

HART PUBLISHING LIMITED ONLINE JOURNALS INSTITUTIONAL ONLINE AGREEMENT

THIS INSTITUTIONAL ONLINE AGREEMENT (“the Agreement”) is made between HART PUBLISHING LIMITED (“the Licensor”) and the Institution named in the Online Registration Materials (“the Licensee”) and is made as of the date an authorised representative of the Licensee completes the Online Registration Materials located online.

IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement, the following expressions shall have the following meanings:

“Authorised 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 (i) affiliated with the Licensee as a current student, faculty, library patron, employee, or in some other capacity whereby they are permitted to access such services in the Licensee’s ordinary course of business, whether from a computer or terminal on the Licensee’s Secure Network, or offsite via a modem link to a valid IP address on the Licensee’s Secure Network; or (ii) physically present on the Licensee’s premises;

“Commercial Use” shall mean use for the purposes of monetary reward (whether by or for the Licensee, an Authorised user, or any other person or entity) by means of sale, resale, loan, transfer, hire, or other form of exploitation of the Licensed Work(s);

“Online Registration Materials” shall mean the registration materials appearing on www.ingentaconnect.com required to be submitted by the Licensee before the Licensee can access the Licensed Work(s);

“Licensed Work(s)” shall mean the online version of each of the Licensor’s journals, for which the Licensee holds a current institutional subscription for online access or which includes online access;

“Licensor Trademarks” shall mean the designations of Hart Publishing Limited;

“Material” shall mean any article or other material contained in the Licensed Work(s) and accessed online;

“Passwords” shall mean any Licensee’s password(s) required to be created in the Online Registration Materials;

“Secure Network” shall mean a network (whether a stand alone network or a virtual network within the Internet) which is only accessible to Authorised Users. A cache server

or any server which can be accessed by unauthorised users is not a secure network for these purposes;

“Server” shall mean either the Licensor’s server or a third party server designated by the Licensor on which the Licensed Work(s) are mounted and through which the Licensee and its authorised Users may gain access to the Licensed Work(s) by means of the World Wide Web;

“Site” shall mean the geographical site (or sites) in respect of which the Licensee has purchased an online subscription from which Authorised Users can access the Licensed Work(s) onsite from a computer or terminal on the Licensee’s Secure Network located at the site and via which Authorised Users can additionally access the Licensed Work(s) offsite via a modem link to a valid IP address on the Licensee’s Secure Network located at the site. A site shall be within one metropolitan boundary. The licensee must apply to the licensor if they do not meet the above criterion.

“Subscription Period” shall mean the period shall mean the period commencing on the date on which the Online Registration Materials are completed and in relation to each Licensed Work shall continue (subject to the provisions for earlier termination contained below) for so long as the Licensee has a current institutional subscription for that Licensed Work for online access or which includes online access.

2. GRANT OF LICENCE, INSTITUTIONAL RIGHTS AND LIMITATIONS ON USE

2.1 In respect of each Site, the Licensor grants the Licensee the non-exclusive and non-transferable right to allow Authorised Users to access and use the Licensed Work(s) throughout the Subscription Period, by means of one or more Secure Networks for the purposes of research, teaching and private study.

2.2 Throughout the Subscription Period, Authorised Users may:

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

2.2.2 electronically save portions of the Licensed Work(s);

2.2.3 print out single copies of portions of the Licensed Work(s);

2.2.4 provide print or electronic copies of all or any part of the Licensed Work(s) to national or international regulatory authorities for the purpose of or in anticipation of regulatory approval and/or trademark applications or other regulatory purposes in respect of the Licensee’s products or services.

2.3 The Licensee and Authorised Users may not:

- 2.3.1 remove or alter the Licensor's copyright notices or other means of identification or disclaimers as they appear in the Licensed Work(s);
 - 2.3.2 systematically make printed or electronic copies of multiple portions of the Licensed Work(s) for any purpose without prior agreement from the Licensor;
 - 2.3.3 display or distribute any part of the Licensed Work(s) on any electronic network, including without limitation the Internet and the World Wide Web, other than a Secure Network;
 - 2.3.4 permit anyone other than Authorised Users to access or use the Licensed Work(s);
 - 2.3.5 use all or any part of the Licensed Work(s) for any Commercial Use.
- 2.4 Where the Licensee is an academic library or part of a non-commercial organisation, then notwithstanding any restriction in clause 2.3, the Licensor hereby grants the Licensee the non-exclusive right to supply (whether by post, fax, or secure electronic transmission, whereby the electronic file is deleted after printing) to an authorised user of another academic library in the same country and the Licensee of library which is part of a non-commercial organisation in the same country as the Licensee, 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 from a journal included in the Licensed Work(s). If the number of copies provided in any one calendar year for any one journal to any one library exceeds five articles, the Licensee may (i) supply the article and pay the Licensor's standard document delivery copyright royalty rate; (ii) forward the request to the Licensor who will undertake to provide the article on a pay per view basis; (iii) forward the request to a document delivery company; or (iv) return the request unfulfilled. The Licensor may request reports in respect of the Licensee's use of the Licensed Work(s) 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 fulfil 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.
- 2.5 On expiry of the Subscription Period, the Licensee shall be entitled to continue to exercise the non-exclusive rights granted herein (subject to the terms and conditions hereof) but only in respect of any Material published for the first time during the Subscription Period unless otherwise explicitly agreed with the

Licensor. Nothing in this sub-clause requires the Licensor to continue to host the material on its servers after the expiry of the Subscription Period or to make the Material available in any other form to the Licensee. The rights granted in this subclause will terminate immediately in respect of any Material which the Licensor ceases to have the right to publish.

3. RESPONSIBILITIES OF THE LICENSEE

3.1 The Licensee will provide all identifying information relating to the Licensee and its Authorised Users required by the Online Registration Materials. The Licensee acknowledges that access to the Licensed Work(s) under this agreement is conditional upon the Licensee completing the Online Registration Materials. The Licensee will amend the Online Registration Materials 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 Work(s) online via the Licensee's Secure Network.

3.3 The Licensee will:

3.3.1 be responsible for the confidentiality and all use of its Password(s);

3.3.2 use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Work(s) by means of the Licensee's Secure Network;

3.3.3 take all reasonable steps to ensure that all Authorised Users abide by terms of this Agreement.

3.4 The Licensee will notify the Licensor as soon as practicable if it becomes aware of any of the following: (a) any loss or theft of the Licensee's Password(s); (b) any unauthorised use of any of the Licensee's Password(s); or (c) any breach by an Authorised User of the terms of this Agreement. Upon becoming aware of any breach of the terms of this Agreement by an Authorised User, the Licensee agrees promptly to initiate disciplinary procedures in accordance with the Licensee's standard practice.

4. RESPONSIBILITIES OF THE LICENSOR

4.1 The Licensor shall use all reasonable efforts:

4.1.1 to make the Licensed Work(s) available by means of the World Wide Web to the Licensee throughout the Subscription Period;

4.1.2 to ensure that the Server has sufficient capacity and rate of connectivity to provide the Licensee with a quality of service consistent with the current standards in the World Wide Web on-line information provision industry;

4.1.3 to restore access to the Licensed Work(s) as soon as possible in the event of an interruption or suspension of the service.

5. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

5.1 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 Work(s) (collectively the “Licensor Intellectual Property”), are the sole and exclusive property of the Licensor and this Agreement does not convey to the Licensee any right, title, or interest therein except for the right to use the Licensed Work(s) in accordance with the terms and conditions of this Agreement.

5.2 The Licensee shall notify the Licensor promptly (i) of the facts and circumstances surrounding any unauthorised possession or use of the Licensed Work(s), or the Licensor Intellectual Property, or any portion thereof; and (ii) on becoming aware of any claim by any third party that the Licensed Work(s) infringes an intellectual property or proprietary right of any third party.

6. REPRESENTATIONS AND WARRANTIES

6.1 The 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 work(s) do not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary right or contract right of any third party.

6.2. Save as provided above, the licensor gives no warranty, express or implied, and makes no representation that (i) the licensed work(s) 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 the licensor; or (ii) that the licensed work(s) will operate error free or without interruption or that any errors will be corrected, or (iii) that the material published in the licensed work(s) is either complete or accurate.

6.3 In no circumstances will the licensor be liable to the licensee or any third party 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 internet problems, unauthorized access, theft or operator errors.

- 6.4 In no circumstances will the licensor be liable to the licensee or any third party for any consequential, incidental, special or indirect damages or loss of profits, including, without limitation, damages for loss of data or corruption of data, loss of programmes, 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.
- 6.5 Without prejudice to the indemnity in clause 7.1, the licensee agrees that the entire liability of licensor to the licensee or authorised users, arising out of any kind of legal claim (whether in contract, tort, by statute or otherwise) in any way connected with the use of or inability to use the licensed work(s) shall be the refund of any fee paid to the licensor for online access to the licensed work(s).

7. INDEMINIFICATION AND FORCE MAJEURE

- 7.1 Notwithstanding the limitation of liability of 6.5, the Licensor shall defend, indemnify, and hold the Licensee harmless against all claims, suits, proceedings, losses, liabilities, and damages (including costs, expenses, and reasonable attorneys' fees) asserted by third parties against the Licensee which arise out of any act or omission by the Licensor that constitutes a breach of Licensor's warranties hereunder.
- 7.2 The Licensee shall defend, indemnify, and hold the Licensor harmless against all claims, suits, proceedings, losses, liabilities, and damages (including costs, expenses, and reasonable legal fees) arising from (i) any unauthorised use or dissemination of the Licensed Work(s) by the Licensee or Authorised Users, including but not limited to infringement of any copyright, violation of any proprietary right and invasion of any privacy rights.
- 7.3 The obligations in clauses 7.1 and 7.2 will survive the termination of this Agreement.
- 7.4 The Licensee and Licensor shall not be responsible to one another 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.

8. TERMINATION

- 8.1 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 Clause 3.3. above would constitute a material breach of this agreement.

8.2 The Licensor reserves the right at any time on 30 days notice to the Licensee to terminate this Agreement in respect of any Licensed Work(s) due to ceasing publication of such Licensed Work(s).

9. GENERAL

9.1 This Agreement is personal to and binding on the parties and neither this Agreement nor any of the rights under it may be assigned.

9.2 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 addresses shown at the head of this Licence, 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) if posted ten (10) days after posting. All notices to the Licensor shall be marked for the attention of the person whose contact details are given in the Online Registration Materials.

9.3 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 and may not be amended or modified except by agreement in writing signed by both parties.

9.4 No provision in this Agreement is intended to be enforceable by a person who is not a party to this Agreement.

9.5 The rights of this 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.

9.6 This Agreement is subject to the laws of England and Wales.

9.7 Headings used in this Agreement are for convenience only and are deemed not to be part of the Agreement.