

Maklu Online: Institutional Online Agreement

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IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement, the following expressions shall have the following meanings:

- 1.1 “Authorised User” shall mean an individual who is authorised by the Licensee to access the Licensee’s information services through the Licensee’s Secure Network and who is affiliated with the Licensee as a current student, faculty member, library patron, employee, or in some other capacity whereby they are permitted to access such services in the Licensee’s ordinary course of business, whether from a computer or terminal on the Licensee’s Secure Network, or offsite from a computer or terminal linked through a Virtual Private Network (VPN) to the Licensee’s resources;
- 1.2 “Online Registration Materials” shall mean the registration materials appearing at <http://www.maklu-online.eu> (or any URL in the maklu-online.eu domain) required to be submitted by the Licensee before the Licensee can access the Licensed Work(s);
- 1.3 “Licensed Work(s)” shall mean the online version of each of the Licensor's available journals for which the Licensee holds a current institutional subscription for online access or which includes online access.
- 1.4 “Secure Network” shall mean a network (whether a stand alone network or a virtual private network within the internet) which is only accessible to authorised users from computers or terminals with registered or identifiable ip-ranges. A cache server or any server or network which can be accessed by unauthorised users is not a secure network for these purposes;
- 1.5 “Commercial Use” shall mean use for the purposes of monetary reward (whether by or for the Licensee, an Authorised User, or any other person or entity) by means of sale, resale, loan, transfer, hire, or other form of exploitation of the Licensed Work(s);
- 1.6 “Licensor Trademarks” shall mean the designations MAKLU PUBLISHERS, MAKLU ONLINE, MAKLU UITGEVERS, MAKLU-PUBLISHERS, MAKLU-ONLINE and MAKLU-UITGEVERS;
- 1.7 “Material” shall mean any abstract, article, index, advertising or other material contained in

the Licensed Work(s) and accessed online;

- 1.8 “MO” shall mean MAKLU-ONLINE, covering all contents referring to the Licensed Work(s) in the domain maklu-online.eu;
- 1.9 “Server” shall mean the Licensor’s server(s) on which the Licensed Work(s) are mounted and through which the Licensee and its authorised Users may gain access to the Licensed Work(s) by means of the World Wide Web;
- 1.10 “Site” shall mean the geographical site (or sites) in respect of which the Licensee has purchased an online subscription from which Authorised Users can access the Licensed Work(s) onsite from a computer or terminal on the Licensee’s Secure Network located at the site and via which Authorised Users can additionally access the Licensed Work(s) offsite via a Virtual Private Network connecting to a service located at the site according to the licence agreed upon;
- 1.11 “Subscription Period” shall mean the period commencing on the date on which the Online Registration Materials are completed and in relation to each Licensed Work shall continue (subject to provisions for earlier termination contained below) for so long as the Licensee has a current institutional subscription for that Licensed Work for online access or which includes online access

2. GRANT OF LICENCE, USAGE RIGHTS AND LIMITATIONS ON USE

- 2.1 In respect of each Site, Licensor grants the Licensee the non-exclusive and non-transferable right to allow Authorised Users to access and use the Licensed Work(s) during the period a subscription on the relevant journal(s) is taken by means of one or more Secure Networks for the purposes of research, teaching, and private study.
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- 2.3 The Licensee and Authorised Users may not: (i) Remove or alter Licensor’s copyright notices or other means of identification or disclaimers as they appear in the Licensed Work(s); (ii) Systematically make printed or electronic copies of multiple portions of the Licensed Work(s) for any purpose; (iii) Display or distribute any part of the Licensed Work(s) on any electronic network, including without limitation the Internet and the World Wide Web; (iv) Distribute any part of the Licensed Work(s) on a Secure Network by other means than direct hyperlinking as mentioned above in clause 2.2.4; (v) Permit anyone other than Authorised Users to access or use the Licensed Work(s); (vi) Distribute any part of the Licensed Work(s) for purposes of Interlibrary Loan in printed or electronic version; (vii) Generate collections of the Materials.
- 2.4 On expiry of the Subscription Period, the Licensee shall lose all right related to the Licensed Work(s).
- 2.5 The rights granted in clause 2 will terminate immediately in respect of any Material which the Licensor ceases to have the right to publish online.

