

## License Agreement

By signature and payment in full for electronic access, Licensee agrees to be bound by the terms and conditions set forth in the JOHN LIBBEY EUROTTEXT License. Licensee further agrees to comply with the requirements set forth herein and the decisions of JOHN LIBBEY EUROTTEXT. This agreement represents the entire agreement between JOHN LIBBEY EUROTTEXT and Licensee concerning the subject matter hereof. Any amendment to this Agreement must be in writing signed by both an authorized signatory for JOHN LIBBEY EUROTTEXT and the Licensee. The rights of JOHN LIBBEY EUROTTEXT under this Agreement shall not be deemed waived except as specifically stated in writing and signed by an authorized signatory for JOHN LIBBEY EUROTTEXT.

If any term of this Agreement is declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect. This Agreement shall be binding upon the heirs, successors and permitted assigns of the Licensee.

LICENSEE:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Institution: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

IP ADDRESS (see below to set up IP Access List)

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PLEASE READ THE TERMS AND CONDITIONS ON REVERSE.

By signing below you certify that you have read and agree to abide by all such Terms and Conditions and that you are authorized to sign this form on behalf of your institution.

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

Title of Authorized Signer \_\_\_\_\_

Contact Person \_\_\_\_\_

E-mail \_\_\_\_\_ Phone \_\_\_\_\_

## **1. KEY DEFINITIONS**

In this Agreement, the following terms shall have the following meanings:

### **1.1. Authorized Site (also referred to as “Licensee’s Premises”)**

A localized site (one geographical location) that is under a single administration and may be academic or non-academic. For Academic Institutions, such a location is a single campus. For corporations, such a location is a single building or corporate campus. For public libraries, such a location is a single building. For avoidance of doubt, if Licensee has multiple physical locations (such as an academic institution with multiple campuses), or if Licensee has a facility located on its premises that is administered by a separate institution, and Licensee wishes to provide access to the Licensed Material to users at such multiple locations, Licensee must enter into a multi-site license agreement with Publisher to include each such location.

### **1.2. Authorized Users**

*For academic institutions* ("Academic Institutions"): (i) Members of the faculty and other staff of the Licensee (whether on a permanent, temporary, contract or visiting basis) employed at the Licensee’s Premises; (ii) individuals who are enrolled at the Licensee’s Academic Institution located on the Licensee’s Premises who are permitted to access the Secure Network from within the Library Premises or from such other places where Authorized Users work or study (including but not limited to Authorized Users’ offices and homes, halls of residence and student dormitories) and who have been issued a password or other authentication from the Licensee; and (iii) other persons who access the Secure Network from computer terminals within the Library Premises and are permitted to use the Library Premises.

*For corporations*: Current members of the staff (whether on a permanent, temporary or contract basis) of the Licensee who are employed at Licensee’s Premises and are permitted to access the Secure Network from within the Licensee’s Premises or from such other places where such staff undertake their work for the Licensee (including but not limited to Authorized Users’ offices and homes) and who have been issued a password or other authentication by the Licensee.

*For public libraries*: (i) Current members of the staff of the Licensee (whether on a permanent, temporary or contract basis) who are employed at Licensee’s Premises and are permitted to access the Secure Network from within the Library Premises or from such other places where such staff undertake their work for the Licensee and who have been issued a password or other authentication by the Licensee; and (ii) members of the public (patrons) who are permitted to use the Licensee’s library and access the Secure Network only from computer terminals within the Library Premises.

### **1.3. Commercial Use**

Use for the purposes of monetary reward (whether by or for the Licensee or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Material. For the avoidance of doubt, neither recovery of direct costs by the Licensee from Authorised Users, nor use by the Licensee or by an Authorised User of the Licensed Material in the course of research funded by a commercial organisation, is deemed to constitute Commercial Use.

### **1.4. FTEs**

An acronym for full-time equivalents and a good faith estimate of the number of Licensee’s Authorized Users (employees, students, and faculty) used to determine the Subscription Fee.

### **1.5. Fee**

Please refer to the estimate.

### **1.5. Library Premises**

The physical premises of the library operated by Licensee that is located on the Licensee's Premises.

### **1.6. Licensed Material**

The online journals of the Publisher to which the Licensee has a fully paid current subscription, provided that material ceases to be Licensed Material once the Licensee ceases to pay the Fee in respect of the said journals.

