

## ACLS HUMANITIES E-BOOK SUB-LICENCE AGREEMENT

THE JISC CONTENT PROCUREMENT COMPANY LIMITED (TRADING AS JISC COLLECTIONS), a company incorporated in England and Wales and limited by guarantee whose registered office is at Ground Floor, Brettenham House South, Lancaster Place, London WC2E 7EN ("JISC Collections")

OFFERS to you, the Sub-Licensee, the permission to access and use the Licensed Material on the terms and conditions as set out in this Sub-Licence. Upon completing and returning the enclosed Acceptance of Sub-Licence Form, your institution will become a non-exclusive Sub-Licensee of JISC Collections.

Acceptance shall be by delivery of a completed copy of the Acceptance of Sub-Licence Form attached hereto to JISC Collections or a JISC Collections' authorised agent who will accept delivery on behalf of JISC Collections. Acceptance shall be acceptance of all terms of this Sub-Licence and no variation or counter offer will be accepted by JISC Collections. In the event that no or partial compliance is made as to the manner or form described for acceptance, no sub-licence will be granted and this offer is deemed withdrawn.

### RECITALS

**WHEREAS** ACLS Humanities E-book is a cross searchable digital collection of over 1,700 full-text titles in the humanities available online;

**AND WHEREAS** ACLS Humanities E-book and all Intellectual Property Rights (as hereafter defined) therein are owned by or licensed to American Council of Learned Societies;

**AND WHEREAS** by an agreement between American Council of Learned Societies and JISC Collections (the "ACLS Humanities E-book Licence Agreement"), JISC Collections is permitted to sub-licence the access and use of ACLS Humanities E-book to Sub-Licensees in accordance with the terms of this Sub-Licence;

JISC COLLECTIONS AND THE SUB-LICENSEE AGREE AS FOLLOWS:

### 1. DEFINITIONS

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

"Authorised Users" means individuals who are authorised by the Sub-Licensee to access the Sub-Licensee's information services whether on-site or off-site via Secure Authentication and who are affiliated to the Sub-Licensee as a current student (undergraduates and postgraduates), member of staff (whether on a permanent or temporary basis including retired members of staff and any teacher who teaches Authorised Users in the United Kingdom) or contractor of the Sub-Licensee. Persons who are not a current student, member of staff or a contractor of the Sub-Licensee, but who are permitted to access the Sub-

"Charges"	<p>Licensee's information services from computer terminals or otherwise within the physical premises of the Sub-Licensee ["Walk-In Users"] are also deemed to be Authorised Users, only for the time they are within the physical premises of the Sub-Licensee. Walk-In Users may not be given means to access the Licensed Material when they are not within the physical premises of the Sub-Licensee. For the avoidance of doubt, Walk-In Users may not be given access to the Licensed Material by any wireless network provided by the Sub-Licensee unless such network is a Secure Network.</p> <p>means the charges as set out in Schedule 1.</p>
"Commercial Use"	<p>means use of the Licensed Material for the purpose of monetary reward (whether by or for the Sub-Licensee or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Material. For the avoidance of doubt, neither the recovery of direct cost by the Sub-Licensee from Authorised Users, nor use by the Sub-Licensee or Authorised Users of the Licensed Material in the course of research funded by a commercial organisation is deemed to constitute Commercial Use.</p>
"Educational Purposes"	<p>means for the purpose of education, teaching, distance learning, private study and/or research.</p>
"HEFCE"	<p>means the Higher Education Funding Council for England.</p>
"Intellectual Property Rights"	<p>means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.</p>
"JORUM Repository"	<p>means the central repository of learning and teaching material funded by the UK funding bodies.</p>

"Licensed Material"	means such electronic book titles selected from time to time by the Sub-Licensee from the product known to the parties as ACLS Humanities E-book' being a cross searchable digital collection of over 1,700 full-text titles in the humanities available online.
"Secure Authentication"	means access to the Licensed Material by Security Assertion Mark-up Language (SAML) technology based authentication, Internet Protocol ("IP") ranges or by another means of authentication agreed in writing between American Council of Learned Societies and JISC Collections from time to time.
"Secure Network"	means a network which is only accessible by Secure Authentication.
"Sub-Licensee"	means the sub-licensee whose details are set out in the Acceptance of Sub-Licence Form attached hereto and made a part hereof.

- 1.2 Headings contained in this Sub-Licence 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.

## **2. GRANT OF SUB-LICENCE**

- 2.1 The Sub-Licensee agrees to pay the Charges as set out in Schedule 1, in consideration of which JISC Collections agrees to grant to the Sub-Licensee a non-exclusive sub-licence to access and use the Licensed Material and to allow Authorised Users to access and use the Licensed Material throughout the term of this Sub-Licence by Secure Authentication for Educational Purposes only.

