

**COPYRIGHT LICENSING LIMITED**

**UNIVERSITY OF WAIKATO**

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**UNIVERSITY PILOT LICENCE AGREEMENT 2015-2016**

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**AGREEMENT dated**

**2014**

**PARTIES**

**COPYRIGHT LICENSING LIMITED** a non-profit company having its registered office at Level 4, 19-21 Como Street, Takapuna, Auckland ("**CLL**")

**THE UNIVERSITY OF WAIKATO**, one of the Specified Universities, together with its successors and permitted assigns ("**the Licensee**")

**BACKGROUND**

- A. This Agreement is one of a number of identical licences made between CLL and each of the Specified Universities, pursuant to a licensing scheme for all New Zealand universities.
- B. As agent for New Zealand publishers and copyright owners and certain Reproduction Rights Organisations overseas, CLL acts on behalf of certain owners and licensees of published copyright material in hard copy format for the purposes of entering into licences for the reprographic and digital reproduction within New Zealand of extracts from published copyright material.
- C. CLL has agreed to grant such a licence to each of the Specified Universities on the terms and conditions set out in this Agreement.
- D. This Agreement replaces the licence agreement that existed between CLL and the Licensee which expired on 28 February 2013 and was extended to 31 December 2014.
- E. This Agreement is a pilot e-reporting scheme put in place to cover the period when each of the Specified Universities will be implementing the Software in accordance with the timetable in Schedule 6.

**IT IS HEREBY AGREED** by the parties as follows:

**1. DEFINITIONS**

1.1. In this Agreement and its Schedules:

"**academic year**" means a calendar year.

"**annual rate**" means the annual rate payable pursuant to clause 4.

"**authorised persons**" means the academic and general staff and duly authorised agents of the Licensee.

"**Agreement**" means this document including all the Schedules.

“**authorised purposes**” means the educational purposes of the Licensee, including study, research and use in the course of educational instruction.

“**bibliographic detail(s)**” in respect of a copyright work means:

- (a) the name of the author;
- (b) the title;
- (c) the publisher;
- (d) the place and date of publication;
- (e) the ISBN/ISSN or other such identifying number;
- (f) first page copied – last page copied; and
- (g) total number of pages copied.

“**copy**” and “**copying**” means:

- (a) the reproduction by authorised persons by reprographic process of copyright material to create course material; and
- (b) the distribution and making available of such reprographic copies to authorised persons and to students (enrolled in the Paper for which the course material is prepared):
  - (i) in hard copy; and
  - (ii) electronically in digital form by means of a Secure System
- (c) the electronic or digital storage of such reprographic copies by the Licensee;
- (d) the accessing of such reprographic copies in digital form by authorised persons and by students (enrolled in the Paper for which the course material is prepared).

“**copyright material**” means all copyright works in Hard Copy Format but does not include the Excluded Works as specified in Schedule 3.

“**copyright work**” or “**works**” means:

- (a) published literary or dramatic works and including the published edition;
- (b) artistic works published as part of or incidental to a literary or dramatic work; in which copyright subsists.

“**course material**” means a course pack or any other material (some of which may be subject to copyright) reproduced in multiple form and prepared by or for a department or staff member of a Licensee for distribution to students enrolled in a course of instruction or Paper taught by that Licensee or made available for such students.

“**Copyright Clearance Service**” has the meaning set out in clause 2.3.

“**department**” means a subject area or equivalent unit within a Faculty or School, recognised by the Licensee.

“**Designated Person**” means a member of the senior management team designated to respond to CLL on behalf of the Licensee.

“**EFTS**” means one equivalent full time student enrolled with the Licensee in an academic year.

“**Enrolled Number of EFTS**” means the total number of EFTS (including all full fee paying and foreign students) enrolled with the Licensee in an academic year as recorded with the Ministry of Education.

“**Excluded Works**” means the works specified in Schedule 3.

“**GST**” means Goods and Services Tax chargeable under the Goods and Services Tax Act 1985.

“**Hard Copy Format**” means published editions of copyright works whether published as books, periodicals or journals.

“**licence fee**” means the fee calculated in accordance with clause 4.

“**out of print work**” or “**OOP**” means a copyright work within the meaning of Schedule 4 that CLL is reasonably satisfied cannot be obtained within a reasonable period of time at an ordinary commercial price.

