

SUBSCRIPTION LICENCE for EDUCATIONAL & CULTURAL INSTITUTION

between

SCRAN Limited (trading as **RCAHMS Enterprises**) a company incorporated in Scotland under the Companies Acts with registered number 163518 and having its registered office at 16 Hill Street, Edinburgh EH2 3LD (the "Licensor");

and

An Educational or Cultural Institution as identified in the accompanying email and recorded in the online shop (the "User").

CONFIRMATION FORM

The Licensor has agreed to grant a licence to allow the User to download Licensed Content during the Download Term (defined hereafter) and to use such Licensed Content (defined hereafter) for the Permitted Purpose upon the terms of this confirmation form and the conditions attached or as available on the **Scran website** which are hereby incorporated by reference (together the "Licence")

In this Licence the words and expressions listed below have the following meanings:-

Licence Fee: As indicated at the point of Sale and confirmed in the accompanying email [including VAT]

Commencement Date: Date of email confirming purchase and supplying login details

Permitted Purpose: Use in accordance with the terms of Licence for research and study which does not involve distribution or the generation of any form of profit or financial gain. The user and the user's staff, students, readers or visitors may create documents or publications for internal institutional use and for sharing and storing on a secure intranet. Additional permission will be required for public distribution or sale. **For the purposes of clarity: sale of any Licensed Content, directly or indirectly by inclusion in any paid service or saleable product or publication, is forbidden.**

Territory: Use in the User's premises by staff and students

Term: One Year

Please note that this Licence sets out the rights granted to the User and the limitations imposed upon the User in relation to use of the Licensed Content. In particular:-

- Subject to the terms of this Licence including payment of the Fee the User may download an unlimited number of Licensed Content items from the Website.
- The User may only use the Licensed Content for the Permitted Purpose in the Territory and for no other purpose and in no other jurisdictions whatsoever and such use is only for the Term. Permission to use the Licensed Content for any further purposes, in additional jurisdictions or for a further period may be granted upon payment of a further fee, which must be paid in full before such further use.
- The User may not make Licensed Content available to any third party.
- There is no right to use any Licensed Content at all unless the relevant Fee has been paid.

AGREEMENT

The User has agreed to the terms and conditions of this Licence in full **by clicking the "I have read and agree to the terms and the appropriate licence" option for this Licence and pressing the Continue button.**

CONDITIONS:

1. Definitions

1.1.1. In this Licence the words and expressions listed below have the following meanings:-

"Licence Fee"	has the meaning given in the Confirmation Form;
"Commencement Date"	has the meaning given in the Confirmation Form;
"Confirmation Form"	means the order confirmation form set out above and forming part of this Licence;
"Download Licence"	has the meaning given in Clause 3.1 (Licence);
"Download Term"	has the meaning given in Clause 2.1 (Commencement and Term);
"Intellectual Property Rights"	means patents, registered designs, trade marks, trade names, design rights, copyright (including rights in computer software), database rights, rights in or to business names, know-how, domain names, trade secrets, confidential information and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having similar or analogous effect to any of the foregoing which may subsist anywhere in the world;
"Licence"	means this agreement including for the avoidance of doubt the Confirmation Form, the Download Licence and the Use Licence;
"Licensed Content"	the material listed on the Website as available for download from the Website by the User (including images, data, text and associated reports);
"Licensor Group Companies"	means the Royal Commission of Ancient and Historical Monuments of Scotland established by Royal Warrant of 1908 (revised in 1992) and having its principal office at John Sinclair House, 16 Bernard Terrace, Edinburgh EH8 9NX, SCRAN Trust and any other companies forming part of the Licensor's group of companies from time to time;
"Permitted Purpose"	has the meaning given in the Confirmation Form;
"Renewal Date"	The date one calendar year from the Commencement Date when the licence must be renewed
"SCRAN Trust"	means the SCRAN Trust, a company limited by guarantee, with registered number SC166833 and having its registered office at 16 Hill Street, Edinburgh EH2 3LD;
"Territory"	has the meaning given in the Confirmation Form;
"Use Licence"	has the meaning given in Clause 3.2 (Licence);
"Use Term"	has the meaning given in Clause 2.2 (Commencement and Term); and
"Website"	means www.scran.ac.uk .

1.1 In this Licence:-

- 1.1.1 the singular includes the plural and vice versa;
- 1.1.2 references to gender include references to all genders;
- 1.1.3 unless otherwise stated, references to sub-Clauses, Clauses are to sub-Clauses, Clauses and of this Licence;
- 1.1.4 the Clause headings are for reference only and shall not affect the construction or interpretation of this Licence; and
- 1.1.5 references to statutes, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

1.2 In this Licence, except where the context otherwise requires, any reference to:-

- 1.2.1 another agreement or any deed or other instrument or document shall be construed as a reference to that other agreement, deed or other instrument or document as the same may have been, or may from time to time be, amended, varied, supplemented or novated;
- 1.2.2 a "day" means a period of 24 hours (or such other number of hours as may be relevant in the case of changes for daylight saving) ending at 12.00 midnight;

- 1.2.3 the words "include" or "including" are to be construed as meaning without limitation;
- 1.2.4 a "month" means a calendar month; and
- 1.2.5 a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having a separate legal personality.

2. Commencement and Term

- 2.1 Insofar as this Licence relates to the Download Licence this Licence shall come into force immediately upon the Commencement Date and subject to payment of the Licence Fee on the Renewal Date shall continue indefinitely in full force and effect unless terminated in accordance with Clause 9 (Termination) and (the "Download Term").
- 2.2 Insofar as this Licence relates to the Use Licence this Licence shall come into force immediately upon the Commencement Date and subject to payment of the Licence Fee on the Renewal Date shall continue indefinitely in full force and effect unless terminated in accordance with Clause 9 (Termination) (the "Use Term").

3. Licence

- 3.1 Subject to the terms of this Licence (including without limitation Clause 3.4) the Licensor grants to the User for the Download Term a non-exclusive, non-transferable licence to allow the User to download an unlimited number of Licensed Content in the Territory (the "Download Licence") to be used solely in accordance with the Use Licence.
- 3.2 Subject to the terms of this Licence the Licensor grants to the User for the Use Term a non-exclusive, non-transferable licence to allow the User to use the Licensed Content downloaded in accordance with the Download Licence in the Territory solely for the Permitted Purpose (the "Use Licence").
- 3.3 The User shall not use or exploit the Licensed Content or any part thereof save in accordance with this Licence. All rights in relation to the Licensed Content not expressly granted to the User under this Licence are reserved to the Licensor.
- 3.4 The User shall not download an amount of Licensed Content pursuant to Clause 3.1 which, in the Licensor's sole opinion, constitutes an unreasonable amount.
- 3.5 The User shall not:
 - 3.5.1 sell, resell, license, distribute, transmit or commercially exploit or make the Licensed Content or any part thereof available in any manner or on any media to any third party;
 - 3.5.2 use the Licensed Content or any part thereof for any purpose other than for the Permitted Purpose;
 - 3.5.3 use the Licensed Content or any part thereof outwith the Territory; or
 - 3.5.4 use the Licensed Content or any part thereof outwith the Use Term

unless the User has been granted explicit prior written consent to do so by the Licensor. If the User applies to the Licensor for such consent, the parties shall discuss the terms on which the Licensor may make available all or any part of the Licensed Content and/or allow such use, including the scope of the licence and the level of fee payable to the Licensor. The Licensor shall not be obliged to agree (whether in whole or in part) to any such consent and the Licensor's decision in this regard shall be final.

4. Licence Fee

- 4.1 In consideration of the rights granted by the Licensor:
 - 4.1.1 the User shall pay to the Licensor the Licence Fee immediately following the Commencement Date; and
 - 4.1.2 on each Renewal Date the User shall pay to the Licensor the Licence Fee.
- 4.2 If the User fails to pay any amount payable by it under this Licence, the Licensor shall be entitled, but not obliged, to charge the User interest on the overdue amount from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Royal Bank of Scotland plc, accruing on a daily basis from the due date until payment is made, whether on or before any judgement.
- 4.3 All sums payable under this Licence are exclusive of Valued Added Tax or any other equivalent sales taxes or duties.

5. Licensed Content

- 5.1 To the extent permitted by law the Licensor hereby excludes any representations, warranties, undertakings, or conditions (whether express or implied by law, contract or otherwise) in connection with the Licensed Content including (without limitation):

- 5.1.1 any warranties of satisfactory quality, fitness for purpose, title and non-infringement; and
- 5.1.2 any warranties that the Licensed Content will be free from errors including any viruses, bugs, trojan horses or any similar errors (together the "Errors") or that any Errors will be corrected and the User is solely responsible for all costs and expenses associated with rectification, repair or damage caused by any Errors.

6. **Liability**

- 6.1 Neither party excludes or restricts their liability in respect of death or personal injury for breach of duty.
- 6.2 Subject always to Clause 6.1, the liability of the Licensor for any breach of the terms of this Licence, or otherwise in relation to the subject matter of this Licence (including that arising from breach of duty, delict, tort or otherwise) shall not exceed the amount of the Licence Fee paid by the User.
- 6.3 Subject always to Clause 6.1 neither party shall be liable in contract, delict (including breach of duty) or otherwise arising out of or in connection with this Licence including by way of indemnity for:
 - 6.3.1 any damage to software or damage or loss of data; or
 - 6.3.2 any economic loss (including loss of revenues, profits, contracts, business or anticipated savings); or
 - 6.3.3 any loss of goodwill or reputation; or
 - 6.3.4 any special, indirect or consequential losses or damage,

in any case, whether or not such losses were within the contemplation of the parties at the date of this Licence, suffered or incurred by that party arising out of or in connection with the provisions of any matter under this Licence.
- 6.4 The parties expressly agree that should any limitation or provision contained in this Clause 6 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

7. **User's Obligations**

- 7.1 The User acknowledges and agrees with the Licensor that:-
 - 7.1.1 all rights and title in and to the Licensed Content and all Intellectual Property Rights in, derived from and relating to the Licensed Content are expressly reserved to the Licensor and its licensors;
 - 7.1.2 the User shall adhere to all of the User's obligations under Clauses 3.4 and 3.5 (Licence);
 - 7.1.3 the User must ensure that no third party retains a copy of the Licensed Content on any medium (including any form of electronic copy);
 - 7.1.4 the User shall immediately provide full particulars to the Licensor in the event that the User becomes aware of any actual or threatened claims by any third party in connection with the Licensed Content;
 - 7.1.5 the Licensor shall have the sole right as against the User to take action against third parties in respect of the Licensed Content. If required to do so by the Licensor, the User shall co-operate fully with the Licensor in any such correspondence, action or proceedings;
 - 7.1.6 the User shall not acquire any rights to commence proceedings in its own name nor shall it negotiate or settle any disputes involving such rights the prior written consent of the Licensor;
 - 7.1.7 all damages recovered under judgement or following settlement of a dispute from third parties shall be the exclusive property of the Licensor; and
 - 7.1.8 the User shall at the request of the Licensor give full co-operation to the Licensor in any action, claim or proceedings brought or threatened by a third party in respect of the Licensed Content as the Licensor may deem fit at the User's costs.
- 7.2 The User shall indemnify the Licensor on demand and keep the Licensor fully indemnified from and against all costs, expenses, actions, proceedings, claims, demands and damages arising directly or indirectly as a result of breach or non-performance by the User of the obligations under this Licence or a breach of any warranty given by the User in Clause 8 (User Warranties) of this Licence.

8. **User Warranties**

- 8.1 The User warrants and undertakes to the Licensor that:
 - 8.1.1 the User has the right, power, authority and capacity to enter into this Licence and to perform its obligations under this Licence;

- 8.1.2 the User has not and shall not acquiesce to the unauthorised use by any third party of any of the Licensed Content;
- 8.1.3 the User shall not use the Licensed Content for any other purpose other than the Permitted Purpose;
- 8.1.4 the User shall not do or omit to do anything to diminish the rights of the Licensor in the Licensed Content or act in any manner which in the Licensor's reasonable opinion is likely to bring the Licensor into disrepute;
- 8.1.5 the User is not acting as an agent or representative for any other person, company or corporate body, institution or any other third party.

9. Termination

- 9.1 The Licensor may terminate this Licence in whole or in part in accordance with this Clause 9 and if either the Download Licence or the Use Licence are so terminated the other shall continue in full force and effect at the sole discretion of the Licensor.
 - 9.2 If the Licensor does not receive payment of the relevant Licence Fee on or prior to the Renewal Date the Download Licence and Use Licence will terminate on the day following such Renewal Date.
 - 9.3 The Licensor may terminate this Licence (in whole or in part) by giving one month's notice to such effect in writing to the User at any time.
 - 9.4 The Licensor may terminate this Licence (in whole or in part) forthwith by written notice to the User if:
 - 9.4.1 the User is in breach of any obligation on it hereunder and, in the case of a breach capable of remedy, it has not been remedied by the User within 5 business days of written notice from the Licensor specifying the breach and requiring its remedy; or
 - 9.4.2 the User is subject to a petition for a bankruptcy order and such petition has presented to the court; or
 - 9.4.3 an administration order is applied for in respect of the User; or
 - 9.4.4 a voluntary arrangement is proposed in respect of the User; or
 - 9.4.5 a resolution is passed or an order being made for the winding up of the User; or
 - 9.4.6 a receiver or administrative receiver is appointed over the whole or any part of the User's undertakings or assets or the User or any other party gives notice of its intention to appoint an administrator to the User; or
 - 9.4.7 the User goes into liquidation (either solvent or insolvent); or
 - 9.4.8 the User is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986) or an event occurs within the jurisdiction of the country in which the User is situated (or registered) which has a similar effect to any of the above events in the United Kingdom; or
 - 9.4.9 the User ceases or threatens to cease to pay its debts as they fall due or ceasing or threatening to cease to trade; or
 - 9.4.10 the User makes or seeks to make any composition or arrangement with its creditors;
 - 9.4.11 the User suffers any event analogous to the events provided in Clauses 9.4.2 to 9.4.10 above under any jurisdiction to which it is subject.
 - 9.5 Termination of this Licence shall be without prejudice to the accrued rights and obligations of the parties.
 - 9.6 Termination of this Licence for any reason shall not bring to an end to the User's obligations to pay any Licence Fee which is due and Clauses 5 (Licensed Content), 6 (Liability), 7 (User's Obligations), 9.7 (Termination) and 15 (Governing Law) shall also survive such termination.
 - 9.7 On termination of the Use Licence for any reason, the User shall immediately cease to use the Licensed Content and shall immediately deliver up to the Licensor on request all copies (including any and all electronic copies) of the Licensed Content and all information, manuals, reports, documents or software relating to the Licensed Content provided to the User by the Licensor in connection with this Licence or any part thereof in its possession or control. Upon any request by the Licensor the User shall certify within 30 days that it has fulfilled its obligations under this Clause 9.7.
- ## 10. Force Majeure
- 10.1 If either party to this Licence is prevented or delayed in the performance of any of its obligations under this Licence (other than any obligation to make payment to the other under this Licence) by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such

evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

10.2 For the purposes of this Licence "Force Majeure" shall be deemed to be any cause affecting the performance of this Licence arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party concerned.

11. **General**

11.1 No variation or amendment to this Licence shall bind either party unless made in writing and signed by or on behalf of both parties.

11.2 Failure by either party to exercise or enforce any rights conferred upon it by this Licence shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

11.3 If any provision of this Licence is held to be unlawful or unenforceable, the rest of this Licence shall remain in full force and effect.

11.4 The User acknowledges that it is not the agent or representative of the Licensor and the User undertakes not to hold itself out as same.

12. **Notices**

Any notice required to be given hereunder by either party to the other shall be in writing and shall be served by sending the same by first class registered or recorded delivery post to the address of the other party as given by the Licensor herein and by the User on the Confirmation Form or to such other address as that party may have previously notified to the party giving notice as its address for such service. Such notice will be deemed to be received two (2) days after the date of posting.

13. **Assignment and Sublicensing**

13.1 The User is not entitled to assign, sublicense, or otherwise transfer the benefit or burden of this Licence, whether in whole or in part, without obtaining the prior written consent of the Licensor.

13.2 The Licensor shall be entitled at its sole discretion to assign, sub-contract or otherwise transfer all or any part of the benefit or burden of this Licence to any Licensor Group Companies and to any other charitable institutions.

14. **Entire Agreement**

This Licence constitutes the entire agreement between the parties and supersedes any previous agreement between them relating to the subject matter of this Licence. Provided that nothing in this Clause 14 shall have effect to exclude the liability of either party for fraud or fraudulent misrepresentation.

15. **Governing Law**

This Licence shall be governed by and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.