 Upon termination of the Licence, for whatever reason, the Licensee shall immediately delete from the hard drives of all of its central and local servers any and all Digital Copies which may be stored there (save for those Digital Copies the retention of which is required by law), and upon written request from CLA the Licensee shall certify that it has done so.

12. NOTICES

All notices given under the Licence 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 Licence, 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

This Agreement and the Schedules hereto embody all the terms agreed between the parties relating to licensing of reprographic rights and no oral representations, warranties or promises shall be implied as terms hereof. The terms and conditions of the Licence may only be varied by documents in writing in terms agreed between CLA and the Licensee and any such documents shall be signed by the parties hereto and annexed to this Agreement.

14. MISCELLANEOUS

- 14.1 Without prejudice to its obligations hereunder the Licensee undertakes in any position of uncertainty concerning the Licensee's rights hereunder as for example which works are Licensed Material, or as to the extent of permitted copying, to seek clarification as soon as practicable of the Licensee's rights from CLA.

14.2 CLA shall have the right on giving reasonable notice to the Licensee to enter the Licensee's premises to review the implementation of the Licence by the Licensee and to inspect the procedures being used by it.

15. DISPUTES AND GOVERNING LAW

This Agreement 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 this Agreement 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 the Agreement generally and under clause 11 particularly.

SCHEDULE 1

Categories of Excluded Material

“Categories of Excluded Material” which may not be copied under the Licence are works within the following categories:

1. printed music (including the words);
2. maps, charts;
3. newspapers;
4. workbooks, workcards and assignment sheets;
5. any work on which the copyright owner has expressly and prominently stipulated that it may not be copied under a CLA Licence.

SCHEDULE 2

Copyright Notice

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- print out a copy;

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The author (which term includes artists and other visual creators) has moral rights in the work and neither staff nor students may cause, or permit, the distortion, mutilation or other modification of the work, or any other derogatory treatment of it, which would be prejudicial to the honour or reputation of the author.

Course of Study:

Title:

Name of Author:

Name of Publisher:

SCHEDULE 3

Copyright Legend

1. The following statement will appear as part of any electronically distributed Commercial Copy:

“The following item is a copyright work which has been supplied by [Licensee] and transmitted by electronic means. The following are NOT permitted, unless you have the permission of the copyright owner or of The Copyright Licensing Agency Ltd or save as permitted by statute:

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- b) retransmitting the article to anybody else, other than to enable a single paper copy to be printed out by or for the individual who originally requested the item;
- c) electronically storing any copy of the article.”

2. The following statement will appear as part of any Commercial Copy distributed in printed form:

“The contents of this document are copyright works and unless you have the permission of the copyright owner or of The Copyright Licensing Agency Ltd or save as may be permitted by statute may not be copied (including storage in any electronic medium) or otherwise reproduced (even for internal purposes) or resold.”

AS WITNESS the hands for and on behalf of the parties hereto the day and year first above written

Signed for and on behalf of The Copyright Licensing Agency Limited

Signed 

Position Director of Education

Date

Signed for and on behalf of the Licensee

Signed

Position

Date

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