

# The CLA Education Licence Terms and Conditions

## Introduction

This Licence records the terms on which CLA grants a licence to Educational Establishments in the **United Kingdom** to reproduce extracts from published material in which copyright subsists.

### 1. DEFINITIONS

1.1 In this Licence, the following meanings apply:

#### **Authorised Persons:**

- (i) in respect of Paper Copies: all students (and, in the case of students aged 16 and under, their parents), teaching and other staff (whether temporary or permanent), and governors of the Licensee;
- (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;

**CCC Electronic-Rights Works:** those works published by a Participating US Publisher listed on CLA's website as being available for digital use or re-use;

**Certificate:** the certificate issued by CLA to confirm issue of the Licence to the Licensee;

**CLA:** The Copyright Licensing Agency Limited;

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**Commencement Date:** the date noted on the first Certificate issued by CLA to the Licensee;

**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;

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**Educational Establishments:** schools, colleges, pupil referral centres, resource centres and other educational institutions with the exception of higher education establishments;

**Excluded Material:** those categories of work and individual works identified on or via CLA's website or other electronic means controlled by CLA and which may be amended periodically by CLA. Any such amendment shall be posted on CLA's website and shall take effect on the next Quarter Day. For the avoidance of doubt, categories of work or individual works may be excluded from Material Licensed for Photocopying, from Material Licensed for Scanning or from Digital Material or any combination thereof;

**FTE Student Total:** the total number of full time equivalent students (to include all full time and part time students) of the Licensee as notified to CLA either by the representative data source as posted on CLA's website such as but not limited to the Data Service, Scottish Funding Council, Department for Education or, if no representative body exists which provides this information, by the Licensee itself calculated in agreement with CLA;

**Licence:** the licence granted by clause 2;

**Licence Fee:** the product of the FTE Student Total multiplied by the applicable per student rate as notified to the Licensee at least three (3) months before the start of the Licence Year or, if greater, the minimum fee (if any) as shown on CLA's website as applicable to Educational Establishments. The rate for subsequent years will increase automatically by the percentage increase in the Retail Price Index over the preceding year as published in the October preceding the start of the Licence Year;

**Licence Year:** unless advised to the contrary, 1 April in any one year to 31 March in the succeeding year or 1 August in any one year to 31 July in the succeeding year depending on the type of educational establishment, in each case the Commencement Date to be specified on the Certificate;

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

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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 1998;

**Quarter Day:** 1st January, 1st April, 1st July or 1st October;

**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, Australia, Canada (including Quebec), Denmark, Finland, France, Hong Kong, Iceland, Ireland, New Zealand, Norway, Singapore, South Africa, Spain, Switzerland, Turkey and the United States of America. This list may be amended periodically by CLA. Any such amendment shall take effect on the next Quarter Day after such amendment is first posted;

**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;

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## **2. GRANT OF LICENCE**

CLA hereby grants on the terms and conditions herein and for educational and teaching purposes only the non-exclusive right to the Licensee, and, as appropriate, Authorised Persons to:

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- 2.5 make available, or permit the making available of, Digital Copies, in both cases solely within the Secure Network;
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- 2.7 For the avoidance of doubt, students accessing the Secure Network remotely within the United Kingdom for the purposes of their studies may open and view a Digital Copy and print out a single paper copy therefrom, but students aged sixteen and under may only make Digital Copies under the Licence under the direction of a member of the teaching staff as part of formal teaching or school activities. Students outside the United Kingdom may receive Licensed Copies but nothing herein shall be deemed to authorise any further copying and each overseas student shall be responsible for complying with all local laws.

## **3. DURATION**

The Licence shall come into effect on the Commencement Date and shall continue from year to year unless and until determined in accordance with clause 12.

## **4. PAYMENT**

The Licence Fee, together with VAT thereon, is payable within 30 days from the date of an invoice from CLA. CLA reserves the right to charge interest at the Prescribed Rate on any payment after such date.

## **5. CONDITIONS APPLYING TO THE CREATION AND USE OF LICENSED COPIES**

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  - (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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- 5.6 Paper Copies made in each Licence Year may be stored and used throughout the Licence Year and for the remainder of any academic year beginning within the Licence Year, but must then be destroyed unless the copies are in a satisfactory condition. Any copies retained for a subsequent academic year must be re-reported in any data collection exercise.

