

Licence to Deposit in a Digital Repository

August 2009

The undersigned,

...

Name of Depositor/Depositors (author);
hereinafter referred to as "Depositor"

grants to

Name of Institution,
hereinafter referred to as "Depositary",

the following licence.

Whereas

This Licence to deposit concerns the storage and provision of access to scholarly works or digital files in a digital repository; it reflects the basic principle that such material should be made freely accessible to third parties without restriction:

- Depositor and Depositary believe it is in the general interest to grant maximum access to scholarly works and/or digital files without compromising quality or academic freedom, especially when it is public resources that finance such works;
- Depositor and Depositary accept that weighty reasons may make it necessary for there to be an embargo on the accessibility for third parties of scholarly works and the underlying files (including databases);
- In the above situation, Depositary and Depositor may – in close consultation – apply an embargo lasting no longer than 6 (six) months.

Clause 1 Definitions

The following words shall have the meanings assigned to them below:

1. **Acceptance:** the communication to Depositor by Depositary of the latter's willingness to accept and preserve Depositor's work and make it available to third parties.
2. **Work:** a scholarly article by Depositor as well as associated elements such as files (including databases), models, and visualisations titled and/or described " ".
3. **Embargo:** a waiting period to be observed before a Work may be made accessible to third parties from the digital repository in which it is included.

Clause 2 Licence

1. Upon Acceptance, Depositor grants Depositary, free of charge, an irrevocable non-exclusive Licence to (a) include the Work in its digital repository by transferring the content of the Work to a data medium at the disposal of Depositary, regardless of the manner or form, and (b) to make the Work accessible to third parties.
2. The non-exclusive Licence referred to in Clause 2.1 encompasses the right for Depositary:
 - to make the Work available to third parties by means of distribution, online transmission or transmission in some other form;
 - to make the Work accessible to all under a non-exclusive and irrevocable licence granting users of the digital repository the right to copy, use, distribute, transmit and display the Work publicly and to make and distribute derivative works, on condition that the name of the Depositor and source are properly indicated;
 - to store and preserve the Work and keep it accessible for the future;
 - to alter or restrict access if there are weighty reasons for doing so.

Clause 3 Obligations of Depositary

1. Depositary shall clearly indicate who Depositor of the Work is and shall also indicate that, when making use of the Work, users are obliged to clearly indicate the name of Depositor and the source of the Work.
2. Depositary, to the best of its ability and means, shall permanently store the deposited Work and shall maintain it as readable and accessible.
3. Depositary shall store the Work and include in its digital repository in its original form. In order to permanently preserve the Work, to ensure that it can be consulted, and to provide electronic access to it, Depositary shall be entitled to make copies of the Work and to alter them; in doing so, Depositary shall do everything reasonably possible to respect the technical functionality, design, and content of the Work.
4. If the Work is subject to an Embargo, Depositary, to the best of its ability and means, shall provide effective (technical) facilities to prevent unauthorised third parties from calling up and/or reusing the Work, or parts of the Work, during the Embargo period.
5. Depositary shall clearly indicate to users that they require the consent of Depositor or of the titleholder/titleholders for any commercial use of the Work.

Clause 4 Moral rights

1. The granting of this Licence to Deposit does not affect Depositor's moral rights in respect of the Work. In particular, Depositor shall have the right to be mentioned as Depositor of the Work and shall have the right to contest any distortion of or adverse effect on his/her Work.
2. If Depositor can show that his/her moral rights have been infringed by Depositary's use of his/her Work pursuant to this non-exclusive Licence, he/she shall be entitled to request that Depositary cease using his/her Work in that manner. Depositary shall comply with such request unless this cannot be required of it given the scholarly or historical value of the Work.

Clause 5 Indemnification

1. Depositor warrants Depositary that he/she is the creator in respect of the Work and that the Work does not infringe any rights of any third party.
2. Depositor shall indemnify Depositary in respect of claims asserted by third parties regarding the Work, for example infringement of copyright and/or other rights, portrait right, infringement of privacy and/or the Data Protection Act, and/or abuse/defamation.
3. Depositor hereby states that, where the Work (or any contribution based on the Work) has been sponsored or subsidised by another institution or organisation than [name of the Institution], all obligations regarding publication and/or other obligations have been complied with that are imposed by said sponsor, institution, or organisation.

Clause 6 Liability

1. Depositary shall not be liable in respect of the loss of some or all of the Work.
2. Depositary shall not be liable for any damage resulting from any act or omission of a third party to whom Depositary has made the Work available.

Clause 7 Changes/restrictions regarding access to the Work

1. If there are weighty reasons for him/her to do so, Depositor shall be entitled to request Depositary to temporarily suspend access by third parties to the Work or parts of the Work. In that event, Depositary shall retain the Work in the digital repository but, from the point at which Depositor submits his/her request, shall cease to allow third parties to access the Work or parts of the Work. Depositary shall only comply with said request in the event of a contravention of public order or public morals.
2. In the event of a contravention of public order or public morals, Depositary shall be entitled to temporarily or permanently restrict or prevent access to the Work or parts of the Work. In such event, Depositary shall inform Depositor as soon as possible.

Clause 8 Legal relationship

Depositary shall be entitled to transfer its exploitation rights in respect of the Work to a third party on condition that said third party complies with the obligations undertaken by Depositary vis-à-vis Depositor. In the event of such transfer, the legal successor to Depositary shall be bound by the present Licence to Deposit.

Clause 9 Multiple Depositors

If the Work has more than one author, Depositor has gained the consent of each of them in order to enter into this Licence to deposit on their behalf.

Clause 10 Applicable Law

This Licence to deposit shall be subject to the law of the country in which Depositor resides. Any dispute shall be submitted for adjudication to the competent court in that country according to the normal rules regarding jurisdiction.

Clause 11 Final Provision

This Licence to deposit shall take effect on the day of Acceptance.

Signed by Depositor on (date)