

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, the Publishers Licensing Society Ltd, the Design and Artists Copyright Society Ltd and various Reproduction Rights Organisations outside the United Kingdom, acts on behalf of a substantial number of owners and/or mandating publishers of Licensed Material offered for sale or subscription in the United Kingdom, and is prepared to give indemnities in respect of claims for copyright infringement made by such and other owners and publishers;
- (b) CLA is willing to grant, and the Licensee is willing to take, a Licence to reproduce such Licensed Material, and an indemnity in respect of such reproduction, in the manner, upon the terms and subject to the conditions hereinafter set out;
- (c) The Licensee is a member of the Association of Colleges ("AoC"), the Association of Scottish Colleges ("ASC"), the Association of Northern Ireland Colleges ("ANIC") or the Association of Welsh Colleges ("Fforwm"); and
- (d) This Agreement is without prejudice to any acts which the Licensee or an Authorised Person is permitted to carry out by the terms of the Copyright, Designs and Patents Act 1988 as the same may from time to time be amended, extended, re-enacted or consolidated and nothing herein shall be construed as affecting or diminishing such permitted acts in any way whatsoever.

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
www.cla.co.uk

CBC House
24 Canning Street
Edinburgh EH3 8EG
Tel 0131 272 2711
Fax 0131 272 2811
Email clasotland@cla.co.uk

NOW IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

In this Licence the following words and expressions shall have the following meanings:

Acetates: reproductions of Licensed Material onto acetate whether for use with overhead projectors or otherwise but, for the avoidance of doubt, excluding slides;

Authorised Persons:

- (i) in respect of Paper Copies: all registered students of, and all employees of the Licensee, and workers and consultants engaged by the Licensee; and
- (ii) in respect of Digital Copies: all those individuals mentioned in (i) above who are permitted by the Licensee to have access to the Secure Network;

where "workers" has the meaning given to it by the Employment Rights Act 1996 and "consultants" means individuals providing consultancy services to the Licensee;

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Prescribed Rate: the rate of interest prescribed from time to time pursuant to The Late Payment of Commercial Debts (Interest) Act 1996;

Scanning Mandate Territories: United Kingdom. This list may be amended periodically by written notice from CLA to the Licensee;

Secure Network: a network (whether a standalone network or a virtual network within the Internet) which is only accessible to those Authorised Persons who are approved by the Licensee for access to the Secure Network, whose identity is authenticated at the time of login (and periodically thereafter) in a manner consistent with current best practice, and whose conduct is subject to regulation by the Licensee.

- 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.

2. GRANT OF LICENCE

CLA hereby grants to the Licensee the non-exclusive right on the terms and conditions herein to:

- 2.1 make, or permit the making of, Paper Copies;
- 2.2 distribute, or permit the distribution of, Paper Copies to Authorised Persons;
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- 2.7 make copies of Paper Copies;
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 - (i) in the case of a book, one complete chapter;
 - (ii) in the case of an issue of a serial publication, or a set of conference proceedings one whole article;
 - (iii) in the case of an anthology of short stories or poems, one short story or poem not exceeding ten (10) Pages in length;
 - (iv) in the case of a published report of judicial proceedings, the entire report of a single case.
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- 4.7 Where extracts of Licensed Material are retyped onto a computer pursuant to clause 2.4, the Licensee shall ensure that the retyped extract is a verbatim copy of the Licensed Material and includes the identity of the author and title of the work from which it is extracted.

5. DURATION

The Licence shall come into effect on the 1st day of August 2003 and shall continue until the 31st day of July 2004 and may thereafter be extended for such further period and on such terms as may be mutually agreed between CLA and the Licensee.

6. LICENCE FEE

- 6.1 In consideration of the grant of the Licence by CLA to the Licensee the Licensee shall pay to CLA an amount of £X multiplied by the FTE Student Totals of the Licensee.
- 6.2 FTE Student Totals for the most recent complete academic year for which data is available shall be used or, in the absence of current data, the most recent FTE Student Totals available, as adjusted in agreement between CLA and either AoC, ASC, ANIC or Fforwm as appropriate, may be used.
- 6.3 All invoices raised by CLA shall be subject to Value Added Tax calculated at the rate for the time being in force and are payable within thirty (30) days of the date of invoice. CLA reserves the right to charge interest at the Prescribed Rate on any payment after such date.

