

Dated

2009

(to take effect from 1 August 2009)

- (1) THE COPYRIGHT LICENSING AGENCY LIMITED

- (2) THE HIGHER EDUCATION INSTITUTION
KNOWN AS «University»

AGREEMENT:
INDEPENDENT COMPREHENSIVE LICENCE

SPECIMEN COPY

THIS AGREEMENT is made on
(to take effect from 1st August 2009)

2009

BETWEEN:

- (1) **THE COPYRIGHT LICENSING AGENCY LIMITED** of Saffron House, 6-10 Kirby Street, London, EC1N 8TS (hereinafter called "CLA") and
- (2) **THE HIGHER EDUCATION INSTITUTION** known as [name of institution] of:
«Address1»
«Address2»
«City»
«County»
«PostalCode»
(hereinafter called "the Licensee")

WHEREAS:

- (A) CLA, as agent for the Authors' Licensing and Collecting Society, the Publishers Licensing Society, the Design and Artists Copyright Society Limited 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 (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, and the storage, communication and use of scanned copies of Licensed Material. CLA is further willing to grant, and the Licensee is willing to take, a licence to include the copying, communication and use by Authorised Persons of Licensed Material where acquired in electronic form.
- (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.

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 all employees of the Licensee including all individuals who, although not employed by the Licensee, are engaged by it to provide consultancy services or who would fall within the meaning of "workers" as defined by the Employment Rights Act 1996. It shall also include, solely in connection with their inspections, persons engaged in inspections for the Quality Assurance Agency or a Research Assessment Exercise

or for other bodies or exercises which may replace the same and/or perform similar functions;

"Commencement Date": 1st August 2009;

"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 technical means may be used to achieve that;

"Course of Study": any whole course of study or any 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:

- (i) an Authorised Person who is either:
 - (a) a student enrolled on that Course of Study; or
 - (b) a tutor, lecturer, supervisor or other person providing teaching to students in respect of that Course of Study;
- (ii) a visiting academic teaching or auditing that Course of Study;

"CLA's website": www.cla.co.uk or such other site as may be notified to the Licensee. A reference to a list or other information on CLA's website shall include both any such list or 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;

"Designated Person": any Authorised Person designated by the Licensee for the purposes of making, or causing the making of, Digital Copies and placing them on Course Collections; such designation need not be by name but may be by specifying the person or persons holding an office or status, which may extend to categories such as all permanent teaching staff, or all persons responsible for convening a Course of Study;

"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 by Authorised Persons of Digital Material 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;

"Digital Material": publications distributed in electronic form published by a Participating Digital Material Publisher 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 included on the list of Excluded Works for the HE Licence published and periodically amended by CLA. Such list will be posted on CLA's website and any amendment shall take effect one month after notice of such amendment is first posted. 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":

All Full Time Equivalent Students of the Licensee, both full and part time including all undergraduates and taught postgraduates (but excluding research postgraduates who are supervised but not taught) the figures for whom shall be calculated by using the following formulae:

- (i) Full Time students studying for 30 weeks per annum constitute 1 FTES (Full Time student = 15 hours tuition/supervised study per week).
- (ii) Part time FTES are derived by adding up the total Part Time hours studied by all of the HEIs students throughout the academic year and dividing this figure by 300.

Each Distance Learner shall be deemed to constitute a single FTES though for the avoidance of doubt where a Course of Study is made up of segments which are all component parts of the same single course, such a student will still be treated as a single FTES;

"Licence": the licence granted by clause 2;

"Licensed Copies": Paper Copies or Digital Copies as appropriate;

"Licensed Material": any and all Material Licensed for Photocopying, Material Licensed for Scanning and Digital Material;

"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 except any Excluded Material. For the avoidance of doubt, unpublished material, including theses, are not the subject of this Licence;

"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 except any Excluded Material;

"Material Supplied by an Intermediary": material in electronic form supplied under a CLA licence to the Licensee by third party document suppliers such as, for example, the British Library Document Supply Centre. For the avoidance of doubt, this does not include material in electronic form supplied to the Licensee by, or on behalf of, the copyright owner which supply will be subject to its own licence conditions;

"Paper Copies": photocopies onto paper from Material Licensed for Photocopying, paper printouts of Digital Copies and paper printouts of Material Supplied by an Intermediary but, in all cases, 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 specified in the list of Participating Digital Material Publishers which shall be available on CLA's website. The list may be amended periodically by CLA and any such amendment shall take effect one month after notice of such amendment is first posted;

"Photocopying Mandate Territories": the United Kingdom, Argentina, Australia, Austria, Belgium, Canada (including Quebec), Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Jamaica, Japan, Luxembourg, Mexico, The Netherlands, New Zealand, Norway, Singapore, South Africa, Spain, Sweden, Switzerland, Taiwan, Trinidad and Tobago and the United States of America. This list may be periodically amended by CLA and any amendment shall be posted on CLA's website and shall take effect one month after notice of such amendment is first posted;

"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 and the United States of America. This list may be amended periodically by CLA and any amendment shall be posted on CLA's website and shall take effect one month after notice of such amendment is first posted;

"Secure Authentication": access to Digital Copies on a Course Collection 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 Designated Person, a Course User or other Authorised Person;

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

"the Survey Scheme": the scheme referred to in clause 8 and Schedule 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 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;

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 in accordance with clause 4 to:

2.2.1 produce Digital Copies provided that the Licensee shall use reasonable endeavours to identify whether it subscribes to a digital version of the work in

- question which is technically suitable for the purpose under a licence which permits the making of multiple copies for students or is available as Digital Material and, if so, to use that digital version instead of creating a Digital Copy by scanning;
- 2.2.2 permit all the uses of such Digital Copies specified in and in accordance with the conditions of Clause 4;
 - 2.2.3 print out from a Digital Copy thus created;
- 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 make available, or permit, the making available of Digital Copies of Material Supplied by an Intermediary for a Course of Study subject to the conditions set out in clauses 4.2 and 4.3;
 - 2.5 to make and distribute Paper Copies and Digital Copies in accordance with clause 10 (copying for those with a visual impairment or other disability);

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 the Licensee must either own an original or a copy supplied on a copyright fee-paid basis by a document supply service of any Licensed Material it copies or scans or, 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 and a copy of the document granting such permission is retained and readily available for production if required;
- 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 during any one Course of Study exceed either singly or in aggregate the greater of five (5) 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;
- 3.4.4 in the case of a published report of judicial proceedings, the entire report of a single case;
- 3.5 no systematic or repeated copying of the same Licensed Material or part thereof for any one Course of Study beyond the limits set out in clause 3.3 and 3.4 above is permitted;
- 3.6 the Licensee shall notify CLA in writing by 1st July in each year as to the number of FTES and Distance Learners for the most recent academic year;
- 3.7 the Licence does not extend to the making of Licensed Copies outside of the United Kingdom except as may be permitted by clause 4.2.7. Licensed Copies made by or for Authorised Persons may be sent outside the United Kingdom to overseas Distance Learners 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. Each overseas Distance Learner 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 Designated 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 a electronic copy of a Digital Copy for the duration of the Course of Study for which it has been provided;
- 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 an original or a copyright fee-paid copy of the original work;

4.2 Conditions applying generally to Digital Copies

- 4.2.1 prior to authorising the making of a Digital Copy by scanning, the Designated Person must satisfy himself that scanning is the most practical method, and if

he knows, or could by reasonable inquiry determine, that a digital version is commercially available, the reason for not using such a version must be recorded;

