

**SUBJECT TO CONTRACT**

**DATED**

**2002**

**COMPANY X**

**-and-**

**THE HIGHER EDUCATION FUNDING COUNCIL OF ENGLAND**

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**[insert product name] LICENCE AGREEMENT**

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**SUBJECT TO CONTRACT**



## SUBJECT TO CONTRACT

- "Adaptations" means any adaptation, alteration, addition to, deletion from, manipulation, or modification of parts of the Associated Materials.
- "Agreement" means this Agreement together with any attached schedules.
- "Associated Materials" means all those associated materials including, but not limited to, scripts, stills, music cue sheets, transcripts relating to the Licensed Work which shall be made available to MAAS for Encoding and delivery to Authorised Institutions as set out in Schedule 2.
- "Authorised Demonstrators" means staff of the JISC who are permitted to access the Licensed Work and Associated Materials in accordance with the provisions as laid down in this Agreement free of charge for demonstration purposes only.
- "Authorised Institution" means an Institution that has signed a Sub-Licence Agreement, for as long as such agreement remains in effect.
- "Authorised Users" means individuals who are authorised by an Authorised Institution to access the Authorised Institution's information services whether from a computer or terminal on the Authorised Institution's Secure Network, or off site via a modem link to a valid IP address on the Authorised Institution's Secure Network and who are affiliated to the Authorised Institution as a current student, faculty member or employee of the Authorised Institution. Persons who are not a current student, faculty member or an employee of the Authorised Institution, but who are permitted to access the Secure Network from computer terminals within the Library Premises ["Walk-In Users"] are also deemed to be Authorised Users, only for the time they are within the Library Premises. Walk-In Users may not be given means to access the Licensed Work and Associated Materials when they are not within the Library Premises.
- "BUFVC" means the British Universities Film and Video Council.
- "Charges" means the fee (if any) payable by an Authorised Institution to the Licensee to access and use the Licensed Work and Associated Materials pursuant to a Sub-Licence Agreement.

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"Commercial Use"	means the use of the whole or parts of the Licensed Work and Associated Materials for any reason which generates a profit.
"DEL"	means the Department for Employment and Learning, a body corporate established under The Further and Higher Education Act 1992 whose principal place of business is at Room 407, Adelaide House, 39/49 Adelaide Street, Belfast BT2 8FD.
"Educational Purposes"	means the use of the whole or parts of the Licensed Work and Associated Materials for the purpose of education, teaching, distance learning, private study or research.
"Effective Date"	means either the date when both parties have signed this Agreement or the date when the Licensed Work and Associated Materials have been delivered to MAAS, whichever is the earlier.
"Encode"	means to create or cause to be created on its behalf a digital copy, both compressed and uncompressed, containing a burnt copy of the digital on-screen graphic (DOG), of the Licensed Work and Associated Materials capable of being delivered on-line or by other means and accessible via a computer network.
"Encodings"	means any or all of the digital copies (either compressed or uncompressed, containing a burnt copy of the MAAS digital on-screen graphic (DOG)) of the Licensed Work or Associated Materials or any collection of them.
"Extract(s)"	means one or more clips of any duration taken from any film or films contained in the Licensed Work.
"Fee"	means the fee as set out in Schedule 1.
"LSC"	means the Learning and Skills Council, a body corporate established under The Further and Higher Education Act 1992 whose principal place of business is at Cheylesmore House, Quinton Road, Coventry CV1 2WT.
"NCETW"	means the National Council for Education and Training Wales, a body corporate established under The Further and Higher Education Act 1992 whose principal place of

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business is at Linden Court, The Orchards, Ty Glas Avenue, Llanishen, Cardiff CF4 5DZ.

