

THIS LICENCE IS AGREED the _____ day of _____ 200_

BETWEEN

CABI Publishing, a division of CAB International, with offices at Wallingford, Oxon OX10 8DE, United Kingdom, and herewith referred to as the "the Publisher"

And (please complete the following):

Consortium Name:
Address:

Post/Zip Code:
Country:

Herewith referred to as "the Licensee".

WHEREAS the Publisher holds the rights granted under this Licence;

AND WHEREAS the Consortium desires to enable Members of the Consortium to use the rights and the Publisher desires to grant to the Consortium the licence to use the rights for the Fee, subject to the terms and conditions of this Licence;

IT IS AGREED AS FOLLOWS:

1. KEY DEFINITIONS

1.1 In this Licence, the following terms shall have the following meanings:

Agent A third party appointed from time to time by the Licensee to act on the Licensee's behalf, who may undertake any or all of the obligations of the Licensee under this Licence, as agreed between the Licensee and the Agent.

Authorized Users Current members of the faculty and other staff of Members (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently studying at a Member's institution, 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 by

a Member with a password or other authentication, together with other persons who are permitted to use a Member's library or information service and permitted to access the Secure Network but only from computer terminals within the Member's Library Premises.

| | |
|----------------------------|--|
| Commercial Use | Use for the purposes of monetary reward (whether by or for the Consortium or a Member or an Authorized User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licenced Materials. |
| Course Packs | A collection or compilation of materials (e.g. book chapters, journal articles) assembled by members of the staff of a Member or for use by students in a class for the purposes of instruction. |
| Electronic Reserve | Electronic copies of materials (e.g. book chapters, journal articles) made and stored on the Secure Network by the Consortium or by a Member for use by students in connection with specific courses of instruction offered by a Member to its students. |
| Fee | The Fee set out in Schedule 2 or in new Schedules to this Licence which may be agreed by the parties from time to time. |
| Library Premises | The physical premises of the library or libraries operated by Members [or by the Consortium], as specified in Schedule 3. |
| Licenced Materials | the electronic material as set out in Schedule 2 or in new Schedules to this Licence that may be agreed by the parties from time to time. |
| Member | A university, other educational institution or research organisation that is in membership of the Consortium and listed in Schedule 1, and which has agreed by virtue of its membership to be bound by the terms and conditions of this Licence as a party to it jointly with the Consortium. |
| Secure Network | A network, whether a standalone network or a virtual network within the Internet, which is only accessible to Authorized Users approved by a Member whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Member. |
| Server | The server, either the Publisher's server or a third party server designated by the Publisher, on which the Licenced Materials are mounted and may be accessed. |
| Subscription Period | That period nominally covered by the volumes and issues of the Licenced Material as listed in Schedule 2, regardless of the actual date of publication. |

2. AGREEMENT

- 2.1 The Publisher agrees to grant to the Consortium the non-exclusive and non transferable right to give Members and Authorized Users access to the Licenced Materials via a Secure Network for the purposes of research, teaching and private study, subject to the terms and conditions of this Licence, and the Consortium agrees to pay the Fee.
- 2.2 This Licence shall commence at the beginning of the Subscription Period for each of the Licenced Materials as set out in Schedule 1 or in new Schedules to this Licence that may be added subsequently; and shall automatically terminate at the end of the Subscription Period, unless the parties have previously agreed to renew it.
- 2.3 Solely in the case of Licenced primary research journals, on termination of this Licence, the Publisher shall provide continuing access for Authorized Users to that part of the Licenced Materials which was published and paid for within the subscription period, either from the Server or from the electronic reserve described in 5.1 below or by supplying electronic files to the Licensee subject to payment of such fees as the parties may agree, except where such termination is due to a breach of the Licence by the Licensee, which the Licensee has failed to remedy as provided in 10.1.1 and 10.1.2 of this Licence. In such case, continuing access shall be provided in respect of Licenced Materials published up to the date of such breach.
- 2.4 In the case of Licenced secondary materials, such as electronic abstracting journals, cumulative secondary databases or online news and review material, access is provided for the Subscription Period only, and the Publisher shall not provide any continuing access for Authorized Users on termination of the Licence. During the Subscription Period, access is provided to all content delivered under the title of the Licenced Materials, including any archival data or additional material which is presented to the Authorized Users under the terms of this Licence.

