

# **SAMPLE LICENSE AGREEMENT**

AMERICAN SOCIETY OF AGRICULTURAL AND BIOLOGICAL ENGINEERS

THIS LICENSE IS AGREED the \_\_\_\_\_ day of \_\_\_\_\_ 2011.

BETWEEN

AMERICAN SOCIETY OF AGRICULTURAL AND BIOLOGICAL ENGINEERS, of 2950 Niles Road, St. Joseph, MI 49085-9659 in the State of Michigan in the United States of America ("the Publisher")

and

"LICENSEE", "address" ("the Licensee")

WHEREAS the Publisher holds the rights granted under this License

AND WHEREAS the Licensee desires to use the rights and the Publisher desires to grant to the Licensee the license to use the rights for the Fee, subject to the terms and conditions of this License.

IT IS AGREED AS FOLLOWS: -

## **1. KEY DEFINITIONS**

1.1 In this License, the following terms shall have the following meanings: -

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

Commercial Use Use for the purposes of monetary reward (whether by or for the Licensee or an Authorized User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, neither recovery of direct costs by the Licensee from Authorized Users, nor use by the Licensee or by an Authorized User of the Licensed Materials in the course of research funded by a commercial organization, 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 Licensee 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 Licensee for use by students in connection with specific courses of instruction

offered by the Licensee to its students.

**Fee** The Fee set out in Schedule 1 or in new Schedules to this License which may be agreed by the parties from time to time.

**Library Premises** The physical premises of the library or libraries operated by the Licensee, as specified in Schedule 2.

**Licensed Materials** The electronic material as set out in Schedule 1 or in new Schedules to this License that may be agreed by the parties from time to time.

**Secure Network** A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorized Users approved by the Licensee 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 Licensee.

**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.

**Subscription Period** That period nominally covered by the volumes and issues of the Licensed Material listed in Schedule 1, regardless of the actual date of publication.

## 2. AGREEMENT

2.1 The Publisher agrees to grant to the Licensee the non-exclusive and non-transferable right, throughout the world, to give Authorized 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 License, and the Licensee agrees to pay the Fee

2.2 This License shall commence at the beginning of the Subscription Period, for each of the Licensed Materials as set out in Schedule 1 or in new Schedules to this License that may be added subsequently; and shall automatically terminate at the end of the Subscription Period, unless the parties have previously agreed to renew it.

2.3 On termination of this License, the Publisher shall provide continuing access for Authorized Users to that part of the Licensed Materials which was published and paid for within the Subscription Period, either from the Server or from the archive described in 7.4 or by supplying electronic files or CD-ROMS to the Licensee subject to payment of such fees as the parties may agree except where such termination is due to a breach of the License by the Licensee which the Licensee has failed to remedy as provided in 10.1.1 and 10.1.3 of this License.

## 3. USAGE RIGHTS

3.1 The Licensee, subject to clause 6 below, may:

3.1.1 Make such local electronic copies by means of cacheing or mirrored storage of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Authorized Users.

3.1.2 Allow Authorized Users to have access to the Licensed Materials from the Server via the Secure Network.

3.1.3 Provide Authorized Users with integrated access and an integrated author, article title, abstract and keyword index to the Licensed Material and all other similar material licensed from other publishers.

3.1.4 Provide single printed or electronic copies of single articles or chapters of the Licensed Materials at the request of individual Authorized Users.

3.1.5 Display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.

3.2 Authorized Users may, under copyright law and subject to clause 6 below:

3.2.1 Search, view, retrieve and display the Licensed Materials.

3.2.2 Electronically save individual articles chapters or items of the Licensed Materials for personal use.

3.2.3 Print off a copy of individual articles chapters or items of the Licensed Materials.

3.2.4 Distribute a copy of individual articles, chapters or items of the Licensed Materials in print or electronic form to other Authorized Users.

3.3 Nothing in this License shall in any way exclude, modify or affect any of the Licensee's statutory rights under the copyright law.

#### 4. SUPPLY OF COPIES TO OTHER LIBRARIES

4.1 The Licensee may, subject to clause 6 below, supply to an Authorized User of another library (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 research or private study and not for Commercial Use, a single paper copy of an electronic original of an individual document being part of the Licensed Materials.

