BRILL JOURNAL AND ARCHIVE ONLINE LICENSE AGREEMENT

THIS LICENCE IS AGREED the ___________ day of __________ 2008

BETWEEN

1 [FULL CONTRACTUAL NAME] of [full address] ("the Publisher")

and

2 [FULL CONTRACTUAL NAME] of [full address] ("the LIBRARY")

WHEREAS the Publisher holds the rights granted under this Licence

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

IT IS AGREED AS FOLLOWS: -

1. KEY DEFINITIONS

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

Authorised Users current members of the faculty and other staff of Members (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently students of a Member’s institution, who are permitted to access the Secure Network from within the Library Premises or from such other places where Authorised Users work or study (including but not limited to Authorised Users’ offices and homes, halls of residence and student dormitories) and who have been issued by a Member with a password or other authentication. Remote access is only permitted to faculty, staff, and graduate and undergraduate students. No other remote access is allowed.

Annual hosting fee Annual fee paid by the library to the publisher for the provision of online access to the Licensed Materials
Commercial Use  Use for the purposes of monetary reward (whether by or for the LIBRARY or a Member 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, neither recovery of direct costs by the LIBRARY or any Member from Authorised Users, nor use by the LIBRARY or a Member or by an Authorised User of the Licensed Materials in the course of research funded by a commercial organisation, is deemed to be Commercial Use.

Course Packs  A collection or compilation of materials (e.g. book chapters, journal articles) assembled by members of staff of a Member for use by students in a class for the purposes of instruction.

Electronic Reserve  Electronic copies of materials (e.g. book chapters, journal articles) made and stored on the Secure Network by the LIBRARY or by a Member for use by students in connection with specific courses of instruction offered by a Member to its students.

Fee  The Fee set out in Schedule 2 or in new Schedules to this Licence which may be agreed by the parties from time to time.

Library Premises  The physical premises of the Library or libraries operated by Members or by the LIBRARY, as specified in Schedule 3.

Licensed Materials  The electronic material as set out in Schedule 2 or in new Schedules to this Licence that may be agreed by the parties from time to time.

Member  A university, other educational institution or research organisation that is in membership of the LIBRARY and listed in Schedule 1, and which has agreed by virtue of its membership to be bound by the terms and conditions of this Licence as if it were a party to it jointly with the LIBRARY.

Secure Network  A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users approved by a Member 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 Member, excluding any cache server or other server or network which can be accessed by persons who are not Authorised Users.

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.
2. AGREEMENT

2.1. The Publisher agrees to grant to the LIBRARY the non-exclusive and non-transferable right, throughout the world, to give Members and Authorised Users access to the Licensed Materials via a Secure Network for the purposes of research, teaching and private study, subject to the terms and conditions of this Licence, and the LIBRARY agrees to pay the Outright Purchase Fee as set out in Schedule 2 and the annual hosting fee as set out in Schedule 2.

The Publisher agrees to grant to the Library perpetual access rights to all the journal issues licensed in this agreement.

3. USAGE RIGHTS

3.1. The LIBRARY, subject to clause 6 below, may:

3.1.1. Allow Authorised Users to have access to the Licensed Materials from the Server via the Secure Network. Any form of remote access to the Licensed Materials by members of the public who are not Authorised Users is not permitted.

3.1.2. 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.

3.1.3. Provide single printed or electronic copies of single articles at the request of individual Authorised Users, but not for commercial use. Copying and storing of entire issues by Authorised Users is not permitted.

3.1.4. Display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorised Users or groups of Authorised Users.

3.1.5. The Publisher recognises the right of the LIBRARY to own and possess in perpetuity their Licensed Materials as described in this Agreement in so far as the Licensed Materials were made available to the LIBRARY during the existence of the Agreement.

3.1.6. The LIBRARY may make one (1) electronic copy of all the Licensed Materials, as well as one (1) copy in print, from the electronic versions of the Licensed Materials to be maintained as a backup for archival purposes. Use of LOCKSS technology for backup and archival purposes is permitted.
3.2 Authorised Users may, in accordance with the copyright law of the Netherlands and subject to clause 6 below:

3.2.1 Search, view, retrieve and display the Licensed Materials.

3.2.2 Electronically save individual articles or items of the Licensed Materials for personal use.

3.2.3 Print off a copy of parts 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; for the avoidance of doubt, this sub-clause shall include the distribution of a copy for teaching purposes to each individual student Authorised User in a class at the Member’s institution.

4. SUPPLY OF COPIES TO OTHER LIBRARIES

4.1 Members may, subject to clause 6 below, supply to an Authorised User of another academic, research, or other non-commercial Library (whether by post or fax or secure transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing), for the purposes of research or private study and not for Commercial Use, a paper copy of an electronic original of an individual document being part of the Licensed Materials. Members shall not honour requests received from for profit companies or directly from individuals.

5. COURSE PACKS AND ELECTRONIC RESERVE

5.1 Members may, subject to clause 6 below, incorporate parts of the Licensed Materials in printed Course Packs for the use of Authorised Users in the course of instruction at a Member’s institution, but not for Commercial Use. Each such item shall carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher. Copies of such items shall be deleted by the Member when they are no longer used for such purpose. Course packs in non-electronic non-print perceptible form, such as audio or Braille, may also be offered to Authorised Users who, in the reasonable opinion of the Member, are visually impaired.

6. PROHIBITED USES

6.1 Neither the LIBRARY nor any Member nor Authorised Users may:

6.1.1 remove or alter the authors’ names or the Publisher’s copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;

6.1.2 systematically make print or electronic copies of multiple extracts of the Licensed Materials;
6.1.3 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

6.2 The Publisher’s explicit written permission must be obtained in order to:

6.2.1 use all or any part of the Licensed Materials for any Commercial Use;

6.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorised Users;

6.2.3 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;

6.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen or as otherwise permitted in this Licence, to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

7. PUBLISHER’S UNDERTAKINGS

7.1 The Publisher warrants to the LIBRARY 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 LIBRARY and its Members 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 LIBRARY or any of its Members 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 LIBRARY or any of its Members has amended the Licensed Materials in any way not permitted by this Licence.

7.2 The Publisher shall provide the LIBRARY, within 30 days of the date of this License, with information sufficient to enable the LIBRARY to access the Licensed Materials.

7.3 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 LIBRARY of such withdrawal. If the withdrawal results in the Licensed Materials being no longer useful to the LIBRARY, the LIBRARY may within thirty days of such notice treat such changes as a breach of this License under clause 10.1.2 and 10.4.

7.4 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’.
7.5 Except as provided in clause 7.1, under no circumstances shall the Publisher be liable to the LIBRARY or any of its Members 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 shall in no circumstances exceed the Fee paid by LIBRARY to the Publisher under this Licence. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Regardless of the cause or form of action, the LIBRARY may bring no action arising from this Licence more than six (6) months after the cause of action arises.

8 LIBRARY’S UNDERTAKINGS

8.1 The LIBRARY and each Member shall:

8.1.1 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 of the sanctions which each Member imposes for failing to do so;

8.1.2 use reasonable endeavours to notify Authorised Users of the terms and conditions of this Licence and take steps to protect the Licensed Materials from unauthorised use or other breach of this License;

8.1.3 use reasonable endeavours to monitor compliance and immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;

8.1.4 issue passwords or other access information only to Authorised Users and use all reasonable endeavours to ensure that Authorised Users do not divulge their passwords or other access information to any third party;

8.1.5 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 Materials in accordance with its obligation under clause 7.2. Should the LIBRARY make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect.

8.1.6 keep full and up-to-date records of all Authorised Users and their access details and provide the Publisher with details of such additions, deletions or other alterations to such records as are necessary to enable the Publisher to provide Authorised Users with access to the Licensed Materials as contemplated by this License;

8.1.7 use reasonable endeavours to ensure that only Authorised Users are permitted access to the Licensed Materials.
8.2 The LIBRARY agrees to indemnify, defend and hold the Publisher harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any claim or legal action taken against the Publisher related to or in any way connected with any use of the Licensed by the LIBRARY, Members or Authorised Users or any failure by the LIBRARY to perform its obligations in relation to this Licence, provided that nothing in this Licence shall make the LIBRARY or any Member liable for breach of the terms of the Licence by any Authorised User provided that the LIBRARY and the Member did not cause, knowingly assist or condone the continuation of such breach to continue after becoming aware of an actual breach having occurred.

8.3 The LIBRARY shall, in consideration for the rights granted under this Licence, pay the Fee within thirty (30) days of receipt of invoice and receipt of such payment shall be a condition of this License coming into effect. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the LIBRARY shall be liable for any such taxes in addition to the Fee.

8.4 The titles of any Licensed Materials, as well as any trademarks, logos and colophons owned by or licensed to the Publisher or affiliated companies shall be shown as they appear in the Licensed Materials provided and shall not be deleted or modified by the LIBRARY or its Authorised Users.

8.5 The Publisher shall have the right to review and approve all use of the publication titles, trademarks, logos, colophons, proprietary legends or legal notices provided by the Publisher.

8.6 All rights with respect to publication titles, trademarks, logos, society names and colophons are expressly and exclusively reserved.

9. UNDERTAKINGS BY BOTH PARTIES

9.1 Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party.

10. TERM AND TERMINATION

10.1 Online access shall be terminated:

10.1.1 if the LIBRARY defaults in making payment of the annual hosting fee as provided in this Licence and fails to remedy such default within thirty (30) days of notification in writing by the Publisher;

10.1.2 if the LIBRARY commits a wilful material and persistent breach of the Publisher’s copyright or other intellectual property rights or of the provisions of clause 3 in respect of usage rights or of clause 6 in respect of prohibited uses;
10.1.3 if the Publisher becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

10.2 On termination all rights and obligations of the parties automatically terminate except for obligations in respect of Licensed Materials, to which access continues to be permitted as provided in clause 3.1.8.

11. GENERAL

11.1 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.

11.2 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.

11.3 This Licence may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, without the prior written consent of the other party, which consent shall not unreasonably be withheld.

11.4 If rights in all or any part of the Licensed Materials are assigned to another publisher, the Publisher shall use its best endeavours to ensure that the terms and conditions of this Licence are maintained.

11.5 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.

11.6 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.

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

11.8 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.

11.9 This Licence shall be governed by and construed in accordance with Netherlands law; subject to clause 12, the parties irrevocably agree that any dispute arising out of or in connection with this Licence will be subject to and within the jurisdiction of the courts of the Netherlands.
12. USE OF AN EXPERT TO RESOLVE DISPUTES

12.1 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 three independent experts of whom two will be appointed by each of the parties. The third expert will be appointed by the two appointed experts together and will be the chairperson of the expert committee.

12.2 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.

12.3 Each party shall provide the expert with such information as he may reasonably require for the purposes of his decision.

12.4 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]

Name (in block capitals: _______________   Date: ______________

Position / Title: ______________________

FOR THE LIBRARY: [FULL NAME]

Name (in block capitals: _______________   Date: ______________

Position / Title: ______________________
SCHEDULE 1

MEMBERS OF THE LIBRARY

A schedule dated [date] to the Licence dated [date] between [Publisher] and [LIBRARY]

<table>
<thead>
<tr>
<th>Institution</th>
<th>Address</th>
<th>Domain name/ IP Address</th>
<th>Contact name/ tel/ fax/ e-mail</th>
</tr>
</thead>
</table>

List of Members and their addresses and Internet details, and a contact name at each

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

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _______________ Date: ______________
Position / Title: ______________________

FOR THE [MEMBER] [LIBRARY]: [FULL NAME]

Name (in block capitals: _______________ Date: ______________
Position / Title: ______________________
SCHEDULE 2

LICENSED MATERIALS AND ACCESS METHOD

A schedule dated [date] to the Licence dated [date] between [Publisher] and [LIBRARY]

THE LICENSED MATERIALS

☐ Brill Journal Archive Online
☐ Brill Law Journal Archive Online
☐ Brill Humanities Journal Archive Online
☐ Brill Social Sciences Journal Archive Online
☐ Brill Science Journal Archive Online

List of titles in the Archive

Outright Purchase Fee

Annual hosting fee

List of Licensed Materials included in the Archive(s),

ACCESS METHOD

Authentication via User ID/password and IP Address
Authentication via IP address

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

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _______________   Date: ______________
Position / Title: ______________________

FOR THE LIBRARY: [FULL NAME]

Name (in block capitals: _______________   Date: ______________
Position / Title: ______________________
SCHEDULE 3

LIBRARY PREMISES OF EACH OF THE MEMBERS

A schedule dated [date] to the Licence dated [date] between [Publisher] and [LIBRARY]

List of addresses of all Members’ Library Premises, Domain Name(s) and IP addresses and/or ranges:
Class B Network: first two network numbers plus asterisks for host addresses, i.e.: 125.64.*, *
Class C network: first three network numbers plus an asterisk for host address, i.e.: 125.64.133,*
Single station: all four numbers, i.e. 125.64.133.20; or ranges, i.e. 125.64.133.20-125.64.133.40

<table>
<thead>
<tr>
<th>Library name &amp; address</th>
<th>Domain name(s)</th>
<th>IP addresses/ranges</th>
</tr>
</thead>
</table>

Network contact: Name:
Telephone: Fax: E-mail address:

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

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals): _______________ Date: ______________
Position / Title: ______________________

FOR THE [MEMBER] [LIBRARY]: [FULL NAME]

Name (in block capitals): _______________ Date: ______________
Position / Title: ______________________
[Optional schedule]

SCHEDULE 4

LIBRARY COPYRIGHT ENFORCEMENT POLICY

A schedule dated [date] to the Licence dated [date] between [Publisher] and [LIBRARY]

List any documents evidencing the policy of each of the Members, with attached copies

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

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _______________   Date: ______________
Position / Title: ______________________

FOR THE LIBRARY: [FULL NAME]

Name (in block capitals: _______________   Date: ______________
Position / Title: ______________________