3. RESPONSIBILITIES OF THE LICENSEE

- 3.1 The Licensee will provide all identifying information relating to the Licensee and its Authorised Users required by the Online Registration Materials. The Licensee acknowledges that access to the Licensed Work(s) under this Agreement is conditional upon the Licensee completing the Online Registration Materials. The Licensee will amend the Online Registration Materials promptly following any additions, deletions or other alterations to the information supplied.
- 3.2 The Licensee will obtain at its cost all telecommunications and other equipment and software (including an Internet Browser and portable document file reader) together with all relevant software licenses necessary to access the Licensed Work(s) online via the Licensee's Secure Network.
- 3.3 The Licensee will
 - 3.3.1 Use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Work(s) by means of the Licensee's Secure Network;
 - 3.3.2 Take all reasonable steps to ensure that all Authorised Users abide by the terms of this Agreement.
- 3.4 The Licensee will notify the Licensor as soon as practicable if it becomes aware any unauthorised use of any part of the Licensed Work(s). Upon becoming aware of any breach of the terms of this Agreement by an Authorised User, the Licensee further agrees promptly to initiate disciplinary procedures in accordance with the Licensee's standard practice.

4. RESPONSIBILITIES OF THE LICENSOR

- 4.1 Licensor shall use all reasonable efforts:
 - 4.1.1 To make the Licensed Work(s) available by means of the World Wide Web to the Licensee throughout the Subscription Period;
 - 4.1.2 To ensure that the Server has sufficient capacity and rate of connectivity to provide the Licensee with a quality of service consistent with current standards in the World Wide Web on-line information provision industry;
 - 4.1.3 To restore access to the Licensed Work(s) as soon as possible in the event of an interruption or suspension of the service.

5. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

- 5.1 The Licensee acknowledges that all content accessible on MO is protected by copyright and has to be treated as copyright protected material. No part of the Materials may be resold or published without written consent of MAKLUPUBLISHERS.
- 5.2 The Licensee shall notify Licensor promptly (i) of the facts and circumstances surrounding any unauthorised use of the Licensed Work(s), or Licensor Intellectual Property, or any portion thereof; and (ii) on becoming aware of any claim by any third party that the Licensed Work(s) infringes an intellectual property or proprietary right of any third party.

6. REPRESENTATIONS AND WARRANTIES

- 6.1 LICENSOR REPRESENTS AND WARRANTS THAT IT HAS THE POWER TO ENTER INTO THIS AGREEMENT AND TO GRANT THE RIGHTS CONFERRED HEREIN TO THE LICENSEE.
- 6.2 SAVE AS PROVIDED ABOVE, LICENSOR GIVES NO WARRANTY, EXPRESS OR IMPLIED, AND MAKES NO REPRESENTATION THAT (I) THE LICENSED WORK(S) WILL BE OF SATISFACTORY QUALITY, SUITABLE FOR ANY PARTICULAR PURPOSE OR FOR ANY PARTICULAR USE UNDER SPECIFIED CONDITIONS, NOTWITHSTANDING THAT SUCH PURPOSE, USE OR CONDITIONS MAY BE KNOWN TO THE LICENSOR; OR (II) THAT THE LICENSED WORK(S) WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION OR THAT ANY ERRORS WILL BE CORRECTED; OR (III) THAT THE MATERIAL PUBLISHED IN THE LICENSED WORK(S) IS EITHER COMPLETE OR ACCURATE.
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- 6.4 IN NO CIRCUMSTANCES WILL LICENSOR BE LIABLE TO THE LICENSEE OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OR LOSS OF PROFITS INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF DATA, LOSS OF PROGRAMS, LOSS OF BUSINESS OR GOODWILL, OR OTHER DAMAGES OR LOSSES OF ANY NATURE ARISING OUT OF THE USE, OR THE INABILITY TO USE THE LICENSED WORK(S).
- 6.5 WITHOUT PREJUDICE TO THE INDEMNITY IN CLAUSE 7.1, THE LICENSEE AGREES THE ENTIRE LIABILITY OF LICENSOR TO THE LICENSEE OR AUTHORISED USERS ARISING OUT OF ANY KIND OF LEGAL CLAIM (WHETHER IN CONTRACT, TORT, BY STATUTE OR OTHERWISE) IN ANY WAY CONNECTED WITH THE USE AND INABILITY TO USE THE LICENSED WORK(S) SHALL BE THE REFUND OF ANY FEE PAID TO THE LICENSOR FOR ONLINE ACCESS TO THE LICENSED WORK(S).