#### 5. COURSE PACKS AND ELECTRONIC RESERVE

5.1 The Licensee may, subject to clause 6 below, incorporate individual articles chapters or items of the Licensed Materials in printed Course Packs and Electronic Reserve collections for the use of Authorized Users in the course of instruction at the Licensee's institution, but not for Commercial Use. 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 Licensee when they are no longer used for such purpose. Course packs in non-electronic non-print perceptible form, such as audio or Braille, may also be offered to Authorized Users who, in the reasonable opinion of the Licensee, are visually impaired.

#### 6. PROHIBITED USES

6.1 Neither the Licensee nor Authorized Users may:

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 systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose other than back-up copies permitted under clause 3.1.2;

6.1.3 mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network

6.2 The Publisher's explicit written permission must be obtained in order to:

6.2.1 use all or any part of the Licensed Materials for any Commercial Use;

6.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorized Users;

6.2.3 publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this License;

6.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen to Authorized Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

## 7. PUBLISHER'S UNDERTAKINGS

7.1 THE PUBLISHER WARRANTS TO THE LICENSEE THAT THE LICENSED MATERIALS USED AS CONTEMPLATED BY THIS LICENSE DO NOT INFRINGE THE COPYRIGHT OR ANY OTHER PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS OF ANY PERSON. THE PUBLISHER SHALL INDEMNIFY AND HOLD THE LICENSEE 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 LICENSEE CLAIMING ACTUAL OR ALLEGED INFRINGEMENT OF SUCH RIGHTS. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THIS LICENSE FOR ANY REASON. THIS INDEMNITY SHALL NOT APPLY IF THE LICENSEE HAS AMENDED THE LICENSED MATERIALS IN ANY WAY NOT PERMITTED BY THIS LICENSE.

7.2 The Publisher shall:

7.2.1 make the Licensed Materials available to the Licensee from the Server in the media, format and time schedule specified in Schedule 1. The Publisher will notify the Licensee at least sixty (60) days in advance of any anticipated specification change applicable to the Licensed Materials. If the changes render the Licensed Materials less useful in a material respect to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this License under clause 10.1.2 and 10.4.

7.2.2 use reasonable endeavors to make available the electronic copy of each journal issue in the Licensed Materials within fifteen (15) days of publication of the printed version. In the event that for technical reasons this is not possible for any particular journal, as a matter of course, such journal shall be identified

at the time of licensing, together with such reasons.

7.2.3 provide the Licensee, within 30 days of the date of this License, with information sufficient to enable the Licensee to access the Licensed Material.

7.2.4 use reasonable endeavors to ensure that the Server has adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this License.

7.2.5 use reasonable endeavors to make the Licensed Materials available to the Licensee and to Authorized Users at all times and on a twenty-four hour basis, save for routine maintenance (which shall be notified to the Licensee 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 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 Licensee of such withdrawal. If the withdrawal results in the Licensed Materials being no longer useful to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this License under clause 10.1.2 and 10.4.

7.4 The Publisher undertakes to use reasonable endeavors to provide or to make arrangements for a third party to provide an archive of the Licensed Materials for the purposes of long term preservation of the Licensed Materials, and to permit Authorized Users to access such archive after termination of this License.

7.5 Collection and analysis of data on the usage of the Licensed Materials will assist both the Publisher and the Licensee to understand the impact of this License. The Publisher shall provide to the Licensee or facilitate the collection and provision to the Licensee and the Publisher by the Licensee of such usage data on the number of articles and of abstracts downloaded, by journal title, on an annual basis for the Publisher's and the Licensee's private internal use only. Such usage data shall be compiled in a manner consistent with applicable privacy laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected. In the case that the Publisher assigns its rights to another party under clause 11.3, the Licensee may at its discretion require the assignee either to keep such usage information confidential or to destroy it.

7.6 EXCEPT AS EXPRESSLY PROVIDED IN THIS LICENSE, THE PUBLISHER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF DESIGN, ACCURACY OF THE INFORMATION CONTAINED IN THE LICENSED MATERIALS, MERCHANTABILITY OR FITNESS OF USE FOR A PARTICULAR PURPOSE. THE LICENSED MATERIALS ARE SUPPLIED 'AS IS'.

