

ICE VIRTUAL LIBRARY: PURCHASE LICENCE AGREEMENT

THIS LICENCE IS AGREED on [Click here to enter a date.](#)

BETWEEN

THOMAS TELFORD LTD, a company wholly owned by the Institution of Civil Engineers, whose registered office is at 1 Great George Street, London SW1P 3AA, United Kingdom, registered in England, Company number 2556636 ("the Publisher")

AND [Click here to enter text.](#) ("the Purchaser")

WHEREAS The Publisher publishes monographs, professional and reference books in printed and digital form the Intellectual Property rights in which are owned by or controlled by the Publisher.

AND WHEREAS the Purchaser desires to use the rights and the Publisher desires to grant to the Licensee the licence to use the rights for the Purchase Fee, subject to the terms and conditions of this Licence.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

1.1 In this Licence, the following expressions shall have the following meanings:

Authorised Site the Purchaser's site(s) composed of (a) single or multiple institutions, or (b) single or multiple geographical locations, listed in Schedule 1. The Purchaser may replace institutions or geographical locations on written notice to the Publisher, which shall be attached to the said Schedule 1 and made a part thereof. In the event that the Purchaser wishes to add institutions or geographical locations, or acquires or merges with another entity, it shall serve written notice to the Publisher of such additions; it is understood and agreed that such additions may be made subject to the Publisher's approval and may require an increase in the Fee.

Authorised Users current members of the faculty and other staff of the Purchaser (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently studying at the Purchaser's institution, who are permitted to access the Secure Network from within an Authorised Site or from such other places where Authorised Users work or study (including but not limited to Authorised Users' offices and homes, halls of residence and student dormitories) and who have been issued by the Purchaser with a password or other authentication together with other persons who are permitted to use the Purchaser's library or information service and access the Secure Network but only from computer terminals within the physical premises of a library at the Authorised Site.

Commercial Use	Use for the purposes of monetary reward (whether by or for the Purchaser or an Authorised User) by means of sale, loan, transfer, hire or other form of exploitation of the Licensed Materials. Neither recovery of direct costs by the Purchaser from Authorised Users, nor use by the Purchaser or by an Authorised User of the Licensed Materials in the course of research funded by a commercial organisation, is deemed to be Commercial Use.
Course Packs	A collection or compilation of materials (e.g. book chapters, journal articles) assembled by members of staff of the Purchaser for use by students in a class for the purposes of instruction.
Electronic Reserve	Electronic copies of materials (e.g. book chapters, journal articles) made and stored on the Secure Network by the Purchaser for use by students in connection with specific courses of instruction offered by the Purchaser to its students.
Purchase Fee	The fee payable by the Purchaser to the Publisher in consideration for which the rights set out in this Licence are granted to the Purchaser, and set out in Schedule 2 or in new Schedules that may be agreed by the parties from time to time
Learning Object	a self-contained unit of learning, education or training comprising information content, learning activities and metadata designed to explain a stand-alone learning objective
Licensed Materials	the electronic material purchased by the Purchaser and listed in Schedule 2
Secure Network	A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users approved by the Purchaser whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Purchaser.
Server	The server, either the Publisher's server or a third party server designated by the Publisher, on which the Licensed Materials are mounted and may be accessed.
Text Mining	a process by which information may be derived by identifying patterns and trends within natural language through text categorisation, statistical pattern recognition, concept or sentiment extraction, and the association of natural language with indexing terms
Virtual Learning Environment	A software system designed to manage and support teaching and learning in education, including systems variously referred to as Course Management Systems, Learning Management Systems, Learning Support Systems, Managed Learning Environments, and similar names.

2. AGREEMENT

- 2.1 The Publisher agrees to grant to the Purchaser the non-exclusive and non-transferable right, throughout the world, to give Authorised Users access to the Licensed Materials via a Secure Network for the purposes of research, teaching and private study, subject to the terms and conditions of this Licence.
- 2.2 In consideration of the rights granted hereunder, the Purchaser agrees to pay the Purchase Fee, which shall be a condition of this Licence coming into effect.

3. USAGE RIGHTS

- 3.1 The Purchaser, subject to clause 6 below, may allow Authorised Users to have access to the Licensed Materials from the Server via the Secure Network, provide Authorised Users with integrated access and an integrated author, title, abstract and keyword index to the Licensed Material and all other similar material licensed from other publishers, provide single printed or electronic copies of single individual chapters or items at the request of individual Authorised Users, and display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorised Users.
- 3.2 Authorised Users may, in accordance with copyright law and subject to clause 6 below, search, view, retrieve and display the Licensed Materials, print or save electronic copies of individual titles, chapters or items of the Licensed Materials for personal use, use individual segments of the Licensed Materials within Learning Objects for the Purchaser's teaching, learning or training purposes, use Text Mining technologies to derive information from the Licensed Materials, and distribute a copy of individual chapters or items of the Licensed Materials in print or electronic form to other Authorised Users, including distribution of a copy to each individual student or trainee Authorised User in a course of instruction of the Purchaser.
- 3.2 Nothing in this Licence shall in any way exclude, modify or affect any of the Purchaser's statutory rights under applicable copyright law.

