

Institutional Perpetual Licence Agreement

This institutional perpetual licence agreement (“Agreement”) is made on2014 (“Effective Date”) between:

- I. **Bloomsbury Publishing Plc.** of registered address 50 Bedford Square, London WC1B 3DP, England, United Kingdom and being a company incorporated in England and Wales under company number 01984336 together with its assigns and successors in title (herein after referred to as “**Publisher**”); and
- II. **[Institution Name]**, residing at [address] (hereinafter referred to as “**Licensee**”)

Background

- A. The Publisher has created internet based materials entitled ‘**BLOOMSBURY COLLECTIONS**’ and all intellectual property rights therein are owned by or duly licensed to the Publisher;
- B. The Licensee wishes to license certain rights in the Materials (as hereinafter defined) as further provided herein for the benefit of the [Institution Name].

IT IS AGREED AS FOLLOWS

1. Definitions and Interpretation

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

“Activation Date” means the first date when the Licensee will first be permitted to access the Licensed Works in accordance with the terms and conditions of this Agreement and as stated in Schedule 1.

“Authentication” means the process of verifying a user’s identity and authorization to access a network or its resources (for example via IP authentication, secure passwords or secure proxy server).

“Authorized Users” means individuals who are authorized by the Licensee to access the Licensee’s information services available through the Licensee’s Secure Network whether from a computer or terminal on such Secure Network or offsite to a valid IP address on the Secure Network; for Higher Education, college and school libraries, Authorised Users are defined as current students, faculty, staff, visiting scholars and walk-in library patrons, and does not include corporate affiliates, bookstore employees or alumni; for public libraries Authorised Users are defined as current library patrons and staff who are physically present on the Licensee’s premises.

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

“Educational Use” means for the non-Commercial Purpose of research, teaching and private study.

“Fee” means the fee as set out in Schedule 1. Such Fee shall fall due and payable by the Licensee within 45 days on receipt by the Licensee of the Publisher’s invoice. The Fee is shown exclusive of VAT which will be payable in addition by the Licensee where applicable.

“Intellectual Property Rights” means any and all patents, trademarks, trade names, domain names, design rights, copyright, moral rights, database 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 Material” means the material listed in Schedule 1.

“Secure Network” means a network which is only accessible to Authorised Users by Authentication.

- 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. Licence Grant

- 2.1 The Publisher hereby grants to the Licensee, subject to and in accordance with the terms of this Licence, a non-exclusive and non-transferable licence in perpetuity to access and use the Licensed Material and to permit the Licensee to grant access to its Authorised Users to use the Licensed Material via Secure Authentication for Educational Use, subject to the terms and conditions of this Agreement. .
- 2.2 In consideration for the licensing of the Licensed Material pursuant to Clause 2.1, the Licensee undertakes to pay and/or ensure the Licensee’s governing body pays to the Publisher the Fee.
- 2.3 The Publisher and its agents reserve the right to charge the Licensee an annual access and maintenance fee.

3. Permitted Uses

- 3.1 The Licensee may allow Authorised Users to:
 - 3.1.1 access the Licensed Material only by Secure Authentication in order to search, retrieve, display and view the Licensed Material;
 - 3.1.2 print out or electronically save up to [10%] of any publication forming part of the Licensed Material for personal research and private study purposes only;
 - 3.1.3 supply to a user authorised by another library (whether by post, fax or secure electronic transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing) a single copy of an electronic original of an individual document, provided that such supply is not done in a manner or magnitude that would replace the receiving library’s own purchase of the Licensed Materials;
 - 3.1.4 transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts (in qualitative and/or quantitative terms) of the Licensed Materials for personal Educational Use but in no case for re-sale, provided that such supply is not done in a manner or magnitude that would replace the receiving library’s own purchase of the Licensed Materials. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorized User’s own scientific, scholarly and educational works;
 - 3.1.5 display, download and print parts of the Licensed Material for the purpose of promotion of the Licensed Material, testing of the Licensed Material or for training Authorised Users;

- 3.1.6 publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, workshop or other such similar activity;
 - 3.1.7 make such copies of training material and network such training material as may be required for the purpose of using the Licensed Material in accordance with this Agreement;
 - 3.1.8 store any MARC Records provided by the Publisher, and load these into the Licensee's public access catalogue, or a shared catalogue.
- 3.2 This Licence shall be deemed to complement and extend the rights of the Licensee and Authorised Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 or like legislation outside the UK and nothing in this Licence shall constitute a waiver of any statutory rights held by the Licensee and Authorised Users from time to time under these Acts or any amending legislation.

