

Licence Agreement

The University of Melbourne (**University**)

(**Licensee**)

Details

Date _____

Parties

Name **The University of Melbourne**, a body politic and corporate established pursuant to the *University of Melbourne Act 2009* (Vic)

Short form name **University**

Notice details

Name

Short form name **Licensee**

Notice details

Background

- A The University publishes the Melbourne Historical Journal (**MHJ**), an academic journal which is usually published once annually. The MHJ also publishes the occasional MHJ Research Series. The MHJ is sold through subscriptions to individual and institutional subscribers.
- B The Licensee wishes to obtain a licence to allow Authorised Users to have electronic access to the MHJ at the Site.
- C The University wishes to grant a licence to the Licensee on the terms set out in this Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Agreement means this means this agreement and includes any schedules and annexures to it, or documents incorporated by reference.

Approved Purpose means the purpose specified in Item 4 of Schedule 1, for which the Licensee may access the Licensed Materials.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time.

Authorised Users means students and employees of the Licensee and authorised clients of the Licensee's facilities, including members of the public who may access the Licensed Material at locations within the physical premises of the Licensee.

Business Day means a day that is not a Saturday, Sunday, or a University of Melbourne holiday as indicated on the University of Melbourne calendar (as amended from time to time).

Business Hours means between the hours of 9.00 am and 5.00 pm Melbourne time, on a Business Day.

Commencement Date means the date specified in Item 1 of Schedule 1.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by the University as confidential; or
- (c) the Licensee knows or ought to know is confidential,

and includes without limitation the terms of this Agreement and all information about the University, its employees, students, agents, research, property, policies and operations which is made available to the University as a result of executing this Agreement but does not include information which:

- (d) was in the public domain at the time of its provision by the University; or
- (e) became part of the public domain after its provision by the University t, otherwise than through an unauthorised disclosure by the Licensee, or any person to whom it has disclosed Confidential Information.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights or **IPR** means all intellectual property rights, including but not limited to, the following rights:

- (a) copyright, discoveries, inventions, patents, rights in circuit layouts, designs, moral rights, trade and service marks (including goodwill in those marks), domain names and trade names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and

- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist anywhere in the world (including Australia),

whether or not such rights are registered or capable of being registered.

Licence Fee means the licence fees set out in Item 2 of Schedule 1.

Licensed Materials means the electronic version of the University's publication which is specified in Item 5 of Schedule 1, to which the Licensee has access pursuant to this Agreement.

Prescribed Terms means the terms, conditions and warranties implied by law into contracts for the supply of goods and services.

Site means the electronic site(s) on which the Licensed Materials will be displayed, as defined by the IP range specified in Item 6 of Schedule 1.

Taxes means any taxes, imports, deduction, notice, charges including transportation and delivery charges (with holdings and duties imposed by any government agency) including customs, and transactions duties (arising in connection with fees agreement, together with any penalties, fines expenses or interest arising in connection with those amounts, but do not include GST).

Term means the term of this Agreement set out in Item 3 of Schedule 1.

2. Licence

2.1 Grant of Licence

- (a) In consideration of the receipt of the Fee, the University grants solely to the Licensee for the Term a personal, non-exclusive, non-transferable licence (**Licence**) to allow Authorised Users to access the Licensed Materials at the Site for the Approved Purpose, subject to the conditions set out in this Agreement.
- (b) The Licensee may provide Authorised Users with remote access to the Licensed Materials:
- (i) through the Licensee's Secure Network subject to the requirements set out in clause 4 of this Agreement; or
 - (ii) by issuing each Authorised User with a secure password and other authentication.

3. Permitted Uses

3.1 Reproduction of Licensed Materials

- (a) The parties acknowledge that the provisions of the *Copyright Act 1968 (Cth)* apply to the Licensed Materials and that all use of the Licensed Materials is subject to the relevant law relating to Intellectual Property Rights.
- (b) The Licensee may reproduce the Licensed Materials as follows:
- (i) by allowing downloading and printing the Licensed Materials for personal use by an Authorised User;
 - (ii) by way of electronic submission to any library which is operated on a not-for-profit basis for the purposes of research or study provided that the submission is not for any commercial purpose;
 - (iii) as part of materials which form part of a course pack or online learning resource for specific subjects offered by the Licensee to Authorised Users, provided that:

- (A) such use is not for a commercial purpose;
- (B) the reproduction is permitted pursuant to the *Copyright Act 1968 (Cth)*; and
- (C) each reproduction includes an acknowledgement of the Melbourne Historical Journal and the title and author of that part of the Licensed Materials.

