

SCHEDULE 5: LICENCE (INSTITUTION – FREE ACCESS)

DATED

2013

[NAME PUBLISHER]

-and-

[INSTITUTION (in capitals and bold)]

[NAME RESOURCE] LICENCE AGREEMENT

[NAME RESOURCE] LICENCE AGREEMENT

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

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

Acceptance of this Licence 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 Licence 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is made as to the manner or form described for acceptance, no licence will be granted and this offer is deemed withdrawn.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 to contract on the basis of the terms and conditions of this Licence.

1. DEFINITIONS

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

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|------------------------------|---|
| "Acceptance of Licence Form" | means the form as attached to this Licence. |
| "Authorised Users" | means an individual who is authorised by the Institution to have access to its information services (whether on-site or off-site) via Secure Authentication and who is: <ul style="list-style-type: none">• a current student of the Institution (including undergraduates and postgraduates) or an alumni of the Institution;• a member of staff of the Institution (whether permanent or temporary including retired members of staff and any teacher who teaches Authorised Users registered in the country where the Institution is located);• an individual holding a valid library membership card issued by the Institution;• a contractor of the Institution; or• a Walk-In User. |

Walk-In Users are persons who are allowed by the Institution to access its information services from computer terminals or otherwise within the

physical premises of the 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 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 the Institution from Authorised Users, nor use by the Institution or Authorised Users of the Licensed Material 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 for access and use of the Licensed Material as set out in the Acceptance of Licence Form. The fee will 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 for the Licensed Material can be found in the pricing spreadsheet in the members-only section of the EIFL website.
"Institution"	means the organisation that signs the Acceptance of Licence Form.
"Licensed Material"	means the product(s)/material selected in the Acceptance of Licence Form from the Material which is further described and/or listed in Schedule 1.
"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, by a username and password provided by the Institution or by another means of authentication agreed between the Publisher and the Institution.
"Secure Network"	means a network which is only accessible to Authorised Users by Secure Authentication.

2. LICENCE GRANT

- 2.1 In consideration for the Fee, the Publisher hereby grants to the Institution upon payment of the Fee a non-exclusive non-transferable licence to access and use the Licensed Material and to allow 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 Institution 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 Material 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 Institution (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; and
 - 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.

4. RESTRICTIONS

- 4.1 Except where this Licence states otherwise, the Institution 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 the Institution or an Authorised User 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.

5. 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 Materials available to the Institution and its Authorised Users either from the Publisher's server or the server of a third party;
- 5.1.3 provide for customer support services to the Institution and to 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 provided it is either duplicated in full, or a proper ownership acknowledgement is included;
- 5.1.5 provide the Institution 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) 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) to ensure that the Licensed Material is accessible to all Authorised Users;
- 5.1.8 inform the Institution 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 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 Institution. 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 Institution. The refund will take into account the amount of material withdrawn and the length of the subscription period remaining.

6. RESPONSIBILITIES OF THE INSTITUTION

6.1 The Institution shall:

- 6.1.1 use all reasonable efforts to ensure that Authorised Users are made aware of the terms of this Licence;
- 6.1.2 use all reasonable efforts to ensure that the Authorised Users comply with the terms of this Agreement. The Institution 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 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 undertake to the Publisher that the 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, and that during the term of this Licence, the Institution 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 fee for access and use of the Licensed Material shall be fixed at one peppercorn payable only if demanded by the Publisher.

8. TERM AND TERMINATION

8.1 The term of this Licence will commence upon 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 The Institution may terminate this Agreement at any time after [insert date after first 12 months] if sufficient funds are not provided or allotted in the library budget by the appropriate body of the Institution for the Licensed Material (or reasonably available or expected to become available from other sources at the time the Institution's payment obligation attaches). The Vice Chancellor of the Institution shall provide a written statement to the Publisher in which the Vice Chancellor confirms the significantly decreased budget allocation to the library. In the event that the Institution wishes to terminate the Agreement from [insert date after first 12 months], the Institution should notify the Publisher thereof three months before such termination should take effect. In subsequent years, the Institution will notify the Publisher three months prior to the anniversary date of this Agreement. Such termination will become effective on 1st January of the relevant year.

8.3 Any party may terminate this Licence at any time on the material or persistent breach by the other of any obligation on its part under this Licence 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.

8.4 Upon termination of this Licence by the Publisher due to a material or persistent breach by the Institution, the Publisher shall cease to authorise all on-line access to the Licensed Materials. 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.

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

9. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

9.1 The Institution acknowledges that all copyrights, patent rights, trade marks, database rights, trade secrets and other intellectual property rights relating to the Licensed Material are the sole and exclusive property of Publisher or are duly licensed to the Publisher and that this Licence does not assign or transfer to the Institution 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.

10. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

10.1 The Publisher warrants to the Institution that it is entitled to grant the licence in this Licence 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 Institution shall have no liability and the Publisher will indemnify, defend and hold the Institution harmless against any and all direct damages, liabilities, claims, causes of action, legal fees and costs incurred by the Institution in defending against any third party claim of intellectual property rights infringements or threats of claims thereof with respect of the Institution's and Authorised Users 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 Institution provides the Publisher with prompt notice of any such claim or threat of claim; (3) the Institution co-operates 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 Institution 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 Institution 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 Institution 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 Institution 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 Licence.

- 10.6 Nothing in this Licence shall make the Institution liable for breach of the terms of this Licence by any Authorised User provided that the Institution did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
- 10.7 The Institution represents to the Publisher that its computer system through which the 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 Authorised Users about the conditions of use of the Licensed Material; and that during the term of this Licence, the Institution will continue to make all reasonable efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

11. FORCE MAJEURE

- 11.1 Either party's failure to perform any term or condition of this Licence as a 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 Licence.
- 11.2 If either party to this Licence is prevented or delayed in the performance of any of its obligations under this Licence 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 Licence 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 Licence 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 the current Vice Chancellor of the Institution. Where the parties agree that a dispute arising out 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 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 Licence 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 Licence, and 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 Institution: to the contact person and address as set out in the Acceptance of Licence Form.

15. GENERAL

15.1 This Licence, 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 Licence and any reference to this Licence shall include the Schedules.

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

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

15.5 The rights of the parties arising under this Licence shall not be waived except in writing. Any waiver of any of a party's rights under this Licence or of any breach of this Licence 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 Licence 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 OF THE PRODUCT(S)/MATERIAL]

[NAME RESOURCE]:
ACCEPTANCE OF LICENCE FORM

Licensed Material (please make your selection by ticking the relevant box below)

Product/Material

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The Publisher has agreed to make the Licensed Material available to the Institution free of charge for the period [date] until [date] ["Term"].

By filling out this form, the Institution accepts and agrees to use the Licensed Material during the Term in accordance with 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.

Name of Institution (name of institution):	
Full postal address of Institution:	
Telephone:	
Contact person:	
Fax:	
E-mail:	
IP addresses:	

Signature: _____

Signed by: _____

Position: _____

Date: _____

Important notes:

1) Please sign this Acceptance of Licence Form and either:

- Fax a copy to the Publisher
- Scan it and email it to the Publisher
- Send it by post but ensure you retain one original copy for your institutional records

The Publisher's contact details are:

Contact person:	
Email:	
Fax:	
Full postal address:	

2) Any changes to the contact details and IP addresses must be notified to the Publisher in writing.