"Funding Body(ies)"	means singly any one of HEFCW, SHEFC, DEL, LSC, NCETW, SFEFC and the Licensee (including in each case any successor body taking on any relevant function of any of these bodies) and in the plural these bodies collectively.
"HEFCW"	means the Higher Education and Funding Council for Wales, a body corporate established under The Further and Higher Education Act 1992 whose principal place of business is at Linden Court, The Orchards, Ty Glas Avenue, Llanishen, Cardiff CF4 5DZ.
"Institution"	means a further and higher education institution located in the United Kingdom set out in Schedule 2 attached hereto and incorporated herein or any institution for whom any Funding Body may be able to provide support and/or services from time to time.
"Library Premises"	means the physical premises of the library or libraries operated by an Authorised Institution.
"Licensed Work"	means those films and/or sound recordings as listed in Schedule 3.
"MAAS"	means the Managing Agent and Advisory Service, a joint venture of and run by the BUFVC and the OU or such other legal person(s) as may from time to time be appointed by the Licensee to perform certain of its obligations under this Agreement, but not acting as agent for the Licensee.
"Master Copy(ies)"	means one or more high quality copy(ies) of the Licensed Work and Associated Materials as listed in Schedule 3.
"OU"	means the Open University.
"Project"	means the provisions of access to the Licensed Work and Associated Materials to Authorised Users pursuant to the terms of this Agreement.
"Secure Network"	means a network (whether a stand alone network or a virtual network within the Internet) which is only accessible to Authorised Users whose identities are authenticated by the Authorised Institution at the time of

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log-in and periodically thereafter consistent with current best practice and whose conduct is subject to regulation by the Authorised Institution. A cache server or other server or network which can be accessed by unauthorised users is not a Secure Network for these purposes.

"SHEFC" means the Scottish Higher Education Funding Council, a body corporate established under The Further and Higher Education ("Scotland") Act 1992 whose principal place of business is at Donaldson House, 97 Haymarket Terrace, Edinburgh EH12 5HD.

"SFEFC" means the Scottish Further Education Funding Council, a body corporate established under The Further and Higher Education ("Scotland") Act 1992 whose principal place of business is at Donaldson House, 97 Haymarket Terrace, Edinburgh, EH12 5HD.

"Sub-Licence Agreement" means such sub-licence as may from time to time be granted by the Licensee to Institutions for accessing the Licensed Work and Associated Materials. Such sub-licence to be in accordance with the terms of this Agreement.

- 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.
- 1.4 Any reference to a clause, schedule or appendix shall be deemed to refer to that clause, schedule or appendix of this Agreement.

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### **2. AGREEMENT**

- 2.1 The Licensor agrees to provide the Licensee with the Licensed Work and Associated Materials as specified in Schedule 3 and to permit the Licensee to encode, communicate and make available the Licensed Work and Associated Materials in accordance with this Agreement and to sub-licence the use of the Licensed Work and the Associated Materials contained within the Encodings in accordance with the terms of this Agreement and the Licensee agrees to pay to the Licensor the Fee in accordance with the provision of Schedule 1.

### **3. LICENCE GRANT**

- 3.1 The Licensor hereby grants to the Licensee a non-exclusive licence to Encode the Licensed Work and Associated Materials and use the Encodings in accordance with this Agreement. The Licensor also hereby grants to the Licensee an exclusive irrevocable licence to communicate and make available the Encodings to any Institution that has signed a Sub-Licence Agreement and allow their use in accordance with the provisions as laid down in this Agreement.
- 3.2 The Sub-Licence Agreement will allow access and use of the Licensed Work and Associated Material in the form of the Encodings by Authorised Users throughout the term of such Agreement by means of a Secure Network and for Educational Purposes only. Any other use, including Commercial Use of any parts of the Licensed Work and Associated Materials is prohibited under this Agreement.
- 3.3 The Licensor hereby undertakes for the duration of this Agreement not to communicate and make available any other form of encoding of the Licensed Work and Associated Materials to Institutions other than the Encodings.
- 3.4 The Licensee hereby grants to the Licensor a non-exclusive, non-transferable licence to communicate and make available the Encodings to Institutions in accordance with the permitted uses as laid down in this Agreement.

### **4. MAAS**

- 4.1 The Licensee has appointed MAAS to negotiate this Agreement and to act as a central point of contact for the Licensor for questions pertaining to this Agreement and will also serve as a point of reference for the Licensor with respect of any Sub-Licence Agreement. MAAS will oversee and co-ordinate the licensing process between the Licensee and the Institutions. MAAS will use its reasonable endeavours to further provide such assistance as may be helpful to or be required by the Parties in carrying out their respective rights and obligations hereunder. The Licensee hereby appoints MAAS as its authorised

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representative to receive any notices or communications from the Licensor to the Licensee under this Agreement as set out below:

queries relating to contractual and rights issues to:

Manager, Contracts and Rights  
Room 321a Perry Bldg  
The Open University  
Walton Hall  
Milton Keynes  
MK7 6AA

queries relating to all other matters to:

MAAS  
BUFVC  
77 Wells Street  
London  
W1T 3QJ

- 4.2 In the event that MAAS is suspended, disbanded or otherwise reorganised in a manner that does not provide for the continuation of its functions or its continuing representation of the Licensee under this Agreement, the Licensee shall reassume the functions of MAAS under this Agreement. The Licensee will provide notice to the Licensor 30 days in advance of any such suspension, disbandment or other reorganisation of MAAS.

## **5. ENCODING**

- 5.1 The Licensee may digitise the Licensed Work and Associated Materials as set out in Schedule 3 in MPEG1 1.5 bits per second and in any other format which may be required from time to time.

## **6. FURTHER PERMITTED USES**

- 6.1 Throughout the term of this Agreement the Licensee may:-

- 6.1.1 display samples of the Encodings on the MAAS web site for promotional purposes only and allow access for the sole purpose of viewing;

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- 6.1.2 mount the Encodings on a Secure Network;
- 6.1.3 make copies of the Encodings as are technically necessary to provide access to Authorised Institutions;
- 6.1.4 grant Sub-Licence Agreements to Institutions permitting the following uses of the Encodings for Educational Purposes only:-
  - 6.1.4.1 to make local electronic copies of all or part of the Licensed Work and Associated Materials, provided that such use is subject to all the terms and conditions of this Agreement;
  - 6.1.4.2 to allow Authorised Users to access the Encodings by means of a Secure Network in order to search, retrieve, display and download, and otherwise use extracts of the Licensed Work and Associated Materials;
  - 6.1.4.3 to allow Authorised Users to electronically save the whole or parts of the Licensed Material and Associated Materials;
  - 6.1.4.4 to allow Authorised Users to print out captured still pictures from the Licensed Work and to print copies of the Associated Materials;
  - 6.1.4.5 to allow Authorised Users to take Extracts of the Licensed Work and to make Adaptations of the Associated Materials;
  - 6.1.4.6 to allow Authorised Users to incorporate parts of the Licensed Work and Associated Materials in printed or electronic course and study packs or multi-media works for the use of Authorised Users in the course of instruction. Each item shall carry appropriate acknowledgement of the source, title and copyright owner. Course packs using Associated Materials in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;
  - 6.1.4.7 to allow Authorised Users to incorporate whole or parts of the Licensed Work, Associated Materials, Extracts and Adaptations in printed or electronic form in assignments, portofolios (including non-public display thereof) and in dissertations, including reproductions of the dissertation for personal use and library deposit, if such conforms to the customary and usual practice of the Authorised Institutions. Each item shall carry appropriate acknowledgement;

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- 6.1.4.8 to display, download, print parts of the Licensed Work and Associated Materials for the purpose of promotion of the Licensed Work and Associated Materials, testing of the product, or for training Authorised Users;
  - 6.1.4.9 to publicly display or publicly perform in an exhibition in Authorised Institution's museum, gallery or similar facility, including use in exhibit labels and other components of the exhibit. Each item shall carry appropriate acknowledgement;
  - 6.1.4.10 to publicly perform as part of a professional presentation at a seminar, conference, or workshop, or other such similar professional activity;
  - 6.1.4.11 to make such copies of and network training material as may required for the purpose of using the Licensed Work and Associated Materials in accordance with this Agreement.
- 6.2 Nothing in this Agreement shall constitute a waiver of any statutory right available and held by the Licensee from time to time under the Copyright, Designs and Patents Act 1988 or any amending legislation.

## **7. RESTRICTIONS**

- 7.1 The Licensee may not:
- 7.1.1 save for clause 6.1.1, sell, resell, redistribute, publish or otherwise make information contained in the Licensed Work, Associated Materials and the Encodings available in any manner or on any media to any one other than Authorised Institutions and their Authorised Users;
  - 7.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they may appear without prior written permission of the Licensor;
  - 7.1.3 make printed or electronic copies of the whole or parts of the Licensed Work, Associated Materials and the Encodings for any purpose, beyond those authorised by this Agreement;
  - 7.1.4 save for clause 6.1.1 display or distribute any part of the Licensed Work, Associated Materials and the Encodings on any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, other than by a Secure Network;

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- 7.1.5 save for clause 6.1.1 permit anyone other than Authorised Demonstrators and Authorised Users to access and use the Licensed Work, Associated Materials and the Encodings;
- 7.1.6 use all or any part of the Licensed Work, Associated Materials and the Encodings for any Commercial Use or for any purpose other than Educational Purposes;
- 7.1.7 save for clause 6.1.1 permit the Licensed Work, Associated Materials and the Encodings to be electronically transmitted to any other recipient except where the recipient is an Authorised Institution or an Authorised User under the terms of this Agreement;
- 7.2 This Clause shall survive termination of this Agreement for any reason.

## **8. RESPONSIBILITIES OF THE LICENSOR**

8.1 The Licensor agrees to:

- 8.1.1 deliver the Licensee the Master Copies as set out in Schedule 3;
- 8.1.2 allow Authorised Demonstrators to use the Master Copies and the Encodings for the purpose of publicising and promoting the Licensed Work and Associated Materials to the Institutions in accordance with this Agreement;
- 8.1.3 provide MAAS, within 30 days of commencement of this Agreement, with information sufficient to enable use of the Licensed Work and Associated Materials in accordance with the terms in this Agreement;
- 8.1.4 permit the Licensee to compile usage data acquired during the term of this Agreement including the provision of use statistics to be compiled on a per institution basis provided that any collection of such data shall not conflict with any privacy and data protection laws that may from time to time apply to the parties;
- 8.1.5 permit the Licensee to launch the Master Copies and the Encodings with ATHENS authentication or any other authentication system used by the Funding Bodies or the Authorised Institutions from time to time, subject to securing any necessary permissions, licences or consents (including, without limitation, any necessary permissions, licences or consents in respect of intellectual property rights).

## **9. RESPONSIBILITIES OF THE LICENSEE**

9.1 The Licensee agrees to:

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- 9.1.1 use all reasonable efforts to ensure that the Authorised Institutions comply with the terms of any Sub-Licence Agreement. The Licensee will promptly on becoming aware of any unauthorised use or other breach notify the Licensor and take all reasonable steps to ensure that such activity ceases and to prevent any recurrence;
- 9.1.2 promote and publicise the availability of the Licensed Work and Associated Materials to the Institutions;
- 9.1.3 require those Institutions that wish to enter into a Sub-Licence Agreement to return to MAAS a duly completed and signed Sub-Licence Agreement;
- 9.1.4 require the Authorised Institutions to provide lists of valid passwords or sets of Internet Protocol (IP) addresses to MAAS. MAAS will provide such details to the Licensor at Licensor's request.

## **10. SECURITY**

- 10.1 Save for clause 6.1.1, access to the Master Copies and Encodings by Authorised Institutions is only permitted by means of a Secure Network and will be controlled through the use of IP addresses and/or passwords or by such other means as may be agreed by the parties from time to time.

## **11. PAYMENT**

- 11.1 The Licensor will invoice the Licensee for the Fees payable and due, at the address set out below:

Joanna Harrison  
JISC Secretariat  
Northavon House  
Coldharbour Lane  
Bristol BS16 1QD

- 11.2 The terms of payments to the Licensor are set out in Schedule 1 hereto. VAT or any other government impost shall be payable where applicable in addition to said Fees.

## **12. TERM AND TERMINATION**

- 12.1 The Term of this Agreement will be for 10 years, which begins on the Effective Date and will remain in full force and effect until expiry, unless terminated earlier as provided for in this Clause.

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- 12.2 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.
- 12.3 This Agreement may be terminated by the Licensee on written notice if the Licensor becomes insolvent, admits insolvency or a general inability to pay its debts as they become due, has appointed a receiver or administrative receiver over it or over any part of its undertaking or assets, passes a resolution for winding up other than a bona fide plan of solvent amalgamation or reconstruction, files a petition for protection under any applicable bankruptcy code, or has filed against it or becomes subject to an insolvent petition in bankruptcy or an order to that effect.
- 12.4 This Agreement may be terminated by the Licensor on written notice if the Licensee is subject to a statutory reconstruction which does not provide for the continuation of the Licensee's functions or the continuing performance of the Licensee's obligations under this Agreement.
- 12.5 Upon termination or the expiration of this Agreement, the Licensee shall cease to authorise all on-line access to the Licensed Work and Associated Materials by Authorised Institutions and Authorised Users. All rights under this Agreement and the Sub-Licence Agreement 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 or expiry.
- 12.6 Upon termination and expiration of this Agreement, copies of parts of the Licensed Work, Associated Materials, Extracts and Adaptations made by Authorised Institutions and Authorised Users may be retained and used subject to the terms of Clause 6 and 7 of the Sub-Licence Agreement, which terms shall survive any termination of this Agreement. The use of electronic copies made by Authorised Institutions and Authorised Users after the expiration or termination of this Agreement requires the authorisation from the Licensor and the conditions of use are not subject to this Agreement.
- 12.7 Upon termination of this Agreement by the Licensee due to a material breach by the Licensor, the Licensor will reimburse the Licensee a pro rata proportion of the then remaining Fee for the unexpired period of the Agreement. The Licensor shall not be obligated to return any portion of the Fee for termination by the Licensor due to the Licensee's breach pursuant to clause 12.2 or termination pursuant to clause 12.3 or 12.4.

