

## LearnTechLib<sup>®</sup> License Agreement

*(Please type or print clearly)*

**Licensee (Institution) Name:** \_\_\_\_\_

**Licensee Primary Contact:** \_\_\_\_\_

**Licensee Address:** \_\_\_\_\_

**Licensee Primary E-Mail:** \_\_\_\_\_

**Licensee Primary Telephone and Fax:** \_\_\_\_\_

**Agreement Date:** \_\_\_\_\_

**If this license is to cover multiple campuses, please list the campuses below:**

**Campus IP Information (addresses or domain ranges for computers on your campus(es)):** Note: This Agreement is intended to cover the entire Licensee identified above as of the date of this Agreement, including all departments, campuses, and professional schools. Therefore, please include IP information covering the entire Licensee.

Are you currently using a proxy server to provide access to restricted resources?  Yes  No

If yes, please provide the IP for the proxy server:

If yes, please also provide the URL that would be used to access the proxied content (e.g. [www.learntechlib.org.proxy.library.edu](http://www.learntechlib.org.proxy.library.edu) or [proxy.library.edu/login?url=www.learntechlib.org](http://proxy.library.edu/login?url=www.learntechlib.org)):

If you do not currently use a proxy server, do you have plans to do so in the future?  Yes  No

Do you provide users any other means of access to restricted resources from machines outside of your campus IP domain?  Yes  No

**The parties agree to be bound by the terms and conditions of the LearnTechLib License Agreement attached hereto as of the Agreement date above.**

**LICENSEE**

**LearnTechLib/AACE**

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: Gary Marks

TITLE: \_\_\_\_\_

TITLE: Chief Executive Director

## LearnTechLib<sup>®</sup> LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “Agreement”) is entered into by and between LearnTechLib, sponsored by the Association for the Advancement of Computing in Education (AACE)), a United States not-for-profit organization, and the Licensee specified above as of the Agreement Date.

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS

“Agreement Date” means the date first above written.

“Archive” means the electronic archive of journals, conference proceedings, ebooks, talks, slides, and multimedia materials provided by LearnTechLib and AACE according to the terms of this Agreement, as well as portions thereof or Materials (as hereafter defined) contained therein.

“Authorized Users” means persons who are authorized to use Licensee’s library facilities who (a) are affiliated with Licensee as students, faculty or employees including permanent, temporary, contract and visiting or researchers associated with the Licensee, or (b) are physically present in the Library (as hereafter defined).

“Derivative Work” means a work based upon one or more preexisting works such as a modification, enhancement, adaptation, translation, abridgment or any other form in which such preexisting work may be transformed or incorporated and which, if prepared without authorization of the owner of the copyright or other intellectual property right in such preexisting work, would constitute an infringement of such right.

“Electronic Learning Environment” means virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments, library environments, course/learning management systems, and courseware technologies) hosted on a Secure Network.

“Intellectual Property” means any trademarks, issued patents and patent applications, copyrights and copyright registrations and applications, rights in ideas, designs, works of authorship, Derivative Works, and all other intellectual property rights relating to the Archive.

“Library” means Licensee’s library building(s).

“Materials” means any portion or portions of journal content in, or printed from, the Archive.

“Secure Network” means a computer network that is only accessible to Authorized Users.

“User Rules” means those terms and conditions for use of the Archive that appear on certain screen displays in the Archive as such may be amended from time to time, or that are otherwise provided to Licensee or to Authorized Users by LearnTechLib and AACE. The User Rules shall include, but not be limited to, the right to make one printed copy, and one electronic copy for storage purposes, of an article or articles from the Archive, solely for an Authorized User’s personal, noncommercial use.

### 2. CONTENT OF ARCHIVE; GRANT OF LICENSE

2.1 LearnTechLib and AACE hereby grants to Licensee a non-exclusive license to use the Archive and to provide the Archive to Authorized Users as permitted herein (the “License”).

### 3. USE OF ARCHIVE

3.1 Licensee shall not permit anyone other than Authorized Users to use the Archive, or

display or otherwise make available the Archive to anyone other than Authorized Users, except as expressly permitted under the terms of this Agreement.