7.7 EXCEPT AS PROVIDED IN CLAUSE 7.1, UNDER NO CIRCUMSTANCES SHALL THE PUBLISHER BE LIABLE TO THE LICENSEE OR ANY OTHER PERSON, INCLUDING BUT NOT LIMITED TO AUTHORISED USERS, FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER ARISING OUT OF THE INABILITY TO USE, OR THE USE OF, THE LICENSED MATERIALS. IRRESPECTIVE OF THE CAUSE OR FORM OF ACTION, THE PUBLISHER'S AGGREGATE LIABILITY FOR ANY CLAIMS, LOSSES, OR DAMAGES ARISING OUT OF ANY BREACH OF THIS LICENCE SHALL IN NO

CIRCUMSTANCES EXCEED THE FEE PAID BY LICENSEE TO THE PUBLISHER UNDER THIS LICENCE IN RESPECT OF THE SUBSCRIPTION PERIOD DURING WHICH SUCH CLAIM, LOSS OR DAMAGE OCCURRED. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. REGARDLESS OF THE CAUSE OR FORM OF ACTION, THE LICENSEE MAY BRING NO ACTION ARISING FROM THIS LICENCE MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION ARISES.

## 8. LICENSEE'S UNDERTAKINGS

### 8.1 The Licensee shall:

8.1.1 use reasonable endeavors to ensure that all Authorized Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and of the sanctions which the Licensee imposes for failing to do so;

8.1.2 use reasonable endeavors to notify Authorized Users of the terms and conditions of this License and take steps to protect the Licensed Materials from unauthorized use or other breach of this License;

8.1.3 use reasonable endeavors to monitor compliance and immediately upon becoming aware of any unauthorized 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;

8.1.4 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 Material in accordance with its obligation under clause 7.2.3. Should the Licensee make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect.

8.1.5 keep full and up-to-date records of all IP addresses and provide the Publisher with details of such additions, deletions or other alterations to such records as are necessary to enable the Publisher to provide Authorized Users with access to the Licensed Materials as contemplated by this License;

8.1.6 use reasonable endeavors to ensure that only Authorized Users are permitted access to the Licensed Materials.

8.2 SUBJECT TO APPLICABLE LAW, THE LICENSEE AGREES TO INDEMNIFY, DEFEND AND HOLD THE PUBLISHER HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, COSTS, LIABILITY AND EXPENSES (INCLUDING REASONABLE LEGAL AND PROFESSIONAL FEES) ARISING OUT OF ANY CLAIM OR LEGAL ACTION TAKEN AGAINST THE PUBLISHER RELATED TO OR IN ANY WAY CONNECTED WITH ANY USE OF THE LICENSED MATERIALS BY THE LICENSEE OR AUTHORISED USERS OR ANY FAILURE BY THE LICENSEE TO PERFORM ITS OBLIGATIONS IN RELATION TO THIS LICENSE, PROVIDED THAT NOTHING IN THIS LICENSE SHALL MAKE THE LICENSEE LIABLE FOR BREACH OF THE TERMS OF THE LICENCE BY ANY AUTHORISED USER PROVIDED THAT THE LICENSEE 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 Licensee shall, in consideration for the rights granted under this License, pay the Fee within thirty (30) days of receipt of invoice and, if applicable, thirty (30) days prior to each subsequent Subscription

Period and receipt of such payment shall be a condition of this License coming into effect. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

## 9. UNDERTAKINGS BY BOTH PARTIES

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

## 10. TERM AND TERMINATION

10.1 In addition to automatic termination (unless renewed) under clause 2.2, this License shall be terminated:

10.1.1 if the Licensee willfully defaults in making payment of the Fee as provided in this License and fails to remedy such default within thirty (30) days of notification in writing by the Publisher;

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

10.1.3 if the Licensee commits a willful 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;

10.1.4 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

10.2 On termination all rights and obligations of the parties automatically terminate except for obligations in respect of Licensed Materials to which access continues to be permitted as provided in clause 2.3.

10.3 On termination of this License for cause, as specified in clauses 10.1.1 and 10.1.3, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorized Users except as provided in clause 2.3.

