

Asempa Limited

Online Journal Site Licence Agreement for Africa Confidential

Key Definitions

In this Agreement, the following terms shall have the following meanings:

- 1.1 **“Authorised Users”** means Persons Affiliated with Licensee: full and part-time employees, staff, and students officially affiliated with the Licensee at the Location(s) using valid Internet Protocol (“IP”) address(es) provided by the Licensee to Licensor.
Walk-ins: Patrons not affiliated with Licensee who are physically present on Licensee’s premises (‘walk-ins;).
- 1.2 **“Commercial Use”** means use of the Licensed Material for the purposes of monetary reward (whether by or for the Licensee or Authorised User) by the means of sale, resale, loan, transfer, hire or other form of exploitation.
- 1.3 **“Fee”** means the subscription fee payable by the Licensee for the Licensed Materials as set out on the Website.
- 1.4 **“Licence”** means the Licence set out in Clause 2 below.
- 1.5 **“Licensee”** means the individual organisation, who purchases this Licence, (either directly or via an agent).
- 1.6 **“Licensed Materials”** means the electronic version of the Licensor’s journal(s) and publications, which the Licensee subscribes to.
- 1.7 **“Licensor”** means Asempa Limited.
- 1.8 **“Location”** means the site of any company, organisation or institution, owned by the licensee. Expressly, it does not include premises of agents, distributors, associates, or other representatives of any kind.
- 1.9 **“Secure Network”** means a network (whether a standalone 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 login and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Licensee.
- 1.10 **“Site”** means the electronic site on which the Licensed Materials will be displayed.
- 1.11 **“Start Date”** means the date upon which the Licensed Materials are first made available to the Licensee.
- 1.12 **“Term”** means one year from the Start Date, unless terminated earlier under Clause 6.
- 1.13 **“Website”** means <http://www.africa-confidential.com>

The Licence

- 2.1 In consideration of receipt of the Fee, Licensor grants the Licensee a non-exclusive, non-transferable Licence to access the Licensed Materials at the Location or remotely. Remote access to the Licensed materials however may only be either via Licensee’s Secure Network (and only if fully in accordance with clauses 4.1.1 and 4.1.2), or to Authorised Users who have been issued by Licensee a password or other necessary authentication to access the Licensed Materials.
- 2.2 Licensor maintains the Licensed Materials as a service to its subscribers. Licensor holds the copyright (or all necessary licences), for all works published in the Licensed Materials, as a compilation and as to the individual articles, collectively and individually, unless otherwise expressly noted.
- 2.3 Neither Licensee nor any Authorised User shall claim ownership of the Licensed Material, or any intellectual property rights in the Licensed Material, by reason of their use of or access to the Licensed Material, nor make any Commercial Use of the Licensed Materials.
- 2.4 The Licensor 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.

Permitted Uses

- 3.1** All use of the Licensed Material is subject to all applicable copyright laws and fair use conventions, and reproduction of any portion of the Licensed Material is permitted as follows:
- 3.1.1 *Downloading*: Downloading, printing, or saving of the Licensed Material for personal use is permissible. No Commercial Use of any part of the Licensed Material is permitted without the prior, express written permission of Licensor. Systematic downloading is forbidden as is the creation of derivative works from the Licensed Materials.
- 3.1.2 *Braille Transcription*: Licensee may transcribe any portion of the Licensed Material into Braille script or enlarged type for Authorised Users who are visually impaired.
- 3.1.3 *Course Packs*: Where the Licensee is an institution, the Licensee and Authorised Users may use a reasonable portion of Licensed Materials in the preparation of course packs or other educational materials for Authorised Users. Each article must carry acknowledgement of the source, title, author and publisher. Copies of such items shall be deleted by the Licensee when they are no longer required for such purpose.
- 3.1.4 *Inter-library Loan*: Where the Licensee is an institution, the Licensee may fulfill occasional request from non-commercial libraries for the Inter-library Loans (“ILL”). However because of the easily reproducible nature of electronic publications, an ILL of any portion of the Licensed Materials in any electronic or digital form is expressly prohibited. For the avoidance of doubt, no PDF document may be emailed for an ILL. Licensee may print articles from the Licensed Materials for an ILL and forward them as hard copies, provided all printing is done at the Location and at Licensee’s expense and that only a limited number of copies of such articles will be distributed in this way.

Upon an adequate consideration from Licensor, the Licensee agrees to maintain records in respect of Licensees use of the Licensed Materials in such Inter-library Loans and to provide such records to Licensor on January 31st each year with a summary for the immediate preceding calendar year.