## **6. FURTHER CONDITIONS APPLYING TO THE CREATION AND USE OF DIGITAL COPIES**

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- 6.5 Without prejudice to its obligations set out in Clause 6.4, the Licensee shall use reasonable endeavours to include, where practicable, in a prominent place in all Digital Copies (or have displayed before viewing) a copyright notice containing at least the identity of the author or creator of the literary or artistic work and the title of the work from which it is made; where material to be scanned, copied, accessed or used 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.
- 6.6 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.
- 6.7 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.
- 6.8 Notwithstanding anything to the contrary, extracts of Licensed Material and other material generated by teaching staff or students may be combined, parts may be blanked out, relevant parts may be selected, translated or adapted as a pedagogic exercise only and illustrations or photographs may be dis-embedded provided in all instances the identity of the author and the title of the original source are clearly identified and the moral rights of the author are observed.
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- 6.9.2 Digital Copies may be stored on a server and/or systematically indexed solely for the purposes of, and for the duration of, the class, lesson or course of study for which the Digital Copy was made and intended to be used and shall, in any event, be deleted at the end of the academic year in which the Digital Copy was made;
- 6.9.3 Notwithstanding clause 6.9.2, if a Digital Copy is required for the subsequent academic year, it may be retained provided it continues to be reported in any data collection exercise. If not required for the subsequent academic year, but likely to be required subsequently, it may be retained provided it is not made available other than to the staff responsible for the management of digital learning resources or similar and if used again must be reported in any data collection exercise.
- 6.10 The Licensee may subcontract the making of Digital Copies to third parties, provided that:
- 6.10.1 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;
- 6.10.2 a record is kept of all such subcontracts, and the Digital Copies made thereunder, and that such record is provided on request to CLA;
- 6.10.3 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 (Right of Third Parties) Act 1999;
- 6.10.4 the use of a sub-contractor located outside of the United Kingdom shall be deemed not to be a breach of clause 2.7

## **7. FURTHER CONDITIONS APPLYING TO THE USE OF CCC ELECTRONIC-RIGHTS WORKS**

- 7.1 Notwithstanding clause 2.3, the Licensee may only scan, or permit the scanning of, hard copies of a CCC Electronic-Rights Work under the Licence where the same is not reasonably available in digital form for the Licensee to purchase whether by subscription or otherwise.
- 7.2 The use of CCC Electronic-Rights Works is subject to such special limitations or other terms (if any) as are applicable to any individual work as identified on CLA's website.

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- 8.1 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 this Licence.

- 8.2 Notwithstanding the provisions of clause 5.2 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 8.1), 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:
- 8.2.1 the Licensee must have lawful possession or lawful use of an original copy of any work from which it makes an Accessible Copy;
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- (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;
- 8.2.6 that the Accessible Copy is only to be used for the benefit of Authorised Persons.
- 8.3 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.6 of the Equality Act 2010.

## **9. NOTIFICATION TO LICENSEE'S STAFF**

- 9.1 The Licensee shall ensure that all its staff (and particularly those with responsibility for reprographic and scanning equipment) are made aware of the terms and conditions of the Licence, including the exclusion of certain works and categories of work, and shall take all reasonable action to ensure that all Authorised Persons comply with such terms and conditions. In particular, the Licensee shall ensure where reasonably practicable that copies of any user guidelines, and other relevant support materials as supplied by CLA or made available on CLA's website are displayed next to all fixed-location photocopying and/or scanning machines, and next to any and all other reprographic equipment, and are drawn to the attention of all Authorised Persons.
- 9.2 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.

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- 10.4 CLA undertakes not to disclose any information obtained as a result of any data collection except:
- 10.4.1 as required by a court or other authority of competent jurisdiction; or
- 10.4.2 in aggregated form from which the identity of the Licensee cannot directly be identified.
- 10.5 Any survey or record-keeping exercise must include all Accessible Copies.

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- 11.2 In the case of any Qualifying Claim CLA will 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 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.
- 11.3 The indemnity conferred by this clause shall not apply:
- 11.3.1 if the Licensee is in material breach of any term of the Licence; or
- 11.3.2 during any period, or in respect of matters arising during such period, which the Licence is in suspense pursuant to clause 12.
- 11.4 CLA will 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.
- 11.5 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. BREACH AND TERMINATION**

- 12.1 Either CLA or the Licensee may terminate the Licence upon giving at least 30 days written notice served so as to expire at the end of each Licence Year.
- 12.2 Should the Licensee commit any material breach of any of the terms and conditions of this Licence and remain in such breach 14 days after receiving notice to remedy the same (where the breach is remediable) then CLA, without prejudice to any of its other rights, may by notice either terminate or suspend the terms of the Licence until CLA shall be satisfied such breaches will not recur.

**13. GENERAL**

- 13.1 All notices given under the Licence shall, unless otherwise specified, be in writing and be sent by first class post, in the case of the Licensee to the address shown on the Certificate, and in the case of CLA to: Barnard's Inn, 86 Fetter Lane, London EC4A 1EN (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.
- 13.2 The Licence may only be varied if such variance is acknowledged in writing on behalf of CLA and the Licensee.
- 13.3 The Licence is personal to the Licensee and may not be assigned or otherwise disposed of in whole or in part.
- 13.4 The 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.
- 13.5 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.
- 13.6 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 their compliance with its terms and to inspect the procedures being used by it.