10.4 On termination of this License by the Licensee for cause, as specified in clause 10.1.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

## 11. GENERAL

11.1 This License constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this License, whether oral or written.

11.2 Alterations to this License and to the Schedules to this License are only valid if they are recorded in writing and signed by both parties.

11.3 This License may not be assigned by either party to any other person or organization, nor may either

party sub-contract any of its obligations, except as provided in this License in respect of and the management and operation of the Server, without the prior written consent of the other party, which consent shall not unreasonably be withheld.

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

11.5 Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this License 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.

11.6 Neither party's delay or failure to perform any provision of this License, 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 License.

11.7 The invalidity or un-enforceability of any provision of this License shall not affect the continuation or enforceability of the remainder of this License.

11.8 Either party's waiver, or failure to require performance by the other, of any provision of this License 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.

11.9 This License shall be governed by and construed in accordance with "state" law; the parties irrevocably agree that any dispute arising out of or in connection with this License will be subject to and within the jurisdiction of the courts of "state".

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

FOR THE AMERICAN SOCIETY OF AGRICULTURAL AND BIOLOGICAL ENGINEERS

Signed \_\_\_\_\_

Name (in block capitals: DONNA M. HULL Date: \_\_\_\_\_

Position / Title: Director, Publications

FOR "LICENSEE"

Signed \_\_\_\_\_

Name (in block capitals: \_\_\_\_\_ Date: \_\_\_\_\_

Position / Title: \_\_\_\_\_

## SCHEDULE 1

### LICENSED MATERIALS SUBSCRIPTION PERIOD AND ACCESS METHOD

A schedule dated \_\_\_\_\_ to the License dated \_\_\_\_\_ between the American Society of Agricultural and Biological Engineers and "licenseelc".

### THE LICENSED MATERIALS

Title Subscription Format Delivery

Period Schedule

Peer-reviewed Journals: 2011 issues web 15 days/issue date

(ISSN 1934-2837) Biological Engineering Transactions (formerly Biological Engineering)

(ISSN 0001-2351) Transactions of the ASABE

(ISSN 0883-8542) Applied Engineering in Agriculture

(ISSN 1074-7583) Journal of Agricultural Safety and Health

(ISSN 8755-1187) ASABE Standards 2011 edition web July

ASABE Annual Meeting Papers 2011 meeting web July/Aug (average 700 papers per year)

Specialty Conference Proceedings 2011 confer. web throughout year (normally 4-5 cd/books per year)

Textbooks (as published)

Monographs (as published)

Total fee for perpetual access to the collection above and 12 month access to the site: "fee\_"

### ACCESS METHOD

Authentication via User ID/password and IP Address

Authentication via IP address

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

FOR THE AMERICAN SOCIETY OF AGRICULTURAL AND BIOLOGICAL ENGINEERS

Signed \_\_\_\_\_

Name (in block capitals: DONNA M. HULL) Date: \_\_\_\_\_

Position / Title: Director, Publications

FOR "LICENSEE"

Signed \_\_\_\_\_

Name (in block capitals: \_\_\_\_\_) Date: \_\_\_\_\_

Position / Title: \_\_\_\_\_

## SCHEDULE 2

### LIBRARY PREMISES

A schedule dated \_\_\_\_\_ to the License dated \_\_\_\_\_ between the American Society of Agricultural

and Biological Engineers and "licenseelc".

List of addresses of the Licensee's Library Premises, Domain Name(s) and IP addresses and/or ranges:

Class B Network: first two network numbers plus asterisks for host addresses, i.e.: 125.64.\*.\*

Class C network: first three network numbers plus an asterisk for host address, i.e.: 125.64.133.\*

Single station: all four numbers, i.e. 125.64.133.20; or ranges, i.e. 125.64.133.20-125.64.133.40

Library name & address Domain name(s) IP addresses/ranges

Network contact: Name:

Telephone: Fax: E-mail address:

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

FOR THE AMERICAN SOCIETY OF AGRICULTURAL AND BIOLOGICAL ENGINEERS

Signed \_\_\_\_\_

Name (in block capitals: DONNA M. HULL) Date: \_\_\_\_\_

Position / Title: Director, Publications

FOR "LICENSEE"

Signed \_\_\_\_\_

Name (in block capitals: \_\_\_\_\_) Date: \_\_\_\_\_

Position / Title: \_\_\_\_\_