7. NOTIFICATIONS

CLA shall provide the Licensee with copies of:

- 7.1 the list of Excluded Categories and Works;
- 7.2 the list of the Photocopying Mandating Territories; and
- 7.3 the List of Participating US Publishers.

8. DATA COLLECTION

The purpose of a data collection exercise is to establish what is being copied.

- 8.1 CLA may, no more than once in each year, require the Licensee to participate in a data collection exercise such as, but without limitation, a survey, a record keeping exercise or an Information Audit.
- 8.2 CLA shall supply the Licensee on request with the latest copies of the CLA Guides to Surveys, Record Keeping and Information Audits (the "Guides") and shall supply such further copies of the Guides as are reasonably necessary before commencing any data collection exercise.
- 8.3 If selected by CLA to participate in a data collection exercise, the Licensee shall provide all reasonable assistance to CLA in accordance with the Guides and undertakes to ensure that its employees comply with its obligations under this clause.
- 8.4 The CLA undertakes not to disclose any information obtained as a result of any data collection exercise except:
- 8.4.1 as required by a court or other authority of competent jurisdiction; or
- 8.4.2 in aggregated form from which the identity of the Licensee cannot directly be identified.

9. COPYING FOR VISUALLY-IMPAIRED PERSONS

An Authorised Person who is visually-impaired and who, by reason of his impairment, requires a Paper Copy in an alternative format in order to render the Paper Copy accessible to him may make, or have made for him, a copy in such alternative format without it constituting a breach of the Licence provided it is permitted by, and made in accordance with, the Copyright and Visual Impairment Joint Industry Guidelines (as amended from time to time) or such other guidelines which may be issued in their place.

10. ACETATES AND ENLARGED COPIES

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- 10.2 The terms and conditions of the Licence, including in particular the provisions of clause 3, apply to the making of Acetates and enlarged Paper Copies.

11. NOTIFICATION TO LICENSEE'S STAFF

- 11.1 The Licensee shall ensure that all its staff (and particularly those with responsibility for reprographic equipment) are made aware of the terms and conditions of this Licence and shall take all reasonable action to ensure that all Authorised Persons comply with such terms and conditions. In particular, the Licensee shall ensure that copies of any User Guidelines supplied by CLA and the list of Excluded Categories and Works are displayed, where reasonably practicable, next to all reprographic equipment.
- 11.2 The Licensee shall appoint an Authorised Person as a CLA Licence Co-ordinator to liaise with CLA in connection with the administration and implementation of the Licence.

12. INDEMNITY

- 12.1 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.
- 12.2 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.
- 12.3.1 The indemnity conferred by this clause shall not apply:
- 12.3.2 if the Licensee is in material breach of any term of the Licence; or
- 12.3.3 during any period, or in respect of matters arising during such period, while the Licence is in suspense pursuant to clause 13.
- 12.4 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.
- 12.5 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.
- 12.6 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.

13. TERMINATION

- 13.1 If the Licensee commits any material breach of any of its obligations under the Licence and remains in breach twenty one (21) days after receiving notice from CLA to remedy such breach (where the breach is remediable) then CLA, without prejudice to any of its other rights, may by notice either:
- (i) terminate the Licence; or
- (ii) suspend the operation of the Licence until CLA shall be reasonably satisfied that such breaches will not recur.
- 13.2 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.
- 13.3 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.
- 13.4 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 without prejudice to any rights or remedies of CLA.

14. GENERAL

- 14.1 Notices in connection with the Licence shall be in writing and shall be sufficiently served if sent prepaid by first class post, addressed to the last known address of the party to be notified. Any notice so sent shall be deemed served on the second day after the date of posting.
- 14.2 The Licence may only be varied if such variation is acknowledged in writing by both CLA and the Licensee.

- 14.3 CLA shall have the right on giving reasonable notice to the Licensee to enter the Licensee's premises and to review the implementation of the Licence by the Licensee and to inspect the procedures being used by it.
- 14.4 This Agreement shall be governed by and construed in accordance with English Law and subject to the exclusive jurisdiction of the English Courts.
- 14.5 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.

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 for and on
behalf of the Licensee