

**THIS LICENCE IS AGREED** the \_\_\_\_\_ day of \_\_\_\_\_ 201\_

**BETWEEN**

the **INSTITUTION OF STRUCTURAL ENGINEERS** a company registered by Royal Charter with Company No. RC000274 and a charity registered in England with Charity No. 233392 and whose registered office is at 11 Upper Belgrave Street, London, SW1X 8BH ("the Publisher")

and

*[Full name of company] a company registered in [place of registration] with Company No. [registered company number] and whose registered office is at [full registered office address] ("the Licensee")*

**WHEREAS** the Publisher holds the rights granted under this Licence

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

**IT IS AGREED AS FOLLOWS: -**

**1. INTERPRETATION**

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

**Agent** A third party appointed from time to time by the Licensee to act on the Licensee's behalf, who may undertake any or all of the obligations of the Licensee under this Licence, as agreed between the Licensee and the Agent.

**Authorised Users** current members of the faculty staff and students (whether on a permanent, temporary or contract basis) of the Licensee who are permitted to access the Secure Network from within the Licensee's Premises or from such other places where Authorised Users undertake their work for the Licensee (including but not limited to Authorised Users' offices and homes) and who have been issued by the Licensee with a password or other authentication.

**Commercial Use** Use for the purposes of monetary reward (whether by or for the Licensee or an Authorised User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, use by the Licensee or by an Authorised User of the Licensed Materials in the course

of research, product development and related activity in the normal course of business does not constitute Commercial Use.

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

**Licensee's Premises** The physical premises owned or 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 Licence that may be agreed by the parties from time to time.

**Secure Network** A network (whether a stand alone network or a virtual network within the Internet) which is only accessible to Authorised 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.

1.2 Clause headings are included in this Licence for ease of reference only and shall not affect the interpretation or construction of this Licence.

1.3 Reference to clauses and schedules are (unless other provided) references to the clauses and schedules of this Licence.

1.4 In the event and to the extent only of any conflict between the clauses and the schedules, the clauses shall prevail.

1.5 Where the context so admits or requires, words denoting the singular include the plural and vice versa.

1.6 References to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time (whether before or after the date of this Licence) and shall include any provisions of which they are re-enactments (whether with or without modification) and any subordinate legislation made under such provisions.

## **2. AGREEMENT**

2.1 The Publisher agrees to grant to the Licensee the non-exclusive and non-transferable right, throughout the world, to give Authorised Users access to the Licensed Materials

via a Secure Network subject to the terms and conditions of this Licence, and the Licensee agrees to pay the Fee. The Agent will be responsible for processing payment of the Fee (and will be entitled to receive any refund of the Fee) on behalf of the Licensee, unless notified otherwise, in which case the Fee will be paid by the Licensee direct to the Publisher.

- 2.2 This Licence 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 Licence that may be added subsequently; and shall automatically terminate at the end of the Subscription Period, unless the parties have previously agreed in writing to renew it.
- 2.3 If the Licensee fails to pay any amount payable by it under this Licence, the Publisher or its Agent shall be entitled but not obliged to charge the Licensee interest on the overdue amount, payable by the Licensee forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 8% per annum above the base rate for the time being of Barclays Bank plc. Such interest shall accrue on a daily basis and be compounded quarterly. The Publisher or its agent reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

### **3. USAGE RIGHTS**

- 3.1 The Licensee, subject to clause 4 below, may:
- 3.1.1 Make such temporary local electronic copies by means of cacheing of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Authorised Users.
- 3.1.2 Allow Authorised Users to have access to the Licensed Materials from the Server via the Secure Network.
- 3.1.3 Provide, or permit the Agent to provide, Authorised 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 Use the Licensed Materials as part of an integrated information service for Authorised Users that will include links between the Licensed Materials and the Licensee's own indexes, third party abstracting and indexing services and other information resources utilised by the Licensee.
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- 3.1.6 Display, download or print the Licensed Materials for the purpose of internal testing or for training Authorised Users or groups thereof, and for internal corporate training programmes (in respect of which appropriate acknowledgement of the source shall be made).

- 3.1.7 Provide print or electronic copies of the Licensed Materials to national or international regulatory authorities for the purposes of, or in anticipation of, regulatory approval or patent and/or trademark applications or other legal or regulatory purposes in respect of the Licensee's products or services.
- 3.2 Authorised Users may, in accordance with copyright law and subject to clause 4 below:
  - 3.2.1 Search, view, retrieve and display the Licensed Materials.
  - 3.2.2 Electronically save parts of the Licensed Materials for personal use.
  - 3.2.3 Print off a copy of individual articles or items of the Licensed Materials.
  - 3.2.4 Distribute a copy of individual articles or items of the Licensed Materials in print or electronic form to other Authorised Users.
- 3.3 Nothing in this Licence shall in any way exclude, modify or affect any of the Licensee's rights under copyright law.

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- 4.1 Neither the Licensee nor Authorised Users may:
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  - 4.1.2 systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose;
  - 4.1.3 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
- 4.2 The Publisher's explicit written permission must be obtained in order to:
  - 4.2.1 use all or any part of the Licensed Materials for any Commercial Use;
  - 4.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorised Users;
  - 4.2.3 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 Licence;
  - 4.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

## **5. PUBLISHER'S UNDERTAKINGS**

- 5.1 The Publisher warrants to the Licensee 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 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 Licence for any reason. This indemnity shall not apply if the Licensee has amended the Licensed Materials in any way not permitted by this Licence.
- 5.2 The indemnity in clause 5.1 is subject to the following provisos:
- 5.2.1 the Licensee promptly notifies the Publisher in writing of the claim or action;
  - 5.2.2 the Licensee makes no admissions or settlements without the Publisher's prior written consent;
  - 5.2.3 the Licensee give the Publisher all information and assistance as the Publisher may reasonably require; and
  - 5.2.4 the Licensee allows the Publisher complete control over any negotiations, litigation and the settlement of any such claim or action.
- 5.3 The Publisher shall:
- 5.3.1 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 and the Agent at least sixty (60) days in advance of any anticipated change of specification in respect of access method, display or any other feature that may affect the manner in which Authorised Users access and make use of the Licensed Materials.
  - 5.3.2 use reasonable endeavours to make available the electronic copy of each journal issue in the Licensed Materials not later than the day of publication of the printed version.
  - 5.3.3 provide the Licensee and the Agent, within 30 days of the date of this License, with information sufficient to enable the Licensee to access the Licensed Material.
  - 5.3.4 use reasonable endeavours 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 Licence.

- 5.3.5 use reasonable endeavours to make the Licensed Materials available to the Licensee and to Authorised Users at all times and on a twenty-four hour basis, save for scheduled routine maintenance (which shall be notified to the Licensee in advance wherever possible;
- 5.3.6 provide adequate and competent technical support and assistance to enable the Licensee to make proper use of the Licensed Materials;
- 5.4 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 Licensee of such withdrawal. If the withdrawal results in the Licensed Materials being substantially and materially less useful to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this License under clause 7.1.2 and 7.4.
- 5.5 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'.
- 5.6 Except as provided in clause 5.1, 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, whether in contract or tort (including negligence) or otherwise, 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.

## **6. LICENSEE'S UNDERTAKINGS**

- 6.1 The Licensee shall:
  - 6.1.1 use reasonable endeavours to ensure that only Authorised Users are permitted access to the Licensed Materials.
  - 6.1.2 use reasonable endeavours to ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and that they are made aware of and undertake to abide by the terms and conditions of this Licence;
  - 6.1.3 monitor compliance and immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all steps,

including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;

- 6.1.4 issue passwords or other access information only to Authorised Users and ensure that Authorised Users do not divulge their passwords or other access information to any third party;
- 6.1.5 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 5.3.3. 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.
- 6.2 The Licensee hereby acknowledges that the business of the Publisher is entirely dependent upon the Publisher's intellectual property rights in the Licensed Materials, and that any material and persistent breach thereof constitutes a fundamental breach of this Licence, in which event, notwithstanding clause 8, this Licence shall immediately terminate; the Publisher shall be entitled to immediate injunctive relief and the immediate removal of all electronic copies of the Licensed Materials held by the Licensee without any rebate of the Fee and without prejudice to any other rights or remedies to which it may be entitled.
- 6.3 The Licensee shall, in consideration for the rights granted under this Licence, pay the Fee within thirty (30) days of receipt of invoice and, if applicable, within thirty (30) days of receipt of invoice relating to each subsequent Subscription Period. 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.