4. Licensee's obligations

4.1 Ownership

The Licensee acknowledges and agrees that the licence granted in clause 2 does not imply the transfer to the Licensee of any proprietary rights in Licensed Materials. All rights in the Licensed Materials, including any rights in any modifications made by or on behalf of the Licensee (whether such modifications are authorised or unauthorised) will reside with the University.

4.2 Restrictions on use

The Licensee must:

- (a) undertake all necessary authentication and verification processes to ensure that only Authorised Users are able to access the Licensed Materials;
- (b) create and maintain reasonable security measures and policies to ensure that access to the Licensed Materials is limited to Authorised Users;
- (c) ensure that all IP addresses listed in Item 6 of Schedule 1 are controlled by it for the purposes of allowing access to the Licensed Materials by Authorised Users;
- (d) use all reasonable efforts to ensure that all Authorised Users are notified of the restrictions relating to the use of the Licensed Materials pursuant to this Agreement;
- (e) not permit any party who is not an Authorised User to access the Licensed Materials;
- (f) ensure that no unauthorised copying or use is made of the Licensed Materials by any party, including systematic downloading or commercial use;
- (g) not remove or deface any copyright notices relevant to the Licensed Materials;
- (h) not sell, rent, lease, sub-license, assign or otherwise transfer the Licensed Material to a third party;
- (i) not alter or modify the Licensed Materials.

5. The University's obligations

5.1 Technical Access

- (a) The parties acknowledge that the University will make reasonable endeavours so that the Licensed Material will be available at all times. However, the University does not warrant or represent that the Licensee will have uninterrupted access to the Licensed Materials at all times.
- (b) The University will not be liable for damages or refunds in the event that access to the Licensed Materials is temporarily suspended or impeded as a result of general network failures or delays, system maintenance procedures, traffic volume, upgrades, volume of server requests, interruption to utilities or telecommunications facilities or any other cause which is beyond the reasonable control of the University and which may result in the Licensed Materials being inaccessible to the Licensee or its Authorised Users.

6. Payment

6.1 Licence Fee

The Licensee must pay to the University:

- (a) the Licence Fee; and
- (b) any other charges set out in Schedule 1 or otherwise payable under this Agreement, within 30 days after the University issues an invoice to the Licensee in respect of such amounts.

6.2 Goods and services tax

- (a) In this clause 6.2 a word or expression defined in the GST Act has the same meaning given to it in that Act.
- (b) The Licence Fee and any other amounts payable by the Licensee under this Agreement do not include GST.
- (c) Where GST is payable on any taxably supply made under or in connection with this Agreement, the Licensee must pay to the University an additional amount equal to the GST payable on the supply provided that the supplier first issues a tax invoice to the Licensee for that supply.
- (d) If the University is required by law to pay any other Taxes in respect of this Agreement, the Licensee must reimburse the University for that amount.

7. Infringement

7.1 Notification

The Licensee must notify the University immediately if:

- (a) it becomes aware of any unauthorised copying or use of the Licensed Materials;
- (b) it becomes aware of any breach of confidence by any person to whom the Licensee has provided access to the Licensed Materials; or
- (c) a claim is made against the Licensee claiming that the Licensee's use of the Licensed Materials in accordance with this Agreement infringes the Intellectual Property Rights of any person (**Claim**).

7.2 Assistance

The Licensee must supply reasonable assistance to the University in defending or settling any Claim.

8. Warranties and limitation of liability

8.1 The University warrants and represents to the Licensee that as at the date of this Agreement, it has the rights, power and authority to enter into this Agreement and to grant the Licensee the rights to access the Licensed Materials in accordance with the terms of this Agreement. The University does not make any warranty as to the accuracy or completeness of the Licensed Materials.

8.2 To the extent permitted by law and subject to clause 8.1, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from this Agreement. If a supply under this Agreement is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing contained in this Agreement excludes, restricts or modifies the application of any provision, the exercise of any

right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent that the Australian Consumer Law permits the University to limit its liability, then the University's liability is limited to:

- (a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- (b) in the case of goods, the cost of revising or replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

8.3 The University is not liable to the Licensee or Authorised Users for any direct or indirect or consequential loss or expense, however caused, or for loss of data, anticipated profits or savings, goodwill, reputation, business receipts or contracts or losses or expenses resulting from third party claims.

8.4 The University's extent of liability in respect of this Agreement is limited to the amount payable by the Licensee during the 12 month period immediately preceding the date on which the liability was incurred.

9. Indemnity

9.1 The Licensee agrees to indemnify the University from and against liability and all loss and damage of any kind whatsoever caused directly or indirectly by any claim or action against the University arising directly or indirectly out of the Licensee's use of the Licensed Materials or any breach by the Licensee of the terms and conditions of this Agreement.

10. Term and termination

10.1 Term

This Agreement will commence on the Commencement Date and, unless terminated earlier in accordance with clause 10.2, will continue for the Term.

10.2 Termination by University

The University may terminate this Agreement with immediate effect by giving written notice to the Licensee if the Licensee:

- (a) commits a material breach of this Agreement and either that breach is incapable of remedy or the Licensee shall have failed to remedy that breach within 14 days after receiving written notice requiring it to remedy that breach;
- (b) becomes unable to pay its debts when they become due;
- (c) enters into any arrangement between itself and its (or any class of its) creditors;
- (d) ceases to carry on business;
- (e) has a mortgagee enter into possession or dispose of the whole or any part of its assets or business;
- (f) enters into liquidation or any form of insolvency administration; or
- (g) has a receiver, receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person appointed to the whole or any part of its assets or business.

10.3 Consequences of termination

At the end of the Term, or if otherwise terminated in accordance with clause 10.2, the University will withdraw the Licensee's access to the Licensed Materials. The Licensee must immediately:

- (a) stop accessing the Licensed Materials;
- (b) pay to the University any amounts due under this Agreement that remain unpaid.

10.4 Accrued rights of action

Expiration or termination of this Agreement (for whatever cause) will not affect any right or cause of action which has accrued to either party at or prior to the date of termination.

10.5 Survival

Clauses 8, 9 and 10 will continue after termination or expiry of this Agreement to the extent necessary to give them their intended effect.

11. Dispute resolution

11.1 Notification of dispute

A party claiming that a dispute has arisen under this Agreement must notify the other party giving details of the dispute. The parties agree to attempt to resolve the dispute in the spirit of good faith on a commercially realistic basis by negotiation or mediation for at least 14 days from the date of the notice giving details of the dispute, before commencing any legal proceedings in relation to the dispute.

11.2 Arbitration

Any dispute which cannot be settled by negotiation between the parties must be referred for determination by a person appointed for that purpose by the parties and failing agreement, appointed by the President of the Institute of Arbitrators and Mediators Australia (Victorian Division).

11.3 Determination binding

Any determination made under the above clause is binding on the parties and the *Commercial Arbitration Act 1984* (Vic) applies to the determination except to the extent otherwise agreed by the parties.

12. Governing Law

This agreement is governed by the laws of the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that state.

13. Notices

13.1 Notice requirements

- (a) A notice, demand, consent, approval or communication under this agreement must be:
 - (i) in writing, in English and signed by a person authorised by the sender; and
 - (ii) hand delivered or sent by prepaid post or facsimile to the recipient's address specified in the details as set out at the start of this agreement and marked to the attention of the contact person specified in the details, as varied by any notice given by the recipient to the sender.

13.2 Effect of notice

A notice given in accordance with clause 13.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

14. Miscellaneous

14.1 Alteration

This Agreement may be altered only in writing signed by each party.

14.2 Assignment

The Licensee may only assign this Agreement or a right under this Agreement with the prior written consent of the University acting in its absolute discretion.

14.3 Counterparts

This Agreement may be executed in counterparts, including facsimile counterpart. All executed counterparts constitute one document.

14.4 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

14.5 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

14.6 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the term of this Agreement continue in force.

14.7 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

15. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of the Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;

- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement which includes any schedules and annexures;
- (e) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time in the state, territory or other place where that obligation is to be performed;
- (h) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901 (Cth)* or the equivalent state legislation, as applicable;
- (k) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form; and
- (l) a reference to the word 'includes' or 'including' is to be construed without limitation to the proceeding words, unless it is expressly stated otherwise.

Schedule 1 - Agreement details

Item 1	Commencement Date	The date this Licence is agreed by the Licensee.
Item 2	Licence Fee	The fee which is specified by the University from time to time on the Melbourne Historical Journal website operated by the University.
Item 3	Term	One year commencing on the Commencement Date, provided that the Licensee may renew the Licence at any time by paying a further Licence Fee to the University.
Item 4	Approved Purpose	Personal study excluding any commercial use.
Item 5	Licensed Materials	Melbourne Historical Journal and all parts thereof, including articles, photographs, illustrations and indexes.
Item 6	IP Range	The IP Range specified by the Licensee to the University on payment of the Licence Fee by the Licensee.

Signing page

EXECUTED as an agreement

Executed for and on behalf of **THE UNIVERSITY OF MELBOURNE** by its authorised officer in the presence of

Signature of officer



Signature of witness



Name of officer (print)

Name of witness (print)

Office held

Date: _____

Executed for and on behalf of
by its authorised officer in the presence of

Signature of officer



Signature of witness



Name of officer (print)

Name of witness (print)

Office held

Date: _____