4. SUPPLY OF COPIES TO OTHER LIBRARIES

- 4.1 The Purchaser may, subject to clause 6 below, supply to another library within the same country as the Purchaser whether by post or fax or secure transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing, for the purposes of private study and research, a single paper copy of an electronic original of an individual chapter or item being part of the Licensed Materials.

5. COURSE PACKS, ELECTRONIC RESERVE AND VIRTUAL LEARNING ENVIRONMENTS

- 5.1 The Purchaser may, subject to clause 6 below, incorporate individual chapters or items of the Licensed Materials in printed Course Packs (including non-electronic non-print perceptible form, such as audio or Braille, for the visually impaired), in Electronic Reserve collections and in Virtual Learning Environments for the use of Authorised Users in the Purchaser's course of instruction. Each such item shall carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher. Copies of such items shall be deleted by the Purchaser when they are no longer used for such purpose.

6. PROHIBITED USES

- 6.1 Neither the Purchaser nor Authorised Users may, without the Publisher's prior express written permission (which may be subject to payment of an additional fee or subject to such conditions as the Publisher in its sole discretion may set):
- 6.1.1 remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;
 - 6.1.2 copy, duplicate, redistribute, re-publish or in any way use any part of the Licensed Materials for Commercial Use, or prepare derivative works or incorporate the Licensed Materials in any other work or system other than the Secure Network;
 - 6.1.3 systematically make multiple copies of any part of the Licensed Materials or make print or electronic copies of multiple extracts of the Licensed Materials for any purpose, or distribute copies of the same to anyone other than Authorised Users;
 - 6.1.4 reverse engineer, decompile, alter, abridge or modify the Licensed Materials or any part of the same for any purpose whatsoever except as expressly provided in this Licence, except to the extent necessary to make them perceptible on a computer screen to Authorised Users;
 - 6.1.5 grant any sublicense to this License.

7. PUBLISHER'S UNDERTAKINGS

- 7.1 The Publisher warrants to the Purchaser that the Licensed Materials used as contemplated by this Licence do not infringe the copyright or any other proprietary or intellectual property rights of any person. The Publisher shall indemnify and hold the Purchaser harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Purchaser claiming actual or alleged infringement of such rights. It is a condition of this indemnity that the Purchaser complies with clause 8.3 and that Thomas Telford Ltd has sole authority over the decision to defend or settle any claim. This indemnity shall survive the termination of this Licence for any reason. This indemnity shall not apply if the Purchaser has amended the Licensed Materials in any way not permitted by this Licence.
- 7.2 The Publisher shall:
- 7.2.1 make the Licensed Materials available to the Purchaser from the Server via Internet Protocol address validation or by Athens or Shibboleth authentication protocols, as set out in Schedule 1. The Purchaser may elect to use proxy servers to access the Licensed Materials remotely through an Authorised Site(s). The Publisher will notify the Purchaser at least sixty (60) days in advance of any anticipated specification change applicable to the Licensed Materials.
 - 7.2.2 provide the Purchaser, within 30 days of the date of this Licence, with information sufficient to enable the Purchaser to access the Licensed Material.
 - 7.2.3 use reasonable endeavours to ensure that the Server has adequate capacity and bandwidth to support the predicted usage of the Purchaser at a level commensurate with the standards of availability for Web-based information services of similar scope, and to make the Licensed Materials available to the Purchaser and to Authorised Users at all times and on a twenty-four hour basis, save for routine maintenance (which shall be notified to the Purchaser in advance wherever possible), and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service.

- 7.3 Where the Licensed Materials shall not be available to the Purchaser for more than thirty (30) consecutive days, the Publisher shall refund to the Purchaser that proportion of one-tenth of the Purchase Fee a proportion of the Fee prorated to the period of such unavailability within the Subscription Period to which the Fee relates.
- 7.4 The Publisher reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Purchaser of such withdrawal. If the Publisher reasonably considers that such withdrawal constitutes a material change to the Licensed Materials or if in the reasonable judgement of the Purchaser the withdrawal results in the Licensed Materials being no longer useful to the Purchaser, the Purchaser may within thirty days of such notice treat such changes as a breach of this License under clause 10.2.2.
- 7.5 The Publisher reserves the right to change the presentation, functionality or user facilities of the Licensed Materials and to make changes in any software or system used to provide access to the Licensed Materials with the objective of improving the performance thereof and improving the experience of Authorised Users in accessing and using the same, at its sole discretion.
- 7.6 The Publisher shall record and compile COUNTER-compliant usage data on the number of abstracts and of articles downloaded, by journal title, on a monthly basis and facilitate the collection of such data by the Purchaser. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected; it shall be used for the Publisher's and the Purchaser's private internal use only. In the case that the Publisher assigns its rights to a part of the Licensed materials as provided in clause 11.3, the Purchaser may at its discretion require the assignee either to keep such usage information confidential or to destroy it.
- 7.7 While the Publisher has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Material, the Publisher makes no representation and gives no warranty express or implied with regard to the information contained in or any part of the Licensed Material including (without limitation) the fitness of such information or part for any purposes whatsoever and the Publisher accepts no liability for loss suffered or incurred by the Purchaser or Authorised Users as a result of their reliance on the Licensed Material.
- 7.8 In no circumstances will the Publisher be liable to the Purchaser for any loss resulting from a cause over which the Publisher does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, unauthorised access, theft, or operator errors.
- 7.9 Except as provided for in Clause 7.1, the Publisher will not be liable to the Purchaser in contract or negligence or otherwise for:
- 7.9.1 any special, indirect, incidental, punitive or consequential damages;
 - 7.9.2 loss of direct or indirect profits, business, contracts, revenue or anticipated savings; or
 - 7.9.3 for any increased costs or expenses.
- 7.10 No party limits its liability for:
- 7.10.1 death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement; and
 - 7.10.2 its own fraud or that of its employees or agents in the course of their engagement.
- 7.11 The Publisher's aggregate liability for any claims, losses, or damages arising out of any breach of this License shall in no circumstances exceed the fee paid by Purchaser to the Publisher under this License. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

8. PURCHASER'S UNDERTAKINGS

8.1 The Purchaser shall:

- 8.1.1 issue passwords or other access information only to Authorised Users and use all reasonable endeavours to ensure that they do not divulge their passwords or other access information to any third party;
- 8.1.2 make Authorised Users aware of the importance of respecting the intellectual property rights in the Licensed Materials and of the terms and conditions of this Licence and use reasonable endeavours to protect the Licensed Materials from unauthorised use or other breach of this Licence and to monitor compliance; immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
- 8.1.3 provide the Publisher, within 30 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Materials in accordance with its obligation hereunder, and to notify any changes to such information not less than ten (10) days before the change takes effect, including additions, deletions or other alterations to its records of Authorised Users and their access details or to IP addresses as are necessary to enable the Publisher to provide Authorised Users with access to the Licensed Materials as contemplated by this Licence;
- 8.1.4 provide all necessary co-operation and information as may reasonably be required by the Publisher;
- 8.1.5 comply with all applicable laws and regulations with respect to its activities under this License;
- 8.1.6 be liable for procuring and maintaining its own network connections and telecommunications links.

8.2 Nothing in this Licence shall make the Purchaser liable for breach of the terms of this Licence by any Authorised User provided that the Purchaser did not cause, knowingly assist or condone the continuation of such breach to continue after becoming aware of an actual breach having occurred.

8.3 The Purchaser agrees to notify the Publisher immediately and provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Material and do all things reasonably required to assist the Publisher in such claims. It is expressly agreed that upon such notification, or if the Publisher becomes aware of such a claim from other sources, the Publisher may remove such work(s) from the Licensed Material. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Licence.

8.4 The Purchaser shall, in consideration for the rights granted under this Licence, pay the Purchase Fee within sixty (60) days of receipt of invoice and, if applicable, within sixty (60) days of receipt of invoice relating to each subsequent Subscription Period, and receipt of such payment shall be a condition of this Licence coming into effect. For the avoidance of doubt, the Purchase Fee shall be exclusive of any sales, use, value added or similar taxes and the Purchaser shall be liable for any such taxes in addition to the Purchase Fee or any other fee due hereunder.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Purchaser acknowledges that the patent rights, trademarks, service marks, trade names, copyright, design rights, database rights and other intellectual property rights in and to the Licensed Materials, whether registered or unregistered, are the sole and exclusive property of the Publisher or exclusively licensed to and controlled by the Publisher and nothing in this Licence shall be deemed to assign or transfer to the Purchaser any such right, title or interest except for the right to use the Licensed Materials in accordance with the terms and conditions of this Licence.

9.2 Each party shall use its best endeavours to safeguard the intellectual property rights, confidential information and other proprietary rights of the other party.

10. TERM AND TERMINATION

10.1 This Licence shall come into effect on the date of signature of this Licence or the date of Payment by the Purchaser of the Purchase Fee, whichever shall be later, and will remain in full force and effect without limitation in time, unless terminated as provided for in clause 10.2

10.2 Notwithstanding the provisions of clause 10.1, this Licence shall be terminated:

10.2.1 if the Purchaser wilfully defaults in making payment of the Purchase Fee within sixty (60) days of signature of this Licence;

10.2.2 if the Publisher commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within sixty (60) days of notification in writing by the Purchaser;

10.2.3 if the Purchaser commits a wilful material and persistent breach of the Publisher's copyright or other intellectual property rights or of the provisions of clause 3 in respect of usage rights or of clause 6 in respect of prohibited uses;

10.3 On termination of this Licence for cause, as specified in clauses 10.2.3, the Purchaser shall immediately cease to distribute or make available the Licensed Materials to Authorised Users.

10.4 On termination of this Licence by the Purchaser for cause, as specified in clause 10.2.2 above, the rights granted under clause 2 of this Licence shall survive the termination of this Licence, subject to the terms and conditions set out in clauses 3, 4, 5 and 6 of this Licence, which shall survive such termination.

10.5 Nothing in this clause 10 shall require the Publisher to continue to provide access to the Licensed Materials from the Server after termination, provided that the Publisher shall supply to the Purchaser with such Licensed Materials in an electronic medium to be mutually agreed between the parties.

10.6 Either party may terminate this License by notice in writing if the other party shall become insolvent or shall have a receiver appointed or shall file or have filed against it any petition or proceedings in the nature of bankruptcy. Either party shall immediately notify the other party in writing of the occurrence of any such event.

11. MISCELLANEOUS PROVISIONS

11.1 This Licence constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Licence, whether oral or written. Any alterations to this Licence or to the Schedules are valid only if they are recorded in writing and signed by both parties.

11.2 This Licence may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, except as provided in this Licence in respect of the management of the Server, without the prior written consent of the other party, which consent shall not unreasonably be withheld.

11.3 If rights in all or any part of the Licensed Materials are assigned to another publisher, the Publisher shall use its best endeavours to ensure that the terms and conditions of this Licence are maintained.

11.4 Any notices to be served on either of the parties by the other shall be sent by prepaid recorded and signed-for delivery or registered post/special delivery to the address of the addressee as

set out below or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within 14 days of posting.

If to the Purchaser:

If to Thomas Telford Ltd:

General Manager: Publishing
Thomas Telford Ltd
One Great George Street
Westminster
London SW1P 3AA
United Kingdom

- 11.5 Neither party's delay or failure to perform any provision of this Licence, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Licence.
- 11.6 The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence.
- 11.7 Either party's waiver, or failure to require performance by the other, of any provision of this Licence will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.
- 11.8 No third party shall have any rights under or in connection with this License by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 11.9 This Licence shall be governed by and construed in accordance with the laws of England; any dispute arising out of or in connection with this Licence will be subject to and within the jurisdiction of the courts of England.

EXECUTION:

The parties have executed this Agreement after the Schedules which form part of this Agreement.

SCHEDULE 1

AUTHORISED SITES

A schedule to the Licence dated [Click here to enter a date.](#) between Thomas Telford Ltd and [Click here to enter text.](#)

List of addresses of the Purchaser's sites, Domain Name(s), and IP addresses or ranges:

<i>Authorised site: name & address</i>	<i>Domain name(s)</i>	<i>IP addresses/ranges</i>
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SCHEDULE 2

THE LICENSED MATERIALS AND FEES

A schedule to the Licence dated [Click here to enter a date.](#) between Thomas Telford Ltd and [Click here to enter text.](#)

The **Licensed Materials** means:

Title	Purchase Fee
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In the event that the Purchaser shall cease to subscribe to or be entitled to access any other material published by the Publisher on the Server, with the result that the Licensed Material is the only product or service of the Publisher to which the Purchaser is entitled access by virtue of this Licence, an annual **maintenance fee** of 3% of the purchase fee will become payable in consideration of the Publisher's continuing to host the Licensed Materials on the Server and provide continuing access thereto to the Purchaser.

AGREEMENT ACCEPTANCE

This Agreement has been entered into by the parties or their duly authorised representatives on the date set out at the beginning of this Agreement. The Schedules preceding this signature block form part of this Agreement.

AS WITNESS the hands of the parties the day and year below first written

FOR AND ON BEHALF OF THE PURCHASER:

Full name: _____ Signature: _____

Position: _____ Date: _____

FOR AND ON BEHALF OF THOMAS TELFORD LTD:

Full name: Mike Cookson Signature: _____

Position: General Manager, ICE Date: _____

Position: Publishing Date: _____