

Digitorial Ltd: UKPressOnline User Terms and Conditions

ACADEMIC; EDUCATION SECTOR

1. DEFINITIONS

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

"Authorised Demonstrators" means nominated employees of the Licensee who may use the Licensed Works in accordance with the provisions as laid down in this Agreement free of charge for demonstration, training or administrative purposes.

"Authorised Users" means individuals who are authorised by the Licensee to access the Licensee's information services whether from a computer or terminal on the Licensee's Secure Network, or off site via a modem link to a valid IP address on the Licensee's Secure Network and who are affiliated to the Licensee as a current student, faculty member or employee of the Licensee. Persons who are not a current student, faculty member or an employee of the Licensee, but who are permitted to access the Secure Network from computer terminals within the Licensee's Premises ["Walk-In Users"] are also deemed to be Authorised Users, only for the time they are within the Premises. Walk-In Users may not be given means to access the Licensed Work when they are not within the Premises.

"Commercial Use" means the use of the whole or parts of the Licensed Works for any reason which generates a profit.

"Educational Purposes" means for the purpose of education, teaching, distance learning, private study and/or research.

"Fee" means the fee payable by a Licensee to the Licensor to access and use the Licensed Works pursuant to this UKPO Licence Agreement.

"Intellectual Property Rights" means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

"Licensed Work" means the product(s) licensed in this Agreement known to the parties as 'UKPO'.

"Perpetual Licence" means the purchase by the Licensee of a permanent Licence to a copy of a section of the Licensed Work to be held by the Licensee or to be held pro tem by Digitorial for access by the Licensee under the terms of this Agreement.

"Print-Publisher(s)" means the Print-Publisher and/or rights owner of the publications made available in the *Published Digital Archive*. This includes but is not limited to: *Trinity Mirror Group; Express Group Newspapers; Hymns Ancient & Modern; People's Press Printing Society; Johnston Press PLC; FOM; KM Group*.

"Secure Network" means a network (whether a stand alone network or a virtual network within the Internet) which is accessible only to Authorised Users whose identities are authenticated by the Licensee at the time of log-in and periodically thereafter consistent with current best practice and whose conduct is subject to regulation by the Licensee. A cache server or other server or network which can be accessed by unauthorised users is not a

Secure Network for these purposes.

"UKPressOnline Digital Archive" (UKPO) is an electronic database of items published by the Print-Publishers.

"Work" means any discrete element of the Licensed Works which may be identified as a single entity for the purposes of copyright and intellectual property.

1.2 Headings contained in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

2. GRANT OF LICENCE

2.1 Digital hereby grants the Licensee a non-exclusive and non-transferable licence to access and use the Licensed Work and to allow Authorised Users to access and use the Licensed Work throughout the term of this Agreement by means of a Secure Network for Educational Purposes only.

3. USE OF THE LICENSED WORK

3.1 Throughout the term of this Agreement the Licensee may for Educational Purposes only:

3.1.1 make local electronic copies of part of the Licensed Work, provided that such use is subject to all the terms and conditions of this Agreement and does not result in the making duplicate copies of the entire Licensed Work.;

3.1.2 allow Authorised Users to access the Licensed Work by means of a Secure Network in order to search, view, retrieve and display, and otherwise use portions thereof;

3.1.3 allow Authorised Users to electronically save portions of the Licensed Work;

3.1.4 allow Authorised Users to print out single copies of portions of the Licensed Work;

3.1.5 allow Authorised Users to incorporate parts of the Licensed Work in printed or electronic course packs or multi-media works for the use of Authorised Users in the course of instruction. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Electronic copies of such items shall be deleted, when this Agreement is terminated. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;

3.1.6 allow Authorised Users to incorporate parts of the Licensed Work in printed or electronic form in assignments, portfolios and in dissertations, including reproductions of the dissertation for personal use and library deposit, if such use conforms to the customary and usual practice of the Licensee. Each item shall carry appropriate acknowledgement;

3.1.7 display, download, print parts of the Licensed Work for the purpose of promotion of the Licensed Work, testing of the product, or for training Authorised Users;

3.1.8 publicly display or publicly perform as part of a professional presentation at a seminar, conference, or workshop, or other such similar professional activity;

3.1.9 make such copies of network training material as may be required for the purpose of using the Licensed Work in accordance with this Agreement.

3.2 Nothing in this Licence shall constitute a waiver of any statutory right available and held by the Licensee from time to time under the Copyright, Designs and Patent Act 1988 or any amending legislation.

4. RESTRICTIONS

4.1 The Licensee and Authorised Users may not:

4.1.1 sell, resell, redistribute, publish or otherwise make the information contained in the Licensed Work available in any manner or on any media to any one other than an Authorised User unless the Licensee has been granted prior written consent by the Print-Publisher;

4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear;

4.1.3 make printed or electronic copies of multiple extracts of the Licensed Work for any purpose, beyond those authorised by this Agreement;

4.1.4 display or distribute any part of the Licensed Work on any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, other than by a Secure Network;

4.1.5 permit anyone other than Authorised Users to access or use the Licensed Work;

4.1.6 use all or any part of the Licensed Work for any Commercial Use or for any purpose other than Educational Purposes;

4.1.7 permit the Licensed Works to be electronically transmitted to any other recipient except where the recipient is an Authorised User under the terms of this UKPO Agreement;

4.1.8 use automated download management software to copy portions of the Licensed Work except where this has been authorised in writing by Digital.

4.2 This Clause shall survive termination of this Agreement for any reason.

5. RESPONSIBILITIES OF THE LICENSEE

5.1 The Licensee will:

5.1.1 issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;

5.1.2 use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Work by means of the Licensee's Secure Network;

5.1.3 use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Licence;

5.1.4 use all reasonable efforts to monitor compliance and notify Digital and/or the Print-Publisher

immediately and provide full particulars on becoming aware of any of the following: (a) any unauthorised use of any of the Licensee's password(s); or (b) any breach by an Authorised User of the terms of this Licence. Upon becoming aware of any breach of the terms of this Licence the Licensee further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Licensee's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence;

5.1.5 comply with all computer security procedures required by the Print-Publisher and Digital and take all reasonable steps to ensure the security of the Licensed Work;

5.1.6 provide lists of valid IP addresses to Digital and update those lists on a regular basis the frequency of which will be agreed by the parties from time to time;

5.1.7 undertake promptly to substitute, delete or amend (or give Digital access to any copy of the database held by the Licensee to substitute, delete or amend) the Licensed Works as notified by Digital Ltd. or the Print-Publisher in writing.

6. RESPONSIBILITIES OF DIGITAL

6.1 Digital shall ensure access and use of the Licensed Work in accordance with the provisions as laid down in this Agreement.

6.2 Digital shall cause support to be provided to the Licensee and to Authorised Users in accordance with the terms set forth in the published product description form.

7. USAGE DATA

7.1 Where and as required by the Licensee, make available or otherwise provide access to usage data which shall be compiled by the Licensor during the term of this Agreement including the provision of use statistics to be compiled on a per Licensee basis (provided always that Licensees may require such data on a monthly basis and that any collection of such data shall not conflict with any privacy and data protection laws that may from time to time apply to the parties) and deliver such data to Licensees; OR provide the means to allow the Licensee to collect such data.

8. FEE

8.1 The Licensee shall pay to the Licensor for each year of the term of this Licence a Fee. The Fee receivable from the Licensee shall be calculated in accordance with the appropriate charges as provided by Digital or their authorised subscription agent. It should be noted that by returning a signed copy of this Agreement the Licensee accepts that it is legally bound to the payment of the total fee applicable over the whole term of the Agreement. All prices are exclusive of VAT.

8.2 The Licensor will invoice the Licensee for the Fees payable and due, at the addresses set out below:

Digital Ltd, Admin/Accounts, Haldan House, Tower Close, Liphook, Hampshire. GU30 7AS

Invoices shall be due and payable no later than thirty (30) days after being issued by the Licensor or their authorised subscription agent or by the day preceding the start of the contract period.

