

IRISH COPYRIGHT LICENSING AGENCY LIMITED (“ICLA”)

TERMS AND CONDITIONS  
of  
HIGHER EDUCATIONAL LICENCE  
(2015 Edition with revisions of April 2016 and August 2017)

[Explanatory Note: This Licence permits photocopying, scanning, digital copying and posting to the Licensee’s intranet, virtual learning environment, or equivalent, of extracts from certain print and digital publications. It also permits for Higher Education establishments that are not Designated Bodies for the purpose of Section 104 of the Copyright and Related Rights Act 2000 the making of Accessible Copies for persons with reading-impairments. The Licence is subject to strict limits, which should be understood and observed. Note in particular that the Licence does not under any circumstances permit the posting of material to the Internet, or World Wide Web, nor permit copying which substitutes for the purchase of original Licensed Material].

RECITALS

- A. Subject only to limited exceptions, the Copyright and Related Rights Act 2000 (as amended) grants authors and publishers of literary works the right to authorise or prohibit the use of their works.
- B. ICLA represents authors and publishers. It grants licences to educational establishments to make certain uses of literary works.
- C. The licensing scheme of ICLA is certified under Statutory Instrument No. 514/2002, pursuant to the terms of Section 57 of the Copyright and Related Rights Act.<sup>1</sup>
- D. The terms and conditions of the ICLA licensing scheme for higher education establishments are set out below.

TERMS AND CONDITIONS

1. Interpretation

*“Authorised Persons” means all staff and students of the Licensee including all individuals who although not employed by the Licensee are engaged by it to provide teaching, research or consultancy services, and in relation to the Licensee’s Intranet, persons, including Distance Learners authorised by the Licensee to use the same using a secure code. It shall also include Emeritus Professors and other honorary staff and visiting academics and, solely in connection with quality assurance inspections, persons engaged in official research excellence assessments.*

*“Course of Study” means any whole course of study or any module or segment of a student’s studies which is regarded by the Licensee as a discrete and self-contained unit for the purposes of examination or assessment.*

*“Digital Copy” means an unaltered electronic copy of a Work or part thereof.*

*“Distance Learner” means a student on a Course of Study designed to be studied away from the Premises. For the avoidance of doubt, the term expressly excludes persons participating in Massive Open Online Courses (MOOCs) and others not in receipt of direct tuition from the Licensee.*

---

<sup>1</sup> Copyright and Related Rights (Certification of Licensing Scheme for Reprographic Copying by Educational Establishments) (The Irish Copyright Licensing Agency Limited) Order 2002. S.I. No. 514 of 2002.



“*Excluded Works*” means material contained in Works or categories of Works appearing on a List of Excluded Works published from time to time by ICLA.

“*Extract*” means a part of a Work which does not exceed the proportion of the entire Work specified in clause 3(b) herein.

“*ICLA Repertoire*” means a lawfully held copy of the Works described in the First Schedule, as updated from time to time and communicated to the Licensee by ICLA.

“*Licence Certificate*” means the certificate issued to the Licensee by ICLA confirming the grant of a Licence, and specifying the duration of the Licence and the amount of the Licence Fee.

“*Licence Fee*” means the fee specified in the Licence Certificate.

“*Licensed Copy*” means a copy of Licensed Material made pursuant to the terms of this Licence.

“*Licensed Material*” means all or any of the following, subject, except in the case of (d) below, to the Licensee being the owner or lawful user of the material:

- (a) *Material Licensed for Photocopying*: Works licensed for photocopying only, as specified in Part 1 of the Schedule hereto.
- (b) *Material Licensed for Scanning and Digital Distribution*: Works originating in non-digital form licensed for scanning and digital distribution, as specified in Part 2 of the Schedule hereto.
- (c) *Digital Publications Licensed for Print and Digital Distribution*: Works originating in digital form, licensed for both print and digital distribution, as specified in Part 3 of the Schedule hereto.
- (d) *Website Material Licensed for Copying*: Works in the form of text and related still images on websites included in the ICLA Repertoire, as specified in Part 4 of the Schedule hereto.

*For the avoidance of doubt, “Licensed Material” does not include published material licensed separately for specific uses from the rightsholder or copied under existing copyright exceptions.*

“*Licensee*” means the higher educational establishment specified on the Licence Certificate in respect of which the Licence Fee has been paid.

“*Licensee’s Intranet*” means the internal computer network operated by the Licensee and accessible only by Authorised Persons using a secure code, whether or not from within the Premises.

“*MOOC*” or “*Massive Open Online Course*” means a course of study made available over the internet without charge to a very large number of people aimed at unlimited participation and open access.

“*Moral Rights*” means the right of the creator of a Work to be identified as the author thereof and to protect the Work from distortion, mutilation or modification in a manner prejudicial to his or her reputation.

“*To copy*” means to make or permit the making of any reproduction of Licensed Material by reprographic or digital means. “*Copying*”, “*a copy*” and “*copies*” shall be construed accordingly.

“*Premises*” means the premises at which the Licensee carries on its activities.

“*Print Copy*” means a reproduction of a Work or part thereof in hard copy on paper or other material.

“*Work*” means an individual published literary text protected by copyright, together with visual and graphic representations when the same are an integral part of the published text. The term “*Works*” shall be construed accordingly.



## 2. Grant of Licence

In consideration of the payment of the Licence Fee by the Licensee, and subject to the terms and conditions herein contained, ICLA grants to the Licensee, upon the issue of a Licence Certificate, the non-exclusive right for the Licensee, for the period specified in the Licence Certificate:

- (a) To photocopy extracts of Materials Licensed for Photocopying and to distribute the same to Authorised Persons.
- (b) To scan extracts of Materials Licensed for Scanning and Digital Distribution and to communicate the same to Authorised Persons via the Licensee's password-protected intranet, virtual learning environment (VLE) or equivalent.
- (c) To create Print and Digital Copies of extracts from Digital Publications Licensed for Print and Digital Distribution *and* Website Material Licensed for Copying, and to distribute and communicate the same to Authorised Persons.
- (d) To make Accessible Copies of Works and to distribute the same in accordance with the terms of clause 4 hereof.
- (e) To supply a Digital Copy to, or receive a Digital Copy from, another Higher Education Institution which holds a Higher Education Licence from ICLA.

**PROVIDED THAT** the said activities are conducted for the educational purposes of the Licensee, and not for commercial gain, or for any other purpose.

## 3. Limits to copying and distribution

The activities authorised by the grant at clause 2 hereof are subject to the following limitations:

- (a) The Licence applies only to Licensed Material in the ownership of the Licensee, or in respect of which the Licensee has subscribed for the appropriate number of students and teachers, or of which the Licensee is otherwise a lawful user and for which specific terms for the uses in this licence have not been specified by the publisher. For the avoidance of doubt, this licence does not supersede licences agreed between the Licensee and the publisher or distributor of the Licensed Material.
- (b) The copying licensed shall extend to but shall not during one Course of Study in the case of any one Work exceed an extract or extracts amounting to ten per cent (10%) of the Work or one chapter (whichever is the greater) save that:
  - (i) in the case of an article in a journal or periodical, the whole article may be copied, but not more than one article in any one issue of the publication;
  - (ii) in the case of a short story or poem of not more than ten pages in length, the whole of the short story or poem may be copied;
  - (iii) in the case of a Work that is not a conventional book, journal, or periodical, or is not divided into distinct sections, the Licensee shall ensure, as far as is reasonably practicable, that copying is limited to extracts that are equivalent to the limits set out above;
  - (iv) for the purpose of this clause "chapter" shall include chapter-specific footnotes and bibliographic references, wherever they are located in the Work; (v) copies made from different editions of the same Work shall be aggregated for the purpose of calculating the size of an extract from a Work.
- (c) Save as provided in clause 4 hereof, the Licensee may not make copies of complete Works, nor systematically copy parts of Works or of the same Works on different occasions so as to exceed the limits herein specified.
- (d) The Licensee shall not under any circumstances post or permit the posting of Licensed Material on the World Wide Web, or Internet, or in open resources (such as, but not limited to, electronic reserves, digital libraries or institutional repositories) directly or indirectly; nor send such material by email, directly or indirectly to any third party, nor



post or provide any link or engage in any other activity which would result in Licensed Material being made available to anyone other than Authorised Persons.

- (e) The number of Print Copies of any one extract of a Work made at any one time by members of staff for distribution to students shall not exceed the number of students on a Course of Study, plus two copies for each tutor or lecturer.
- (f) The number of students given access to Licensed Copies in digital form or by electronic means for a particular Course of Study shall not exceed the number of students on that Course of Study.
- (g) The Licence does not extend to the copying of Works which are themselves copies, except for copies on which a copyright fee has been paid.
- (h) The Licensee may not republish Licensed Copies in any manner of form; nor sell, rent, or otherwise deal in Licensed Copies for valuable consideration, save that Print Copies may be provided to Authorised Persons at a price set to recoup only the cost of production and not for profit.
- (i) The Licensee may not copy Excluded Works. In the event that the Licensee should wish to copy any such works, permission should be sought from the owner of the copyright in the works.
- (j) The Licence does not extend to the making of copies outside of the Republic of Ireland, save that Licensed Copies may be supplied to Distance Learners wherever they are located. Distance Learners shall be responsible for complying with all local laws
- (k) The Licence does not authorise any amendment, alteration or manipulation of Licensed Material. Alterations may however be made for pedagogic purposes, for example by blanking out parts, annotating or translating an extract from a Work, on condition that the author's Moral Rights are respected and it is made clear on the face of the copy that the original Work has been so altered.
- (m) When an extract from Licensed Material is copied and pasted or retyped onto a digital device pursuant to the terms of this Licence, the Licensee shall ensure that the extract is a verbatim copy of the Licensed Material and includes the identity of the author and the title of the Work from which it has been extracted.
- (n) The Licensee shall not copy any graphic or visual material unless the same is an integral part of a published text. The graphic or visual material may however be copied without the related text.
- (o) The Licensee shall not collect or store Digital Copies in any form with the intention of creating an electronic database or library or other information repository or resource, save that Digital Copies may be held in so far as is necessary for technical back-up purposes.
- (p) If a Course of Study is not likely to be repeated in a future teaching session, Digital Copies made under this Licence must be removed from the Licensee's Intranet and, before that Course of Study is again taught, the Licensee must ensure that copies to be made available to Authorised Persons on that Course of Study comply with the conditions of this Licence, or a renewal thereof.
- (q) The Licensee may subcontract the making of Digital Copies to third parties provided that the Licensee takes all reasonable steps to ensure that any such third party operates appropriate management and security procedures so as to ensure compliance with the terms of the Licence. The Licensee shall keep records of all such subcontracts and the Digital Copies made thereunder and shall supply such records to ICLA on request.



(r) Licensed Copies shall not be made in a manner which directly or indirectly substitutes for the purchase of original Licensed Material or the commissioning, reproduction, hire or any other use of an original Work.

(s) The Licensee may exercise the rights granted in this Licence in relation to Digital Copies of Licensed Material notwithstanding any conditions specified in the contract or licence under which it acquired the same.

#### 4. Accessible Copies

(a) The provisions of this clause shall apply only where an Authorised Person by reason of visual impairment or other disability is unable to read or access an original publication or a Licensed Copy made under the provisions of this Licence.

(b) Notwithstanding the provisions of clause 3(b), but subject otherwise to the terms and conditions of this Licence, the Licensee may make and supply an Accessible Copy of the entire or any part of a Work or other material comprising Licensed Material for the use of an Authorised Person, subject to the following conditions:

(i) the Licensee must be the owner or lawful user of an original copy of any Work from which it makes an Accessible Copy;

(ii) the Licensee may only make an Accessible Copy of a Work if and to the extent that such Work is not commercially available in a form accessible to the Authorised Person for whom the Accessible Copy is made;

(iii) each Accessible Copy that exceeds the limits set out in clause 3(b) shall contain on the front thereof:

(aa) a statement that it is a copy of the original Work made under an ICLA Licence for the personal use of persons with visual or other reading impairment and that it may not be further copied (including any electronic copying or transmission) or dealt with without permission or save as may be permitted by law; and

(bb) the title, as well as the name of the author and publisher, of the original Work and the published edition from which it is copied.

(c) An Accessible Copy produced in a digital format may include facilities for navigating around the Accessible Copy and any such other facilities or changes (such as enlargement, reduction or colour selection of the text or illustrations) as are necessary to enable the Authorised Person for whom the Accessible Copy is made to access the Accessible Copy provided that:

(i) such changes do not amount to a derogatory treatment of the Work;

(ii) no other digital manipulation of the Work is made whether by way of optical character recognition, morphing, colour or shade adjustment or by other means, other than as necessary to make the Work accessible to the Authorised Person for whom the Accessible Copy is made;

(d) Accessible Copies may only be made and used for the benefit of Authorised Persons.

(e) The number of copies made pursuant to this clause shall not exceed the number of Authorised Persons who require an Accessible Copy.

(f) For reasons of cost and efficiency the Licensee may retain a master copy of an Accessible Copy from which future copies may be made in accordance with this clause. The master copy shall not be used for any other purpose.



## 5. Excluded Works

(a) ICLA shall make available to the Licensee in writing via its website a list of Excluded Works, and shall notify the Licensee from time to time of any changes made thereto.

(b) ICLA shall be entitled, on giving three months' notice to the Licensee, to remove a Work, or category of Work, from the Licensed Material, provided that if a Work has already been copied it can remain on the Licensee's Intranet for the remainder of the relevant academic year, but no further Print Copies may be made.

## 6. Duration

The duration of this Licence shall be the term specified in the Licence Certificate.

## 7. Licence Fee

The Licensee shall pay to ICLA the amount of the Licence Fee specified in the Licence Certificate.

## 8. Information, Records and Surveys

(a) The Licensee shall comply with the record-keeping procedures approved from time to time by ICLA, and shall make its records available to ICLA upon request.

(b) When requested to do so for a limited period the Licensee shall keep relevant bibliographic and other records of Digital Copies made under the Licence and provide such records to ICLA by a method to be agreed with the Licensee. ICLA will consult the Licensee in advance concerning the methodology for this exercise.

(c) The Licensee shall permit ICLA to attend at the Premises by arrangement from time to time (but no more often than once per year) for the purpose of carrying out an audit of copying of Licensed Material made over a one-week period.

(d) The Licensee shall warrant and undertake, and it is a condition of the grant of a Licence that all information supplied to ICLA for the purpose of the Licence is true and accurate, to the best of the Licensee's knowledge, information and belief.

(e) Unless compelled by a competent legal authority, ICLA undertakes not to disclose any information supplied to it by the Licensee under the terms of this clause, other than information in aggregated form, from which the Licensee may not be identified.

## 9. Copyright Notices

The Licensee shall use its best endeavours to ensure that:

- (a) A notice in a form approved by ICLA is displayed beside every photocopier and scanner at the Premises stating the limits of copying permitted under this Agreement, and by law;
- (b) All Authorised Persons covered by the Licence are made aware of the terms of the Licence with regard to online copying not involving scanners or photocopiers;
- (c) The names of the author and publisher and the title of the Work appear on the first page of each Print Copy made of Licensed Material.
- (d) A notice containing at least the identity of the author or creator of the Work and the title of the Work from which it is made, is displayed on every Digital Copy of Licensed Material.



- (e) For reasons of observance of the Moral Rights of the author or creator, the requirements specified in sub-clauses (b) and (c) above shall apply to graphic and visual material copied, when the requisite information is provided in the Licensed Material.

## **10. Additional Obligations of the Licensee to ICLA**

The Licensee shall take all reasonable steps to ensure that every Authorised Person availing of this Licence complies with the terms and conditions herein contained, and in particular shall implement all Guidelines to clarify for such persons the terms of the Licence notified in writing from time to time by ICLA.

## **11. Third Party Obligations**

The Licensee shall, in exercising the rights hereby granted, ensure compliance with all applicable laws, including those relating to Moral Rights, data protection, defamation, obscenity, privacy, confidence and all computer-related regulations.

## **12. Indemnities**

(a) Subject as provided below, in any case where the Licensee receives a claim that, when acting under the permission granted by the Licence, the Licensee has infringed the copyright of any person or body, ICLA shall indemnify the Licensee in respect of all reasonable costs, expenses and damages awarded against or incurred by the Licensee, including any ex gratia payment made with the prior written consent of ICLA, PROVIDED HOWEVER:

- (i) the indemnity shall only apply where the Licensee has complied with the Licence terms;
- (ii) the indemnity shall only apply when the Licensee has given ICLA written notice of any claim within 10 working days of the claim being notified to the Licensee;
- (iii) the Licensee shall ensure that no admission or offer of payment or indemnity shall be made or given on its own behalf or on behalf of ICLA without the prior written consent of ICLA; and
- (iv) the indemnity shall apply only to Works in the ICLA Repertoire; for the avoidance of doubt it shall not apply to Excluded Works

(b) The Licensee shall indemnify ICLA against all costs, claims demands and expenses arising in consequence of breach of this Agreement by the Licensee, its servants, agents and Authorised Persons.

## **13. Termination of Licence**

(a) The Licence shall be for the term specified on the Licence Certificate and shall terminate automatically on the expiry thereof.

(b) The Licence shall automatically terminate in the event that the Licensee shall cease to operate as an individual educational establishment.

(c) ICLA shall be entitled to terminate the Licence in the event of a material breach by the Licensee of the terms hereof.

(d) Termination shall be without prejudice to any antecedent rights of ICLA under the terms and conditions of the Licence.

(e) In the event of termination, the Licensee shall cease to copy Licensed Material; shall destroy all Print Copies and delete from its computer systems all Digital Copies of



Licensed Material made pursuant to the Licence and shall ensure that all Authorised Persons previously entitled to make or use copies under this agreement are notified of the termination of the Licence.

#### **14. Renewal of Licence**

This agreement may be renewed periodically by the issue of a new Licence Certificate to the Licensee.

#### **15. Service of Notices**

All notices required to be given under the Licence shall be given in writing and shall either be delivered by hand or be sent by prepaid registered post to the relevant party at the address given in the Licence Certificate. In the case of a notice sent by post, it shall be deemed to have been served on the second day following posting.

#### **16. Assignment**

The Licence is personal to the Licensee and may not be assigned to a third party without the prior written consent of ICLA.

#### **17. Variation**

No variation of the terms of the Licence shall be effective or binding unless the same shall be in writing and signed by the party against whom it is sought to enforce the variation.

#### **18. Arbitration**

Any dispute between the parties to the Licence concerning any aspect thereof may be referred by either party to the decision of the Controller of Patents Designs and Trade Marks (if empowered to determine such dispute) and otherwise to an arbitrator nominated for the President for the time being of the Irish Business and Employers Confederation.

#### **19. Governing Law**

The Licence agreement shall be governed by the laws of Ireland.



## SCHEDULE

### ICLA Repertoire

#### Part 1

##### Material Licensed for Photocopying

- Books, journals and periodicals published in print form in the following countries: Ireland; \*the United Kingdom; Argentina; Australia; Austria; Belgium; Canada (including Quebec); Denmark, France; Germany; Greece; Iceland; Italy; Japan; Lichtenstein, the Netherlands; New Zealand; Norway; South Africa; Spain; Switzerland; Taiwan, Trinidad and Tobago and the United States of America.
- **Newspapers published in print form in Ireland and the UK.**

**EXCLUDING:** Excluded works as advised from time to time by ICLA.

#### Part 2

##### Material Licensed for Scanning and Digital Distribution

- Books, journals and periodicals published in print in the following countries: Ireland, \*UK, USA provided they are identified as the Copyright Clearance Center's (CCC's) Academic Repertory Licence Repertory (CCC AACL Works) as published on CCC's website from time to time, Australia, Denmark, **Japan**, New Zealand and South Africa.
- **Newspapers published in print form in Ireland and the UK**

**EXCLUDING:** Excluded works advised from time to time by ICLA.

#### Part 3

##### Digital Publications Licensed for Digital and Print Distribution

- **Irish publications:** books, journals and periodicals distributed in electronic form that are published by the publishers listed on ICLA's website at [web address].
- **UK publications:** books, journals and periodicals distributed in electronic form that are specifically included in the list provided on the Copyright Licensing Agency's (CLA's) website, International section <http://schools.cla.co.uk/about-your-licences/cla-licence/what-can-be-copied/digital-material-publishers/>
- **USA publications:** works distributed in electronic form that are specifically included in the list on the Copyright Clearance Center's (CCC's) website of Academic Repertory Licence Repertory (CCC AACL)Works) [http://www.cla.co.uk/usa/us\\_ed](http://www.cla.co.uk/usa/us_ed)
- **Newspapers** published as digital originals in Ireland and the UK.
- Books, journals and periodicals published in digital form in the following countries: Australia, Denmark, New Zealand and South Africa.

**EXCLUDING:** Excluded works advised in writing from time to time by ICLA.



## Part 4

### Website Material Licensed for Digital and Print Distribution

- **Irish publications:** The content (text and still images) of websites made available either openly or via a paywall by the publishers listed on ICLA's website at [www.icla.ie](http://www.icla.ie).
- **UK publications:** the content (text and still images) of websites made available either openly or via a paywall by UK publishers on their websites and specifically included in the list provided on the Copyright Licensing Agency's (CLA's) website, International section <http://schools.cla.co.uk/about-your-licences/cla-licence/what-can-be-copied/digital-material-publishers/>
- **USA publications:** the content (text and still images) of websites made available either openly or via a paywall by USA publishers and specifically included in the list on the Copyright Clearance Center's (CCC's) website of Academic Repertory Licence Repertory (CCC AACL)Works) [http://www.cla.co.uk/usa/us\\_ed](http://www.cla.co.uk/usa/us_ed)
- **Newspapers:** the content (text and still images) of websites related to newspapers published in Ireland and the UK.
- **Other territories:** the content of websites (text and still images) made available either freely or via a paywall in the following countries: Australia, Denmark, New Zealand and South Africa.

**EXCLUDING:** Excluded works advised in writing from time to time by ICLA.

