



University of Toronto Press Site Licence Agreement

THIS Site Licence Agreement (hereafter "LICENCE") IS AGREED the ___ day of _____, in the year _____.

BETWEEN

University of Toronto Press (hereafter the "Licensor") (5201 Dufferin Street, North York, ON M3H 5T8), as owner and publisher of _____ (hereafter the "Licensed Materials")

and

_____ (hereafter the "Licensee").

WHEREAS the Licensee desires to use the Licensed Materials and the Licensor desires to grant to the Licensee the licence to use the Licensed Materials, as defined in Schedule 1, subject to the terms and conditions of this Licence.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

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

1.1. Authorized Users

Full- and part-time students, faculty, and employees (including permanent, temporary, contract, or visiting appointments) and researchers associated with the Licensee, regardless of the physical location of such persons. Walk-in Users shall be deemed to be Authorized Users under the terms and conditions of this Licence.

1.2. Commercial Use

Use of the Licensed Materials for the purposes of monetary reward (by Authorized Users) by means of sale, resale, loan, transfer, hire, or other form of commerce. For the avoidance of doubt, the following uses shall not be deemed to constitute Commercial Use: recovery of direct costs by the Licensee from Authorized Users of the Licensed Materials in the course of research funded by a commercial organization; recovery of copying costs as outlined in Section 3.5.

1.3. Course Pack

A collection or compilation of materials (e.g., book chapters or journal articles) assembled by staff of the Licensee for use by students in a class for the purposes of instruction.

1.4. Data or Text Mining

A machine process by which information may be derived by identifying patterns and trends within natural language through text categorization, statistical pattern recognition, concept or sentiment extraction, and the association of natural language with indexing terms.

1.5. Electronic Learning Environments

A software system designed to support teaching and learning in an educational setting, including by not limited to, virtual research environments, library environments, and courseware technologies generally hosted on a Secure Network.

1.6. Electronic Reserves

Electronic copies of materials (e.g., journal articles) made and stored on the Secure Network by the Licensee for use by students who are Authorized Users in connection with specific courses of instruction offered by the Licensee to its students.

1.7. Purchase Fee

The payment set out in Schedule 1 for perpetual access to and maintenance of the Licensed Materials.

1.8. Secure Network

A network which is accessible only to Authorised Users by secure authentication.

1.9. Server

The server, either the Licensor's server or a third-party server designated by the Licensor, on which the Licensed Materials are mounted and may be accessed.

2. GRANT OF LICENCE

2.1. General

The Licensor hereby grants to the Licensee the nonexclusive and non-transferable right to permit Authorized Users to access the Licensed Materials for the purposes of private study, research, education, distance learning, teaching, and administrative use associated with the normal practices and activities of the Licensee and consistent with the fair dealing doctrine and exceptions for educational institutions and libraries in Canadian copyright law. Except for the rights expressly granted under this Licence, all other rights are reserved and shall remain exclusive to the Licensor.

2.2. Perpetual Access

Except for termination for uncured breach (see Section 11.2), the Licensor hereby grants to the Licensee a nonexclusive, royalty-free, perpetual licence for the Licensee and their Authorized Users to use the Licensed Materials. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which the Licensee shall have access to the Licensed Materials is outlined in Schedule 1.

3. USAGE RIGHTS

The Licensed Materials may be used for the purposes of research, education, distance learning, or other non-commercial use as follows:

3.1. Display

Authorized Users shall have the right to electronically display the Licensed Materials.

3.2. Digital Copying

Authorized Users may download and digitally copy no more than 25 articles at a session of the Licensed Materials.

3.3. Saving

Authorized Users may electronically save no more than 25 articles at a session of the Licensed Materials.

3.4. Printing

Authorized Users may print no more than 25 articles at a session of the Licensed Materials.

3.5. Recovery of Copying Costs

The Licensee may charge a fee to cover costs of copying or printing portions of Licensed Materials for Authorized Users, including the costs associated with reproducing portions of the Licensed Materials for the creation of printed Course Packs. Such fees shall not constitute Commercial Use.

3.6. Course Packs / Electronic Reserve

Authorized Users may incorporate no more than 5 articles at one time from the Licensed Materials in printed and electronic Course Packs and Electronic Reserve collections for the use of Authorized Users in the course of instruction at the Licensee's Institution, but not for Commercial Use. Such usage will be consistent with the Canadian copyright law. Each such item shall carry appropriate acknowledgement of the source, listing title and author of the work, and the publisher. Course packs in non-electronic, non-print perceptible form, such as audio or Braille, may also be offered to Authorized Users who, in the reasonable opinion of the Licensee, have visual, perceptual, or physical disabilities.

3.7. Electronic Learning Environments

Authorized Users may incorporate no more than 5 articles at one time from the Licensed Materials to be used in Electronic Learning Environments. Such usage will be consistent with Canadian copyright law. Each item shall carry appropriate acknowledgement of the source, listing title, author, and copyright owner.

3.8. Use in Academic Research

Authorized Users may incorporate limited parts of the Licensed Materials in printed or electronic form in assignments, portfolios, theses, and dissertations, including reproductions of the Licensed Materials for library deposit and other non-commercial uses consistent with Canadian copyright law. Authorized Users shall be permitted to extract or use information contained therein for purposes such as educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis consistent with Canadian copyright law.

3.9. Electronic Links

The Licensor will comply with the OpenURL standard. Licensee may provide electronic links to the Licensed Materials from the Licensee's web page(s). The Licensor will assist the Licensee upon request in creating such links effectively, and will use the OpenURL standard for such links whenever feasible. Licensee may make changes in the appearance of such links and/or statements accompanying such links as reasonably requested by the Licensor.

3.10. Scholarly Sharing

Authorized Users may transmit, in hard copy or electronically, no more than one article at one time of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use, but in no case for Commercial Use. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables, and excerpts from the Licensed Materials in Authorized User's own scientific, scholarly, and educational works, consistent with Canadian copyright law.

3.11. Interlibrary Loan

The Licensee shall be permitted to supply to a non-subscribing library (whether by post, fax, or secure electronic transmission or secure post-to-Web, whereby the electronic file is deleted immediately after printing), for the purposes of research or private study and not for Commercial Use, a single copy of an electronic original of an article being part of the Licensed Materials, consistent with Canadian copyright law. Files transmitted in this manner must carry

copyright notices. Licensee agrees to fulfil interlibrary loan requests in compliance with Canadian copyright law.

3.12. Marketing and Training Materials

The Licensee and Authorized Users may display, download, or print limited parts of training and promotional materials related to the Licensed Materials for the purpose of internal marketing or for training Authorized Users or groups of Authorized Users.

3.13. Data or Text Mining

Authorized users shall be permitted to apply automated tools and processes to the Licensed Materials consistent with Canadian copyright law for the purposes of data mining for purposes of textual analysis and visual mapping of textual relationships.

3.14. Walk-In Users

Walk-In Users may be given access to the Licensed Materials by Licensee, but only: (i) from designated terminals that are physically located in Licensee's premises; and (ii) with a Licensee-controlled IP address.

3.15. Persons with Visual, Perceptual, or Physical Disabilities

In the event that the Licensed Materials are not Accessibility compliant, the Licensee shall have the right to modify or copy the Licensed Materials in order to make them useable to Authorized Users, within the framework of this Agreement.

4. PROHIBITED USES

4.1. Unauthorized Use

The Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials. Licensee may use Licensed Materials only as expressly permitted in Section 3 above. All other uses of the Licensed Materials are prohibited, including, but not limited to:

- a) re-distribution, re-selling, or sub-licensing in any manner, including in connection with fee-for-service use or to other persons or entities except to Authorized Users (other than Walk-in Users);
- b) supply or distribution of single or multiple copies in any form to anyone other than an Authorized User;
- c) download of copies of the Licensed Materials for archival use;
- d) distribution of any part of the Licensed Materials on any electronic network, including, without limitation, the Internet on the Worldwide Web, other than the Licensee's Secure Network; and
- e) monetary reward (whether by Licensee or an Authorized User) by means of sale, transfer, or other form of exploitation of the Licensed Materials or any part thereof without Licensor's prior explicit written permission. For the avoidance of doubt, bulk reproduction or distribution of electronic or print copies of Licensed Materials for sales/promotional purposes is specifically prohibited.

