

LICENCE AGREEMENT No. CP20-007(S)
(Course Packs) [Scanning]

This Agreement is made the 10 day of February 2020 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) **THE CHINESE UNIVERSITY OF HONG KONG**, a university incorporated under the Chinese University of Hong Kong Ordinance (Cap. 1109), of Shatin, New Territories, Hong Kong (“**Licensee**”) particulars of which are described in Schedule I of this Agreement

WHEREAS

- (A) The Licensor, as agent for the copyright owners of the Licensed Materials for Scanning, is authorized to provide a licence to make Paper Copies and/or Scan Copies.
- (B) 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 Paper Copies and/or Scan Copies 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 10 February 2020

“Academic Year” means the period of 12 months commencing on 1 September each year.

“Authorized Persons” means all students and all employees of the Licensee including all individuals who, although not employed by the Licensee, are engaged by the Licensee to provide consultancy research and supporting services.

“Course Collection” means those Scan Copies placed on a network which is only accessible by those Authorized Persons by means of Secure Authentication for a particular Course of Study access to which for the purpose of downloading or printing out is restricted to Course Users on that Course of Study by whatever technical means used to achieve that.

“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 extracts of Licensed Materials for Scanning in the form of Scan Copies, designed in advance to be used in support of a Course of Study.
“Course User”	means, in respect of any Course of Study: <ul style="list-style-type: none"> (i) An Authorized Person who is either: <ul style="list-style-type: none"> (a) a student enrolled on that Course of Study; or (b) a tutor, lecturer, supervisor or other person providing teaching to students in respect of that Course of Study; (ii) a visiting academic teaching or auditing that Course of Study.
“Designated Person”	means, any Authorized Person designated by the Licensee for the purposes of making, or causing the making of, Scan Copies and placing them on Course Collection; such designation need not be by name but may be by specifying the person or persons holding an office or status, which may extend to categories such as all permanent teaching staff, or all persons responsible for convening a Course of Study.
“Distance Learners”	means those Course Users on Courses of Study designed to be studied away from the Licensee’s premises.
“Licence Fee”	means the licence fee payable by the Licensee to the Licensor under clause 7.1 of this Agreement and calculated in accordance with Schedule III of this Agreement.
“Licensed Materials for Scanning”	means the Works described in Schedule II of this Agreement subject to such exclusions as are defined therein.
“Paper Copies”	means, physical printouts of Scan Copies pursuant to and in accordance with the terms and conditions of this Agreement.
“Scan Copies”	means, in relation to any part of the Licensed Materials for Scanning, electronic copies in the form of digital dumb copies or digital bitmap copies or made by other processes including those processes involving optical character or font recognition pursuant to and in accordance with the terms and conditions of this Agreement.

“Secure Authentication”	means access to Scan Copies placed on a network by a process of authentication which, at the time of login, identifies each user whether by user name or password or by some other equally secure method and which identifies the user’s status as being any of the Authorized Persons.
“Term”	means a period of eleventh (11) months 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 Paper Copies and/or Scan Copies 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 for Scanning save as granted hereby.

3. Restrictions and Obligations

- 3.1 The Licensee shall not make and use Paper Copies and/or Scan Copies 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) make available via a network which is only accessible by those Authorized Persons by means of Secure Authentication 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 is prohibited from distributing Paper Copies to Course Users but may allow Course Users to retain the Paper Copies for subsequent reference.

- 3.2 Subject to clause 3.4 below, the Licensee must ensure that:
- (a) all Scan Copies and Course Packs are made on the initiative of the Licensee's instructors. No Scan Copies or Course Packs may be made upon request by any other persons;
 - (b) no more than one (1) Course Pack 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
 - (c) with respect to a Course Pack, it shall not include Scan Copies of extracts from more than thirty (30) Works.
- 3.3 The Licensee shall observe and comply with the following limits when making Paper Copies and/or Scan Copies:
- (a) subject to the limits set out in clauses 3.3 (b) to (c) below, each of the Licensee's instructors and students may have 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, make Paper Copies and/or Scan Copies of 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 for Scanning, other than newspapers, journals or periodicals, the Licensee shall not, in any one academic year, make Paper Copies and/or Scan Copies of more than ten percent (10%) or a chapter of that Licensed Materials for Scanning, whichever covers the smaller portion of the Licensed Materials for Scanning, for inclusion in any one single Course Pack.
- 3.4 Further Conditions:
- (a) The Licensee may:
 - (i) authorize Designated Persons to make, or cause the making of, Scan Copies for the purpose of a Course of Study and to place them on the Course Collection for that Course of Study and to retain, for back-up purposes, a Scan Copy on a network which is only accessible by those Authorized Persons by means of Secure Authentication which Scan Copy may be retrieved and added to another Course Collection for the purposes of a different Course of Study;
 - (ii) make available via Secure Authentication, or display or supply, Scan Copies in Course Collections to Course Users;
 - (iii) permit Course Users to access the Course Collection, to download a Scan Copy, to print out from a Scan Copy and to retain a Scan Copy for the duration of the Course of Study for which it has been provided.
 - (b) The Designated Person shall, prior to authorizing the making of a Scan Copies by scanning, satisfy himself that scanning is the most practical method, or to identify whether it subscribes to a digital version of the Work in question which is technically suitable for the purpose under a licence which permits the making of multiple copies for students or is available as Scan Copies and, if so, to use that digital version instead of creating Scan Copies by scanning;

