

SUBSCRIPTION AND PERPETUAL ACCESS LICENSE AGREEMENT

COMMERCIAL TERMS

- 1 **LICENSOR:** BLOOMSBURY PUBLISHING INC, [Text deleted]
YORK 10018, USA.
- 2 **LICENSEE:** University of California San Diego, whose principal offices are located at
9500 Gilman Drive, La Jolla, California 92093
- 3 **LICENSED WORK(S):** The Subscription Licensed Works and/or Perpetual Access Licensed Works set out in Schedule A (as the same may be amended from time to time in accordance with Clause 4.4 of this Agreement) and/or as set out in an invoice relating to this Agreement and/or otherwise agreed in writing (including by way of addenda signed by both parties to this Agreement).
- 4 **SITE(S):** The site(s) listed in Schedule B.
- 5 **CHARGES:** The price set out in the Licensor's or the Subscription Agent's invoices concerning (i) access to the Licensed Works and (ii) maintenance fees as set out in Annex 2, if relevant ("Maintenance Fees").
- 6 **SUBSCRIPTION AGENT OR LIBRARY SUPPLIER ("SUBSCRIPTION AGENT"):** NONE
- 7 **LICENSEE CONTACT DETAILS:**
- Name: _____ [Text deleted] _____
E-mail: _____ [Text deleted] _____
Telephone: _____ [Text deleted] _____
- 8 **GOVERNING LAW:** This Agreement will be interpreted and construed according to, and governed by, the laws of the State of California without regard to conflict of law principles that would result in the application of any law other than the law of the State of California; and the Licensee irrevocably agrees that any dispute arising out of or in connection with this Agreement will be subject to and exclusively within the jurisdiction of the United States District Court for the State of California or the Supreme Court of the State of California.

THE LICENSOR AND LICENSEE EACH ACCEPT AND AGREE TO THE TERMS OF THIS AGREEMENT.

Signed by [Text deleted]
For and on behalf of the Licensor
Name: [Text deleted]
Position: Director of Academic Publishing
University of California San Diego
Date: Apr 20 2017

Signed by [Text deleted]
For and on behalf of the Licensee
Name: [Text deleted]
Position: AWL Collection Services UCSB
Date: 4/17/17

TERMS AND CONDITIONS

1 COMMENCEMENT AND DEFINITIONS

1.1 This Agreement shall be deemed to commence on the earliest of

1.1.1 the earliest Subscription Start Date for Subscription Licensed Works; and

1.1.2 the earliest Perpetual Access Start Date for Perpetual Access Licensed Works;

and shall apply to all orders for Licensed Works placed by the Licensee which are accepted by the Licensor on or after such date. This Agreement shall continue thereafter, subject to earlier termination in accordance with its terms.

1.2 Regardless of when this Agreement commences or terminates, the Licensee and Authorized Users may not use a Licensed Work outside of the Licensed Work Term for that Licensed Work unless expressly permitted to do so by the Licensor. Any such permitted use outside the Licensed Work Term shall be subject to the terms of the Legal Notice(s) for the relevant Licensed Work(s).

1.3 Any order placed by the Licensee for access to the Licensed Works will constitute an offer by the Licensee to subscribe to or purchase the Licensed Works referred to therein subject to the terms of this Agreement. The Licensee is responsible for ensuring that the terms of its order are complete and accurate.

1.4 An order made pursuant to this Agreement shall only be deemed to be accepted when the Licensor issues a written acceptance of the order.

1.5 In this Agreement, the words or phrases defined on the front page shall have the meanings set out there and the following expressions shall have the following meanings:

"Authorized User" shall mean an individual who is authorised by the Licensee to access the Licensee's information services available through the Licensee's Secure Network and who is/are:

- Persons affiliated with the University of California, San Diego. Full and part time employees (including faculty, staff and independent contractors) and students of Licensee regardless of the physical location of such persons.
- Walk-ins. Patrons not affiliated with Licensee who are physical present at Licensee's site ("walk-ins");

"Commercial Use" shall mean use for the purposes of direct or indirect monetary reward (whether by or for the Licensee, an Authorized User, or any other person or entity) by means of sale, resale, loan, transfer, hire, or other form of exploitation of the Licensed Works. For the avoidance of doubt, neither recovery of direct cost by the Customer from Authorized Users, nor use by the Customer or Authorized Users of the Products in the course of research funded by a commercial organization shall be deemed to constitute Commercial Use;