5. MODIFICATION OF LICENSED MATERIALS

The Licensee shall not modify, manipulate, or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

5.1. Removal of Copyright Notice

The Licensee may not remove, obscure, or modify any copyright notices included in the Licensed Materials.

5.2. Automatic Searches

Licensee shall not use any robots, spiders, crawlers, or other automated downloading programs or devices to continuously and automatically search, index, or retrieve any content accessed online under this Licence, except as permitted by this Licence. Licensee shall not reverse-engineer, decompile, or disassemble any software included in the Licensed Materials.

5.3. Commercial Purposes

Licensee may not use the Licensed Materials for any Commercial Use other than those allowed in Section 1.2.

6. MUTUAL RESPONSIBILITIES

6.1. Confidentiality of User Data

Licensor and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users.

7. LICENSOR RESPONSIBILITIES

7.1. Completeness of Content

Where applicable, Licensor shall use reasonable efforts to ensure that the online content is, as much as possible, equivalent to print versions of the Licensed Materials and that it represents a complete, faithful, and timely replication of the print versions of such Licensed Materials where applicable. Any content removed at the request of the copyright holder will be clearly identified in the Licensed Materials.

7.2. Withdrawal of Licensed Materials

Licensor reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish and for which the Licensor has been unable to secure the provisions, or any item or part of an item which the Licensor has reasonable grounds to believe infringes copyright or is defamatory or otherwise unlawful in nature, from the Licensor's servers. The Licensor shall give written notice to the Licensee of such withdrawal.

8. LICENSEE RESPONSIBILITIES

8.1. Provision of Notice of Licence Terms to Authorized Users

Licensee shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Licence, including, in particular, any limitations on access or use of the Licensed Materials as set forth in this Licence.

8.2. Provision of Notice of Intellectual Property Right to Authorized Users

Licensee shall make reasonable efforts to provide Authorized Users with notice of any applicable intellectual property or other rights related to the Licensed Materials. Licensee shall make reasonable efforts to prevent any infringement that comes to the attention of the Licensee, of any intellectual property or other rights of the Licensor in the Licensed Materials. Licensee shall promptly notify Licensor of any infringement that arises, and shall take appropriate steps to avoid its recurrence; Licensee agrees to take immediate action to suspend access to the Licensed Materials by any Authorized User violating these restrictions on reproduction, use, and transmission of the Licensed Materials and shall consider other restrictions on access to and retrieval of the Licensed Materials, including additional limitations on printing and downloading, without prejudice to Licensor's rights and remedies.

8.3. Protection from Unauthorized Use

Licensee shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Licence. Licensee shall use reasonable efforts to comply with the terms and conditions of this Licence by Authorized Users, and upon becoming aware of any unauthorized use or other breach, shall inform the Licensor in a timely manner and take reasonable and appropriate steps to ensure that such activity ceases and to prevent any future recurrence; Licensee agrees to take immediate action to suspend access to the Licensed Materials by any unauthorized user. Both parties agree to cooperate in good faith and to provide sufficient exchange of information to prevent any further unauthorized use.

9. REPRESENTATION, WARRANTIES, AND INDEMNIFICATION

Subject to the Limitations set forth elsewhere in this Licence:

9.1. Limitations on Warranties

Neither party shall be liable for any indirect, special, incidental, punitive, or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials.

Licensor makes no representation or warranty, and expressly disclaims any liability, with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein; libel; infringement of rights of publicity, privacy, trademark rights, or moral rights; or the disclosure of confidential information.