- (c) The Licensee shall not edit, amend, alter, manipulate or otherwise add to the Scan Copies, nor shall it purport to authorize the same;
 - (d) The Licensee shall delete from the hard drives of all its central and local servers any and all Scan Copies which may be stored there upon notice from the Licensor that the copyright holder believes that the Licensed Materials for Scanning contained in the Scan Copies infringes copyright or is, or may be, defamatory, obscene or otherwise unlawful;
 - (e) The Scan Copies shall not be placed on any website, the publicly accessible world wide web or be linked either directly or indirectly by hypertext links (or the like) to or from any external or third party website in such a way otherwise than by Secure Authentication; and
 - (f) Subject to Clauses 3.4(a)(i) and 3.4(d), the Scan Copies may be stored on a server, or be systematically indexed, solely for the purposes of, and for the duration of, the Course of Study for which the Scan Copies was made and intended to be used, and shall, in any event, be deleted at the end of the Academic Year in which the Scan Copy was made.
- 3.5 The Licensee may apply in writing to the Licensor for consent to make Paper Copies and/or Scan Copies in excess of the limits set out in clauses 3.2(c) 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 Paper Copies and/or Scan Copies in excess of the limits set out in clauses 3.2(c) and 3.3 without prior written approval from the Licensor.
- 3.6 The Licensee agrees to exhibit on the first page of every Course Pack made by compilation of Scan Copies a notice setting out the date of making the Scan Copies, the titles of the Licensed Materials for Scanning and the publication year, the names of the authors, the names of the publishers, together with the following words:
- “This material (insert the Reference Number) has been scanned in accordance with the terms of the licence issued by The Hong Kong Reprographic Rights Licensing Society Limited. Unless otherwise authorized, you are not permitted to make any further copy of this material, or to make it available to others. No re-sale is permitted.”
- 3.7 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.
- 3.8 Conditions applying to a Course Collection:
- (a) Maintenance of Course Collection

The Licensee shall ensure that each Course Collection contains only Scan Copies in respect of the Course of Study for which the Course Collection in question is designated, and in particular that:

 - (i) the Scan Copies in the Course Collection, when taken as a whole, do not exceed the extent limits of Clauses 3.2(c) and 3.3;
 - (ii) Scan Copies of Works which, during the Licence, become Excluded Licenced Materials for Scanning are removed from the Course Collection;
 - (iii) each Scan Copy is made from the current, or where an earlier edition is required for pedagogic purposes, the most appropriate edition of the original;

- (iv) relevant bibliographic and other records are kept in respect of each Scan Copy to enable the Licensee to comply with the provisions of this Licence Agreement;
- (v) if a Course of Study is not likely to be repeated in a future teaching session, Scan Copies made under this Licence Agreement are removed from the Course Collection and that before the Course of Study is again taught, a detailed check is made to ensure that the copies made available to Course Users comply with the conditions of this Licence Agreement;

(b) Access to Course Collection

The Licensee shall ensure that appropriate controls are maintained, wherever feasible of a technical nature, to ensure compliance with the terms of this Licence and in particular that:

- (i) only Designated Persons may make, or cause the making of the Scan Copies and place them on the Course Collection;
- (ii) whilst all Authorized Persons may view Scan Copies held in the Course Collection, only Course Users may download and print out Scan Copies.

3.9 Scan Copies made by or for Authorized Persons may be sent outside the Territory to overseas Distance Learners provided that nothing herein shall be deemed to authorize any further copying of Scan Copies outside of the Territory by an overseas Distance Learner. Each overseas Distance Learner shall be responsible for complying with all local laws.

4. Indemnity

4.1 The Licensee indemnifies the Licensor against all liabilities 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 liabilities 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 Paper Copies and/or Scan Copies 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 Paper Copies and/or Scan Copies.

4.4 The Licensee acknowledges where the Licensor notifies it that any specified Works, being included as the Licensed Materials for Scanning before the time of notification, is to be excluded from the list of Licensed Materials for Scanning, the Licensor shall cease to be liable for the making of further Paper Copies and/or Scan 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 Paper Copies and/or Scan Copies 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 Paper Copies and/or Scan Copies. 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 Paper Copies and/or Scan Copies.

6. Compliance Audit

- 6.1 The purpose of a Compliance Audit is to ensure compliance with the terms and conditions of this Agreement, in particular, but without limitation, with the provisions of clause 3 and by monitoring the observance of the moral rights of authors:

(a) If selected for the purpose of carrying out an inspection pursuant to a Compliance Audit, the Licensee shall ensure that it and all Authorised Persons co-operate fully with the reasonable requirements of the Licensor relating to the inspection;

(b) The Licensor shall on giving reasonable notice have the right of access throughout the Licensee's premises at normal working hours in order to organize and carry out an inspection.

- 6.2 During an inspection the person or the persons nominated by the Licensor to carry out the inspection shall be given full access to the intranet operated by way of Secure Authentication (including all Course Collections) and shall be given facilities to inspect records, to compare a selection of scanned material with its source, to observe, monitor and evaluate the systems established by the Licensee for the making of Scan Copies, for making available or distributing such Scan Copies and for maintaining Course Collections and allowing access to them in accordance with clause 3.4. Such access may be subject to reasonable arrangements for supervision as required by the Licensee to ensure the security of its computer systems and networks, and to maintain the confidentiality of personal or other confidential data.

7 Payment

- 7.1 The Licensee shall pay to the Licensor the Licence Fee as calculated and in the manner in accordance with Schedule III of this Agreement.

- 7.2 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 during the preceding quarter showing the Reference Number, the date of scanning, 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 scanned, the quantity of Scan Copies made, the total number of pages of the original Licensed Materials for Scanning, the commencement date and 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 Paper Copies and/or Scan Copies made during the preceding quarter to the Licensor at the same time as rendering the statement.

- 7.3 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 7.2 of this Agreement.

- 7.4 The Licensor shall be entitled to examine all books and records prepared and kept by the Licensee pursuant to clause 7.3 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 7.2 of this Agreement.

8. Commencement and Termination

- 8.1 This Agreement shall be effective from the Commencement Date and shall, unless terminated in accordance with clause 8.2 of this Agreement, continue throughout the Term.
- 8.2 Either party of this Agreement may immediately terminate this Agreement by notice in writing if:
 - 8.2.1 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
 - 8.2.2 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.
- 8.3 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.
- 8.4 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 for Scanning and shall remove any representation to this effect.
- 8.5 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 for Scanning after the Term.

9. Severability

- 9.1 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.

10. Notices

- 10.1 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.

11. Governing Law and Disputes

- 11.1 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.

12. General

- 12.1 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.
- 12.2 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.
- 12.3 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 FOR SCANNING

All literary, musical, dramatic, or artistic Works, or a part of such Works in original 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 FOR SCANNING

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, Australia, Canada, Denmark, Ireland, Jamaica, Mainland China, New Zealand, Quebec, Singapore, South Africa, South Korea, Spain, Switzerland, Taiwan, UK, USA and Zimbabwe. (In other words, Works published in named territories may be scanned 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 Published Works intended to be “consumable” or for one-time use.
- * Teachers’ resources, including instructors’ manuals, solutions manuals, test bank, 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 Canada, Denmark, Jamaica, Mainland China, Quebec, Singapore, South Africa, Spain, Switzerland, Taiwan and USA).
- * Magazines (except that this Agreement covers magazines published in Canada, Denmark, Ireland, Jamaica, Mainland China, New Zealand, Quebec, Singapore, South Africa, South Korea, Spain, Switzerland, Taiwan, UK and USA).
- * Printed music including the words (except that this Agreement covers printed music including the words published in Hong Kong SAR, Australia, Denmark, Mainland China, South Korea, Switzerland, Taiwan, USA 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