4. Restrictions

4.1 Save as provided herein, the Licensee and Authorised Users may not:

- 4.1.1 sell or resell the Licensed Material unless the Licensee or an Authorised User has been granted prior written consent by the Publisher to do so;
- 4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear;
- 4.1.3 alter, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this Agreement. For the avoidance of doubt, no alteration of the words or their order is permitted;
- 4.1.4 display or distribute any part of the Licensed Material 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 unless permitted in this Agreement; or
- 4.1.5 use all or any part of the Licensed Material for any Commercial Purpose or for any purpose other than Educational Use.
- 4.1.6 perform automated searches or scripts on the Publisher's platform which are likely to burden the Publisher's servers
- 4.1.7 download all or parts of the Licensed Materials in a systematic manner.

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

5. Responsibilities of the Publisher

5.1 The Publisher agrees:

- 5.1.1 to make the Licensed Material available to the Licensee and Authorised Users from the Effective Date;
- 5.1.2 to use all reasonable endeavours to make the Licensed Material available to the Licensee and Authorised Users at all times and on a twenty four hour basis, save for routine maintenance, and to restore access to the Licensed Material as soon as possible in the event of an interruption or suspension of the service;
- 5.1.3 to endeavour to provide for customer support services to Authorised Users via email or phone, including answering email inquiries relating to the use, functionality and content of the Licensed Material;

- 5.1.4 to use all reasonable endeavours to ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Agreement;
 - 5.1.5 make statistics regarding the Licensee's usage of the Licensed Materials by Authorized Users available for download, in conformance with the Codes of Practice for Project COUNTER.
- 5.2 The Publisher reserves the right at any time to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish or any item or part of an item for which the Publisher has reasonable grounds to believe it infringes an intellectual property right or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Licensee of such withdrawal.

6. Responsibilities of Licensee

6.1 The Licensee agrees to:

- 6.1.1 issue passwords or other access information only to Authorised Users and use all best efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;
 - 6.1.2 use reasonable efforts, including without limitation by use of Authentication, to ensure that only Authorised Users are permitted access to the Licensed Material;
 - 6.1.3 use reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Agreement; and
 - 6.1.4 use reasonable efforts to monitor compliance with the terms of this Agreement and notify the Publisher immediately and provide full particulars on becoming aware of any of the following (a) any unauthorised access to or use of the Licensed Material or unauthorised use of any of Licensee's password(s); or (b) any breach by an Authorised User of the terms of this Agreement. Upon becoming aware of any breach of the terms of this Agreement, 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.
- 6.2 The Licensee undertakes to the Publisher that the computer systems through which the Licensed Material will be used are configured, and procedures are in place, to prohibit access to the Licensed Material by any person other than an Authorised User, that it shall inform the Authorised Users about the conditions of use of the Licensed Material, and that during the term of this Agreement, the Licensees will make best efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.
- 6.3 The Licensee will provide the Publisher with all identifying information, including IP address ranges, relating to the Licensee and its Authorised Users necessary to enable the Licensor to set up and activate the Licensee's subscription to the Licensed Materials. The Licensee acknowledges that access to the Licensed Materials under this Agreement is conditional upon the Licensee providing the Publisher with this information. The Licensee will notify the Licensor promptly following any additions, deletions or other alterations to the information supplied
- 6.4 This Clause shall survive termination of this Agreement for any reason.

