

1 DEFINITIONS

In this Agreement the following words shall have the following meanings:

"Agreement" means the Contract Form and these Licence Terms;

"Annual Access Fees" the annual fee for providing online access to a Product, the current fee is set out in the Contract Form but may be subject to an annual increase as notified to Licensee;

"Authorised User" an individual who is either a current student, faculty member or other member of staff of Licensee, and whom is authorised by Licensee to access Licensee's information services via the Secure Network from a terminal at the Licensee's library premises or offsite via a secure link to a valid IP address on the Secure Network;

"Contract Form" the form setting out the products that Licensee wishes to either purchase or subscribe to, together with the relevant fees, and in relation to the subscription products, the subscription period;

"Commercial Use" for the purposes of monetary reward (whether by or for Licensee, an Authorised User, or any other person or entity) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Product(s);

"Course Packs" a collection or compilation of materials (whether in print or electronic format, and where required by visually impaired students, in braille or audio format), assembled by staff of Licensee for use by students in a class for the purposes of educational instruction;

"Electronic Reserve" electronic copies of materials made and stored on the Secure Network or within a virtual learning environment for use by staff of Licensee in connection with specific courses of instruction offered by Licensee to its students;

"Fees" means the Subscription Fees, the Purchase Fees and (where applicable) any Annual Access Fees;

"Online Access" access to the Product(s) via the Server;

"Product(s)" the Purchased Product(s) and/or the Subscription Product(s);

"Purchase Fee(s)" the fees set out in the Contract Form for the supply of the Purchased Product(s);

"Purchased Product(s)" the product(s) which Licensee has purchased on a "perpetual access" basis (as detailed in the Contract Form), made available via Online Access or otherwise delivered by Licensor in electronic format;

"Section" in relation to a Product, means an article of a journal, a chapter of a book or an entry in a reference or database product;

"Secure Network" a network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users whose identities are authenticated by Licensee at the time of log in (and periodically thereafter in line with best practice) by Secure Authentication;

"Secure Authentication" Athens or Shibboleth (SAML) technology based authentication, IP ranges, username and password, or such other authentication process agreed between Licensee and Licensor from time to time, which is consistent with current best practice;

"Server" either Licensor's server or a third party server designated by Licensor on which the Product(s) are mounted and may be accessed;

"Subscription Fee(s)" the fee(s) set out in the Contract Form for access to the Subscription Product(s) during the Subscription Period;

"Subscription Period" the period commencing on the date set out in the Contract Form for which Licensee and the Authorised Users may access and use the Subscription Product(s) and any such renewal period agreed in accordance with clause 8.1; and

"Subscription Product(s)" the product(s) to which Licensee has subscribed for an agreed subscription period (as detailed in the Contract Form), made available via Online Access or otherwise delivered by Licensor in electronic format.

2 LICENCE AND PROPRIETARY RIGHTS

- 2.1 Online Access to a Purchased Product shall be provided to Licensee on payment of the Purchase Fee and: (i) on payment of an Annual Access Fee; or (ii) at no additional cost where Licensee has a current subscription for Online Access to any Subscription Product. Where Licensor is unable to provide Online Access on a continuing basis, it shall only be obligated to provide a copy of the Purchased Product in pdf format (or such other electronic format as it in its sole discretion determines) and the Licensee agrees and acknowledges that the use of any electronic copy shall always be subject to the permitted terms of use (as set out in this clause 2 and in any other term of this Agreement).
- 2.2 Subject to the payment of the Subscription Fees, Licensor grants Licensee the non-exclusive and non transferable right to use and access the Subscription Products for the Subscription Period but only in accordance with the permitted terms of use (as set out in this clause 2 and in any other term of this Agreement).
- 2.3 For such period that Licensor holds the right to publish a journal volume, any journal volume which Licensee has paid to have Online Access to during the Subscription Period shall continue to be accessible to Licensee after that period has expired. (This continuing access shall not apply to any shallow archive volumes provided free of charge as an additional benefit to online subscribers.) In fulfilling this obligation, Licensor shall continue to provide Online Access at no additional charge for such period that Licensee has a current subscription for a Subscription Product. Where no current subscription is in existence, Licensee must pay an Annual Access Fee for continuing Online Access. Where Licensor is unable to provide Online Access on a continuing basis, it shall only be obligated to provide a copy in pdf format (or such other format as it in its sole discretion determines). The permitted terms of use (as set out in this clause 2 and in any other term of this Agreement) shall continue to apply to any journal volume to which access is

granted after its Subscription Period has expired. The Licensee accepts and acknowledges that whilst Licensor cannot guarantee continued access as detailed above, in the event a journal volume is transferred to another publisher, the Licensor will make all reasonable efforts to negotiate such rights with the new publisher.

