

Second Extract Permissions Service Agreement

THIS AGREEMENT is made on _____

BETWEEN

(1) THE COPYRIGHT LICENSING AGENCY LIMITED of 5th Floor Shackleton House, 4 Battle Bridge Lane, London SE1 2HX (“**CLA**”); and

(2) THE HIGHER EDUCATION INSTITUTION known as _____

of:

Address _____

City _____ Postcode _____

(hereinafter called “the **Licensee**”) _____

WHEREAS:

- (1) Under the existing CLA Higher Education Licence currently in force between CLA and the Licensee as at the date above (the “**CLA Higher Education Licence**”), CLA grants to the Licensee the right to photocopy and to scan extracts, or to use or re-use digital extracts, from published books, journals and magazines protected by copyright.
- (2) The CLA Higher Education Licence is subject to certain limits on the extent of the extracts that may be copied or otherwise reproduced (as defined below as the “**CLA Higher Education Licence Limits**”). The Parties now wish to enter into an agreement to enable the Licensee to apply for and be granted permission to reproduce extracts (which are defined below as the “**Additional Licensed Copies**”) which exceed the CLA Higher Education Licence Limits.
- (3) Each permission shall be granted by CLA acting on behalf of the relevant Participating Rightsholder (as defined below). The price will be set by Participating Rightsholders and will be calculated by reference to the number of pages to be copied and the number of students to whom the Additional Licensed Copies are to be made available.
- (4) The agreement to grant permissions to make copies beyond the CLA Higher Education Licence Limits is not intended to substitute directly or indirectly for the purchase of Licensed Material.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words and expressions shall have the following meanings:

“Additional Licensed Copies”:

means Paper Copies and Digital Copies made pursuant to this Agreement and complying with the limits of clause 2.1;

“CLA Higher Education Licence Limits”:

the amounts of any one (1) copyright work that may be copied under clause 3.4 of the CLA Higher Education Licence being, in summary, one (1) chapter in a book or one article in a serial publication or, if greater or in aggregate, ten per cent (10%) of the copyright work;

“Digital Copies” and “Paper Copies”:

as defined in the CLA Higher Education Licence but interpreted so as to apply only to those copyright works included as Licensed Material in the Permissions Service and the terms “Material Licensed for Photocopying” “Material Licensed for Scanning” and “Digital Material” shall be construed accordingly in relation to this Agreement;

“Licensed Material”

as defined in the CLA Higher Education Licence but limited only to those copyright works listed or referred to in the Permissions Service;

The Copyright
Licensing Agency Ltd

Head Office (London)
Tel 020 7400 3100
Email cla@cla.co.uk
www.cla.co.uk

CLA Scotland
Tel 0131 272 2711
Email clascotland@cla.co.uk

Registered in England
Reg no. 1690026

“Licensee Details”:

the unique Username and Password provided by CLA to enable the Licensee to access and purchase Transactional Permissions;

“Participating Rightsholders”:

those rightsholders of Licensed Material who have agreed that Additional Licensed Copies may be made of some or all of their copyright works as listed or referred to in the Permissions Service;

“Permissions Service”:

the transactional top-up permissions service provided by CLA on its website (or through other accredited portals as listed on CLA's website) on behalf of Participating Rightsholders under which the Licensee can obtain permissions to make Additional Licensed Copies at the prices set out in the Permissions Service and otherwise on the terms set out in this Agreement;

“Transactional Permission(s)”:

permission(s) granted to the Licensee using the Permissions Service;

“Transaction Permission Details”:

the details for each Transactional Permission to be entered into by the Licensee at the point of purchase being:

- i) the number of students to whom the Additional Licensed Copies are to be made available; and
- ii) the page range comprising the Additional Licensed Copies; and
- iii) the usage type (i.e. whether photocopying, scanning or digital re-use);

“Transaction Permission Fee”

the price calculated by the Permissions Service by reference to the Transaction Permission Details for each Transactional Permission.

- 1.2 Words and phrases defined in the CLA Higher Education Licence shall (except as specifically amended above) have the same meaning when used in this Agreement.
- 1.3 All references to the singular in this Agreement include the plural and vice versa as the context so requires and references to any gender shall include both genders.

2. GRANT

- 2.1 CLA hereby grants the non-exclusive right for the Licensee to make Paper Copies or Digital Copies of Licensed Material of a second chapter of a book or of a second article of a serial publication, or of a number of pages not exceeding ten per cent (10%) of the total wordcount of a book, forming part of Licensed Material, where taken together these extracts would exceed ten per cent (10%) of the total publication, in each case as a Transactional Permission only.
- 2.2 Each Transactional Permission shall be constituted by:
 - i) the selection, by or on behalf of the Licensee, of a copyright work within Licensed Material; and
 - ii) the entry of valid Licensee Details by or on behalf of the Licensee; and
 - iii) the entry of accurate Transaction Permission Details; and
 - iv) the checking of the relevant tick box in the Permissions Service to indicate agreement to the Transactional Permission Fee and all other terms of the Transactional Permission.
- 2.3 Each Transactional Permission shall be at, and subject to payment of, the Transaction Permission Fee and otherwise on, and subject to, the terms and conditions of this Agreement and shall be enforceable against the Licensee as a separate contractual obligation.
- 2.4 Additional Licensed Copies shall be subject to the terms and conditions of the CLA Higher Education Licence (other than the CLA Higher Education Licence Limits) and shall each include the Copyright Notice set out in Schedule 2 of the CLA Higher Education Licence.
- 2.5 Except as expressly modified by the terms of this Agreement, the CLA Higher Education Licence shall remain in full force and effect. In particular the provisions of clause 10 of the CLA Higher Education Licence (Indemnity) shall apply to Additional Licensed Copies as they apply to Licensed Copies.

3. RESTRICTIONS AND LIMITATIONS

- 3.1 Any Transactional Permission granted in accordance with clause 2 above shall only apply to:
 - i) the number of students and page range stated in the Transaction Permission Details; and
 - ii) the usage type specified in by the Transaction Permission Details; and
 - iii) use in one (1) Course Collection; and
 - iv) use in one (1) academic year only.
- 3.2 The use of different editions of the same book to make copies of more than one Additional Licensed Copy during any one (1) Course of Study shall be a breach of both this Agreement and the CLA Higher Education Licence.

4. DURATION

This Agreement shall come into effect on 1 August 2019 and shall continue until terminated in accordance with the provisions set out in clause 7.1, 7.2 or 7.3.

5. PAYMENTS

The Transaction Permission Fees, together with VAT thereon, are payable within thirty (30) days from the date of an invoice from CLA. The Transactional Permissions may be suspended or rescinded in the event of non-payment of the Transaction Permission Fees.

6. WARRANTIES

The Licensee warrants that reasonable care will be taken by the Licensee to ensure that all details supplied in order to complete the Transaction Permission Details will be complete and accurate and that all Additional Licensed Copies will be used in accordance with the terms of this Agreement and the CLA Higher Education Licence as appropriate.

7. TERM AND TERMINATION

- 7.1** This Agreement shall terminate immediately upon the expiration or termination, for whatever reason, of the CLA Higher Education Licence and the continued use and retention of Additional Licensed Copies shall be subject to the same provisions as are contained in the CLA Higher Education Licence regarding the use of Licensed Copies after a termination or expiration of the CLA Higher Education Licence.
- 7.2** This Agreement may be terminated or suspended by either party (without termination or suspension of the CLA Higher Education Licence) for any material breach of the terms of this Agreement by the other party (including any non-compliance with any of the terms of the CLA Higher Education Licence applying to the creation use and storage of Additional Licensed Copies) on the terms relating to termination or suspension contained in clause 11.1 of the CLA Higher Education Licence.
- 7.3** This Agreement may be terminated by either party by giving three months' notice in writing.
- 7.4** Termination of this Agreement shall be without prejudice to any rights or remedies of the parties which had accrued to the date of termination;
- 7.5** Upon termination of this Agreement for breach by the Licensee, 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.

Signed for and on behalf of the Licensee

Signed:

Name:

Position:

Date: