

Manchester University Press: Institutional, Perpetual Access Licence Agreement

THIS LICENSE IS AGREED the day of January 1

BETWEEN

Manchester University Press of Altrincham Street, Manchester, M1 7JA, UK (“the Publisher”)

And

University of California, San Diego at 9500 Gilman Drive, La Jolla, CA 92093 (‘the Licensee’)

IT IS AGREED AS FOLLOWS

1. Definitions

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

‘Authorised Users’	means individuals who are authorised by the Licensee to access the Licensee’s information services whether on-site or off-site via Secure Authentication and who are affiliated to the Licensee as a current student (including but not limited to undergraduates and postgraduates), current member of staff (whether on a permanent or temporary basis including retired members of staff and any teacher who teaches Authorised Users in the country where the Licensee is based) or contractor of the Licensee. Persons who are not a current student, member of staff or a contractor of the Licensee, but who are permitted to access the Licensee’s information services from computer terminals or otherwise within the physical premises of the Licensee [‘Walk-In Users’] are also deemed to be Authorised Users, only for the time they are within the physical premises of the Licensee. Walk-In Users may not be given means to access the Licensed Material when they are not within the physical premises of the Licensee. For the avoidance of doubt, Walk-In Users may not be given access to the Licensed Material by any
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	wireless network provided by the Licensee unless such network is a Secure Network.
'Commercial Use'	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 is deemed to constitute Commercial Use.
'Educational Purposes'	means for the purpose of education, teaching, distance learning, private study and/or research.
'Fee'	The purchase Fee set out in Schedule 1 or in new Schedules to this License which may be agreed by the parties from time to time.
'Intellectual Property Rights'	means patents, trademarks, trade names, design rights, copyright (including rights in computer software and 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'	All titles in the Manchester Ebook collection as set out in Schedule 1, published in the calendar year of this Agreement, to which the Licensee has purchased outright, as set out in Schedule 1 and additional content purchased in subsequent years, which shall be subject to an amendment to this agreement.
'Secure Authentication'	means access to the Licensed Material by UK Access Management Federation compliant technology, Internet Protocol ('IP') ranges or by a username and password provided by the Licensee or by another means of authentication agreed between the Publisher and the Licensee.
'Secure Network'	means a network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users and Walk-in Users approved by the Licensee whose identity is authenticated at the time of login and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Licensee.
'Server'	The server, either the Publisher's server or a third party server designated by the Publisher, on which the Licensed Materials are mounted and may be accessed.

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, the non-exclusive and non-transferable perpetual right, throughout the world, to give Authorised Users access to the Licensed Material via a Secure Network for Educational Purposes.
- 2.2 The Licence shall commence on the date of this Agreement and remain in effect without limit of time unless terminated under the provision of clause 7 of this License.

3. Permitted Uses

- 3.1 The Licensee may:

3.1.1 make such local temporary copies of the Licensed Material, by means of caching of all or part of the Licensed Materials, as are necessary to ensure efficient use by Authorised Users, provided that such use is subject to all the terms and conditions of this Licence, and does not result in the making available to Authorised Users of duplicate copies of the Licensed Material;

- 3.1.2 allow Authorised Users to:

3.1.2.1 access the Licensed Material from the server via the Secure Network in order to search, retrieve, display and view the Licensed Material;

3.1.2.2 electronically save parts of the Licensed Material for personal use;

3.1.2.3 print off single copies of parts of the Licensed Material;

3.1.2.4 incorporate parts of the Licensed Material in printed and electronic course packs, study packs, resource lists and virtual learning environments to be used in the course of instruction hosted on a Secure Network. Copies of such items which are under Licensee's direct control shall be deleted by the Licensee when they are no longer required for such purpose. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;

3.1.2.5 supply to an authorised user of another academic or non-profit library (whether by post, fax or secure electronic transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing), for the purposes of research or private study and not for Commercial Use, a single paper copy of an electronic original of an individual document;

3.1.2.6 provide single printed or electronic copies of individual chapters at the request of individual Authorised Users;

3.1.2.7 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;

- 3.2 This Licence shall be deemed to complement and extend the rights of the Licensee and Authorised Users under Section 107 and 108 of the U.S. Copyright Act 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 remove, obscure or modify the authors' names or Publisher's copyright notices, text acknowledging or other means of identification or disclaimers as they appear;

4.1.2 systematically make print or electronic copies of multiple extracts of the Licensed Material for any purpose other than expressly permitted by this Licence;

4.1.3 systematically distribute the whole or part of the Licensed Material to anyone other than Authorised Users;

- 4.1.4 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;
- 4.1.5 prepare derivative works or download, display or distribute any part of the Licensed Material, works based on the Licensed Material or works which combine it with any other 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 other than as permitted in this License;
- 4.1.6 use all or any part of the Licensed Material for any Commercial Use or for any purpose other than Educational Purposes; or
- 4.1.7 permit anyone other than Authorised Users to access or use the Licensed Material

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 Server via the Internet from the date of this Agreement;
- 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 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;
- 5.1.4 to provide or to make arrangements for a third party to provide an archive of the Licensed Material for the purposes of long term preservation of the Licensed Material, and to permit Authorised Users to access such archive after termination of this licence

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 copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Licensee of such withdrawal. If the withdrawn material represents more than ten per cent (10%) of the Licensed Material, the Publisher shall make a pro rata refund of part of the Fee to the Licensee, taking into account the amount of material withdrawn.

6. Responsibilities of Licensee

6.1 The Licensee agrees to:

- 6.1.1 provide all identifying information relating to the Licensee and its Authorised Users required during institutional registration and activation of access. The Licensee acknowledges that access to the Licensed Material under this Agreement is conditional upon the Licensee activating their access with the Publisher's designated third party online platform. The Licensee will amend their identifying information promptly following any additions, deletions or other alterations to the information supplied;
- 6.1.2 ~~issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;~~
- 6.1.3 use all reasonable efforts, including without limitation by use of Secure Authentication, to ensure that only Authorised Users are permitted access to the Licensed Material;
- 6.1.4 use all reasonable efforts to ensure that all Authorised Users are aware of the importance of respecting the Intellectual Property Rights in the Licensed material and to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this

Agreement and to protect the Licensed material from unauthorised use or other breach of this Licence; and

- 6.1.5 use all 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 system through which the Licensed Material will be used is 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 shall, in consideration of the rights granted under this License, pay the Fee within thirty (60) days of receipt of invoice and receipt of such payment shall be a condition of this License coming into effect. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

7. Termination

7.1 This Licence shall be terminated:

7.1.1 if the Licensee wilfully defaults in making payment of the Fee and fails to remedy such default within thirty (60) days of notification in writing by the Publisher;

7.1.2 if either party commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within sixty (60) days of notification in writing by the other party; or

7.1.3 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

7.2 On termination all rights and obligations of the parties automatically terminate except for those specified in 3.2 and 6.1.4 above.

7.3 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.

7.4 On termination of this Agreement by the Licensee due to a material breach or repeated other breaches by the Publisher, the Publisher shall provide electronic copies of the Licensed Materials to the Licensee for hosting locally on a server within the Secure Network for access by Authorised Users under the terms of clauses 3 and 4, which shall survive such termination. The Publisher shall not be obligated to return any portion of the Fee for termination by the Publisher due to the Licensee's breach pursuant to Clause 7.1.2.

8. Representation, Warranties and Indemnification

8.1 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. 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 damages, liabilities, claims, causes of action, legal fees and costs incurred by the Licensee in defending against any third party claim of Intellectual Property Rights infringements or threats of claims thereof 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; (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.

- 8.2 The Publisher reserves the right to change the presentation or user facilities and to make changes in any software used to make the Licensed Material available at their sole discretion. The Publisher will notify the Licensee of any substantial change to the Licensed Material.
- 8.3 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.
- 8.4 In no circumstances will the Publisher be liable to the Licensee for any loss resulting from a cause over which the Publisher does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, unauthorised access, theft, or operator errors.
- 8.5 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. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement.
- 8.6 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.
- 8.7 Save as provided for in Clause 8.1, 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, contracts, revenue or anticipated savings or for any increased costs or expenses.
- 8.8 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.

9. Force Majeure

- 9.1 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, telecommunications or Internet failures or damages to or destruction of any network facilities ['Force Majeure']) shall not be deemed to be, or to give rise to, a breach of this Agreement.
- 9.2 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.

10. Assignment

- 10.1 Save as permitted for under this Agreement, neither this Agreement nor any of the rights and obligations under it may be assigned by either party without obtaining the prior written consent of the other party, such consent shall not unreasonably be withheld or delayed. 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.

11. Governing Law and Dispute Resolution

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

11.2

In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise good faith efforts to resolve the dispute as soon as possible. In the event that the parties cannot, by exercise of their good faith efforts, resolve the dispute, they shall submit the dispute to informal mediation, as further described below in this paragraph. The parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute. The party invoking mediation shall give to the other party written notice of its decision to seek informal mediation, and the notice must include a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute.

12. Notices

12.1 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:

13. General

13.1 The Licensee acknowledges that Intellectual Property Rights relating to the Licensed Material are the sole and exclusive 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.

13.2 This Agreement constitutes the entire agreement between the parties relating to the Licensed Material and supersedes 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.

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

13.4 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.

As witness the hands of the duly authorised representatives of the parties the day and year below first written

For the Publisher

Name (in block capitals): [Text deleted]

Title: INSTITUTIONAL SALES MANAGER

Date: 10/01/2023

Signature: [Text deleted]

For the Licensee

Name (in block capitals) [Text deleted]

Title Associate University Librarian Scholarly Resources and Services

Date 1/17/2023

Signature [Text deleted]

SCHEDULE 1

LICENSED MATERIALS AND FEES

A schedule dated (input date) to the Agreement dated (input date) between Manchester University Press of Altrincham Street, Manchester, M1 7JA, UK ('the Publisher') and ('the Licensee')

THE LICENSED MATERIALS

Any digital book purchased on a perpetual access basis via www.manchesterhive.com