Except for the express warranties stated herein, the Licensed Materials are provided on an "as is" basis, and LICENSOR DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, ORAL, OR WRITTEN), RELATING TO THE LICENSED MATERIALS OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus or other such malicious computer program. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

9.2. Indemnities

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Licence, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request.

9.3. Term of Indemnity

This indemnity shall survive the termination of this Licence for any reason. This indemnity shall not apply to any specific Licensed Materials if the Licensee has amended the Licensed Materials in any way not permitted by this Licence. The maximum liability of Licensor under this Licence, if any, for damages incurred by Licensee or any Authorized User whether based in contract or tort, the total cost of the licensed product for the Licensee, for the life of the agreement, is as listed in Schedule 1. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS LICENCE IS APPLICABLE TO THIS INDEMNIFICATION.

10. GENERAL

10.1. Entire Licence

This Licence constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written.

10.2. Amendment

No modification or claimed waiver of any provision of this Licence shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

10.3. Assignment and Transfer

Licensee may assign this Licence without the prior written consent of Licensor. Licensor may assign this Licence without the prior written consent of Licensee. The rights and obligations of this Licence shall bind and benefit any successors or assigns of the parties.

10.4. Notices

Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this Licence or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within 14 days of posting.

10.5. Force Majeure

Neither party shall be liable in damages or have the right to terminate this Licence for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control, including, but not limited to, Acts of God, government restrictions (including the denial or cancellation of any export or other necessary licence), wars, terrorism, insurrections, strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected.

10.6. Severability

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

10.7. Waiver of Contractual Right

Either party's waiver or failure to require performance by the other, of any provision of this Licence will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

10.8. Governing Law

This Licence shall be governed by and construed in accordance with the laws of the Province of Ontario, 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 laws of Ontario and Canada applicable therein. Both parties agree that any action or proceeding relating to this Licence will be brought to a court of competent jurisdiction in the Province of Ontario, Canada.

10.9. Dispute Resolution

If the parties disagree over an interpretation of this Licence or whether a party is in breach of any part of this Licence, the parties shall in good faith enter into negotiations to resolve the disagreement and discuss the feasibility of resolving the disagreement by mediation or other means short of litigation. The parties shall cooperate in good faith in pursuing mediation or such other means.

11. TERM AND TERMINATION

11.1. Suspension of Access

The Licensor reserves the right to temporarily suspend the Licensee's access to the Licensed Materials for substantial infringement of the rights holder's intellectual property rights in the Licensed Materials or for a breach of the terms of this Licence that threatens either the performance or the security of the Server. Immediately after suspending such access the Licensor shall issue a notice of the breach to the Licensee. The Licensor shall forthwith restore access to the Licensee upon receipt of notice that such activity has ceased and that the Licensee has made reasonable efforts to protect against recurrence of such activity.

11.2. Breach of Licence

Under ordinary circumstances, should a breach of this Agreement by the Licensee or an Authorized User come to the attention of the Licensor, the Licensor will inform the Licensee and provide a reasonable amount of time (ordinarily 30 days) for investigation and, if necessary, correction of the breach. But the Licensor shall have the right immediately to suspend this Licence Agreement, without need for provision of proof, if it determines that the Licensee has committed a serious and material breach of the Agreement or one that is likely to continue. If it is feasible to cut off the access of a single offending user, rather than the entire institution, that will be done.

If the Licensor is in breach of this Agreement, the Licensee will inform Licensor in writing and allow 30 days to mend the breach. If the breach is not cured, the Licensee may terminate the Agreement upon written notice and receive a pro-rated refund.

AS WITNESSED by the signatures of the parties on the day and year noted below.

FOR THE LICENSOR

Antonia Pop
Director, Journals
5201 Dufferin Street
North York, ON M3H 5T8
Telephone: 416-667-7838
E-mail: apop@utpress.utoronto.ca

Date:

Signature:

FOR THE LICENSEE

Date:

Signature:

