

**PUBLISHER EBOOKS AGREEMENT – PERPETUAL ACCESS (ACADEMIC)**  
(hereinafter called ,Agreement‘)

between

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Represented by Anne-Kristin Wohlbier

(hereinafter called ,Publisher‘)

of the one part

and

Licensee: \_\_\_\_\_

Street: \_\_\_\_\_

Zip: \_\_\_\_\_ City: \_\_\_\_\_

State/Province: \_\_\_\_\_ Country: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Institution's IP addresses: \_\_\_\_\_

\_\_\_\_\_

Proxy server IP address: \_\_\_\_\_

Bill to (if different from “Licensee” address)

Street: \_\_\_\_\_

Zip: \_\_\_\_\_ City: \_\_\_\_\_

State/Province: \_\_\_\_\_ Country: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

(hereinafter called “Licensee“)  
of the other part

In consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the parties agree as follows:

**1. Definitions.**

- a. "Authorized Sites" means the locations listed in Schedule A.
- b. "Authorized Users" means (a) persons affiliated with Licensee as students, faculty or employees; (b) authorized persons physically present in Licensee's library facilities; and (c) such other persons as Publisher may, at the request of Licensee and in Publisher's sole discretion, authorize in writing to access the Licensed Products.
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- d. "Licensed Products" means the definition ascribed to it in Schedule B.
- e. "Remote Access" means access provided by Licensee via secured authentication means only to students, faculty or employees affiliated with Licensee at Authorized Sites who are not physically present at an Authorized Site.
- f. "Service Date" means the date Publisher first provides Licensee with access to the Licensed Products.

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d. Compliance. Upon not less than five (5) business days written notice, Publisher may inspect the equipment and facilities used by Licensee to access or provide access to the Licensed Products and Licensee's records concerning access to and use of the Licensed Products, but only as reasonably necessary to verify compliance with the terms and conditions of this Agreement; provided, however, that such inspection shall be conducted at Publisher's expense and not more frequently than once per each consecutive twelve-month period. If an inspection reveals that Licensee's usage of the Licensed Products materially exceeded the scope of the license granted herein, Licensee shall reimburse Publisher for the reasonable costs of the inspection and immediately pay Publisher the fees associated with such usage. Notwithstanding the foregoing, Publisher shall be entitled to pursue any other legal and equitable remedies it may have on account of Licensee's breach of this Agreement.

e. Withdrawal of Content. Publisher reserves the right to withdraw from the Licensed Products content that it no longer retains or has the right to license, or that it has reasonable grounds to believe is unlawful, harmful, false or infringing.

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b. Protection. Licensee shall make reasonable efforts to advise all Authorized Users of the restrictions on use of and Publisher's rights in the Licensed Products set forth in Sections 3(c) and 4(a). In the event that Licensee becomes aware of any unauthorized use of the Licensed Products by way of Licensee's IP addresses, servers or other facilities, Licensee shall promptly give notice to Publisher of such unauthorized use and make all reasonable efforts to eliminate such unauthorized use.

## 5. Termination.

a. Termination. Notwithstanding anything to the contrary, this Agreement may be terminated as follows:

(1) *Material Breach*. Either party may terminate this Agreement in the event of a material breach by the other party that remains uncured thirty (30) days after the non-breaching party gives the breaching party written notice of such breach.

(2) *Suspension*. In the event that Publisher notifies Licensee of a material breach of Section 3(c)(1) of this Agreement, Publisher reserves the right to suspend Licensee's access to the Licensed Products. Publisher will make commercially reasonable efforts to limit suspension to the offending IP address or user account, to the extent that the offending IP address or user account can be reasonably ascertained under the circumstances; otherwise, Publisher reserves the right to suspend all online access to the Licensed Products by Licensee. The suspension shall remain in effect until Licensee has cured the material breach, and Licensee shall not be entitled to a refund of any fees during such suspension. If Licensee does not cure the material breach within thirty (30) days after notice of such breach, Publisher shall be entitled to terminate this Agreement.