"Concurrency Restriction"	shall mean, for each Licensed Work, respectively, the maximum number of permitted concurrent Authorized Users for that Licensed Work, if applicable, as specified in Schedule A and/or in the relevant invoice and/or as otherwise agreed in writing;
"Content-Specific License Terms"	shall mean, in relation to an article, chapter or any other portion of any Licensed Work, the specific license terms under which that material is published (for example, but not limited to, a Creative Commons license), as may be specified on the website of the Licensed Work;
"Educational Use"	shall mean the non-Commercial Use for the purposes of research, teaching and private study;
"Fair Use"	Shall mean use by the Licensee or an Authorized User conforming to Paragraphs 107 of the U.S. Copyright Law as amended from time to time.
"Initial Year"	shall mean, for each Subscription Licensed Work, respectively, the 12 month period, which commences on that Licensed Work's Subscription Start Date;
"Legal Notice"	shall mean, for each Licensed Work, the legal notice and/or terms of use of that Licensed Work as specified on the website for the Licensed Work in a document linked from the footer or header of the homepage;
"Licensed Work Term"	shall have the meaning ascribed to it in Clause 2.1;
"Licensor Trademarks"	shall mean the designations BLOOMSBURY, BLOOMSBURY PUBLISHING, FAIRCHILD BOOKS AND STUDIO;
"Material"	shall mean any ebook, abstract, article, index, advertising, metadata or other material or content (including for the avoidance of doubt, any audiovisual content) contained in the Licensed Works and accessed online;
"Password(s)"	shall mean any password(s) given to the Licensee by the Licensor or created by the Licensee to access the Licensed Work(s) and any other passwords required by Authorized Users to access the Secure Network;
"Perpetual Access Licensed Work"	shall mean a Licensed Work which is purchased on a perpetual access basis, as indicated in Schedule A and/or in an invoice relating to this Agreement and/or as otherwise agreed in writing;
"Perpetual Access Start Date"	shall mean, for each Licensed Work which is a Perpetual Access Licensed Work, the date on which perpetual access starts for that Licensed Work (as may be specified in Schedule A and/or in the relevant invoice and/or as otherwise agreed in writing);

"Pre-Publication Titles"	shall mean any Licensed Works which have not yet been published as at the date on which the Licensee's order therefor is received by the Licensor;
"Secure Network"	shall mean a network (whether a stand-alone network or a virtual network within the Internet, accessible offsite) which is only accessible to Authorized Users. A cache server or any server or network which can be accessed by unauthorized users is not a Secure Network;
"Server"	shall mean either the Licensor's server or a third party server designated by the Licensor on which the Licensed Works are mounted and through which the Licensee and its Authorized Users may gain access to the Licensed Works by means of the World Wide Web.
"Subscription End Date"	shall mean, for each Subscription Licensed Work, respectively, the date on which the subscription ends for that Licensed Work (as may be specified in Schedule A and/or in the relevant invoice and/or as otherwise agreed in writing) or any subsequent date agreed in writing by the parties under the renewal process in this Agreement;
"Subscription Period"	shall mean, for each Subscription Licensed Work, respectively, a period commencing on the Subscription Start Date for that Licensed Work and expiring on the Subscription End Date for that Licensed Work and subject to renewal for successive periods in accordance with this Agreement;
"Subscription Licensed Work"	shall mean a Licensed Work which is purchased on a subscription basis, as specified in Schedule A and/or in an invoice relating to this Agreement and/or as otherwise agreed in writing;
"Subscription Start Date"	shall mean, for each Subscription Licensed Work, respectively, the date on which the subscription starts for that Licensed Work (as may be specified in Schedule A and/or in the relevant invoice and/or as otherwise agreed in writing);
"Text And Data Mining"	shall mean, in relation to any Licensed Work(s) or any portion thereof, performing a computational analysis of anything recorded in that (those) Licensed Work(s) or portion;
"Updates"	shall mean, in relation to a Perpetual Access Licensed Work, updates or supplements to that Licensed Work published by the Licensor after the Version Licensed;
"Usage Rights"	shall mean, for each Licensed Work, respectively, the permitted use of that Licensed Work, as described in Clause 2 of this Agreement;

“Version Licensed” shall mean, in respect of a Perpetual Access Licensed Work which consists of an online collection of titles and/or images and/or audiovisual material (or any combination of the aforementioned), the version of that Licensed Work specified as the “Version Licensed” in Schedule A or otherwise agreed in writing by the Licensor.

