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2.2 The Rights are personal to the Licensee and do not extend to its subsidiary or parent organisations, or to any other related or affiliated organisations. The Licensee may not assign, sub-license, transfer, charge or otherwise dispose of its rights under this



Agreement without the prior written consent of the Licensor.

2.3 Title to, and ownership of, the Licensed Material (including any copies made by or on behalf of the Licensee including by the Authorised Users) is not transferred to the Licensee and remains vested in the Licensor, subject to the Rights granted in Clause 2.1 and Clause 4.6. The Licensee acknowledges that any rights not expressly granted in this Licence are reserved to the Licensor.

2.4 The Licensee is responsible for the provision of and payment for the computer equipment and telecommunication services necessary for access to and use of the Licensed Material. The Licensor shall not issue credits or refunds against charges incurred by the Licensee in relation to such telecommunication services or those incurred contacting Customer Support. The Licensee accepts that the Licensor has no control over such telecommunication services and that the Licensor shall have no liability to the Licensee for the acts or omissions of providers of telecommunication services or for faults in or failures of their apparatus or of the Licensee's computer equipment.

### 3. USAGE RESTRICTIONS

Except as expressly permitted in Clause 2.1, the Licensee warrants that it will not, nor will it license or permit others to, directly or indirectly, without the Licensor's prior written consent:

- (a) sell, distribute, license, rent or otherwise exploit the Licensed Material, or any element of it, for any commercial purpose;
- (b) make the Licensed Material, or any element of it, available by any means to persons other than Authorised Users;
- (c) make the Licensed Material, or any element of it, available on, or by, electronic bulletin boards, news groups, Web sites, FTP or any other means of posting or transmitting material on the Internet, an on-line service or wide area network;
- (d) remove or obscure the Licensor's copyright notice from the Licensed Material including hard-copy print-outs;
- (e) use the Licensed Material to create any derivative work, product or service, or merge the Licensed Material with any other product, database, or service;
- (f) alter, amend, modify, translate, or change the Licensed Material;
- (g) undertake any activity that may have a damaging effect on the Licensor's ability to achieve revenue through selling and marketing the Licensed Material;

(h) otherwise use the Licensed Material supplied in accordance with this Agreement in a manner that would infringe the copyright or other proprietary rights contained within it;

(i) make the Licensed Material or any part of it available by remote access to any person other than Authorised Users; or

(j) make mass, automated or systematic extractions from or hard copy storage of the Licensed Material.

### 4. TERM AND TERMINATION

4.1 This Agreement shall begin on the Commencement Date and continue for the initial period of the Supply Period as defined in the Schedule. The Licensor may agree to renew the Supply Period for additional one-year periods, subject to payment of appropriate fees and acceptance thereof by the Licensor. If the Supply Period is not so renewed the Agreement shall continue in accordance with Clause 4.6.

4.2 Either party may terminate the Supply Period at any time upon written notice to the other if the other party commits a material breach of any term of this Agreement (for the avoidance of doubt non-payment of any fees as they fall due under this Agreement by the Licensee shall constitute a material breach). The termination will become effective thirty days after receipt of written notice unless, in the case of a remediable breach, during the relevant period of thirty days the defaulting party has remedied the breach.

4.3 Licensor may terminate the Supply Period at any time upon thirty days' written notice to the Licensee.

4.4 If termination of the Supply Period occurs as a result of notice being given by the Licensee under Clause 4.2, 4.5 or 10.2 or by the Licensor under Clause 4.3 or 10.2 the Licensor shall repay the Licensee a pro-rateable proportion of the Licence Fee as represents the paid for but unexpired Supply Period at the date of termination.

4.5 Either party may terminate the Supply Period forthwith on notice in writing to the other if the other party is unable to pay its debts or ceases or threatens to cease to carry on business, goes into administration, receivership or administrative receivership, or any event analogous to any of the foregoing occurs in any jurisdiction.

4.6 On termination (including non-renewal) of the Supply Period, Licensee shall have no rights of any kind to any Licensed Material published after the date of termination. On termination (including non-

renewal) of the Supply Period, otherwise than as a result of notice being given by the Licensor under Clause 4.2 or 4.5, the Licensee's non-exclusive licence of the Rights shall, subject to (except as otherwise set forth in this Clause 4.6) all the terms and conditions in this Agreement (including without limitation this sub-clause 4.6, Clause 4.8 and the other provisions of this Clause 4), continue indefinitely in respect of the Licensed Material accessible as at the date of termination of the Supply Period in:

(a) Section A and B of the Schedule SUBJECT ALWAYS to the Licensee's continued compliance with the terms of this Agreement and payment of such reasonable annual access fee as Licensor may from time to time charge (or such alternative supply arrangement terms and costs as the parties may agree); and

(b) Section C of the Schedule SUBJECT ALWAYS to the Licensee's continued compliance with the terms of this Agreement and payment of such reasonable annual access fee as Licensor may from time to time charge (or such alternative supply arrangement terms and costs as the parties may agree); PROVIDED THAT due to rights restrictions: (i) only editions and other material published after the Commencement Date up to the date of termination (including non-renewal) of the Supply Period will be accessible (the "C Content") and (ii) it may only be possible to allow access via the Network on the same basis as set out at (a) above for a limited period. The Licensor shall, after the end of such limited period and provided that it has the rights to do so, deliver the C Content in a physical storage media (the "Media") to the Licensee SUBJECT ALWAYS to the Licensee's compliance with the terms of any additional licence terms notified to the Licensee on delivery of the Media (the "Media Licence") that are appropriate for such physical media (for the avoidance of doubt, in respect of the use of the Media by the Licensee the terms of the Media Licence shall prevail over the terms of this Agreement if there is a conflict or other inconsistency) and payment of such reasonable supply fee as Licensor may from time to time charge to cover its handling costs (or such alternative supply arrangement terms and costs as the parties may agree).

(the "**Post Supply Licence**").

4.7 Without prejudice to any other rights the Licensor may have, the Licensor may suspend the provision of the Licensed Material to the Licensee with immediate effect on written notice without liability if the Licensor believes the Licensed Material is being used in a manner that contravenes the provisions of this Agreement or the Media

Licence or in the event of delay or failure to pay in accordance with clause 5.

4.8 The Licensor may terminate this Agreement (including the Post Supply Licence) at any time upon written notice to the Licensee if the Licensee commits a breach of any term of this Agreement or the Media Licence. The termination will become effective thirty days after receipt of written notice unless, in the case of a remediable default, during the relevant period of thirty days the Licensee has remedied the default.

4.9 On termination of the Supply Period as a result of notice being given by the Licensor under Clause 4.2 or 4.5 or on termination of the Post Supply Licence as a result of notice being given by the Licensor under Clause 4.8, the Licensee shall have no further rights of any kind in the Licensed Material and the Licensee agrees to destroy and use its best endeavours to procure that all Authorised Users destroy, all Licensed Material stored on its Network or in CD-Rom or other hard copy form both on paper and in any digital information storage media or other physical media storage, including, but not limited to, system servers, hard disks, diskettes, and back up tapes.

4.10 When calculating the reasonable annual access fee payable by the Licensee pursuant to this clause 4.6 the Licensor shall be entitled to increase such fee on an annual basis including but not limited to reflect any increase in the number of Chargeable Users, any change in the business of the Licensee or any increase in supply or other costs incurred by the Licensor.

## 5. LICENCE FEE

5.1 The Licensee agrees to pay to the Licensor the Licence Fee and any other payments under this Agreement within 30 days of the date of invoice.

5.2 All amounts payable by the Licensee under this Agreement shall be exclusive of any sales, use, value added or similar taxes.

## 6. NATURE AND JOURNALS LICENCE FEE (NOT APPLICABLE TO NEWS)

6.1 Where the Licensed Material includes **Nature** and/or **Journals** elements the Licence Fee is calculated on the basis of Chargeable Users. The Licensee warrants that its Chargeable Users during the 12 months prior to the Commencement Date did not exceed the number of Chargeable Users as stated in the Schedule in respect of **Nature** and/or **Journals**.

6.2 The Licence Fee is assessed on the number of the Licensee's Chargeable Users during the 12 month period prior to the Commencement Date for the initial 12 month period of the Supply Period and for each 12 month period prior to any subsequent 12 month extensions agreed to by the Licensor. The Licensee must immediately notify the Licensor if at any time the actual number of Chargeable Users exceeds the number of Chargeable Users stated in the Schedule. The Licensee acknowledges that in the event that such number of Chargeable Users increases during the initial 12 month period of the Supply Period or in any subsequent 12 month extension period agreed to by the Licensor the Licence Fee will be increased in accordance with the Licensee's then applicable charges for any subsequent 12 month extension period agreed to by the Licensor.

## 7. LICENSEE'S UNDERTAKINGS

7.1 The Licensee will take all reasonable steps to ensure that the Licensed Material is used only in accordance with the terms and conditions of this Agreement and shall inform Authorised Users of the permitted use restrictions and other provisions set out in this Agreement.

7.2 The Licensee shall put into place reasonable procedures to monitor the compliance with the terms and conditions of this Agreement by the Authorised Users.

7.3 The Licensee will notify the Licensor immediately of infringements that come to the Licensee's notice and the Licensee agrees to co-operate with the Licensor as appropriate to stop further abuse should it occur.

7.4 Subject to Clause 4.8, nothing in this Agreement shall make the Licensee liable for breach of the restrictions set out in the terms and conditions of this Agreement by any Authorised User as long as the Licensee complied with the terms of Clauses 6, 7.1, 7.2 and 7.3 and did not cause, intentionally assist in or encourage such breach nor allowed it to continue after having received notice of such breach whether from the Licensor or otherwise. However, in the event of continuing abuse the Licensor shall be entitled to terminate this Agreement.

7.5 The Licensor shall be entitled to monitor the use of the Licensed Material through the Licensor's servers, or as the case may be any service provided by an agent on its behalf, so as to monitor compliance with this Agreement.

## 8. WARRANTIES, UNDERTAKINGS AND INDEMNITIES

8.1 The Licensor warrants to the Licensee that it has full right and authority to grant the Rights to the Licensee and that the use by the Licensee of the Licensed Material in accordance with this Agreement will not infringe the rights of any third party.

8.2 The Licensor shall indemnify the Licensee for the amount of any award of damages against the Licensee by a court of competent jurisdiction as a result of any claim arising from a breach of the warranty in Clause 8.1 provided that the Licensee must inform the Licensor immediately upon becoming aware of any claim, not attempt to compromise or settle the claim and give reasonable assistance to the Licensor who shall be entitled to assume sole conduct of any defence and shall have the right at its option:

- (a) to procure the right for the Licensee to continue using the Licensed Material;
- (b) to make such alterations, modifications or adjustments to the Licensed Material that it becomes non-infringing without incurring a material reduction in performance or function; or
- (c) to replace the Licensed Material with non-infringing substitutes provided that such substitutes do not entail a material reduction in performance or function.

8.3 The Licensor shall not be liable to the Licensee for any loss or damage whatsoever resulting from omissions or inaccuracies in the Licensed Material regardless of how caused. The Licensor does not warrant that access to the Licensed Material will be free from errors or faults. In the event of a fault, the Licensee shall notify Customer Support of the same by telephone, electronic mail or in writing.

8.4 Without prejudice to the generality of the foregoing, the Licensor shall not be liable for any claim arising from:

- (a) any failure or malfunction resulting wholly or to any material extent from the Licensee's negligence, operator error, use other than in accordance with the User Documentation or any other misuse or abuse of the Licensed Materials;
- (b) the failure by the Licensee to implement recommendations previously advised by the Licensor in respect of, or solutions for, faults in the Licensed Material; or
- (c) the decompilation or modification of the Licensed Material or its merger with any other program or any maintenance repair adjustment alteration or enhancement of the Licensed Material by any person other than the Licensor or its authorised agent; or
- (d) the Licensee or any Authorised User being unable to exercise the Rights due to the Licensed material being unavailable as a result of any act or omission of the Licensor provided that the period for

which the Licensed Material is not available shall not exceed a period of 50 hours (in aggregate) in any continuous period of 1000 hours.

8.5 The Licensee shall use its best efforts to safeguard the intellectual property, confidential information including without limitation the terms of this Agreement, and proprietary rights of the Licensor.