3. USAGE RIGHTS

- 3.1 The Consortium, subject to clause 6 below, may:
 - 3.1.1 Access the Licenced Materials via the Publisher's Server [Load the Licenced Materials on the Licensee's server on a Secure Network];
 - 3.1.2 Make such back-up copies of the Licenced Materials as are reasonably necessary.
 - 3.1.3 Make such local electronic copies by means of cacheing {or mirrored storage} of all or part of the Licenced Materials as are necessary solely to ensure efficient use by Members and by Authorised Users and not to make available to Authorised Users duplicate copies of the Licenced Material.
 - 3.1.4 Allow Authorized Users to have access to the Licenced Materials from the Server via the Secure Network;

- 3.1.5 Provide Authorized Users with integrated access and an integrated author, article title, abstracts and keyword index to the Licenced Materials and all other similar material Licenced from other publishers;
 - 3.1.6 Provide single printed or electronic copies of single articles at the request of individual Authorized Users;
 - 3.1.7 Display, download or print the Licenced Materials for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.
- 3.2 Authorized Users may, subject to clause 6 below:
- 3.2.1 Search, view, retrieve and display the Licenced Materials;
 - 3.2.2 Electronically save parts of the Licenced Materials for personal use;
 - 3.2.3 Print off a copy of parts of the Licenced Materials;
 - 3.2.4 Distribute a copy of individual articles or items of the Licenced Materials in print or electronic form to other Authorized Users.
- 3.3 Nothing in this Licence shall in any way exclude, modify or affect any of the Licensee's rights under the Copyright Designs and Patents Act 1988 or any statutory instruments made thereunder or any amending legislation.

4. SUPPLY OF COPIES TO OTHER LIBRARIES

- 4.1 Members may, subject to clause 6 below, supply to an Authorized User of another library, within the same country as the Consortium, single copies of an individual document being part of the Licenced Materials by post, fax or electronic transmission via the Internet or otherwise, for the purposes of research or private study and not for Commercial Use.

5. COURSE PACKS AND ELECTRONIC RESERVE

- 5.1 Members may, subject to clause 6 below, incorporate parts of the Licenced Materials in printed Course Packs and Electronic Reserve collections for the use of Authorized Users in the course of instruction at a Member's institution, but not for Commercial Use. Each such item shall carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher's copyright notice. Copies of such items shall be deleted by the Member when they are no longer used for such purpose. Course packs in non-electronic non-print perceptible form, such as audio or Braille, may also be offered to Authorized Users who, in the reasonable opinion of the Member, are visually impaired.

6. PROHIBITED USES

- 6.1 Neither the Consortium nor any Member nor Authorized Users may:

- 6.1.1 Remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licenced Materials;
 - 6.1.2 Systematically make print or electronic copies of multiple extracts of the Licenced Materials for any purpose other than back-up copies permitted under clause 3.1.2;
 - 6.1.3 Mount or distribute any part of the Licenced Materials on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network;
- 6.2 The Publisher's explicit written permission must be obtained in order to:
- 6.2.1 Use all or any part of the Licenced Materials for any Commercial Use;
 - 6.2.2 Systematically distribute the whole or any part of the Licenced Materials to anyone other than Authorized Users;
 - 6.2.3 Publish, distribute or make available the Licenced Materials, works based on the Licenced Materials or works which combine them with any other material, other than as permitted in this Licence;
 - 6.2.4 Alter, abridge, adapt or modify the Licenced Materials, except to the extent necessary to make them perceptible on a computer screen, or as otherwise permitted in this Licence, to Authorized Users.

7. PUBLISHER'S UNDERTAKINGS

- 7.1 The Publisher warrants to the Consortium that the Licenced Materials do not infringe the copyright or any other proprietary or intellectual property rights of any person. The Publisher shall indemnify and hold the Consortium and its Members harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Consortium or any of its Members claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this Licence for any reason. This indemnity shall not apply if the Consortium or any of its Members has amended the Licenced Materials in any way not permitted by this Licence.
- 7.2 The Publisher shall:
- 7.2.1 Make the Licenced Materials available to the Consortium from the Server in the media, format and time schedule specified in Schedule 1. The Publisher will notify the Consortium thirty (30) days in advance of any anticipated specification change applicable to the Licenced Materials;
 - 7.2.2 Use all reasonable endeavours to make available the electronic copy of each journal issue in the Licenced Materials no later than the day of publication of the printed version;

