

## **License Agreement for the Institutional Access to and Use of Maruzen eBook Library**

This Agreement ("Agreement") is entered into as of January 8, 2018 ("Effective Date") by and between University of California, San Diego, having a principal place of business at 9500 Gilman Dr., La Jolla, CA 92093 ("Licensee") and MARUZEN-YUSHODO Company, Limited, having a principal place of business at [Text deleted] ("Licensor").

In consideration of the mutual promises contained herein, the parties hereto agree as follows:

### **Section 1. Definitions**

As used in this Agreement, the following terms have the designated meanings:

#### **1.1 Website**

"Website" means the website operated by the Licensor at <https://elib.maruzen.co.jp/>.

#### **1.2 eBooks**

"eBooks" means the contents for downloading and/or streaming with which the Licensor provides the Licensee on the Website.

#### **1.3 Service**

"Service" means Maruzen eBook Library by which the Licensor provides the Licensee with eBooks and other related services on the Website.

#### **1.4 Authorized Users**

"Authorized Users" means those persons who are authorized to access to and use the Service and eBooks at the Licensee's locations or via secured network administered by the Licensee. The access to and use of the Service shall be limited within the range(s) indicated on Exhibit A.

#### **1.5 Terminals**

"Terminals" means the devices for accessing and displaying eBooks. The specification of the types as well as format and system requirements which enable the use of eBooks is posted on the Website.

#### **1.6 IP Address Authentication**

"IP Address Authentication" means the way of access to the Service without entering a set of user ID and password by registering fixed global IP addresses of the Licensee on the internet.

#### 1.7 ID/Password Authentication

"ID/Password Authentication" means the way of access to the Service by entering a set of user ID and password issued by the Licensor in cases in which the Licensee does not have its own fixed global IP addresses.

### **Section 2. Grant of License**

The Licensor grants to the Licensee a non-exclusive, non-transferrable license to access and use the Service in accordance with the terms and conditions contained in this Agreement.

Licensor warrants that it has the right to license the rights granted under this Agreement to use the Service, that it has obtained any and all necessary permissions from third parties to license the e-Books, and that use of the Service shall not infringe the copyright of any third party.

### **Section 3. IP Address Authentication**

- 3.1 The IP Addresses for the access to and use of the Service upon the execution of this Agreement shall be indicated by the Licensee on the application form to use the Service.
- 3.2 The Licensee shall be responsible for the identification and determination of its own IP Addresses to be indicated on the application form. The Licensee will exercise reasonable vigilance and shall be responsible for all access control and security measures necessary to ensure that the Licensee's IP Addresses are not used by persons other than the Licensee or Authorized Users to access the e-Books.
- 3.3 If unauthorized access to or use of the Service, or the spoofing access from the registered IP addresses are recognized, the Licensor may suspend the provision of the Service with the Licensee to the IP addresses in question without any prior notice to which the Licensee shall agree.

### **Section 4. ID/Password Authentication**

- 4.1 The Licensee shall be responsible for the confidentiality, operation and management of the sets of user ID and password issued by the Licensor based on the application form to use the Service, and shall not transfer, lend or disclose any set of user ID and password to any third party.
- 4.2 In the event any third parties access and use the Service despite of the provisions of section 4.1, the Licensor may regard such access and use of the Service as by the Licensee, unless the Licensee notifies such use based on section 4.3. If the Licensor

recognized the unauthorized access to and use of the Service by the ID/Password Authentication, the Licensor may suspend the provision of the Service with the Licensee without any prior notice to which the Licensee shall agree.

- 4.3 If the Licensee recognized the unauthorized access to and use of the Service by any third party, the Licensee shall immediately notify it to the Licensor.

#### **Section 5. Changes of Registered Information and Cancellation**

- 5.1 If the Licensee changes the registered information in this Agreement or the application form to use the Service, or offers to cancel the use of the Service, the Licensee shall immediately notify it to the Licensor.

- 5.2 If the Licensee does not notify the changes in the appropriate manner, the Licensor shall not be responsible for any Licensee's difficulties in the access to and use of the Service.

- 5.3 After the cancellation of the Service by Licensee or Licensor, the Licensee may continue to use the part of eBooks downloaded before the cancellation of the Service, but the Licensee shall use them in a strict compliance with the Agreement. Upon termination of this Agreement by Licensee for cause, Licensor shall use reasonable efforts to provide Licensee with a mutually agreed machine readable copy of the eBooks purchased and made available up to the date of the termination or to take alternative measures.  
Post termination use shall be subject to the terms of this Agreement.

#### **Section 6. Orders of eBooks**

- 6.1 The Licensee shall place the orders of eBooks in accordance with the procedure established by the Licensor.
- 6.2 Access and use of each individual eBook shall become effective when the Licensor accepts the order(s) and notifies the Licensee of the completion of registering the Licensee's application(s).
- 6.3 The Licensee shall not cancel the order(s) after the execution of each application and activation of eBooks as described in section 6.2

#### **Section 7. Access and Use of eBooks**

- 7.1 The Licensor shall enable the Licensee to access and use the eBooks of which the Licensee placed and the Licensor accepted the orders in accordance with the provisions of section 6.
- 7.2 The Licensor shall enable the Licensee to download or access the eBooks of which the

Licensee placed and the Licensor accept the orders at the Website. The Licensee shall be responsible for, at its own expenses, the operation of and securing the internet connection to download or access the eBooks.

#### **Section 8. Payment**

- 8.1 The Licensee shall make the payment to access and use the eBooks in accordance with the terms of payment described in Exhibit B.
- 8.2 If the payments to the Licensor are subject to withholding tax of any applicable country, the Licensee shall withhold such tax and pay the withheld amount to the competent tax authorities
- 8.3 In the event that any sales or value added tax is required to be paid on the payment under this Agreement, the Licensee shall be liable to pay such tax.

#### **Section 9. Warranties**

- 9.1 If eBooks are not provided within ten (10) business days after the placement of order, or if the eBooks are not properly displayed in the operating environment (devices, software and its version, etc.) required by the Licensor, the Licensee shall notify the Licensor.
- 9.2 Upon the notification by the Licensee as is described in section 9.1, the Licensor shall enable the Licensee to access the eBooks, or fix the software problems to enable the Licensee to access the eBooks. The Licensor, however, shall not be responsible for fixing the software problems or restoring the access if the reported software problems do not occur in the Licensor's operating environment in accordance with the Licensor's requirement, or if the software problems occur in the environment which does not meet the Licensor's requirement.

#### **Section 10. Permitted Use of eBooks**

- 10.1 The Licensee and authorized users shall be permitted to
  - (a) access, display, and browse the eBooks in accordance with this Agreement, and technical protections and limitations (by the number of simultaneous users and devices enabled to access the eBooks) set by the Licensor.
  - (b) Incorporate parts of the ebooks in course packs and/or electronic reserves to be used by Authorized Users in the course of instruction (but not for commercial use).
- 10.2 Unless permitted by section 10.1, the Licensee shall not be permitted to duplicate, copy, modify, change, translate, display, browse, screen, lend to third party, transmit via internet or other communication methods the eBooks regardless of the purpose or the fee for the action.

10.3 The Licensor shall not be responsible for any loss or damages caused by the Licensee's breach of obligations described in section 10.2.

10.4 Using electronic, paper, or intermediated means, Licensee at its discretion may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

10.5 Licensee and Authorized Users may make all use of the Licensed Materials as is consistent with United States copyright law, including its Fair Use Provisions.

#### **Section 11. Operating Environment of the Service**

11.1 The Licensee shall prepare the Terminals, devices, software, communication networks and so on to use the Service.

11.2 The Licensor shall not be responsible for the deletion of downloaded contents of eBooks caused by the damage or replacement of the Terminals, devices and software not prepared by the Licensor.

#### **Section 12. Prohibited Use**

12.1 In accessing and using the Service, the Licensee and the Authorized Users shall not:

- (1) register false information in submitting the application form to access and use the Service;
- (2) infringe copyrights, trademarks or any other intellectual property of the Licensor or any third party;
- (3) infringe any property or privacy of any third party;
- (4) unlawfully change or delete the information stored in the Licensor's facilities;
- (5) use the Service in spoofing as others, or which help such misrepresenting the user as someone activities, unlawful use of any user ID and password by others;
- (6) disturb the use and operation of the Licensor's facilities or any other facility for internet connection related to the Service;
- (7) correspond to the actions described in section 12.1 (1) through (6), or link the Website with any other website which encourages such purposes;
- (8) relate to crimes or any other unlawful action, or which may correspond to or help such actions;
- (9) disturb the Service.

- (10) use the Service against the restrictions or limitations described in section 10.1;
- (11) cancel, change or invalidate the technical protection or limitation of the Service or eBooks, regardless of the cause and purposes,; and

12.2 The Licensee shall use reasonable efforts to inform the Authorized Users of the prohibited and/or restricted use of the Service.

### **Section 13. No Assignment**

The Licensee shall not transfer, assign or give as security all or part of the rights or obligations described in this Agreement to any third party.

### **Section 14. Property Rights**

The Licensee acknowledges that the eBooks, information related to them, and other information posted on the Website (products, trademarks, characters, marks and all other information contained in the Website) shall remain the property of the Licensor and/or those who provide the contents on the Website with the Licensor. The Licensee shall not duplicate, copy, modify, change, translate, display, browse, screen, lend to third party, transmit via internet or other communication methods the contents on the Website except for accessing, displaying and browsing them in the authorized use in accordance with this Agreement.

### **Section 15. Term**

The term of this Agreement will become effective on the Effective Date and continue until the first anniversary of the Effective Date. This Agreement will be renewed thereafter automatically on the same terms and conditions for additional successive periods of one (1) year each unless either party gives the other written notice of its intention not to renew at least sixty (60) days before the end of the then applicable term.

### **Section 16. Termination**

16.1 The Licensor may immediately terminate this Agreement to access and use the eBook and discontinue the provision of the Service with the Licensee in any of the following events:

- (1) If the Licensee or any Authorized User breach the provisions of section 12;
- (2) If the Licensee or any Authorized User breach the provisions of any other section except section 12 and the breach is not cured within a reasonable period of time;  
or
- (3) If the Licensee becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or enter into compulsory or voluntary liquidation or amalgamation or has a receiver or manager appointed of the whole or

substantially the whole of its undertakings or if any distress or execution shall be threatened or levied upon any equipment or other property of the Licensee.

- 16.2 Even after the termination of this Agreement due to the reasons described in section 16.1, the Licensee shall be responsible for the implementation of obligation which accrued based on this Agreement prior to the termination.

### **Section 17. Changes, Suspension and Termination of the Service**

- 17.1 The Licensor may change the contents of the Service by adding, deleting or taking any other actions with prior notice on the Website to the Licensee.
- 17.2 The Licensor may suspend the Service due to the system maintenance work, occurrence of system faults, fires, power failures, such disasters as earthquakes or floods, war, riots and other causes beyond its control. In such cases the Licensor makes its best efforts to make the prior announcement of the suspension of the Service to the Licensee.
- 17.3 The Licensor may terminate the Service due to the business or technical reasons. In such cases, the Licensor shall make the prior notice to the Licensee one (1) month before the termination of the Service.
- 17.4 The Licensee acknowledges that the Service and eBooks are provided based on agreements between the Licensor and the copyright holders or others having rights to specific eBooks ("copyright holders"). The Licensee further acknowledges and agrees that any specific eBooks may not be available due to the termination of the agreement between the Licensor and the copyright holders. Upon termination of such agreement with copyright holders, Licensor shall use reasonable efforts to provide Licensee with a mutually agreed machine readable copy of the eBooks purchased and made available up to the date of the termination or to take alternative measures. The definitions of Authorized Users and allowed and prohibited uses of the E-books as indicated in this Agreement shall continue to apply to the use of any provided machine readable copy.

### **Section 18. Disclaimer and Limitation of Liability**

- 18.1 As long as the Service is provided in accordance with this Agreement, the Licensor shall not be responsible for any damages or loss of the Licensee caused by the fact that the Licensee used or was not able to use the Service.
- 18.2 <This section intentionally deleted.>
- 18.3 THE LICENSEE ACKNOWLEDGES THAT THE SERVICE AND EBOOKS ARE

PROVIDED ON AN "AS IS" BASIS, AND THE LICENSOR DISCLAIMS TO THE FULLEST EXTENT PERMITTED BY LAW ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, ORAL, OR WRITTEN), RELATING TO THE SERVICE, EBOOKS, OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE LICENSEE ACKNOWLEDGES THAT THE LICENSOR FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO AUTHORIZED USERS OR TO ANY THIRD PARTY.

**Section 19. Online Terms and Conditions**

In the event that Licensor requires Authorized Users to agree to additional terms relating to the use of the Service (commonly referred to as "click-through" or "clickwrap" licenses), or otherwise attempts to impose terms on Authorized Users through online terms and conditions invoked by the mere use or viewing of the e-Book, such terms shall not materially differ from the provisions of this Agreement. In the event of any conflict between the click-through terms or online terms and conditions and this Agreement, the terms of this Agreement shall prevail. For the avoidance of doubt, Authorized Users are not a party to this Agreement.

**Section 20. Force Majeure**

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing this Agreement if such delay or default is caused by conditions beyond its control, including, but not limited to, acts of God, government restriction, war, insurrection, strike, fire, flood, or internet or telecommunications breakdown.

**Section 21. Severability**

If any part of this Agreement shall be held unenforceable, the remainder of this Agreement will nevertheless remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written

(Licensee)

[Text deleted]

1/8/18

Name: [Text deleted]



Title: Associate University Librarian, Collection Services

MARUZEN-YUSHODO Company, Limited. (Licensor)

[Text deleted]

Name: [Text deleted]

Title: Senior General Manager, e-Resources, Solution and Subscription

## Exhibit A – Authorized Users

"Authorized Users" shall be (1) persons affiliated with the Licensee as students, faculty or employees; (2) other non-affiliated persons physically present in the Licensee's library facilities; and (3) such other persons as the Licensor may, at the request of the Licensee and in the Licensor's sole discretion, authorized in writing to access the Licensed Products.

## Exhibit B – Payment

All payments made by the Licensee under this Agreement shall be made within thirty (30) days of date of the Licensor's invoice.