

## The CLA Education Licence

### Terms and Conditions

[Draft version showing impact of ECL authorisation]

### Introduction

This Licence records the terms on which CLA grants a licence to Educational Establishments in the Kingdom to reproduce extracts from published material in which copyright subsists.

### 1. DEFINITIONS

1.1 In this Licence, the following meanings apply:

Authorised Persons:

(i) in respect of Paper Copies: all students (and, in the case of students aged 16 and under, their parents), teaching and other staff (whether temporary or permanent), and governors of the Licensee;

(ii) in respect of Digital Copies: all those individuals mentioned in (i) above who are permitted by the License to have access to the Secure Network;

CCC Electronic-Rights Works:

those works ~~published by a Participating US Publisher listed on~~ identified as such -by the search functionality of CLA's website or other electronic means controlled by CLA

~~CLA's website as being available for digital use or re-use;~~

Certificate:

the certificate issued by CLA to confirm issue of the Licence to the Licensee;

CLA:

The Copyright Licensing Agency Limited;

CLA's website:

cla.co.uk or such other site as may be notified to the Licensee. A reference to a list or other information on or accessed via CLA's website or other electronic means controlled by CLA shall include both any such list or information which is stated to be of general application to all CLA licences and any stated to apply specifically to the CLA Education Licence;

Commencement Date:

the date noted on the first Certificate issued by CLA to the Licensee;

Course of Study:

any whole course of study or any module or segment of a student's studies which is normally regarded by the Licensee as a discrete and self-contained unit;

#### Digital Copies:

either electronic copies of Material Licensed for Scanning, in whole or part, or copies made in the course of, or as a result of, the access or use by Authorised Persons of Digital Material and which, in both cases, are direct unaltered copies of the work copied or copies retyped verbatim and are made in accordance with the terms of the Licence;

#### Digital Material:

still images and text from publications created and distributed in electronic form ~~published by a Participating Digital Material Publisher~~ and Website Material except Excluded Material. For the avoidance of doubt, material other than still images and text is not included in the Licence nor is any material which is only referred to in, or can only be accessed by following an external link, in Website Material or in an electronic publication ~~of a Participating Digital Material Publisher~~ where that material is not itself included in the Website Material or such electronic publication;

#### Educational Establishments:

schools, colleges, pupil referral centres, resource centres and other educational institutions with the exception of higher education establishments;

#### Excluded Material:

those categories of work and individual works identified on or via CLA's website or other electronic means controlled by CLA and which may be amended periodically by CLA. Any such amendment shall be posted on CLA's website and shall take effect on the next Quarter Day. For the avoidance of doubt, categories of work or individual works may be excluded from Material Licensed for Photocopying, from Material Licensed for Scanning or from Digital Material or any combination thereof;

#### FTE Student Total:

the total number of full time equivalent students (to include all full time and part time students) of the Licensee as notified to CLA either by the representative data source as posted on CLA's website such as but not limited to the Data Service, Scottish Funding Council, Department for Education or, if no representative body exists which provides this information, by the Licensee itself calculated in agreement with CLA;

#### Licence:

the licence granted by clause 2;

#### Licence Fee:

the product of the FTE Student Total multiplied by the applicable per student rate as notified to the Licensee at least three (3) months before the start of the Licence Year or, if greater, the minimum fee (if any) as shown on CLA's website as applicable to Educational Establishments. The rate for

subsequent years will increase automatically by the percentage increase in the Retail Price Index over the preceding year as published in the October preceding the start of the Licence Year;

Licence Year:

unless advised to the contrary, 1 April in any one year to 31 March in the succeeding year or 1 August in any one year to 31 July in the succeeding year depending on the type of educational establishment, in each case the Commencement Date to be specified on the Certificate;

Licensed Copies:

Paper Copies or Digital Copies as appropriate;

Licensed Material:

any and all Material Licensed for Photocopying, Material Licensed for Scanning and Digital Material;

Licensee:

any Educational Establishment in respect of which the appropriate Licence Fee has been paid;

Material Licensed For Photocopying:

original published editions of books, journals, magazines and other periodicals published in hard copy form ~~in the Photocopying Mandate Territories~~ in which copyright or any database right subsists, except Excluded Material;

Material Licensed For Scanning:

original published editions of books, journals, magazines and other periodicals in which copyright or any database right subsists published in hard copy form ~~in the Scanning Mandate Territories and CCC Electronic Rights Works, and in both cases,~~ Paper Copies derived there from by the Licensee except Excluded Material;

Paper Copies:

photocopies onto paper from original Material Licensed for Photocopying (and copies made therefrom), paper printouts of Digital Copies and photocopies thereof and paper printouts of Third Party Digital Material but, in all cases, excluding any copy in electronic form;

~~Participating Digital Material Publisher:~~

~~a Rightsholder who has confirmed to CLA that it is willing to permit the use under the Licence of Digital Material in which the Rightsholder owns or controls the copyright and who has not withdrawn such permission. The list of Participating Digital Material Publishers shall be available on CLA's website and may be amended periodically by CLA. Any such amendment shall be posted on CLA's website and shall take effect on the next Quarter Day after such amendment is first posted;~~

~~Participating US Publisher:~~

~~a publisher participating in the agreement between the Copyright Clearance Center (CCC) and CLA as listed on CLA's website;~~

**Photocopying Mandate Territories:**

~~the United Kingdom, Argentina, Australia, Austria, Barbados, Belgium, Canada (including Quebec), Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, India, Ireland, Italy, Jamaica, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Singapore, South Africa, Spain, Sweden, Switzerland, Taiwan, Trinidad and Tobago, Turkey and the United States of America. This list may be amended periodically by CLA. Any such amendment shall be posted on CLA's website and shall take effect on the next Quarter Day after such amendment is first posted;~~

**Prescribed Rate:**

the rate of interest prescribed from time to time pursuant to the Late Payment of Commercial Debts (Interest) Act 1998;

**Quarter Day:**

1st January, 1st April, 1st July or 1st October;

**Rightholder:**

any person owning or controlling the relevant rights comprising all or part of the copyright in any Licensed Material;

**Scanning Mandate Territories:**

~~the United Kingdom, Australia, Canada (including Quebec), Denmark, Finland, France, Hong Kong, Iceland, Ireland, New Zealand, Norway, Singapore, South Africa, Spain, Switzerland, Turkey and the United States of America. This list may be amended periodically by CLA. Any such amendment shall take effect on the next Quarter Day after such amendment is first posted;~~

**Secure Network:**

a network (whether a standalone network or a virtual network within the Internet) which is only accessible to those Authorised Persons who are approved by the Licensee for access to the Secure Network, whose identity is authenticated at the time of login (and periodically thereafter) in a manner consistent with current best practice, and whose conduct is subject to regulation by the Licensee;

**Website Material:**

material in the form of still images and text posted on websites, limited to those identified as included in the licence repertoire by the search functionality of CLA's website or other electronic means controlled by CLA~~material in the form of still images or text created and posted on Participating Digital Material Publishers' websites except Excluded Material.~~

All references in this Licence to the singular may include the plural and vice versa as the context so requires and references to any gender shall include both genders.

## 2. GRANT OF LICENCE

CLA hereby grants on the terms and conditions herein and for educational and teaching purposes only the non-exclusive right to the Licensee, and, as appropriate, Authorised Persons to:

2.1 make, or permit the making of, Paper Copies;

2.2 distribute, or permit the distribution of, Paper Copies to Authorised Persons;

2.3 scan Material Licensed for Scanning to produce Digital Copies provided that, subject to clause 7, the Licensee shall use reasonable endeavours to identify whether it subscribes to a digital version of the work in question and, if so, to use that digital version instead of creating a Digital Copy by scanning;

2.4 create Digital Copies by retyping extracts of Licensed Material onto a computer;

2.5 make available, or permit the making available of, Digital Copies, in both cases solely within the Secure Network;

2.6 make copies, or permit the making and distribution of, Accessible Copies in accordance with clause 8;

2.7 For the avoidance of doubt, students accessing the Secure Network remotely within the United Kingdom for the purposes of their studies may open and view a Digital Copy and print out a single paper copy therefrom, but students aged sixteen and under may only make Digital Copies under the Licence under the direction of a member of the teaching staff as part of formal teaching or school activities. Students outside the United Kingdom may receive Licensed Copies but nothing herein shall be deemed to authorise any further copying and each overseas student shall be responsible for complying with all local laws.

## 3. DURATION

The Licence shall come into effect on the Commencement Date and shall continue from year to year unless and until determined in accordance with clause 12.

## 4. PAYMENT

The Licence Fee, together with VAT thereon, is payable within 30 days from the date of an invoice from CLA. CLA reserves the right to charge interest at the Prescribed Rate on any payment after such date.

## 5. CONDITIONS APPLYING TO THE CREATION AND USE OF LICENSED COPIES

5.1 The number of Paper Copies of any one item of Licensed Material taken at any one time shall not exceed the number needed to ensure that there is one Paper Copy for each member of the teaching staff and each student in the class, lesson or course of study within the academic year for which the Paper Copies are intended. Where the Paper Copies are intended for a meeting of Authorised Persons, the number of Licensed Copies shall not exceed the numbers attending that meeting.

5.2 The Licensee shall ensure that Licensed Copies do not exceed either singly or in aggregate the greater of five (5) per cent of any published edition, or:

(i) in the case of a book, one complete chapter;

(ii) in the case of an issue of a serial publication, or a set of conference proceedings, one whole article;

(iii) in the case of an anthology of short stories or poems, one short story or poem not exceeding ten (10) pages in length;

(iv) in the case of a published report of judicial proceedings, the entire report of a single case.

For Digital Material that is not made available or otherwise structured as a conventional book, journal, magazine or other periodical or where the Digital Material is not divided into distinct sections identifiable as the equivalent of a book chapter or of an article in a journal, magazine or other periodical, the Licensee shall ensure, as far as is reasonably practicable, that copying is limited to extracts that are equivalent to the limits set out above, at all times bearing in mind clause 5.5, in particular the requirement that no copying shall substitute for the purchase of original Licensed Material.

5.3 No systematic or repeated copying of the same Licensed Material or part thereof for any one class, lesson or course of study within an academic year beyond the limits set out in Clause 5.2 above is permitted.

5.4 The Licence does not extend to the making of Licensed Copies outside of the United Kingdom.

5.5 With the exception of any part of Website Material that is 'free-to-view', the Licensee must own or have subscribed, to, an original or a copy on which it has paid a copyright fee (which shall include material supplied in either hardcopy or electronic form by a supplier licensed by CLA to provide such a service such as, but without limitation, document delivery and press cuttings suppliers) of any Licensed Material it copies, scans or uses under the terms of this Licence). The making of Licensed Copies shall not directly or indirectly substitute for the purchase of original Licensed Material or for the commissioning, reproduction, hire or any other use of an original artistic work within Licensed Material.

5.6 Paper Copies made in each Licence Year may be stored and used throughout the Licence Year and for the remainder of any academic year beginning within the Licence Year, but must then be destroyed unless the copies are in a satisfactory condition. Any copies retained for a subsequent academic year must be rereported in any data collection exercise.

## 6. FURTHER CONDITIONS APPLYING TO THE CREATION AND USE OF DIGITAL COPIES

6.1 Except as may be permitted by this clause, by clause 8 or by statute, the Licensee shall not edit, amend, manipulate, add to or delete from Digital Copies nor shall it authorise the same, and no digital manipulation, morphing, colour or shade adjustment or otherwise may be made of Digital Copies or Digital Material under the Licence.

6.2 Digital Copies may not be placed on the publicly accessible internet or be linked either directly or indirectly by hypertext links (or the like) to or from any external or third party website. Digital Copies may not be stored in open resources (such as, but not limited to electronic reserves, digital libraries or institutional repositories) to the extent that they are accessible to members of the public who are not Authorised Persons.

6.3 Except as permitted by the Licence, no other copying, dissemination, publication, communication or making available to the public, repackaging or distribution, in any form of Digital Copies, in whole or in part, is permitted.

6.4 Where any work (including an artistic work) appearing within Material Licensed for Scanning or Digital Material incorporates, or has adjacent to it, the identity of the author or creator of the work, no Digital Copy of that work shall be made unless the Digital Copy incorporates the identity of such author or creator.

6.5 Without prejudice to its obligations set out in Clause 6.4, the Licensee shall use reasonable endeavours to include, where practicable, in a prominent place in all Digital Copies (or have displayed before viewing) a copyright notice containing at least the identity of the author or creator of the literary or artistic work and the title of the work from which it is made; where material to be scanned, copied, accessed or used already contains a copyright notice placed by a Rightsholder on a document, the Licensee shall not be required to add a further notice to the document.

6.6 The Licensee will delete from the hard drives of all its central and local servers any and all Digital Copies which may be stored there upon notice from CLA that the copyright holder believes that the Licensed Material contained in the Digital Copies infringes copyright or is or may be defamatory, obscene or otherwise unlawful.

6.7 Where extracts of Licensed Material are retyped onto a computer pursuant to clause 2.4, the Licensee shall ensure that the retyped extract is a verbatim copy of the Licensed Material and includes the identity of the author and title of the work from which it is extracted.

6.8 Notwithstanding anything to the contrary, extracts of Licensed Material and other material generated by teaching staff or students may be combined, parts may be blanked out, relevant parts may be selected, translated or adapted as a pedagogic exercise only and illustrations or photographs may be dis-embedded provided in all instances the identity of the author and the title of the original source are clearly identified and the moral rights of the author are observed.

6.9 Digital Copies may not be stored on a server, or systematically indexed, with the intention of creating an electronic library or similar educational information resource of extracts of Licensed Material except that:

6.9.1 Digital Copies may be stored where necessary for technical or back-up purposes or where the retention of such Digital Copies may be required by law;

6.9.2 Digital Copies may be stored on a server and/or systematically indexed solely for the purposes of, and for the duration of, the class, lesson or course of study for which the Digital Copy was made and intended to be used and shall, in any event, be deleted at the end of the academic year in which the Digital Copy was made;

6.9.3 Notwithstanding clause 6.9.2, if a Digital Copy is required for the subsequent academic year, it may be retained provided it continues to be reported in any data collection exercise. If not required for the subsequent academic year, but likely to be required subsequently, it may be retained provided it is not made available other than to the staff responsible for the management of digital learning resources or similar and if used again must be reported in any data collection exercise.

6.10 The Licensee may subcontract the making of Digital Copies to third parties, provided that:

6.10.1 the Licensee takes all reasonable steps to ensure that any such third party operates appropriate management and security procedures so as to ensure compliance with the terms of this Licence;

6.10.2 a record is kept of all such subcontracts, and the Digital Copies made thereunder, and that such record is provided on request to CLA;

6.10.3 all such subcontracts require the sub-contractor to comply, as appropriate, with the conditions of the Licence relating to Digital Copies and which, in particular, prohibit the sub-contractor from retaining any Digital Copy (or any intermediate copy involved in the production of the same) and shall include a clause conferring on CLA the right to take action directly against any such sub-contractor pursuant to the Contracts (Right of Third Parties) Act 1999;

6.10.4 the use of a sub-contractor located outside of the United Kingdom shall be deemed not to be a breach of clause 2.7

## 7. FURTHER CONDITIONS APPLYING TO THE USE OF CCC ELECTRONIC-RIGHTS WORKS

7.1 Notwithstanding clause 2.3, the Licensee may only scan, or permit the scanning of, hard copies of a CCC Electronic-Rights Work under the Licence where the same is not reasonably available in digital form for the Licensee to purchase whether by subscription or otherwise.

7.2 The use of CCC Electronic-Rights Works is subject to such special limitations or other terms (if any) as are applicable to any individual work as identified on CLA's website.

## 8. PERSONS SUFFERING FROM A PRINT DISABILITY

8.1 The provisions of this clause shall only apply where an Authorised Person is visually impaired or otherwise disabled and by reason of such visual impairment or disability is unable to read or access a Licensed Copy made under the provisions of this Licence.

8.2 Notwithstanding the provisions of clause 5.2 the Licensee may make and supply a copy (an "Accessible Copy") of part or the whole of any work within Licensed Material in any alternative format that is more accessible to an Authorised Person (as described in 8.1), whether in digital or audio format, large or small print copies or embossed copies (whether produced in Moon or Braille or otherwise) or in other formats on, and subject to, the following conditions:

8.2.1 the Licensee must have lawful possession or lawful use of an original copy of any work from which it makes an Accessible Copy;



8.2.2 the Licensee may only make an Accessible Copy of a work if and to the extent that such work is not commercially available in a form accessible to the Authorised Person for whom the Accessible Copy is made;

8.2.3 each Accessible Copy that exceeds the limits set out in clause 5.2 shall contain:

(a) a statement that it is a copy of the original work made under a CLA Licence for the personal use of a visually impaired or a disabled person and that it may not be further copied (including any electronic copying or transmission) or dealt with without permission or save as may be permitted by law;

(b) the title, as well as the name of the author and publisher, of the original work and the published edition from which it is copied;

8.2.4 the Licensee may only charge for the supply of an Accessible Copy an amount which does not exceed the cost of making and supplying it;

8.2.5 any Accessible Copy produced in a digital format may include facilities for navigating around the Accessible Copy and any such other facilities or changes (such as enlargement, reduction or colour selection of the text or illustrations) as are necessary to enable the Authorised Person for whom the Accessible Copy is made to access the Accessible Copy provided that: (a) such changes do not amount to a derogatory treatment of the work; (b) no other digital manipulation of the work is made whether by way of optical character recognition, morphing, colour or shade adjustment beyond what is necessary to make the Accessible Copy accessible to the Authorised Person for whom the Accessible Copy is made;

8.2.6 that the Accessible Copy is only to be used for the benefit of Authorised Persons.

8.3 An Authorised Person is to be regarded as visually impaired or disabled for the purposes of this clause if he would be regarded as a “visually impaired person” in accordance with s.31F (9) of the Copyright, Designs and Patents Act 1988, or, as appropriate, as a disabled person in accordance with s.6 of the Equality Act 2010.

## 9. NOTIFICATION TO LICENSEE’S STAFF

9.1 The Licensee shall ensure that all its staff (and particularly those with responsibility for reprographic and scanning equipment) are made aware of the terms and conditions of the Licence, including the exclusion of certain works and categories of work, and shall take all reasonable action to ensure that all Authorised Persons comply with such terms and conditions. In particular, the Licensee shall ensure where reasonably practicable that copies of any user guidelines, and other relevant support materials as supplied by CLA or made available on CLA’s website are displayed next to all fixed-location photocopying and/or scanning machines, and next to any and all other reprographic equipment, and are drawn to the attention of all Authorised Persons.

9.2 The Licensee shall appoint an Authorised Person as a CLA Licence Co-ordinator to liaise with CLA in connection with the administration and implementation of the Licence.