### **1.7. Secure Network**

A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users approved by the Licensee whose identity is authenticated at the time of login and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Licensee.

### **1.8. IP Addresses**

Access to the Licensed Material shall be controlled through the use of Internet Protocol (IP) addresses. Licensee is responsible for providing Valid IP Addresses to the Licensor for its Institution. For the terms of this Agreement, a Valid IP Address is defined as an Internet Protocol address (or range of addresses) assigned to computer workstations physically present in the Institution or connected to the Institution.

Clause 1.2. above defines the Authorized Users who will be allowed access to the Licensed Material. Authorized Users will be recognized and authorized only by their Internet Protocol address.

### **1.9. Subscription Period**

That period nominally covered by the volumes and issues of the Licensed Material, regardless of the actual date of publication.

## **2. Agreement**

2.1. The Publisher agrees to grant the Licensee the non-exclusive and non-transferable right to give Authorised Users access to the Licensed Material via a Secure Network for the purposes of research, teaching and private study, subject to the terms and conditions of this License. Any use of the Licensed Material not specifically authorized in this Agreement is prohibited.

2.2. The Publisher reserves the right at any time to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable.

2.3. The Licensee shall pay to the Publisher the Subscription Fee for the first calendar year of the term before access is granted. The Licensee shall pay to the Publisher the Subscription Fee for each subsequent calendar year of the term within sixty (60) days after the beginning of each such calendar year.

2.4. This License shall commence at the beginning of the Subscription Period, and remain in effect until the end of the Subscription Period, when the License shall automatically terminate unless the parties have previously agreed to renew it.

## **3. Delivery of the licensed material**

3.1 After payment of the Subscription fee by Licensee, the Publisher shall:

3.1.1 Make the Licensed Material available to the Licensee via the Publisher's server or the server of a third party. The Publisher shall notify the Licensee at least sixty (60) days in advance of any anticipated specification change applicable to the Licensed Material.

3.1.2 Use reasonable endeavours to make available the electronic copy of each journal covered by this License, no later than seven (7) days after issue date. In the event that for technical reasons this is not

possible for any particular journal, as a matter of course, such journal shall be identified at the time of licensing and/or renewal of a subscription, together with the reasons therefore.

3.1.3 Provide the Licensee, within 30 days of commencement, with information sufficient to enable access to the Licensed Material.

3.1.4 Use all reasonable endeavours to ensure that the relevant server or servers referred to in clause

3.1.5 have adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this License

3.1.6 Use all reasonable endeavours to make the Licensed Material available to the Licensee and to Authorised Users at all times and on a twenty-four hour basis, save for routine maintenance, and to restore access to the Licensed Material as soon as possible in the event of an interruption or suspension of the service.

3.2. The Publisher reserves the right at any time to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Licensee of such withdrawal.

#### **4. Licensed rights**

4.1 The Licensee may, subject to Clause 4 below:

4.1.1 Make such back-up copies of the Licensed Material, as are reasonably necessary

4.1.2 Make such temporary local electronic copies (by means of cacheing) of all or part of the Licensed Material as are necessary to ensure efficient use by Authorised Users, provided that such use is subject to all the terms and conditions of this Agreement (and does not result in the making available to Authorised Users of duplicate copies of the Licensed Material)

4.1.3 Allow Authorised Users to have access to the Licensed Material, from the Publisher's server or from another server designated by the Publisher via the Secure Network

4.1.4 Provide single printed or electronic copies of single articles at the request of individual Authorised Users

4.1.5 Display, download or print the Licensed Material for the purpose of internal marketing or testing, or for training Authorised Users.

4.2 Authorised Users may, subject to Clause 4 below:

4.2.1 Search, view, retrieve and display the Licensed Material

4.2.2 Electronically save parts of the Licensed Material for personal use

4.2.3 Print off single copies of parts of the Licensed Material

4.2.4 Distribute single copies of parts of the Licensed Material in print or electronic form to other Authorised Users

#### **5. Prohibited uses**

5.1 Neither the Licensee nor Authorised Users may remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Material.

5.2 Neither the Licensee nor Authorised Users may systematically make print or electronic copies of multiple extracts of the Licensed Material for any purpose.