- 2.4 Licensee may allow the Authorised Users to access, search, retrieve and display the Product(s) via the Secure Network (including providing integrated access via search of an author, article title and keyword index) and each Authorised User may solely for the purposes of research, teaching and private study and subject always to the overriding restrictions in clause 2.6:
- 2.4.1 download and store a limited number of Sections of each Product in machine readable form (provided that a substantial part of each Product is not downloaded and stored by the Authorised User);
- 2.4.2 print a limited number of Sections of each Product (provided that such copying does not amount to the copying by the Authorised User of a substantial part of a Product);
- 2.4.3 incorporate a limited number of Sections of each Product in Course Packs and/or Electronic Reserves provided that: (i) a substantial part of Product is not incorporated in a Course Pack or Electronic Reserve; and (ii) each Section shall expressly and with reasonable prominence acknowledge the source (including author, title, publisher) and Licensor's copyright notice. Such copies shall be deleted/destroyed when they are no longer to be used for teaching purposes.
- 2.5 Licensee may supply to the library of an institution (whether by post, fax or secure transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing) a single paper copy of a Section of a Product in accordance with the limitations set out in clause 2.4.2 and provided that such copy may only be used for research, teaching and private study purposes and not for any Commercial Use.
- 2.6 Neither Licensee nor any Authorised User may:
- 2.6.1 remove or alter Licensor's copyright notice or other means of identification or disclaimers as they appear on a Product;
- 2.6.2 systematically make printed or electronic copies of any of the Products for any purpose;
- 2.6.3 permit access to the Product(s) to anyone who is not an Authorised User;
- 2.6.4 display or distribute any part of a Product on any electronic network, (including without limitation the Internet and the World Wide Web) other than a Secure Network;
- 2.6.5 use all or any part of a Product for Commercial Use;
- 2.6.6 modify, adapt or alter a Product or make available the Product in any other form or medium or create derivative works without the written permission of Licensor;
- 2.6.7 create a database in electronic or structured manual form by downloading and storing any content from the Product(s) save as permitted pursuant to clause 2.4.3;
- 2.6.8 attempt to interfere with the proper workings of any online provision of the Product(s) including attempting to circumvent security, tamper with, hack into or otherwise disrupt the Server or other Internet connected device used as part of the Licensor's IT system which enables access to the Product(s);
- 2.6.9 either individually or collectively download Product content at rate which exceeds 600 pdfs per hour;
- 2.6.10 use any automated retrieval devices (such as web robots, wanderers, crawlers, spiders of similar devices (save that this is not intended to prevent Licensee from using a federated search engine or discoverability service as part of its library information services); nor otherwise download, store, reproduce, transmit, display, print, copy, distribute, extract, exploit or use the Product(s) except as expressly permitted in this Agreement.
- 2.7 Licensor reserves the right to withdraw access to the Product(s) in the event of a download rate in excess of the limit in clause 2.6.9. The withdrawal of access in such circumstances is generated by an automatic abuse detection process. Upon activation of the process, emails including details of the actual download rate detected will be sent to Licensor's administrator following which Licensor may contact Licensee's administrator to request an investigation. Licensor shall only restore access once the issue has been resolved to its satisfaction.

3 LICENCEE'S RESPONSIBILITIES

- 3.1 Licensee will provide Licensor on request with all identifying information, including IP address ranges, relating to the Licensee and its Authorised Users necessary to enable Licensor to set up and activate Online Access. Licensee agrees that access is conditional upon the provision of this information. Licensee is responsible for promptly notifying Licensor of any changes to this information.
- 3.2 Licensee warrants and represents that the range of IP addresses provided pursuant to clause 3.1 are only assigned to devices within its Secure Network.
- 3.3 Licensee:
- 3.3.1 shall ensure Online Access is only granted to Authorised Users via the Secure Network and that access granted to such users ceases on them ceasing to be a staff member or student as required in this Agreement;
- 3.3.2 shall take all reasonable measures to monitor the use of the Product(s) and shall make Authorised Users aware of these terms of use;
- 3.3.3 procures that all Authorised Users shall treat all logins, passwords or other Authorised User identification required for Online Access as confidential and not disclose them to any other person;
- 3.3.4 procures that all Authorised Users shall only use the Product(s) in compliance with these terms;
- 3.3.5 shall promptly notify Licensor on becoming aware of any unauthorised possession or use or other breach of these terms and take appropriate action (including disciplinary action) to ensure that such activity ceases and to prevent any recurrence.

