

THIS AGREEMENT is made on:

(to take effect from 1 August)

**BETWEEN:**

(1) **THE COPYRIGHT LICENSING AGENCY LIMITED** of

Saffron House 6-10 Kirby Street, London EC1N 8TS (hereinafter called "CLA") and

(2)

known as

of

(hereinafter called "the Licensee")

**WHEREAS:**

- (a) CLA, as agent for the Authors' Licensing and Collecting Society Ltd ("ALCS"), the Design and Artists' Copyright Society Ltd ("DACs"), the Publishers Licensing Society Ltd ("PLS") and various reproductions rights organisations ("RROs") overseas, acts on behalf of substantial number of owners and licensees of published material in which copyright subsists offered for sale or subscription in the United Kingdom.
- (b) The Licensee wishes to make and to distribute copies of such material to third parties.
- (c) CLA is willing to grant a licence to allow the Licensee to make and distribute such copies upon the terms and subject to the conditions hereinafter set out.

The Copyright  
Licensing Agency Ltd

Saffron House  
6-10 Kirby Street  
London EC1N 8TS  
Tel 020 7400 3100  
Fax 020 7400 3101  
Email [cla@cla.co.uk](mailto:cla@cla.co.uk)  
[www.cla.co.uk](http://www.cla.co.uk)

CBC House  
24 Canning Street  
Edinburgh EH3 8EG  
Tel 0131 272 2711  
Fax 0131 272 2811  
Email [clascotland@cla.co.uk](mailto:clascotland@cla.co.uk)

## NOW IT IS AGREED AS FOLLOWS:

### 1. DEFINITIONS AND INTERPRETATION

In this Licence the following meanings shall apply:

1.1 **Appendix:** the appendix hereto containing the procedures and data formats for the exchange of data between CLA and the Licensee;

**Commencement Date:** [ ];

**Copyright Fee:** either:

(i) the fee in respect of each title as notified (and periodically amended) to the Licensee by CLA in accordance with clause 6; or

(ii) in respect of any Licensed Material where the titles have not been so notified to the Licensee, £6.00 per article (or part of an article) in a periodical and, for a book, 30p per page as the same may be amended from time to time.

save that in respect of titles which are, or during the currency of the Licence become, more than 120 years old the Copyright Fee shall be zero;

**Customer:** a member of the Licensee or other user of its document delivery services;

**Excluded Categories:** those categories of book, journal or periodical which are included on the list of Excluded Categories in Schedule 1, as amended from time to time and published on CLA's website [www.cla.co.uk](http://www.cla.co.uk) as per clause 6.3;

**Excluded Works:** those individual books, journals or periodicals which are notified to the Licensee in accordance with clause 6.3;

**Licensed Copy:** a single paper copy made from the original published edition of Licensed Material in accordance with the provisions of the Licence;

**Licensed Material:** original published editions of books, journals, magazines and other periodicals in which copyright subsists published in the United Kingdom and elsewhere, except those books, journals and periodicals contained or identified in the lists of Excluded Categories and Excluded Works. For the avoidance of doubt, this does not include any material published in electronic form;

**Prescribed Rate:** the rate of interest prescribed from time to time pursuant to The Late Payment of Commercial Debts (Interest) Act 1998;

**Quarter Day:** 1st January, 1st April, 1st July and 1st October each year and "Quarter" shall mean the periods of 3 calendar months commencing on each Quarter Day;

**Secure Intermediate Electronic Transmission:** the provision of Licensed Copies by those means set out in Schedule 2 or such other secure electronic means as may from time to time be agreed in writing by CLA.

1.2 All references to the singular in this Licence may include the plural and vice versa as the context so requires and references to any gender shall include both genders.

1.3 The provisions of the Schedules and the Appendix shall form part of this Licence as if set out herein.

### 2. GRANT OF LICENCE

CLA hereby grants to the Licensee on the terms and conditions herein the non-exclusive right to make Licensed Copies of Licensed Material within the United Kingdom and to distribute them whether in the United Kingdom or elsewhere by post or by Secure Intermediate Electronic Transmission to Customers.

PROVIDED THAT the Licensee shall not distribute overseas by means of Secure Intermediate Electronic Transmission Licensed Copies of any works within Licensed Material of which it has been notified by CLA as not being available for such transmission in accordance with clause 6.4.