5.3 Neither the Licensee nor Authorised Users may provide, by electronic means, to a user at another library or elsewhere, a retained electronic copy of any part of the Licensed Material.

5.4 Neither the Licensee nor Authorised Users may mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network without the Publisher's explicit written permission.

5.5 The Publisher's explicit written permission must be obtained in order to:

5.5.1 Use the whole or any part of the Licensed Material for any Commercial Use

5.5.2 Systematically distribute the whole or part of the Licensed Material to anyone other than Authorised Users

5.5.3 Publish, distribute or make available the Licensed Material, works based on the Licensed Material or works which combine it with any other material, other than as permitted in this License

5.5.4 Alter, abridge, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this License, to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

## **6. Additional licensee duties**

6.1 The Licensee shall:

6.1.1 Use all reasonable endeavours to ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Material and of the sanctions which the Licensee imposes for failing to do so.

6.1.2 Use reasonable efforts to ensure that all Authorized Users are appropriately notified of the restrictions placed on Authorized Users' use of the Licensed Material under this Agreement and take all reasonable steps to protect the Licensed Material from unauthorized use or other breach of this Agreement;

6.1.3 Use reasonable efforts to monitor compliance and immediately, upon becoming aware of any unauthorized use of the Licensed Material or other breach of this Agreement, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;

6.1.4 Provide the Publisher with all information requested by Publisher necessary to enable the Publisher to provide access to the Licensed Material in accordance with its obligation under this Agreement. Should the Licensee make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect;

6.1.5 Keep full and up-to-date records of all IP addresses used by Licensee to access the Licensed Material and provide the Publisher with details of additions, deletions, or other alterations to such records as are necessary to enable the Publisher to provide Authorized Users with access to the Licensed Material as contemplated by this Agreement; and

6.1.6 Use all reasonable endeavours to ensure that only Authorised Users are permitted access to the Licensed Material.

6.2 Nothing in this License shall make the Licensee liable for breach of the terms of the License by any Authorised User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

6.3 The Licensee shall, in consideration for the rights granted under this License, pay the Fee in accordance with clause 2.1 within 30 days of signature and, if applicable, within 30 days of each subsequent renewal. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

6.4. Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party.

## **7. Copyright and Property rights**

7.1 Nothing in this Agreement shall effect a transfer of copyright rights in the Licensed Material from the Publisher to the Licensee or its Authorized Users. Subject only to the license granted to the Publisher to use the Licensed Material hereunder, the Publisher shall retain any rights of copyright in the Licensed Material that it possessed prior to entering into this Agreement.

7.2. The Publisher warrants to the Licensee that it is the owner of the copyright in the Licensed Material or that it is duly licensed to use the copyright material contained in the Licensed Material and that the Licensed Material used as contemplated in this License does not infringe any copyright or other proprietary or intellectual property rights of any natural or legal person.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1. The Publisher represents and warrants that (i) it has the right, power and authority to enter into this Agreement and to perform all of its obligations hereunder; and (ii) the Licensee's use of the Licensed Material as permitted under this Agreement will not infringe the copyright or any other proprietary or intellectual property rights of any third party.

8.2. The Licensee represents and warrants that it has the right, power and authority to enter into this Agreement and to perform all of its obligations hereunder.

8.3. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PUBLISHER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF DESIGN, ACCURACY OF THE INFORMATION CONTAINED IN THE LICENSED MATERIAL, MERCHANTABILITY OR FITNESS OF USE FOR A PARTICULAR PURPOSE. THE LICENSED MATERIAL ARE SUPPLIED 'AS IS'.

## **9. INDEMNIFICATION AND LIMITATION OF LIABILITY**

9.1 The Publisher shall indemnify and hold harmless the Licensee and its employees from and against any and all losses, liabilities, claims, costs, damages and expenses (including attorneys' fees and administrative or court costs) arising out of or resulting from third party claims relating to the Publisher's breach or alleged breach of any representation or warranty made by Publisher under Section 8.1(ii). The parties acknowledge that the Publisher has no obligation to indemnify and hold harmless the Licensee from third party claims relating to the use of the Licensed Material by any unauthorized third party and/or the use of the Licensed Material in any manner that is not permitted under this Agreement.