- 4.2.2 all Digital Copies 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 3 (or as amended periodically by CLA) containing at least the title of the work from which it is made, the name of the author and of the publisher and, in the case of an artistic work where the work incorporates, or has adjacent to it, the identity of the visual creator of the artistic work, the name of that visual creator; 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;
- 4.2.3 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 4.2.10 or by clause 10 or by statute, no digital manipulation, morphing, colour or shade adjustment or otherwise may be made of Digital Copies;
- 4.2.4 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;
- 4.2.5 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;
- 4.2.6 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;
- 4.2.7 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;

(D) the use of a sub-contractor located outside of the United Kingdom shall be deemed not to be a breach of clause 3.7;

- 4.2.8 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 to Course Users;
- 4.2.9 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.
- 4.2.10 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.
- 4.2.11 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.
- 4.2.12 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;
- (C) each Digital Copy is made from the current or, where an earlier edition is required for pedagogic purposes, the most appropriate edition of the original;

- (D) 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 8;
- (E) 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 (and at least annually) 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, wherever feasible of a technical nature, to ensure compliance with the terms of this Licence and in particular that:

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

5. DURATION

The Licence shall come into effect on and shall endure for a period of two years from the Commencement Date until the 31st July 2011.

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 as follows:

6.1.1 for the period 1st August 2009 to 31st July 2010: £7.70

6.1.2. for the period 1st August 2010 to 31st July 2011: £7.70 plus an increase in line with the Retail Prices Index

6.2 The most up to date totals for the Licensee's FTES shall be used for every invoice. Invoices shall be issued for each annual period and are payable within thirty days of their 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. NOTIFICATIONS

Upon signature of this Agreement the Licensee shall notify all relevant staff of the existence of the Licence and of the following information which is obtainable via the CLA's Internet website at <http://www.cla.co.uk>:

- (a) the list of Excluded Works for the HE Licence;
- (b) the identity of the Photocopying Mandate Territories and the Scanning Mandate Territories together with a note of any exclusions or restrictions placed thereon;
- (c) the list of Participating Digital Material Publishers; and
- (d) CLA Digital Data Reporting Guide.

8. SURVEYS AND OTHER DATA REPORTING

8.1 The purpose of a survey is to establish what is being copied.

8.1.1 If selected for the purpose of carrying out a survey pursuant to the Survey Scheme set out in Schedule 2 the Licensee shall during the period of the survey ensure that it and all Authorised Persons co-operate fully with the requirements of CLA relating to the survey;

8.1.2 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 survey.

8.2 The Licensee shall ensure that records of each and every Digital Copy made or used pursuant to this Agreement are created in a form specified by CLA and that such records are sent to the CLA in accordance with arrangements stipulated by CLA. The current details of such form and arrangements are set out in Appendices 1 and 2. Any amendments made by CLA to the form and arrangements shall be posted on CLA's website and shall take effect one month after notice of amendments are posted.

9. COMPLIANCE AUDIT

9.1 The purpose of a Compliance Audit is to ensure compliance with the terms and conditions of this Agreement, in particular, but without limitation, with the provisions of clauses 3 (extent limits) and 4 (creation and storage of Digital Copies and access thereto) and by monitoring the observance of the moral rights of authors:

9.1.1 If selected for the purpose of carrying out an inspection pursuant to a Compliance Audit, the Licensee shall ensure that it and all Authorised Persons co-operate fully with the reasonable requirements of CLA relating to the inspection as set out in the Audit Plan as stipulated by CLA;

9.1.2 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 an inspection.

- 9.3 During an inspection the person or the persons nominated by CLA to carry out the inspection shall be given full access to the Secure Network (including all Course Collections) and shall be given facilities to inspect records, to compare a selection of scanned material with its source, to observe, monitor and evaluate the systems established by the Licensee for the making of Digital Copies, for making available or distributing such Digital Copies and for maintaining Course Collections and allowing access to them in accordance with clause 4.2. Such access may be subject to reasonable arrangements for supervision as required by the Licensee to ensure the security of its computer systems and networks, and to maintain the confidentiality of personal or other confidential data.
- 9.4 If the Licensee subcontracts the making of Digital Copies as envisaged by clause 4.2.7 it shall ensure that it obtains for CLA rights of access and inspection similar to those granted to CLA under the Licence to enable CLA to undertake its inspection at the sub-contractors premises as appropriate.

10. VISUALLY IMPAIRED AND DISABLED PERSONS

- 10.1 The provisions of this clause shall only apply where an Authorised Person is visually impaired or otherwise disabled and by reason of such visual impairment or disability is unable to read or access a Licensed Copy made under the provisions of the Licence.
- 10.2 Notwithstanding the provisions of clause 3.4 the Licensee may make and supply a copy (an "Accessible Copy") of part or the whole of any work within Licensed Material in any alternative format that is more accessible to an Authorised Person (as described in clause 10.1), whether in digital or audio format, large or small print copies or embossed copies (whether produced in Moon or Braille or otherwise) or in other formats on, and subject to, the following conditions:
- 10.2.1 the Licensee must have lawful possession an original copy of any work from which it makes an Accessible Copy;
- 10.2.2 the Licensee may only make an Accessible Copy of a work if and to the extent that such work is not commercially available in a form accessible to the Authorised Person for whom the Accessible Copy is made;
- 10.2.3 each Accessible Copy that exceeds the limits set out in clause 3.4 shall contain:
- (A) a statement that it is a copy of the original work made under a CLA Licence for the personal use of a visually impaired or a 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;
- (B) 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;
- 10.2.4 the Licensee may only charge for the supply of an Accessible Copy an amount which does not exceed the cost of making and supplying it;

10.2.5 any Accessible Copy produced in a digital format may include facilities for navigating around the Accessible Copy and any such other facilities or changes (such as enlargement, reduction or colour selection of the text or illustrations) as are necessary to enable the Authorised Person for whom the Accessible Copy is made to access the Accessible Copy provided that:

- (A) such changes do not amount to a derogatory treatment of the work;
- (B) no other digital manipulation of the work is made whether by way of optical character recognition, morphing, colour or shade adjustment beyond what is necessary to make the Accessible Copy accessible to the Authorised Person for whom the Accessible Copy is made;

10.2.6 that the Accessible Copy is only to be used for the benefit of Authorised Persons.

10.3 An Authorised Person is to be regarded as visually impaired or disabled for the purposes of this clause if he would be regarded as a "visually impaired person" in accordance with s.31F (9) of the Copyright, Designs and Patents Act 1988, or, as appropriate, as a disabled person in accordance with s.1 of the Disability Discrimination Act 1995.

11. NOTIFICATION TO UNIVERSITY STAFF

Within fourteen (14) days of the execution of this Agreement the Licensee will procure that its Vice Chancellor or Principal or equivalent office holder shall notify to Authorised Persons, and particularly those with responsibility for reprographic equipment at the Licensee's premises and those with responsibility for the Short Loan Collections, the terms and conditions of this Licence and shall require all Authorised Persons to comply with such terms and conditions.

12. INDEMNITY

12.1 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;

12.2 the indemnity conferred by clause 12.1 will not apply:

12.2.1 if the Licensee is in material breach of any term of the Licence; or

12.2.2 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;

- 12.3 subject to the conditions of clause 12.2 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;
- 12.4 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;
- 12.5 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;
- 12.6 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.
- 12.7 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.

13. TERMINATION

- 13.1 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:

13.1.1 terminate the Licence; or

13.1.2 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.

- 13.2 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.

- 13.3 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 13.4.
- 13.4 Termination of the Licence pursuant to clause 13 shall be without prejudice to any rights or remedies of the parties under the Licence.
- 13.5 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.

14. NOTICES

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.

15. 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.

16. MISCELLANEOUS

- 16.1 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.
- 16.2 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.

17. 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 13 particularly.

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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. any work on which the copyright owner has expressly and prominently stipulated that it may not be copied under a CLA Licence.

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SCHEDULE 2

Surveys and Record Keeping

The Survey Scheme will operate as follows:

1. If selected by CLA to participate in a survey:
 - (a) the Licensee will within thirty (30) days notify CLA of the identity of the buildings comprising its premises (and the situation of reprographic equipment thereon);
 - (b) the Licensee will co-operate in allowing CLA to set up and run surveys in such Departments and/or libraries as CLA will select and shall require its staff and students to fulfil the survey requirements. CLA will publish for distribution by the Licensee throughout its premises guidelines for the operation of a survey.

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SCHEDULE 3

Copyright Notice

Staff and students of this [University] [Institution] are reminded that copyright subsists in this extract and the work from which it was taken. This Digital Copy has been made under the terms of a CLA licence which allows you to:

- access and download a copy;
- print out a copy;

This Digital Copy and any digital or printed copy supplied to or made by you under the terms of this Licence are for use in connection with this Course of Study. You may retain such copies after the end of the course, but strictly for your own personal use.

All copies (including electronic copies) shall include this Copyright Notice and shall be destroyed and/or deleted if and when required by the [University] [Institution].

Except as provided for by copyright law, no further copying, storage or distribution (including by e-mail) is permitted without the consent of the copyright holder.

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:

Name of Designated Person authorising scanning:

Title:

Name of Author:

Name of Publisher:

Name of Visual Creator (as appropriate):

Appendix 1

Collection and Supply of Data Records of Digital Copies (Scans and Digital Originals).

In accordance with the provisions of the Licence, each Licensee must compile a Record in relation to each and every Digital Copy which is made available in the Course Collection for a Course of Study, both for Scans and Digital Originals. The initial arrangements agreed for this are as follows:

1. Each Licensee should nominate a Licence Coordinator to liaise with CLA. CLA will send the Licence Coordinator a template for an Excel spreadsheet with the data fields for both Scans and Digital Originals, as show in the sample below.
2. The Licence Coordinator will ensure that an entry is made in respect of each item scanned or copied from a Digital Original under the Licence which is made available in the Course Collection of a Course of Study. If the same digital original or scanned item is made available for more than one Course, a separate entry is required for each Course. An entry is required whatever means are used to provide access under the CLA licence to a Digital Copy, whether it is through a VLE, by emailing it to students on a Course, by display (e.g. on PowerPoint during a lecture), by printing, or on a CD. However, this does not require a separate entry if more than one means of access is used for the same item in relation to the same Course of Study.
3. The Licence Coordinator must ensure that the completed Record Sheet spreadsheet is sent to CLA by 15th August for the preceding Licence period 1st August to 31st July. Each Record Sheet must include records for every item made available since the previous spreadsheet data were supplied to CLA.
4. The Record Sheets are to be sent by e-mail to CLA to "hescan@cla.co.uk"

APPENDIX 2 - Digital Copy Record Sheet (for Scans [S] and Digital Originals [D])

Course Code for Course of Study [S/D]	Course of Study Duration (weeks) [S/D]	No. of Registered Students on Course of Study [S/D]	ISBN / ISSN [S/D]	Journal / Book Title [S/D]	Journal Year or Volume Number [S/D]	Author(s) of Book / Chapter / Article [S/D]	Page No. From [S/D]	Page No. To [S/D]	Source (see code A below)	Primary Reason for Scanning where Digital Version known to exist – (see code B below)	Artistic Works- (see code C below)

Source (options for code A)

- A From original (paper version) owned by Institution [S]
- B From Digital Original licensed to Institution [D]
- C From copyright fee paid copy [S]
- D From another HEI under Sharing Provision (include name of supplying institution) [S]

Reason for scanning (options for code B)

- A Digital version owned by institution but it is in an unsuitable format [S]
- B Institution does not own or subscribe to digital version [S]

Artistic works (options for code C)

- A Full page artistic work [S/D]
- B Artistic work with text [S/D]
- C Artistic work disembodied from page [S/D]

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

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