

This Licence Agreement is agreed the [date] day of [date] 20[..]

between

1 [full contractual name] of [full address] ('the Publisher')

and

2 [full contractual name] of [full address] ('the Licensee')

This should be the head office - see definitions for the treatment of affiliates

WHEREAS the Publisher holds the rights granted under this Licence Agreement

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

IT IS AGREED AS FOLLOWS

1. Key definitions

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

1.1 **Authorised Users** Current employees and independent contractors of the Licensee (whether on a permanent, temporary or contract basis) who would be permitted by the Licensee to access the Secure Network from within or outside the Licensee's premises, 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.

1.2 **Fee** The fee set out in Schedule 1, as amended by mutual agreement of the parties from time to time.

May be a one-off fee, an annual fee (i.e. subscription), or any other basis.

1.3 **Licensed Materials** The electronic material listed in Schedule 1, as amended by mutual agreement of the parties from time to time, and which is delivered in the format and according to the time schedule specified in Schedule 1.

May be a single item or multiple items.

1.4 **Licensee** This term includes the Licensee as first named above, and those affiliates of the Licensee and other associated companies indicated in Schedule 2. The ownership of the Licensee is also indicated in Schedule 2. For avoidance of doubt, "Affiliate" shall mean any

corporation or other business entity controlled by, controlling, or under common control with, the Licensee. For this purpose “control” shall mean direct or indirect beneficial ownership of more than fifty percent (50%) of the voting interest in such corporation or other business entity or having otherwise the power to govern the financial and the operating policies or to appoint the management of an organization.

1.5 **Secure Network** A network operated or controlled by the Licensee (whether a standalone network or a virtual network within the Internet) which is accessible only to Authorised Users

2. Grant of Licence

2.1 The Publisher hereby grants to the Licensee the non-exclusive and non-transferable right to give Authorised Users [worldwide access] to the Licensed Materials via the Secure Network, subject to payment of the Fee by the Licensee and to the other terms and conditions of this Licence Agreement

2.2 In consideration of the rights granted under this Licence Agreement, the Licensee shall pay the Fee to the Publisher in accordance with the provisions of Schedule 1. 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.

2.3 This Licence Agreement shall commence on [date] and, unless earlier terminated pursuant to clause 8 below, shall remain in effect until [date], when the Licence Agreement shall automatically [terminate] [be renewed for a further [Calendar year/specify other period]] unless the parties have previously agreed [on or before] to renew it. The licence period for individual items of material shall be as set out in Schedule 1 as amended by mutual agreement of the parties from time to time.

Square brackets provide for option of automatic renewal.

3. Permitted uses

3.1 Subject to Clause 4 below, the Licensee may, for all of the Licensed Materials in Schedule 1:

3.1.1 Allow Authorised Users to have access to the Licensed Materials via the Secure Network

3.1.2 Supply to Authorised Users, by electronic or other means, copies of one or more individual items taken from the Licensed Materials.

3.1.3 Display, download, distribute or print multiple copies of parts of the Licensed Materials for the purpose of internal promotion or testing of the service, or for training groups of Authorised Users.

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,] [under the terms and conditions specified in Schedule 3]

3.1.5 Use the licenced data for Text and Data Mining (TDM) meaning: download, extract and index information from the Publisher's Content to which the Subscriber has access under this Subscription Agreement. Where required, mount, load and integrate the results on a server used for the Subscriber's text-mining system and evaluate and interpret the TDM Output for access and use by Authorised Users. The Subscriber shall ensure compliance with Publisher's Usage policies, including security and technical access requirements. Text and data mining may be undertaken on either locally loaded Publisher Content or as mutually agreed.

3.2 Subject to Clause 4 below, Authorised Users may, for all of the Licensed Materials in Schedule 1:

3.2.1 Search, view, retrieve and display the Licensed Materials

3.2.2 Print single copies of individual items taken from the Licensed Materials

3.2.3 Make electronic copies of individual items taken from the Licensed Materials [for storage on the Authorised User's machine only]

3.2.4 Distribute single copies of individual items taken from the Licensed Materials in print or electronic form to other Authorised Users.

3.2.5 Store electronic copies of the Licensed Materials as necessary solely to ensure efficient use by Authorized Users in connection with their work on a project and only during the lifetime of that project. Such copies are not to be redistributed for marketing.

3.3 Subject to Clause 4 below, with respect to individuals who are not Authorized Users, Authorized Users may, for all of the Licensed Materials in Schedule 1:

3.3.1 Store and provide print or electronic copies of parts of the Licensed Materials to national or international regulatory authorities for the purposes of or in anticipation of regulatory approval, patent and/or trademark applications or other regulatory purposes in respect of the Licensee's products or services, under the financial terms specified in Schedule 3.

3.3.2 Supply print or electronic copies of individual items taken from the Licensed Materials when required by law for use in legal proceedings, under the financial terms specified in Schedule 3.

3.3.3 Reactively supply single print or electronic copies of individual articles or parts of articles taken from the Licensed Materials to individual third parties upon request for medical information purposes. Copies supplied under this clause must carry without modification copyright notices or other notices related to Intellectual Property already incorporated in the Licensed Materials.

3.3.4 Supply electronic or printed copies of Licensed Materials to his independent contractors without access to his Secure Network, provided:

3.3.4.1 The copies will be used only for the purposes of the contracted work

3.3.4.2 The recipients are advised that the copies are confidential and not for redistribution

3.3.4.3 At the termination of the contracted work, the copies will be destroyed

3.3.5 Proactively distribute electronic or printed copies of the Licensed Materials to scientific advisors who are not Authorized Users on occasions where the Licensee has a non-marketing

business need, provided no more than 25 (twenty-five) copies of a single work were distributed per occasion and all recipients were contractually advised that the copies were for their personal use only and not for redistribution.

3.3.6 Transmit to a third party colleague, either electronically or printed, a single article or item from the Licensed Materials for personal use or scholarly, educational, or scientific research. All recipients will be advised that the copies were for their personal use only and not for redistribution or re-sale.

[3.3.7 Supply multiple print [or electronic] copies of items taken from the Licensed Materials to third parties on a systematic basis for marketing purposes, under the financial and other terms specified in Schedule 3. [Under no circumstances may electronic copies be supplied under this clause {*only required if previous square-bracketed phrase is deleted*}] Copies supplied under this clause must carry without modification copyright notices or other notices related to Intellectual Property already incorporated in the Licensed Materials.]

[3.3.8 Make available to the public, from the Licensee's website, electronic copies of individual items taken from the Licensed Materials, under the financial terms specified in Schedule 3.]

4. Prohibited uses

4.1 Neither the Licensee nor Authorised Users may remove or alter the authors' names or affiliations or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials.

4.2 Neither the Licensee nor Authorised Users may systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose other than as explicitly permitted under Section 3 of this Licence Agreement.

4.3 Neither the Licensee nor Authorised Users may provide or make available by electronic means to any third party who is not an Authorised User a retained electronic copy of any part of the Licensed Materials other than as permitted under Section 3.

4.4 Neither the Licensee nor Authorised Users may mount or distribute any part of the Licensed Materials on any electronic network, including but not limited to the Internet and the World Wide Web, other than the Secure Network [other than as permitted under Sub-section 3.3 above].

Square bracketed phrase needed if permitted in any or all of 3.3

4.5 The Licensee and Authorised Users may not, without the Publisher's explicit written permission:

4.5.1 Use the whole or any part of the Licensed Materials for sale, reward or exploitation other than as expressly permitted by this Licence Agreement.

4.5.2 Distribute the whole or part of the Licensed Materials to anyone other than Authorised Users or for any purpose not expressly authorised by this Licence Agreement [other than as permitted under Clauses 3.3.1 to 3.3.8]

Square bracketed phrase needed, if permitted in any or all Clauses 3.3.1 to 3.3.8

4.5.3 Publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine it with any other material, other than as permitted in this Licence Agreement

4.5.4 Alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make it perceptible on a computer screen to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

4.6 The grant of rights regarding TDM contained in Clause 3.1.5 above in no way broadens the scope of other rights granted under the Subscription Agreement and the grant of rights remains subject to each of the limitations and exclusions, including regarding third-party access to content and permissible outsourcing of IT services, contained in this Agreement. For avoidance of doubt, the Subscriber may communicate the results without creating products that substitute for Publisher's Content, whether for internal or external use, nor may the Subscriber make the results in the form of data sets available to third parties (beyond defined third parties covered elsewhere in this Agreement, and for the limited purposes specified), nor may the Subscriber produce derivative products or services based on Publisher's Content.

5. Publisher's undertakings -

5.1 The Publisher shall indemnify and hold the Licensee harmless from and against any direct loss, damage, cost, liability or expense (including reasonable legal and professional fees) arising out of any legal action taken against the Licensee claiming that the Licensee's use of the Licensed Materials within the terms permitted in this Licence Agreement infringes any copyright or other proprietary or intellectual property rights of any natural or legal person. This indemnity shall survive the termination of this Licence Agreement for any reason. This indemnity shall not apply if the Licensee has modified the Licensed Materials in any way not permitted by this Licence Agreement.

5.2 The Publisher shall

5.2.1 Make the Licensed Materials available to the Licensee and to Authorised Users from the Publisher's server in the media, format and time schedule specified in Schedule 1

5.2.2 Make available to the Licensee the electronic version of each journal covered by this Licence Agreement, not later than the start of business hours on the day of [within ... days of][reasonably promptly after] publication of the printed version. In the event that for technical reasons this is not possible for any particular journal, as a matter of course, such journal shall be identified at the time of licensing, together with the reasons therefore

There may be a specification of penalties if these parameters are not met.

5.2.3 Provide the Licensee, according to the schedule set forth in Schedule 1, with information sufficient to enable access to the Licensed Materials.

5.3 The Publisher shall use all reasonable endeavours to:

5.3.1 Make the Licensed Materials available to the Licensee and to Authorised Users [at all times and on a twenty-four hour basis][commensurate with the standards of availability set out in clause 5.3.2 below], save for routine maintenance (which shall be notified to the Licensee in advance wherever possible) the current schedule for which is identified in Schedule 5]

[5.3.2 Ensure that its 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 Agreement]

[5.3.3 In the event of unscheduled interruption of access to the Licensed Materials restore the Licensee's access to the Licensed Materials within [two (2)] hours]

[5.3.4 Inform the Licensee of scheduled interruptions and their duration [fourteen (14) days in advance]. [The Publisher shall restrict such interruptions to less than three (3) per year.] [The schedule for regular maintenance shall be as set out in Schedule 5]

[5.3.5 Announce any changes concerning the specification or configuration of the Licensed Materials at least three (3) months in advance [and ensure that such changes are fully compatible with the Licensee's existing systems architecture]]

[5.3.6 Provide the Licensee with adequate and competent technical support and assistance to enable the Licensee to use the Licensed Materials as contemplated hereby [including operating a help desk for all Authorised Users between [9 a.m. and 5 p.m.] in each time zone from which the Licensed Materials is accessed]]

5.4 The Publisher reserves the right at any time to withdraw from the Licensed Materials any item or part of an item 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 withdrawn material represents more than 50% of the individual journal issue in which it appeared, the Publisher shall make a pro rata refund of part of the Fee, taking into account the amount of material withdrawn and the remaining un-expired portion of the Licence Agreement Period.

5.5 The Publisher recognises the importance of long-term preservation of material published in electronic form and [undertakes:][will endeavour] *will use all reasonable endeavours*:-

To explore future strategies for the creation of a permanent archive, whether by the Publisher or by others

Either to provide or to make arrangements for the provision of a permanent archive of the Licensed Materials

To provide a long-term archive as specified in Schedule 6

5.6 The Publisher shall provide on a [*state frequency*] basis usage information for the Licensee's private internal use only, as specified in Schedule 4. Such usage information shall be compiled in a manner consistent with any applicable privacy or data protection laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.

5.7 The Publisher will not disclose to any third party any information about the Licensee's business, including without limitation the list of Licensed Materials or any Licensee usage statistics relating to particular journals or particular articles, without the prior written consent of the Licensee.

5.8 The Publisher warrants that after the exercise of all reasonable care to the best of its knowledge and belief the Licensed Materials contain no virus or other unauthorised or harmful programme, code or routine, and will use its best endeavours to ensure that no software commands that will corrupt, delete or make unreadable other computer files stored on the Secure Network will be inserted by it into the Publisher's electronic files delivered or accessed under the terms of this Licence Agreement.

5.9 If the Licensee is accessing the Publisher's server and system under this Licence Agreement, the Publisher warrants that such system will perform consistently with the written specifications or descriptions of such system [set out in Schedule 5].

5.10 Publisher agrees to alert Licensee of system changes according to the written specifications set out in Schedule 5.

5.11 If the Licensee is accessing the Publisher's server and system, and if the Publisher utilises software for that system produced by a third party software vendor, the Publisher shall provide such warranties as are provided to the Publisher by such vendor as identified in [Schedule].

5.12 If notwithstanding the warranties in 5.8-5.11 above, any harmful virus within the Licensed Materials and attributable to the Publisher or attributable to its software, or attributable to the Publisher's related suppliers including without limitation software suppliers, should come to light during the Term of this Licence Agreement, the Licensee shall have the option either:

(a) to require the Publisher to make [or require from the Publisher's software supplier] such repairs or modifications as may be necessary to remove or correct the said virus within 30 days of receiving written notice from the Licensee to do the same, or

(b) to terminate this Licence Agreement under the terms of clause 8 below.

6 Licensee's undertakings

6.1 The Licensee hereby undertakes that it will not itself or by its employees, agents or contractors commit, procure or be involved in the commission of any material or persistent breach of the Publisher's intellectual property or other proprietary rights relating to the Licensed Materials.

6.2 The Licensee shall:

6.2.1 Ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials [and of the disciplinary procedures which the Licensee will impose for failing to do so]

6.2.2 Use all reasonable endeavours to ensure that all Authorised Users are made aware of and agree to abide by the terms and conditions of this Licence Agreement.

6.2.3 Use all reasonable endeavours to monitor compliance and immediately on becoming aware of any unauthorised use or other breach, take all reasonable steps, [including appropriate disciplinary action], both to ensure that such activity ceases immediately and to prevent any recurrence, and shall inform the Publisher thereof

6.2.4 Issue passwords (or other information to enable access to the Secure Network) only to Authorised Users and shall not divulge, and shall use all reasonable endeavours to ensure that Authorised Users do not divulge, their passwords or other access information to any third party

[6.2.5 Keep full and up-to-date records of all Authorised Users and their access details, and if appropriate provide the Publisher with periodic lists of additions, deletions or other alterations to such records as agreed between the parties from time to time]

6.2.6 Use all reasonable endeavours to ensure that only Authorised Users are permitted access to the Licensed Materials [and if appropriate notify the Publisher within a reasonable period of any person ceasing to be an Authorised User].

Records and notification only necessary if publisher provides direct access - if not, delete.

7 Mutual undertakings

7.1 Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party. In particular, but without limitation:

7.1.1 All commercial and financial terms and conditions of this Licence Agreement which are specific to the agreement between the parties, including without limitation the content of all the Schedules hereto, shall be kept strictly confidential

8 Termination

8.1 This Licence Agreement may be terminated only as follows:

8.1.1 Upon expiration of the stated term hereof, as specified in Clause 2.3

8.1.2 If the Licensee defaults in making payment of the Fee, having failed, after 30 days' notice to remedy such default.

8.1.3 If either party or any of its current employees commits a material or persistent breach of any term of this Licence Agreement and fails to remedy the breach (if capable of remedy) within thirty days of notification in writing by the other party

8.1.4 Either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

This may not be legally binding in the USA, but is worth retaining for its applicability in other territories

[8.1.5 If the ownership or control of either party should change from that set out in Schedule 2. A person or organisation shall be regarded as in control of a corporation or organisation if it either (i) directly or indirectly owns at least 50% of the voting stock or other participating interests of that corporation or organisation or (ii) has the power to elect more than half the directors of such corporation or organisation. In the absence of such ownership or power to elect, a person or organisation shall be regarded as in control of a corporation or organisation if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation or organisation, whether through the ownership of voting securities, by contract or otherwise.]

8.2 In the event of any breach of the Licensee's undertaking in clause 6.1 above, this Licence Agreement may be immediately terminated at the sole option of the Publisher and in the event of the exercise of such option the Publisher shall be entitled to [the return of all Licensed Materials][the immediate removal of all [electronic] copies of the Licensed Materials held by the Licensee] without any rebate of licence fee, in addition to any other rights and remedies to which it may be entitled, at law or in equity.

8.3 On termination all rights and obligations of the parties automatically terminate except for:

8.3.1 Those specified in Clauses 5.1 and 7.1 above

8.3.2 All obligations in respect of Licensed Materials to which access continues to be permitted

[8.6 does not apply 'without limitation' - that privilege is forfeit if the Licensee is in material breach]

8.4 On termination of this Licence Agreement due to breach of any material term thereof by the Licensee, as specified in Clauses 8.1.2-3 above, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorised Users.

8.5 On termination of this Licence Agreement due to breach of any material term thereof by the Publisher, as specified in Clause 8.1.3 above, the Publisher shall forthwith repay to the Licensee that portion of the Fee attributable to the unused portion of the original term of this Licence Agreement.

8.6 On expiry or termination of this Licence Agreement, in respect of one or more journals included in the Licensed Materials, for any cause other than breach by the Licensee, [the Publisher shall supply a copy of/the Publisher shall continue to provide access to/the Publisher shall provide access via the archive specified in Schedule 6 to] all the respective Licensed Materials made available prior to the date of termination.

Last option only applicable if a specific permanent archive has been specified, and the publisher has the right to grant access to it.

9. General

9.1 This Licence Agreement contains the full and complete understanding between the parties and supersedes all prior arrangements and understandings whether written or oral appertaining to the subject matter of this Licence Agreement. All Schedules hereto are incorporated as if set forth in this Licence Agreement in full.

9.2 Alterations to this Licence Agreement are only valid if they are recorded in writing and signed by both parties.

9.3 This Licence Agreement 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. Either party may make its consent conditional on the agreement of the assignee to maintain the confidentiality of (or, at that party's election, destroy) all usage information collected by the other party pursuant to Clause 5.7.

9.3.1 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 Agreement are maintained.

9.4 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 Agreement or to such other address as notified by either party to the other as its address for the service of notices and all such notices shall be deemed to have been received within 14 days of posting.

9.5 Neither party shall be liable in any way for failure or delay in performing its obligations under this Licence Agreement if the failure or delay is due to causes outside the reasonable control of the party in default.

9.6 The failure of any party to enforce any provision on any one occasion shall not affect its right to enforce another provision or the same provision on another occasion.

9.7 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND LOSS OF GOODWILL) ARISING FROM ANY BREACH OF THIS LICENCE AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.8 In the event that any provision of this Licence Agreement is held to be invalid, the remainder of the provisions shall continue in full force and effect.

9.9 This Licence Agreement shall be governed by and construed according to the laws of [specify country] and the parties irrevocably agree to submit to the jurisdiction of the [specify nationality] Courts.

The preferred jurisdiction may be agreed by the parties - a matter of negotiation in each case

As witness the hands of the parties the day and year below first written

For the Publisher

Date

Name (in block capitals)

Title

For the Licensee

Date

Name (in block capitals)

Title

Schedule 1 - Licensed Materials

List of Licensed Materials, initial licence period for each item, format of each item, delivery schedule (if applicable) for each item and fee and payment terms for the initial licence period for each item [provision for re-negotiating fee and payment terms for any renewal terms]"..

Schedule 2

Ownership [,addresses [and IP ranges]] of the Licensee and affiliates of the Licensee to which the licence is granted in this Licence Agreement

Schedule 3 - Terms for distribution to third parties

If applicable. Terms for distribution of copies to third parties for marketing and medical information (and possibly legal and regulatory) purposes - e.g. price per page per copy, or price per article per copy. Terms and conditions may apply to any or all of print copies, electronic copies, and website mounting. Any required copyright management information/ re-use notice and reporting requirements should also be specified here. Only include if this is permitted by the publisher under Clauses 3.3.1 to 3.3.8.

Schedule 4 - Usage information

Specify exactly what usage information is to be collected, and on what frequency reports are to be provided to the other party

Schedule 5

Service level agreements for maintenance (s. 5.3.1).

Schedule 6

Arrangements for the provision of a long-term archive (s.5.5).