7. Fee

The Publisher will invoice Licensee for the Fee payable directly.

8. Term and Termination

- 8.1 This Agreement shall commence from the Effective Date and, unless terminated earlier as provided for in this Clause 8, will continue in full force and effect in perpetuity.
- 8.2 In the event that the Licensee wishes to terminate this Agreement, the Licensee should notify the Publisher in writing and the termination will become effective thirty days after receipt of the written notice.
- 8.3 In the case of termination of this Licence (except for a material breach by the Licensee of its obligations under this Licence), the Publisher will provide the Licensee and its Authorised Users with access to and use of the Licensed Material, provided that the Licensee agrees to continue to restrict access to Authorised Users via secure means, and that all such access is subject to the restrictions specified in Clause 6; access will be provided either by one or more of the following options, without charge,:
- i) supplying archival copies of the same Licensed Material to the Licensee in an electronic medium mutually agreed between the parties; and
 - ii) supplying archival copies of the same Licensed Material to a central archiving facility operated on behalf of the UK HE/FE community or other archival facility.
- 8.4 Any party may terminate this Agreement at any time on the material breach or repeated other breaches 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 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.
- 8.5 Upon termination of this Agreement by the Publisher due to a material breach or repeated other breaches by the Licensee, the Publisher shall cease to authorise on-line access to the Licensed Material by the Licensee and Authorised Users, and the Licensee shall destroy all files, data & software derived from the terminated service.
- 8.6 Publisher reserves the right to withdraw access to the Licensed Material in the event of the detection of abuse of the Licensed Material.
- 8.7 If rights in all or any part of the Licensed Materials are assigned to another publisher, the Publisher shall use its reasonable endeavours to ensure that the terms and conditions of this Licence are maintained.

9. Acknowledgement and Protection of Intellectual Property Rights

- 9.1 The Licensee acknowledges that, other than the licence granted pursuant to clause 2.1 hereof, all Intellectual Property Rights in the Licensed Material are the property of the Publisher or duly licensed to the Publisher and that this Agreement does not assign or transfer to the Licensee any right, title or interest therein except for the right to access and use the Licensed Material in accordance with the terms and conditions of this Agreement.

10. Representation, Warranties and Indemnification

- 10.1 The Publisher warrants to the Licensee that the Licensed Material and all Intellectual Property Rights therein are owned by or licensed to the Publisher and that the Licensed Material used as contemplated in this Agreement does not infringe any Intellectual Property Rights of any natural or legal person. Subject to clause 10.5, the Publisher agrees that the Licensee shall have no liability and the Publisher will indemnify, defend and hold the Licensee harmless against any and all claims,