2 GRANT OF LICENSE, USAGE RIGHTS AND LIMITATIONS ON USE

2.1 In this Agreement, “Licensed Work Term” shall mean:

2.1.1 for each Subscription Licensed Work, the Subscription Period for that Licensed Work as specified on Schedule A and/or in the relevant invoice ; and

2.1.2 for each Perpetual Access Licensed Work, a perpetual term from the Perpetual Access Start Date for that Licensed Work.

2.2 For each Licensed Work, respectively, Licensor grants the Licensee the non-exclusive and non-transferable right for the Licensed Work Term and subject to any Concurrency Restriction(s) to allow Authorized Users at the Sites for the purposes of research, teaching, and private study to:

2.2.1 access the Server by means of a Secure Network in order to search the Licensed Work and to view, retrieve, and display portions thereof;

2.2.2 save and print out single copies of portions of the Licensed Work (save, for the avoidance of doubt, where specific Material is made available by the Licensor by means of streaming only);

2.2.2.1 Licensee and Authorized users may make local digital copies of portions of the Licensed Works in order to ensure efficient use by Authorized Users by appropriate browser or other software. For the avoidance of doubt, the cached copy is not a derivative work.

2.2.3 if the Licensee is an academic institution, incorporate links to the Licensed Work in electronic course packs and course management systems for use in connection with courses offered by the Licensee for academic credit provided that no person other than an Authorized User may use such links; Licensee and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of print or electronic course packs or other educational materials. Licensee and Authorized Users may use a reasonable portion of the Licensed Materials for use in print or electronic course reserves in connection with specific courses of instruction offered by the Licensee.

2.2.4 transmit links to the Licensed Work to other Authorized Users.

2.2.5 Licensee and Authorized Users may distribute single copies of individual articles or items of the Licensed Materials in print or electronic form to Authorized Users. For the avoidance of doubt, classroom handouts shall include the distribution of a copy for teaching purposes to all individual Authorized Users in a class at Authorized Sites;

2.2.6. Authorized Users may transmit to a third party, in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational or scientific research or professional use but in no case for resale or commercial purposes. It being acknowledged that such access to and use of the Licensed Works shall be subject to Fair Use and nothing in this Agreement shall constitute a waiver of any statutory rights held by the Licensee and Authorized Users from time to time under the U.S. Copyright Law as may be amended from time to time.

2.2.7 Text and Data Mining. Authorized Users may use the Licensed Materials to perform and

engage in text and/or data mining activities for academic research, scholarship, and other educational purposes and may utilize and share the results of text and/or data mining in their scholarly work and make the results available for use by others, so long as the purpose is not to create a product for use by third parties that would substitute for the Licensed Materials.

2.3 For the avoidance of doubt the Licensee and Authorized Users may not:

- 2.3.1 remove, obscure or alter Licensor's copyright notices, source acknowledgements, or other means of identification or disclaimers as they appear in the Licensed Works or reproduce any images from the Licensed Works without the accompanying copyright notices or credits as provided in the Licensed Works;**
- 2.3.2 systematically make multiple printed or electronic copies of portions of the Licensed Works for any purpose except as permitted by law or by this Agreement, or as authorized by Licensor;**
- 2.3.3 display or distribute any part of the Licensed Works on any electronic network, including without limitation, the Internet and the World Wide Web, other than the Secure Network;**
- 2.3.4 permit anyone other than Authorized Users to access or use the Licensed Works;**
- 2.3.5 use all or any part of the Licensed Works for any Commercial Use or for any use other than Educational Use;**
- 2.3.6 alter, adapt or modify the Licensed Works, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted by this Agreement. For the avoidance of doubt, no alteration of the words in any Licensed Work, or their order, is permitted;**
- 2.3.7 perform automated searches or scripts on the Licensor's platform which burden the Licensor's servers.**

The provisions of this clause 2.3 shall survive termination of this Agreement for any reason.

- 2.4 The Licensor reserves the right to suspend the Licensee's access to any or all Licensed Works which Licensor is hosting or any portion thereof in the event that it reasonably believes that one, some or all of any portion of the Licensed Works is being used otherwise than in accordance with this Agreement (e.g. without limitation, in breach of Clause 2.3.2). In such event, the Licensor will restore access only when the matter has been satisfactorily resolved.**
- 2.5 Where the Licensee is an academic library, or library which is part of a non-commercial organisation, then notwithstanding any restriction in Clause 2.3, the Licensor hereby grants the Licensee the non-exclusive right during the Licensed Work Term for each Licensed Work, respectively, to supply (whether by post, fax or secure electronic transmission, using Ariel or its equivalent, whereby the electronic file is deleted after printing) another academic library or library which is part of a non-commercial organisation, for the purposes supplying an Authorized User of the recipient library with a single copy of an electronic original of an individual document from a**

Licensed Work for the purpose of research or private study and not for Commercial Use. The Licenser may request reports in respect of the Licensee's use of the Licensed Works in such inter-library loans, provided the confidentiality of user data shall be maintained.

If the Licensee is located in the United States of America, the Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: reproduction by libraries and archives") and with guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) from time to time, the text of which is available as part of the US Copyright Office Circular 21.

- 2.6 In the event that Licenser requires Authorized Users to agree to additional terms relating to the use of the Licensed Materials (commonly referred to as "click-through" or "clickwrap" licenses), or otherwise attempt to impose terms on Authorized Users through online terms and conditions invoked by the mere use or viewing of the Licensed Materials, such terms shall not materially differ from the provisions of this Agreement. In the event of any conflict between the click-through terms or online Legal Notice terms and conditions and this Agreement, the terms of this Agreement shall prevail. For the avoidance of doubt, Authorized Users are not a party to this Agreement.
- 2.7 Nothing in this License shall in any way exclude, modify or affect any of the Licensee's rights under the Fair Use Provisions of United States and international copyright laws, or any statutory instruments made there under or any amending legislation.

3 RESPONSIBILITIES OF THE LICENSEE

- 3.1 The Licensee will provide the Licenser on request with all identifying information, including IP address ranges, relating to the Licensee and its Authorized Users necessary to enable the Licenser to set up and activate the Licensee's access to the Licensed Works. If required by the Licenser, the Licensee shall enter such information into an online registration system indicated by the Licenser. The Licensee will notify the Licenser or amend such information (where originally entered by the Licensee) promptly following any additions, deletions or other alterations to the information supplied.
- 3.2 The Licensee will obtain at its cost all telecommunications and other equipment and software (including an Internet browser and portable document file reader) together with all relevant software licenses necessary to access the Licensed Works online via the Licensee's Secure Network.
- 3.3 The Licensee shall:
- 3.3.1 use best efforts to ensure the confidentiality and security of the Password(s);
 - 3.3.2 use reasonable efforts to:
 - 3.3.2.1. ensure its Authorized Users' compliance with the terms of this Agreement;
 - 3.3.2.2. ensure that only Authorized Users are permitted access to the Licensed Works by means of the Licensee's Secure Network;
 - 3.3.2.3. restrict and control unauthorized access to the Licensed Works and to any Licensee user names, passwords or other access control mechanisms provided by the Licenser;
 - 3.3.3 Use reasonable efforts to ensure that Authorized Users are made aware that the Licensed Works are protected by copyright and the Authorized Users' use of the Licensed Works is

subject to the restrictions and obligations contained in this Agreement.

- 3.4 The Licensee will notify Licensor immediately if it becomes aware of any of the following: (a) any loss or theft of the Password(s); (b) any unauthorized use of any of the Password(s) or other access control mechanisms; or (c) any breach by an Authorized User of the terms of this Agreement.
- 3.5 The Licensee shall notify Licensor promptly (i) of the facts and circumstances surrounding any unauthorized access, possession, or use of the Licensed Works, or Licensor intellectual property, or any portion thereof; and (ii) on becoming aware of any claim by any third party that the Licensed Works infringe an intellectual property or proprietary right of any third party.
- 3.6 The Licensee acknowledges that the obligations in this Clause 3 are primarily directed at ensuring the security of the Licensed Works and that the Licensor is reliant on the Licensee fulfilling these obligations to ensure that security. Accordingly, upon the Licensor's request, the Licensee shall terminate access to the Licensed Works of any Authorized User whose actions or omissions constitute a breach of the terms of this Agreement (or would constitute such a breach if they were a party to it) and, further, upon any continuing breach of this Clause 3 by the Licensee, the Licensor reserves the right to suspend the Licensee's access to the Licensed Works, in addition to any other available remedies, pending any satisfactory resolution of said breach.

4 RESPONSIBILITIES OF LICENSOR

- 4.1 Licensor shall set up and activate the Licensee's online access to the Licensed Works following receipt of the information to be supplied by the Licensee under Clause 3.1.
- 4.2 The Licensor shall use all reasonable efforts:
 - 4.2.1 to make the Licensed Works available by means of the World Wide Web to the Licensee throughout the Licensed Work Term for each Licensed Work, respectively;
 - 4.2.2 to ensure that the Server has sufficient capacity and rate of connectivity to provide the Licensee with a quality of service consistent with current standards in the World Wide Web on-line information provision industry; and
 - 4.2.3 to restore access to the Licensed Works as soon as possible in the event of an interruption or suspension of the service.
- 4.3 The Licensor agrees to make available to the Licensee statistics regarding the Licensee's usage of the Licensed Works by Authorized Users available for download, in compliance with the Codes of Practice for Project COUNTER.
- 4.4 The Licensor reserves the right to withdraw from the Licensed Works any content that it no longer retains the right to provide or that it determines may be unlawful, defamatory, obscene, harmful, false, infringing or otherwise objectionable. If the withdrawal of any content in accordance with this Clause renders the Licensed Work substantially different in Scope and nature, the Licensor shall reimburse the Licensee a portion of the Charges paid by the Licensee, to be calculated by reference to the proportion of the overall content of the Licensed Work which the withdrawn content represents.
- 4.5 The Licensor reserves the right to suspend access to the Licensed Works with written notice in the event of any unauthorized use of the Licensed Works, in addition to any other available remedies.
- 4.6 Throughout the Licensed Work Term for each Licensed Work, Licensor shall itself provide, or arrange for the provision by a third party, of customer support services to the Licensee.

4.7 Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards of availability for information services of similar scope operating via the world-wide web. Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to server maintenance; software installation or testing; and loading or making available additional Licensed Materials as they become available. Licensor shall have no liability under this Clause in respect of unavailability because of service or equipment failure outside Licensor's control (including problems with public or private telecommunications services, or Internet nodes or facilities). In addition to the 2% down-time specified above, the Licensor may schedule brief unavailability periods, but will do so only where (1) it has given at least forty-eight (48) hour notice to Licensee, and (2) in ways and at times that minimize inconvenience to Licensee and its Authorized Users, regardless of when notice has been given.

4.8. Licensor shall provide to Licensee upon request, or Licensee may create, one (1) copy of the entire set of Licensed Materials to be maintained as an archival copy. The archival copy from the Licensor shall be provided without any DRM in a mutually agreeable electronic medium suitable to the content, and any fees for provision of copies will be on a time and materials basis only.

In the event the Licensor discontinues or suspends selling or licensing the Licensed Materials, the Licensee may request, and/or create, and use such archived Licensed Materials under the same terms as this Agreement.

4.9 The Licensor agrees that no personally identifiable information, including but not limited to log-ins recorded in system, logs, IP addresses of patrons accessing the system, saved searches, usernames and passwords, will be shared with third parties, except in response to a subpoena, court order, or other legal requirement, or as strictly required in order to enable the Licensor to perform its obligations hereunder. If Licensor is compelled by law or court order to disclose personally identifiable information of Authorized Users of patterns of use, Licensor shall provide the Licensee with adequate prior written notice as soon as is practicable, so that Licensee or Authorized Users may seek protective orders or other remedies. Licensor will notify Licensee and Authorized Users as soon as is practicable if the Licensor's systems are breached and the confidentiality of personally identifiable information is compromised.

5 PAYMENTS BY THE LICENSEE

5.1 In consideration of the rights granted by Licensor under this Agreement, the Licensee shall pay the Charges due to Licensor for each Licensed Work within 30 days of receipt of an appropriate invoice.

5.2 The Charges and (for Subscription Licensed Works) any renewal fees are exclusive of sales tax, value added tax or any equivalent tax (if applicable). Notwithstanding any other provision of this Agreement, Licensor shall not be obliged to grant access to a Licensed Work, or continue to grant such access to the Licensee until the Charges or renewal fees for that period have been received by the Licensor, unless otherwise mutually agreed in writing by both parties.

5.3 The Charges and (for Subscription Licensed Works) any renewal fees may be higher than the Charges or renewal fees for the previous 12 month period and may take into account, without limitation, changes to the Sites, changes to the Licensed Works and the potential number of Authorized Users. Licensor will provide notice within 60 days of expiration of current Subscription Term of any increase in fees.

5.4 <This section intentionally deleted.>

- 5.5 In the event that the Licensee is purchasing the Licensed Works through a Subscription Agent, the Licensee hereby agrees to pay all fees owing to the Licensor hereunder to the Subscription Agent.

6 ADDITIONAL TERMS

- 6.1 The terms in Annexes 1 and 2 shall only apply in the following circumstances:

6.1.1 For each Subscription Licensed Work, the terms in Annex 1 shall apply in relation to that Licensed Work.

6.1.2 For each Perpetual Access Licensed Work, the terms in Annex 2 shall apply in relation to that Licensed Work.

7 ACKNOWLEDGMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

7.1 The Licensee acknowledges that all copyrights, patent rights, Licensor Trademarks, services marks, database rights, trade secrets and other intellectual property rights relating to the Licensed Works (collectively the "Licensor Intellectual Property"), are owned or controlled by Licensor and that this Agreement does not convey to the Licensee any right, title, or interest therein except for the right to use the Licensed Works in accordance with the terms and conditions of this Agreement.

7.2 The Licensee acknowledges that neither it nor any Authorized User may create any derivative work based on the Licensed Works except with the prior written permission of the Licensor.

8 REPRESENTATIONS AND WARRANTIES

8.1 LICENSOR REPRESENTS AND WARRANTS THAT IT HAS THE POWER TO ENTER INTO THIS AGREEMENT AND TO GRANT THE RIGHTS CONFERRED HEREIN TO THE LICENSEE AND THAT THE LICENSED WORKS DO NOT VIOLATE OR INFRINGE UPON ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER PROPRIETARY RIGHT OR CONTRACT RIGHT OF ANY THIRD PARTY.

8.2 LICENSOR PROVIDES THE LICENSED WORKS ON AN "AS IS" BASIS. SAVE AS PROVIDED ABOVE AND TO THE EXTENT PERMITTED BY LAW, LICENSOR GIVES NO WARRANTY, EXPRESS OR IMPLIED, AND MAKES NO REPRESENTATION THAT (I) THE LICENSED WORKS WILL BE OF SATISFACTORY QUALITY, SUITABLE FOR ANY PARTICULAR PURPOSE OR FOR ANY PARTICULAR USE UNDER SPECIFIED CONDITIONS, NOTWITHSTANDING THAT SUCH PURPOSE, USE, OR CONDITIONS MAY BE KNOWN TO LICENSOR; OR (II) THAT THE LICENSED WORKS WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION OR THAT ANY ERRORS WILL BE CORRECTED; OR (III) THAT THE MATERIAL PUBLISHED IN THE LICENSED WORKS IS EITHER COMPLETE OR ACCURATE.

8.3 IN NO CIRCUMSTANCES WILL LICENSOR BE LIABLE TO THE LICENSEE OR ANY THIRD PARTY FOR ANY LOSS RESULTING FROM A CAUSE OVER WHICH LICENSOR DOES NOT HAVE DIRECT CONTROL, INCLUDING BUT NOT LIMITED TO FAILURE OF ELECTRONIC OR MECHANICAL EQUIPMENT OR COMMUNICATION LINES, TELEPHONE OR OTHER INTERCONNECT PROBLEMS, UNAUTHORIZED ACCESS, THEFT, OR OPERATOR ERRORS.

8.4 IN NO CIRCUMSTANCES WILL LICENSOR BE LIABLE TO THE LICENSEE OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR LOSS OF PROFITS INCLUDING, WITHOUT LIMITATION,

DAMAGES FOR LOSS OF DATA OR CORRUPTION OF DATA, LOSS OF PROGRAMS, LOSSES ARISING FROM INACCURACIES IN, OR CORRUPTION CAUSED BY, THE LICENSED WORKS, LOSS OF BUSINESS OR GOODWILL, OR OTHER DAMAGES OR LOSSES OF ANY NATURE ARISING OUT OF THE USE OF, OR INABILITY TO USE THE LICENSED WORKS.

- 8.5 THE LICENSEE AGREES THAT THE ENTIRE LIABILITY OF LICENSOR TO THE LICENSEE 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 WORKS SHALL BE THE REFUND OF ANY SUMS ACTUALLY RECEIVED BY THE LICENSOR UNDER THIS AGREEMENT.
- 8.6 THE LICENSEE WARRANTS THAT IT HAS IN PLACE APPROPRIATE POLICIES AND DISCIPLINARY PROCEDURES REGARDING THE MISUSE OF ONLINE TOOLS SUCH AS THE LICENSED WORK(S).
- 8.7 THE SIGNATORY FOR LICENSEE OF THIS AGREEMENT REPRESENTS AND WARRANTS TO LICENSOR THAT S/HE HAS THE POWER AND AUTHORITY TO EXECUTE THIS AGREEMENT ON BEHALF OF THE LICENSEE, WHICH LICENSEE AGREES TO BE BOUND BY ALL TERMS CONTAINED HEREIN.

9 TERMINATION

- 9.1 The Licensee may terminate this Agreement at any time for convenience provided that, in such case, no refund of any Charges shall be due.
- 9.2 Either party may terminate this Agreement forthwith by serving written notice on the other in the event that the other party commits a material breach of this Agreement and in the case of a breach capable of remedy fails to remedy the same within 30 days of a request to do so. Without limitation, a breach by the Licensee of the provisions of Clauses 2.3, 3.1, 3.3, 3.4 and 5.1 above would constitute a material breach of this Agreement. The rights in this Clause are in addition to any rights and remedies that may be available in law or equity.
- 9.3 In addition to the rights in Clause 9.2, the Licensor reserves the right to suspend access to any or all Licensed Works or any portion thereof in the event that the Licensee commits a material breach of this Agreement, in addition to any other available remedies.
- 9.4 If the Licensee pays the Charges due under this Agreement via a Subscription Agent, Licensor may terminate this Agreement or suspend access to any or all Licensed Works or any portion thereof without liability to the Licensee in the event the Subscription Agent fails to pay such sums to the Licensor. Licensee acknowledges that its sole remedy in such circumstances is against the Subscription Agent and not the Licensor. The Licensor's rights in this Clause are in addition to any rights and remedies that may be available in law or equity.

10 GENERAL

- 10.1 This Agreement is personal to the Licensee and the rights granted under it do not extend to its subsidiary or parent organisations, nor may such rights be assigned or sublicensed without the prior written consent of the Licensor. The Licensor may assign any or all of its rights and obligations under this Agreement to an affiliate, a successor to its business or a transferee of Licensor's right to publish and distribute any Licensed Work(s) (in part or in whole) and the Licensee undertakes to execute at Licensor's cost any documents or instruments as may be required to effect the Licensor's rights under this Clause.. The rights and obligations of this Agreement will bind and benefit any successors and permitted assigns of the parties. Any attempted assignment in violation of this Clause

will be null and void and of no force or effect.

- 10.2 Except where expressly stated otherwise, all notices required to be given under this Agreement shall be given in writing in English and left at or sent by first class registered or recorded delivery to the appropriate address shown at the head of this Agreement, or such other address as the party concerned shall from time to time designate by notice pursuant to this Clause. Such notices shall be deemed to be delivered (i) when left at the addressee's address; or (ii) 10 (ten) days after posting as registered mail or certified mail. All notices to Licensor shall be marked for the attention of the Group Legal Director. All notices to the Licensee shall be marked for the attention of the contact named in the cover page of this Agreement.
- 10.3 This Agreement constitutes the entire agreement of the parties about its subject matter, supersedes all prior communications, understandings and agreements (whether written or oral) relating to its subject matter
- 10.4 The terms of this Agreement are confidential and the Licensee shall not disclose the same to any third party other than its professional advisors or as may be required by judicial or regulatory authority with competent jurisdiction over the Licensee.
- 10.5 Subject to the requirements of any laws local to the parties, this Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. The parties agree to be bound by photocopy, scanned, facsimile, electronic or other copies, which shall have the same effect for all purposes as an ink-signed original.
- 10.6 This Agreement may be amended only by agreement in writing executed by both parties.
- 10.7 Neither the Licensee nor the Licensor shall be responsible to the other for any failure to perform any obligation under this Agreement due to Acts of God, war, riot, embargoes, acts of civil or military authorities, fire, flood, typhoon, wind storm, snow storm, blizzard, hurricane, or other cause that is outside the control of the party and could not be avoided by the exercise of due care. Notwithstanding the occurrence of any of the events set forth in this Clause, the parties shall at all times use reasonable efforts to perform all obligations under this Agreement in a timely manner, taking account of the existing circumstances.
- 10.8 No provision in this Agreement is intended to be enforceable by any third party.
- 10.9 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 further breach.
- 10.10 Headings used in this Agreement are for convenience only and are deemed not to be part of the Agreement.

ANNEX 1 – ADDITIONAL TERMS FOR SUBSCRIPTION LICENSED WORKS

- 1. Except where expressly stated otherwise, the terms in this Annex shall only apply in relation to Subscription Licensed Works, if any, purchased under this Agreement.**
- 2. Except where expressly agreed otherwise in writing, following the expiry of the Subscription Period the Licensee shall not be entitled to continuing access to the Subscription Licensed Work or any portion thereof.**
- 3. For each Subscription Licensed Work, no later than 60 days before the end of the Subscription Period for that Licensed Work, the Licensor will notify the Licensee of the renewal fees for the following 12 month period (or such other period as may be agreed by the parties) and shall invoice the Licensee for this amount. Upon payment of such renewal fees, the Subscription Period for that Licensed Work shall be extended by that further period. Payment for that period shall be due to the Licensor within 30 days from the date of the invoice.**

ANNEX 2 – ADDITIONAL TERMS FOR PERPETUAL ACCESS LICENSED WORKS

1. Except where expressly stated otherwise, the terms in this Annex shall only apply in relation to Perpetual Access Licensed Works, if any, purchased under this Agreement.
2. For the avoidance of doubt, in the case of Perpetual Access Licensed Works, the Charges do not include perpetual access to any new Collection Modules as they are published.. Should any additional Collection Modules be published, they may be purchased by the Licensee, subject to an Agreement addendum at the relevant time and payment of an additional charge. Any additional Collection Modules so purchased shall become part of the Licensed Works and subject to the terms of this Agreement.

Updates made to purchased Collections of the Licensed Works (listed in Schedule A or an Agreement addendum) are automatically included in Perpetual Access Licensed Works as the updates are released.

3. Where the Licensor notifies the Licensee that a Perpetual Access Licensed Work is subject to a Maintenance Fee, the Licensee must pay an annual Maintenance Fee, as indicated in Schedule A.

4. RIGHT OF CANCELLATION: PRE-PUBLICATION TITLES

- a. If the Licensor accepts an order for Perpetual Access Licensed Works which includes any Pre-Publication Titles, the Licensor reserves the right, at any time prior to activating the Licensee's access to such Pre-Publication Titles, to amend or cancel such order (as may be appropriate) to remove any one or more such Pre-Publication Titles from the order and the scope of this Agreement. For the avoidance of doubt, any such amendment or cancellation under this Clause will not extend to or otherwise affect any Licensed Works in respect of which access has already been activated.
- b. If the Licensor amends or cancels an order in accordance with Clause 4(a) of this Annex, its sole liability to the Licensee shall be limited to the repayment by the Licensor of any and all sums received by the Licensor under this Agreement in respect of the Pre-Publication Titles affected by such amendment or cancellation.

SCHEDULE A
LICENSED WORKS

SUBSCRIPTION LICENSED WORKS -

Description/ Name of Licensed Work: N/A

Start Date: N/A

Subscription Period: N/A

Charges: N/A

Payment Due Date: N/A

Maximum Number of Permitted Concurrent Authorized Users (where applicable) N/A

PERPETUAL ACCESS LICENSED WORKS -

Description/ Name of Licensed Work: Drama Online (Core Collection; Nick Hern Books add-on; LA Theatre Works add-on; Globe on Screen add-on; Stage on Screen add-on; Patsy Rodenberg add-on; Maxine Peake's Hamlet add-on; Hollow Crown add-on; BBC Drama Films add-on)

Start Date: April 15, 2017

Charges: \$[Text deleted]

[Text deleted]

Payment Due Date: 30 days after invoice

Maximum Number of Permitted Concurrent Authorized Users (where applicable): unlimited

SCHEDULE B

LICENSEE SITE(S)

University of California San Diego