9. TERM AND TERMINATION

9.1 The Term of this Agreement will commence upon the date of signature or on an agreed date and will remain in full force and effect for a period of twelve months, unless terminated earlier as provided for in this Clause 9.

9.2 Either party may terminate this Agreement at any time on the material or persistent breach by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty (30) days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith by written notice to the other party.

9.3 Notwithstanding anything to the contrary herein, this Agreement will automatically terminate if the UKPO Licence Agreements between Digital and the Print-Publishers terminate for any reason. Digital shall make reasonable endeavours not to cause the UKPO Licence Agreement between Digital and the Print-Publishers to terminate.

9.4 Further notwithstanding anything to the contrary herein, upon a breach by the Licensee, on-line access to the Licensed Work shall be terminated. Unless previously delivered, a copy of the section of the database licensed by Perpetual Licence will be delivered by Digital to the Licensee.

9.5 Upon termination and expiration of this Agreement, print copies of parts of the Licensed Work and Adaptations made by Authorised Institutions and Authorised Users may be retained and used subject to the terms of Clause 3 and 4 of this Agreement, which terms shall survive any termination of this Agreement. The use of electronic copies of Licensed Works not included in any Perpetual License after the expiration or termination of this Agreement requires the authorisation from the Print-Publisher and the conditions of use are not subject to this Agreement.

10. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

10.1 The Licensee acknowledges that all copyrights, patent rights, trademarks, database rights, trade secrets and other intellectual property rights relating to the Licensed Work are the sole and exclusive property of the Print-Publisher or are duly licensed to the Print-Publisher and that this Licence does not assign or transfer to the Licensee any right, title or interest therein except for the right to use the Licensed Work in accordance with the terms and conditions of this Agreement.

11. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

11.1 The Licensee represents and warrants that it has sufficient authority and rights to enter into and perform its obligations under this Agreement.

11.2 Digital represents and warrants that it has the right to grant the Licence and that the use of the Licensed Work by Authorised Users is in accordance with the terms of this Agreement shall not infringe the copyright of any third party. The foregoing shall not apply to improper usage of the Licensed Work by the Licensee or Authorised Users. Digital makes no representation or warranty, and expressly disclaims any liability with respect to the content of the Licensed Work including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.

11.3 Digital shall indemnify and keep indemnified Licensee against any and all costs, claims, demands, expenses, losses and liabilities of whatsoever nature arising out of or in connection with any infringement of Intellectual Property Rights of any third party by the possession or use of the Licensed Works by Licensee as permitted by this Licence The Licensee agrees to notify Digital and the Print-Publisher immediately and

provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with works contained in the Licensed Work. It is expressly agreed that upon such notification, or if the Print-Publisher becomes aware of such a claim from other sources, Digital (on instruction from the Print-Publisher) may remove such work(s) from the Licensed Work. At the request of the Print-Publisher, the Licensee will remove such work(s) from any copies of the Licensed Work maintained by the Licensee. At Digital's request and expense, Licensee shall permit Digital to conduct all negotiations and litigation in respect of the 3rd party claim. Licensee shall give all reasonable assistance and Digital shall pay Licensee's costs and expenses incurred.

11.4 This indemnity shall not apply to infringements or breaches arising directly from the combination of the Licensed Works with other content or material not supplied under this Licence or by the use of the Licensed Works in breach of the terms of this Licence by the Licensee.

11.5 Subject to the above and to the extent permitted by law, Digital shall not be liable to the Licensee for any loss or damage including any loss of profits, goodwill, contract or any indirect or consequential loss including loss or damage suffered by the Licensee as a result of an action brought by a third party.

11.6 The Print-Publisher reserves the right to change the content, presentation, user facilities or availability of parts of the Licensed Work and to make changes in any software used to deliver the Licensed Work at its sole discretion. A notification will be given to the Licensee of substantial changes to the Licensed Work.

11.7 Other than the express warranties stated in this Clause 11, the Licensed Work is provided on an "as is" basis, and Digital disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Work or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. Digital further expressly disclaims any warranty or representation to Authorised Users, or to any third party. Digital accepts no liability for loss suffered or incurred by the Authorised Institution or Authorised Users as a result of their reliance on the Licensed Work.

11.8 The Licensee represents to Digital that its computer system through which the Licensed Work will be used is configured, and procedures are in place, to prohibit access to the Licensed Work by any person other than an Authorised User; that it shall inform Authorised Users about the conditions of use of the Licensed Work; and that during the term of this Agreement, the Licensee will continue to make all reasonable efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

12. FORCE MAJEURE

12.1 Either party's failure to perform any term or condition of this Agreement as a result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities) ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Agreement.

12.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

12.3 If the Force Majeure Event prevails for a continuous period of more than [six] months, any party may

terminate this agreement by giving [30 days'] written notice to the other party. On the expiry of this notice period, this licence will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this licence occurring prior to such termination.

13. ASSIGNMENT

13.1 Neither this Agreement nor any of the rights under it may be assigned or licensed by either party without obtaining the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. All the terms of this Agreement will be binding upon any permitted successor to any party.

14. GOVERNING LAW AND DISPUTE RESOLUTION

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

14.2 Where the parties agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement. In default of agreement upon whom to appoint as a suitable expert, such expert shall upon the request of either party be appointed by the Chair for the time being of the Committee of Vice-Chancellors and Principals.

14.3 Any person to whom a reference is made under Clause 14.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.

14.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

14.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

15. CONFIDENTIALITY & FREEDOM OF INFORMATION

15.1 During the term of this Agreement each party may receive confidential information of the other party, including without limitation proprietary information, inventions, trade secrets, confidential know-how and other technical, business and operational information related to the development or provision of the Licensed Work or to the businesses of the parties. Except as otherwise transferred in accordance with the terms of this Agreement, and subject to the terms of section 16 below, all confidential information will remain the exclusive property of the disclosing party and neither party may disclose any confidential information of the other party to any third party for any reason without the prior written consent of such other party, nor to any of such party's employees or staff other than those who have a need to know in order to provide the services contemplated by this Agreement.

15.2 The parties acknowledge and agree that the obligation to respect confidentiality of the other's confidential information will survive any expiry or termination of this Agreement.

15.3 The Licensor will note the Licensee's obligations under the Freedom of Information Act 2000 and in particular that the Licensee may be required to provide information relating to this Agreement or the Licensor to

a person in order to comply with its obligations under the Act.

15.4 The Licensor will facilitate the Licensee's compliance with the Licensee's obligations under the Freedom of Information Act 2000 and comply with requests from the Licensee for that purpose within 10 working days of the request being made.

15.5 For the purposes of this Agreement "confidential information" shall exclude any information that the licensee is obligated to disclose to a person under the provisions of the Freedom of Information Act 2000 and any codes of practice and guidance issued by the Government.

16. NOTICES

16.1 All notices required to be given under this Agreement shall be given in writing in English and sent by electronic mail or first class registered or recorded delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and notices shall be deemed to have been received (a) 24 hours after successful transmission in the case of electronic mail; (b) fourteen (14) days after the date of posting in the case of first class registered or recorded delivery:

if to Digitalorial Digitalorial Ltd. Admin/Accounts, Helden House, Tower Close, Liphook, Hampshire. GU30 7AS

email: accounts@digitalorial.co.uk

If to the Licensee [As stated in the Acceptance of License Form]

17. GENERAL

17.1 This Agreement and its Schedules constitute the entire agreement between the parties relating to the Licensed Work and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.

17.2 The Schedules shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules.

17.3 The Print-Publishers may enforce the terms of this Agreement subject to and in accordance with the terms of the Agreement and the provisions of the Contract (Rights of Third Parties) Act 1999, as amended or substituted from time to time, otherwise a person who is not a party to the Agreement has no right to enforce any term of the Agreement.

17.4 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

17.5 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 or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.