### 3. PAYMENT AND TERM

3.1 The Licence shall commence on the Commencement Date and continue from year to year unless and until determined in accordance with clause 9.

3.2 CLA has elected to have a self-billing arrangement, subject to the prior approval of Her Majesty's Customs and Excise. All payments pursuant to such self-billing arrangement shall be made by the Licensee quarterly within 30 days after the end of each Quarter in respect of Licensed Copies made in that Quarter.

3.3 CLA reserves the right to charge interest at the Prescribed Rate on late payment of Copyright Fees.

3.4 In the event that the Licensee does not pay the correct Copyright Fee following a change to Copyright Fees duly notified to it by CLA, it shall, in addition to paying any shortfall and interest thereon at the Prescribed Rate, also pay a sum in respect of CLA's reasonable administrative expenses.

#### **4. RESTRICTIONS ON PHOTOCOPYING**

- 4.1 The Licensee must own an original of any Licensed Material it copies under the terms of this Licence.
- 4.2 No Licensed Copy shall exceed the greater of 5% of any item of Licensed Material, or:
- (a) in the case of a book, one chapter;
  - (b) in the case of a periodical publication, one whole article and the contents pages of a year's issue of any periodical publication; or
  - (c) in the case of a published report of judicial proceedings, the entire report of a single case.

#### **5. CONDITIONS OF SUPPLY TO CUSTOMERS**

- 5.1 The Licensee shall include either the statement set out in paragraph 1 of Schedule 3 on any Licensed Copy supplied in printed form or the statement set out in paragraph 2 of Schedule 3 on any Licensed Copy supplied by Secure Intermediate Electronic Transmission.
- 5.2 Where a Licensed Copy is supplied by Secure Intermediate Electronic Transmission to any Customer, the Licensee shall require that:
- 5.2.1 either it is immediately printed out; or
  - 5.2.2 it is forwarded to the individual requesting the item, for their immediate printing;
- and in either case, all electronic versions of any Licensed Copy made in accordance with this clause are immediately deleted following successful transmission and printing.
- 5.3 The Licensee shall not supply a Licensed Copy to a Customer without imposing a condition prohibiting subsequent resale, hiring out or other disposal for valuable consideration of the Licensed Copy.
- 5.4 The Licensee shall include as a condition of the supply of a Licensed Copy to a Customer a clause which expressly confers on CLA pursuant to the Contracts (Rights of Third Parties) Act 1999, the right to take legal action directly against that Customer to enforce the restrictions set out in this clause.
- 5.5 Should the Licensee have reasonable grounds to believe that any Customer is in breach of any of the restrictions set out in this Licence, it shall as soon as practicable serve notice on such Customer requiring it to remedy the alleged breach within 30 days of the date of the notice, and warning that the Licensee will suspend supply of Licensed Copies without further notice if the breach is not remedied within the said period. For the purposes of this clause, 'reasonable grounds' shall include evidence of non-compliance provided by CLA.

#### **6. NOTIFICATION OF COPYRIGHT FEES AND EXCLUDED MATERIAL**

- 6.1 CLA shall notify the Licensee of the fees to be charged by the Licensee for the supply of Licensed Copies within 30 days of signature of this Licence and periodically thereafter in accordance with the Appendix.
- 6.2 Changes to Copyright Fees by CLA shall not be made more frequently than once a Quarter on a Quarter Day and in the event that any changes are to be made, CLA shall give 4 weeks prior notice to the Licensee to that effect, such notice to be in the form, and contain the details, set out in the Appendix.
- 6.3 CLA shall publish on its website at [www.cla.co.uk](http://www.cla.co.uk) a list of Excluded Works in accordance with the Appendix and may notify the Licensee of any changes to such list and to the list of Excluded Categories by giving 4 weeks written notice prior to a Quarter Day and the Licensee shall implement such changes on that Quarter Day. CLA may exceptionally notify the Licensee of changes to the list of Excluded Works between Quarter Days and the Licensee shall use reasonable endeavours to implement such changes.
- 6.4 CLA shall provide the Licensee with a list of those works within Licensed Material (if any) which may not be distributed outside of the United Kingdom by Secure Intermediate Electronic Transmission and may notify the Licensee of any changes to such list by giving 4 weeks written notice prior to a Quarter Day and the Licensee shall implement such changes on that Quarter Day.

#### **7. RECORDS AND DATA SUPPLY**

- 7.1 The Licensee shall maintain records of each Licensed Copy made pursuant to this Licence.
- 7.2 The Licensee shall not unreasonably deny CLA access to those records which are less than one year old for the purposes of examination or audit and CLA shall give to the Licensee not less than seven days notice of its intention to audit the said records.
- 7.3 The Licensee shall, within 30 days of the end of each Quarter (or at such other times as may be agreed between the parties), supply to CLA in machine-readable form a copy of the records in the format set out in the Appendix in relation to Licensed Copies made during that Quarter.

#### **8. INDEMNITY**

- 8.1 In this Clause 'Qualifying Claim' shall mean any complaint made in writing that the Licensee acting in pursuance of the Licence has infringed copyright and / or database right in Licensed Material or in the typographical arrangement of the published edition in which Licensed Material is contained.

- 8.2 In the case of any Qualifying Claim CLA shall indemnify the Licensee in respect of all reasonable legal costs, expenses and damages awarded against or incurred by the Licensee including any ex gratia payments made with the prior written consent of CLA, provided that the Licensee has complied with the terms of this Licence and has given CLA notice of any Qualifying Claim within ten (10) working days, or in the case of a Claim Form, within five (5) working days of the same having been received by the Licensee.
- 8.3 The indemnity conferred by this clause shall not apply:
- 8.3.1 if the Licensee is in material breach of any term of the Licence; or
- 8.3.2 during any period, or in respect of matters arising during such period, while the Licence is in suspense pursuant to clause 9.2.
- 8.4 CLA shall take over responsibility for any negotiations for the settlement of any Qualifying Claim and if such Qualifying Claim cannot be resolved by negotiation CLA shall assume full responsibility for the conduct of the defence of such Qualifying Claim. The Licensee shall co-operate with CLA in this respect where reasonably requested by CLA to do so.
- 8.5 The Licensee shall ensure that no admission or offer of payment or indemnity shall be made or given by or on its behalf or on behalf of CLA without CLA's written consent and shall ensure that all correspondence received in connection with a Qualifying Claim is promptly passed to CLA.
- 8.6 The Licensee shall indemnify CLA in respect of all reasonable expenses, damages and legal costs awarded against or incurred by CLA in respect of any claim arising out of the Licensee's breach of any term of the Licence.

## **9. TERMINATION AND BREACH**

- 9.1 Either party may terminate the Licence upon giving the other not less than 6 months written notice served so as to expire on any anniversary of the Commencement Date.
- 9.2 If the Licensee commits any material breach of any of the provisions of this Licence and remains in breach fourteen (14) days after receiving notice to remedy such breach (where the breach is remediable) then CLA, without prejudice to any of its other rights, may by notice either terminate the Licence or suspend the Licence until CLA shall be satisfied such breaches will not recur.
- 9.3 Either party may terminate the Licence by notice in writing to the other if and when a supervisor, receiver, administrator, 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.

## **10. GENERAL**

- 10.1 All notices given under the Licence shall be in writing and be sent by first class post, in the case of the Licensee to the address shown on this Licence, and in the case of CLA to: Saffron House, 6-10 Kirby Street, London EC1N 8TS (or any address notified to the Licensee by CLA), 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.
- 10.2 This Licence may only be varied if such variation is acknowledged in writing by CLA and by the Licensee.
- 10.3 This Licence is personal to the Licensee and may not be assigned or otherwise disposed of in whole or in part.
- 10.4 This Licence shall be governed by English law and the parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to the Licence.
- 10.5 The parties do not intend that any term of the Licence shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Licence save as is mentioned in clause 5.4.

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

On behalf of The Copyright Licensing Agency Limited:

Signed:

Name in block capitals:

Title:

On behalf of:

Signed:

Name in block capitals:

Title:

## SCHEDULE 1

### Excluded Categories

- Printed music (including words);
- Tests or examination papers whether published individually or in a collection;
- Internal house journals and other free publications of an employer intended primarily for its employees;
- Newspapers;
- Privately owned documents issued for tuition purposes and limited to clientele who pay fees;
- Maps, charts or books of tables;
- Workbooks, workcards or assignment sheets;
- Works which expressly stipulate that they may not be copied;

Theses and 'grey' literature as that expression is understood in the publishing trade.