- damages, damages, awards, penalties, or injuries incurred, legal fees and costs incurred by the Licensee in defending against any third party claim of Intellectual Property Rights infringements with respect of the Licensee's or Authorised Users' use of the Licensed Material, provided that: (1) the use of the Licensed Material has been in full compliance with the terms and conditions of this Agreement; (2) the Licensee provides the Publisher with prompt notice of any such claim or threat of claim on becoming aware of such claim(s); (3) the Licensee co-operates fully with the Publisher in the defence or settlement of such claim; and (4) the Publisher has sole and complete control over the defence or settlement of such claim.
- 10.2 The Publisher reserves at their sole discretion the right to change the presentation, user facilities and/or availability of the whole or parts of the Licensed Material and to make changes in any software used to make the Licensed Material available; the Publisher shall notify representatives of the Licensee who have signed up to receive updates of any substantial changes in presentation of the Licensed Materials.
- 10.3 While the Publisher has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Material, the Publisher makes no representation and gives no warranty express or implied with regard to the information contained in or any part of the Licensed Material including (without limitation) the fitness of such information or part for any purposes whatsoever and the Publisher accepts no liability for loss suffered or incurred by the Licensee or Authorised Users as a result of their reliance on the Licensed Material.
- 10.4 The Licensee agrees to notify the Publisher immediately, provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Material and do all things reasonably required to assist the Publisher in such claims. It is expressly agreed that upon such notification, or if the Publisher becomes aware of such a claim from other sources, the Publisher may remove such work(s) from the Licensed Material and in such event the Publisher shall serve written notice thereof on the Licensee. Failure to promptly report in writing knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement.
- 10.5 Nothing in this Agreement shall make the Licensee liable for breach of the terms of this Agreement by any Authorised User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
- 10.6 Save as provided for in Clause 10.1, neither the Licensee nor the Publisher will be liable to the other in contract or negligence or otherwise for (i) any special, indirect, incidental, punitive or consequential damages (ii) loss of direct or indirect profits, business, goodwill, data, contracts, revenue or anticipated savings or for any increased costs or expenses. Without prejudice to the indemnity in clause 10.1, the Licensee agrees that the entire liability of the Publisher to the Licensee or Authorised Users arising out of any kind of legal claim (whether in contract, tort, by statute or otherwise) in any way connected with the use or inability to use the Licensed Materials shall be the refund of any Fees paid hereunder.
- 10.7 The Licensee shall defend, indemnify, and hold the Publisher harmless against all claims, suits, proceedings, losses, liabilities, and damages (including costs, expenses, and reasonable attorneys' fees) arising from (i) any unauthorised use or dissemination of the Licensed Materials by the Licensee or Authorised Users and (ii) any violation of this Agreement or of any third-party's rights by the Licensee or Authorised Users, including but not limited to infringement of any Intellectual Property Rights, violation of any proprietary rights and invasion of any privacy rights.
- 10.8 No party limits its liability for (i) death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement; and (ii) its own fraud or that of its employees or agents in the course of their engagement.

11. Force Majeure

- 11.1 Either party's failure to perform any term or condition of this Agreement as result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, technical, telecommunications or Internet failures or damages to or destruction of any network facilities, failure of electronic or mechanical equipment or communication lines, unauthorised access, theft, fire or operator errors ("Force Majeure")) shall not be deemed to be, or to give rise to, a breach of this Agreement.
- 11.2 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.
- 11.3 If the Force Majeure Event prevails for a continuous period of more than two months, the party not affected by the Force Majeure Event may terminate this Agreement by giving 14 days' written notice to the other party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

12. Assignment

- 12.1 Licensee may not assign this Agreement nor any of the rights and obligations under it without first obtaining the prior written consent of the Publisher. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Agreement and agrees to be bound to all the terms of this Agreement.

13. Governing Law and Dispute Resolution

- 13.1 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 exclusive jurisdiction of the English courts.

14. Notices

- 14.1 All notices required to be given under this Agreement shall be given in writing in English and sent by courier, or special 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 all such notices shall be deemed to have been received three (3) days after the date of posting in the case of special delivery or despatch in the case of courier:

if to the Licensee: [Department, Name and address of the Institution]

if to the Publisher: Bloomsbury Publishing Plc. 50 Bedford Square, London WC1B 3EF and copy to Legal Department, Bloomsbury Publishing Plc. 50 Bedford Square, London WC1B 3EF.

15. General

- 15.1 This Agreement and its Schedules constitute the entire agreement between the parties relating to the Licensed Material 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.
- 15.2 Schedule 1 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 Schedule.

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

15.4 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.

Agreed:

For and on behalf of BLOOMSBURY PUBLISHING PLC:

Signed by:

PRINT NAME:

Position:

for and on behalf of [Name of Institution]:

Signed by:

PRINT NAME:

Position:

Schedule 1: LICENSED MATERIALS, FEE AND PAYMENT TERMS

Licensed Materials: Bloomsbury Collections

[List of Collections licensed]

Fee and Payment Terms:

The Licensee will pay the Publisher the applicable Fee (plus VAT where applicable) as agreed with the Publisher. Each applicable Fee shall be due and payable 45 days after the receipt by the Licensee of a suitable invoice for such fee from the Publisher.

Annual Maintenance/Technology Fee (applicable to Perpetual Access purchases):
£250 (\$400)

Activation Date: