

## THE LICENCE AGREEMENT

### **Between**

Brepols Publishers N.V., having its principal offices at [REDACTED]  
and registered in the Turnhout Register of commerce: [REDACTED]  
Hereafter called the "Publisher"

### **and**

the Licensee

...University of California, San Diego.....  
with its principal office at

[REDACTED]

.....  
Hereafter called the "Licensee"

This agreement sets out the terms and conditions under which the Publisher shall provide online access to the Database(s) specified in the annexe(s) and available on the BREPOLiS-website.

### **Section 1. Definitions**

Under this licence agreement, the terms used hereafter are defined as following:

*"Database"*: the collection of systematically arranged data with a common user interface that are individually accessible by electronic means

*"The Authorized Users"*: those persons who have access to and use of the Database through the Licensee's network, object of this Agreement, in their relationship with the Licensee. Those persons can only be:

- All staff members employed by the Licensee, including temporary staff members
- Students accredited by the Licensee; registered users of the library
- "Walk-in users" consulting the database onsite

*"IP address"*: a unique string of figures which identifies the computer of an Internet user.

*"Onsite usage"*: computer that is being used to access the online resource is within a building or on the campus of the Licensee.

*"Remote access"*: access whereby the computer being used is off-campus, or away from the Licensee's property, e.g. access by a user from home.

*"Extraction"*: the permanent or temporary transfer of all or a substantial part of the contents of the Database to another medium by any means or in any form.

*"Re-utilization"*: any form of making available to the public all or a substantial part of the contents of the Database, by distribution of copies, by renting, by on-line or other forms of transmission.

*"Education"*: the systematic and - according to accepted principles - organised transfer of elementary and comprehensive knowledge and skills by appointed and competent teachers to individuals or to a group of persons gathered together for that purpose.

*"Scientific research"*: the investigation of any subject of scholarship.

*"Substantial part"*: any part of the Database that can stand on its own as a coherent body of data which can be relevant for a larger audience or that represents a considerable amount of data from the Database.

*"Insubstantial part"*: any part of the Database that cannot be considered to be a substantial part of the Database.

*"Force majeure event"*: fire, flood, earthquake, elements of nature or Acts of God, acts of war, terrorism, riots, civil disorders, strikes, lockouts, labour difficulties, or any other similar cause beyond the reasonable control of a (non-performing) party.

## **Section 2. Object and nature of the agreement.**

Under this agreement, the Publisher agrees to grant to the Licensee a non-exclusive and non-transferable licence to have on-line access to the Database and to make use of the Database. The Publisher also grants the Licensee the right to authorize Authorized Users to access and make use of the Database.

The licence level, the subscription price and the list of Licensee's Authorized Users (or Authorized Users groups) are specified in Annexe hereto.

## **Section 3. Access**

The Database is being accessed via the url "<http://www.brepolis.net>".

Annexed hereto is a list of IP-addresses, which corresponds to the Licensee's Authorized Users (or Authorized User groups). The Publisher grants the Authorized Users of the Licensee access to the Database via those IP addresses after payment of the subscription fee.

Changing or adding IP-addresses can only be done after written agreement between the Publisher and the Licensee.

The Publisher shall use reasonable efforts to facilitate the access to the site as much as possible and provide the Licensee with a quality of service comparable to current standards in the scholarly information provision industry. In case of difficulties of access to the site, the Publisher shall use reasonable efforts to solve the difficulties as soon as possible and restore access to the Database.

The Publisher shall notify Licensee in a timely manner of all instances of system unavailability that occur outside the Publisher's normal maintenance window and use reasonable efforts to provide advance notice of hardware or software changes that may affect system performance.

The Publisher and the Licensee undertake to make the Database accessible for Authorized Users only.

The Publisher and the Licensee undertake to take the necessary reasonable steps to avoid that third or unauthorized parties would access and use the Database.

If:

- the Publisher establishes or should have a reasonable suspicion that unauthorized Users or third parties access and use or possibly use the Database or if
- the Licensee informs the Publisher of such an unauthorized use by telephone, by written or by any other means,

Licensee shall cooperate with the Publisher in the investigation of any unauthorized use of the licensed materials and shall have 30 days to remedy such unauthorized use and prevent its recurrence. If the unauthorized access or use has not been remedied within the 30 day period, Publisher may terminate such Authorized User's access to the licensed. The Publisher informs the Licensee of this measure as soon as possible, together with an explanation of the grounds of this measure.

If for reasons that may cause serious damage to the server or the Database of the Publisher the Publisher considers it absolutely necessary to block the IP address that has been used for the unauthorized use of the Database he may do so. He will inform the Licensee of this measure as soon as possible, together with an explanation of the grounds of this measure. Licensee shall cooperate with the Publisher in the investigation of any such unauthorized use of licensed materials or the Database.

In the event of any damage caused by unlawful use of the database the Licensee cannot be hold responsible if he had taken reasonable steps to avoid that third or unauthorized parties would access and use the Database or if he can evidence that he cannot be held liable. In such a case the costs are at the expense of the Publisher.

#### **Section 4. Warranty - Rights of the Licensee and the Authorised User.**

The Publisher guarantees to the Licensee that he has full rights to grant access and use of the Database to the Licensee. All copyright rights to the content and design of the Database and of the Brepolis environment, the search page and other interfaces, designs and lay-out as well as names, trade marks and logos are owned by the Publisher and/or her partners. The Licensee shall use its best efforts to safeguard the intellectual property and proprietary rights of the Publisher.

The Licensee's Authorized Users are authorized to access the Database by using an IP address, recognized by the Publisher (cf. section 3). These rights are not extended to Licensee's subsidiaries, parent organizations or to any other affiliated organization or person.

The Licensee and Authorized Users are entitled to extract and re-utilize, for non-commercial purposes only, any insubstantial parts of the contents of the Database.

The systematic extraction and/or re-utilization of insubstantial Parts of the Database, for commercial purposes or other purposes that could damage the Publisher conflicts with normal exploitation of the Database and causes prejudice to the legitimate interests of the Publisher and is not authorized.

The Licensee and Authorized Users who, for the purpose of illustration for teaching or scientific research, have the intention of using a substantial part extracted from the contents of the Database,

should obtain, prior to use, an authorization in writing from the Publisher. In such a case, the Licensee/Authorized User shall always mention the name of the Publisher and the designation of the Database. Other use of any substantial part is not allowed.

The Licensee is not entitled to transfer, sublet or confer the rights - that are granted to him according to the terms of this Agreement - to third parties.

The Licensee and Authorized Users are not entitled to reproduce, distribute, modify, supplement or split the contents or structure of the Database. Furthermore, neither the Licensee nor the Authorized User is entitled to rearrange the Database or to set up derived Databases.

**Scholarly Sharing.** Authorized Users may occasionally transmit to a third party in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for resale or commercial purposes.

No transfer of copyright is made by this licence.

The Licensee shall use reasonable efforts to inform the Authorized Users on the rights that are conferred to the Licensee and Authorized Users according to the terms and conditions of this Agreement.

The Licensee shall use reasonable efforts to inform the Authorized Users on the acts, which the Licensee and Authorized Users are, not authorized to perform.

The use of the search software, made available together with the Database, is included in the subscription price. The Licensee undertakes to use exclusively that search software when consulting the Database and will make the Database available to the Authorized Users in that form.

The Publisher will make available to the Licensee the usage-statistics it is technically able to supply, at regular time intervals. .

### **Section 5. Compensation for damage**

The Publisher and his partners endeavor to offer an overall good-quality product and a reliable service. Nevertheless the Database is provided "as it stands" and the Publisher nor his partners who have been involved in the creation, production or delivery of the Database shall be liable for any direct or indirect damages arising out of the use of, or the inability to use, the Database. The Publisher does not guarantee that the Database will be usefully accessible in every hardware/software environment.

In case of force majeure events or any other events beyond the reasonable control of the Publisher, the Publisher shall use his best efforts to restore all services as soon as possible. However neither party can be liable for any direct or indirect damages due to events of force majeure.

Whenever the agreement is terminated for breach of license by the Licensee, the Licensee will not be able to recover any amounts paid to the Publisher, for the unexpired term.

In no event shall the Publisher's or Licensee's compensation for damages that have been evidenced in connection with this agreement exceed twice the annual subscription fee paid by the Licensee for the online materials.

## **Section 6. Publisher's obligations.**

The Publisher guarantees that, for the whole period of the Agreement, the structure and contents of and access to the Database will be at least of equal quality than the one on the day of undersigning of this Agreement. The Licensee acknowledges knowing the licensed material and its fitness for the purpose.

The Publisher undertakes to make the latest version of the Database permanently available to the Licensee and the Authorized Users. Therefore the Database and the interfaces are subject to change without notice.

If the Publisher does not perform his material obligations and does not solve the material defaults within 30 days after notice is received in reasonable detail, the Licensee is entitled to terminate this Agreement and claim a pro-rata refund for the remaining unexpired term, unless the Publisher can provide evidence that he cannot be held liable for the non-performance of his obligations.

## **Section 7. Prices and payment.**

The Publisher will inform the Licensee at least two (2) months before the renewal date of the fee that will be applicable for the next period.

The subscription fee is always due for the complete period except if explicitly agreed differently. The Licensee can terminate the licence agreement at any time but no refund for the ongoing Term is due by the Publisher except in the case of termination for cause under Section 6 above.

The price(s) applicable for the Licensee are mentioned in the annexe of the Licence Agreement or are confirmed by (pro-forma) invoice.

The Licensee is in charge of the costs of using public telecommunications and infrastructure whenever he consults the Database.

## **Section 8. Duration and expiration of Agreement.**

The first subscription period will run from the moment access is given, which is foreseen to be by [date] 1 November 2009. (see also section 3 §3) till 31 December 2010. *P.A.*

Yearly the subscription will be renewed after the end of the previous subscription period for an additional period of one (1) year if the Licensee pays to the Publisher the fee for such an additional period. The Publisher will inform the Licensee at least two (2) months before the renewal date of the fee that will be applicable for the next period.

Subscription periods will run from January 1<sup>st</sup> to December 31<sup>st</sup>.

At the expiry of the agreement, the Licensee will not keep in his possession any data of the Database for further use or for archival reasons, nor give further access to the Database unless explicitly agreed with the Publisher.

If an archival copy in print, microfiche or CD Rom is included in the agreed licence level, then the Licensee is allowed to continue to make use of this.

## **Section 9. Applicable law and jurisdiction.**

This agreement, including any annexes or attachments forms one single and entire agreement between the Publisher and the Licensee. It replaces any previous proposals, correspondence or other communications.

Law of the State of California is applicable to this Agreement.

The Courts of California have jurisdiction in case of a conflict arisen out of this Agreement.

**Section 10. Notice of Terms of "Click-Through" License Terms.**

In the event that Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall the terms of such "click-through" licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "click-through" licenses and this Agreement, the terms of this Agreement shall prevail.

**Section 10. Secrecy.**

To the extent allowed by law, the Licensee and the Publisher undertake to keep the subscription price of this Agreement secret for third parties

Done in Turnhout in two originals, each party acknowledging having received a duly executed copy.

[Date] ..... *Oct 22, 2009* .....

Signed,

for the Publisher ,

[name] Hans Deraeve

[function] Commercial Manager

[Signature] 

for the Licensee

[name] ..... [stamp]

[function] .....

[Signature]  .....



4. Practical details about the Licensee

- a. Contact persons + e-mail address + phone number  
(no subscription agency allowed)

Christine Peters

[Redacted]

[Redacted]

- b. Invoice address (full address including VAT-code etc.)

Elec, Resources, Acq Dept, Library  
Univ of Calif San Diego

[Redacted]

Done in Turnhout in two originals, each party acknowledging having received a duly executed copy.

Signed,

for the Publisher ,

[name] Hans Deraeve

[stamp]

[function] Commercial Manager

[Signature]

[Redacted Signature]

for the Licensee

[name] .....Tony Harvell.....

[function] .....Head, UCSD Library Acquisitions

[Signature]

[Redacted Signature]