



# TERTIARY INSTITUTIONS LICENCE

**THIS AGREEMENT IS MADE** as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011 BETWEEN **THE JAMAICAN COPYRIGHT LICENSING AGENCY**, a Company incorporated under the laws of Jamaica and having its registered office situate at 17 Ruthven Road, Building 3, Kingston 10 in the parish of St. Andrew (hereinafter called "JAMCOPY") OF THE ONE PART AND \_\_\_\_\_, and having its business address at \_\_\_\_\_ in the parish of \_\_\_\_\_ (hereinafter called "the Licensee") OF THE OTHER PART.

## WHEREAS:

- (a) JAMCOPY is a reproduction rights organization established by copyright owners to administer rights in their Published Works;
- (b) The Licensee is an educational institution established for the purpose of education, research and higher learning, (hereinafter called "the Licensee Institution");
- (c) The Licensee is desirous of obtaining, and JAMCOPY is willing to grant, a Licence to permit the Licensee Institution to reproduce Licensed Works, upon the terms and subject to the conditions hereinafter set out;
- (d) This Agreement is without prejudice to any acts which the Licensee Institution is permitted to carry out by the terms of the Jamaica Copyright Act No. 4 of 1993 as the same may from time to time be amended, extended, re-enacted or consolidated and nothing herein shall be construed as affecting or diminishing such permitted acts in any way whatsoever.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the parties

agree as follows:

## 1 DEFINITION AND INTERPRETATION

1.1 In this Agreement except where a different interpretation is clear from or necessary in the context the following terms shall have the following meanings:

|   |  |
|---|--|
| 'Alternate Format Copy'   | an audio, Braille, large print (produced by a reprographic process), electronically encoded, or machine readable reproduction of all or part of a Published Work produced for a person who is blind, visually impaired or unable to view normal print because of a physical disability.  |
| 'Authorised Persons'  | Licensee Institution together with their employees, Students, Teachers, Library Workers  |
| 'Copyright Act'   | the Copyright Act of Jamaica   |
| 'Copy'<br>(also described for the purpose of clarity as 'Non-Digital Copy') | <p>a visually perceivable reproduction of all or part of a Published Work made by any of the following processes:</p> <ul style="list-style-type: none"><li>(i) any copying by reprographic process which includes facsimile reproduction by photocopying or xerography;</li><li>(ii) duplicating from a stencil;</li><li>(iii) copying onto microform (including microfilm and microfiche);</li><li>(iv) for the sole purpose of making presentations by overhead, slide or LCD projection, digital copying, copying by transcription by hand or drawing (including tracing) onto acetate or other media;</li><li>(v) for the sole purpose of making paper copies:<ul style="list-style-type: none"><li>a. typing or word-processing without adaptation, and</li><li>b. reproduction by a machine or device that makes Electronic Files, subject to clauses 2.2 to 2.4 of this Agreement;</li><li>c. facsimile transmission and transmission by Video Telecom</li></ul></li></ul> |
| 'Coursepack'  | bound or otherwise packaged or assembled Copies of Licensed Works from more than one publication   |

|                               |  |
|-------------------------------|--|
| 'Digital Copy'                | an electronic copy of a Work Licensed For Digital Uses, in whole or part, in the form either of a digital bitmap copy which is a direct unaltered copy of the work copied or a verbatim retyped copy made solely pursuant to clause 2.1.7 of this Agreement  |
| 'Digital Mandate Territories' | the Territories, listed in Schedule C to this Agreement, in respect of which JAMCOPY is authorised to grant a licence under 2.1.7 of this Agreement. This list may be amended periodically by written notice from JAMCOPY to the Licensee  |
| 'Electronic File'             | each file in digital format created as a result of making Copies pursuant to clause 2 of this Agreement  |
| 'Exclusions List'             | the list of Published Works that are not included in the Repertoire and the list of Rightsholders that have notified JAMCOPY that they do not want their Published Works to be copied under a licence from JAMCOPY, outlined in Part 2 of Schedule B to this Agreement. This list may be amended periodically by written notice from JAMCOPY to the Licensee.  |
| 'Inclusions List'             | the list of Territories where Rightsholders are represented by a reproduction rights organisation with which JAMCOPY has an agreement to include the Published Works published in those territories in this Licence and the list of US Rightsholders in the United States of America whose Published Works are included in the Repertoire, outlined in Part 1 of Schedule B to this Agreement. This list may be amended periodically by written notice from JAMCOPY to the Licensee. |
| 'Library Worker'              | each person including any professional librarian, Student, Teacher, volunteer or assistant working in a library which forms part of or is associated with the Licensee Institution.  |
| Licence                       | the rights granted to the Licensee Institution by JAMCOPY under clause 2 of this Agreement   |
| 'Licensee Institution'        | an educational establishment falling under the remit of the Licensee and covered by the Licence outlined in Schedule A to this Agreement and as notified by the Licensee to JAMCOPY periodically   |
| 'Licensed Work'               | a Published Work in the Repertoire   |

|                                    |  |
|------------------------------------|--|
| 'Page'                             | a page of a Licensed Work  |
| 'Premises'                         | any building or buildings owned, leased or rented by the Licensee Institution within Jamaica for the purposes of teaching or research or any purpose connected therewith   |
| 'Published Work'                   | a literary, dramatic, artistic or musical work or a typographical arrangement of a published edition, of which copies have been issued to the public with the consent or acquiescence of the copyright owner in a publication such as a book, folio, magazine, journal, newspaper or other periodical  |
| 'Repertoire'                       | all Published Works for which JAMCOPY has the right to license reprographic and other reproduction rights in Jamaica whether derived from copyright owners of Published Works in Jamaica or by agreement between JAMCOPY and another Reproductions Rights Organization representing copyright owners of Published Works outside of Jamaica or otherwise  |
| 'Reproduction Rights Organization' | an entity, including a "licensing body" as defined in the Copyright Act, that carries on the business of collective administration of reproduction rights, including reprographic rights, in a repertoire of Published Works on behalf of copyright owners.  |
| 'Rightsholder'                     | a person entitled to authorise copying of Published Works on whose behalf JAMCOPY has the authority to grant the Licence   |
| 'Royalty'                          | the amount calculated and payable under clause 7 of this Agreement in the manner provided in Schedule D to this Agreement.   |
| 'Secure Network'                   | a network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Persons who are approved by a Licensee Institution for access to the Secure Network, whose identity is authenticated at the time of login (and periodically thereafter) in a manner consistent with current best practice, and whose conduct is subject to regulation by the Licensee Institution |
| 'Student'                          | each person enrolled in an educational, cultural or recreational activity including distance education, or a correspondence course taking place on the Premises or   |

being administered or operated by the Licensee Institution.

'Teacher' each teacher, professor, researcher, instructor, demonstrator, teaching or research assistant, lecturer or other person who provides instruction to Students and who is affiliated with the Licensee Institution.

TSE the total headcount of all students enrolled in a course of study at the Licensee Institution (including all full and part time students and students enrolled in distance learning) outlined in Schedule D to this Agreement and as notified by the Licensee to JAMCOPY in accordance with Schedule D

'Works Licensed For Digital Uses' Licensed Works in which copyright subsists in the Digital Mandate Territories and Works (other than any excluded material) in which copyright subsists in the USA which are published in the USA by publishers on the list of US Publishers outlined in Part 1 of Schedule B to this Agreement, which permit their published work to be used in accordance with clause 2.1.7 of this Agreement

1.2 In this Agreement unless the context requires otherwise:

1.2.1 words and expressions that are defined in the Copyright Act shall bear the same meanings in this Agreement

1.2.2 words importing the singular number shall include the plural and *vice versa*

1.2.3 words importing any particular gender shall include all other genders

1.2.4 references to persons shall include bodies of persons whether corporate or incorporate

1.2.5 words importing the whole shall be treated as including a reference to any part of the whole

1.3 Any reference in this Agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended modified extended re-enacted or replaced (whether before or after the date of this Agreement) and including all subordinate legislation from time to time made under it

1.4 References in this Agreement to clauses schedules and annexes except where otherwise expressly stated are to clauses of, and schedules and annexes to, this Agreement and such Clauses Schedules and Annexes shall have effect as if set out in

full in the body of this Agreement, and any reference to this Agreement includes the Clauses, Schedules and Annexes.

- 1.5 Headings are used in this Agreement for the convenience of the parties only and shall not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of clauses schedule or exhibits to which they relate

## **2. LICENCE**

- 2.1 JAMCOPY hereby grants to the Licensee and by extension the Licensee Institution the following non-exclusive rights, subject to the terms and conditions of this Agreement:

2.1.1 to make Copies of Licensed Works for use by Authorised Persons and for use in interlibrary loan to other non-profit educational institutions and non-profit libraries, archives, and museums in accordance with Schedule E.

2.1.2 to make Coursepacks, whether or not for sale to and for use by Authorised Persons and for distribution to Students enrolled in distance education, and to make Copies of Licensed Works for sale to and for use by Authorised Persons and for distribution to Students enrolled in distance education, in accordance with Schedule F.

2.1.3 to make Copies of Licensed Works for sale to or use by any persons or entities other than non-profit educational institutions, libraries, archives or museums in accordance with Schedule G.

2.1.4 to make a single Copy of all or a part of any rare or fragile copy of a Licensed Work held by a library which forms part of or is associated with a Licensee Institution for the purpose of preventing deterioration of such copy and for use by Authorised Persons

2.1.5 to make a single Copy of not more than 20% of a Published Work to replace any damaged or missing pages of the work in the collection of a library which forms part of or is associated with a Licensee Institution

2.1.6 to make Alternate Format Copies of Licensed Works for use by Authorised Persons who require Alternate Format Copies and those involved in assisting such persons, in accordance with Schedule H

2.1.7 to do the following for use by Authorized Persons in accordance with Schedule I:

(i) convert Works Licensed for Digital Uses from print to digital form provided that such Works are not commercially available in digital form from a Rightsholder.

(ii) reproduce Works Licensed for Digital Uses, digitally converted hereunder, onto paper and to distribute such paper copies to Authorised Persons

- (iii) store Works Licensed for Digital Uses, digitally converted hereunder, on the Secure Network, or on disk for internal storage
- (iv) distribute Works Licensed for Digital Uses, digitally converted hereunder, on the Secure Network
- (v) reproduce portions of a Work Licensed for Digital Uses in digital form

2.2 Input or output of Licensed Works (without adaptation) into or from an Electronic File by computer or word processor shall only be permitted under this Agreement in amounts authorized and according to all other terms and conditions of this Agreement for the purpose of producing Paper Copies and such Paper Copies shall be produced immediately after the Electronic File has been created and the Electronic File shall be promptly destroyed and in any event no later than the expiry of this Agreement.

2.3 Nothing in this Agreement authorizes the dissemination or distribution of an Electronic File in any electronic form in any way whatsoever, including but not limited to, on disk or over a computer network.

2.4 (a) Copies made under this Agreement must be faithful and accurate reproductions of the Licensed Work and must not alter, manipulate, annotate, include comments, edit, amend or rearrange the content or appearance of all or part of the Licensed Work in any way. Notwithstanding the foregoing, annotations or comments concerning a Page may be made on an accompanying page in accordance with the terms of this Agreement.

(b) Notwithstanding sub-clause 2.4(a), for Copies made:

(i) under clause 2.2 of this Agreement any of the following activities are permissible provided that the moral right of integrity held by the author of the Licensed Work is not infringed:

(A) rotating the image orientation of the Licensed Work from landscape to portrait, or vice versa; or

B) copying only a portion of a Page, provided that the copyright attribution as required by Schedule F, clause 8 of this Agreement includes a credit to both the author and publisher of the portion copied, as well as to the author and publisher of the Page from which the portion was copied;

(ii) under clause 2.2 of this Agreement but only for the specific purpose of producing Alternate Format Copies under clause 2.1.6 of this Agreement, making an Electronic File may involve any of the following activities, provided that the moral right of integrity held by the author of the Licensed Work is not infringed:

(A) rotating the image orientation of the Licensed Work from landscape to portrait, or vice versa; or

- (B) copying only a portion of a Page, provided that the copyright attribution as required by Schedule H, clause 2 of this Agreement includes a credit to both the author and publisher of the portion copied, as well as to the author and publisher of the Page from which the portion was copied; or
- (C) increasing or decreasing the font size of the Licensed Work to a reasonable degree, provided that the font itself is not changed.

### **3. PURPOSE AND SCOPE OF LICENCE**

- 3.1 The Licensee Institution shall only make Non-Digital and/or Digital Copies pursuant to clause 2 of this Agreement for the purpose of education or recreation associated with the Licensee Institution, including professional, research, archival and administrative activities. For greater certainty, the parties agree that no Non-Digital or Digital Copies may be made pursuant to this Agreement for use in association with partisan political activities, endorsement, or advertising of a product, service, cause or institution where the nature of the material to be copied and the proposed use would prejudice honour or reputation of the author of the work.
- 3.2. For greater certainty, the parties acknowledge that the Licence does not apply to any of the following works:
  - (a) works in respect of which copyright is owned by the Licensee or a Licensee Institution;
  - (b) anything that is excepted from copyright infringement pursuant to the provisions of the Copyright Act, and any amendments thereto that may be enacted before or after the date of this Agreement but only from the effective date of such enactment;
  - (c) works outlined in the Exclusions List;
  - (d) unpublished works;
  - (e) works for which the Licensee Institution has first sought permission to make the Non-Digital and/or Digital Copies from the person who has the right to grant that permission, regardless of whether or on what terms that permission is granted, unless that person advises the Licensee Institution that it has authorized JAMCOPY (or a collective with which JAMCOPY has a reciprocal agreement) to grant permissions on its behalf;
  - (f) originals of artistic works;
  - (g) photographic negatives or other transparencies (positives) mounted or unmounted;
  - (h) publications containing a notice which expressly prohibits copying under the authorization of a licence from a Reproduction Rights Organization;
  - (i) any of the following works, unless such works contain a notice which specifically

authorizes copying under a licence with JAMCOPY or any Reproduction Rights Organization represented by JAMCOPY:

- (i) published workbooks, work cards, assignment sheets, tests, examination papers, and any other Published Works intended to be "consumable";
- (ii) publications containing commercially valuable proprietary information, such as newsletters, with restricted circulation or that indicate use is restricted to fee-paying clientele;
- (iii) letters to the editor and advertisements in newspapers, magazines or periodicals; and
- (iv) business cases which are available for purchase.

3.3 If the Licensee Institution seeks to obtain permission to make Non-Digital and/or Digital Copies of works from a person referred to in clause 3.2(e) of this Agreement, such Non-Digital and/or Digital Copies shall not be made or reported pursuant to this Agreement.

3.4 JAMCOPY may add to or delete from the Exclusions and Inclusions Lists Published Works, Mandating Countries and Participating or Non-Participating Rightsholders, as the case may be, and shall issue to the Licensee a notice of change to the Lists which notice shall specify such addition or deletion. Such additions or deletions shall take effect on the date seven (7) days from the date of giving of such notice of change.

3.5. The Licensee Institution shall not copy onto acetate or any similar transparent material or for mounting as a slide any work of a fine art if a slide of the work is available on the Jamaican market within a reasonable time frame and for a reasonable price.

#### **4. GENERAL OBLIGATIONS ON THE LICENSEE**

4.1 The Licensee shall ensure that Licensee Institutions are made aware of the terms and conditions of the Licence and the Licensee Institution shall take all reasonable action to ensure that all Authorised Persons comply with such terms and conditions. In particular, the Licensee and Licensee Institutions shall ensure that any user guidelines, posters or brochures made available to the Licensee by JAMCOPY and the Inclusions List and Exclusions List outlined in Schedule B of this Agreement and the Digital Mandate Countries outlined in Schedule B of this Agreement are displayed, where reasonably practicable, within the immediate vicinity of each machine or device used for making Non-Digital and/or Digital Copies in a place and manner that is readily visible and legible to persons using such machine or device.

4.2 If the Licensee generates material containing information for distribution to Authorised Persons pursuant to clause 4.1 hereof and such information refers to JAMCOPY by its corporate name "Jamaican Copyright Licensing Agency" or its registered trademark "JAMCOPY®", the Licensee shall provide JAMCOPY with a copy of such material in advance of such distribution to enable JAMCOPY to have a reasonable opportunity to comment on the material if it so chooses, whereupon the Licensee shall ensure that

any changes or revisions required by JAMCOPY are incorporated in such material.

- 4.3 The Licensee shall not sell Non-Digital and/or Digital Copies made pursuant to this Agreement except for Non-Digital Copies made pursuant to clauses 2.1.2, 2.1.3 and 2.1.4 of this Agreement, which may only be sold for an amount which does not exceed the cost of making such Copies, an amount to cover royalties payable to JAMCOPY in respect of making such Copies, and administrative overhead costs.

## **5. RECORD KEEPING AND DATA COLLECTION**

- 5.1 Licensee Institution shall establish and maintain records all Copies made pursuant to clauses 2.1.2 and 2.1.3 of this Agreement which records shall specify, for each of such Copies made, the title, publisher, author or authors (where known), the material onto which such Copies were made, the total number and page numbers of the Pages reproduced, and, where reasonably available, the total number of Pages in the publication from which the Copies are directly made. Licensee Institution shall submit, together with each payment made under clause 7 of this Agreement, copies of such records to JAMCOPY covering the period for which such payment is being made.
- 5.2 JAMCOPY may, no more than twice in each year of the Licence, require Licensee Institution to participate in a data collection exercise such as, but without limitation, a survey, a record keeping exercise or an Information Audit for the purpose of verifying and ascertaining what is being copied or otherwise reproduced pursuant to the Licence.
- 5.3 JAMCOPY shall notify to the Licensee the Guide to Surveys, Record Keeping and or Information Audits ("the Guides") before commencing any data collection exercise
- 5.4 JAMCOPY shall have the right of access throughout the Premises for the purposes of conducting the data collection exercise
- 5.5 The Licensee shall ensure that all Authorised Persons:
- 5.5.1 are fully informed about the Guides
  - 5.5.2 co-operate fully with the requirements of JAMCOPY relating to the data collection, including but not limited to,
    - a. giving JAMCOPY access throughout the Premises at any reasonable time or times in order to organize and carry out a survey or an Information Audit
    - b. identifying the situation of the machine(s) or device(s) used to make Copies for the benefit of Authorised Persons
    - c. allowing JAMCOPY to set up and run surveys in such departments and or libraries as JAMCOPY will select
    - d. requiring Authorised Persons to participate in and fulfill any survey requirements

5.6 JAMCOPY may at any time following the first year of this Licence require that each Licensee Institution establish and maintain records of all Alternate Format Copies made pursuant to clause 2.1.6 of this Agreement and all Non-Digital and/or Digital Copies made pursuant to clauses 2.1.1 and 2.1.7 respectively, of this Agreement, in accordance with the Record Keeping Guides notified by JAMCOPY to the Licensee pursuant to this clause.

## **6. AUDIT**

6.1 To verify the accuracy of any records submitted by Licensee Institution to JAMCOPY pursuant to clause 5 of this Agreement, and not more than once within each calendar year, JAMCOPY shall have the right, at any reasonable time during business hours and upon 21 days written notice to the Licensee, by an independent chartered accountant (or accountant of similar standing) approved in writing by the Licensee, which approval shall not be unreasonably withheld, to inspect and audit the obligations of the Licensee Institution pursuant to this Agreement and accounts and records of the Licensee Institution relating to the number of Alternate Format Copies, Non-Digital and/or Digital Copies made pursuant to this Agreement. The costs of such inspection and audit shall be borne by JAMCOPY.

6.2 JAMCOPY shall keep all information obtained as a result of any inspection or audit referred to in clause 6.1 of this Agreement confidential to itself and to its professional advisors and shall not use such information for any commercial purposes other than to verify the accuracy of the records and compliance with the terms of copying.

## **7. LICENCE FEE/ROYALTY AND HOW PAYABLE**

7.1 In consideration of the grant of the Licence by JAMCOPY the Licensee Institution shall pay the Royalty to JAMCOPY.

7.2 In addition to the Royalty the Licensee Institution shall pay to JAMCOPY as may be required by law any sums in respect of any applicable taxes levied on the Licensee Institution by government in respect of the copying, calculated at the rate of taxation then in force.

7.3 The Licensee Institution shall be liable to pay, without demand from JAMCOPY interest at the prime rate charged by the Bank of Nova Scotia Jamaica Limited plus two per cent (2%) per annum on any Royalty or other amount which is overdue from the day such amount became overdue until the day prior to the date of payment, inclusive. However, interest will not be payable nor paid unless the amount has been outstanding (unpaid) for more than forty-five (45) days following the due date.

## **8. TERM OF LICENCE**

This Agreement is for a term of five (5) years to commence on \_\_\_\_\_

and to expire on \_\_\_\_\_ subject to renewal in accordance with the provision of clause 9 of this Agreement.

## **9. RENEWAL**

This Agreement shall be automatically renewed for subsequent five (5) year periods on the same terms and conditions unless, at least six (6) months prior to the expiry of the initial or any subsequent period, one party notifies the other that it wishes to review the terms of this Agreement. Upon the giving of such notice this Agreement will terminate at the end of the applicable period unless renewed on such terms and conditions as the parties may agree upon or as the Copyright Tribunal may establish.

## **10. TERMINATION**

10.1 If the Licensee Institution shall be in breach of any of its obligations under clauses 3 through 7 hereof or shall be in breach of any of the terms and conditions of copying set forth in the Schedules to this Agreement, JAMCOPY may give written notice to the Licensee of such breach, and if the Licensee does not cure, or cause to be cured, such breach within 30 days of the giving of such notice, or if the breach is one which requires more than 30 days to remedy and the remedy shall not have commenced within such period and shall not have thereafter been diligently pursued, JAMCOPY shall be entitled, without prejudice to any of its other rights, to:

- (i) terminate the Licence; or
- (ii) suspend the operation of the Licence until JAMCOPY shall be reasonably satisfied that such breaches will not recur

10.2 In the event of termination prior to the expiry of this Agreement, the Licensee shall ensure the removal of all posters with respect to the making or using of Non-Digital and/or Digital Copies under the licence from JAMCOPY and the posting of a notice in the immediate vicinity of any machine or device used for making Non-Digital and/or Digital Copies to advise users that such licence has terminated.

10.3 Any termination under this Agreement shall be without prejudice to JAMCOPY's right to receive any overdue and outstanding Royalties.

## **11. GENERAL**

### **11.1 Proper law and jurisdiction**

This Agreement shall be governed and construed in accordance with the Laws of Jamaica and subject to clause 11.2 the parties agree to submit to the exclusive jurisdiction of the Jamaican courts.

### **11.2 Dispute Settlement**

If the parties have a dispute concerning the application or interpretation of this

Agreement, and if the parties cannot settle this dispute through negotiation:

- (i) if the dispute falls under the Jurisdiction of the Copyright Tribunal pursuant to the Copyright Act, no party shall apply to the Copyright Tribunal for the resolution of such dispute or commence legal proceedings relating to such dispute until after 30 days from the giving of notice specifying such dispute to the other party. Within 30 days after the giving of such notice each party shall enter into negotiations with the other party to amicably resolve such dispute by agreement.
- (ii) if the dispute does not fall under the Jurisdiction of the Copyright Tribunal pursuant to the Copyright Act, the parties will try in good faith to settle the dispute through mediation administered by the Alternative Dispute Resolution Centre. If the parties fail to resolve the dispute within twenty-one (21) days after starting mediation, then upon notice by either of the parties the dispute shall be referred to a panel of three arbitrators, one appointed by the Licensor, one appointed by the Licensee and the third shall be the Chairman, appointed by the two previously appointed and the arbitration shall be binding and conducted in accordance with the Arbitration Act of Jamaica.

### 11.3 Assignment

This Agreement may not be assigned by either party without the prior written consent of the other party. The Licensee may sub-contract the rights granted to it pursuant to this Agreement to a third party, but only for purposes of making Non-Digital Copies authorized pursuant to clause 2 of this Agreement for Authorised Persons and not for the purposes of offering for sale or distributing such Copies by the third party to any other person.

### 11.4 Notice

11.4.1 Any notice required or permitted by the terms of this Agreement shall be in writing, and shall be well and sufficiently given if personally delivered, if transmitted by facsimile, registered mail or courier to the party to be notified.

- (1) In the case of JAMCOPY to:  
17 Ruthven Road,  
Building 3,  
Kingston 10  
Attention: General Manager

- (2) In the case of the Licensee to:

11.4.2 Any such notice shall be deemed to have been duly given when personally served upon the individual identified above, and if sent by facsimile, to have

been given on the second business day following the facsimile transmission, and if so mailed, to have been given on the fifth business day following the day on which it was registered in a post office. In the event of a postal strike, any notice shall be sent by facsimile or courier. Either party to this Agreement may, by written notice to the other party, given as aforesaid, designate a change of name or address for such party.

#### **11.5 Variation of Terms**

This agreement is not subject to variation by oral presentation and no variation by the Licensee shall be effective unless agreed in writing between the Licensee and JAMCOPY. JAMCOPY may vary this agreement by written notification to the Licensee and such variation shall automatically take effect and form part of this Agreement unless within ten (10) days of the date of the notification the Licensee notifies JAMCOPY in writing that it does not agree to the variation.

#### **11.6 Severance**

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of this are received by either of the parties from any relevant competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or by agreement of the parties it may be severed from this Agreement and in either event the remaining provisions of this Agreement shall remain in full force and effect

#### **11.7 Whole Agreement**

This Agreement contains the whole agreement between the parties and supersedes any prior written or oral agreement between them in relation to its subject matter and the parties confirm that they have not entered into this Agreement upon the basis of any representations that are not expressly incorporated into this Agreement. No oral explanation or oral information given by any party shall alter or affect the interpretation of this Agreement

#### **11.8 Signatories**

The individuals who have executed this Agreement on behalf of the parties expressly represent and warrant that they are authorized to sign on behalf of the party for purposes of binding their respective party to this Agreement.

**IN WITNESS WHEREOF** the parties hereto have signed this Agreement which will take effect from the commencement date outlined in Clause 8 of this Agreement.

**JAMAICAN COPYRIGHT LICENSING AGENCY**

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Signature of Representative

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Signature of Representative

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Title of Representative

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Title of Representative

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Witness to the above signature

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Witness to the above signatures

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Date

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Date

## SCHEDULE A

### JAMCOPY Inclusions and Exclusions Lists (Clause 1.1 of the Agreement)

#### PART 1

#### JAMCOPY Inclusions List

This Licence includes:

- 1) Published Works of the Rightsholders in the United States of America outlined in the list entitled **Participating US Rightsholders** annexed hereto.
- 2) Works published in the territories outlined in the list entitled **Mandating Countries** annexed hereto.

#### PART 2

#### JAMCOPY Exclusions List

This Licence excludes:

- 1) Editions of all other works which are published only outside of the Mandating Countries save for those works of Participating US Rightsholders as listed in PART 1 of this Schedule.
- 2) Works published by the Rightsholders identified in the list entitled **Non-Participating Rightsholders** annexed hereto, who have informed JAMCOPY that they do not want their publications copied under your licence with JAMCOPY. Permission must be obtained directly from the copyright owner before copying from any of them if the copying would otherwise be an infringement of copyright. All works from each publisher are excluded unless otherwise noted.
- 3) **Unpublished Works** including typescripts, originals of artistic works and photographic negatives.

**Annex 1**

**Participating US Rightsholders**

## **Annex 2**

### **Mandating Countries**

1. Argentina
2. Australia
3. Barbados
4. Belgium
5. Brazil
6. Canada
7. Colombia
8. Finland
9. Greece
10. Hong Kong (including Macau)
11. Iceland
12. India
13. Jamaica
14. Japan
15. Kenya
16. Malta
17. Mauritius
18. Mexico
19. New Zealand
20. Nigeria
21. Norway
22. Russia
23. Singapore
24. Slovakia
25. South Africa
26. Switzerland
27. Trinidad & Tobago
28. Spain
29. United Kingdom
30. United States of America
31. Zimbabwe

**Annex 3**

**Non-Participating Rightsholders**

## SCHEDULE B

### **'Digital Mandate Territories' (Clause 1.1 of the Agreement)**

**The following territories are Digital Mandate Territories:**

Jamaica

## SCHEDULE C

### Licence Fee/Royalty and How Payable (Clause 7 of the Agreement)

#### LICENCE FEE/ROYALTY AND HOW PAYABLE

- (a) In consideration of the grant of the Licence by JAMCOPY each Licensee Institutions shall pay JAMCOPY an annual Royalty of J\$\_\_\_\_\_ multiplied by the total headcount of all students enrolled in a course of study at that Licensee Institution (TSE).
- (b) The Royalty to be payable pursuant to (a) hereof shall be adjusted upwards on an annual basis on ----- of each year during the term of this Licence, and any renewal term thereof, in line with the increase in the Consumer Price Index published by the Statistical Institute of Jamaica, the first such increase to take effect on -----
- (c) On or before ----- of each successive year during the term of this Licence, and any renewal term thereof, the Licensee shall provide JAMCOPY with the total headcount of all students enrolled in a course of study at all Licensee Institutions (TSE) with a breakdown in respect of each Licensee Institution. TSE for the most recent complete academic year for which data is available shall be used or, in the absence of current data, the most recent TSE available, as adjusted in agreement between JAMCOPY and the Licensee, may be used. In calculating the TSE, the following shall be taken into account:
- (i) **Inclusions in TSE**  
The total headcount for the purposes of calculating the total royalty payable shall include but is not limited to students on campus and off campus, distance learners and students undertaking the Licensee Institution' programmes at other institutions or other institutions programmes at the Licensee Institution's campus (also sometimes known as franchise students).
- (ii) **Exemptions from TSE**  
The total headcount for the purposes of calculating the total royalty payable shall exclude visually impaired students who require conversion of material to Braille.
- (d) The total headcount of all students enrolled in a course of study at the Licensee Institution (TSE) for the first year of the Licence (-----) amount to \_\_\_\_\_
- (e) The Royalty for the first year of the Licence (-----) shall be paid in two installments, the first of which is due and payable on or before -----and the second of which is due and payable on or before-----. The Royalty for each successive year of the Licence shall be payable in advance within forty-five (45) days of ----- in each year during the term of this licence and any renewal term.

## SCHEDULE D

## **Terms of Non-Digital Copying (Clause 2.1.1 of the Agreement)**

1. All Copies shall be made onto paper except for Copies made onto acetate or similar transparent material, slides, microfiche and microfilm and except for interlibrary loan transmission. Copies made onto slides, microfiche and microfilm shall only be made in accordance with the additional terms and conditions of this Agreement. For interlibrary loan transmission, a Library Worker who receives a Copy in digital form may provide the individual who has requested it with a paper Copy only and thereafter will promptly destroy the Digital Copy.
2. Except as otherwise specifically provided in the Agreement, no copying shall exceed 10% of a Published Work or the following, whichever is greater
  - (1) an entire newspaper article or a page;
  - (2) an entire single short story, play, poem, essay or article from a book or periodical issue (including a set of conference proceedings) containing other works;
  - (3) an entire single item of print music from a book or periodical issue containing other kinds of work;
  - (4) an entire entry from an encyclopedia, dictionary, annotated bibliography or similar reference work;
  - (5) an entire reproduction of an artistic work (including drawing, sculpture, painting, prints, architectural works of art or works of artistic craftsmanship) from a book or periodical issue containing other works;
  - (6) an entire chapter which is 20% or less of a book.

JAMCOPY shall use reasonable efforts to clear requests by the Institution to copy in excess of these limits. It is understood that such clearances may be subject to additional payment of royalties.
3. JAMCOPY shall use reasonable efforts to clear requests by the Institution to copy works published in excluded countries or by excluded publishers and excluded works. It is understood that such clearances may be subject to additional payment of royalties, as required by the rights holder.
4. The Institution shall only make a sufficient number of Copies to provide one for each Student, two for each Teacher and such number required by the Institution for administrative purposes.
5. The Institution shall not make any Copies of any Published Work which to the knowledge of the Institution or the person doing the copying or ordering the Copies is commercially available as a separate publication at a reasonable price and within a reasonable period of time.
6. The Institution shall not engage in systematic, cumulative copying of the same Published Work for a single course or program in one academic year beyond the limits set out in clause 2 of this Schedule.

7. The Institution shall not assemble any Copies of Published Works into a Coursepack.
8. The Institution shall include on at least one page of all multiple Copies made pursuant to clause 2.1.1 of this Agreement for the purpose of distribution to Students and on all Copies made pursuant to clause 2.1.1 of this Agreement for the purpose of interlibrary loan, the international copyright symbol ©, a credit to the publisher, the artist or illustrator of any artistic work reproduced (where known) and the author or authors (where known) and, when possible, shall display the following prominent notice:

**"This material has been copied under licence from JAMCOPY.  
Resale or further copying of this material is strictly prohibited."**

## SCHEDULE E

### Terms of Non- Digital Copying (Clause 2.1.2 of the Agreement)

1. All Copies shall be made onto paper except for Copies made onto acetate or similar transparent material, slides, microfiche and microfilm. Copies made onto slides, microfiche and microfilm shall only be made in accordance with the additional terms and conditions of this Agreement.
2. Except as otherwise specifically provided in this Agreement, no copying shall exceed 15% of a Published Work or the following, whichever is greater:
  - (1) an entire newspaper article or a page;
  - (2) an entire single short story, play, poem, essay or article from a book or periodical issue (including a set of conference proceedings) containing other works;
  - (3) an entire single item of print music from a book or periodical issue containing other kinds of work;
  - (4) an entire entry from an encyclopedia, dictionary, annotated bibliography or similar reference work;
  - (5) an entire reproduction of an artistic work (including drawing, sculpture, painting, prints, architectural works of art or works of artistic craftsmanship) from a book or periodical issue containing other works;
  - (6) an entire chapter which is 20% or less of a book.

JAMCOPY shall use reasonable efforts to clear requests by the Institution to copy in excess of these limits. It is understood that such clearances may be subject to additional payment of royalties.

3. JAMCOPY shall use reasonable efforts to clear requests by the Institution to copy works published in excluded countries or by excluded publishers and excluded works. It is understood that such clearances may be subject to additional payment of royalties, as required by the rights holder.
4. The Institution shall only make a sufficient number of Copies to provide one for each Student, two for each Teacher and such number required by the Institution for administrative purposes.
5. The Institution shall not make any Copies of any Published Work which to the knowledge of the Institution or the person doing the copying or ordering the Copies is commercially available as a separate publication at a reasonable price and within a reasonable period of time.
6. The Institution shall not engage in systematic, cumulative copying of the same Published Work for a single course or program in one academic year beyond the 1 limits set out in clause 2 of this Schedule;
7. If a Coursepack made pursuant to this Agreement includes extracts from textbooks,

the following limitations apply to those extracts:

- (a) no such extract can exceed the lesser of 5% or a single chapter of a textbook;
  - (b) the Coursepack must not contain more than two such extracts from textbooks written by the same author and published by the same publisher within any period of five years; and
  - (c) not more than 50% of the pages in the Coursepack can be taken from textbooks.
8. The Institution shall include on at least one page of all Copies made pursuant to clause 2.1.2 of this Agreement the international copyright symbol ©, a credit to the publisher, the artist or illustrator of any artistic work reproduced (where known) and the author or authors (where known) and shall display the following prominent notice:

**"This material has been copied under licence from JAMCOPY.  
Resale or further copying of this material is strictly prohibited."**

## SCHEDULE F

### Terms of Non- Digital Copying (Clause 2.1.3 of the Agreement)

1. All Copies shall be made onto paper except for Copies made onto acetate or similar transparent material, slides, microfiche and microfilm. Copies made onto slides, microfiche and microfilm shall only be made in accordance with the additional terms and conditions of this Agreement.
2. Except as otherwise specifically provided in this Agreement, no copying shall exceed 15% of a Published Work or the following, whichever is greater:
  - (1) an entire newspaper article or a page;
  - (2) an entire single short story, play, poem, essay or article from a book or periodical issue (including a set of conference proceedings) containing other works;
  - (3) an entire single item of print music from a book or periodical issue containing other kinds of work;
  - (4) an entire entry from an encyclopedia, dictionary, annotated bibliography or similar reference work;
  - (5) an entire reproduction of an artistic work (including drawing, sculpture, painting, prints, architectural works of art or works of artistic craftsmanship) from a book or periodical issue containing other works;
  - (6) an entire chapter which is 20% or less of a book.

JAMCOPY shall use reasonable efforts to clear requests by the Institution to copy in excess of these limits. It is understood that such clearances may be subject to additional payment of royalties.

3. JAMCOPY shall use reasonable efforts to clear requests by the Institution to copy works published in excluded countries or by excluded publishers and excluded works. It is understood that such clearances may be subject to additional payment of royalties, as required by the rights holder.
4. The Institution shall not make any Copies of any Published Work which to the knowledge of the Institution or the person doing the copying or ordering the Copies is commercially available as a separate publication at a reasonable price and within a reasonable period of time.
6. The Institution shall not engage in systematic, cumulative copying of the same Published Work for a single course or program in one academic year beyond the limits set out in clause 2 of this Schedule.
7. No Copies of Licensed Works may be assembled into a Coursepack.
8. The Institution shall include on at least one page of all Copies made pursuant to clause 2.1.3 of this Agreement the international copyright symbol ©, a credit to the publisher, the artist or illustrator of any artistic work reproduced (where known) and the author or

authors (where known) and shall display the following prominent notice:

**"This material has been copied under licence from JAMCOPY.  
Resale or further copying of this material is strictly prohibited."**

## SCHEDULE G

### Terms of Non-Digital Copying (Clause 2.1.6 of the Agreement) Alternate Format Copies

1. The Institution shall not make any alteration in the text of the original Published Work except where reasonably required in making the Alternate Format Copy. Omissions and deletions from the Published Work must be indicated in the Alternate Format Copy.
2. The Institution shall include on all Alternate Format Copies made pursuant to clause 2.1.6 of this Agreement international copyright symbol ©, a credit to the publisher and the author or authors (where known) and shall display the following prominent notice:  
  
**"This material is reproduced in alternate format under licence from JAMCOPY.  
Resale or further copying of this material is strictly prohibited."**
3. The Institution shall not make any Alternate Format Copies of any Licensed Work where to the knowledge of the Institution such a Copy is available as a separate publication at a reasonable price and within a reasonable period of time.
4. On request, and if available, the Institution shall provide a Copy of any Alternate Format Copy made by it pursuant to this Agreement to JAMCOPY, on behalf of the Rightsholder.

## SCHEDULE H

### Terms of Digital Copying (Clause 2.1.7 of the Agreement)

1. All Digital Copies made pursuant to clause 2.1.7 of this Agreement must be faithful and accurate reproductions and must not alter, manipulate, edit, delete, amend or rearrange the content or appearance of all or part of the Work Licensed for Digital Uses in any way
2. Digital Copies may not be placed on the publicly accessible internet or be linked whether directly or indirectly by hypertext links (or the like) to or from any external or third party website
4. Except as permitted by the Licence no other copying, dissemination, publication, communication or making available to the public, repackaging, distribution, in any form of Digital Copies, in whole or in part, is permitted.
5. Where any Work Licensed for Digital Uses incorporates, or has adjacent to it, the identity of the author of the work, no Digital Copy of that work shall be made unless the Digital Copy incorporates the identity of such author.
6. The Institution shall ensure that any Digital Copy distributed pursuant to clause 2.1.7 (iv) of this Agreement carries the international copyright symbol © attached to the Work and is marked to the effect of:

**“This Digital Copy was made and delivered under licence from JAMCOPY.  
Further reproduction is strictly prohibited”**

7. The Institution will delete from the hard drives of all its central and local servers any and all Digital Copies which may be stored there upon notice from JAMCOPY that the Rightsholder believes that the Licensed Work contained in the Digital Copies infringes copyright or is or may be defamatory, obscene or otherwise unlawful.
8. Except as otherwise specifically provided in this Agreement, the Institution shall not reproduce, convert, store, distribute or transmit or authorize the reproduction, conversion, storage, distribution or transmission of more than 10 % of a Work Licensed For Digital Uses or, the following whichever is greater:
  - (1) an entire newspaper article or a page;
  - (2) an entire single short story, play, poem, essay or article from a book or periodical issue (including a set of conference proceedings) containing other works;
  - (3) an entire single item of print music from a book or periodical issue containing other kinds of work;
  - (4) an entire entry from an encyclopedia, dictionary, annotated bibliography or similar reference work;
  - (5) an entire reproduction of an artistic work (including drawing, sculpture, painting, prints, architectural works of art or works of artistic craftsmanship) from a book or periodical issue containing other works;

- (6) an entire chapter which is 20% or less of a book.
9. The Institution shall not engage in systematic, cumulative reproduction, conversion, storage, distribution or transmission of the same Work Licensed for Digital Uses for a single course or program in one academic year beyond the limits set out in clause 8 of this Schedule.
10. The Institution shall not assemble any Digital Copies into a Coursepack.
11. The Institution shall not sell or authorize the sale of any Digital Copies