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

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- 13.1 The Licensee acknowledges that all copyrights, patent rights, trademarks, database rights, trade secrets and other intellectual property rights relating to the Licensed Work and Associated Materials, are the property of the Licensor or duly licensed to the Licensor and that this Agreement does not assign or transfer to the Licensee any right, title or interest therein except for the right to use the Licensed Work and Associated Materials in accordance with the terms and conditions of this Agreement.
- 13.2 Any and all intellectual property rights in the Encodings shall be the property of the Licensee.

## **14. PROPRIETARY NOTICES AND TRADE MARKS**

- 14.1 The parties will co-operate to develop materials to be used in promoting the Project. The parties agree that neither of them will make any official press release or other formal publicity relating to the Project without first obtaining in each case the prior written consent of the other party which consent will not be unreasonably withheld or delayed.
- 14.2 The Licensor grants to the Licensee a non-exclusive, non-transferable licence to use the trade mark(s) listed in Schedule 4 hereto and incorporated herein, provided that such use will be solely for informational and promotional purposes connected with the Project. The Licensee will display the Licensor's trade mark(s) only in such a form and manner as will be specifically approved by the Licensor. Accordingly, all materials in any medium bearing the Licensor's trade mark(s) will be submitted for the Licensor's approval, provided, however, that the absence of written approval or disapproval after thirty (30) days following such submission will be deemed approval. The Licensee recognises the value of the goodwill associated with the Licensor's trade mark(s), and acknowledge that such goodwill belongs and will be accrued exclusively to the Licensor. All rights in the Licensor trade mark(s), other than those specifically granted herein, are reserved by the Licensor, and the Licensee will not acquire any rights in the Licensor's trade mark(s) by virtue of any use it may make thereof. Upon the expiration or termination of this Agreement for any reason, all rights in the Licensor's trade mark(s) will automatically revert to the Licensor, and no further use may be made of the Licensor's trade mark(s) subject to the continued use of any part of the Licensed Work and Associated Materials having already been incorporated into a new work by any Authorised Institution or Authorised User under the terms of a Sub-Licence Agreement and bearing the Licensor's trade mark(s) as set out in Clause 12.6.

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

- 15.1 The Licensor warrants to the Licensee that the Licensed Work and Associated Materials and all intellectual property rights therein are owned by or licensed to the Licensor and that the Licensed Work and Associated Materials used as contemplated in this Agreement do not infringe any copyright or other proprietary or intellectual property rights of any

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natural or legal person. The Licensor agrees that the Licensee shall have no liability and the Licensor will indemnify, defend and hold the Licensee harmless against any and all 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 Work and Associated Materials, provided that: (1) the use of the Licensed Work and Associated Materials have been in full compliance with the terms and conditions of this Agreement; (2) the Licensee and Authorised Institution(s) provide the Licensor with prompt notice of any such claim or threat of claim; (3) the Licensee co-operates fully with the Licensor in the defence or settlement of such claim; and (4) the Licensor has sole and complete control over the defence or settlement of such claim.

The foregoing does not apply to modifications or derivative works of the Licensed Work and Associated Materials, nor to Extracts of the Licensed Work and Adaptations of the Associated Materials.

- 15.2 The Licensor may provide additional content to the Licensed Work and Associated Materials by agreement with the Licensee. The Licensee will notify the Authorised Institutions of any substantial changes to the Licensed Work and Associated Materials.
- 15.3 While the Licensor has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Work and Associated Materials, the Licensor makes no representation and gives no warranty express or implied with regard to the information contained in or any part of the Licensed Work and Associated Materials including (without limitation) the fitness of such information or part for any purposes whatsoever and the Licensor accepts no liability for loss suffered or incurred by the Authorised Institutions or Authorised Users as a result of their reliance on the Licensed Work and Associated Materials.
- 15.4 In no circumstances will either party be liable to the other party for any loss resulting from a cause over which the Licensor 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.
- 15.5 The Licensee agrees to notify the Licensor promptly 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 Work and Associated Materials. It is expressly agreed that upon such notification, or if the Licensor becomes aware of such a claim from other sources, the Licensor may remove such work(s) from the Licensed Work and Associated Materials. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement.

