

IOP Publishing

Terms and Conditions

Version dated 1 September 2021

- 1 These terms and conditions are the main licence terms between IOP Publishing Limited of Temple Circus, Temple Way, Bristol BS1 6HG England ("IOP") and the educational institution or commercial organisation (the "Customer") (references to the "Customer" shall extend to references to the "Consortium" and/or the "Institution", where applicable and unless stated to the contrary) whose name and contact details are included in the Annexure(s) (the "Licence").
- 2 The Customer may give Authorised Users (defined in term 9) electronic access to the content described in the Annexure(s) (the "Publications") (references to the "Publications" shall extend to references to the "Content" and/or the "Journals" where applicable and unless stated to the contrary) subject to these terms and conditions.
- 3 Unless otherwise agreed with IOP, the Customer will access the Publications through IP addresses supplied to IOP in writing (the "IP addresses"). The Customer shall promptly notify IOP in writing of any updates to the IP addresses during the term of this Licence.
- 4 Any amendments to these terms and conditions shall be in writing and signed by authorised signatories of the parties. For the avoidance of doubt, no terms and conditions of the Customer, including, but not limited to, those included in purchase orders or other Customer documentation regarding the licensing of the Content, shall form part of this Licence, whether sent to IOP before or after this Licence is entered into by the parties.
- 5 This Licence shall be for the term which is set out in the Annexure(s). If the Customer pays IOP the applicable Licence Fee, it shall then continue on an annual rolling basis.
- 6 The Customer shall not assign or transfer its right to access the Publications to any other institution, organisation or person.
- 7 For the avoidance of doubt, where the Customer has previously entered into a separate agreement with IOP, including, but not limited to, an archive agreement, and that agreement is still in force, the Customer's rights and obligations which relate to that other service are unaffected by these terms and conditions.
- 8 IOP's online publications and their content, including, but not limited to, abstracts, are either owned by IOP or IOP has the right to make them available and are subject to all applicable copyright, database protection and other rights of copyright owners and publishers under the laws of England and other countries. Authorised Users shall claim no ownership by reason of their use of or access to the Publications. ALL RIGHTS RESERVED.

Authorised Users

- 9 In these terms and conditions, the term "Authorised Users" shall mean (definition depends on whether the Customer is a **commercial organisation** or an **educational institution**):

- 9.1 **(applies only if the Customer is a commercial organisation)**, the Customer's employees, contract staff (permanent or temporary) and persons with authorised access to the Customer's information facilities on site using one of the IP addresses. Access is limited to the site addresses set out in the Annexure(s) except that Authorised Users may access the Service from terminals or workstations from which they undertake work for the Customer. Access from other countries is only permitted where those countries are set out in the Annexure(s);
- 9.2 **(applies only if the Customer is an educational institution)** the Customer's employees, faculty (permanent, temporary and visiting), students officially affiliated with the Customer, persons with legal access to the library's facilities on site using one of the IP addresses and contract staff (permanent or temporary). Authorised Users include persons affiliated with remote sites or campuses of the Customer in the same country as the Customer and/or persons affiliated with the Customer who are studying overseas at sites or campuses of a third party institution on a temporary basis.

For the avoidance of doubt, members of the public authorised for on-site access by the Customer shall only be entitled to do the above activities with regard to the Publications whilst on the Customer's premises and shall lose this access upon departure. In addition, such persons shall be excluded from all remote access privileges.

Access to the Publications

- 10 Where the Customer wishes to allow the Authorised Users to access the Publications from terminals or work stations at locations other than the site addresses supplied to IOP, this may be done via public access, caching and proxy servers, or some other recognised authentication system such as Shibboleth, provided that the Authorised Users access the Publications through the IP addresses and provided further that the Customer has adequate security measures in place to ensure that only Authorised Users access the Publications via the applicable method.
- 11 Access extends only to Authorised Users individually and may not be transferred or extended to others. The Customer shall take all reasonable measures to ensure that only Authorised Users can use the Publications and shall ensure that Authorised Users are made aware of and understand the restrictions and prohibitions on use set out in these terms and conditions and that they abide by them. The Customer shall also exercise vigilance and be responsible for all display and access controls, including, but not limited to, security measures, necessary to ensure that the Publications are only accessible by Authorised Users. The Customer shall make every effort to enforce these terms and conditions on receiving information that reasonably indicates that they are being violated. Where the Customer becomes aware of any unauthorised access, it shall inform IOP in writing with full details as soon as reasonably possible.
- 12 Authorised Users may access, search and print hard copy of text. Copying shall be limited to making a single printed copy or electronic copies of a reasonable number of individual articles, chapters or other similar items.
- 13 No text accessed via the Publications may be made available to non-Authorised Users, either for commercial reward or free of charge, except that for inter-library loan purposes:

