

- 1.2 Words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.
- 1.3 The headings in these conditions are intended for reference only and shall not affect their construction.
- 1.4 Any reference to a clause, schedule or appendix shall be deemed to refer to that clause, schedule or appendix of this Agreement.

2. Grant of Licence

- 2.1 The Licensor hereby grants to the Licensee a non-exclusive, worldwide, perpetual, royalty free, sub-licensable licence to use, disseminate in any medium , copy , make available, archive and otherwise use the Work in accordance with the terms and conditions of this Agreement.

3. Scope of License

- 3.1 The Licensor named above gives permission to the Licensee to:
 - (a) make any editorial changes that are necessary to place the Work in the Repository but will consult with the Licensor over substantial alterations to the Work;
 - (b) incorporate the whole or part of the Work into joint publications containing contributions by other authors, or in consultation of the Licensor to divide the Work into two or more publications;
 - (c) communicate, make available and distribute the Work in a variety of formats and media;
 - (d) make copies of the Work, including additional electronic and paper copies of the Work as are necessary to ensure efficient access by Users of the Repository and for archival purposes;
 - (e) archive the Work or allow authorised third party organisations to archive the Work;
 - (f) create and display static screen shots of the Work on a publicly available web site or network for publicity and demonstration purposes;
 - (g) catalogue, enhance, incorporate and modify metadata, and re-format the Work in any way to ensure its future preservation and accessibility;
 - (h) sub-licence the Work to the Users of the Repository in accordance with the licence as attached at Schedule 1 to this agreement (“ReStore User Licence”) or on equivalent terms and which comply with the provisions of clauses 3.2-3.4 below;

- (i) display and use the Licensor's logo or trademark only in connection with the use of the Work in accordance with this agreement.

3.2 Except where provided for in this Agreement the Licensor and Users of the Work may not:

- 3.2.1 sell or resell the Work and/or modifications;
- 3.2.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they may appear without prior written permission of the Licensor;
- 3.2. use all or any part of the Work for any Commercial Use or for any purpose other than Educational Purposes and Non-Commercial Purposes unless with the consent of the Licensor.

3.3 The Licensee and all Users shall comply with the terms of the Copyright, Designs and Patents Act 1988 and in particular, but without limitation, shall recognise the rights, including moral right and the rights of attribution, of the original author. Each use or adaptation of the Licensor's Work shall make appropriate acknowledgement of the source, title, and copyright owner.

3.4 Nothing contained herein shall constitute a waiver of any statutory rights available and held by the Licensor from time to time under the Copyright, Designs and Patents Act 1988 or any amending legislation.

3.5 Nothing in this Agreement shall oblige the Licensee to include or retain the Works on the Repository and/or to continue to maintain the Repository.

4. Licensor's Warranties

4.1 The Licensor warrants that to the best of its, and any employees involved in the Licensor Project, knowledge and belief:

- 4.1.1 all relevant consents and/or permissions required so as not to infringe the rights of any third party whose material is comprised within the Work have been obtained or have otherwise been notified to the Licensee as absent;
- 4.1.2 it has appropriately referenced and acknowledged the author of any third party content contained in the Work;
- 4.1.3 it is entitled to grant the rights contained in this Agreement; and
- 4.1.4 it has responded truthfully to any questions asked by the Licensee and recorded on the Author Reviewer Form, and as attached at Schedule 2,

in the process of carrying out its due diligence in respect of including the Works in the Repository.

- 4.2 The warranties provided for this Clause 4 do not apply to modifications of the Work by the Licensee and other works created by Users as a result of the permitted uses provided for in this Agreement.

5. Intellectual Property

- 5.1 The Licensee acknowledges that all Intellectual Property Rights relating to the Work, are the property of the Licensor or duly licensed to the Licensor and that this Agreement does not assign or transfer to the Licensee or any User any right, title or interest therein except for the right to use the Work in accordance with the terms and conditions of this Agreement.
- 5.2 Any database rights in the Repository shall be the property of the Licensee.
- 5.3 Intellectual Property Rights in the metadata created by the Licensee or by a third party on its behalf, including but not limited to metadata supplied by the Licensor, shall be the property of the Licensee.
- 5.4 Intellectual Property Rights in any additional data or intellectual property added by the Licensee to the Work to assist Users in using the Work will belong to the Licensee and/or any other parties that the Licensee may choose to enter into an agreement with to produce such materials.
- 5.5 The Licensor will not be entitled to use any trade marks or register any domain names, associated with the Repository without the prior consent of the Licensee.

6. Responsibilities

- 6.1 The Licensor shall be responsible for any reasonable and direct costs, claims, damages or expenses that the Licensee incurs to third parties in connection with the Licensor's breach of this agreement and any deliberate or wrongful acts, omissions & defaults of the Licensor with respect to the inclusion of the Works in the Repository.
- 6.2 Nothing in this Agreement shall make the Licensee liable to the Licensor for any User's infringement of the Licensor's intellectual property rights or breach of the ReStore User Licence provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
- 6.3 Nothing in this Agreement shall oblige the Licensee to pursue any enforcement action on behalf of the Licensor against any User or other third party in respect of any infringement by them of the Licensor's Intellectual Property Rights.

- 6.4 Both Parties shall notify the other Party in the event that it becomes aware that a third party's intellectual property rights could be infringed or a third party claims its intellectual property rights have been infringed by their inclusion in the Works. As soon as it becomes aware of such claim the Licensee shall immediately take down the third party material from the Repository until the Licensor and Licensee have agreed the course of action to take or until the third party has given its consent for the material to remain.
- 6.5 The Licensee shall be wholly responsible for any claim with respect to any ongoing intellectual property infringement if it fails to comply with Clause 6.4.

7. Limitation of Liability

- 7.1 Neither party shall be liable to the other for any costs, claims, damages or expenses arising out of any act or omission or any breach of contract or statutory duty or in tort calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual or such costs, claims, damages or expenses calculated on a time basis which shall include indirect and consequential losses.

8. Term and Termination

- 8.1 This Agreement shall commence upon the signature by both parties and shall remain in full force and effect in perpetuity. For the avoidance of doubt, the parties agree that both the Licensee's right to retain the Work and the perpetual licenses granted by the Licensor to the Licensee in Clause 3 are irrevocable and will survive any termination or repudiation of this Agreement.

9. Notices

- 9.1 All notices (including all other documents) to be served under this Agreement shall be in writing and shall be delivered or sent:

In the case of the Licensee, to the:

<<Name>>

ReStore Project Manager
National Centre for Research Methods
The University of Southampton
University Road
Highfield
Southampton
Southampton
SO17 1BJ

In the case of the Licensor, to The Registrar or University Secretary or other equivalent person at the address specified at the beginning of this Agreement.

or to such other address as it may have notified in writing to the other party.

9.2 A notice shall be delivered by hand or sent by prepaid first class recorded delivery.

9.3 A notice shall be deemed to have been received:

(a) if delivered by hand between 9.00 am and 5.00 pm (such time period being referred to in this as "**Business Hours**") on Monday to Friday (to be known as the "**Business Day**" and shall exclude statutory public holidays and the official closure periods of the Licensee) when so delivered or, if delivered by hand outside Business Hours, at the next start of Business Hours;

(b) if sent by first class recorded delivery post on a Business Day, at 9.00 am on the second Business Day after posting; or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day after posting.

9.4 In proving service of a notice, it shall be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted.

9.5 E-mail and fax notice between the parties shall not be valid for the purposes of this Agreement.

10. Governing Law

10.1 This Agreement is governed by, and shall be interpreted in accordance with, English law and each party irrevocably submits to the non-exclusive jurisdiction of the English Courts in relation to all matters arising out of or in connection with this Agreement.

11. General

11.1 Delay in exercising, or a failure to exercise, any right or remedy in connection with this Agreement shall not operate as a subsequent waiver of that right or remedy. A single or partial exercise of any right or remedy shall not preclude any other or further exercise of that right or remedy, or the exercise of any other right or remedy. A waiver of a breach of this Agreement shall not constitute a waiver of any subsequent breach.

11.2 No person who is not a party to this Agreement is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

11.3 The parties intend each provision of this Agreement to be severable and distinct from the others. If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the

legality, validity and enforceability of the remainder of this Agreement shall not be affected.

11.4 The Licensee shall be entitled to assign its rights in or novate this agreement to any third party successor who takes on the responsibility of the ReStore Project and Repository.

11.5 This Agreement sets out the entire agreement between the parties relating to its subject matter and overrides any prior correspondence or representations and any previous agreements (if any) between the Licensor and the Licensee.

AS WITNESS the hands of the duly authorised representatives of the parties the day and year first before written:

An authorised representative }
for and on behalf of }
the Licensor }

Name:
Position:
Telephone Number:
Email:

An authorised representative }
for and on behalf of }
the Licensee }

Name:
Position:

Telephone Number:

Email:

Schedule 1 – User Licence

The terms and conditions of the ReStore website shall apply as may be amended from time to time but which will contain provisions in respect of the following:

- *Disclaimer on behalf of Licensor & Licensee with respect to use of Works – (to include virus provision)*
- *Restriction of rights to use materials in any Work unless otherwise specifically provided on particular materials*
- *Requirement to duly acknowledge author, copyright owner*
- *Instruction to seek further licence from Licensor for Licensor Works*
- *Restriction on use of Licensor & Licensee Trademarks*

The current terms & conditions of use can be found at
<http://www.restore.ac.uk/terms.php>

Schedule 2 – Authors Review Form

Completed form to be attached