

IT IS HEREBY AGREED between CLNZ and the Licensee as follows:

1. DEFINITIONS

1.1 In this Agreement and its Schedules (unless the context otherwise requires):

"**Academic year**" means a calendar year.

"**Annual licence fee**" means the fee calculated in accordance with clause 4.

"**Annual rate**" means the annual rate payable pursuant to clause 4.

"**Authorised persons**" means the academic and general staff and duly authorised agents of the Licensee.

"**Authorised purposes**" means use in a course of educational instruction and includes for the purposes of study or research.

"**Bibliographic detail**" means information on a work that can be used to correctly identify the work from which a copy was made. This detail identifies the author, title(s), publisher, place and date of publication and/or ISBN/ISSN or other such number.

"**CLNZ**" means Copyright Licensing New Zealand. This is the brand name for Copyright Licensing Limited, a duly incorporated company having its registered office in Auckland. The company has been formed to act on behalf of copyright owners and is authorised to enter into licences for the collection of licence fees in relation to the reprographic reproduction of extracts from published copyright material;

"**Copy and copying**" mean:

- (a) the reproduction in material form of extracts from copyright material by reprographic or electronic means; and
- (b) the electronic or digital storage of such extracts; and
- (c) the distribution of such extracts either in hard copy or electronic form by means of a secure system.

"**Copyright Material**" means all copyright works in hard copy format but does not include the Excluded Works as specified in Schedule 2.

"**Copyright work**" or "**Copyright works**" means:

- (a) published literary or dramatic works;
 - (b) artistic works published as part of or incidental to a literary or dramatic work;
- in which copyright subsists.

"**Course pack or Compilation**" means a collection of material (some of which may be subject to copyright) prepared by or for a department (or equivalent) or staff member of the Licensee and reproduced in multiple form for distribution to students enrolled in a course of instruction taught by the Licensee.

"**CPI**" means the annual consumer price index as updated in each year's final quarter by Statistics New Zealand on the website www.stats.govt.nz

"**Department**" means a subject area or equivalent unit of study recognised by the Licensee.

"**EFTS**" means one equivalent full time student enrolled with the Licensee in an academic year.

"**Enrolled Number of EFTS**" means the total number of EFTS (including all full fee paying and foreign students) enrolled with the Licensee in an Academic Year.

"**Excluded Works**" means the works specified in Schedule 2.

"GST" means Goods and Services Tax chargeable under the Goods and Services Tax Act 1985.

"Guidelines" has the meaning set forth in clause 5.1.

"GST" means Goods and Services Tax chargeable under the Goods and Services Tax Act 1985.

"Hard Copy Format" means published editions of copyright works whether published as books, periodicals or journals.

"Licence Fee Schedule" means the Annual Licence Fee rate card available from www.copyright.co.nz

"Secure system" means a system accessible only by authorised persons and students of the Licensee whose conduct is subject to regulation by the Licensee and includes a password protected Licensee intranet, email and distribution by CD/DVD.

"Student" means a Student enrolled with the Licensee.

"Survey" means a Survey undertaken according to the procedures agreed from time to time between the Licensee and CLNZ.

"The Act" means the Copyright Act 1994.

"The Licence" means this Agreement.

"Work" and "works" mean published editions of literary or dramatic works (including any artistic work published as part of or incidental to that work), in which copyright subsists other than the Excluded Works specified in Schedule 2.

1.2 In the interpretation of this Agreement:

- (a) "CLNZ" includes any assignee or transferee of rights from CLNZ;
- (b) "Licensee" includes any person to whom this agreement is assigned in accordance with Clause 11.1;
- (c) One gender includes the other genders;
- (d) The singular includes the plural and vice versa.

2. GRANT OF LICENCE

2.1 CLNZ grants to the Licensee the right to copy from original versions of copyright material for authorised purposes by authorised persons in accordance with the terms and conditions of this Agreement.

2.2 Nothing in this Agreement shall authorise the copying of copyright material beyond the extent and limitations set out in Schedule 1 nor shall it authorise the copying of the Excluded Works.

2.3 If the Licensee wishes to copy for authorised purposes any item of copyright material beyond the extent set out in Schedule 1, it may make application to CLNZ for permission to do so. CLNZ will take reasonable steps to respond to any such application promptly.

2.4 Where the Licensee distributes any copyright material under this Agreement it shall:

- (a) include appropriate bibliographical detail on the material distributed;
- (b) include an appropriate copyright warning notice in the material distributed in line with that contained in clause 4.4 of Schedule 1 and require authorised persons and students receiving material to agree to comply with the terms of the copyright warning notice prior to accessing the material whenever possible; and
- (c) ensure that any electronic version has an appropriate security mechanism designed to prevent any unauthorised copying or subsequent unauthorised use.

- 2.5 Nothing in this Agreement affects any rights which the Licensee or authorised persons may have under the Copyright Act 1994 or otherwise at law or by statute or under any other licence. It shall not be a breach of this Agreement to do anything which is otherwise not an infringement of copyright under the Copyright Act 1994 or any future amendments to that Act.
- 2.6 The Licensee may make a reasonable charge to recover costs and overheads incurred by the Licensee in providing copies of the copyright material.
- 2.7 This Agreement shall operate within New Zealand and not elsewhere provided that a copy of copyright material (distributed by the Licensee by electronic means via a secure intranet) may be made outside New Zealand by a student enrolled with the Licensee provided always that such a copy is for an authorised purpose.

3. TERM

- 3.1 The term of the licence is a 12 month period from 1 January to 31 December each year. The licence will renew automatically at the end of each term, unless terminated in accordance with the conditions outlined in Clause 8.

4. ANNUAL LICENCE FEE

- 4.1 In consideration for the Licence, the Licensee will pay to CLNZ in each year of the term of the Licence, an Annual Licence Fee calculated by multiplying the number of enrolled EFTS by the per EFTS fee. If the total of this calculation is less than the Minimum Fee (as listed in the Licence Fee Schedule), the Minimum Fee will apply. All fees are exclusive of GST.
- 4.2 The annual rate will increase at the start of each year at the rate of CPI.
- 4.3 CLNZ may, at its sole discretion, amend the Licence Fee Schedule for considerations other than CPI that CLNZ deems appropriate in the circumstances. CLNZ will only make amendments at the commencement of a new licence term and if the fee amendment is an increase in the per EFTS rate, CLNZ will provide the licensee with 90 days written notice of the increase.
- 4.4 Each year the licensee shall pay the annual licence fee in one instalment, such payment to be made by 31 March in each year of the licence or such later date as agreed with CLNZ.

5. COMPLIANCE PROCEDURES

- 5.1 CLNZ will publish and provide Guidelines on the provisions of the licence for distribution to Authorised Persons of the Licensee.
- 5.2 The Licensee will require Authorised Persons to comply with the provisions of the licence as outlined in the Guidelines provided by CLNZ.
- 5.3 Observance of the Guidelines prepared by CLNZ will be evidence of compliance with the licence in the absence of proof to the contrary.
- 5.4 Should CLNZ become aware of issues of non-compliance with the terms of the licence it may, at its sole discretion, elect to undertake an audit of the use of copyright materials by the licensee and authorized persons. The procedures for such audit to be agreed between CLNZ and the Licensee.

6. SURVEY

- 6.1 The Licensee and CLNZ will in consultation settle on the form of the procedures to be followed from time to time by Authorised Persons of the Licensee in undertaking a Survey.
- 6.2 On the form of the procedures referred to in clause 6.1 having been agreed the Licensee will implement the agreed procedures and require its Authorised Persons to comply with them.
- 6.3 The Licensee will allow duly authorised representatives of CLNZ to be present on its premises on reasonable notice and at reasonable times to:
- (a) Participate in undertaking a Survey; and
 - (b) Monitor compliance with the licence.

7. CONFIDENTIALITY AND PRESERVATION OF RIGHTS

7.1 Confidentiality

- 7.1.1 CLNZ acknowledges that all information acquired by CLNZ pursuant to this Agreement concerning the copying of copyright material by the Licensee or any Authorised Person (whether supplied by the Licensee or an Authorised Person, or otherwise received by CLNZ) shall be held by CLNZ in strict confidence and shall not be disclosed to any other person.
- 7.1.2 Nothing in clause 7.1 shall prevent CLNZ from reporting to copyright holders (or their representatives) aggregate figures for copying by the Licensee of any Copyright Material.

7.2 Preservation of Rights

- 7.2.1 CLNZ and the Licensee acknowledge that none of the following:

- (a) The acceptance of this licence by the Licensee;
- (b) Any discussions or negotiations preliminary to that acceptance;
- (c) The undertaking of a Survey;
- (d) Any other action (active or passive) on the part of CLNZ, the Licensee or any Authorised Person in relation to the copying, communication or distribution of copyright material which comes to the attention of CLNZ;

is to be taken as:

- (i) An acknowledgment that copyright subsists in any Copyright Material so as to cause its copying by the Licensee or an Authorised Person to be an unlawful infringement of that copyright; or
- (ii) Indicative of any such infringement

8. TERMINATION

8.1 Termination for Cause

This Agreement may be terminated by either party if the other party fails to remedy a material breach of its obligations within 28 days of receiving written notice specifying the breach and requiring the breach to be remedied.

8.2 Licensee Responsibility on Termination

Within 30 working days after termination, the Licensee shall ensure that all copyright material copied in reliance on the Agreement and stored on any of the Licensee's computers or computer network is deleted. At any time in during the 6 months following termination, CLNZ has the right to undertake an inspection, in

conjunction with the Licensee, to ensure compliance with this clause. Where such an inspection reveals the continued use of copyright materials copied under the terminated agreement, the Licensee will:

- (a) Pay to CLNZ a sum representing the number of pages of such material at a rate of 15c per page, multiplied by the number of copies made available
- (b) Remove all such material from its computers and/or computer network

8.3.1 Termination Without Cause

The Licensee may terminate this Agreement by giving not less than ninety (90) days written notice to CLNZ. Any termination or suspension of the operation of the Licence will be without prejudice both to any annual Licence Fee already paid or then due or payable under the terms and conditions of the Licence. The Licensee's Responsibility on Termination outlined in Clause 8.2 will also apply to termination in accordance with this Clause. The Licensee shall also certify to CLNZ in writing that it has complied with the terms of Clause 8.2.

9. ARBITRATION

9.1 Any difference or dispute concerning the application, interpretation or operation of this Agreement may be referred by either party to arbitration of a single arbitrator appointed by the Arbitrators Institute of New Zealand or its nominee and the decision of the arbitrator shall be binding on the Licensee under its Agreement on the one hand and CLNZ as the Licensor on the other hand.

9.2 The foregoing provision does not preclude CLNZ on the one hand or the Licensee on the other hand from referring to the Copyright Tribunal any dispute over which that Tribunal may have jurisdiction.

10. INDEMNITY

10.1 CLNZ indemnifies the Licensee from and against all claims, actions, proceedings and liabilities (including legal costs) arising out of the copying by Authorised Persons of Copyright Material in compliance with this licence.

10.2 The Licensee shall notify CLNZ within 28 days of any claim which invokes this indemnity and authorises CLNZ to deal with that claim in such manner as CLNZ thinks fit.

10.3 The Licensee shall provide all reasonable assistance requested by CLNZ in any action taken by CLNZ to resist or defend any such claim but at the cost of CLNZ.

10.4 CLNZ shall not settle any claim or any proceedings without the written approval of the Licensee which approval shall not be unreasonably withheld.

10.5 This indemnity remains enforceable by the Licensee notwithstanding the termination of this Agreement by expiry or otherwise but only in respect of circumstances giving rise to this indemnity which have occurred during the term of this Agreement.

11. ASSIGNMENT AND VARIATION

11.1 This Agreement is not assignable by the Licensee without the prior written consent of CLNZ, such agreement not to be unreasonably withheld.

11.2 This Agreement may not be varied except by agreement in writing.

12. GOVERNING LAW

12.1 This Agreement shall be governed as to all matters, including validity, construction and performance by and under the laws of New Zealand.



13. NOTICES

13.1 Any notice which either party is required, or may wish, to give to the other pursuant to this Agreement shall be in writing and shall be given by personal or courier delivery by mail, postage prepaid, or by facsimile transmission to the other party at the respective addresses shown above or at such other address as may be designated by either party by written notice to the other for the purposes of this Agreement.

13.2 Any such notice shall be deemed to have been properly given and to be effective:

- (a) at the time of delivery, if delivered personally or by courier;
- (b) three days after mailing;
- (c) at the time of transmission, if sent by facsimile, or if sent after 5.00 pm (local time in the place of receipt) on any day or on a day which is not a business day in the place of receipt, on the next business day in that place.

SIGNED AS AN AGREEMENT

COPYRIGHT LICENSING LIMITED

And witnessed by

Chief Executive

Signature of witness

Occupation

City/town of resident

(Institution).....

And witnessed by

Chief Executive/Principal/Director

Signature of witness

Occupation

City/town of resident

SCHEDULE 1
Limits and Requirements for Copying

Work which may be copied

1. The limits of copying of copyright material pursuant to this licence shall be:
 - 1.1 Copying of the whole or any part of an article from a periodical publication, or more than one article from the same issue of a periodical publication where each of those articles copied is on the same subject matter. The term “the same subject matter” will be interpreted on a case-by-case basis. For the avoidance of doubt, it is not intended to allow copying of multiple articles from the same issue of a periodical publication unless the content of each of the articles copied is closely related and focusing on a particular aspect of a subject;
 - 1.2 Copying of up to 10 per cent of a work (other than an article in a periodical publication) or one chapter of the work whichever is the greater;
 - 1.3 Copying of up to 15 pages of the whole or part of a single work contained in a collection of works notwithstanding that such works may be separately published;
 - 1.4 Copying of the whole of an artistic work (such as an illustration) where it is published in a copyright work and is copied in accordance with the provisions of this Schedule;
 - 1.5 Reprographic copying of up to and including the whole of an out of print work subject to prior confirmation from CLNZ that it is satisfied that sufficient copies of that work cannot be obtained within a reasonable time at an ordinary commercial price. Electronic copying of a whole work under this clause is specifically excluded;
 - 1.6 Making a repeat copy from a work within 14 days providing such copying is not made by or on behalf of the same authorised person for the same paper, unit or module of a course of study. For the avoidance of doubt, repeat copying does not mean repeat access to copyright material made available by electronic means under the licence. Where copyright materials are made available to authorised persons by electronic means, authorised persons in the prescribed paper, unit, or module of a course of study, may access that material any number of times within the statutory 14 day period without breaching the terms of the licence.

Volume limits

2. The Licensee may make sufficient copies of any one item of copyright material to provide for:
 - 2.1 distribution to each authorised person and enrolled student intended to receive a copy; and
 - 2.2 spare copies to be available to replace lost copies.

General requirements

3. Copyright material may be included in course packs or compilations provided each such extract does not exceed the limits set out in 1 above. This restriction will not apply to ad hoc arrangements entered into pursuant to clause 2.3 of the License. Such course packs may be made available either electronically or produced by reprographic means.

4. In copying material under the Licence (whether by electronic or reprographic means), the Licensee will use its best endeavours to:
- 4.1 ensure that the number of pages made available do not exceed the limits set out above unless prior approval/clearance has been obtained from CLNZ in writing;
 - 4.2 ensure that the material copied is a reasonably accurate copy of the original which preserves the structure, layout, authenticity and integrity of the original;
 - 4.3 ensure that electronic or digital copies made are:
 - (i) not systematically stored and indexed, with the intention of creating an electronic library or similar educational learning resource;
 - (ii) not placed on any computer or computer network on the publicly accessible Internet in such a way as to be publicly accessible or accessible other than to students and authorised persons;
 - (iii) only made available to authorised persons and students who have been made aware they must comply with the terms of the copyright warning notice set out in clause 4.4 of this Schedule.
 - 4.4 ensure that all material made available will have associated with it an appropriate copyright warning notice in line with the following:

“This material is protected by copyright and has been copied by and solely for the educational purposes of [*licensee name*] under licence. You may not sell, alter or further reproduce or distribute any part of this [coursepack/material] to any other person. Where provided to you in electronic format, you may only print from it for your own use in the relevant course of instruction. Failure to comply with the terms of this warning may expose you to legal action for copyright infringement and/or disciplinary action by [*licensee name*].”
 - 4.5 ensure that, in the event the Licensee becomes aware of a possible breach of the licence, appropriate action is taken to investigate the alleged breach and, if necessary, ensure compliance with the licence.
5. The Licensee will ensure that all copies distributed electronically to students and authorised persons are provided on a secure system.

SCHEDULE 2
Excluded Works

"Excluded Works" under the License are works within the following categories (notwithstanding that these may be copied or made available to authorised persons with authority other than under the CLNZ licence).

1. Works downloaded from the Internet;
2. Printed music (including the words);
3. Loose maps and charts;
4. Unpublished religious orders of service;
5. House journals and other free publications primarily for employees of commercial businesses, industrial undertakings or public services;
6. Illustrations and/or photographs that do not come within the provisions of clause 1.4 of Schedule 1;
7. Any work on which the copyright owner has prominently stipulated that it may not be copied under any copyright license;
8. Privately owned/unpublished works;
9. Theses, dissertations and student papers.
10. New Zealand newspapers*

*New Zealand newspapers are only excluded from Commercial PTE licences.