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## **SUBSCRIBER SALES AGREEMENT**

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

BETWEEN

CAMBRIDGE UNIVERSITY PRESS of The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU  
in the United Kingdom ("the Publisher")

and

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("the Institution")

WHEREAS the Publisher holds the rights granted under this Agreement;

WHEREAS the Institution desires to enable its Authorised Users to use the Products and the Publisher desires to grant to the Institution the licence to use the Products for the Annual Subscription Fee or the Perpetual Access Fee, subject to the terms and conditions of this Agreement

AND WHEREAS the Regional Library Network has been appointed by the Publisher to sell access to the Products to the Institution, subject to the terms of a separate agreement between the Publisher and the Regional Library Network, the terms of which are substantially similar to the terms of this Agreement

IT IS AGREED AS FOLLOWS:

### **1 KEY DEFINITIONS**

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

Access Date                      The date from which access to the Products is granted to the Institution and Authorised Users

Annual Subscription Fee        The fee payable by the Institution to the Regional Library Network for access to those Products listed in Schedule 1 as being available on an annual subscription

Authorised Users                Current members of the faculty and other staff of the Institution (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently studying at the Institution, who are permitted to access the Secure

Network from within the Library Premises or from such other places where Authorised Users work or study (including but not limited to Authorised 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 Institution's Library Premises.

Commercial Use	Use for the purposes of monetary reward (whether by or for an Institution or an Authorised User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Products. For the avoidance of doubt, neither recovery of direct costs by the Institution from Authorised Users, nor use by an Institution or by an Authorised User of the Products in the course of research funded by a commercial organisation, is deemed to be Commercial Use.
Effective Date	The date, expressed on the first page of this Agreement, on which the terms and conditions of the Agreement take effect.
Library Premises	The physical premises of the library or libraries operated by the Institution.
Regional Library Network	The Regional Library Network for <name of state> which wishes Institutions in its region to gain access to the Products, and which shall negotiate access to the Products with the Publisher on the Institution's behalf
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 Institution, whose identity is authenticated at the time of log-in and periodically thereafter consistent with current reasonable practice.
Perpetual Access Fee	The fee payable by the Institution to the Regional Library Network for access to those Products listed in Schedule 1 as being available on a Perpetual Access Fee basis
Products	The electronic Products specified in Schedule 1, which shall include electronic versions of printed titles together with any additional material that the Publisher makes available to the Institution. Additional Products may be added to Schedule 1 by mutual agreement of the parties.
Publisher's Server	The server on which the Products are mounted and may be accessed.

## 2 **AGREEMENT**

- 2.1 This Agreement shall commence on the Effective Date and shall continue thereafter unless either party gives notice to the other to terminate in accordance with the provisions of clause 11 below.

### **3 USAGE RIGHTS**

- 3.1 The Institution and Authorised Users may, subject to clause 4 below:
  - 3.2.1 Access the Products from the Publisher's Server via the Secure Network in order to search, view, retrieve and display the Products;
  - 3.2.2 Unless otherwise stated below, make printed copies of one chapter or up to 5 percent of the pages from each Product, or an individual title within a Product (if applicable), whichever is the greater, for personal use.
- 3.2 Nothing in this Agreement shall in any way exclude, modify or affect any of the Institution's statutory rights under national copyright law.

### **4 PROHIBITED USES**

- 4.1 Neither the Institution nor any Authorised User may:
  - 4.1.1 remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Products;
  - 4.1.2 download, mount or distribute all or any part of the Products to the Secure Network or to any other electronic network, including, without limitation, the Internet and the World Wide Web;
  - 4.1.3 engage in systematic copying of the Products, or transmit any part of the Products by any means to any unauthorised user;
  - 4.1.4 allow copies to be stored or accessed by an unauthorised user;
  - 4.1.5 make the Products or any part thereof available for Inter Library Loan;
  - 4.1.6 alter, abridge, adapt or modify the Products except to the extent necessary to provide access to Authorised Users under the terms of this Agreement.
- 4.2 The Publisher's explicit written permission must be obtained in order to:
  - 4.2.1 use all or any part of the Products for any Commercial Use;
  - 4.2.2 distribute the whole or any part of the Products to anyone other than Authorised Users;
  - 4.2.3 publish, distribute or make available the Products, works based on the Products or works which combine them with any other material, other than as permitted in this Agreement.

### **5 PUBLISHER'S UNDERTAKINGS**

- 5.1 The Publisher warrants to the Institution that the Products used as contemplated by this Agreement do not infringe the copyright or any other proprietary or intellectual property rights of any person. The Publisher shall indemnify and hold the Institution 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 Institution claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this Agreement for any reason. This indemnity shall not apply if the Institution, or any Authorised User, has amended the Products in any way not permitted by this Agreement.
- 5.2 The Publisher shall:
  - 5.2.1 make the Products available to the Institution at the IP addresses and/or ranges listed in Schedule 2.
  - 5.2.2 provide the Institution, as soon as possible and no later than thirty (30) days after the Effective Date, with information sufficient to enable the Institution and Authorised Users to access the Products;

- 5.2.3 use all reasonable endeavours to ensure that the Server has adequate capacity and bandwidth to support the usage of the Authorised Users 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 Agreement;
- 5.2.4 use reasonable endeavours to make the Products available to the Institution and to Authorised Users at all times and on a twenty-four hour basis, save for routine maintenance (which shall be notified to the Institution in advance wherever possible), and to restore access to the Products as soon as possible in the event of an interruption or suspension of the service.
- 5.3 The Publisher reserves the right at any time to withdraw from the Products 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.
- 5.4 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 Products, merchantability or fitness of use for a particular purpose. The Products are supplied 'as is'.

## **6 INSTITUTION'S UNDERTAKINGS**

- 6.1 The Institution 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 Products;
  - 6.1.2 use all reasonable endeavours to notify Authorised Users of the terms and conditions of this Agreement and take steps to protect the Products from unauthorised use or other breach of this Agreement;
  - 6.1.3 use all reasonable endeavours to monitor compliance and immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all reasonable and appropriate steps, both to ensure that such activity ceases and to prevent any recurrence;

## **7 REGIONAL LIBRARY NETWORK RESPONSIBILITIES**

- 7.1 The Regional Library Network shall provide a first point of contact for the Institution with respect to the Products, and shall answer queries from the Institution or Authorised Users concerning pricing, effective use, billing, IP authentication and troubleshooting problems. The Publisher shall provide assistance, as appropriate, to the Regional Library Network in answering such queries;
- 7.2 Where the Institution has not informed the Publisher of the IP addresses and/or ranges required in Schedule 2, the Regional Library Network shall collect the IP addresses and/or ranges from the Institution at least thirty days prior to the Access Date and shall deliver the same to the Publisher as soon as possible thereafter.

## **8 PAYMENTS**

- 8.1 The Institution shall pay the Regional Library Network the Annual Subscription Fee or the Perpetual Access Fee (as appropriate) within thirty days of receipt of invoice from the Regional Library Network, said fees becoming due in each year of this Agreement. The Annual Subscription Fee or Perpetual Access Fee may change in any calendar year, the

exact fee to be negotiated between the Institution and the Regional Library Network separate to this Agreement.

- 8.2 In the event of an annual maintenance fee becoming payable by the Institution for some Products (as indicated in Schedule 1), the Publisher shall invoice the Institution direct for such fee and the Institution shall pay the annual maintenance fee within thirty days of receipt of invoice. The annual maintenance fee shall be exclusive of any sales, use, value added or similar taxes and the Institution shall be liable for any such taxes in addition to the annual maintenance fee.
- 8.3 Prior to a new access year commencing, the annual maintenance fee is subject to change at the Publisher's sole discretion, but in any event shall not amount to an increase of more than 5% per year.
- 8.4 The Publisher reserves the right to suspend online access to the Publisher's Server in the event that the Institution defaults in making payment of the Annual Subscription Fee, the Perpetual Access Fee and/or any annual maintenance fee for one or more of the Products and fails to remedy such default within sixty days of the Access Date or any Access Date anniversary. If the Institution fails to pay the Annual Subscription Fee, Perpetual Access Fee or annual maintenance fee after a further thirty days (ie. Within ninety days after the Access Date or any Access Date anniversary) the Publisher shall be entitled to terminate this Agreement.

## **9 INTELLECTUAL PROPERTY RIGHTS**

- 9.1 The Institution acknowledges that Publisher or its licensors are the owners of all intellectual property rights in the Products and such rights shall remain vested in Publisher, or in the Publisher's licensors.

## **10 WARRANTIES AND LIABILITIES**

- 10.1 Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party.
- 10.2 Under no circumstances shall the Publisher be liable to the Institution or any other person, including but not limited to Authorised Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Products. 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 Agreement shall in no circumstances exceed the Annual Subscription Fee paid by the Institution in respect of the calendar year during which such claim, loss or damage occurred.

## **11. TERM AND TERMINATION**

- 11.1. This Agreement may be terminated:
  - 11.1.1 if either party serves written notice to the other of its desire to terminate for any reason, no later than thirty days before the end of a calendar year (termination then to occur at the end of that calendar year);
  - 11.1.2 if the Publisher's agreement with the Regional Library Network terminates for whatever reason;

- 11.1.3 if the Institution defaults in making payment of the Annual Subscription Fee, Perpetual Access Fee or annual maintenance fee as provided in this Agreement and fails to remedy such default within sixty (60) days of notification in writing by the Publisher;
  - 11.1.4 if either party commits a material or persistent breach of any term of this Agreement and fails to remedy the breach (if capable of remedy) within sixty (60) days of notification in writing by the other party;
  - 11.1.5 if the Institution commits a wilful material and persistent breach of the Publisher's copyright or other intellectual property rights or of the provisions of clause 3 in respect of usage rights or of clause 4 in respect of prohibited uses;
  - 11.1.6 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration;
  - 11.1.7 if access, capacity, or technical services of the Publisher are incapable of providing reliable use of the Products or otherwise frustrate the intent of the Institution in entering into this Agreement and such technical issues cannot be resolved by the Publisher within sixty (60) days of notification in writing from the Institution.
  - 11.1.8 if the Publisher no longer possesses the right to publish a Product (then this Agreement shall terminate in respect of that individual Product alone).
- 11.2 Except as otherwise provided herein, on termination of this Agreement all rights and obligations of the parties automatically terminate, and the rights granted to the Institution hereunder shall automatically revert to the Publisher.
- 11.3 On termination of this Agreement the Publisher shall immediately cease to make available the Products to the Institution. Notwithstanding the above, if the Publisher receives a written request from the Institution no later than sixty (60) days after termination, and provided that the Publisher has not terminated this Agreement on the grounds of clauses 11.1.3, 11.1.4 or 11.1.5 above, the Publisher shall provide to the Institution the contents of those perpetual access Products listed in Schedule 1, as Word and Excel files without functionality or programming for the Institution to hold in its archive and, if it so desires, to make available in that pared-down form to Authorised Users.
- 11.4 On termination of this Agreement, no Fee or part thereof paid up to the date of termination shall be re-paid to the Institution by the Publisher.

## 12 CONFIDENTIALITY

- 12.1 The parties acknowledge and agree that all information concerning each other's business is confidential and proprietary information, and undertake that they will not permit the duplication and disclosure of any such information to any person other than to personnel who require such information for the performance of their obligations covered by this Agreement, or to that party's professional advisors, funders and insurers.
- 12.2 Notwithstanding 12.1 above, this shall not apply to any information which:
- 12.2.1 at the time of disclosure is in the public domain; or
  - 12.2.2 is made available at any time by an independent third party which has not obtained it directly or indirectly in breach of any confidentiality agreement with either of the parties hereto; or
  - 12.2.3 where in the case of confidential information received by the Publisher from the Institution the Publisher can show that such confidential information was in its possession free from obligations of confidentiality prior to such receipt.

### **13 USE OF AN EXPERT TO RESOLVE DISPUTES**

- 13.1 If any difference arises between the Publisher and the Institution touching the meaning of this Agreement and the rights and liabilities of the parties, the parties shall first use their best endeavours to resolve such difference between themselves, but in the absence of such resolution shall then refer the matter to an independent expert to be selected by mutual agreement of the parties. Each party shall provide the expert with such information as the expert may reasonably require for the purposes of determination. The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable. The decision of the expert shall be final and binding on the parties.

### **14 GENERAL**

- 14.1 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.
- 14.2 Alterations to this Agreement and to the Schedules to this Agreement are only valid if they are recorded in writing and signed by both parties.
- 14.3 This Agreement may not be assigned by either party to any other person or organisation without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 14.4 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 Agreement 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 fourteen (14) days of posting.
- 14.5 Neither party's delay or failure to perform any provision of this Agreement, as a 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 netProducts facilities) shall be deemed to be, or to give rise to, a breach of this Agreement.
- 14.6 The invalidity or un-enforceability of any provision of this Agreement shall not affect the continuation or enforceability of the remainder of this Agreement.
- 14.7 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.
- 14.8 This Agreement shall be governed by and construed in accordance with the law of England; 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 courts of England.

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

FOR CAMBRIDGE UNIVERSITY PRESS

Name (block capitals) \_\_\_\_\_

Signature \_\_\_\_\_

Position/Title \_\_\_\_\_

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

FOR \_\_\_\_\_ (name of Institution)

Name (block capitals) \_\_\_\_\_

Signature \_\_\_\_\_

Position/Title \_\_\_\_\_

Date \_\_\_\_\_

## SCHEDULE 1

### The Products

Product	Access Method	Maintenance Fee
Cambridge Collections Online	Annual Subscription Fee	No
HSUS	Perpetual Access Fee	\$100 per annum*
Lectrix	Annual Subscription Fee	
Shakespeare Survey Online	Perpetual Access Fee	\$175 per annum*
Orlando	Annual Subscription Fee	
Econometric Society Monographs Online	Perpetual Access Fee	\$50 per annum*
Cambridge Histories Online	Perpetual Access Fee	\$750 per annum*
Dictionary of Irish Biography	Perpetual Access Fee	\$200 per annum*

**\* The annual maintenance fee detailed in this Schedule 1 is subject to an annual increase of not more than 5%, as provided for in clause 8.3.**

## **SCHEDULE 2**

### **INSTITUTION DETAILS**

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

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

City, State, Zip: \_\_\_\_\_

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

Contact Phone: \_\_\_\_\_

Contact E-mail: \_\_\_\_\_

Domain name(s): \_\_\_\_\_

IP addresses and/or ranges\*: \_\_\_\_\_

\_\_\_\_\_

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\* Please give full details of all relevant netProducts as follows:

Class B NetProducts: first two netProducts numbers plus asterisks for host addresses, i.e.: 125.64.\*.\*

Class C netProducts: first three netProducts 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