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- 15.6 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.
- 15.7 The Licensee shall cause for Authorised Institutions to undertake that the Institution's computer system through which the Licensed Work and Associated Materials will be used is configured, and procedures are in place, to prohibit access to the Licensed Work and Associated Materials by any person other than an Authorised User, that it shall inform the Authorised Users about the conditions of use of the Licensed Work and Associated Materials, and that during the term of this Agreement, Authorised Institutions will continue to make best efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

## **16. FORCE MAJEURE**

- 16.1 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.
- 16.2 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.

## **17. ASSIGNMENT**

- 17.1 Save as permitted for under this Agreement, neither this Agreement nor any of the rights under it may be assigned by either party without obtaining the prior written consent of the other party. All the terms of this Agreement will be binding upon any permitted successor to any party.

## **18. CONFIDENTIALITY**

- 18.1 During the term of this Agreement each party may receive confidential information of the other party, including without limitation proprietary information, inventions, trade secrets, confidential know-how and other technical, business and operational information

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related to the development or provision of the Licensed Work and Associated Materials or to the businesses of the parties. Except as otherwise transferred in accordance with the terms of this Agreement, all confidential information will remain the exclusive property of the disclosing party and neither party may disclose any confidential information of the other party to any third party for any reason without the prior written consent of such other party, nor to any of such party's employees or staff other than those who have a need to know in order to provide the services contemplated by this Agreement.

18.2 The parties acknowledge and agree that the obligation to respect confidentiality of the other's confidential information will survive any expiration or termination of this Agreement.

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

19.1 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.

19.2 The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Secretary of JISC and the Executive Director of the Licensor. Where the parties agree that a dispute arising out of or in connection with this Agreement 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.

19.3 Any person to whom a reference is made under Clause 19.2 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.

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

19.5 The costs of the expert shall be borne by the parties in such proportions as they shall agree in advance.

## **20. NOTICES**

20.1 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

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case of electronic mail or fax; (b) seven (7) days after the date of posting in the case of first class registered or recorded delivery:

if to the Licensee:

Manager, Contracts and Rights  
MAAS  
Room 321a Perry Bldg  
Walton Hall  
Milton Keynes  
MK7 6AA

Email: M.C.Gilbart@open.ac.uk

Fax: 0044 (0)1908 654322

if to the Licensor:

[insert contact details]

### **21. GENERAL**

- 21.1 This Agreement and its Schedules constitute the entire agreement between the parties relating to the Licensed Work and Associated Materials 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.
- 21.2 The Schedules 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.
- 21.3 No provision in this Agreement is intended to be enforceable by a person who is not a party to this Agreement
- 21.4 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
- 21.5 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

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or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

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**SCHEDULE 1: FEE**

The Licensee shall cause to pay the Licensor the sum of [to be inserted] [per annum] upon the signing of this Agreement and within 30 days of the receipt of a suitable invoice.

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**SCHEDULE 2: AUTHORISED INSTITUTIONS**

Further and Higher Education Institutions and Research Councils in the UK are eligible. From time to time this list is updated. The most up-to-date information can be found online at: <http://www.jisc.ac.uk/dner/collections/newbanding.html>

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**SCHEDULE 3: LICENSED WORKS AND ASSOCIATED MATERIALS**

**Licensed Work**

<b>Title</b>	<b>Format at Delivery</b>	<b>No of Mater Copies</b>	<b>Delivered</b>
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**Associated Material**

<b>Title</b>	<b>Format at Delivery</b>	<b>No of Mater Copies</b>	<b>Delivered</b>
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**SCHEDULE 4: TRADE MARKS**

**[to be provided by the Licensor]**

**SUBJECT TO CONTRACT**

IN WITNESS the hands of the above parties on the date first above written: -

SIGNED by: \_\_\_\_\_

Position: (Signature)

for and on behalf of  
**[insert company name]**

WITNESSED by: \_\_\_\_\_

Position: (Signature)

Address:

SIGNED by: \_\_\_\_\_

Position: (Signature)

for and on behalf of  
**THE HIGHER EDUCATION FUNDING  
COUNCIL FOR ENGLAND**

WITNESSED by: \_\_\_\_\_

(Signature)

Position:

Address: