

**SCHEDULE 4: LICENCE (CONSORTIUM)**

**DATED**

**2013**

**[NAME PUBLISHER]**

-and-

**[CONSORTIUM/MINISTRY (in capitals and bold)]**

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**[NAME RESOURCE] LICENCE AGREEMENT**

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## **[NAME RESOURCE] LICENCE AGREEMENT**

**[PUBLISHER]** whose principal office is at **[address]** ("Publisher"),

OFFERS to you, the Licensee, permission to access the Licensed Material and use such material only on the terms and conditions as set out in this Agreement.

Acceptance of this Agreement will be by delivery of a completed Acceptance of Licence Form attached hereto to the Publisher or to an authorised representative who will accept delivery on behalf of the Publisher. Acceptance shall be acceptance of all terms and conditions of this Agreement and no variation or counter offer will be accepted by the Publisher. In the event that no or partial compliance is made as to the manner or form described for acceptance, no licence will be granted and this offer is deemed withdrawn.

### **RECITALS**

**WHEREAS** **[Name Resource]** and all intellectual property rights therein are owned by or licensed to the Publisher;

**AND WHEREAS** the terms of this Licence and the fee were negotiated and agreed under the **[Name Resource]** Agreement between Stichting eIFL.net and the Publisher dated **[date]**.

**AND WHEREAS** the parties are desirous of reaching agreement to make access to the Licensed Material (as hereafter defined) available to authorised users of authorised institutions.

### **IT IS AGREED AS FOLLOWS**

#### **1. DEFINITIONS**

1.1 In this Agreement, the following terms shall have the following meanings:

- |                              |   |
|------------------------------|---|
| "Acceptance of Licence Form" | means the form as attached to this Licence.   |
| "Authorised Institution"     | means an Eligible Institution of which the Publisher has received IP addresses.   |
| "Authorised Users"           | means individuals who are authorised by an Authorised Institution to access the Authorised Institution's information services (whether on-site or off-site) via Secure Authentication and who are: <ul style="list-style-type: none"><li>• a current student of the Authorised Institution (including undergraduates and postgraduates) or an alumni of the Authorised Institution;</li><li>• a member of staff of the Authorised Institution (whether permanent or temporary including retired members of staff and any teacher who teaches Authorised Users registered in the country where the Authorised Institution is located);</li></ul> |

- a contractor of the Authorised Institution; or
- a Walk-In User.

Walk-In Users are persons who are allowed by the Authorised Institution to access its information services from computer terminals or otherwise within the physical premises of the Authorised Institution. For the avoidance of doubt, Walk-In Users may be given access to the Licensed Material by any wireless Secure Network. Walk-In Users are not allowed off-site access to the Licensed Material.

"Commercial Use"

means use of the Licensed Material for the purpose of monetary reward (whether by or for the Licensee, an Authorised Institution or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Material. For the avoidance of doubt, neither the recovery of direct cost by Authorised Institutions from Authorised Users, nor use by Authorised Institutions or Authorised Users of the Licensed Work in the course of research funded by a commercial organisation is deemed to constitute Commercial Use.

"Educational Purposes"

means use for the purpose of education, teaching, distance learning, private study and/or research.

"Fee"

means the fee for the Licence and for access and use of the Licensed Material by Authorised Institutions and Authorised Users as set out in the Acceptance of Licence Form. The fee shall be in line with the offer negotiated and agreed under the [Name Resource] Agreement between Stichting eIFL.net and the Publisher dated [date]. Details of the offer can be found in the pricing spreadsheet in the members-only section of the EIFL website.

"Eligible Institution"

means any university, public, national or governmental library or research institution or any other institution located in the country where the Licensee is located and for which the Licensee may provide support and/or services by law or under contract from time to time. Eligible Institutions are listed in the Acceptance of Licence Form.

"Licensed Material"

means the product(s)/material selected by the Licensee and Eligible Institutions from the Material as listed in Annex 1 to the Acceptance of Licence Form.

"Licensee"

means the organisation that may enter on behalf of the Eligible Institutions into this Licence with

the Publisher. The Licensee can be: (a) a legally established consortium; (b) a governmental organisation on behalf of the Eligible Institutions; or (c) the lead partner in an informal consortium of Eligible Institutions.

"Material" means the list of material on offer from the Publisher as set out in Schedule 1.

"Secure Authentication" means access to the Licensed Material by (Internet Protocol ("IP") ranges or by a username and password provided by the Licensee or by another means of authentication agreed between the Publisher and the Licensee.

"Secure Network" means a network which is only accessible to Authorised Users by Secure Authentication.

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. LICENCE GRANT**

2.1 In consideration for the Fee, the Publisher hereby grants to the Licensee upon payment of the Fee a non-exclusive non-transferable licence to access and use the Licensed Material and to allow Authorised Institutions and Authorised Users to access and use the Licensed Material on the terms and conditions as set out in this Licence via Secure Authentication and for Educational Purposes only.

## **3. PERMITTED USES**

3.1 This Licence permits the Licensee and Authorised Institutions for Educational Purposes only to:

3.1.1 provide Authorised Users with integrated access and an integrated article author, article title and keyword index to the Licensed Materials and all other similar material licensed from other publishers;

3.1.2 supply to an authorised user of a non-commercial library located in the same country as the Licensee (whether by post, fax or secure electronic transmission provided the electronic file is deleted immediately after printing) a single paper copy of an electronic original of an individual document;

3.1.3 provide single printed or electronic copies of single articles at the request of individual Authorised Users;

3.1.4 display, download and print parts of the Licensed Material for the purpose of promoting or testing the Licensed Material or for training Authorised Users;

3.1.5 make and distribute copies of training material as may be required for the purpose of using the Licensed Material in accordance with this Licence;

3.1.6 allow Authorised Users for Educational Purposes only to:

- 3.1.6.1 access the Licensed Material by Secure Authentication in order to search, retrieve, display and view the Licensed Material;
  - 3.1.6.2 electronically save parts of the Licensed Material;
  - 3.1.6.3 print out single copies of parts of the Licensed Material;
  - 3.1.6.4 incorporate parts of the Licensed Material in printed and electronic course packs to be used in the course of instruction and/or in virtual learning environments hosted on a Secure Network. Authorised Users must specify the title and copyright owner of the Licensed Material used in the course packs. Course packs in other formats, such as Braille, may also be offered to Authorised Users;
  - 3.1.6.5 incorporate parts of the Licensed Material in printed or electronic form in assignments and portfolios, theses and in dissertations (“the Academic Works”), and to make reproductions of the Academic Works for personal use and library deposit. Reproductions of the Academic Works can be provided to sponsors of those Academic Works. Authorised Users must specify the title and copyright owner of the Licensed Material used in the Academic Works;
  - 3.1.6.6 publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other similar event;
  - 3.1.6.7 save and/or deposit in perpetuity parts of the Licensed Material in electronic repositories operated by the Institution and/or by an Authorised User on a Secure Network. Access to and use of such repositories shall be limited to Authorised Users; and
  - 3.1.6.8 use the Licensed Material to perform and engage in text mining/ data mining activities for academic research and other Educational Purposes and allow Authorised Users to mount, load and integrate the results on a Secure Network and use the results in accordance with this Licence.
- 3.2 Throughout the term of this Licence, the Licensee, Authorised Institutions and their authors shall be permitted free of charge to store articles written by such authors appearing in the Licensed Material (in the form published by the publisher (e.g. PDF)) with a maximal time embargo of one year in an (institutional or discipline-specific) repository of their choice and to make them available in Open Access.

#### **4. RESTRICTIONS**

- 4.1 Except where this Licence states otherwise, the Licensee, Authorised Institutions and Authorised Users may not:
- 4.1.1 use all or any part of the Licensed Material for any Commercial Use or for any purpose other than Educational Purposes unless the Publisher has given permission in writing to do so;
  - 4.1.2 remove, obscure or alter copyright notices, text acknowledgments or other means of identification or disclaimers;
  - 4.1.3 alter, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this Licence. For the avoidance of doubt, no alteration of the words or their order is allowed;

- 4.1.4 display or distribute any part of the Licensed Material on any electronic network, including the Internet, other than by a Secure Network;
- 4.1.5 make printed or electronic copies of multiple extracts of the Licensed Material for any purpose, beyond those authorised by this Licence; and
- 4.1.6 systematically distribute the whole or any part of the Licensed Material to anyone other than Authorised Users.

4.2 This Clause shall survive termination of this Licence for any reason.

## **RESPONSIBILITIES OF THE PUBLISHER**

5.1 The Publisher shall:

- 5.1.1 provide access and allow use of the Licensed Material in accordance with the provisions as laid down in this Licence;
- 5.1.2 make the Licensed Material available to the Licensee and Authorised Institutions either from the Publisher's server or the server of a third party;
- 5.1.3 provide for customer support services to Authorised Institutions and to their Authorised Users via e-mail or phone, including answering e-mail inquiries relating to the use, functionality and content of the Licensed Material;
- 5.1.4 provide electronic product documentation free of charge. The Publisher allows copies of all documentation to be made and distributed to Authorised Institutions provided it is either duplicated in full, or a proper ownership acknowledgement is included;
- 5.1.5 provide the Licensee and Authorised Institutions with fully COUNTER-compliant usage statistics on at least a quarterly basis;
- 5.1.6 use all reasonable efforts to meet the Open URL Standard ([www.niso.org](http://www.niso.org)) to ensure that Authorised Users can discover the Licensed Material;
- 5.1.7 use all reasonable efforts to meet the W3C standards ([www.W3.org](http://www.W3.org)) to ensure that the Licensed Material is accessible to all Authorised Users;
- 5.1.8 to inform the Licensee from time to time of the dark archives that the Publisher uses for archiving the Licensed Material in the event of a force majeure or if the Publisher ceases to exist; and
- 5.1.9 permit the Licensee and Authorised Institution to make cancellations and substitutions of the Licensed Material annually [only applicable for multi-years agreements].

5.2 The Publisher reserves the right at any time to withdraw from the Licensed Material any item or part of an item:

- i) for which the Publisher no longer retains the right to publish; or
- ii) for which the Publisher has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.

In the event of a withdrawal, the Publisher shall give written notice thereof to the Licensee. If the withdrawn material represents more than ten per cent (10%) of the Licensed Material, the Publisher shall make a pro rata refund of the Fee to the Licensee. The refund will take into

account the amount of material withdrawn and the length of the subscription period remaining.

## **6. RESPONSIBILITIES OF THE LICENSEE**

6.1 The Licensee agrees to:

6.1.1 use all reasonable efforts to ensure that the Authorised Institutions are made aware of the terms of this Licence;

6.1.2 use all reasonable efforts to ensure that the Authorised Institutions and Authorised Users comply with the terms of this Agreement. The Licensee will immediately on becoming aware of any unauthorised use or other breach notify the Publisher and take all reasonable steps to ensure that such activity ceases and to prevent any recurrence;

6.1.3 provide or shall cause the Authorised Institutions to provide the Publisher with lists of valid IP addresses and update those lists on a regular basis the frequency of which will be agreed by the parties from time to time; and

6.1.4 cause for Authorised Institutions to undertake to the Publisher that the Authorised Institution's computer system through which Licensed Material will be used is configured, and procedures are in place, to prohibit access to the Licensed Material by any person other than an Authorised User, that it shall inform the Authorised Users about the conditions of use of the Licensed Material, and that during the term of this Licence, Authorised Institutions will continue to make best efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

## **7. FEE**

7.1 The Licensee shall pay the Publisher in accordance with the terms of payment as set out in the Acceptance of Licence Form and the Publisher will invoice the Licensee for the Fee payable and due at the address as set out in the Acceptance of Licence Form.

## **8. TERM AND TERMINATION**

8.1 The term of this Agreement will commence on the date of signature and will remain in full force and effect until the date as set out in the Acceptance of Licence Form unless terminated earlier as provided for in this Clause 8.

8.2 Any party may terminate this Agreement at any time on the material or persistent breach by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith by written notice to the other party.

8.3 Upon termination of this Agreement by the Publisher due to a material or persistent breach by the Licensee, the Publisher shall cease to authorise all on-line access to the Licensed Materials by Authorised Institutions and Authorised Users. All rights under this Licence will be automatically terminated, except for such rights of action as will have accrued prior to such termination and any obligation which expressly or impliedly continue in force after such termination.

8.4 Upon termination of this Agreement by the Licensee due to a material or persistent breach by the Publisher, the Publisher will reimburse the Licensee a pro rata proportion of the then remaining Fee for the unexpired period of this Licence.

8.5 Upon termination of this Agreement, the Publisher will provide the Authorised Institutions and their Authorised Users with access to the full text of the Licensed Material which was published and paid for during the term of this Licence, either by continuing online access via the Publishers' server or by supplying the electronic files in a medium and format mutually agreed between the parties to the Authorised Institutions without charge. Continuing archival access is subject to the terms and conditions of use of this Licence.

## **9. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

9.1 Except as provided for in Clauses 9.2 and 9.3, the Licensee acknowledges that all copyrights, patent rights, trademarks, database rights, trade secrets and other intellectual property rights relating to the Licensed Material, are the property of the Publisher or duly licensed to the Publisher and that this Licence does not assign or transfer to the Licensee any right, title or interest therein except for the right to use the Licensed Material in accordance with the terms and conditions of this Licence.

9.2 For the avoidance of doubt, the Publisher hereby acknowledges that any database rights created by the Licensee or an Authorised Institution as a result of local mounting of the Licensed Material as referred to in Clause 8.5 shall be the property of the Licensee or such Authorised Institution.

9.3 For the avoidance of doubt, the Publisher hereby acknowledges that any database rights created by the Licensee, an Authorised Institution or an Authorised User as a result of textmining/datamining of the Licensed Material as referred to in Clause 3.1.6.8 shall be the property of the Licensee or such Authorised Institution or Authorised User.

## **10. REPRESENTATION, WARRANTIES AND INDEMNIFICATION**

10.1 The Publisher warrants to the Licensee that it is entitled to grant the licence in this Agreement and that the use of the Licensed Material as contemplated in this Licence will not infringe any copyright or other proprietary or intellectual property rights of any natural or legal person. The Publisher agrees that the Licensee and Authorised Institutions shall have no liability and the Publisher will indemnify, defend and hold the Licensee and Authorised Institutions harmless against any and all direct damages, liabilities, claims, causes of action, attorneys' fees and costs incurred by the Licensee or Authorised Institutions in defending against any third party claim of intellectual property rights infringements or threats of claims thereof with respect of the Licensee's and Authorised Institution's use of the Licensed Material, provided that: (1) the use of the Licensed Material has been in full compliance with the terms and conditions of this Licence; (2) the Licensee and Authorised Institution(s) provide the Publisher with prompt notice of any such claim or threat of claim; (3) the Licensee and Authorised institutions cooperate fully with the Publisher in the defence or settlement of such claim; and (4) the Publisher has sole and complete control over the defence or settlement of such claim.

10.2 The Publisher reserves the right to change the content, presentation, user facilities or availability of parts of the Licensed Material and to make changes in any software used to make the Licensed Material available at their sole discretion. The Publisher will notify the Licensee of any substantial change to the Licensed Material.

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



- 10.4 In no circumstances will the Publisher be liable to the Licensee for any loss resulting from a cause over which the Publisher 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.
- 10.5 The Licensee agrees to notify the Publisher immediately 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 Publisher becomes aware of such a claim from other sources, the Publisher may remove such work(s) from the Licensed Material. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement.
- 10.6 Nothing in this Agreement shall make the Licensee liable for breach of the terms of this Agreement by any Authorised Institution or Authorised 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.

## **11. FORCE MAJEURE**

- 11.1 Either party's failure to perform any term or condition of this Agreement as result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities) ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Agreement.
- 11.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

## **12. ASSIGNMENT**

- 12.1 Except as permitted for under this Licence, neither this Licence nor any of the rights under it may be assigned 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 Licence and agrees to be bound to all the terms of this Licence.

## **13. GOVERNING LAW AND DISPUTE RESOLUTION**

- 13.1 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.
- 13.2 The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Managing Director of the Publisher and a senior officer of the Licensee. Where the parties agree that a dispute arising out of or in connection with this Licence would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement.
- 13.3 Any person to whom a reference is made under Clause 13.2 shall act as an expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.

13.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

13.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

#### **14. NOTICES**

14.1 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 below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received (a) 24 hours after successful transmission in the case of electronic mail or fax; (b) fourteen (14) days after the date of posting in the case of first class registered or recorded delivery:

if to the Publisher:

[insert details]

if to the Licensee:

to the contact person and address as set out in the Acceptance of Licence Form.

#### **15. GENERAL**

15.1 This Agreement, its Schedules and Annexes 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.

15.2 The Schedules and Annexes 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 and Annexes.

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

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

15.5 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: MATERIAL**

**[INSERT DETAILS]**

**[NAME RESOURCE]:**

**ACCEPTANCE OF LICENCE FORM**

The Licensee hereby accepts and agrees to the terms and conditions of the [Name Resource] Licence Agreement as displayed in the Members' Only section of the EIFL website (contract number: [Name Resource] 2013-01) and its Schedules and Annexes.

The Licensee agrees to subscribe to the Licensed Material for Eligible Institutions as listed in Annex 1 below from [insert date] to [insert date] ["Term"] and to pay to the Publisher the Fee of [insert amount and currency] for access and use of the Licensed Material for the duration of the Term.

The fee shall be due and payable 90 days after the date of an invoice for the fee from the Publisher. The fee excludes VAT and local taxes. The Licensee will pay such taxes where applicable.

Name of Licensee (name of institution):	
Full postal address of Licensee:	
Telephone:	
Primary contact person:	
Fax:	
E-mail:	
Deputy contact person:	
Fax:	
E-mail:	
Purchase order number:	
Invoice address (if different from above):	
IP addresses:	

Signature: \_\_\_\_\_

Signed by: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

List of Eligible Institutions

No.	Eligible Institutions Library Premise(s)	Contact person	Address	IP addresses/passwords
1.				
2.				
3.				
4.				
5.				

## ANNEX I – LIST OF COLLECTIONS SELECTED BY ELIGIBLE INSTITUTIONS

The following collections have been selected by the Eligible Institutions and will collectively form the Licensed Material.

Institution	Product/Collection	Price