- 13.1 a single paper copy of an article or chapter from a single Publication may be made and sent non-digitally to a library in the same country as the Customer under fair dealing/use exemptions;
- 13.2 a single copy of an article or chapter from a single Publication may be made available to a library in the same country by secure transmission using Ariel or ILLiad (or their equivalent) whereby that electronic file is deleted immediately after printing. Such supply shall be for the purpose of research or private study and not for commercial use or onward transmission or distribution. In the USA, such copies may only be made in compliance with Section 108 of the Copyright Act of the USA and within CONTU guidelines.
- 14 Access is granted to Authorised Users of **commercial organisations (as defined in term 9.1)** solely for internal research, testing or training purposes or for personal use in accordance with these terms and conditions.
- 15 Access is granted to Authorised Users of **educational institutions (as defined in term 9.2)** solely for private study or research for a non-commercial purpose by Authorised Users. Authorised Users may use the Publications for educational resources, such as "course packs", made available solely to other Authorised Users, provided that electronic copies included in such educational resources are removed or deleted at the end of the semester or term in which the relevant course ends. Such Authorised Users may also make brief quotations from the content of the Publications, with the customary acknowledgement of the source, and copy and transmit content from individual online articles in "person-to-person" and non-systematic scholarly exchanges of information.
- 16 The Customer and Authorised Users may only use this online access in a way that does not breach the laws of the country in which they are accessing the Publications.
- 17 Altering, recompiling, systematic or programmatic copying, reselling, redistributing, supplying, publishing or republishing (beyond the brief quotations permitted above) from the Publications of any text, output, search results or other information including, but not limited to, copyright, proprietary or other legal notices, in any form or medium is prohibited. Systematic downloading, service bureau redistribution services; printing for a for-fee-service purpose; document delivery services and/or the systematic making of print or electronic copies for transmission to non-Authorised Users (beyond that permitted above) are prohibited.

Termination

- 18 Access to the Publications shall terminate immediately if these terms and conditions are materially breached and such breach is not remedied within 30 days of the breaching party receiving a written request to remedy such breach or on written notice of a party where the other party becomes insolvent or is wound-up or otherwise ceases to operate or the occurrence of any analogous event under the law of any relevant jurisdiction. Where the Customer is the party in breach, IOP will write to its contact to notify them and to alert them to the fact that access to the Publications will be terminated by IOP if the breach is not remedied. IOP shall have the right to terminate that access if the breach is not remedied to its satisfaction within 30 days of such notification being sent to the Customer. In addition, IOP reserves the right to suspend temporarily the Customer's access to the Publications for infringement of IOP's copyright or for breach of these terms and conditions. On suspending such access, IOP will issue a notice to the Customer specifying the nature of the breach and

the activity causing it. IOP will restore access to the Customer on receipt of written notice that such activity has ceased and that the Customer has made all necessary efforts to protect against recurrence of such activity.

Continued Access to Content (term 19 is not applicable to IOP ebooks, IOP Archive and Article Packs)

- 19.1 Upon termination of this Licence, where the Customer:
- 19.1.1 is not in breach of any of the terms and conditions of this Licence; and
 - 19.1.2 has paid all its fees in full,
- the Customer will be entitled to have continued access to the issues of the Publications dated with the calendar year in which this Licence commenced.
- 19.2 Where this Licence remains in force for subsequent full calendar years, and the conditions in term 19.1 apply, the Customer will have continued access to the issues of the Publications under this Licence which were dated with those full calendar years (the "Available Content"). All other access shall terminate.
- 19.3 The Available Content will be made available via a website on payment of an annual maintenance fee and for so long as IOP provides electronic access to that content via that website. If access via a website is no longer available at any time, the Available Content will be made available on disk or some other form of electronic media.
- 19.4 If, at any time, IOP ceases to publish or distribute any of the Available Content then it will use its reasonable endeavours to negotiate the right for the Customer to continue to access it in accordance with these terms and conditions.