## **3. USE OF THE LICENSED MATERIAL**

- 3.1 Throughout the term of this Sub-Licence the Sub-Licensee may for Educational Purposes only:
- 3.1.1 make such temporary local electronic copies of all or part of the Licensed Material as are necessary to ensure efficient use by Authorised Users, provided that such use is subject to all the terms and conditions of this Sub-Licence;
- 3.1.2 allow Authorised Users to access the Licensed Material by Secure Authentication in order to search, retrieve, display and view, and otherwise use portions thereof;

- 3.1.3 allow Authorised Users to electronically save parts of the Licensed Material;
- 3.1.4 allow Authorised Users to print out copies of parts of the Licensed Material;
- 3.1.5 provide single printed or electronic copies of parts of the Licensed Material at the request of individual Authorised Users;
- 3.1.6 supply to an authorised user of another library (whether by post, fax or secure electronic transmission, using Ariel software or its equivalent, whereby the electronic file is deleted immediately after printing) a single paper copy of an electronic original of parts of the Licensed Material;
- 3.1.7 incorporate parts of the Licensed Material for use by Authorised Users in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;
- 3.1.8 allow Authorised Users to incorporate parts of the Licensed Material in printed or electronic form in assignments and portfolios, theses and in dissertations ("the Academic Works"), including reproductions of the Academic Works for personal use and library deposit, if such use conforms to the customary and usual practice of the Sub-Licensee. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner;
- 3.1.9 display, download and print parts of the Licensed Material for the purpose of promotion of the Licensed Material, testing of the Licensed Material, or for training Authorised Users;
- 3.1.10 publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other such similar activity;
- 3.1.11 make such copies of training material and network such training material as may be required for the purpose of using the Licensed Material in accordance with this Sub-Licence;
- 3.1.12 deposit in perpetuity the learning and teaching objects as referred to in Clause 3.1.7 in electronic repositories operated by the Sub-Licensee on a Secure Network and in the JORUM Repository. The access and use of such learning and teaching objects shall be governed by the terms and conditions of the applicable repository; and
- 3.1.13 download and incorporate the MARC records for the Licensed Material into local library catalogues, union catalogues and such other library and information systems including but not limited to search machines. MARC

records shall be delivered at no extra cost for non-commercial use by local catalogues, union catalogues, any other library and information system (including but not limited to search engines).

- 3.2 This Sub-Licence shall be deemed to complement and extend the rights of the Institution and Authorised Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 and nothing in this Sub-Licence shall constitute a waiver of any statutory rights held by the Institution and Authorised Users from time to time under these Acts or any amending legislation.

#### **4. RESTRICTIONS**

- 4.1 Save as provided herein, the Sub-Licensee and Authorised Users may not:
- 4.1.1 sell or resell the Licensed Material unless the Sub-Licensee or an Authorised User has been granted prior written consent by American Council of Learned Societies to do so;
  - 4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear;
  - 4.1.3 alter, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this Agreement. For the avoidance of doubt, no alteration of the words or their order is permitted;
  - 4.1.4 display or distribute any part of the Licensed Material 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;
  - 4.1.5 use all or any part of the Licensed Material for any Commercial Use or for any purpose other than Educational Purposes.
- 4.2 This Clause 4 shall survive termination of this Sub-Licence for any reason.

#### **5. RESPONSIBILITIES OF THE SUB-LICENSEE**

- 5.1 The Sub-Licensee will:
- 5.1.1 issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;
  - 5.1.2 use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Material;
  - 5.1.3 use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Sub-Licence;
  - 5.1.4 use all reasonable efforts to monitor compliance with the terms of this Sub-Licence and notify American Council of Learned Societies and JISC Collections

immediately and provide full particulars on becoming aware of any of the following (a) any unauthorised access to or use of the Licensed Material or unauthorised use of any of the Sub-Licensee's password(s); or (b) any breach by an Authorised User of the terms of this Sub-Licence. Upon becoming aware of any breach of the terms of this Sub-Licence the Sub-Licensee further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Sub-Licensee's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence;

5.1.5 comply with all computer security procedures required by JISC Collections and/or a third party duly appointed by JISC Collections and take all reasonable steps to ensure the security of the Licensed Material; and

5.1.6 provide lists of valid IP addresses to JISC Collections and update those lists on a regular basis the frequency of which will be agreed by the parties from time to time.

