

LICENCE AGREEMENT **No. CP19-007**
(Course Packs) [Photocopying]

This Agreement is made the **27** day of **December 2018** between:

- (1) **THE HONG KONG REPROGRAPHIC RIGHTS LICENSING SOCIETY LIMITED**, a limited liability company incorporated in Hong Kong, of Unit Nos. 909-910, 9/F Prosperity Millennia Plaza, 663 King's Road, North Point, Hong Kong ("**Licensor**")
- (2) [*name, corporate description and address*] ("**Licensee**") particulars of which are described in Schedule I of this Agreement

WHEREAS

- (1) The Licensor, as agent for the copyright owners of the Licensed Materials, is authorized to provide a licence to make Copies of the Licensed Materials.
- (2) The Licensee, being an educational establishment, has requested and the Licensor has agreed to grant to the Licensee a non-exclusive and non-transferable licence to make and use Copies of the Licensed Materials for preparation of Course Packs subject to the terms and conditions set out in this Agreement.

IT IS HEREBY AGREED as follows:

TERMS AND CONDITIONS

1. Definitions

1.1 In this Agreement the following expressions shall have the following meanings unless the context otherwise requires:-

"Commencement Date" means 1 January 2019

"Copies" means, in relation to any part of a Work, reproductions in hardcopy form which are made by photocopying. For the avoidance of doubt, whilst the definition does not in general include copies in electronic or digital format, it includes the making of copies which are transient (in electronic form or otherwise) or storing in electronic form to enable reproduction by way of hardcopy form as contemplated by this Agreement; provided that such copies in electronic or digital format are destroyed upon completion of the Course of Study for the purpose of which the copies are made

"Course of Study" means any whole course of study or any segment of a student's studies provided by the Licensee which is normally regarded as a discrete and self-contained unit for the purposes of examination or assessment, and which as such would normally carry an overall mark or value counting towards the student's final qualification

“Course Pack”	means a compilation of photocopied extracts of Licensed Materials, designed in advance to be used in support of a Course of Study
“Licence Fee”	means the licence fee payable by the Licensee to the Licensor under clause 6.1 of this Agreement and calculated in accordance with Schedule III of this Agreement
“Licensed Materials”	means the Works described in Schedule II of this Agreement subject to such exclusions as are defined therein
“Term”	means a period of two (2) years commencing from the Commencement Date
“Territory”	means Hong Kong Special Administrative Region of the People's Republic of China
“Textbooks”	means books written in accordance with any syllabus issued by the Hong Kong Curriculum Development Council
“Work”	means a work in which copyright subsists under the Copyright Ordinance (Cap. 528, laws of Hong Kong)

- 1.2 The clause headings in this Agreement are for convenient reference only and shall be disregarded in construing this Agreement.
- 1.3 In this Agreement, words connoting the singular include the plural and vice versa; and references to a person include body corporate or unincorporated and to the person's executor, administrators and successors.
- 1.4 Reference to this Agreement or any other agreement shall be deemed to include a reference to all schedules and annexure thereto, and shall also include such agreement as amended, varied or supplemented from time to time.

2. Licence

- 2.1 In consideration of the payment by the Licensee of the Licence Fee and subject to the terms and conditions set out in this Agreement, the Licensor hereby grants to the Licensee a non-exclusive and non-transferable right by way of licence to make and use Copies of the Licensed Materials for preparation of Course Packs in the Territory during the Term.
- 2.2 The Licensee acknowledges that nothing contained in this Agreement shall give the Licensee any right, title or interest in or to the Licensed Materials save as granted hereby.

3. Restrictions and Obligations

- 3.1 The Licensee shall not make and use Copies of the Licensed Materials for preparation of Course Packs other than for the following purposes:
- (a) instruction by the Licensee's instructors in relation to any Course of Study provided by the Licensee; or
 - (b) distribution to the Licensee's students for teaching, learning, discussion or classroom use in relation to any Course of Study provided by the Licensee.

For the avoidance of doubt, subject to compliance with the terms set out in this Agreement, the Licensee may allow its instructors and students to retain the Course Packs for subsequent reference.