## SCHEDULE 2

### Methods of Secure Intermediate Electronic Transmission

The following methods of transmission shall be employed:

1. Facsimile
2. Ariel®  
For details see [www.rlg.org/ariel](http://www.rlg.org/ariel)  
The Licensee will only transmit documents in TIFF format.
3. Adobe Content Server System  
For details see [www.adobe.co.uk](http://www.adobe.co.uk)
4. Other systems allowing Print only  
As agreed from time to time with CLA

Currently any approved print system must prevent the receiver from saving the transmitted file.

### SCHEDULE 3

#### User Registration and Copyright Legend

1. The following statement will appear as part of any items 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 and 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."
2. The following statement will appear as part of any electronically distributed item:

"The following item is a copyright work which has been supplied 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 and save as may be permitted by statute:

  - (a) printing more than a single paper copy, which itself may not be further copied;
  - (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."

#### THE APPENDIX

This Appendix contains the procedures and data formats for the exchange of data between CLA and the Licensee pursuant to the Agreement.

This Appendix covers the exchange of information:

- (a) For the quarterly cycle of notification of any changes to the list of Excluded Works.
- (b) For the quarterly cycle of notification of Copyright Fees by CLA to the Licensee through to the Licensee providing copies of the usage reports and making payments to CLA.
- (c) Other data exchange that may occur at other times, outside of the normal quarterly cycle.

Terms used in the Licence shall have the same meaning when used in this Appendix.

#### Quarterly data exchange

Event	Clause	Timing	Responsibility	Notes / Annexes
Notify Copyright Fees to be applied for the forthcoming quarter	6.2	As required, Quarter start minus 4 weeks	CLA	Supplied on CD-Rom containing an Excel file in the form of Annex 1
Provide lists of Excluded Works	6.3		CLA	Supplied on CD-Rom containing an Excel file in the form of Annex 2
Notify changes to Excluded Works	6.3	Quarter start minus 4 weeks	CLA	As above
Maintain records of each Licensed Copy	7.1	Throughout each Quarter	Licensee	
Provide copy of Usage Report Forms and payment notification	7.3	Quarter <b>end</b> plus 30 days	Licensee	Annex 3
Make payment to CLA for Licensed Copies	3	Quarter <b>end</b> plus 30 days	Licensee	

## Annex 1

Pursuant to clause 6.2, CLA is to provide Copyright Fees on CD-Rom in the format below.

The file consists of one record for each ISSN. Each record consists of 5 fixed length fields formatted as follows:

Field	Comment
ISSN	
Title	
Source	CLA or TRS
Unit of Measure	'P' or 'A' for Page / Article
Copyright Fee	Sterling format 999.99

Notes

1. Non-default records only to be supplied.
2. Currently envisaged for periodicals and journals only.
3. The data format for books shall be as notified by CLA from time to time.

## Annex 2

File format for notification of Excluded Works where CLA has been notified by a copyright owner of specific works to be excluded.

The file consists of one record for each excluded ISSN. Each record consists of 2 length fields formatted as follow

Field
ISSN
Title

Notes:

1. CLA can provide ISSN's for Excluded Works, only where the UK publisher has notified these to CLA.
2. CLA cannot provide comprehensive lists of all titles published by an excluded UK publisher, or similarly for any excluded foreign publications, categories or publishers.
3. The data format for books shall be as notified by CLA from time to time.

### Annex 3

#### Usage report forms

##### 1. *File Format*

The file will be in Microsoft Excel format with one record for each copy of each article or extract from a book. Each row will contain the columns listed in the table below.

Row	Name	Comment
1	Licensee's unique transaction reference number	This is not essential but may be helpful in resolving queries.
2	ISBN or ISSN of Publication	Alpha-numeric standard ISSN without "-" separator
3	Number of Pages Supplied	Pages supplied for books
4	Country	Country to which document delivered
5	Date Supplied	In the format 21-JAN-02
6	Copyright Fee	In decimal format showing pounds and pence: either article rate (for journals) or page rate multiplied by pages supplied
7	Bibliographic Details	Title of publication, name of publisher and, where practicable, name of author

##### 2. *Exchange Format*

The Licensee will supply the transaction files by email in Microsoft Excel format.

##### 3. *Payment Details*

All payments must be accompanied by a self-billing invoice reconciling to the total of Copyright Fees shown in row 6 above.

#### The Copyright Licensing Agency Ltd

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