Fees

- 20 The fee payable by the Customer for access to the Publications shall be that agreed in writing and shall be payable by the Customer within 30 days of the date of invoice. For subsequent years, for products which renew on an annual basis and/or where the parties agree to add other content to the Publications, the Customer shall pay the required fees within 30 days of the date of invoice. Where the parties agree that additional content shall be added to the Publications then this shall be confirmed in writing (email shall suffice) and that content shall then be included within the definition of the "Publications" upon payment by the Customer of the applicable fee. In addition, where the Customer initially licenses an Article Pack, and then goes on to purchase more downloads from the Publications, all subsequent purchases shall be subject to these terms and conditions, unless otherwise agreed by the parties in writing.
- 21 IOP will notify the Customer, in writing and in advance, with details of the fees payable for subsequent years. The Customer acknowledges that the fees for the initial term (which, where relevant, is set out in the Annexure(s)) are fixed but, unless the fees for subsequent years have been agreed with IOP in writing, fees for subsequent years are subject to price increases and alterations. In addition, for Article Packs, IOPscience extra and IOPcorporate, where IOP acquires or launches a new publication, such publication shall be added to the Publications and the Customer shall pay the appropriate additional fee to reflect this.

- 22 All sums specified are exclusive of sales taxes (where applicable) which shall be paid by the Customer on presentation of an appropriate tax invoice or other appropriate claims document. If the Customer is tax exempt, it shall notify IOP of this in writing and shall provide IOP with any documentary evidence it requires to support this exemption, promptly on request at any time.

Withdrawal of the Publications

- 23 IOP reserves the right at any time to withdraw any of the Publication(s) (or part) if it no longer retains the right to publish or ceases, for whatever reason, to publish or to distribute such Publication(s) or if, in its sole discretion, it believes that such Publication(s) contains any material which infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.
- 24 If any Publication(s) is withdrawn, IOP will give the Customer written notice and, where it deems it to be applicable, will substitute it with another publication which is not currently included as part of the Publications. If it does not substitute the Publication with another publication then IOP will reduce the fee for that licence year by a sum equivalent to the contribution of the withdrawn content to the total fee, pro-rated. IOP shall be entitled to offset any reduction owing to the Customer against any amounts owed to IOP by the Customer under any agreement between the parties.

Availability of the Publications

- 25 IOP will use its reasonable endeavours to make the Publications available on a 24 hour basis, subject to IOP's right to suspend access in order to carry out routine maintenance, repairs, testing, reconfigurations or upgrades and unavailability caused by circumstances beyond IOP's reasonable control including, but not limited to, downtime relating to telecommunications lines or any Internet nodes or facilities. If access is suspended or interrupted, or fault or defect occurs which prevents access, IOP's liability shall be limited to using commercially reasonable efforts to restore access as soon as is reasonably practicable. IOP shall have no other liability in this respect. IOP shall not be liable for any delay, downtime, transmission error, software or equipment incompatibility, force majeure or any failure of performance beyond its reasonable control.

Warranties and Exclusions of Liability

- 26 IOP WARRANTS THAT IT IS ENTITLED TO GRANT THE LICENCES IN THESE TERMS AND CONDITIONS.
- 27 IOP DOES NOT WARRANT THAT THE CUSTOMER'S ACCESS TO THE PUBLICATIONS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE RESULTS OBTAINED WILL BE USEFUL OR WILL SATISFY ITS REQUIREMENTS.
- 28 OTHER THAN AS SET OUT ABOVE, IOP MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PUBLICATIONS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF QUALITY, ORIGINALITY, SUITABILITY, SEARCHABILITY, OPERATION, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 29 IOP SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR OTHER DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THESE TERMS AND

CONDITIONS AND/OR USE OF THE PUBLICATIONS, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF CONTRACTS, BUSINESS INTERRUPTION OR LOSS OF DATA.

- 30 IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF IOP FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF A BREACH OR TERMINATION OF ACCESS TO THE PUBLICATIONS, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, DUE TO NEGLIGENCE, EXCEED THE TOTAL AMOUNT PAID BY THE CUSTOMER TO IOP FOR THE PUBLICATIONS DURING THE YEAR OF THE LICENCE IN WHICH SUCH CLAIM, LOSS OR DAMAGE OCCURRED, EVEN IF IOP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL CLAIM, LOSS OR DAMAGE.
- 31 THE TERMS SETTING OUT LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.
- 32 REGARDLESS OF THE CAUSE OR FORM OF ACTION, THE CUSTOMER MAY BRING NO ACTION ARISING FROM THESE TERMS AND CONDITIONS MORE THAN SIX CALENDAR MONTHS AFTER THE CAUSE OF ACTION AROSE.
- 33 THE CUSTOMER ASSUMES SOLE RESPONSIBILITY FOR ALL USE OF THE PUBLICATIONS THROUGH ITS IP ADDRESSES.
- 34 IN THE CASE OF ARCHIVE CONTENT, IOP USES ITS REASONABLE ENDEAVOURS TO INCLUDE ALL RESEARCH MATERIAL FORMING PART OF THE PUBLICATIONS BUT DUE TO THE AGE, RARITY AND UNAVAILABILITY OF CERTAIN MATERIAL, IOP ACCEPTS NO RESPONSIBILITY FOR THE COMPLETENESS OF THE PUBLICATIONS AND MAKES NO REPRESENTATION OR WARRANTY IN THIS REGARD.
- 35 IOP CONDUCTS REASONABLE QUALITY CHECKING AS PART OF THE PRODUCTION PROCESS OF THE PUBLICATIONS. THIS CHECKING ENCOMPASSES ACCURACY AND COMPLETENESS. NO CHECKING ABOVE AND BEYOND THIS HAS BEEN CARRIED OUT. IOP WILL TAKE REASONABLE CARE TO ENSURE THAT THE PUBLICATIONS ARE COMPLETE, ACCURATE AND ERROR FREE BUT IOP ACCEPTS NO RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF THE PUBLICATIONS AND MAKES NO WARRANTY OR REPRESENTATION IN THIS REGARD.

General

- 36 Failure to enforce any provision on any one occasion will not affect either party's right to enforce another provision or the same provision on another occasion. These terms and conditions, the accompanying Annexure(s) and any supplementary terms and conditions of IOP, constitute the entire agreement between the parties relating to the Publications and supersede any prior communication between them with respect to the subject matter. This is not intended to exclude any liability that either party may have for fraud.
- 37 Where, at the time of agreeing to these terms and conditions, the Customer has existing subscriptions to print journals published by IOP, and those journals are included within the Publications, it may be entitled to renew those print subscriptions for a discount on the catalogue price whilst it has access to the Publications. IOP will provide details of the applicable discount on request.
- 38 Where, during the term of this Licence, the Customer merges with another institution or organisation, it shall be entitled to add that institution's or organisation's sites to this Licence provided that, where that other institution or organisation is an existing customer of IOP, it

maintains all of its then current subscriptions with IOP (whether for print and/or electronic products and services) or, where that institution or organisation wishes to cancel any or all of its existing subscriptions, going forward, the cost of those cancelled subscription(s) is added to the then current Licence Fee payable under this Licence. If the merged institution or organisation was not a current customer of IOP then IOP reserves the right to increase the licence fee to reflect the addition.

- 39 The Customer shall keep the negotiations with IOP regarding this Licence, and the terms of this Licence, confidential, including, but not limited to, the Licence Fee, and the Customer shall not disclose the same to any third party. For the avoidance of doubt, the confidentiality requirement shall not apply to those circumstances where the Customer is obliged to disclose any particular information, in accordance with its governing law and/or constitution.
- 40 Where the Customer provides Personal Data (as defined in the Data Protection Act (2018) and any subsequent legislation or regulations) to IOP, the Customer acknowledges that such Personal Data may be processed:
- 40.1 for the administration of this Licence;
- 40.2 for the provision of services in connection with this Licence, including, but not limited to, creation of the Customer's online account and exchange of customer service communications; and/or
- 40.3 as otherwise stated in IOP's Privacy Policy from time to time.
- 41 Where the Customer requests notarisation, apostilling, legalisation, couriering of physical documents and / or translation of documents related to the processing of this Licence and / or any additional agreement with IOP, IOP reserves the right to charge the Customer for the cost of these services, in addition to the fees stated in the Annexure(s).