## **6. RESPONSIBILITIES OF JISC COLLECTIONS**

6.1 JISC Collections shall use all reasonable efforts to ensure access and use of the Licensed Material in accordance with the provisions as laid down in this Sub-Licence.

6.2 JISC Collections shall use all reasonable efforts to cause customer support services to be provided to the Sub-Licensee and to Authorised Users.

## **7. USAGE DATA**

7.1 The parties shall co-operate in gathering any data on usage of the Licensed Material that is available to them during the term of this Sub-Licence, and shall provide such data to each other upon request. Notwithstanding the foregoing, the parties shall neither assemble nor provide data from which an individual user could be identified.

## **8. CHARGES**

8.1 The Sub-Licensee shall pay the Charges to JISC Collections for the Sub-Licence in the amount and upon terms set out in Schedule 1.

## **9. TERM AND TERMINATION**

9.1 The term of this Sub-Licence will commence upon the date of signature and will remain in full force and effect until 31<sup>st</sup> July 2011 unless terminated earlier as provided for in this Clause 9.

9.2 Either party may terminate this Sub-Licence at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Sub-Licence by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach.

9.3 Notwithstanding anything to the contrary herein, this Sub-Licence will be treated as if terminated if the ACLS Humanities E-book Licence Agreement between American

Council of Learned Societies and JISC Collections terminates until JISC Collections remedies the breach. JISC Collections will notify the Sub-Licensee of such termination and when it has remedied the breach. JISC Collections shall make reasonable endeavours not to cause the ACLS Humanities E-book Licence Agreement between American Council of Learned Societies and JISC Collections to terminate.

- 9.4 Further, notwithstanding anything to the contrary herein, upon a breach by the Sub-Licensee, on-line access to the Licensed Material shall be terminated.
- 9.5 Upon termination of this Agreement, JISC Collections will use all reasonable efforts to procure that American Council of Learned Societies at no charge provides the Sub-Licensee with an archive of the full text of the Licensed Material paid for by the Sub-Licensee. The archive will be supplied to the Sub-Licensee in an electronic medium mutually agreed between the Licensor and the Sub-Licensee. The Sub-Licensee may network the archive within their institution at their own costs. Save as provided for in Clause 3.1.12, continuing archival access and use is subject to the terms and conditions of use of this Agreement.
- 9.6 For the avoidance of doubt, print and electronic copies of all or parts of the Licensed Material may be retained and used by the Sub-Licensee and Authorised Users after termination of this Sub-Licence subject to the terms of Clauses 3 and 4, which terms shall survive any termination of this Sub-Licence.

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

- 10.1 The Sub-Licensee acknowledges that the Intellectual Property Rights in the Licensed Material are the sole and exclusive property of American Council of Learned Societies or are duly licensed to American Council of Learned Societies and that this Sub-Licence does not assign or transfer to the Sub-Licensee any right, title or interest therein except for the right to use the Licensed Material in accordance with the terms and conditions of this Sub-Licence.

## **11. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION**

- 11.1 The Sub-Licensee represents and warrants that it has sufficient authority and rights to enter into and perform its obligations under this Sub-Licence.
- 11.2 JISC Collections represents and warrants that it has the right to grant the Sub-Licence and that the use of the Licensed Material by the Sub-Licensee and Authorised Users in accordance with the terms of this Sub-Licence shall not infringe the copyright of any third party. The foregoing shall not apply to improper usage of the Licensed Material by the Sub-Licensee or Authorised Users. JISC Collections makes no representation or warranty, and expressly disclaims any liability with respect to the content of the Licensed Material, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.
- 11.3 The Sub-Licensee agrees to notify American Council of Learned Societies and JISC Collections within 48 hours and provide full particulars in the event that it becomes

aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Material. It is expressly agreed that upon such notification, or if American Council of Learned Societies becomes aware of such a claim from other sources, American Council of Learned Societies may remove such work(s) from the Licensed Material. At the request of American Council of Learned Societies, the Sub-Licensee will make all reasonable efforts to remove such work(s) from any copies of the Licensed Material maintained by the Sub-Licensee. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Sub-Licence.