- 3.4 Licensee is responsible for obtaining at its own cost all internet connections, equipment and software necessary to access the Product(s) via the Secure Network. Furthermore, whilst Licensor will try to guard against viruses, it does not guarantee or warrant that any Product nor Online Access will be free from infections, viruses and/or other code that has contaminating or destructive properties and Licensee is responsible for implementing sufficient procedures and virus checks to satisfy its requirements for the security of data input and output.
- 4 LICENSOR'S RESPONSIBILITIES**
- 4.1 Licensor shall set up and activate Licensee's Online Access promptly upon receipt of the Fees and receipt of the information to be supplied by the Licensee in accordance with clause 3.1.
- 4.2 Following activation of Licensee's account, Licensor shall (subject to the other provisions of this clause 4) use reasonable endeavours to:
- 4.2.1 provide Licensee with continuing Online Access throughout the Subscription Period or as required pursuant to clause 2.1; and
- 4.2.2 ensure that the Server has sufficient capacity and rate of connectivity to provide Licensee with a level of service which is commensurate with the current standards in the online information industry sector.
- 4.3 Licensor may temporarily suspend the Licensee's Online Access for the purposes of maintenance or upgrades but will use its reasonable endeavours to: (i) notify Licensee in advance of such activities; (ii) carry out these activities where practicable during non-working hours; and (iii) minimise the period of suspension or interruption.
- 4.4 In relation to any Product made available via Online Access Licensor reserves the right at any time on notice to Licensee to:
- 4.4.1 make changes or corrections and to alter, update or upgrade any aspect of the Product;
- 4.4.2 vary the technical specification of any Product or of any software included therein; and
- 4.4.3 withdraw the Product (or any part) where it has decided to cease publication of that Product.
- 4.5 Where Licensor withdraws a Product or a material part thereof in accordance with clause 4.4.3, if Licensee purchased the withdrawn Product on a perpetual basis, the withdrawn Product shall be provided to Licensee in pdf format (or such other electronic format as Licensor in its sole discretion determines), otherwise Licensor may in its sole discretion either offer broadly equivalent replacement materials or a credit in respect of the unexpired portion of the Subscription Fee or Annual Access Fee in relation to the withdrawn Product (or part thereof). The provision of a pdf copy, replacement or credit (as applicable) shall discharge Licensor's liabilities to Licensee in respect of the withdrawn material.
- 4.6 For such period that Licensee is entitled to Online Access, Licensor agrees to provide Licensee with access to usage data, and where available, usage reports detailing the level of use of any Subscription Product(s) by Licensee's Authorised Users per month. Any reports made available shall be COUNTER compliant (or compliant with an equivalent industry standard), and these reports and data will not identify individual Authorised User usage, but will be provided in respect of the IP address ranges given by Licensee pursuant to clause 3.1. Licensor will not be able to provide accurate usage data and/or reports if Licensee stores any of the Subscription Product(s) on any cache or proxy server, which is discouraged in any event due to the dynamic nature of the Subscription Product(s).
- 5 INTELLECTUAL PROPERTY RIGHTS**
- 5.1 The Product(s) and any related usage data and usage reports made available are protected by international copyright laws, database rights and other intellectual property rights. The Licensor, its affiliates and its licensors are the owners of these rights and this Agreement does not transfer any rights or title in the Product(s) except the right to access and use the Product(s) as set out in clause 2.
- 5.2 The Licensor warrants that use of the Product(s) in accordance with these terms does not infringe the intellectual property rights of any third party.
- 6 LIMITATION OF LIABILITY**
- 6.1 Whilst Licensor will seek to make available the Product(s) online, it cannot guarantee that such Online Access will operate continually or without interruption and neither does Licensor guarantee the accuracy of any information and content contained in the Product(s), which is provided on a strictly "as is" basis. Licensor has no liability for any loss or damage whatsoever sustained by Licensee or any Authorised User as a result of the availability or use of or reliance on the content in the Product(s).
- 6.2 Save as expressly set out herein, Licensor, to the fullest extent permitted by law, excludes all express or implied terms, conditions, warranties and/or representations with regard to the Product(s) including, without limitation, any warranties relating to quality or fitness for purpose.
- 6.3 Licensor shall not be liable for any indirect or consequential loss or damage or for any loss of or corruption of data, loss or programs, profit, anticipated savings, revenue or goodwill (whether direct or indirect) arising out of or in connection with the access, availability use of or reliance on the Product(s).
- 6.4 Licensee agrees that the entire liability of Licensor to Licensee and any Authorised User for any claim (whether in contract, tort, misrepresentation, breach of statutory duty or otherwise) arising out of or in connection with the access, availability, use of, or reliance on a Product shall be limited to the Fees paid for that Product in the year that the liability arose in relation to that Product.
- 6.5 Nothing in this Agreement shall limit or exclude Licensor's liability for death or personal injury resulting from Licensor's negligence or its fraudulent misrepresentation or any other liability which cannot be limited or excluded under applicable law.
- 7 FEES**