9.2. To the extent permitted by law, the Licensee shall indemnify and hold harmless the Publisher, its officers, directors and employees from and against any and all losses, liabilities, claims, costs, damages and expenses (including attorneys' fees and administrative or court costs) arising out of or resulting from third party claims relating to (i) the breach or alleged breach of any representation, warranty or obligation of the Licensee under this Agreement; (ii) use of the Licensed Material by the Licensee in a manner that is not permitted under this Agreement; and/or (iii) the use of the Licensed Material by any Authorized User in a manner that is not permitted under this Agreement if Licensee was aware of such unauthorized use.

9.3. EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 9.1 AND

9.2, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES INCURRED BY THE OTHER PARTY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED THAT SUCH DAMAGES ARE POSSIBLE.

9.4. EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 9.1 AND 9.2, EACH PARTY'S LIABILITY FOR ANY CLAIMS, LOSSES, OR DAMAGES ARISING OUT OF THIS AGREEMENT SHALL IN NO CIRCUMSTANCES EXCEED THE SUBSCRIPTION FEES PAID BY LICENSEE TO THE PUBLISHER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE ON WHICH SUCH CLAIM, LOSS OR DAMAGE OCCURRED.

9.5. UNDER NO CIRCUMSTANCES SHALL THE PUBLISHER BE LIABLE TO THE LICENSEE OR ANY OTHER PERSON FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF INTERRUPTIONS IN THE AVAILABILITY OF THE LICENSED MATERIAL NOT WITHIN THE REASONABLE CONTROL OF THE PUBLISHER, INCLUDING WITHOUT LIMITATION, POWER OUTAGES AND FAILURE OF EQUIPMENT OR SERVICES NOT PROVIDED BY THE PUBLISHER.

## **10. Term and Termination**

10.1. The term of this Agreement shall commence on the Effective Date and shall continue until terminated under Section 10.2 of this Agreement. At least sixty (60) days prior to the end of each calendar year during the term, the Publisher may provide the Licensee with written notice of the Subscription Fee for the subsequent calendar year (the "Notice").

10.2. This Agreement may be terminated under the following circumstances:

10.2.1. If the Licensee fails to pay any Subscription Fee owed by Licensee by the date specified in Section 2.3 of this Agreement, then Publisher may terminate this Agreement immediately;

10.2.2. If either party materially breaches the Agreement and fails to cure such breach within sixty (60) days after the date that the breaching party receives written notice from the other party of such breach, then the non-breaching party may terminate this Agreement; or

10.2.3. If either party becomes subject to receivership, liquidation, or similar external administration, then the other party may terminate this Agreement.

10.3. On expiration or termination of this Agreement, all rights and obligations of the parties automatically terminate except that Sections 7, 8, 9, 10 and 11 shall survive.

10.4. On expiration or termination of this Agreement, the Licensee shall immediately cease to distribute or make available the Licensed Material to any third party and shall remove all Licensed Material posted on Licensee's Secure Network.

10.5. If Licensee terminates this Agreement because of Publisher breach under Section 10.2.2, the Publisher shall promptly refund to Licensee a pro rata portion of the Subscription Fee paid by Licensee under this Agreement based on the amount of time remaining in the then-current term.

## **11. General**

11.1 This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Agreement, whether oral or written. The Publisher may modify any of the terms of this License at any time by providing notice on Publisher's web site or, at the Publisher's option, directly to Users via electronic or conventional mail.

11.2 Except as otherwise provided, this Agreement may not be assigned by either party to any other person or organization, nor may either party sub-contract any of its obligations, without the prior written consent of the other party, which consent shall not unreasonably be withheld. Notwithstanding the foregoing sentence, the Publisher may assign this Agreement without the Licensee's consent to any entity that acquires or succeeds by operation of law to all or substantially all of the assets of the Publisher that relate to this Agreement.

11.3 Neither party shall be in default or otherwise liable under this Agreement due to its inability to perform its obligations by reason of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities).

11.4 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. In the event that any provision of this Agreement is determined to be invalid, unenforceable or otherwise illegal, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement will remain in full force and effect.

11.5 Either party's waiver, or failure to require performance by the other, of any provision of this Agreement will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself. No term of this Agreement will be deemed waived, and no breach will be deemed excused, unless such waiver or excuse is in writing, is expressly titled waiver of rights, and is executed by the party against whom such waiver is claimed.

11.6 This agreement shall be governed by French law.