Licensee’s Obligations

- 4.1** Licensee agrees that it:
- 4.1.1 will undertake all necessary authentication and verification processes to ensure that only Authorised Users can access the Licensed Materials;
- 4.1.2 is responsible for creating and maintaining reasonable security measures, and posting policies consistent with the rights and restrictions described in this Licence to ensure that only Authorised Users can access the Licensed Materials;
- 4.1.3 is prohibited from making agreements for access to the Licensed Material with individuals, organisations, vendors, affiliates, or partners, which are not departments of the Licensee. Licensee affirms that all IP addresses in the range listed for authorisation are specifically controlled by Licensee for workstations under its administrative control and for the use of Authorised Users. Licensee is responsible for maintaining the list of IP addresses of all Authorised Users;
- 4.1.4 will not knowingly permit anyone other than Authorised Users to use the Licensed Materials;
- 4.1.5 will, if it becomes aware of unauthorised access to the Licenced Material, notify Licensor immediately and co-operate in locating and attempting to stop the specific individuals who are abusing the service. If the specific abuser(s) cannot be identified or stopped, Licensor has the right to withhold, suspend, or terminate access to all or any portion of the Licensed Materials, without liability;
- 4.1.6 will not remove, cover, overlay, obscure, block, or change any copyright notices, legends, or terms of use which Licensor may post on the Site in order to inform users about system features, terms of use, or copyright notices;
- 4.1.7 will not in anyway frame or use framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of Licensor without the

Licensor's express written consent. Licensee may not use any meta tags or any other "hidden text" utilising Licensor's names or trade marks, without the express written consent of Licensor.

and
4.1.8 will not make any Commercial Use of the Licensed Materials.

Technical Access

5.1 Licensor intends for the Site to be available 24 hours per day, 7 days per week. However, Licensor will not be liable for damages or refunds should the Site become unavailable or access to the Site becomes slow or incomplete due to system back-up procedures, internet traffic volume, upgrades, overload of requests to the servers, general network failures or delays, or any other cause which may from time to time make the Site inaccessible to Licensee.

Termination

- 6.1 Either party may terminate this Agreement:
- 6.1.1 where the other party commits a material or persistent breach of any term of this Agreement and fails to remedy such breach (if capable of remedy) within 30 days of notification in writing from the other party; or
 - 6.1.2 immediately upon the other party becoming insolvent, subject to receivership, liquidation or similar external administration.
- 6.2 Licensor may terminate this Licence if Licensee defaults in making payment of the Fee or any part of the Fee.
- 6.3 On termination of this Licence for just cause, access to the Licensed Materials by Licensee and Authorised Users shall be terminated.

Warranty and Liability

- 7.1 While Licensor seeks to ensure the accuracy of content posted online, Licensor does not warrant or guarantee its accuracy, completeness, merchantability, or fitness for a particular purpose.
- 7.2 To the fullest extent permitted by law and other than expressly provided for herein, in no circumstances is Licensor liable to the Licensee for any indirect or consequential losses or expenses, however caused, including, without limitation, loss of anticipated profits or savings, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims. Nothing in this Agreement seeks to exclude liability for death or personal injury caused by Licensor's negligence or fraudulent misstatement.
- 7.3 Licensor's aggregate liability for any content, accessibility or problems with the Site will not exceed the amount of subscription fees paid for the Licensed Materials during the 12-month period preceding any claim or notice of damages.

Indemnities

- 8.1 Licensor shall indemnify and hold Licensee harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright arising out of the authorised use of the Licensed Materials by Licensee or any Authorised User. No limitation of liability set forth elsewhere in this Agreement is applicable to this indemnification.
- 8.2 Should Licensee wish to invoke the indemnity in clause 8.1 and is conditional on the following. Licensee must promptly notify Licensor of any such claims and must not make any admission of liability. The other party shall provide assistance in investigating and defending such claims as Licensor may reasonably request and have the right to participate in the defence at its own expense, subject to following all reasonable instructions of Licensor.

General

- 9.1 Neither party shall be liable for failure, default or delay in performing its obligations under this Licence, caused by a Force Majeure event which shall include any act of God, war, or threatened war, act or threatened act of terrorism, riot, strike, lockout, individual action, fire,

flood, drought, tempest or other event beyond the reasonable control of either party.

- 9.2 Licensor may assign or transfer any of its rights and obligations under this Agreement, upon written notice to Licensee.
- 9.3 Alterations to this Agreement are only valid if they are recorded in writing and signed by both parties.
- 9.4 In the event that any provision of this Agreement is held to be invalid, the remainder of the provisions shall continue in full force and effect.
- 9.5 There shall be no right whatsoever for any third party to enforce the terms and conditions of this Agreement. The Parties hereby expressly wish to exclude the operation of the Contracts (Rights of Third Parties) Act 1999.

Date of document: October 2010