

SUBJECT TO CONTRACT

[Please customise the highlighted sections]

DATED

2008

[LICENSOR]

-and-

[LICENSEE]

[NAME OF RESOURCE] SUPPLY AND LICENCE AGREEMENT

28 March 2008

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"Derivative Works"	means a work based upon the Licensed Material to which enough original creative work has been added so that the new work represents an original work of authorship.
"Educational Purposes"	means for all such purposes that are conducive to education, teaching, distance learning, private study and/or research.
"Effective Date"	means the date that all parties have signed the Agreement.
"Fee"	means the applicable fee payable by the Licensee to the Licensor in accordance with Schedule 1 for the rights granted herein.
"Institutions"	means any higher, further education institution or any other organisation located in the United Kingdom for whom any UK funding body may be able to provide support and/or services 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"	means the resource licensed in this Agreement known to the parties as ['name of the resource'] being [description] as further specified in Schedule 2.
"Third Party Consents"	means all licences, permissions and consents in writing and payments to any third party owner of Intellectual Property Rights in the Third Party Material which may be required for the use and exploitation of Third Party Material for the purposes envisaged under this Agreement.
"Third Party Material"	means that part of the Licensed Material identified in Schedule 3 that is not owned by or licensed to the Licensor.
"User"	means any person accessing the Licensed Material from anywhere in the world.

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. AGREEMENT

- 2.1 The Licensor agrees: (a) to provide the Licensee with a copy of the Licensed Material; (b) to permit the Licensee to mount, communicate and make available the Licensed Material to Users in accordance with this Agreement; (c) to permit the Licensee to use and sub-license such use of the Licensed Material in accordance with this Agreement; and (c) to permit the Licensee to grant HEFCE a perpetual licence to make the Licensed Material available to Institutions on the terms as set out in Clause 3.1.2.
- 2.2 In consideration for the Licensor's licensing of the Licensed Material pursuant to Clause 3, the Licensee undertakes to pay to the Licensor the Fee in accordance with the provisions of Schedule 1.

3. LICENCE GRANT

- 3.1 The Licensor hereby grants to the Licensee:
- 3.1.1 a non-exclusive royalty-free licence in perpetuity to mount on any network or platform, preserve, communicate and make available the Licensed Material through any networked or un-networked electronic means and to provide access and allow use of the Licensed Material by Users for Educational Purposes; and
- 3.1.2 a non-exclusive royalty-free licence in perpetuity to supply the Licensed Material to HEFCE and to sub-license to HEFCE the right to mount on any network or platform, communicate and make available the Licensed Material through any networked or un-networked electronic means and to allow HEFCE to provide access and allow use of the Licensed Material by Institutions for Educational Purposes.
- 3.2 The Licensor hereby agrees that the Licensee may appoint third parties to act on its behalf to perform the tasks and activities as set out in Clause 3.1.1. This arrangement shall be subject to an agreement between the Licensee and any third party which is consistent with the terms of this Agreement where relevant.
- 3.3 The Licensor hereby agrees that HEFCE may appoint third parties to act on its behalf to perform the tasks and activities as set out in Clause 3.1.2. This arrangement shall be subject to an agreement between HEFCE and any third party which is consistent with the terms of this Agreement where relevant.
- 3.4 HEFCE shall only be entitled to make the Licensed Material available to Institutions in the event that the Licensee or any of its assignees fail to make the Licensed Material available on-line to Institutions and their users without charge. In the event of such failure by the Licensee or any of its assignees, the Licensor hereby agrees that under such circumstances HEFCE may make the Licensed Material available to the Institutions at a charge solely to recover its cost of hosting and providing access to the Licensed Material by Institutions whether access is provided by HEFCE or by any third party duly appointed by HEFCE under Clause 3.4.

- 3.5 The Licensee acknowledges and agrees that the Licensor grants no rights in respect of any Third Party Material and the Licensee undertakes at the Licensee's expense before using the Licensed Material and as a condition precedent to the grant of the licence under Clauses 3.1 and 3.2, to obtain, or to require that its sub-licensees obtain, all Third Party Consents and any other consents which may be required for the use of the Licensed Material for Educational Purposes as envisaged pursuant to this Agreement.

4. COMMENCEMENT AND TERM

- 4.1 This Agreement commences on the Effective Date and will remain in full force and effect in perpetuity. For the avoidance of doubt, the parties agree that the perpetual licences granted by the Licensor to the Licensee in Clause 3 are irrevocable and will survive any termination or repudiation of this Agreement.

5. USE OF THE LICENSED MATERIAL

- 5.1 Throughout the term of this Agreement the Licensee or a distributor duly appointed by the Licensee may:-

5.1.1 mount the Licensed Material and incorporate the Licensed Material in the Service or any other database from time to time; and

5.1.2 make such copies of the Licensed Material as are technically necessary to provide access to Users and for preservation purposes.

- 5.2 Throughout the term of this Agreement the Licensee may for Educational Purposes permit Users:-

5.2.1 allow Users to access the Licensed Material in order to search, retrieve, display and view, and otherwise use portions of the Licensed Material;

5.2.2 allow Users to electronically save parts of the Licensed Material;

5.2.3 allow Users to print out copies of parts of the Licensed Material;

5.2.4 allow Users to incorporate parts of the Licensed Material in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments). Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Users;

5.2.5 allow Users to incorporate parts of the Licensed Material in printed or electronic form in assignments and portfolios, theses and in dissertations ("the Academic Works"), including reproductions of the Academic Works for personal use and library deposit. Reproductions in printed or electronic form of Academic Works may be provided to

sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner;

- 5.2.6 allow Users to 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;
- 5.2.7 allow Users to publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other such similar activity;
- 5.2.8 allow Users to deposit in perpetuity the learning and teaching objects as referred to in Clause 5.2.4 in electronic repositories and in the JORUM Repository. The access and use of such learning and teaching objects shall be governed by the terms and conditions of the applicable repository;
- 5.2.9 allow Users to create Derivative Works; and
- 5.2.10 allow Users to use the Licensed Material for any other purposes that are conducive to education, teaching, learning, private study and/or research.

5.3 This Agreement shall be deemed to complement and extend the rights of the Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 and nothing in this Agreement shall constitute a waiver of any statutory rights held by the Users from time to time under these Acts or any amending legislation.

6. RESTRICTIONS

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

- 6.1.1 sell or resell the Licensed Material or use the Licensed Material for any other Commercial Use unless the Licensee or a User has been granted prior written consent by the Licensor to do so; and
- 6.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Licensee acknowledges that all Intellectual Property Rights in the Licensed Material are the property of the Licensor or duly licensed to the Licensor and that this Agreement does not create, assign or transfer to the Licensee any right, title or interest in the Licensed Material except for the right to use the Licensed Material in accordance with the terms and conditions of this Agreement.
- 7.2 Save as provided for under Clause 7.1, any and all Intellectual Property Rights in and relating to any meta data and other works created by the Licensee or Users from the Licensed Material shall be the property of the Licensee or such Users absolutely.
- 8.3 Nothing in this Agreement conveys any other ownership rights to the Licensor in and in relation to any meta data and other works created by the Licensee from the Licensed Material.

9. REPRESENTATION, WARRANTIES AND INDEMNIFICATION

9.1 The Licensor warrants to the Licensee that the Licensed Material and all Intellectual Property Rights therein are owned by or licensed to the Licensor and that the Licensed Material used as contemplated in this Agreement and the Sub-Licence Agreement do not infringe any copyright or other proprietary or Intellectual Property Rights of any natural or legal person. The Licensor agrees that the Licensee shall have no liability and the Licensor 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 an User's use of the Licensed Work, provided that: (1) the use of the Licensed Work has been in full compliance with the terms and conditions of this Agreement; (2) the Licensee provide the Licensor with prompt notice of any such claim or threat of claim; (3) the Licensee co-operates fully with the Licensor in the defence or settlement of such claim; and (4) the Licensor has sole and complete control over the defence or settlement of such claim.

The foregoing does not apply to Third Party Material or Derivative Works of the Licensed Material.

9.2 While the Licensor has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Material, the Licensor makes no representation and gives no warranty express or implied with regard to the information contained in any part of the Licensed Material including (without limitation) the fitness of such information or part for any purposes whatsoever and the Licensor accepts no liability for loss suffered or incurred by the Licensee or Users as a result of their reliance on the Licensed Material.

9.3 In no circumstances will the Licensor be liable to the Licensee for any loss resulting from a cause over which the 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, unauthorised access, theft, or operator errors.

9.4 The Licensee agrees to notify the Licensor within 48 hours and 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. It is expressly agreed that upon such notification, or if the Licensor becomes aware of such a claim from other sources, the Licensor may remove such work(s) from the Licensed Material. If the Licensor decides to remove such work(s) from the Licensed Material, the Licensee agrees to remove such work(s) from the Licensed Material and to notify any designated third parties that they must do the same. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement.

9.5 Nothing in this Agreement shall make the Licensee liable for breach of the terms of this Agreement by any 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.

9.6 The Licensor and the Licensee do not seek to exclude liability under this Agreement for fraud or for personal injury or death caused by its negligence and the negligence of its employees, authorised sub-contractors and agents.

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 or sub-licensed 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 English law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.

12. NOTICES

12.1 All notices required to be given under this Agreement shall be given in writing in English and sent by electronic mail, fax or first class registered or recorded delivery to the relevant addressee at its address set out in this Agreement.

13. GENERAL

13.1 This Agreement and its Schedules constitute the entire agreement between the parties relating to the Licensed Material and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.

13.2 The Schedules shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules.

13.3 It is intended by the parties that HEFCE shall have the right to enforce Clauses 3.1.2, 3.3 and 3.4 of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999.

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

13.5 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.

SCHEDULE 1: FEE

1. The fee payable by the Licensee to the Licensor for the rights granted herein to the Licensee and HEFCE shall be fixed at one peppercorn payable by the Licensee only if demanded.

SCHEDULE 2 – LICENSED MATERIAL

SCHEDULE 3 – THIRD PARTY MATERIAL

IN WITNESS the hands of the above parties on the date first above written: -

SIGNED by:

Position:

(Signature)

for and on behalf of

[LICENSOR]

WITNESSED by:

Position:

(Signature)

Address:

SIGNED by:

Position:

(Signature)

for and on behalf of

[LICENSEE]

WITNESSED by:

Position:

(Signature)

Address: