

Licensing agreement no. _____

AGREED on _____

BETWEEN

1 **Questa.Soft GmbH** in Frankfurt am Main, 60599 Offenbacher Landstrasse 368
("the Distributor")

and

2 **the University of _____**
("the Licensee")

WHEREAS the Distributor holds the rights granted under this Licence

AND WHEREAS the Licensee desires to use the rights and the Distributor desires to grant to the Licensee the licence to use the rights for the Fee, subject to the terms and conditions of this Licence.

IT IS AGREED AS FOLLOWS: -

1. KEY DEFINITIONS

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

Authorised Users	Current members of the faculty and other staff of the Licensee (whether on permanent, temporary, contract, or visiting basis), individuals who are currently studying at the Licensee's institution, and authorized on-site users who access the Service through workstations physically located on the site.
Commercial Use	Use for the purposes of monetary reward (whether by or for the Licensee or an Authorised User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, neither recovery of direct costs by the Licensee from Authorised Users, nor use by the Licensee or by an Authorised User of the Licensed Materials in the course of research funded by a commercial organisation, is deemed to be Commercial Use.
Course Packs	A collection or compilation of materials (e.g. book chapters, journal articles) assembled by members of staff of the Licensee for use by students in a class for the purposes of instruction.

Electronic Reserve	Electronic copies of materials (e.g. book chapters, journal articles) made and stored on the Secure Network by the Licensee for use by students in connection with specific courses of instruction offered by the Licensee to its students.
Fee	The Fee set out in Schedule 2 or in new Schedules to this Licence which may be agreed by the parties from time to time.
Library Premises	The physical premises of the library or libraries operated by the Licensee, as specified in Schedule 1.
Licensed Materials	The electronic material as offered at www.ceeol.com , Central and Eastern European Online Library, as set out in Schedule 5 or in new Schedules to this Licence.
Secure Network	A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users approved by the Licensee whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Licensee.
Server	The server, either the Distributor's server or a third party server designated by the Distributor, on which the Licensed Materials are mounted and may be accessed.
Licensee	The organization, or group of organizations ("Consortia" as set out in Schedule 4) that is given permission through the License agreement to access the Licensed materials for the Fee.

2. AGREEMENT

- 2.1 The Distributor agrees to grant to the Licensee the non-exclusive and non-transferable right, throughout the world, to give Authorised Users access to the Licensed Materials via a Secure Network for the purposes of research, teaching and private study, subject to the terms and conditions of this Licence, and the Licensee agrees to pay the Fee.
- 2.2 This Licence shall commence on _____ and shall remain in effect until _____, and shall continue thereafter to be in effect unless terminated by either party by 3 months written notice to the other.

3. USAGE RIGHTS

- 3.1 The Licensee, subject to clause 6 below, may:
- 3.1.1 Make such temporary local electronic copies by means of cacheing or mirrored storage of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Authorised Users and not to make available to Authorised Users duplicate copies of the Licensed Material.
- 3.1.2 Allow only the Authorised Users to have access to the Licensed Materials from the Server via the Secure Network.

- 3.1.3 Provide Authorised Users with integrated access and an integrated author, article title, abstract (where available) and keyword index to the Licensed Material.
 - 3.1.4 Provide single printed or electronic copies of single articles at the request of individual Authorised Users.
 - 3.1.5 Display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorised Users or groups of Authorised Users.
- 3.2 Authorised Users may, subject to clause 6 below:
- 3.2.1 Search, view, retrieve and display the Licensed Materials.
 - 3.2.2 Electronically save individual articles or items of the Licensed Materials for personal use.
 - 3.2.3 Print off a copy of parts of the Licensed Materials.
 - 3.2.4 Distribute a copy of individual articles or items of the Licensed Materials in print or electronic form to other Authorised Users; for the avoidance of doubt, this sub-clause shall include the distribution of a copy for teaching purposes to each individual student Authorised User in a class at the Licensee's institution.

4. **SUPPLY OF COPIES TO OTHER LIBRARIES**

The Licensee may supply through interlibrary loan a copy of an individual document being part of the Licensed Materials by post, fax, **electronic transmission via the Internet**, secure electronic transmission using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing, or otherwise, for the purposes of research or private study and not for commercial use. Specifically, copies may be made in compliance with Section 108 of the Copyright Act of the US and within the CONTU guidelines.

5. **COURSE PACKS AND ELECTRONIC RESERVE**

- 5.1 For avoidance of doubt, Licensee may incorporate parts of the Licensed Materials in printed Course Packs and Electronic Reserve collections for the use of Authorised Users in the course of instruction at the Licensee's institution, but not for Commercial Use. Each such item shall carry appropriate acknowledgment of the source, listing title and author of the extract, title and author of the work, and the publisher. Copies of such items shall be deleted by the Licensee when they are no longer used for such purpose. 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, are visually impaired..

6. PROHIBITED USES

- 6.1 Neither the Licensee nor Authorised Users may:
- 6.1.1 remove or alter the authors' names or the Distributor's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;
 - 6.1.2 systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose;
 - 6.1.3 mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network
- 6.2 The Distributor's explicit written permission must be obtained in order to:
- 6.2.1 use all or any part of the Licensed Materials for any Commercial Use;
 - 6.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorised Users;
 - 6.2.3 publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this Licence;
 - 6.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen or as otherwise permitted in this Licence, to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

7. DISTRIBUTOR'S UNDERTAKINGS

- 7.1 The Distributor warrants to the Licensee that the Licensed Materials used as contemplated by this Licence do not infringe the copyright or any other proprietary or intellectual property rights of any person. The Distributor shall indemnify and hold the Licensee harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Licensee claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this Licence for any reason. This indemnity shall not apply if the Licensee has amended the Licensed Materials in any way not permitted by this Licence.
- 7.2 The Distributor shall:
- 7.2.1 make the Licensed Materials available to the Licensee from the Server in the list specified in Schedule 5. The Distributor will notify the Licensee in advance of any anticipated specification change applicable to the Licensed Materials. If the changes render the Licensed Materials less useful in a material respect to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this Licence under clause 11.1.2 and 11.3.
 - 7.2.2 provide the Licensee within 10 days of the date of this Licence, with information sufficient to enable the Licensee to access the Licensed Material.

- 7.2.3 use reasonable endeavours to ensure that the Server has adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Licence.
- 7.2.4 use reasonable endeavours to make the Licensed Materials available to the Licensee and to Authorised Users at all times and on a twenty-four hour basis, save for routine maintenance (which shall be notified to the Licensee in advance wherever possible), and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service.
- 7.3 The Distributor reserves the right at any time to withdraw from the Licensed Materials any publication, item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. If the withdrawal results in the Licensed Materials being no longer useful to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this License under clause 11.1.2 and 11.3.
- 7.4 Collection and analysis of data on the usage of the Licensed Materials will assist both the Distributor and the Licensee to understand the impact of this License. The Distributor shall provide to the Licensee or facilitate the collection and provision to the Licensee and the Distributor by the Licensee of such usage data on the number of articles downloaded, by journal title, on an annual basis for the Distributor's and the Licensee's private internal use only. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws and the anonymity of individual users and the confidentiality of their searches shall be fully protected.
- 7.5 Except as expressly provided in this License, the Distributor makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Materials, merchantability or fitness of use for a particular purpose. The Licensed Materials are supplied 'as is'.
- 7.6 Except as provided in clause 7.1, under no circumstances shall the Distributor be liable to the Licensee or any other person, including but not limited to Authorised Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials, provided that the Distributor has not acted in wilful default or gross negligence. Irrespective of the cause or form of action, the Distributor's aggregate liability for any claims, losses, or damages arising out of any breach of this Licence shall in no circumstances exceed the Fee paid by Licensee to the Distributor under this Licence in respect of the Subscription Period during which such claim, loss or damage occurred. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Regardless of the cause or form of action, the Licensee may bring no action arising from this Licence more than six (6) months after the cause of action arises.

8. LICENSEE'S UNDERTAKINGS

- 8.1 The Licensee shall:
- 8.1.1 use reasonable endeavours to ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the licensed materials;

- 8.1.2 use reasonable endeavours to notify Authorised Users of the terms and conditions of this Licence and take steps to protect the Licensed Materials from unauthorised use or other breach of this License;
- 8.1.3 use reasonable endeavours to monitor compliance and immediately upon becoming aware of any unauthorised use or other breach, inform the Distributor and take all reasonable and appropriate steps, both to ensure that such activity ceases and to prevent any recurrence;
- 8.1.4 provide the Distributor, within 10 days of the date of this Agreement, with information sufficient to enable the Distributor to provide access to the Licensed Material in accordance with its obligation under clause 7.2.3. Should the Licensee make any significant change to such information, it will notify the Distributor not less than ten (10) days before the change takes effect.
- 8.1.5 keep full and up-to-date records of all Authorised Users IP addresses and provide the Distributor with details of such additions, deletions or other alterations to such records as are necessary to enable the Distributor to provide Authorised Users with access to the Licensed Materials as contemplated by this License; Access to the Licensed materials shall be controlled by Distributor through the use of IP addresses. Licensee will be responsible for verifying the status of the Authorized users, providing lists of sets of IP addresses to Distributor if applicable, and updating such lists on a regular basis. The terms and conditions of this agreement shall apply to any such updates. Licensee shall cooperate with the Distributor in the implementation of additional security procedures as they are developed.
- 8.1.6 use reasonable endeavours to ensure that only Authorised Users are permitted access to the Licensed Materials.
- 8.1.7 Licensee is responsible for establishing and maintaining hardware and Internet access to provide access to, and transmit the Licensed materials to Authorized Users. Licensee understands that Internet browser software is required to access the Licensed materials. Schedule 3 attached hereto and incorporated herein sets forth hardware platforms and browsing software required and / or recommended for accessing the Licensed materials. Licensee understands that from time to time the licensed materials might be added to or modified by Distributor, that portions of the Licensed materials may migrate to other formats and that the terms of Schedule 3 might be updated.
- 8.2 The Distributor and its Content Providers do not guarantee the accuracy or completeness of the database, or of the information contained in this database, or its merchantability or fitness for a particular purpose.
- 8.3 The Licensee shall, in consideration for the rights granted under this Licence, pay the Fee within thirty (30) days of signature and, if applicable, within thirty (30) days prior to each subsequent Subscription Period and receipt of such payment shall be a condition of this License coming into effect.

9. UNDERTAKINGS BY BOTH PARTIES

- 9.1 Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party.

10. FEE

- 10.1 Licensee shall make payment to the Distributor for the License granted herein pursuant to the payment terms set forth in Schedule 2.

11. TERM AND TERMINATION

In addition to automatic termination (unless renewed) under clause 2.2, this Licence shall be terminated:

- 11.1.1 if the Licensee defaults in making payment of the Fee as provided in this Licence and fails to remedy such default within thirty (30) days of notification in writing by the Distributor;
 - 11.1.2 if the Distributor commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the Licensee;
 - 11.1.3. if the Licensee commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the Distributor;
 - 11.1.4 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
- 11.2 On termination of this Licence for cause, as specified in clauses 11.1.1 and 11.1.3, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorised Users
- 11.3 On termination of this Licence by the Licensee for cause, as specified in clause 11.1.2 above, the Distributor shall refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

12. GENERAL

- 12.1 This Licence constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Licence, whether oral or written.
- 12.2 Alterations to this Licence and to the Schedules to this Licence are only valid if they are recorded in writing and signed by both parties.
- 12.3 This Licence may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, except as provided in this Licence in respect of the management and operation of the Server, without the prior written consent of the other party, which consent shall not unreasonably be withheld.

- 12.4 If rights in all or any part of the Licensed Materials are assigned to another distributor, the Distributor shall use its best endeavours to ensure that the terms and conditions of this Licence are maintained.
- 12.5 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.
- 12.6 Neither party's delay or failure to perform any provision of this Licence, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Licence.
- 12.7 The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence.
- 12.8 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.

Signed:

FOR THE DISTRIBUTOR:

Full name (in block capitals): _____

Position / Title: _____

Date: _____

FOR THE LICENSEE:

Full name (in block capitals): _____

Position / Title: _____

Date: _____

SCHEDULE 1
LIBRARY PREMISES

SCHEDULE 2
FEE and PAYMENT TERMS

SCHEDULE 3
HARDWARE AND SOFTWARE REQUIREMENTS

SCHEDULE 4
CONSORTIA DETAILS

SCHEDULE 5
LICENSED MATERIALS