

LICENCE FOR ACCESS TO RESEARCH IN PUBLIC LIBRARIES

THIS AGREEMENT is made the [] day of [] 2014 (this Agreement)

BETWEEN

- (1) **PUBLISHERS LICENSING SOCIETY LIMITED** a company registered in England with company number 1575236 and its registered office at 55-56 Russell Square London WC1B 4HP (PLS); and
- (2) [LOCAL AUTHORITY name and address]
[]
(the Licensee)

BACKGROUND

- (A) The June 2012 Report of Dame Janet Finch CBE into expanding access to published research findings recommended the implementation of walk-in access to peer-reviewed journals and conference proceedings in public libraries across the UK.
- (B) Accordingly, PLS and the Licensee wish to operate a pilot programme to provide licensed online access in UK public libraries to peer-reviewed journals and conference proceedings that have been opted-in by publishers through PLS.
- (C) Therefore, PLS agrees to grant on behalf of publishers certain rights to the Licensee to permit the operation of that pilot programme subject to and in accordance with the terms and conditions of this Agreement.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

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

Authorised Agreement means a written agreement under which a Publisher or other rights owner grants rights in respect of the Licensed Material;

Commercial Use means use for the purposes of monetary reward (whether by or for the Licensee, a Registered User or any other person) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Material. In particular, for the avoidance of any doubt, the recovery of actual costs incurred in providing technical facilities relating to use of the Licensed Material in accordance with clause 3.1(b) is not Commercial Use, but the use of the Licensed Material in the course of research for or funded by a commercial organisation is Commercial Use;

Device means a computer terminal or other electronic viewing device compatible with the Technical Supply provided either by the Licensee/Public Library for public use within the Library Premises only or, subject always to the provisions of clause 3.4, by a Registered User;

Librarian means the chief librarian or someone of comparable status employed or

engaged at a Public Library by the Licensee with responsibility for implementing the arrangements contemplated under this Agreement;

Library Premises means the operational physical premises of the Public Libraries in the Territory listed in Schedule 1;

Licensed Material means the peer-reviewed journals and conference proceedings of the Publishers in electronic form only made available under this arrangement from time to time as discoverable through the Search Facility and for the avoidance of any doubt excluding any books, major reference works and databases;

Personal Use means use for non-commercial research and private study only excluding any Commercial Use and not for any other form of re-use;

Public Library means libraries freely accessible to the public which are maintained and operated by the Licensee in the Territory but for the avoidance of any doubt excluding all deposit libraries, including the British Library, and the libraries of universities, colleges and schools unless otherwise agreed in writing by PLS;

Publisher means any publisher who shall have opted-in to this arrangement from time to time as discoverable through the Search Facility;

Registered User means an individual member of the public who is registered as an authorised user of a Public Library and permitted to access its Secure Network from a Device within the Library Premises through the use of a unique password and/or other user-authentication;

Search Facility means the search or other user navigation and discovery functionality provided as part of the Technical Supply;

Secure Network means the local communications network necessary to access the Licensed Material and provided by or on behalf of the Licensee which is accessible only to authorised users whose identity is authenticated at the time of login and periodically thereafter consistent with current best practice and whose conduct is subject to compliance with the Public Library's acceptable use policy or equivalent terms;

Start Date means [] 2014;

Technical Supply means the technical interface and supporting operational services necessary to provide access to the Licensed Material via a Secure Network to a Device within the Library Premises;

Term has the meaning given in clause 6.1;

Territory means the United Kingdom; and

User Undertakings means the undertakings listed in Schedule 2.