7. INDEMNIFICATION AND FORCE MAJEURE

- 7.1 Notwithstanding the limitation of liability in clause 6.5, Licensor shall defend, indemnify, and hold the Licensee harmless against all claims, suits, proceedings, losses, liabilities, and damages (including costs, expenses, and reasonable attorney's fees) asserted by third parties against the Licensee which arise out of any act or omission by Licensor that constitutes a breach of Licensor's warranties hereunder.
- 7.2 The Licensee shall defend, indemnify, and hold Licensor harmless against all claims, suits, proceedings, losses, liabilities and damages (including costs, expenses, and reasonable attorneys' fees) arising from (i) any unauthorised use or dissemination of the Licensed

Work(s) by the Licensee or Authorised Users, including but not limited to infringement of any copyright, violation of any proprietary right and invasion of any privacy rights.

- 7.3 The obligations in clauses 7.1 and 7.2 will survive the termination of this Agreement.
- 7.4 The Licensee and Licensor shall not be responsible to one another for any failure to perform any obligation under this Agreement due the Acts of God, war, riot, embargoes, acts of civil or military authorities, fire, flood, typhoon, wind storm, snow storm, blizzard, hurricane, or other cause that is outside the control of the party and could not be avoided by the exercise of due care. Notwithstanding the occurrence of any of the events set forth in this clause, the parties shall at all times use reasonable efforts to perform all obligations under this Agreement in a timely manner, taking account of the existing circumstances.

8. TERMINATION

- 8.1 Either party may terminate this Agreement forthwith by serving written notice on the other in the event that the other party commits a material breach of this Agreement and in the case of a breach capable of remedy fails to remedy within 30 days of a request so to do. Without limitation, a breach by the Licensee of the provisions in Clause 3.3 above would constitute a material breach of this Agreement.
- 8.2 Licensor reserves the right at any time on 30 days notice to the Licensee to terminate this Agreement in respect of any Licensed Work(s) due to ceasing appearance of such Licensed Work(s) on MO.

9. GENERAL

- 9.1 This Agreement is personal to and binding on the parties and neither this Agreement nor any of the right under it may be assigned or sublicensed.
- 9.2 All notices required to be given under this Agreement shall be given in writing in English and left at or sent by first class registered or recorded delivery to the appropriate address provided in the Online Registration Materials. All notices to the Licensee shall be marked for the attention of the person whose contact details are given in the Online Registration Materials.
- 9.3 This Agreement constitutes the entire agreement of the parties about its subject matter, supersedes all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement in writing signed by both parties.
- 9.4 No provision in this Agreement is intended to be enforceable by a person who is not a party to this Agreement.
- 9.5 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other further breach.
- 9.6 This Agreement is governed by and construed in accordance with the laws of Belgium, without regard to its conflicts of law principles. Hereby is submitted and agreed that the sole

jurisdiction and venue for any actions that may arise under or in relation to the subject matter hereof shall be the courts located in Antwerp, Belgium.

9.7 Headings used in this Agreement are for convenience only and are deemed not to be part of the Agreement.

Last revised: 3 December 2012