8.6 THE LICENSED MATERIAL IS PROVIDED "AS IS." NEITHER THE LICENSOR NOR ANYONE ELSE MAKES ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF SATISFACTORY QUALITY, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS CLAUSE, ALL CONDITIONS, WARRANTIES, CLAUSE 12 TERMS, REPRESENTATIONS, AND UNDERTAKINGS EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RESPECT OF THE LICENSED MATERIAL ARE TO THE FULLEST EXTENT PERMITTED BY LAW EXPRESSLY EXCLUDED.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY REPRESENTATIVE OF THE LICENSOR OR BY ANYONE ELSE SHALL CREATE ANY WARRANTIES.

8.7 The content of the Licensed Material is subject to change without notice.

## 9. USAGE STATISTICS (RELEVANT TO NATURE, JOURNALS AND NEWS)

The Licensor confirms to the Licensee that usage statistics covering the online usage of Nature, the Journals and News covered by this Agreement will be provided. The Licensor further confirms that it shall use all reasonable endeavours to ensure that such usage statistics will adhere to the specifications of the COUNTER Code of Practice, including data elements collected and their definitions; data processing guidelines, usage report content, frequency and delivery method Provided That these statistics are strictly for the Licensee's private internal use and the Licensor shall not be required to disclose any information to the Licensee which it is prohibited from disclosing to the Licensee due to any legal or regulatory constraint imposed upon it including without limitation any applicable privacy or data protection legislation or regulations or contractual obligations.

## 10. FORCE MAJEURE

10.1 Either party's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, floods, governmental restrictions, power failures, or damage or destruction of any network facilities or services, shall not be deemed a breach of this Agreement.

10.2 If any event set out in Clause 10.1 shall continue for a period in excess of 30 days either party shall be entitled to terminate this Agreement forthwith by written notice to the other.

## 11. NOTICE

Any notice to be served on either party by the other made under this Agreement shall be in writing sent by prepaid recorded delivery or registered post to the address of the addressee as set out in the Schedule or to such other address as notified by either party to the other as its address for service of notices and all such notices shall be deemed to have been received within 48 hours after posting.

## 12. LIABILITY

12.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its own negligence or any other liability the exclusion or limitation of which is prohibited by law.

12.2 Except as provided for in Clause 12.1 above, the liability of the Licensor in respect of any and all claims (whether in contract or in tort) arising out of or in connection with this Agreement is limited in respect of each event or series of connected events to the greater of US\$10,000 or an amount equal to the fees paid under this Agreement.

12.3 Except as provided for in Clause 12.1, notwithstanding anything else contained in this Agreement, in no event shall the Licensor be liable to the Licensee for:

- (a) loss of profits, business, revenue, goodwill, anticipated savings; and/or
- (b) indirect, special, incidental or consequential loss or damage; and
- (c) any inaccuracy in the Licensed Material.

## 13. GOVERNING LAW

This Agreement, and the rights and liabilities of the parties with respect to this Agreement and its subject matter, shall be governed by the laws of the State of New York, without reference to the principles of conflicts of laws thereof. Any dispute arising out of or relating to this Agreement or its subject matter not settled by the parties may be resolved only by the

courts of the State of New York or, if subject matter jurisdiction exists, by the United States federal courts, with venue in the County of New York (in the case of state court) or in the Southern District of New York (in the case of federal court). Each of the parties hereby consents to the jurisdiction of such courts over it in any action involving any such dispute. Each of the parties agrees not to commence or maintain a legal proceeding involving any such dispute in any forum except a court of the State of New York located in New York County or the United States District Court for the Southern District of New York (other than to enforce a judgement obtained in such courts) and agrees not to contest the venue of any action involving any such dispute in the County of New York or the Southern District of New York, as the case may be, nor to assert in any such court the doctrine of forum non conveniens or the like.

#### 14. SEVERABILITY

In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

#### 15. WAIVERS

No provision of this Agreement or breach thereof may be waived except in a writing signed by the party against whom the waiver is sought to be enforced.

#### 16. THIRD PARTY RIGHTS

Nothing in this Agreement is intended to confer rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.