## 10. DATA COLLECTION

10.1 CLA may, no more than once in each year, require the Licensee to participate in a data collection exercise to identify the type of photocopying and scanning of Licensed Material and the use or re-use of Digital Material under the Licence which will assist CLA in distributing the Licence Fee to authors, artists and publishers.

10.2 The data collection exercise may, without limitation, take the form of a survey or a record keeping or online reporting exercise or any combination of these, including the recording of the creation of Digital Copies, in accordance with any guidelines on data collection on CLA's website.

10.3 If selected by CLA to participate in a data collection exercise, the Licensee shall co-operate with CLA in conducting the data collection exercise and undertakes to ensure that its staff comply with its obligations under this clause.

10.4 CLA undertakes not to disclose any information obtained as a result of any data collection except:

10.4.1 as required by a court or other authority of competent jurisdiction; or

10.4.2 in aggregated form from which the identity of the Licensee cannot directly be identified.

10.5 Any survey or record-keeping exercise must include all Accessible Copies.

## 11. INDEMNITY

11.1 In this clause "Qualifying Claim" shall mean any complaint made in writing that the Licensee acting in pursuance of this Licence has infringed copyright and/or database right in Licensed Material or in the typographical arrangement of the published edition in which Licensed Material is contained.

11.2 In the case of any Qualifying Claim CLA will indemnify the Licensee in respect of all reasonable legal costs, expenses and damages awarded against or incurred by the Licensee including any ex-gratia payments made with the prior written consent of CLA, provided the Licensee has complied with the terms of this Licence and has given CLA notice of any Qualifying Claim within ten (10) working days or, in the case of a Claim Form, within five (5) working days of the same having been received by the Licensee.

11.3 The indemnity conferred by this clause shall not apply:

11.3.1 if the Licensee is in material breach of any term of the Licence; or

11.3.2 during any period, or in respect of matters arising during such period, which the Licence is in suspense pursuant to clause 12.

11.4 CLA will take over responsibility for any negotiations for the settlement of any Qualifying Claim and if such Qualifying Claim cannot be resolved by negotiation CLA shall assume full responsibility for the conduct of the defence of such Qualifying Claim. The Licensee shall co-operate with CLA in this respect where reasonably requested by CLA to do so.

11.5 The Licensee shall ensure that no admission, or offer of payment or indemnity shall be made or given by or on its behalf or on behalf of CLA without CLA's written consent and shall ensure that all correspondence received in connection with a Qualifying Claim is promptly passed to CLA.

## 12. BREACH AND TERMINATION

12.1 Either CLA or the Licensee may terminate the Licence upon giving at least 30 days written notice served so as to expire at the end of each Licence Year.

12.2 Should the Licensee commit any material breach of any of the terms and conditions of this Licence and remain in such breach 14 days after receiving notice to remedy the same (where the breach is remediable) then CLA, without prejudice to any of its other rights, may by notice either terminate or suspend the terms of the Licence until CLA shall be satisfied such breaches will not recur.

## 13. GENERAL

13.1 All notices given under the Licence shall, unless otherwise specified, be in writing and be sent by first class post, in the case of the Licensee to the address shown on the Certificate, and in the case of CLA to: Barnard's Inn, 86 Fetter Lane, London EC4A 1EN (or any address notified to the Licensee by CLA), and shall be deemed to have been served on the second working day (which shall exclude weekends and English public holidays) following the date of posting.

13.2 The Licence may only be varied if such variance is acknowledged in writing on behalf of CLA and the Licensee.

13.3 The Licence is personal to the Licensee and may not be assigned or otherwise disposed of in whole or in part.

13.4 The Licence shall be governed by English law and the parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to the Licence.

13.5 The parties do not intend that any term of the Licence shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Licence.

13.6 CLA shall have the right on giving reasonable notice to the Licensee to enter the Licensee's premises to review the implementation of the Licence by the Licensee and their compliance with its terms and to inspect the procedures being used by it.

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