(3) *Insolvency*. Either party may terminate this Agreement in the event that the other party becomes insolvent or bankrupt; becomes the subject of any proceedings under bankruptcy, insolvency or debtor's relief law; has a receiver or manager appointed; makes an assignment for the benefit of creditors; or takes the benefit of any applicable law or statute in force for the winding up or liquidation of such party's business.

b. Events Upon Termination. Upon termination of this Agreement, Licensee shall cease all use of and access to the Licensed Products and delete all copies of eBooks in its custody or control.

## 6. Representations and Warranties.

Publisher and Licensee each represents and warrants to the other that: (a) it has the necessary power and authority to enter into this Agreement; (b) the execution and performance of this Agreement has been authorized by all necessary corporate or institutional action; (c) entry into and performance of this Agreement will not conflict with any provision of law or the certificate of incorporation, by-laws or comparable organizational documents of the party or conflict with any condition of any contract to which it is a party; (d) no action by any governmental organization is necessary to make this Agreement valid and binding upon the party; and (e) it possesses all licenses and other governmental approvals necessary to perform its obligations under this Agreement.

## 7. Disclaimer.

The licensed products are provided to licensee "as is" and "with all faults." Publisher, to the maximum extent permitted by law, expressly disclaims all warranties and representations (except as set forth in section 6), express or implied, including, without limitation: (a) the implied warranties of merchantability and fitness for a particular purpose; and (b) any warranty with respect to the quality, accuracy, currency or completeness of the licensed products, or that licensee's use of the licensed products will be error-free, uninterrupted, free from other failures or will meet licensee's requirements.

## 8. Limitation of liability.

a. In no event shall either party be liable to the other party for any incidental, indirect, special, punitive or consequential damages, including, but not limited to, damages arising from any type or manner of commercial, business or financial loss occasioned by or resulting from any use of the licensed products, such as any malfunction, defect or failure of the licensed products or their delivery via the internet, even if such party had actual or constructive knowledge of the possibility of such damages and regardless of whether such damages were foreseeable.

b. Publisher undertakes no responsibility for, and disclaims all liability arising from, any defects or failures in any communications lines, the internet or internet service provider, licensee's computer hardware or software, or any other service or device used to access the licensed products or to authenticate any user as an authorized user. Licensee acknowledges and agrees that publisher is not responsible for the accuracy of any information or data contained in the licensed products, and publisher shall not be liable for any losses or damages resulting from reliance on any such information or data under any circumstances.

## 9. Confidentiality

a. "Confidential Information" as used herein means information identified in good faith by either party as "Confidential" and/or "Proprietary," or information that, under the circumstances, ought reasonably to be treated as confidential and/or proprietary. "Confidential Information" shall include, but not be limited to, the terms and conditions of this Agreement and pricing information.

b. Neither party shall disclose to a third party Confidential Information of the other party. The receiving party shall use the same degree of care as it uses to protect the confidentiality of its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Confidential Information of the disclosing party. The foregoing obligations shall not apply to any Confidential Information that: (a) can be demonstrated to have been publicly known at the time of the disclosing party's disclosure of such Confidential Information to the receiving party; (b) becomes part of the public domain or publicly known, by publication or otherwise, not due to any unauthorized act or omission by the receiving party; (c) can be demonstrated to have been independently developed or acquired by the receiving party without reference to or reliance upon such Confidential Information; (d) is provided to the receiving party by a third party who is under no obligation to the disclosing party to keep the information confidential; or (e) is required to be disclosed by law, provided that the receiving party takes reasonable and lawful actions to avoid and/or minimize such disclosure and promptly notifies the disclosing party so that the disclosing party may take lawful actions to avoid and/or minimize such disclosure. Each party agrees that it will use the Confidential Information provided by the other party only as necessary to discharge its obligations under this Agreement.

**10. General.**

a. Notice. Notices given under this Agreement shall be in writing and may be delivered by hand or sent by courier, registered mail, e-mail or fax to the physical address, e-mail address or facsimile number for each party set forth on the first page of this Agreement. Any such notice shall be deemed successfully given: (1) if delivered personally, at the time of delivery; (2) in the case of an internationally-recognized courier service, the date of delivery confirmation; (3) in the case of registered mail, five (5) days from the date of posting; or (4) in the case of e-mail or facsimile, at the time of successful transmission.

b. Assignment. Licensee may not assign this Agreement, or sublicense, assign or delegate any right or duty hereunder, by operation of law or otherwise, without the prior written consent of Publisher.

c. Entire Agreement. This Agreement, including all annexes, exhibits and schedules, contains the final and entire agreement of the parties on the subject matter herein and supersedes all previous and contemporaneous oral or written negotiations or agreements on the subject matter herein.

d. Amendment. This Agreement may not be amended except in a writing executed by an authorized representative of each party.

e. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its unenforceability. Such provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of this Agreement.

f. Force Majeure. Any prevention of or delay in either party's performance hereunder due to labor disputes, acts of God, governmental restrictions, enemy or hostile governmental action, fire or other casualty or other causes beyond such party's reasonable control shall excuse such party's performance of its obligations hereunder for a period equal to the duration of any such prevention or delay.

g. Non-Waiver. The failure of either party to require strict performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

h. Survival. The provisions of this Agreement that should by their nature survive termination of this Agreement shall survive such termination, including, but not limited to, Sections 3(c), 3(e), 4(a), 5(b), 6, 7, 8, 9 and 10.

i. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.

**For Publisher:**

Name of authorized signer:

\_\_\_\_\_

Title of authorized signer:

\_\_\_\_\_

Date \_\_\_\_\_

Authorized signature \_\_\_\_\_

**For Licensee:**

Name of authorized signer:

\_\_\_\_\_

Title of authorized signer:

\_\_\_\_\_

Date \_\_\_\_\_

Authorized signature \_\_\_\_\_

**SCHEDULE A:  
AUTHORIZED SITES**

A. Name and physical address(es) of Authorized Site(s) of Licensee:

\_\_\_\_\_

B. IP Address(es) of Authorized Site(s) - if proxy server is used, skip part B and go to part C:

\_\_\_\_\_

C. Publisher permits Licensee to make use of one or more proxy servers to provide Authorized Users with access to the Licensed Products. Please provide responses to the questions below so that Publisher can accurately monitor authentication and use of the Licensed Products.

1. Physical address of proxy server(s):

\_\_\_\_\_

2. IP address(es) of proxy server(s):

\_\_\_\_\_

3. Intended use(s) of proxy server(s) - check all that apply:

Load balancing

Provide Remote Access

Other (please specify): \_\_\_\_\_

**Licensee Responsibilities**

Licensee shall be responsible for verifying the status of Authorized Users, providing lists of valid IP addresses to Publisher, and updating such lists promptly as changes are made. Licensee shall cooperate with Publisher in the implementation of additional security procedures reasonably requested by Publisher.

Licensee represents and warrants that: (a) the list of IP addresses provided above is accurate and valid, and (b) Licensee shall use reasonable efforts to maintain sufficient security with respect to such IP addresses so as to prevent use of the Licensed Products by anyone other than Authorized Users.

**Use of Blind Log-In Script**

If Licensee opts to utilize a Blind Log-In Script, Licensee acknowledges and agrees to the following: (a) a Blind Log-In Script can only be placed on Licensee's secure, internal, password-protected network and can only be accessed by Authorized Users; (b) a simultaneous user session is immediately occupied when an Authorized User accesses the Licensed Products; (c) if a simultaneous user session is interrupted or expires for any reason, the Authorized User must return to Licensee's internal page that contains the link to the Licensed Products to re-gain access to the Licensed Products; and (d) an Authorized User will not be able to gain access to links provided by CrossRef, a collaborative reference linking service, within an Publisher article. For more information regarding Blind Log-In Script, please contact Publisher by email.

Licensee Initials: \_\_\_\_\_

**SCHEDULE B:  
LICENSED PRODUCTS**

“Licensed Products” means:

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Front List Plus Two Preceding Calendar Years. Electronic books in the Publisher imprint published in PDF format and made available through Publisher’s website during the calendar year in which the Service Date falls plus the two calendar years preceding the Service Date. For example, if the Service Date is March 1, 2010, then the Licensed Products shall consist of electronic books in the Publisher imprint published in PDF format and made available through Publisher’s website between January 1, 2008 and December 31, 2010.

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Other. Electronic books in the Publisher imprint published in Publisher format and made available through Publisher’s website during the following calendar years (*to be completed by Publisher only*): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Licensee Initials: \_\_\_\_\_