- 7.2.3 Provide the Consortium, within 30 days of the date of this Licence, with information sufficient to enable the Consortium to access the Licenced Material;
- 7.2.4 Use all reasonable endeavours to ensure that the Server has adequate capacity and bandwidth to support the usage of the Consortium 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 Licence;
- 7.2.5 Use all reasonable endeavours to make the Licenced Materials available to the Consortium and to Authorized Users at all times and on a twenty-four hour basis, save for routine maintenance and to restore access to the Licenced Materials as soon as possible in the event of an interruption or suspension of the service.
- 7.3 The Publisher reserves the right at any time to withdraw from the Licenced Materials 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.
- 7.4 The Publisher undertakes to use reasonable endeavours to provide or to make arrangements for a third party to provide an archive of the Licenced Materials for the purposes of long term preservation of the Licenced Materials, and to permit Authorised Users to access such archive after termination of this Licence.
- 7.5 EXCEPT AS EXPRESSLY PROVIDED IN THIS LICENCE, 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 LICENCED MATERIALS, MERCHANTABILITY OR FITNESS OF USE FOR A PARTICULAR PURPOSE. THE LICENCED MATERIALS ARE SUPPLIED 'AS IS'.
- 7.5.1 UNDER NO CIRCUMSTANCES SHALL THE PUBLISHER BE LIABLE TO THE CONSORTIUM OR ANY OF ITS MEMBERS OR ANY OTHER PERSON, INCLUDING BUT NOT LIMITED TO AUTHORIZED USERS, FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER ARISING OUT OF THE INABILITY TO USE, OR THE USE OF, THE LICENCED MATERIALS. IRRESPECTIVE OF THE CAUSE OR FORM OF ACTION, THE PUBLISHER'S AGGREGATE LIABILITY FOR ANY CLAIMS, LOSSES, OR DAMAGES ARISING OUT OF ANY BREACH OF THIS LICENCE SHALL IN NO CIRCUMSTANCES EXCEED THE FEE PAID BY CONSORTIUM TO THE PUBLISHER UNDER THIS LICENCE IN RESPECT OF THE SUBSCRIPTION PERIOD DURING WHICH SUCH CLAIM, LOSS OR DAMAGE OCCURRED. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

8. CONSORTIUM'S UNDERTAKINGS

- 8.1 The Consortium and each Member shall:
- 8.1.1 Use all reasonable endeavours to ensure that all Authorized Users are appropriately notified of the importance of respecting the intellectual property rights in the Licenced Materials and of the sanctions which each Member imposes for failing to do so as specified in Schedule 4;
 - 8.1.2 Use all reasonable endeavours to notify Authorised Users of the terms and conditions of this Licence and take steps to protect the Licenced Materials from unauthorised use or other breach of this Licence;
 - 8.1.3 Use all reasonable endeavours to monitor compliance and immediately upon becoming aware of any unauthorized use or other breach, 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;
 - 8.1.4 Where appropriate, issue passwords or other access information only to Authorized Users and use all reasonable endeavours to ensure that Authorized Users do not divulge their passwords or other access information to any third party;
 - 8.1.5 Provide the Publisher, within 30 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licenced Material in accordance with its obligation under clause 7.2.3. Should the Consortium make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect;
 - 8.1.6 keep full and up-to-date records of all Authorised Users and their access details or IP addresses where access is controlled by IP address, and provide the Publisher with details of such additions, deletions or other alterations to such records as are necessary to enable the Publisher to provide Authorised Users with access to the Licenced Materials as contemplated by this Licence;
 - 8.1.7 Use all reasonable endeavours to ensure that only Authorized Users are permitted access to the Licenced Materials.

- 8.2 SUBJECT TO APPLICABLE LAW, THE CONSORTIUM AGREES TO INDEMNIFY, DEFEND AND HOLD THE PUBLISHER HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, COSTS, LIABILITY AND EXPENSES (INCLUDING REASONABLE LEGAL AND PROFESSIONAL FEES) ARISING OUT OF ANY CLAIM OR LEGAL ACTION TAKEN AGAINST THE PUBLISHER RELATED TO OR IN ANY WAY CONNECTED WITH ANY USE OF THE LICENCED MATERIALS BY THE CONSORTIUM, MEMBERS OR AUTHORIZED USERS OR ANY FAILURE BY THE CONSORTIUM TO PERFORM ITS OBLIGATIONS IN RELATION TO THIS LICENCE, PROVIDED THAT] NOTHING IN THIS LICENCE SHALL MAKE THE CONSORTIUM OR ANY MEMBER LIABLE FOR BREACH OF THE TERMS OF THE LICENCE BY ANY AUTHORIZED USER PROVIDED THAT THE CONSORTIUM AND THE MEMBER DID NOT CAUSE, KNOWINGLY ASSIST OR CONDONE THE CONTINUATION OF SUCH BREACH TO CONTINUE AFTER BECOMING AWARE OF AN ACTUAL BREACH HAVING OCCURRED.
- 8.3 The Consortium shall, in consideration for the rights granted under this Licence, pay the Fee within thirty (30) days of receipt of invoice and, if applicable, within thirty (30) days of receipt of invoice relating to each subsequent Subscription Period.

9. UNDERTAKINGS BY BOTH PARTIES

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

10. TERM AND TERMINATION

- 10.1 In addition to automatic termination (unless renewed) under clause 2.2, this Licence shall be terminated:
- 10.1.1 If the Consortium defaults in making payment of the Fee as provided in this Licence and fails to remedy such default within thirty (30) days of notification in writing by the Publisher;
- 10.1.2 If either party commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the other party;
- 10.1.3 If either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
- 10.2 On termination all rights and obligations of the parties automatically terminate except for obligations in respect of Licenced Materials to which access continues to be permitted.
- 10.3 On termination of this Licence for cause, as specified in clauses 10.1, the Consortium shall immediately cease to distribute or make available the Licenced Materials to Authorized Users and shall return to the Publisher or destroy all Licenced Materials locally mounted pursuant to clause 3.1.1 and 3.1.2.

10.4 On termination of this Licence by the Consortium for cause, as specified in clause 10.1.2 above, the Publisher shall forthwith repay the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

11. GENERAL

11.1 This Licence constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Licence, whether oral or written.

11.2 Alterations to this Licence and to the Schedules to this Licence are only valid if they are recorded in writing and signed by both parties.

11.3 This Licence may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, except as provided in this Licence in respect of the Agent [and the management and operation of the Server] [and the Publisher's Representative], without the prior written consent of the other party, which consent shall not unreasonably be withheld.

11.4 If rights in all or any part of the Licenced Materials are assigned to another publisher, the Publisher shall use its best endeavours to ensure that the terms and conditions of this Licence are maintained.

11.5 Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this Licence or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within 14 days of posting.

11.6 Neither party's delay or failure to perform any provision of this Licence, as result 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) shall be deemed to be, or to give rise to, a breach of this Licence.

11.7 The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence.

11.8 Either party's waiver, or failure to require performance by the other, of any provision of this Licence 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.

11.9 This Licence shall be governed by and construed in accordance with English law; the parties irrevocably agree that any dispute arising out of or in connection with this Licence will be subject to and within the jurisdiction of the courts of England.

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals): _____ Date: _____

Position / Title: _____

FOR THE CONSORTIUM: [FULL NAME]

Name (in block capitals): _____ Date: _____

Position / Title: _____

FOR MEMBER: [FULL NAME]

Name (in block capitals): _____ Date: _____

Position / Title: _____

FOR MEMBER: [FULL NAME]

Name (in block capitals): _____ Date: _____

Position / Title: _____

FOR MEMBER: [FULL NAME]

Name (in block capitals): _____ Date: _____

Position / Title: _____

FOR MEMBER: [FULL NAME]

Name (in block capitals): _____ Date: _____

Position / Title: _____

SCHEDULE 1

MEMBERS OF THE CONSORTIUM

A schedule dated [date] to the Licence dated [date] between [Publisher] and [Consortium]

| Institution | Address | Domain name/ IP Address | Contact name/ tel/ fax/ e-mail |
|--------------------|----------------|------------------------------------|---|
|--------------------|----------------|------------------------------------|---|

List of Members and their addresses and Internet details, and a contact name at each

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

FOR THE [MEMBER] [CONSORTIUM]: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

SCHEDULE 2

LICENCED MATERIALS, [SUBSCRIPTION PERIOD] AND ACCESS METHOD

A schedule dated [date] to the Licence dated [date] between [Publisher] and [Consortium]

THE LICENCED MATERIALS

| Title | [Subscription Period] | Format | Delivery Schedule | Fee |
|--------------|----------------------------------|---------------|------------------------------|------------|
|--------------|----------------------------------|---------------|------------------------------|------------|

List of Licenced Material, for each item list title, [initial Subscription Period,] format, delivery schedules (if applicable) and Fee [for the initial Subscription Period]

ACCESS METHOD

Authentication via User ID/password and IP Address
Authentication via IP address

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

FOR THE CONSORTIUM: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

SCHEDULE 3

LIBRARY PREMISES OF EACH OF THE MEMBERS

A schedule dated [date] to the Licence dated [date] between [Publisher] and [Consortium]

List of addresses of all Members' Library Premises, Domain Name(s) and IP addresses and/or ranges:

Class B Network: first two network numbers plus asterisks for host addresses, i.e.: 125.64..**

*Class C network: first three network numbers plus an asterisk for host address, i.e.: 125.64.133.**

Single station: all four numbers, i.e. 125.64.133.20; or ranges, i.e. 125.64.133.20-125.64.133.40

| Library name & address | Domain name(s) | IP addresses/ranges |
|-----------------------------------|-----------------------|----------------------------|
|-----------------------------------|-----------------------|----------------------------|

Network contact: Name:

Telephone:

Fax:

E-mail address:

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

FOR THE [MEMBER] [CONSORTIUM]: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

[Optional schedule]

SCHEDULE 4

CONSORTIUM COPYRIGHT ENFORCEMENT POLICY

A schedule dated [date] to the Licence dated [date] between [Publisher] and [Consortium]

List any documents evidencing the policy of each of the Members, with attached copies

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

FOR THE CONSORTIUM: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____