## **7. TERM AND TERMINATION**

- 7.1 In addition to automatic termination (unless renewed) under clause 2.2, this Licence shall be terminated:
  - 7.1.1 if the Licensee defaults in making payment of the Fee as provided in this Licence;
  - 7.1.2 if either party commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the other party;
  - 7.1.3 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
- 7.2 On termination all rights and obligations of the parties automatically terminate except as specifically provided in this Licence.
- 7.3 On termination of this Licence for cause, as specified in clauses 7.1, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorised Users.

7.4 On termination of this Licence by the Licensee for cause, as specified in clause 7.1.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

## **8. GENERAL**

8.1 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.

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

8.3 Neither party may assign or transfer any of its rights or obligations under this Licence, except as provided in this Licence in respect of the Agent and the management of the Server, without prior written consent of the other such consent not to be unreasonably withheld or delayed, save that the Publisher may assign or transfer its rights under the Licence without consent provided it gives advance notice to the Licensee.

8.4 If either party shall come under the control of any third party other than that by which it is controlled at the date of this Licence, the other shall have the right immediately to terminate or renegotiate the terms of this Licence. Control shall mean either the ownership of more than fifty per cent (50%) of the ordinary share capital carrying the right to vote at general meetings or the power to nominate a majority of the board of directors.

8.5 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 Licence 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.

8.6 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.

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

8.8 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.

## **9. USE OF AN EXPERT TO RESOLVE DISPUTES**

9.1 If any difference arises between the parties on the meaning of this Licence or their rights and obligations, it shall first be referred to an independent expert appointed by

agreement of the parties, or, in default of an agreement, by the Secretary General for the time being of the Association of Learned and Professional Society Publishers.

- 9.2 Any expert so appointed shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing stating the reasons for his decision) shall be final and binding on the parties.
- 9.3 Each party shall provide the expert with such information as he may reasonably require for the purposes of his decision.
- 9.4 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable or, if no determination is made by the expert, by the parties in equal proportions.

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

**FOR THE PUBLISHER: [FULL NAME]**

Signature: \_\_\_\_\_

Name (in block capitals): LEE BALDWIN

Date: \_\_\_\_\_

Position / Title: MANAGING EDITOR

**FOR THE LICENSEE: [FULL NAME]**

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

**SCHEDULE 1**

**LICENSED MATERIALS, SUBSCRIPTION PERIOD AND ACCESS METHOD**

A schedule dated \_\_\_\_\_ to the Licence dated \_\_\_\_\_ between The Institution of Structural Engineers and \_\_\_\_\_

*THE LICENSED MATERIALS*

<b>Title</b>	<b>Subscription Period</b>	<b>Fee</b>
<i>The Structural Engineer</i>	January to December	Annual subscription

*ACCESS METHOD*

- Authentication via assigned subscription number
- Authentication via IP address

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

**FOR THE PUBLISHER: [FULL NAME]**

Signature: \_\_\_\_\_

Name (in block capitals): LEE BALDWIN

Date: \_\_\_\_\_

Position / Title: MANAGING EDITOR

**FOR THE LICENSEE: [FULL NAME]**

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

**SCHEDULE 2**

**LICENSEE'S PREMISES**

A schedule dated \_\_\_\_\_ to the Licence dated \_\_\_\_\_ between The Institution of Structural Engineers and \_\_\_\_\_

**Subscriber name & address:**

**Domain name(s):**

**IP addresses/ranges:**

**Subscriber number (if known):**

**Network contact:**

E-mail address:

Telephone:

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

**FOR THE PUBLISHER: [FULL NAME]**

Signature: \_\_\_\_\_

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

Position / Title: MANAGING EDITOR

**FOR THE LICENSEE: [FULL NAME]**

Signature: \_\_\_\_\_

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

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