- 7.1 The Fees are net of all applicable taxes, including without limitation VAT or other applicable sales taxes, which shall be charged in accordance with the relevant regulations in force at the time of making the taxable supply, and such amounts shall be payable by the Licensee in addition to the Fees on receipt of a valid invoice.
- 7.2 Licensee shall pay the Fees in full without deduction of, or in respect of any tax, unless required by law. If any such withholding or deduction is required, Licensee shall when making the payment to which the withholding or deduction relates, pay to Licensor such additional amount as will ensure that it receives the same total amount that it would have received if no such withholding or deduction had been required
- 7.3 The Licensee shall pay the Fees in accordance with the payment provisions set out in the Contract Form, and if no such provisions are specified, shall make payment within 30 days of the date of invoice. Without prejudice to any other right or remedy that Licensor may have, where the Licensee fails to pay the Fees and any VAT or other applicable sales tax on the due date, the Licensor shall be entitled to: (i) charge interest at a rate of 4% per annum above the base lending rate of Barclays Bank plc accruing on a daily basis until the date of actual payment; and (ii) delay the activation of or suspend access to the Product(s) previously granted until full payment is made of any Fees, and Licensee agrees that the Subscription Period shall not be extended by any period of delay or suspension resulting from late payment.
- 8 TERM AND TERMINATION**
- 8.1 The Subscription Period may be renewed by mutual consent for additional periods upon payment of the agreed renewal Fees.
- 8.2 Either party may terminate this Agreement (and Licensor may terminate this Agreement in part) forthwith by serving written notice on the other in the event that the other party commits a material breach of this Agreement, and in the case of a breach capable of remedy, fails to remedy the same within 30 days of a written request to do so. Licensee or an Authorised User's breach of clauses 2.6 or 3.3 shall be deemed a material breach.
- 8.3 Upon termination of this Agreement: (i) Licensee and Authorised User's rights to any Subscription Products shall immediately terminate; (ii) Licensee shall immediately cease using any passwords or other Authorised User identification to access the Subscription Products; and (iii) Licensee procures that all Authorised Users will do likewise and Licensor shall not be required to refund any Subscription Fees where terminated for Licensee's breach. Any copies of Subscription Product material shall be deleted from Licensee's records and storage media (including copies of extracts held in any Electronic Reserves).
- 9 DATA PROTECTION**
- 9.1 Unless otherwise defined, terms in this clause shall have the meanings defined in the Data Protection Act 1998 (as amended from time to time). Licensee acknowledges that Licensor may use any Personal Data provided by Licensee for the purposes of the fulfilment of this Agreement and as may be further detailed in Licensor's privacy policy <http://www.cambridge.org/policy/privacy> which may be revised from time to time ("Purpose"). Licensee's Personal Data may be transferred to Licensor's or its agent's or subcontractor's offices, which may be located outside of the European Economic Area. By entering into this Agreement, Licensor agrees to the processing and disclosure of its Personal Data for the Purpose.
- 10 ANTI BRIBERY AND CORRUPTION**
- 10.1 Licensee acknowledges that Licensor acts in accordance with the UK Bribery Act 2010. Both parties confirm that they have policies and procedures in place to ensure compliance with all relevant anti-bribery and corruption laws and both agree that they shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.
- 11 GENERAL**
- 11.1 Licensee may not assign, transfer or sub-licence its rights or obligations under this Agreement.
- 11.2 In no circumstances shall Licensor be liable to Licensee or any Authorised User for any delay or failure to perform its obligations due to an event beyond its reasonable control, including but not limited to, loss or failure of third party controlled IT equipment and internet connections.
- 11.3 This Agreement constitutes the entire agreement between the parties and supercedes any previous agreement between the parties relating to the subject matter of this Agreement. Each party acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement.
- 11.4 This Agreement may not be amended, varied or supplemented except in writing signed by duly authorised representatives of both parties.
- 11.5 If any provision of this Agreement (or any part of any provision) is found by a court to be unenforceable that provision or part provision shall, to the extent required, be deemed not to form part of this Agreement and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 11.6 No provision of this Agreement is intended to be enforceable by a person who is not a party to this Agreement.
- 11.7 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next business day delivery service at its registered office (if a company) or its principal place of business (in any other case), or sent by fax to its main fax number. Any notice shall be deemed to have been duly received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next business day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service; and if sent by fax, at 9.00 am on the next business day after transmission. For the purposes of this clause, "writing" shall not include e-mail.
- 11.8 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other further breach.
- 11.9 Headings used in this Agreement are for convenience only and are deemed not to be part of the Agreement.
- 11.10 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is subject to English Law. The parties submit to the non-exclusive jurisdiction of the English courts to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).