- 11.4 Nothing in this Sub-Licence shall make the Sub-Licensee liable for breach of the terms of this Sub-Licence by any Authorised User provided that the Sub-Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of a an actual breach having occurred.
- 11.5 Subject to the above and to the extent permitted by law, JISC Collections shall not be liable to the Sub-Licensee for any loss or damage including any loss of profits, goodwill, contract or any indirect or consequential loss including loss or damage suffered by the Sub-Licensee as a result of an action brought by a third party.
- 11.6 American Council of Learned Societies reserves the right to change the content, presentation, user facilities or availability of parts of the Licensed Material and to make changes in any software used to deliver the Licensed Material at their sole discretion. JISC Collections will notify the Sub-Licensee of any substantial change to the Licensed Material.
- 11.7 Other than the express warranties stated in this Clause 11, the Licensed Material is provided on an "as is" basis, and JISC Collections disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Material or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. JISC Collections further expressly disclaims any warranty or representation to Authorised Users, or to any third party. JISC Collections accepts no liability for loss suffered or incurred by the Sub-Licensee or Authorised Users as a result of their reliance on the Licensed Material.
- 11.8 The Sub-Licensee represents to JISC Collections that its computer system through which the Licensed Material will be used is configured, and procedures are in place, to prohibit access to the Licensed Material by any person other than an Authorised User; that it shall inform Authorised Users about the conditions of use of the Licensed Material; and that during the term of this Sub-Licence, the Sub-Licensee will continue to make all reasonable efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.
- 11.9 JISC Collections and the Sub-Licensee do not seek to exclude liability under this Agreement for fraud or for personal injury or death caused by its negligence and the negligence of its employees, authorised sub-contractors and agents.

## **12. FORCE MAJEURE**

- 12.1 Either party's failure to perform any term or condition of this Sub-Licence as a result

of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities) ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Sub-Licence.

- 12.2 If either party to this Sub-Licence is prevented or delayed in the performance of any of its obligations under this Sub-Licence by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

### **13. ASSIGNMENT**

- 13.1 Neither this Sub-Licence nor any of the rights and obligations under it may be assigned or sub-licensed by the Sub-Licensee without obtaining the prior written consent of JISC Collections or HEFCE, after an assignment by JISC Collections to HEFCE, such consent not to be unreasonably withheld or delayed. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Sub-Licence and agrees to be bound to all the terms of this Sub-Licence.

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

- 14.1 This Sub-Licence shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Sub-Licence will be subject to and within the jurisdiction of the English courts.
- 14.2 Where the parties agree that a dispute arising out of or in connection with this Sub-Licence would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement. In default of agreement upon whom to appoint as a suitable expert, such expert shall upon the request of either party be appointed by the Chair for the time being of Universities UK (<http://www.universities.ac.uk>).
- 14.3 Any person to whom a reference is made under Clause 14.2 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.
- 14.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 14.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

### **15. NOTICES**



## SCHEDULE 1 – CHARGES AND PAYMENT TERMS

By returning a signed copy of this Sub-Licence, the Sub-Licensee accepts that it must pay to JISC Collections the total sum of the charges for the whole term of this Sub-Licence in accordance with the applicable JISC Collections charging band. JISC Collections or a JISC Collections' authorised agent will invoice the Sub-Licensee annually for the applicable charge as set out below. All prices are exclusive of VAT, which will be payable where applicable.

For the avoidance of doubt the term of this Sub-Licence will commence upon the date of signature of the attached Acceptance of Sub-Licence Form and will remain in full force and effect until the date of termination as set out in Clause 9.

### Option 1: Annual Licence Charge

Band	1 <sup>st</sup> August 2008 – 31 <sup>st</sup> July 2009	1 <sup>st</sup> August 2009 – 31 <sup>st</sup> July 2010	1 <sup>st</sup> August 2010 – 31 <sup>st</sup> July 2011
A	£745	£825	£905
B	£710	£760	£810
C - D	£575	£635	£695
E –F	£400	£440	£480
G – H	£260	£280	£300
I - J	£170	£185	£200

In the event that the Sub-Licensee signed the Acceptance of Sub-Licence Form during a given year, the Sub-Licensee shall pay JISC Collections that part of the applicable charge which represents the period covering the date of signature of the Acceptance of Sub-Licence Form up to the date where the next 12 months subscription period starts. Thereafter the Sub-Licensee will pay JISC Collections the full applicable charges for subsequent years as and where applicable.

### Option 2: Single Payment Licence Charge

Institution that wish to subscribe for the full Term of the Agreement [3 Years from 1st August 2008 – 31st July 2011] in one single payment, will receive a Single Payment Licence Charge Discount. Institutions must subscribe by the 30th September 2008 to receive this discount.

Band	Annual Licence Charge	Single Payment Licence Charge Discount	Total Single Payment Licence Charge for 1st August 2008 – 31st July 2011
A	£745	£240	£2,235
B	£710	£150	£2,130
C – D	£575	£180	£1,725
E –F	£400	£120	£1,200
G – H	£260	£60	£780
I – J	£170	£45	£510

Invoices shall be due and payable no later than thirty (30) days after being issued by JISC Collections or a JISC Collections' authorised agent.