



## GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS:** In this Agreement, the following terms shall have the following meanings:

**Agreement:** these General Terms and Conditions, together with any agreed Commercial Terms, and any Schedules or other documents referred to therein;

**Authorised Users:** individuals who have been properly authorised by the Licensee to access the Licensed Materials via the Secure Network;

**Commercial Terms:** the commercial terms for the supply of the Licensed Materials to the Licensee, agreed between the Parties from time to time;

**COUNTER:** Counting Online Usage of Networked Electronic Resources;

**End User Terms:** the terms applicable to use of the Publishers electronic database by Authorised Users, as stated on the Publisher's website at End User Terms ([http://www.emeraldgrouppublishing.com/about/policies/end\\_user\\_terms.pdf](http://www.emeraldgrouppublishing.com/about/policies/end_user_terms.pdf))

**Fee:** the fee for the Licensed Materials, as set out in the Commercial Terms;

**Group Companies:** the Publisher's holding company and any subsidiaries of the Publisher or its holding company;

**Licensed Materials:** means the content comprised in the relevant Products, and, where applicable, as detailed in the Schedule(s);

**Licensee:** the Customer, as detailed in the Commercial Terms;

**Product:** the product(s) purchased by the Licensee from the Publisher, as detailed in the Commercial Terms;

**Product Lists:** means the information provided about the Licensed Materials comprised in each Product offered by the Publisher including indicative lists and resources for discovery;

**Publisher:** Emerald Publishing Limited;

**Secure Network:** the network owned or controlled by the Licensee via which Authorised Users access the Licensed Materials;

**Subscription Period:** for Products that are purchased on subscription, the period from the Subscription Start Date to the Subscription End Date, as detailed in the Commercial Terms;

**Territory:** as detailed in the Commercial Terms.

## 2. PRODUCTS AND LICENCE

2.1. In consideration of the Fee(s), the Publisher grants to the Licensee the non-exclusive and non-transferable right in the Territory to give Authorised Users access to the Licensed Materials through the Secure Network, subject to the terms and conditions of this Agreement. For the avoidance of doubt, Authorised Users may access the Licensed Materials from outside of the Territory, provided that this is at all times via the Secure Network.

2.2. For Products purchased on subscription, the Licensed Materials shall include all content included in the relevant Product during

the Subscription Period. Licensee shall not be entitled to access content added following the end of the Subscription Period unless and until Commercial Terms are agreed between the Parties for a new or extended Subscription Period.

2.3. For Products purchased on a non-subscription (transactional) basis, the Licensed Materials comprise content included in the Product and/or for the period specified in the Commercial Terms only.

2.4. The Publisher reserves the right at any time to withdraw from the Licensed 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 a third party's copyright or other intellectual property right, or which is defamatory, obscene, unlawful or otherwise objectionable. If the withdrawal represents more than 10% of the Licensed Materials of any particular Product, the Publisher shall give written notice of such withdrawal to the Licensee and refund that part of the Fee for that Product that is in proportion to the amount of Licensed Materials withdrawn for any remaining un-expired portion of the Subscription Period.

2.5. Where stated in the Commercial Terms, Publisher shall provide access in perpetuity for Authorised Users to Licensed Materials (for Products purchased on a subscription basis, this is in respect of the Product's content published and paid for during the relevant Subscription Period). Access in perpetuity will be provided either through the Secure Network or from the archive described in clause 6.2. If no right of access in perpetuity is granted, the Licensee's right to access the Licensed Materials will terminate at the end of the relevant Subscription Period (or other access period as specified in the Commercial Terms).

2.6. The perpetual access right described in clause 2.5 is subject to the terms of this Agreement and Publisher may terminate this arrangement if either (a) the Licensee is in breach of any terms; or (b) the Publisher no longer has the right to grant such access to the Licensee (in which case termination of the perpetual access right shall be for the affected part of the Licensed Materials only).

2.7. Product Lists are maintained on the Publisher's website at

Journals

(<https://www.emeraldgrouppublishing.com/products/journals/discover-our-ejournal-collections>),

Books

(<https://www.emeraldgrouppublishing.com/products/books/discover-our-ebooks>),

Cases

(<https://www.emeraldgrouppublishing.com/products/case-studies/discover-our-ecase-collections>),

Resources for Discovery

(<https://www.emeraldgrouppublishing.com/how-to/librarians/toolkit/resources-discovery>),

and maybe added to at any time. From time to time, content within the Product Lists may be removed and/or replaced with other content, but unless otherwise agreed with the customer, this will be no more than once per year on renewal of the Subscription Period.

2.8. Complimentary archive access may be provided with a subscription at the discretion of the Publisher and content comprised in any such archives may be removed or substituted from time to time on reasonable notice from the Publisher to the Licensee. The Licensee's complimentary access to archives will cease on expiry of the relevant Subscription Period.



### 3. FEE AND PAYMENT

- 3.1. Unless otherwise stated in the Commercial Terms, the Licensee shall pay the Fee to the Publisher within 28 days of receipt of the Publisher's invoice.
- 3.2. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added, non-recoverable, withholding or other taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

### 4. PERMITTED USES

- 4.1. Subject to payment of the Fee, the Licensee may:
  - (a) allow Authorised Users to have access to the Licensed Materials through the Secure Network;
  - (b) provide printed or electronic copies of single articles, chapters or cases to students as reasonable to facilitate classroom based teaching;
  - (c) display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorised Users or groups of Authorised Users;
  - (d) supply another library within the Territory, a single copy of an individual article, case or chapter being part of the Licensed Materials by post, fax or secure electronic transmission, for educational purposes; and
  - (e) incorporate parts of the Licensed Materials in printed course packs (in any form, including electronic, printed, audio or braille), and in virtual learning environments for use by Authorised Users only; provided that (i) each incorporated item shall carry appropriate acknowledgement of the source, title, author of the extract and the name of the Publisher; and (ii) such copies are destroyed or permanently deleted when no longer required for such use.
- 4.2. Subject to payment of the Fee, Authorised Users may:
  - (a) search, view, retrieve and display on screen the Licensed Materials;
  - (b) print a single copy or download and save individual articles or items of the Licensed Materials for educational purposes; and
  - (c) distribute a single copy of individual articles or single chapters of the Licensed Materials in print or electronic form to other Authorised Users or to other individual scholars collaborating with Authorised Users but only for the purposes of fair dealing for non-commercial research and educational purposes;
- 4.3. Nothing in this Licence shall in any way exclude, modify or affect any of the Licensee's statutory rights under copyright laws.
- 4.4. All rights in and to the Licensed Materials not expressly granted to the Licensee under this Agreement are reserved to the Publisher and its licensors.

### 5. PROHIBITED USES

- 5.1. Neither the Licensee nor the Authorised Users may:
  - (a) use all or part of the Licensed Materials for any commercial or business purpose; with the exception of (i) recovery of

costs from Authorised Users; and (ii) use of the Licensed Materials in the course of research funded by a commercial organisation (both of which are permitted);

- (b) remove or alter the authors' names or the Publisher's copyright notices or other means of identification as they appear on the Licensed Materials;
- (c) make print or electronic copies of multiple extracts or make multiple copies of any part of the Licensed Materials for any purpose other than expressly permitted by this Agreement;
- (d) download or distribute any part of the Licensed Materials on any electronic system or network, including without limitation the internet and the world wide web, other than the Secure Network, except where otherwise expressly permitted by this Agreement;
- (e) prepare, publish or distribute works which combine the Licensed Materials with any other material, except as otherwise permitted in this Agreement; or
- (f) alter, abridge, adapt or modify the Licensed Materials for any purpose whatsoever, except to the extent necessary to make them perceptible on a computer screen to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

### 6. PUBLISHER'S OBLIGATIONS

- 6.1. The Publisher shall:
  - (a) make the Licensed Materials available to the Licensee through the Secure Network based on internet access by an industry standard means of authentication;
  - (b) within 30 days of the date of full payment of the Fee, provide the Licensee with information sufficient to enable the Licensee to access the Licensed Materials; and
  - (c) use its reasonable endeavours to make the Licensed Materials available to the Licensee and to Authorised Users at all times and on a 24 hour basis, save for routine maintenance, and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service.
- 6.2. The Publisher's journal collection has been placed into long term preservation archives (including Portico, LOCKSS and CLOCKSS) and (subject to any relevant membership requirements) the Licensee and Authorised Users shall be able to access the Licensed Materials via such archive(s) in the event that such Licensed Materials are permanently unavailable from the Publisher. Access to the archive(s) shall at all times be subject to the terms of this Agreement and this clause shall survive termination or expiry of this Agreement.
- 6.3. The Publisher will use its reasonable endeavours to be compliant with the COUNTER code of practice and incorporate the latest compliancy rules where applicable in relation to the Licensed Materials and the Publisher's obligations under this Agreement.

### 7. LICENSEE'S OBLIGATIONS

- 7.1. Within 30 days of this Agreement, the Licensee shall provide to the Publisher all information sufficient to enable the Publisher to provide access to the Licensed Materials via the Secure Network.
- 7.2. The Licensee shall:



- (a) use all reasonable endeavours to ensure that all Authorised Users are aware of the End User Terms and the permitted uses of Licensed Materials under this Agreement;
  - (b) use reasonable efforts to prevent unauthorised use of the Licensed Materials and, on becoming aware of any unauthorised use or other breach of this Agreement, inform the Publisher as soon as practicable in writing;
  - (c) authenticate the identity of Authorised Users to accepted industry standards at log in and issue passwords (or equivalent access verification) to Authorised Users;
  - (d) take all reasonable steps and appropriate steps (including, without limitation, taking disciplinary action), to promptly cease any unauthorised use of the Licensed Materials and ensure it does not recur.
- (b) where so required, allows the Publisher control over such negotiations or litigation and/or the defence or settlement of such claim or suit;
  - (c) makes no representations, admissions, agreement or settlements in relation to such claim or suit without the Publisher's prior written consent; and
  - (d) gives the Publisher all information and assistance it may reasonably require.

## 8. CONFIDENTIALITY AND ANNOUNCEMENTS

- 8.1. The Commercial Terms of this Agreement are confidential and, except as permitted below or required by law, the Licensee shall not disclose the same to any third party without the written permission of the Publisher.
- 8.2. The Licensee consents to the Publisher providing the details of the Licensee's customer account to the Publisher's Group Companies, associates, agents and IT service providers, some of which are based outside of the European Economic Area, where this is necessary to provide the Products and services requested by the Licensee.
- 8.3. The Licensee agrees to maintain the confidentiality of any data provided to it by the Publisher relating to usage of the Licensed Materials by the Licensee and its Authorised Users. This data will only be used for internal analysis of usage of the Licensed Materials and will not be shared with third parties without the prior written consent of the Publisher.
- 8.4. The Publisher may publicly acknowledge that the Licensee is a customer and the Licensee grants to the Publisher the right to use the Licensee's name and quotations in public relations and promotional material, subject to the prior consent of the Licensee (not to be unreasonably withheld or delayed).
- 8.5. This clause 8 shall survive the termination of this Agreement.

## 9. WARRANTIES AND INDEMNITY

- 9.1. Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement.
- 9.2. The Publisher warrants to the Licensee that the Licensed Materials used as contemplated by this Agreement do not infringe the copyright or any other intellectual property rights of any third party and shall indemnify and hold the Licensee harmless from and against any direct loss (including reasonable and properly incurred legal and professional fees) arising out of any legal action taken against the Licensee by a third party claiming such infringement. This indemnity shall not apply if the Licensee has used the Licensed Materials in any way not expressly permitted by this Agreement.
- 9.3. The indemnity in clause 9.2 shall only apply to the extent that the Licensee:
  - (a) promptly notifies the Publisher in writing of any claim or suit relevant to the indemnity;

- 9.4. The Publisher shall not be liable to the Licensee or to any other person, including but not limited to Authorised Users, for any special, exemplary, indirect or consequential loss, costs, damages, charges or other expenses of any kind (including loss of profits or revenues, loss of business, depletion of goodwill, loss of anticipated savings, loss of contract or business interruption) arising under or in connection with this Agreement, in particular arising out of the inability to use, or the use of, the Licensed Materials.

- 9.5. Subject to (i) clause 9.6; and (ii) in respect of the Publisher's indemnity under clause 9.2 for which aggregate liability shall be limited to £3 million; the Publisher's aggregate liability for all claims, losses or damages arising under or in connection with this Agreement or any other agreement between the parties shall be limited to an amount equivalent to the Fee(s) received by the Publisher from the Licensee in respect of the calendar year during which such claim, loss or damage occurred.

- 9.6. No party limits its liability for death or personal injury caused by its own negligence (or the negligence of its employees or agents) or for fraud.

- 9.7. Except as expressly provided in this Agreement, all representations or warranties of any kind, express or implied, including but not limited to the accuracy of the information contained in the Licensed Materials, merchantability or fitness of use for a particular purpose are to the fullest extent permitted by law excluded from this Agreement and accordingly the Licensed Materials are supplied "as is".

## 10. TERMINATION

- 10.1. The Publisher may terminate this Agreement by notice in writing if:

- (a) Licensee does not pay the Fee by the due date for payment;
- (b) the Licensee commits a material breach or commits persistent breaches of the Agreement and fails to remedy such breach or persistent breaches within thirty (30) days of being notified by the Publisher of such breach or breaches;
- (c) the Licensee becomes insolvent or becomes subject to bankruptcy, receivership, liquidation or administration.

- 10.2. The Licensee may terminate this Agreement by notice in writing if:

- (a) the Publisher commits a material or persistent breach of any term of this Agreement and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the Licensee; or
- (b) the Publisher becomes insolvent or becomes subject to bankruptcy, receivership, liquidation or administration.



- 10.3. In the event of termination by the Publisher pursuant to clause 10.1:
- (a) any right of perpetual access to the Licensed Materials pursuant to clause 2.5, shall immediately cease;
  - (b) the Licensee shall cease to provide Authorised Users with access to the Licensed Materials via the Secure Network; and
  - (c) the Licensee shall destroy copies of any Licensed Materials in its possession or control and promptly provide to Publisher such evidence as it may reasonably require of Licensee's compliance with this requirement.
- 10.4. In the event of termination by Licensee pursuant to clause 10.2 (a) the Publisher shall refund a proportion of any Fee that represents the paid for but un-expired part of any relevant Subscription Period.
- 10.5. In the event of termination by Licensee pursuant to clause 10.2 (b), Licensee shall be able to access paid for Licensed Materials via the archive(s) referred to in clause 6.2 in perpetuity where such access has been granted in this Agreement (in the Commercial Terms and as referred to in clause 2.5).
- 10.6. Either party's delay or failure to perform any provision of this Licence, as a result of circumstances beyond its control (including, without limitation, acts of third parties, terrorism, war, strikes, floods, governmental restrictions, power, telecommunications or internet failures, or damage to or destruction of any network facilities) (a **Force Majeure Event**) shall not constitute a breach of this Licence and neither party shall have any liability or responsibility for failure to fulfil any obligation under this Licence so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.
11. **GENERAL**
- 11.1. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, representations and agreements relating to the subject matter of this Agreement, whether oral or written.
- 11.2. Any variations to this Agreement are only valid if they are recorded in writing and signed by both parties.
- 11.3. This Agreement may not be assigned by the Licensee to any other person or organisation without the prior written consent of the Publisher.
- 11.4. Any notices to be served in writing on either of the parties by the other shall be sent by first class post and email to the address of the addressee as set out in this Agreement or to such other address as notified by either party in writing to the other as its address for service of notices. Notices shall be deemed served 24 hours after being sent by email and, if no sooner response is received, be deemed received within 7 days of posting.
- 11.5. If any provision of this Agreement (or part of any provision) is found by any court or other competent authority to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any illegal, invalid or un-enforceable provision would be valid, enforceable and legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties in the original provision.
- 11.6. 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.
- 11.7. No term of this Licence shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Licence, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 11.8. Unless otherwise stated in the Commercial Terms, 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) shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.