“**Paper**” means a paper or course taught by the Licensee.

“**Secure System**” means a system that has an appropriate security mechanism designed to prevent any unauthorised copying or subsequent unauthorised use and is accessible only by authorised persons and students of the Licensee, whose conduct is subject to the regulations, statutes (and, where appropriate, the employment agreements) of the Licensee. For the avoidance of doubt, information distributed by means of a password protected university intranet shall be deemed to be distributed by a Secure System.

“**Software**” means the third party software programs used by the Licensee to facilitate the electronic reporting of the use of copyright material pursuant to the Licence.

“**Specified Universities**” means any one or all of the Universities listed in Schedule 1.

“**student**” means a student enrolled with the Licensee.

“**the Act**” means the Copyright Act 1994.

“**the Licence**” means this Agreement.

“**the Term**” means the duration of this Agreement as set out in clause 3.

“**UNZ**” means Universities New Zealand – Te Pokai Tara established by Part XIX of the Education Act 1989.

“**UNZ Copyright Expert Group**” means the Group appointed by UNZ or a duly appointed subcommittee thereof to make recommendations to UNZ and to the Vice Chancellor of each of the Specified Universities on matters relating to copyright, including negotiations with CLL on the matters pertaining to this Agreement.

**“work in transit”** means a copyright work within the meaning of Schedule 5 that CLL is reasonably satisfied is in transit to the Licensee and will not be received by the Licensee within a reasonable time prior to its required use.

1.2. In the interpretation of this Agreement:

- (a) “CLL” includes any assignee or transferee of rights from CLL;
- (b) One gender includes the other gender;
- (c) The singular includes the plural and vice versa;
- (d) A term or expression which is defined in the Copyright Act 1994 but is not defined in clause 1.1 has the meaning given in the Act.

1.3. **Acknowledgements**

The parties acknowledge that:

- (a) This Agreement is in the nature of a pilot e-reporting scheme.
- (b) CLL and the licensee will work constructively together during the term to ensure that the implementation of the Software achieves full and accurate reporting for both CLL and the licensee.
- (c) The Licensee has agreed to implement the Software within its university in accordance with the Implementation Commencement Date in Schedule 6.
- (d) The Specified Universities have each agreed to the Reporting Dates as set out in Schedule 6 and each will use all reasonable endeavours to achieve those Reporting Dates. If in any case a Specified University is not able to achieve the Reporting Dates, it will forthwith agree with CLL the earliest possible revised Reporting Dates and will comply with those dates even if they are after the expiry of the Term.
- (e) Representatives of CLL and of such of the Specified Universities that propose to enter into a further licence from 1 January 2017 will meet to discuss the terms of any further licence on or before 1 March 2016.

**2. GRANT OF LICENCE**

2.1. CLL grants the Licensee the right for authorised persons to copy copyright material for authorised purposes in accordance with the terms and conditions of this Agreement.

2.2. Nothing in this Agreement shall authorise the copying of copyright material beyond the extent and limitations set out in Schedule 2 nor shall it authorise the copying of the Excluded Works.

- 2.3. If the Licensee wishes to copy for authorised purposes any item of copyright material beyond the extent set out in Schedule 2, it may make application to CLL for permission to do so. CLL will take reasonable steps to respond to any such application promptly. Unless otherwise agreed with CLL prior to the copying, the Licensee will be invoiced for such copying and must pay for any such additional copying at CLL's transactional rate of 10 cents per copied page payable on the 20<sup>th</sup> of the month following invoice. Any copying allowed by CLL under this clause will be deemed to be copied pursuant to CLL's Copyright Clearance Service.
- 2.4. Where the Licensee distributes any course material under this Agreement it shall comply with Schedule 2 and shall:
- (a) include bibliographical detail;
  - (b) include an appropriate copyright warning notice in line with that contained in clause 4.6 of Schedule 2;
  - (c) ensure authorised persons and students are clearly notified that it is a term of access to and supply of course material that they must comply with the terms of the copyright warning notice prior to accessing any course material.
- 2.5. Nothing in this Agreement affects any rights which the Licensee or authorised persons may have under the Act or otherwise at law or by statute or under any other licence. It shall not be a breach of this Agreement to do anything which is otherwise not an infringement of copyright under the Act or any future amendments to that Act.
- 2.6. The Licensee may make a reasonable charge to recover costs and overheads incurred by the Licensee in providing copies of the copyright material.
- 2.7. This Agreement shall operate within New Zealand only but shall not prevent a student enrolled with the Licensee from copying copyright material (distributed by the Licensee by electronic means via a Secure System) outside New Zealand provided always that such copying is for an authorised purpose.
- 2.8. Nothing in this Agreement shall license the copying of copyright material for provision to students who attend or receive a course of instruction online via what is known as or comprises a MOOC (Massive Open Online Course). CLL is willing to enter into separate licences for the copying of copyright material for provision to such persons.

