

Dated 26 January 2012

HIGHER EDUCATION FUNDING COUNCIL FOR ENGLAND

- and -

THE COPYRIGHT LICENSING AGENCY LIMITED

AGREEMENT

Relating to REF 2014

THIS AGREEMENT is dated

2012

PARTIES

(1) HIGHER EDUCATION FUNDING COUNCIL FOR ENGLAND Northavon House,
Coldharbour Lane, Bristol BS16 1QD ("HEFCE")

(2) THE COPYRIGHT LICENSING AGENCY LIMITED Saffron House, 6-10 Kirby Street,
London, EC1N 8TS ("CLA")

BACKGROUND

- (A) The Research Excellence Framework (REF) is a peer review exercise to evaluate the quality of research in UK higher education institutions.
- (B) The REF is managed by the REF team, based at the Higher Education Funding Council for England (HEFCE), on behalf of the four UK higher education funding bodies – HEFCE, the Scottish Funding Council (SFC), the Higher Education Funding Council for Wales (HEFCW) and the Department for Employment and Learning, Northern Ireland (DEL).
- (C) As part of the REF 2014, Higher education institutions (HEIs) will submit research outputs for expert review by panels established for the REF (REF panels). Such outputs will, amongst other items, include journal articles and other research outputs published during the period January 1 2008 to 31 December 2013. Certain of those published research outputs will comprise publications which are available in print on paper form only and others which are available online through publishers' or third parties' commercial online information services.
- (D) CLA, as agent for the Authors' Licensing and Collecting Society, the Publishers Licensing Society, the Design and Artists Copyright Society Limited and various reproduction rights organisations outside the United Kingdom acts on behalf of a substantial number of owners and/or mandating publishers of Licensed Material (as defined below) offered for sale or subscription in the United Kingdom, and is prepared to give indemnities in respect of claims for copyright infringement made by such and other owners and publishers.
- (E) In order to assist HEIs to make submissions to the REF 2014, and for REF panels and the REF team to access published research outputs included in such submissions, HEFCE wishes to make such published research outputs accessible in physical or digital form as appropriate.

In the case of published research output which is only available in print on paper form, this may involve photocopying the material and providing it for review by authorised users (panel members), or scanning the material in digital form and making it available for review by panel members via a secure web-based system.

In the case of published research output which is available online through publishers' or third parties' online information services, this will involve HEFCE; storing PDFs that are downloaded from publisher sites by subscribing universities, storing PDFs that it downloads from publisher sites in order to facilitate offline access by panel members and storing digital object identifiers and other metadata relating to such published research output on the REF Submission System

- (F) CLA has agreed to authorise HEFCE to make the necessary arrangements so that through the use of relevant authentication systems, HEFCE will establish a secure, web-based submission system from which the REF team and panel members can access published research outputs for the purposes of the REF 2014 as specified in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS

1.1. In this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:-

"Assessment Phase" means the period from 1 September 2012 to 31 December 2014;

"Authorised Users" means (i) HEFCE's employees who are engaged in the management of the REF 2014, including Panel Secretariat seconded to HEFCE to assist in the administrative aspects of the REF and (ii) Panel Members, including assessors and observers and (iii) officials involved in investigations under REF complaint procedures (e.g. whistle blowing policies);

"CrossRef" means the collaborative reference linking service operated by Publishers International Linking Association, Inc. (PILA) which effects linkages through DOIs which are tagged to article metadata supplied by participating publishers;

"DOI" means Digital Object Identifier, a system, governed by the International DOI Foundation, for identifying content objects in the digital environment. DOIs are names assigned to any entity for use on digital networks and DOIs resolve to the current location of the entity;

"Digital Form" means a document in Adobe Portable Document Format (PDF) or in any other format as approved by CLA from time to time;

"Funding Bodies" means HEFCE, SFC, HEFCW and DEL;

"HEI" means a higher education institution;

"Licensed Material" means all or part of any book, journal, magazine or other periodical and conference proceedings which has been or will be published or made available in print on paper or in Digital Form during the Publication Period which is included or referred to in a Submission and in respect of which CLA has been mandated by publishers or is otherwise entitled to administer certain rights over those materials

"Panel Members" means individuals who are members (including chairs, assessors and observers) of the main panels and sub-panels established within the REF 2014 whilst acting in the course of their duties as main or sub-panel members;

"Permitted Uses" means the uses of the Licensed Material which Authorised Users are permitted to make in accordance with clause 6 below;

"Publication Period" means the period from 1 January 2008 to 31 December 2013;

"Publisher Site" means a website or other online Data Collection System from which a publisher or other third party operates a commercial information service from which Licensed Material is made available;

"REF 2014" means the Research Excellence Framework 2014, further details of which are given at <http://www.REF.ac.uk>;

"REF Submission System" means a secure web-based data collection system to be owned and operated by HEFCE during the term of this Agreement

"Submission" means a submission to the REF 2014 made by an HEI.

"Submission Deadline" means 29 November 2013

1.2. Any reference to "party" or "parties" (in upper or lower case) shall be

deemed to be a reference to a party or parties to this Agreement.

- 1.3. Unless the context otherwise requires, words in the singular include the plural and vice versa and words for any gender shall include all genders. Reference to persons includes individuals, bodies corporate, unincorporated associations and partnerships.

2. AGREEMENT

- 2.1. CLA hereby grants a non-exclusive, royalty-free licence to HEFCE to make Licensed Material available at no cost to Authorised Users, and to permit them to use Licensed Material for the Permitted Uses at no cost, during the Assessment Phase in accordance with the terms of this Agreement. This free collective licence is provided to enable access for REF purposes to items within Licensed Material purchased by the UK Higher Education community.

3. PERIOD OF AGREEMENT

- 3.1. This Agreement will come into effect on the date of this Agreement and will continue in force until June 30 2015.
- 3.2. This Agreement is subject to early termination in accordance with clause 14 below.

4. SUBMISSION OF LICENSED MATERIAL BY HEIS TO HEFCE

Licensed Material in print on paper form

- 4.1. In respect of any Licensed Material in print on paper form, CLA hereby authorises HEFCE:-
 - 4.1.1. to permit HEIs to photocopy Licensed Material or to scan Licensed Material from print on paper form into Digital Form; and
 - 4.1.2. to transmit promptly the photocopy or electronic file containing a copy of the Licensed Material to HEFCE
- 4.2. Such authorisation shall be given on condition that HEFCE itself deletes and requires each such HEI and all Authorised Users to delete within three months of the end of the Assessment Phase all electronic copies of content created under this licence after the electronic file has been sent to HEFCE except to the extent storage may be permitted under any licence already held by the HEI.

Licensed Material in Digital Form

- 4.3. In respect of Licensed Material to be made available in Digital Form from a Publisher Site, CLA hereby authorises HEFCE to make the necessary arrangements with HEIs, and to permit HEIs, to submit the DOIs for such Licensed Material to HEFCE for storage on the REF Submission System.
- 4.4. Where a HEI has a subscription permitting access to the full-text of a submitted research output the HEI is authorised to download the publisher's PDF file for transmission to HEFCE for storage in the REF Submission System.

5. MAKING LICENSED MATERIAL AVAILABLE VIA THE REF SUBMISSION SYSTEM

- 5.1. CLA hereby grants a non-exclusive royalty-free licence to HEFCE to make Licensed Material available to Authorised Users from the REF Submission System in accordance with the Permitted Uses.
- 5.2. In the case of Licensed Material photocopied or scanned by HEIs and sent to HEFCE in accordance with clause 4.1, HEFCE shall have the right to

make the full text of such Licensed Material available to Authorised Users in Digital or printed form.

- 5.3. In the case of Licensed Material in Digital Form made available from a Publisher Site in accordance with clause 4.3, HEFCE shall have the right to retrieve DOIs from CrossRef, store DOIs of Licensed Material on the REF Submission System, use DOIs to resolve to Licensed Material and download such material from the Publisher Site, store Licensed Material on the REF Submission System and make such material available to Authorised Users in accordance with Permitted Uses.
- 5.4. For the purpose of the rights granted to HEFCE, HEFCE will make the necessary arrangements at its own cost to ensure that DOIs for Licensed Material, where such DOIs have been registered with CrossRef, are available and that Authorised Users can access Licensed Materials via the REF Submission System when required in order to use the Licensed Materials in accordance with the Permitted Uses.

6. PERMITTED USES

- 6.1. CLA hereby permits Authorised Users on a non-exclusive basis to access the Licensed Materials which are stored on, or which can be linked to from, the REF Submission System, and to use Licensed Material for the non-commercial purpose of assessing any REF Submission during the Assessment Phase by means of:-
 - 6.1.1. displaying the Licensed Material on screen or printing a copy;
 - 6.1.2. downloading and storing copies of such Licensed Material in Digital Form; and
 - 6.1.3. linking to Licensed Material referred to in any Submission via its DOI.
- 6.2. CLA authorises HEFCE to permit HEIs:-
 - 6.2.1. to incorporate or attach a copy in Digital Form or Print on Paper form of the full text of Licensed Material in any Submission; and
 - 6.2.2. to send Submissions containing such full text or the relevant DOI to HEFCE.
- 6.3. In respect of any Licensed Materials which are on a Publisher Site, the use of those Licensed Materials shall also be subject to any terms and conditions applying to that site, provided they do not conflict with any of the terms and conditions of this Agreement, in which event the latter shall prevail.

7. RESTRICTIONS

- 7.1. Neither HEFCE, nor any other Funding Body or Authorised User, may access or use any Licensed Material copied or accessed under this Agreement for any purpose other than the Permitted Uses in connection with the REF 2014.
- 7.2. No electronic files containing copies of all or part of any Licensed Material copied or accessed under this Agreement may be stored by any HEI except as mentioned in, and in accordance with, the express provisions of this Agreement.
- 7.3. No storage of any Licensed Material copied or accessed under this Agreement on the REF Submission System shall be permitted after the expiry of three months following the end of the Assessment Phase, and HEFCE undertakes that it will, and will use reasonable endeavours to

ensure that Authorised Users will, delete or destroy all Licensed Material stored or held by them within three months of the end of the Assessment Phase, except where that material is held or stored pursuant to a separate licence.

8. HEFCE DUTIES

- 8.1. HEFCE will ensure that the REF Submission System has been subject to appropriate penetration testing and that suitable login and authentication procedures are in place to ensure that access to the system is limited to those who have suitable permissions. HEFCE will monitor usage of the system throughout the period of this Agreement to ensure that system integrity is maintained and that users can access the system only via authorised accounts.
- 8.2. HEFCE shall ensure, through writing to the designated REF contacts and copied to the head of institution, that all HEIs are made aware of the Permitted Uses, and applicable restrictions, relating to the Licensed Material contained in this Agreement.
- 8.3. HEFCE shall ensure, through writing to each Authorised User to make them aware of the terms of Permitted Use, and applicable restrictions relating to the Licensed Material contained in this Agreement.
- 8.4. In the event that HEFCE becomes aware or is notified of any non-compliance, it will promptly take steps to bring such non-compliance to an end. These steps will include reminding the individual of their responsibilities under the terms of this licence, and notifying them that if non-compliance continues that their panel chair, nominating body, and/or employer will be notified. If non-compliance continues after such reminder access rights will be removed by HEFCE.
- 8.5. HEFCE will ensure that formal and public acknowledgement is given by the Funding Bodies to the fact that authors, visual creators and publishers have allowed free use of Licensed Material for the purposes of the REF 2014 and that publishers have allowed free access to their digital content.
- 8.6. If HEFCE becomes aware of, or is notified by any academic author that they wish to exclude material from the REF, it will notify CLA and will work with the relevant HEI to investigate the reasons for this and will use reasonable endeavours to resolve any concerns that the author may have.

9. CLA DUTIES

- 9.1. CLA will endeavour to ensure that the Publishers Licensing Society shall write to trade associations and mandating publishers, to make the publishing community aware of this licence, the use of published works within the REF 2014, and the access arrangements that have been put in place.
- 9.2. If CLA becomes aware or is notified by any publisher that an academic author wishes to exclude their material from this licence, it will notify HEFCE and support HEFCE's investigation and resolution of any concern.
- 9.3. CLA will endeavour to ensure that publishers enable access to Licensed Material in a timely way.

10. AUDIT RIGHTS

- 10.1. CLA's duly authorised representative shall be permitted remote and physical access to those aspects of the REF Submission System relating to the storage and transmission of research outputs, and to HEFCE's electronic or other records or files relating to it, on reasonable notice during normal business hours after the Submission Deadline in order to

verify that the REF Submission System is being operated in accordance with this Agreement. Any material accessed under this provision should be treated in confidence, and HEFCE may request that the authorised representative of CLA sign a confidentiality agreement prior to accessing any information contained within the REF Submission System. The terms of any such confidentiality agreement will be mutually agreed by CLA and HEFCE (both parties acting reasonably and in good faith) in advance of signature being requested.

- 10.2. In the event that any such access reveals any non-compliance on HEFCE's part, CLA shall specify the areas of non compliance in writing to HEFCE which shall take immediate steps to remedy the non-compliance.

11. WARRANTIES AND INDEMNITIES

- 11.1. HEFCE hereby warrants to CLA that it has full power to make this Agreement and to perform its obligations under this Agreement.
- 11.2. CLA hereby indemnifies HEFCE and HEIs for any claims by publishers related to the use of their works under this licence.
- 11.3. All warranties and indemnities shall survive the termination of this Agreement.

12. EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 12.1. The sole warranties given by CLA and HEFCE are those contained in clause 11.
- 12.2. Except for the express warranties stated in this Agreement, the Licensed Material is provided on an "as is" basis, and CLA disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose.
- 12.3. HEFCE and CLA make no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. All such implied provisions are hereby excluded to the full extent permitted by law.
- 12.4. Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data or business interruption arising out of the use of, or the inability to use, the Licensed Material.
- 12.5. Nothing in this Agreement shall operate to exclude or limit either party's liability for death or personal injury caused by its negligence.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. CLA, on behalf of rights holders it represents, reserves all copyright and other intellectual property rights in the Licensed Material in respect of copyright, database right, trade mark rights or otherwise.

14. TERMINATION

- 14.1. Either party may terminate this Agreement immediately by notice in writing if the other party:
 - 14.1.1. commits a material breach of any of the terms of this Agreement and, if such breach is capable of remedy, fails to remedy the breach within 28 days of receiving notice from the terminating party specifying the breach and requiring the breach to be remedied;

- 14.1.2. has been subject to a Force Majeure (as defined in clause 15.1) event for a continuous period of more than 90 (ninety) days;
- 14.1.3. enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction); becomes insolvent; ceases or threatens to cease to carry on business; compounds or makes any voluntary arrangement with its creditor; becomes subject to an administration order; is unable to pay its debts as they fall due; has an encumbrancer take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets.
- 14.2. CLA may terminate this Agreement in the event that the REF 2014 is wound up or suspended at any time before the end of the Assessment Phase, and HEFCE will reimburse CLA for any actual costs incurred. If plans for the REF 2014 are substantially changed then the Parties agree to discuss any impact it might have on this Agreement.
- 14.3. Upon termination of this Agreement, all rights granted in this Agreement shall revert to CLA and its rightsholders without further notice. Such termination shall not affect the rights of any HEI or Panel Member in respect of any Licensed Material submitted to the REF 2014 before the date on which termination of this Agreement takes effect.
- 14.4. HEFCE shall ensure that all Licensed Material held on the REF Submission System are deleted no later than three 3 months after the end of the Assessment Phase.

15. GENERAL CLAUSES

- 15.1. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to, Acts of God, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
- 15.2. HEFCE may not assign, transfer or sub-contract, all or parts of its rights or obligations under this Agreement without CLA's prior written consent.
- 15.3. Neither party intends that any term of this shall be by virtue of the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to this Agreement.
- 15.4. Each party agrees to discuss any additional documents and any other acts or things which may be required and to explore possible ways forward with the aim of finding a shared solution.
- 15.5. A failure or delay by either party to exercise any right or remedy under this Agreement shall not be construed or operate as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy.
- 15.6. This Agreement represents the entire terms agreed between the parties in relation to its subject matter and supersedes all previous contracts or arrangements of any kind between the parties relating to its subject matter.
- 15.7. This Agreement may be amended, superseded, or cancelled (or any of its terms and conditions waived) only by written instrument signed by or on behalf of the CLA and HEFCE, or in the case of waiver, of the party waiving compliance.
- 15.8. Each of the provisions contained in this Agreement shall be construed as independent of every other such provision, so that if any provision of this agreement shall be determined by any court or competent authority to be

illegal, invalid and/or unenforceable then such determination shall not affect any other provision of this agreement, all of which other provisions shall remain in full force and effect.

16. DISPUTE RESOLUTION PROCEDURE

- 16.1. This Agreement shall be governed by and construed in accordance with English law.
- 16.2. Any dispute between the parties arising out of this Agreement will be settled in England and will be referred to an arbitrator appointed by the President for the time being of the London Chamber of Commerce. The decision of such arbitrator shall be final and binding upon the parties. Any reference under this Clause shall be deemed to be a reference to arbitration within the meaning of the Arbitration Act 1996.
- 16.3. Nothing in this clause shall prevent either party from applying to the English Courts for such provisional or protective measures as may be available.

17. NOTICES

- 17.1. All notices and other communications under this Agreement shall be in writing. They shall be deemed to have been duly given when delivered, if delivered by messenger during normal business hours of the recipient. Alternatively, they shall be deemed duly given when sent, if transmitted by fax transmission (receipt confirmed) during normal business hours of the recipient, or on the third business day following mailing, if mailed by certified or registered mail, postage prepaid, in each case addressed to the party concerned as shown in this letter or as otherwise notified by one party to the other as the address for the receipt of notices.

AS WITNESS the hands of the parties the day and year written above.

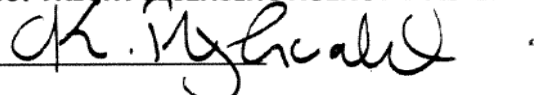
HIGHER EDUCATION FUNDING COUNCIL FOR ENGLAND

By: 

Name: Graeme Rosenberg

Title: REF Manager

THE COPYRIGHT LICENSING AGENCY LIMITED

By: 

Name: Kevin Fitzgerald

Title: Chief Executive