3.2 Licensee may not utilize the Archive for commercial purposes, including but not limited to the sale of Materials, fee-for-service use of the Archive, or bulk reproduction or distribution of Materials in any form; nor may Licensee impose special charges on Authorized Users for use of the Archive beyond reasonable printing or administrative costs. Furthermore, under no circumstances may Licensee (a) remove, obscure or modify any copyright or other notices included in the Archive or the Materials; (b) use Materials in a manner that would infringe the copyright therein under the laws of any country.

3.3 Licensee shall use all reasonable efforts to protect the Archive from any use that is not permitted under this Agreement, and shall notify LearnTechLib ([info@learntechlib.org](mailto:info@learntechlib.org)) of any such use of which it learns or is notified.

3.4 In the event of any unauthorized use of the Archive by an Authorized User, (a) LearnTechLib may suspend or terminate such Authorized User's access to the Archive, (b) LearnTechLib may suspend or terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee shall suspend or terminate such Authorized User's access to the Archive upon LearnTechLib's request.

3.5 It is understood that Licensee may wish to use the Archive for the purpose of fulfilling occasional requests from other collections, a practice commonly called Interlibrary Loan. Licensee may use Materials that have been printed from the Archive in Interlibrary Loan in accordance with Canadian, U.S., and international copyright laws and conventions.

3.6 The parties shall cooperate in gathering data on usage of the Archive, and shall provide such data to each other upon request. Notwithstanding the foregoing, the parties shall not provide data from which an individual user could be identified, unless such disclosure is reasonably necessary for pursuing a claim or investigation concerning alleged violation(s) of the User Rules or is in response to a subpoena, court order, or other legal proceeding.

3.7 Authorized Users may utilize the Archive as follows:

- 3.7.1 Access and use the Archive from the premises of the Licensee, or remotely via a process whereby Authorized Users are authenticated by providing a set of institutional credentials in order to access the Licensee's Secure Network, in order to search, retrieve, display, and view the Archive.
- 3.7.2 Download, save, and transmit by email reasonable amounts of the Archive for personal use.
- 3.7.3 Create persistent links to individual articles for access by Authorized Users from within Secure Networks, and for distribution to Authorized Users by such methods as (but not limited to) email and through Electronic Learning Environments.
- 3.7.4 Transmit to a third-party colleague in hard copy or electronically, reasonable amounts of the Archive for personal use or scholarly or educational use or scientific research.
- 3.7.5 Incorporate reasonable amounts of the Archive in printed or electronic form in assignments, exercises, projects, portfolios, theses and dissertations.
- 3.7.6 Alter or modify the format of the Archive as necessary to provide an

equivalent level of service to Authorized Users with appropriately documented print or other disabilities, in compliance with the Accessibility for Ontarians with Disabilities Act (AODA).

- 3.7.7 Incorporate reasonable amounts of the Archive, whether in print or electronic format, in course packs, handouts, study packs, resource lists, and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in Electronic Learning Environments, and to be distributed to Authorized Users through such methods as (but not limited to) email, Electronic Learning Environments, and in person. Each item shall carry appropriate acknowledgement of the source, listing title, and copyright owner.
- 3.7.8 Include the Archive in federated, metasearch, or discovery services, whenever technically able, for indexing and discovery purposes.
- 3.7.9 Conduct research employing data or text mining of the Archive and disseminate results publicly for non-commercial purposes.
- 3.7.10 Display, download or print reasonable amounts of the Archive, including screenshots, for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.

3.8 Notwithstanding any other provisions of this Agreement, nothing shall in any way restrict or limit the ability of Authorized Users to engage in or conduct any activity that is otherwise permitted under Canadian copyright laws, including without limitation pursuant to any fair dealing exceptions.

#### 4. DELIVERY; SUPPORT

4.1 The Archive will be stored at one or more locations in digital form accessible by telecommunications links between such locations and Licensee's or Authorized Users' workstations. LearnTechLib shall make the Archive available online in digital form to Licensee and Authorized Users within fourteen (14) days of when this Agreement is signed and received by LearnTechLib and the Archive is made publicly available, provided, however, that IP addresses or passwords shall have been provided to LearnTechLib pursuant to Section 4.2 herein.

4.2 Access to the Archive shall be controlled by LearnTechLib through the use of IP addresses. Licensee shall be responsible for providing lists of valid passwords or sets of IP addresses to LearnTechLib if applicable, and updating such lists on a regular basis. The terms and conditions of this Agreement shall apply to any such updates. Licensee shall cooperate with LearnTechLib in the implementation of additional security procedures as they are developed.

4.3 Licensee shall inform LearnTechLib ([info@learntechlib.org](mailto:info@learntechlib.org)) if it makes use of a proxy server to provide access to the Archive, or if it becomes aware of a proxy server that is providing such access.

4.4 Licensee is responsible for establishing and maintaining hardware and Internet access to provide access to, and to transmit, the Archive to Authorized Users. Licensee understands that Internet browser software is required to access the Archive.

#### 5. FEES

5.1 Licensee shall make payment to LearnTechLib for the License granted herein pursuant to the payment terms set forth in this agreement. 5.2 Licensee shall be responsible for all costs associated with establishing access to the Archive as set forth in Section 4.4 above, including but not limited to any telecommunications or other charges imposed by carriers, proprietary network operators and Internet access providers, or licenses for browser software, if any, as well as for all costs associated with printing from the Archive. Licensee shall further be responsible for all costs, fees and taxes relating to Licensee's or Authorized Users' use of the Archive.

## 6. TERM AND TERMINATION

6.1 This Agreement shall continue in effect through **\*\*\*ONE YEAR FROM START DATE\*\*\***, and will renew for successive one (1) year terms based on renewed agreement and payment made to LearnTechLib. For the purposes of clarity: This Agreement will automatically terminate at the end of the subscription term unless both parties have previously agreed to renew.

6.2 Upon termination of this Agreement all online access to the Archive by Licensee and Authorized Users shall be terminated.

## 7. PROPRIETARY RIGHTS

7.1 Licensee hereby recognizes and agrees that the Archive and all Intellectual Property are proprietary to LearnTechLib, subject to the rights of third parties therein. Licensee hereby warrants that it will not, during the term of this Agreement or any time thereafter, attach, dispute or contest, directly or indirectly, LearnTechLib's right and title in and to the Archive, nor assist or aid others to do so.

7.2 Neither party may use the other's name or trademark(s) in a way likely to cause confusion as to the origin of goods or services, or to endorse or show affiliation with the other, except as specifically approved. Notwithstanding the foregoing, (i) LearnTechLib may use Licensee's name and/or the name of the Library in brochures or other materials to identify Licensee as a participant in LearnTechLib, and (ii) Licensee is encouraged to use LearnTechLib's and AACE's name to announce its participation to Authorized Users.

## 8. REPRESENTATIONS AND WARRANTIES

8.1 Each party hereby represents and warrants that it is duly organized and validly subsisting and has full authority to enter into this Agreement and to bind the party to the terms and conditions herein. Licensee represents and warrants that the contact information provided on page one (1) of this Agreement and all updates thereto ("Contact Information") are provided with the full consent of the individuals identified and that the use of such information in connection with the performance of this Agreement shall not constitute a violation of any privacy or related law, regulation, or policy. It is understood that the Contact Information shall be used solely in connection with the performance of this Agreement, including but not limited to communicating with Licensee about LearnTechLib participation.

8.2 Licensee further represents and warrants that it is organized and operated for charitable, scientific, literary or educational purposes, or that it is a government entity, and that no part of the net earnings of such organization inures to the benefit of any private shareholder or individual.

8.3 Licensee represents and warrants that (a) the list of IP addresses and/or passwords provided to LearnTechLib in accordance with Section 4.2 above is accurate and valid, and (b) Licensee shall exert reasonable efforts to maintain sufficient security with respect to such IP addresses and/or passwords such that no one other than Authorized Users is or will be able to access the Archive.

8.4 Licensee represents and warrants that it is providing no IP addresses to LearnTechLib that pertain to any campus other than those listed or indicated on page one of this Agreement, or for which access has

otherwise been agreed in writing by LearnTechLib and AACE. LearnTechLib reserves the right to assess additional fees and require additional license terms or separate license agreements in the event that Licensee provides IP addresses pertaining to campuses other than those listed or indicated on page one of this Agreement. Licensee represents and warrants that it is not providing access to the LearnTechLib Archive to campuses other than those listed or indicated on page one of this Agreement, or for which access has otherwise been agreed to in writing by LearnTechLib. LearnTechLib reserves the right to assess additional fees and require additional license terms or separate license agreements in the event that campuses other than those listed or indicated on page one of this Agreement are sought to be added in the future.

8.5 The Archive has been developed and is maintained with reasonable professional care. LearnTechLib shall use reasonable efforts to provide continuous availability of the Archive online subject to periodic unavailability due to maintenance of the server(s), the installation or testing of software, and downtime related to equipment or services outside the control of LearnTechLib including public or private telecommunications services or internet nodes or facilities.

8.6 LearnTechLib represents and warrants that use of the Archive by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party. The foregoing shall not apply, however, to modifications or Derivative Works of the Archive. LearnTechLib and AACE make no representation or warranty, however, and expressly disclaim any liability with respect to the content of any Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information. Notwithstanding the foregoing, Licensee agrees to notify LearnTechLib of any infringement, libel, or other claim pertaining to any Materials of which Licensee becomes aware. Upon such notification or if LearnTechLib learns of such a claim from another source, LearnTechLib may remove such Materials from the Archive pending the resolution of such claim.

**8.7 OTHER THAN THE EXPRESS WARRANTIES STATED IN THIS SECTION 8, THE ARCHIVE IS PROVIDED ON AN "AS IS" BASIS, AND LearnTechLib DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, ORAL OR WRITTEN), RELATING TO THE ARCHIVE OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LearnTechLib MAKES NO WARRANTIES RESPECTING ANY HARM THAT MAY BE CAUSED BY THE TRANSMISSION OF A COMPUTER VIRUS, WORM, TIME BOMB, LOGIC BOMB OR OTHER SUCH COMPUTER PROGRAM. LearnTechLib FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO AUTHORIZED USERS, OR TO ANY THIRD PARTY.**

8.8 Licensee shall comply with all applicable laws and regulations in its exercise of the License granted herein. Licensee represents and warrants that it shall effect or obtain all non-U.S. governmental or regulatory filings, registrations, and approvals required in connection with this Agreement ("Approvals"), and shall pay any costs associated therewith. Licensee's failure to comply with all applicable laws and regulations, or to effect or obtain Approvals, shall constitute material breach; Licensee agrees to indemnify LearnTechLib for any costs incurred by LearnTechLib or AACE arising therefrom. Licensee shall inform LearnTechLib of any laws or regulations of Licensee's country that require any change to this Agreement. LearnTechLib may terminate this Agreement if warranted by a change in any such laws or regulations.

8.9 LearnTechLib shall not be liable for any loss, injury, claim, liability or damage of any kind resulting from the unavailability of the Archive, interruption of the services provided hereunder, or arising out of or in connection with Licensee's use of Materials. If the Archive fails to operate in conformance with the terms of this Agreement, Licensee shall immediately notify LearnTechLib, and LearnTechLib's sole obligation shall be to repair the nonconformity. In no event shall LearnTechLib's liability exceed the fees paid to LearnTechLib by Licensee, and neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, even if advised of the possibility of a claim.

## 9. GOVERNINGLAW

9.1 This Agreement shall be interpreted and construed according to, and governed by, the United States Federal, as applicable, excluding any such laws that might direct the application of the laws of another jurisdiction. The parties expressly exclude, if applicable, the application of the United Nations Convention on Contracts for the International Sale of Goods.

9.2 Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled by arbitration, including joint and/or consolidated arbitration where practicable, conducted in English, and judgment on the award rendered by the Arbitrator(s) may be entered in any court. The parties agree to exclude any right of application or appeal to other than United States courts in connection with any question of law arising in the course of the arbitration, or with respect to any award made.

9.3 The English language version of this Agreement shall be controlling over any other version.

## 10. MISCELLANEOUS

10.1 This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written, including the User Rules. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of LearnTechLib, AACE, and Licensee.

11.2 This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

11.3 Nothing contained herein shall be deemed to create an agency, joint venture, or partnership relationship between the parties.

11.4 Waiver of any provision herein shall not be deemed to be a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

11.5 If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11.6 The parties hereto agree to execute, acknowledge, and deliver all such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.

11.7 The License herein granted is nontransferable and nonassignable. Licensee shall not sublicense, convey, pledge, encumber or otherwise dispose of this Agreement, or any right, interest or obligation thereunder, directly or indirectly, without the prior written consent of LearnTechLib. This Agreement shall be binding upon any permitted successor to Licensee, or to all or substantially all of the assets of Licensee.