- 1.2 In this Agreement (unless the context otherwise requires):
- (a) words in the singular shall include the plural and vice versa and use of any gender shall include the others;
 - (b) the headings in this Agreement are for convenience only and shall not affect its interpretation;
 - (c) references to numbered **clauses** and **Schedules** relate to this Agreement and all Schedules to this Agreement are an integral part of this Agreement;
 - (d) references to a **Party** shall mean a party to this Agreement and (subject to clause 7.1) include references to their respective successors in title and permitted assigns, transferees and novatees and references to a **person** include an individual, firm, unincorporated association or body corporate;
 - (e) references to **writing** does include e-mail or fax except in relation to any notices under clauses 6 and 7.5;
 - (f) references to **include, including** and **in particular** shall be for illustrative purposes and not be construed to limit the sense of the preceding words;
 - (g) unless otherwise stated references to the **approval, agreement** or **consent** of PLS or a Publisher shall be to such approval, agreement or consent being given, withheld, delayed or conditioned at PLS's or the Publisher's sole discretion and obtained in writing and in advance;
 - (h) reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated; and
 - (i) any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

2. LICENCE

- 2.1 Subject to and in consideration of the Licensee complying with its obligations and undertakings under this Agreement, PLS grants to the Licensee from the Start Date for the Term the non-exclusive and non-transferable right to give Registered Users access to the Licensed Material on the Devices via Secure Networks for Personal Use within the Library Premises only subject to and in accordance with the other terms and conditions of this Agreement.
- 2.2 PLS shall procure the provision of the Technical Supply by such third party supplier as PLS shall from time to time appoint. The Licensee shall provide, and procure that all reasonable assistance is provided, to PLS and such third party supplier as may be necessary to enable the implementation of the Technical Supply including the integration and availability of the Search Facility on a Device.
- 2.3 Nothing in this Agreement is intended to limit any right in respect of the Licensed Material granted at any time under an Authorised Agreement and accordingly where there is a conflict in relation to the subject matter of this Agreement the terms of any

Authorised Agreement shall take precedence over the terms of this Agreement.

- 2.4 No fee shall be payable by the Licensee in respect of the rights granted under this Agreement (subject to clauses 2.5 and 2.6 below) provided always that the Licensee exercises its rights and complies with its obligations and undertakings under this Agreement at its own cost and expense.
- 2.5 All rights not expressly granted to the Licensee under this Agreement are reserved on behalf of PLS and the Publishers including the right for an individual Publisher:
- (a) to determine from time to time at its sole discretion as to which content is made accessible as part of the Licensed Material under this Agreement;
 - (b) immediately without notice to suspend or block access to any content within the Licensed Material in whole or in part which ceases at any time to be in the ownership or control of that Publisher or for which it otherwise no longer retains the right to publish or which it has reasonable grounds to believe infringes copyright or other intellectual property or proprietary rights, is defamatory, obscene, infringing of privacy rights or is otherwise unlawful or objectionable or if continued access to such material could otherwise give rise to any liability or damage;
 - (c) immediately without notice to suspend or block access to all its content within the Licensed Material for any Public Library whose Registered Users are in material or persistent breach of the User Undertakings and/or conditions of use referred to under clause 4.2 until that Publisher reasonably believes that the breaches have been remedied and will not recur; and
 - (d) immediately upon notification to withdraw all its content from the Licensed Material entirely for any other reason with withdrawal including (at the Publisher's discretion) ending access to back-issues previously made accessible.
- 2.6 The Parties agree and acknowledge that the rights granted under this Agreement are in respect of a pilot programme and accordingly are granted on a short-term, non-precedential basis.

3. PERMITTED USES

- 3.1 Subject always to the provisions of clause 4, the Licensee shall allow each Registered User:
- (a) to search for and access using the Search Facility the Licensed Material via a Device within the Library Premises only;
 - (b) to display and view the Licensed Material using the Search Facility on the screen of a Device within the Library Premises only; and
 - (c) to print, or have printed, within the Library Premises a single paper copy of a reasonable part (as is appropriate for the Registered User's particular Personal Use) of the Licensed Material subject to the specific restrictions in clause 4.4 below;

in each case for that Registered User's Personal Use only.

- 3.2 Subject always to the provisions of clause 4, the Licensee may allow each Public Library:
- (a) to also conduct the activities referred to in clause 3.1 (a) to (c) solely to the extent and insofar as is reasonably necessary for the purpose of internal testing or training Registered Users; and
 - (b) to charge Registered Users for the recovery of actual costs incurred in providing specific technical facilities relating to use of the Licensed Material including the printing of paper copies but not as a fee to access or view the Licensed Material.
- 3.3 Nothing in this Agreement shall in any way exclude, limit or modify the following permitted uses by Public Libraries under the Copyright Designs & Patents Act 1988:
- (a) copying in compliance with the conditions prescribed in and as permitted (i.e. one copy of an article in a periodical or extract of a literary work to a person satisfying the librarian that they require it for the sole purpose of research for a non-commercial purpose or for private study) subject always to the specific restrictions in clause 4.4 below; and
 - (b) making an accessible copy for a visually impaired user.

For the avoidance of any doubt inter-library loans and document delivery shall not be permitted in respect of the Licensed Material.

- 3.4 The Licensee may permit a Registered User to provide and use their own computer terminal or other electronic viewing device compatible with the Technical Supply on the Library Premises in order to access the Licensed Material provided that:
- (a) use of such equipment is only permitted: (i) subject to the Registered User's prior agreement to, and continued compliance with, the relevant Public Library's own acceptable use policy or equivalent terms prohibiting copyright infringement; and (ii) through user-identifiable log-on credentials;
 - (b) no useable copy of the Licensed Material is retained by the Registered User on such equipment or otherwise on leaving the Library Premises other than any paper copy as permitted hereunder; and
 - (c) access to the Licensed Material is otherwise in accordance with the terms of this Agreement.

4. RESTRICTIONS AND REQUIREMENTS

4.1 The Licensee agrees and acknowledges that the rights of access to and use of the Licensed Material granted under this Agreement must be exercised within the Library Premises only and the Licensee must not suffer or permit access from or use at any other location whether through remote access technology or any other means.

4.2 The Licensee shall at all times procure that:

- (a) each Registered User signs a written undertaking confirming that he or she agrees to be bound by terms and conditions of access which must include the User Undertakings; and
 - (b) the User Undertakings are complied with.
- 4.3 The Licensee must use all reasonable endeavours to monitor the compliance of Public Libraries, library staff and volunteers, and Registered Users with the requirements of this Agreement and immediately on becoming aware of any unauthorised use of the Licensed Material or other breach, must inform both PLS and the relevant Publisher and, without prejudice to the rights of PLS and the Publishers under clause 2.5, take all reasonable steps including termination of access of any Registered User and appropriate disciplinary action against any staff and volunteers, both to ensure that such activity ceases and to prevent any recurrence. The Licensee shall issue passwords or other access information only to Registered Users and use all reasonable endeavours to ensure that Registered Users do not divulge their passwords or other access information to any third party.
- 4.4 The Licensee agrees and acknowledges that the right to print out copies of any Licensed Material under clauses 3.1(c) and 3.3(a) shall be subject to:
 - (a) the requirement that all copying must be carried out within the Library Premises; and
 - (b) the requirement that each copy maintains authors' names, the Publisher's copyright notices and/or other means of identification or disclaimers as they appear in the Licensed Material.
- 4.5 At all times during the Term, the Licensee shall:
 - (a) procure that the Librarian in each Public Library has: (i) signed a written statement in a form approved by PLS acknowledging that they have read and understood the terms and conditions of this Agreement and that they agree to be bound by them; and (ii) complied with those terms and conditions;
 - (b) provide, and maintain the security of, the Secure Networks and immediately notify PLS if the Licensee becomes aware of any actual or suspected security breach along with the steps being taken to remedy the breach and shall provide all reasonable assistance to PLS, PLS' suppliers and the Publishers in order to mitigate its impact;
 - (c) not suffer or permit the use of spiders, bots, crawlers or other software agents or any equivalent technology on any of the Licensed Material;
 - (d) use its best endeavours to maintain all its Public Libraries' subscriptions to journals made available within the Licensed Material notwithstanding the arrangements hereunder;

- (e) comply with any digital rights management requirements imposed by the Publishers in accordance with the Technical Supply arrangements;
- (f) enforce the above restrictions and requirements in addition to procuring adherence to each Public Library's own acceptable use policy (provided that in the event of conflict the former take precedence) and assist PLS and the Publishers in identifying and restricting excessive or unusual access by any individual Registered User (including updating the User Undertakings where necessary);
- (g) suspend access to the arrangements under this Agreement for any Registered User not complying with the conditions of use immediately on the instruction of a Publisher and/or PLS; and
- (h) notify PLS of any technical reliability issues or suggestions for improving the service provided to Registered Users and
- (i) notify PLS immediately if the ownership, control or operation of any of the Public Libraries is subject to material restructuring, reorganization or other change.

4.6 For the avoidance of any doubt, the Licensee agrees and acknowledges that the following activities are not permitted at any time under this Agreement:

- (a) any Commercial Use of any of the Licensed Material;
- (b) access to or use of any of the Licensed Material by anyone other than Registered Users or library staff and volunteers;
- (c) the alteration, adaptation or modification of any of the Licensed Material including combining with other works or content, except to the extent necessary to make it perceptible on a Device screen or to print out on paper as permitted under this Agreement in accordance with the Technical Supply arrangements and for the avoidance of any doubt, no alteration of words or their order is permitted;
- (d) the systematic, mass or automated extraction or printing out of content from the Licensed Material;
- (e) the re-posting of content from the Licensed Material for access via the Internet or any other computer network;
- (f) the publication, distribution or making available of any of the Licensed Material other than as permitted in this Agreement; or
- (g) any disruptive, malicious or harmful acts including actual or attempted unauthorised computer access or data modification, denial of service attacks and the introduction or transmission of malware or other contaminants.

5. LIMITATION OF LIABILITY

- 5.1 PLS warrants to the Licensee that it is duly authorized and mandated by the Publishers to grant the rights to the Licensee as set out in this Agreement.
- 5.2 The Licensee agrees and acknowledges that, as the arrangements under this Agreement are to be provided and procured by PLS without any fee payable by the Licensee, subject only to clause 5.1 above, the Licensed Material, the Technical Supply, the Search Facility and all other obligations and undertakings of PLS under this Agreement are provided on an "as is" and "as available" basis and neither PLS nor any other person (including a Publisher or any of PLS' suppliers) makes any warranty, representation or undertaking of any kind, whether express or implied, in respect of them including, but not limited to, warranties of satisfactory quality, accuracy, completeness, non-infringement or fitness for a particular purpose.
- 5.3 In particular, the Licensee agrees and acknowledges that computer and telecommunications systems and services are not fault-free and that periods of down-time (both planned and unplanned) do occur and accordingly no commitment can be made to the Licensee that access to the Licensed Material shall be uninterrupted, timely, secure or error free, and the Licensee shall make no such commitment to Registered Users. In the event of any problem or fault, the Licensee shall direct its staff and volunteers to contact such support service via telephone or email as PLS shall from time to time notify.
- 5.4 The Licensee further agrees and acknowledges that this Agreement sets out the entire understanding between the Parties in respect of the arrangements hereunder and except as expressly set out in this Agreement all conditions, terms, warranties, representations, and undertakings of any kind in respect of the Licensed Material, the Technical Supply and the Search Facility are expressly excluded to the fullest extent permitted by law.
- 5.5 The Licensee warrants to PLS that it has the full right, power and authority to enter into and perform its obligations under this Agreement.
- 5.6 Each Party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other Party.
- 5.7 In no event shall PLS or any Publisher or any of PLS' suppliers be liable to the Licensee for any losses, costs, expenses, damages or liabilities whatsoever (whether direct, indirect, incidental, special or consequential or for any loss of business, contracts, data, opportunity, profits, revenue, reputation or savings) arising from the access to, use of or reliance on the Licensed Material, the Technical Supply and the Search Facility or in any way connected with this Agreement, in each case howsoever caused subject always to clause 5.8.
- 5.8 Nothing in this clause 5 shall exclude or limit the liability of either Party for death or personal injury caused by its negligence or for fraud or fraudulent misrepresentation or any other liability the exclusion or limitation of which is not permitted by law.

6. TERM AND TERMINATION

- 6.1 This Agreement shall commence on the Start Date and shall remain in effect until 30th November 2015 unless it is terminated earlier in accordance with its terms (the **Term**).
- 6.2 Either Party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other Party.
- 6.3 Either Party may terminate this Agreement on immediate written notice to the other Party if the other Party:
- (a) commits a material or persistent breach of any term of this Agreement and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the other Party; or
 - (b) becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
- 6.4 On termination of this Agreement for any reason:
- (a) access to the Licensed Material and all other rights granted under this Agreement to the Licensee shall end immediately and automatically; and
 - (b) the Licensee shall provide, and procure that all reasonable assistance is provided, to PLS and its third party supplier as may be necessary to enable the permanent removal of the Technical Supply including the non-availability of the Search Facility on the Devices.

7. GENERAL

- 7.1 This Agreement may not be assigned, transferred or novated 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.
- 7.2 This Agreement is personal to the Licensee and shall not extend to any subsidiary, parent or affiliated organisation save as expressly provided in this Agreement.
- 7.3 If rights in all or any part of the Licensed Material are assigned to another person, PLS shall use its reasonable endeavours to ensure that the terms and conditions of this Agreement are maintained.
- 7.4 Nothing in this Agreement shall transfer to the Licensee any title to or ownership of the Licensed Material (including any copies made by or on behalf of the Licensee and/or Registered Users) and all rights shall remain vested in the relevant Publisher subject always to any rights expressly granted under this Agreement. The Licensee acknowledges that any rights not expressly granted in this Agreement are expressly reserved.
- 7.5 Alterations to this Agreement are only valid if they are recorded in writing and signed by both Parties.

- 7.6 Any notices to be served on either of the Parties by the other Party shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this Agreement or to such other address as notified by either Party to the other Party as its address for the service of notices and all such notices shall be deemed to have been received within fourteen (14) days of posting.
- 7.7 If any difference shall arise between the Parties touching the meaning of this Agreement or the rights and liabilities of the Parties thereto which the Parties are unable to resolve and if the Parties agree, the same shall in the first instance be referred to the Centre for Effective Dispute Resolution (CEDR) for resolution in accordance with CEDR's procedures for the agreed form of dispute resolution.
- 7.8 Neither Party shall be liable in any way for failure or delay in performing its obligations under this Agreement if the failure or delay is due to causes outside the reasonable control of the Party in default.
- 7.9 The failure of either 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.
- 7.10 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.
- 7.11 The Parties intend that each Publisher shall have the right to enforce this Agreement under the Contracts (Rights of Third Parties) Act 1999 but the Parties agree that any other person who is not a Party to this Agreement shall have no right under that legislation to enforce any term of this Agreement.
- 7.12 This Agreement shall be governed by and construed according to the laws of England and the Parties irrevocably agree to submit to the jurisdiction of the English Courts.

SCHEDULE 1

LIBRARY PREMISES

[Please list Public Libraries to be offering this service]

SCHEDULE 2

USER UNDERTAKINGS

Registered Users must give the following undertakings in respect of the Licensed Material:

- (a) to use for their personal use only i.e. non-commercial research and private study only excluding any Commercial Use and not for any other form of re-use;
- (b) to access at all times via the password protected Secure Network of the Library on Library Premises;
- (c) not to build any repository or other archive;
- (d) not to save including by means of downloading onto discs, CDs or USB memory sticks or other portable devices;
- (e) not to copy, forward, distribute, sell or share with any third party or post on any external or public network;
- (f) not to adapt, modify, transform or translate;
- (g) not to remove any attributions and copyright notices;
- (h) not to modify, remove, circumvent or otherwise interfere with any digital rights information;
- (i) not suffer or permit the making of any derivative works from any of the Licensed Material;
- (j) not copy onto their own systems or otherwise retain, store or divert any of the Licensed Material; and
- (k) acknowledgement that the Licensed Material is not intended to be, and should not be relied upon as, a substitute for specific medical, professional or expert advice.

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

For PLS

Name

SARAH FAULDER

Title

Chief Executive

Signature

For the Licensee

Name (in block capitals)

Title

Signature