- 3.2 The Licensee must ensure that:
- (a) all Copies of the Licensed Materials and Course Packs are only made by:
 - (i) the instructors or staff of the Licensee;
 - (ii) staff of organizations owned or financed by the Licensee; or
 - (iii) staff of any organizations authorized by the Licensor;
 - (b) all Copies of the Licensed Materials and Course Packs are only made within the premises of the Licensee, organizations owned or financed by the Licensee, or any organizations authorized by the Licensor;
 - (c) all Copies of the Licensed Materials and Course Packs are made on the initiative of the Licensee's instructors. No Copies of the Licensed Materials or Course Packs may be made upon request by any other persons;
 - (d) no more than one (1) Course Pack, plus sufficient Copies of that Course Pack for distribution to the Licensee's instructors and students, shall be made in relation to the same Course of Study. The Licensee shall obtain a unique reference number from the Licensor for each Course Pack ("Reference Number"); and
 - (e) with respect to a Course Pack, it shall not include Copies of extracts from more than thirty (30) Works.
- 3.3 The Licensee shall observe and comply with the following limits when making Copies of the Licensed Materials:
- (a) subject to the limits set out in clauses 3.3 (b) to (c) below, each of the Licensee's instructors and students may receive no more than one (1) set with respect to the same Course Pack;
 - (b) with respect to each issue of newspaper, journal or periodical, the Licensee shall not, in any one academic year, copy more than one complete article of any length from that issue of newspaper, journal or periodical for inclusion in any one single Course Pack; and
 - (c) with respect to any other Licensed Materials other than newspapers, journals or periodicals, the Licensee shall not, in any one academic year, copy more than ten percent (10%) or a chapter of that Licensed Material, whichever covers the smaller portion of the Licensed Material, for inclusion in any one single Course Pack.
- 3.4 The Licensee may apply in writing to the Licensor for consent to make Copies of the Licensed Materials in excess of the limits set out in clauses 3.2(e) and 3.3 of this Agreement. The Licensor shall make all reasonable efforts to deal with all such applications for consent submitted by the Licensee within ten (10) business days after their submission. The relevant copyright owners shall have the absolute discretion in deciding: (a) whether to grant the permission to the Licensee; and (b) as to the appropriate fee with respect to the permission. The Licensee shall not make Copies of the Licensed Materials in excess of the limits set out in clauses 3.2(e) and 3.3 without prior written approval from the Licensor.
- 3.5 The Licensee agrees to exhibit on the first page of every Course Pack made by compilation of Copies of the Licensed Materials a notice setting out the date of making the Copies, the names of the authors, the names of the publishers, the titles of the Licensed Materials and the publication year, together with the following words:
- “This material (insert the Reference Number) has been copied in accordance with the terms of the licence issued by The Hong Kong Reprographic Rights Licensing Society Limited. You are not permitted to make any further copy of this material, or to make it available to others. No re-sale is permitted.”

- 3.6 The Licensee agrees to exercise reasonable diligence in cooperating with the Licensor in any educational programmes designed to propagate among the Licensee's instructors, staff and students knowledge of laws and policy relating to the protection of intellectual property.

4. Indemnity

- 4.1 The Licensee indemnifies the Licensor against all liability incurred by the Licensor as a result of or arising out of any breach by the Licensee of any obligation, warranty or other provisions of this Agreement.
- 4.2 The Licensor indemnifies the Licensee against all liability incurred by the Licensee as a result of or arising out of any breach by the Licensor of any obligation, warranty or other provisions of this Agreement.
- 4.3 Subject to clause 4.4 and without prejudice to the generality of clause 4.2, where a claim is made against the Licensee for infringement of copyright arising from making Copies of the Licensed Materials under this Agreement, the Licensor indemnifies the Licensee against all damages reasonably incurred by it as a result of or arising out of the making of the Copies.
- 4.4 The Licensee acknowledges where the Licensor notifies it that any specified Works, being included as the Licensed Materials before the time of notification, is to be excluded from the list of Licensed Materials, the Licensor shall cease to be liable for the making of further Copies of such Work by the Licensee commencing from the end of one month following the date of notification.

5. Infringement

- 5.1 If the Licensee becomes aware that any other person, firm or company alleges that the making of Copies of the Licensed Materials infringes any rights of another party, the Licensee shall immediately give the Licensor full particulars in writing thereof and shall make no comment or admission to any third party in respect thereof.
- 5.2 The Licensor shall have the conduct of all such claims or proceedings and shall in its sole discretion decide what action if any to take in respect of any infringement, alleged infringement, passing off or any other claim or counterclaim brought or threatened in respect of making Copies of the Licensed Materials. For the avoidance of doubt, subject to clause 4.4, the Licensor shall indemnify the Licensee against all damages reasonably incurred as mentioned in clause 4.3.
- 5.3 The Licensee will at the request of the Licensor exercise reasonable diligence in cooperating with the Licensor in any action, claim or proceedings brought or threatened in respect of making Copies of the Licensed Materials.

6. Payment

- 6.1 The Licensee shall pay to the Licensor the Licence Fee as calculated and in the manner in accordance with Schedule III of this Agreement.
- 6.2 The Licensee shall within fifteen (15) days of the first day of each January, April, July and October following the Commencement Date provide a statement to the Licensor giving particulars of the Course Packs made by compilation of Copies of the Licensed Materials during the preceding quarter showing the Reference Number, the date of photocopying, the name of the author, the name of the publisher, the title, the ISBN or ISSN, the edition, the publication year, the page numbers of the pages copied, the quantity of Copies made, the total number of pages of the original Licensed Materials, the presentation date, duration of the Course of Study, the full name of the instructor, the course title, the course code, and the

respective department/faculty, together with any other particulars as the Licensor may reasonably require, as well as the instructor's request form (bearing the signature of the respective instructor). The Licensee shall also pay the Licence Fee in relation to the Copies made during the preceding quarter to the Licensor at the same time as rendering the statement.

- 6.3 The Licensee shall keep separate, detailed, true and accurate books and records of all Course Packs made to enable the Licensor to check the accuracy of the information contained in the statements rendered under clause 6.2 of this Agreement.
- 6.4 The Licensor shall be entitled to examine all books and records prepared and kept by the Licensee pursuant to clause 6.3 of this Agreement on reasonable notice during business hours and to take copies of or extracts from such books and records. The Licensee shall bear the reasonable costs for any such examination if:
- (a) the examination reveals that the Licensee underpays for the Licence Fee with respect to any quarter within the Term, as calculated in accordance with Schedule III of this Agreement, by more than 5%; or
 - (b) the Licensee fails to comply with clause 6.2 of this Agreement.

7. Commencement and Termination

- 7.1 This Agreement shall be effective from the Commencement Date and shall, unless terminated in accordance with clause 7.2 of this Agreement, continue throughout the Term.
- 7.2 Either party of this Agreement may immediately terminate this Agreement by notice in writing if:
- 7.2.1 the other party is in material breach of any terms of this Agreement (including in case of the Licensee, any default in payment of the Licence Fee) and, if such breach is capable of being remedied, failing to remedy such breach within fifteen (15) calendar days after receipt from the non-defaulting party of a written notice of such breach; or
 - 7.2.2 the other party enters into a compulsory or voluntary liquidation or otherwise becomes insolvent or makes any arrangement or composition with its creditors or has a receiver or manager appointed; or enters into a scheme of restructuring or amalgamation or for whatever reason ceases or is unable to carry on its business.
- 7.3 Termination of this Agreement for whatever reason shall be without prejudice to the accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination and in particular but without limitation the right to recover damages from the other.
- 7.4 Upon termination of this Agreement for whatever reason, the licence hereby granted shall immediately lapse. The Licensee shall thereupon cease to hold itself out as a licensee of the Licensor or of the copyright owners of the Licensed Materials and shall remove any representation to this effect.
- 7.5 One year before the expiry date of the Licence Agreement, the Licensor and the Licensee shall enter into good faith negotiations for a further licence for the Licensed Materials after the Term.

8. Severability

- 8.1 It is agreed by both the Licensor and the Licensee that if any provision of this Agreement, or the application thereof to any persons, places, or circumstances, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

9. Notices

9.1 Any notice required to be given hereunder by either party to the other shall be in writing and shall be served by sending the same by prepaid post or by fax to the address or fax number of the other party as given herein or to such other address or fax number as that party may have previously notified to the party giving notice as its address or fax number for such service, and the notice shall be deemed to have been received on:

- (a) the third (3rd) day after posting (if given by prepaid post); or
- (b) the date of receipt as shown on any transmission report by the machine from which the notice was sent (if given by fax). The transmission report must indicate that the notice was sent in its entirety to the fax number of the other party.

10. Governing Law and Disputes

10.1 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties agree to:

- (a) irrevocably and unconditionally submit to the courts of Hong Kong, save as specifically provided for in the Copyright Ordinance, to the Copyright Tribunal; and
- (b) waive any right to object to proceedings being brought in those courts for any reason.

11. General

11.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior written or oral representations agreements or understandings between them relating to the subject matter of this Agreement other than any false misrepresentation made by a party to induce the other party to enter into this Agreement.

11.2 No variation or amendment of this Agreement shall bind either party unless made in writing and agreed to in writing by duly authorized officers of both parties.

11.3 A failure by either party hereto to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

SCHEDULE II

LICENSED MATERIALS

All literary, musical, dramatic, or artistic Work, or a part of such Works in printed form, of which copies have been issued to the public whether in the form of a book, magazine, newspaper, journal, periodical or otherwise excluding:

- a) all Works listed in Schedule IV of this Agreement;
- b) those works (if any) listed in writing by the Licensor and issued to the Licensee in January and July of each year during the Term. The exclusion list and additions to the exclusion list shall not take effect until one month after written notification to the Licensee; and
- c) all Textbooks.

SCHEDULE IV

LIST OF EXCLUDED LICENSED MATERIALS

THIS AGREEMENT DOES NOT COVER ANY OF THE FOLLOWING LISTED CATEGORIES OF WORKS OR PUBLISHED WORKS:

- * Works published outside the following territories: Hong Kong SAR, Argentina, Australia, Belgium, Canada, Colombia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Luxembourg, Mainland China, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nigeria, Norway, Philippines, Quebec, Russian Federation, Singapore, Slovakia, South Africa, South Korea, Spain, Switzerland, Taiwan, Trinidad and Tobago, UK, USA, Vietnam and Zimbabwe. (In other words, Works published in named territories may be copied under this Agreement.)
- * Works without ISBN or ISSN (except that this Agreement covers designated newspapers without ISBN or ISSN).
- * Workbooks, work cards, exercise books, worksheets, assignment sheets, tests, examination papers, and other Works intended to be “consumable” or for one-time use.
- * Teachers’ resources, including instructors’ manuals, solutions manuals, test bank and teachers’ guides.
- * Instruction manuals.
- * Publications containing a notice expressly prohibiting copying under the authorization of a licence from a reproduction rights organization.
- * Newspapers (except that this Agreement covers newspapers published in Argentina, Australia, Belgium, Canada, Colombia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Indonesia, Ireland, Jamaica, Japan, Luxembourg, Mainland China, Malta, Mauritius, Netherlands, Nigeria, Philippines, Quebec, Russian Federation, Singapore, Slovakia, South Africa, Spain, Switzerland, Taiwan, Trinidad and Tobago, UK, USA and Vietnam).
- * Magazines (except that this Agreement covers magazines published in Argentina, Australia, Belgium, Canada, Colombia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Indonesia, Ireland, Jamaica, Japan, Luxembourg, Mainland China, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nigeria, Philippines, Quebec, Russian Federation, Singapore, Slovakia, South Africa, South Korea, Spain, Switzerland, Taiwan, Trinidad and Tobago, UK, USA and Vietnam).
- * Printed music including the words (except that this Agreement covers printed music including the words published in Hong Kong SAR, Australia, Belgium, Denmark, Finland, Hungary, Iceland, Luxembourg, Mainland China, Malta, Nigeria, Norway, Philippines, Slovakia, South Korea, Switzerland, Taiwan, USA, Vietnam and Zimbabwe).
- * Works listed hereunder:
 - All publications published by the City University of Hong Kong Press
 - All case studies published by Harvard Business School
 - Hong Kong Nursing Journal published by the College of Nursing, Hong Kong
 - All publications published by the National Comprehensive Cancer Network