### **3. TERM**

- 3.1. This Agreement commences on 1 January 2015 and shall continue until 31 December 2016.

#### **4. LICENCE FEE**

- 4.1. The Licensee will pay to CLL for the duration of this Agreement a licence fee calculated by multiplying the Enrolled Number of EFTS of the Licensee by the annual rate plus GST.
- 4.2. The annual rate for the licence shall be \$23.22 per EFTS.
- 4.3. Each year the licensee shall pay the licence fee to CLL in two instalments:
  - (a) A first instalment on 31 March of each year of an amount equal to half the amount calculated by multiplying the Enrolled Number of EFTS of the Licensee for the preceding academic year by the applicable annual rate plus GST; and
  - (b) A second instalment on 31 October each year of an amount equal to the licence fee (calculated in accordance with clause 4.1) less the amount of the first instalment.
- 4.4. If payment of the licence fee prescribed in clauses 4.1 – 4.3 is not made on the due dates for payment, then the licensee must pay interest at a rate of 2% above the base annual lending rate of Westpac Banking Corporation in New Zealand calculated daily from the due date for payment until the actual date of payment of the outstanding amount.

#### **5. PROCEDURES FOR PROVISION AND VERIFICATION OF DATA**

- 5.1. During the academic year the Licensee will:
  - (a) ensure that all names or other identifiers of Papers being taught are loaded into the Software prior to the commencement of teaching of that Paper;
  - (b) in accordance with the Reporting Dates in Schedule 6 supply to CLL in electronic form as soon as reasonably practicable for each Paper completed:
    - (i) the number of students enrolled in each such Paper;
    - (ii) bibliographical details of the content of all copyright materials copied under the licence and made available to students as entered into the Software during the course of the instruction of that Paper, whether in hard copy or electronic format;
- 5.2. CLL and the Licensee will each bear their own costs incurred in:
  - (a) installing, ensuring its functionality, running and maintaining the Software; and
  - (b) collecting and distributing the data.

- 5.3. The Licensee will maintain and retain all necessary records and take all reasonable steps to ensure that:
- (a) all data referred to in clause 5.1 is supplied to CLL in a timely fashion;
  - (b) all data is provided in excel or an agreed alternative format.
- 5.4. It is recorded that the objective of this data and its supply to CLL is to obtain bibliographic details and volume data of copyright material copied pursuant to the licence to enable CLL to distribute the licence fee to the appropriate copyright owners in a cost-effective way.
- 5.5. The Licensee will take all reasonable steps to co-operate with CLL and to answer any queries it has concerning the content or accuracy of any data supplied by it pursuant to clause 5.1 or concerning compliance with this Agreement.
- 5.6. Where CLL has concerns as to the completeness or the accuracy of any supplied data or compliance with this Agreement, it may send a formal request to the Designated Person specifying the data or information that it requires to be clarified or supplied.
- 5.7. The Licensee will ensure that the Designated Person responds to CLL within 10 working days.
- 5.8. If communication with the Designated Person fails to resolve CLL's concerns, CLL may refer the specific issue to the UNZ Copyright Expert Group for consideration and resolution.
- 5.9. If the Licensee sub-contracts the making of copies pursuant to this licence, it shall ensure that it obtains undertakings from those sub-contractors:
- (a) of confidentiality and security to ensure that any files from which copies are made are kept securely and not disclosed or communicated to any other person not authorised by the Licensee; and
  - (b) to delete any files on completion of the work contracted by the Licensee.
- 5.10. If the Licensee authorises a third party to store, on its behalf, electronic copies of copyright material copied under this Agreement, then the Licensee shall ensure that the third party agrees to put in place an appropriate security mechanism designed to prevent any unauthorised use and that the copyright material is accessible only by authorised persons and students of the Licensee, whose conduct is subject to the regulations, statutes (and, where appropriate, the employment agreements) of the Licensee.

#### **Communication by Licensee of obligations under Licence to relevant staff**

- 5.11. At least once during each year of the Term the Licensee will communicate, to all staff involved with any copying under this Agreement, the obligations of the Licensee under this Agreement.

- 5.12. As part of the induction of any new staff member who it is reasonably anticipated will be involved with any copying under this Agreement, the Licensee will communicate to the staff member the obligations of the Licensee under this Agreement.

## 6. CONFIDENTIALITY AND PRESERVATION OF RIGHTS

- 6.1. Subject to the terms of this Agreement, CLL acknowledges that all information acquired by CLL pursuant to this Agreement concerning the copying of copyright material by the Licensee or any authorised person (whether supplied by the Licensee or an authorised person or otherwise received by CLL) shall be held by CLL in strict confidence and shall not be disclosed to any other person.

- 6.2. Nothing in clause 6.1 shall prevent CLL from reporting to copyright owners and their representatives and publishers (together the "Copyright Owner") details of copying by the Licensee of their works, but only on condition that the Copyright Owner undertakes in favour of the Licensee not to:

- (a) refer to the use by the Licensee or any of its staff (permanent or part-time) of the Copyright Owner's works in any advertising and marketing that the Copyright Owner undertakes, and
- (b) use the information in order to market to or promote with the Licensee or any of its staff (permanent or part-time) the work copied or any other works.

- 6.3. CLL and the Licensee acknowledge that none of the following:

- (a) The acceptance of this Licence by the Licensee;
- (b) The acceptance of Licences by other Specified Universities;
- (a) Any discussions or negotiations preliminary to those acceptances; and
- (d) The fee to be paid by the Specified Universities under this licensing scheme including this Licensee.

is to be taken as:

- (i) an acknowledgement that copyright subsists in any copyright material so as to cause its copying by the Licensee or an authorised person otherwise to be an unlawful infringement of that copyright;
- (ii) indicative of any such infringement; or
- (iii) an acknowledgement that the licence fee provided for in clause 4 above is any indication of a fair and reasonable fee in the case of any licensee and whether in any negotiations for a future licence beyond the term of this licence or in any Reference before the Copyright Tribunal.

## **7. TERMINATION**

### **Termination for Cause**

- 7.1. Each party shall have the right to terminate the Agreement in its entirety upon the occurrence of any of the following, and the expiration of any applicable period of cure:
- (a) The failure of the other party to comply with any material term of this Agreement and the expiration of 28 days from written notice thereof specifying the nature of such default; provided, that if the default is of a nature that cannot be cured within such 28 day period, then the failure of the defaulting party to commence the cure within such 28 day period and diligently to pursue cure to completion;
  - (b) The repeated occurrence of any one or more of the events described in paragraph (a) above, notwithstanding that any such event shall have been cured.
- 7.2. Neither party will exercise its right to terminate under this clause without prior consultation with the UNZ Copyright Expert Group.

### **Licensee responsibility on termination**

- 7.3. As soon as practicable after termination of this Agreement, the Licensee shall ensure that all copyright material copied under the Agreement and stored anywhere on any of the Licensee's learning management systems and servers is deleted provided however that the Licensee may retain securely a copy of any material copied under this licence for its own records and to be used solely for record keeping purposes or for other lawful purposes where recourse to an archival record of course material provided by the Licensee to a student may be necessary.
- 7.4. At any time during the period 6 months after the date of termination, CLL has the right to request a certificate of compliance from the Licensee to ensure compliance with clause 7.3. The certificate shall detail the reasonable steps taken by the Licensee to ensure that no copies of copyright material are made available to students either in hard copy or through the Secure System other than in compliance with the Copyright Act 1994 or pursuant to existing third party licences.

### **Preservation of Rights**

- 7.5. Termination or expiry of the term of this Agreement shall not affect any rights which a party may have against any other party as a result of a breach by that other party of any of its obligations under this Agreement prior to termination or expiry.

## **8. INDEMNITY**

- 8.1. CLL indemnifies the Licensee and all authorised persons from and against all claims, actions, proceedings and liabilities (including all reasonable legal costs) arising out of the copying by authorised persons of copyright material in compliance with this Licence or any other material in Hard Copy Format copied by the Licensee in reliance on this Licence whether or not CLL is licensed to authorise copying in accordance with mandates from the underlying copyright owners.
- 8.2. The Licensee will notify CLL within 14 days of any claim or proceeding which invokes the indemnity.
- 8.3. CLL may at its sole discretion and cost take over the control of the conduct of any negotiations on the settlement of any indemnified claim or proceeding and/or assume full control of any such claim or proceeding issued against the Licensee arising out of the Licensee's actions under this Agreement.
- 8.4. This indemnity remains enforceable by the Licensee notwithstanding any termination of this Agreement by expiry or otherwise but only in respect of circumstances giving rise to this indemnity which have occurred during the term of this Agreement.
- 8.5. CLL will not settle any claim without prior notice to and consultation with the UNZ Copyright Expert Group and shall at all times act in accordance with Part 14 of the Education Act 1989 as it applies to Universities.

## **9. GENERAL PROVISIONS**

### **Assignment**

- 9.1. This Agreement is not assignable by the Licensee without the prior written consent of CLL, such agreement not to be unreasonably withheld.

### **Governing Law**

- 9.2. This Agreement shall be governed as to all matters, including validity, construction and performance by and under the laws of New Zealand.

### **Authority to UNZ Copyright Expert Group**

- 9.4. In relation to the operation of this Agreement, CLL shall communicate only with the UNZ Copyright Expert Group provided that nothing in this clause prevents CLL from discussing day to day management and operation issues under the Agreement with the Licensee or its staff.

### **Disputes**

- 9.3. In the event of a dispute arising under this Agreement, a party wishing to resolve the dispute must notify the other party of the existence of the dispute and must identify the nature of the dispute in writing. If a dispute has not been resolved

between the parties within 30 days after notice of the dispute has been given, either party may require the dispute to be mediated in accordance with clause 9.9.

- 9.4. The existence of a dispute or the commencement of proceedings does not affect the obligation of the parties to continue to perform their obligations under this Agreement.

### **Mediation**

- 9.5. Disputes under this Agreement that have not been resolved in accordance with clause 9.7 may be submitted to mediation in accordance with the rules of AMINZ (Arbitrators and Mediators Institute of New Zealand) or LEADR (Lawyers Engaged in Alternative Dispute Resolution).
- 9.6. If a dispute is submitted to mediation under clause 9.9 a party may not commence proceedings in respect of the dispute unless the dispute has not been determined within 30 days of submission to mediation (or such other time as the parties agree).
- 9.7. Nothing in clause 9.9 - 9.10 affects the right of any party to seek a determination from the Copyright Tribunal of New Zealand in relation to the subject matter of this Agreement.

### **Inquiries to CLL**

- 9.8. Without prejudice to its obligations under this Agreement, the Licensee undertakes that, in any position of uncertainty concerning its rights under this Agreement, it will consult with CLL.

### **Notices**

- 9.9. Any notice which either party is required, or may wish, to give to the other pursuant to this Agreement shall be in writing and shall be given by personal or courier delivery, by post, email, or by facsimile transmission to the other party at the respective addresses shown above or at such other address as may be designated by either party by written notice to the other for the purposes of this Agreement.
- 9.10. Notices served by personal delivery, email or facsimile, will be deemed to have been received on the day of sending if a business day or if not a business day then on the first business day after sending. Notices sent by post or by courier will be deemed to have been received on the second business day after sending.

### **Waiver**

- 9.11. If either party waives any breach of any provision of this Agreement it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement.
- 9.12. The failure of any party at any time to properly enforce any of the provisions of this Agreement or to exercise any rights granted to this Agreement, will not be

considered a waiver or affect such party's right to enforce any or all provisions of this Agreement.

**SIGNED AS AN AGREEMENT**

**SIGNED for and on behalf of  
COPYRIGHT LICENSING LIMITED**

by its duly authorised representative in the presence of

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of resident

**SIGNED for and on behalf of  
THE UNIVERSITY OF WAIKATO**

by its duly authorised representative in the presence of:

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of resident

**SCHEDULE 1****The Specified Universities**

Lincoln University

Massey University

University of Auckland

University of Canterbury

University of Otago

Victoria University of Wellington

University of Waikato

Auckland University of Technology

## SCHEDULE 2

### Limits and Requirements for Copying, Distribution and Storage of Copied Material

#### Inclusion of copyright material in course materials

1. Copyright material may be copied and included in course materials provided that such material does not exceed the limits set out in Clause 2 below. This restriction will not apply to ad hoc arrangements entered into pursuant to clause 2.3 of the Licence. Such course materials may be made available by reprographic means. It may be distributed or made available to authorised persons and to students of the Licensee in hard copy and electronically in digital form by means of a Secure System.

#### Copyright material and extent of copyright material which may be copied

2. The limits of copying of copyright material pursuant to this Licence shall be as follows:
  - 2.1 Copying of the whole or any part of an article from a periodical publication, or more than one article from the same issue of a periodical publication where each of those articles copied is on the same subject matter. The term “the same subject matter” will be interpreted on a case-by-case basis. For the avoidance of doubt, it is not intended to allow copying of multiple articles from the same issue of a periodical publication unless the content of each of the articles copied is closely related and focusing on a particular aspect of a subject;
  - 2.2 Copying of up to 10 per cent of a work (other than an article in a periodical publication) or one chapter of the work whichever is the greater;
  - 2.3 Copying of up to 15 pages of the whole or part of a single work contained in a collection of works notwithstanding that such works may be separately published;
  - 2.4 Copying of the whole of an artistic work (such as an illustration) where it is published in a copyright work and is copied in accordance with the provisions of this Schedule;
  - 2.5 Reprographic copying of up to and including the whole of an out of print work (OOP) provided that prior to any such copying and use of the copied material, the Licensee has complied with the OOP procedure as set out in Schedule 4 and received from CLL an OOP permission document. Electronic copying of a whole work under this clause is specifically excluded;
  - 2.6 Reprographic or electronic copying of a portion of a work in transit (the exact amount allowed to be copied to be at the sole discretion of CLL) provided that prior to any such copying and use of the copied material, the

Licensee has complied with the work in transit procedure as set out in Schedule 5 and received from CLL a work in transit permission document.

- 2.7 The making of a repeat copy from a work within 14 days providing such copying is not made by or on behalf of the same authorised person for the same paper, unit or module of a course of study. For the avoidance of doubt, repeat copying does not mean repeat access to copyright material made available by electronic means under the Licence. Where copyright materials are made available to authorised persons by electronic means, authorised persons in the prescribed paper, unit, or module of a course of study, may access that material any number of times during the Paper in which the authorised person is involved or enrolled without breaching the terms of the Licence.

### **Volume limits**

3. The Licensee may make sufficient copies of any one item of copyright material to provide for:
- 3.1 Distribution in one or more formats to each authorised person and student intended to receive a copy; and
- 3.2 spare copies to be available to replace lost copies.

### **Obligations of Licensee in respect of distribution and storage of copied material**

4. In copying material under the Licence (whether by electronic or reprographic means), the Licensee will use its best endeavours to ensure that:
- 4.1 the number of pages made available do not exceed the limits set out above unless prior approval/clearance has been obtained from CLL in writing;
- 4.2 the material copied is a reasonably accurate copy of the original which preserves the structure, layout, authenticity and integrity of the original. Interleaving or interspersing comments or additional material for teaching purposes is permitted provided that in each case bibliographical details are provided with the material copied;
- 4.3 electronic or digital copies made are:
- (i) not systematically stored and indexed, so as to create an electronic library or similar educational learning resource within the university provided that the Licensee may retain (for the duration of the Licence only and subject to clause 7.3) a master copy of course material copied under this Licence for its own reference purposes and also for consideration for use in the following semester or semesters provided that in such case the Licensee shall record that fact; and
  - (ii) not placed on any computer or computer network on the publicly accessible Internet in such a way as to be publicly accessible or accessible other than to students and authorised persons; and

- (iii) only available to authorised persons and students who have been made aware they must comply with the terms of the copyright warning notice set out in clause 4.6 of this Schedule.
- 4.4 course materials are monitored for copies that are no longer required for the teaching of the course and these copies are either deleted or access to them is restricted to authorised persons.
- 4.5 all course material distributed to students contains:
- (i) in respect of extracts from books: author (year), name of book, place of publication, publisher, first page – last page;
  - (ii) in respect of articles from journals/serials, magazines, newspapers: author (year, publication date), name of article, name of journal, magazine or newspaper, volume, first page – last page.
- 4.6 all material made available will have associated with it an appropriate copyright warning notice in line with the following:
- “This material is protected by copyright and has been copied by and solely for the educational purposes of the University under licence. You may not sell, alter or further reproduce or distribute any part of this coursepack/material to any other person. Where provided to you in electronic format, you may only print from it for your own private study and research. Failure to comply with the terms of this warning may expose you to legal action for copyright infringement and/or disciplinary action by the University.”*
- 4.7 in the event the Licensee becomes aware of a possible breach of the Licence, appropriate action is taken to investigate the alleged breach and, if necessary, ensure compliance with the Licence.
- 4.8 all copies distributed electronically to students and authorised persons are provided on a Secure System.

### **SCHEDULE 3**

#### **Excluded Works**

“Excluded Works” under the Licence are works within the following categories (notwithstanding that these may be copied or made available to authorised persons other than under the CLL licence).

1. Works downloaded from the Internet (under the terms of an applicable licence with a publisher of electronic content);
2. Printed music (including the words);
3. Loose maps and charts;
4. Unpublished religious orders of service;
6. House journals and other free publications primarily for employees of commercial businesses, industrial undertakings or public services;
7. Illustrations and/or photographs that do not come within the provisions of clause 2.4 of Schedule 2;
8. Any work on which the copyright owner has prominently stipulated that it may not be copied under any copyright licence;
9. Privately owned documents issued for tuition purposes and limited to clientele who pay fees;
10. Theses, dissertations and student papers.

## SCHEDULE 4

### Out of Print Works Procedure

#### 1. INTRODUCTION

Copyright Licensing Ltd (CLL) receives requests from institutions that have licences with CLL to enable the licensee to copy a portion or the whole of a work that is either no longer commercially available in print, or where commercial copies may not be available within the timeframe required for a course of instruction.

#### 2. THE CLL LICENCE

The CLL licences allow:

*Reprographic copying of up to and including the whole of an out of print work (OOP) provided that prior to any such copying and use of the copied material, the Licensee has complied with the OOP procedure as set out in Schedule 4 and received from CLL a signed OOP permission document. Electronic copying of a whole work under this clause is specifically excluded*

For clarity : if permission is given to copy an entire work, these copies may only be made available to students in print. Consistent with the provisions of the licence, the institution may recover the reasonable costs of copying from students.

#### 3. LICENSEES

Only educational organisations with **current CLL licences** are able to access the provisions of this procedure. The CLL Licence database will be checked at the time of receipt of the OOP request, prior to the request being actioned.

#### 4. REQUESTS

The licensee must make a written request (i.e. via email) to CLL for each instance of OOP copying they wish to undertake. The request must include:

The date of the request

Institution Name

Institution Contact

ISBN

Title

Publisher

Author

Year of publication

Country of publication

Evidence that the work is out of print or otherwise not available\*

Page numbers to be copied

Number of pages in the entire work

Course name and paper number that the work is being copied for

Number of copies to be made (i.e. number of students who will receive the material)

Period of time that the material will be made available to students (e.g. Semester One)

\*this evidence may be in the form of confirmation from the publisher of the title (if in New Zealand) or from the institution's usual source of printed works

If the request is for more than one group of students (e.g. for 2 different semesters) then a separate request must be made for each semester.

Requests to copy an edition of a work that is out of print when a subsequent edition is available cannot be approved.

The Manager Information Management will process all OOP requests. Requests to copy an entire work can only be approved by the CEO.

## 5. RESPONSES

Requests under this procedure will be acknowledged within one working day of receipt from the licensee. Permission, or otherwise, will be advised within 5 working days, unless there are extenuating circumstances that require CLL to undertake research into the title's availability that extends beyond the 5 working day limit. If this situation occurs the licensee will be advised of the delay in providing a response, the reason for the delay and the expected timeframe for providing a final response.

The applicant is advised in writing that they may proceed with the copying requested and is provided with the appropriate notice (see below) that must be attached to each copy made that is covered by the OOP permission. In the absence of any alternate request from the applicant and solely at the discretion of CLL, permission to use the copied material will expire on the 31st of December in the year in which the application is received.

<p style="text-align: center;"><b>OUT OF PRINT PERMISSION</b></p> <p style="text-align: center;">This work has been photocopied under licence from Copyright Licensing Limited at the request of</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">(Name of Institution)</p> <p style="text-align: center;">The work is only available to students enrolled in</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">(Name of Course / Paper)</p> <p style="text-align: center;">It may not be copied or otherwise reproduced without the prior written consent of Copyright Licensing Limited or the copyright owner.</p>
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## SCHEDULE 5

### Work in Transit Procedure

#### 1. INTRODUCTION

Copyright Licensing Ltd (CLL) receives requests from institutions that have licenses with CLL to enable the licensee to copy a portion of a work that has been ordered from the supplier by the institution for a course of instruction but where the delivery of the order from the supplier has been delayed and will not be received from the supplier within a reasonable time prior to its required use by the institution.

#### 2. THE CLL LICENCE

The CLL licences allow:

*Reprographic copying of a portion of a work in transit (the exact amount allowed to be copied to be at the sole discretion of CLL) provided that prior to any such copying and use of the copied material, the Licensee has complied with the work in transit procedure as set out in Schedule 5 and received from CLL a work in transit permission document.*

CLL allows this provision to extend to providing permission for portions of works delayed in transit to be copied and distributed to enrolled students pending the arrival of the original works. For clarity, if permission is given to copy a Work in Transit for a portion of a work, these copies may be made available to students either electronically or in print.

#### 3. LICENSEES

Only educational organisations with **current CLL licenses** are able to access the provisions of this procedure. The CLL License database will be checked at the time of receipt of the Work in Transit request, prior to the request being actioned.

#### 4. REQUESTS

The licensee must make a written request (i.e. via email) to CLL for each instance of a Work in Transit copying they wish to undertake. The request must include:

- The date of the request
- Institution Name
- Institution Contact
- ISBN
- Title
- Publisher
- Author
- Year of publication
- Country of publication
- Evidence that the work has been ordered and is in transit\*
- Page numbers to be copied
- Number of pages in the entire work
- Course name and paper number that the work is being copied for
- Number of copies to be made (i.e. number of students who will receive the material)
- Period of time that the material will be made available to students (e.g. Week One Semester One to Week Five Semester One)

\*this evidence will be in the form of an order and delivery confirmation from the supplier of the title.

If further copying is required due to extended delay of the order, then a separate request must be made for any additional copying.

The Manager Information Management will process all Work in Transit requests.

## 5. RESPONSES

Requests under this procedure will be acknowledged within one working day of receipt from the licensee. Permission, or otherwise, will be advised within 5 working days, unless there are extenuating circumstances.

The applicant is advised in writing that they may proceed with the copying requested and is provided with the appropriate notice (see below) that must be attached to each copy made that is covered by the Work in Transit permission.

<p style="text-align: center;"><b>WORK IN TRANSIT PERMISSION</b></p> <p style="text-align: center;">This work has been photocopied under licence from Copyright Licensing Limited at the request of</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">(Name of Institution)</p> <p style="text-align: center;">The work is only available to students enrolled in</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">(Name of Course / Paper)</p> <p style="text-align: center;">It may not be copied or otherwise reproduced without the prior written consent of Copyright Licensing Limited or the copyright owner. The copies are provided pending arrival of the ordered books and the photocopies should be returned to the institution and destroyed once the books arrive.</p> <p style="text-align: center;"><a href="http://www.copyright.co.nz">www.copyright.co.nz</a></p>
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**SCHEDULE 6****Timetable for Implementing Software**

<b>Implementation Commencement Date</b>	<b>Academic Period to Report</b>	<b>Reporting Dates to CLL</b>
Semester 2, 2015	Semester A: Semester B: Summer School:	May 2016 October 2016 March 2017