

SUBJECT TO CONTRACT

DATED

2016

[PUBLISHER]

-and-

**JISC SERVICES LIMITED
(OPERATING AS JISC COLLECTIONS)**

[PRODUCT NAME] AGREEMENT

THIS AGREEMENT is made

day of

2016

BETWEEN: [FULL LEGAL NAME OF PUBLISHER], a company whose registered office is at [insert address] ("Publisher")

AND **JISC SERVICES LIMITED (OPERATING AS JISC COLLECTIONS)** (Company Number 2881024), a company limited by guarantee incorporated in England and Wales whose registered office is at One Castlepark, Tower Hill, Bristol BS2 0JA ("Jisc Collections")

BACKGROUND

1. [insert brief product description].
2. [insert product name] and all intellectual property rights therein are owned by or duly licensed to the Publisher.
3. Jisc Collections is the organisation that (1) carries on from the UK funding bodies all or any of the businesses of establishing, managing and providing access to the UK learning community and to acquire and grant licences for access and use of learning material for the advancement and benefit of the UK learning community; (2) acquires and grants licences for access and use of electronic resources for the community of bodies and institutions engaged in the provision or support of education, learning and/or research in the UK and elsewhere in the world.
4. Jisc Collections has been appointed by the Society of Chief Librarians to negotiate this Agreement on its behalf.
5. The parties are desirous of reaching agreement to make access to [insert product name] available to Library Services (as hereafter defined) and their users against a set price and on terms and conditions as set out in the attached licence.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

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

"Authorised Demonstrator" means a person working for Jisc Collections who is permitted to access and use the Product in accordance with Clause 3.1.3.

"Library Services" means the public library services in England, as identified in Schedule 2.

"Licence" means the licence negotiated between Jisc Collections and the Publisher to be used by the Publisher in connection with the Offer of which a copy is attached in Schedule 3.

"Licence Fee" means the licence fee referred to in the Licence.

"Offer"	means the offer for the Product as set out in Schedule 1.
"Product"	means the product known to the parties as '[insert product name]' being [insert description] supplied by the Publisher.
"Subscribing Library Service"	means a Library Service that has entered into the Licence for as long as such agreement remains in effect.

1.2 Headings contained in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

2. AGREEMENT

2.1 In consideration for the Publisher agreeing to provide access to the Product to Subscribing Library Services on the basis of the Offer and the terms of this Agreement and to allow its use in accordance with the terms and conditions of the Licence as attached hereto in Schedule 3, Jisc Collections agrees to promote the Offer to the Library Services.

3. RESPONSIBILITIES OF THE PUBLISHER

3.1 The Publisher agrees to:

3.1.1 make the Product available to Library Services in accordance with the Offer as set out in Schedule 1;

3.1.2 provide access and allow use of the Product by Subscribing Library Services and their authorised users in accordance with the provisions as laid down in the Licence as attached hereto in Schedule 3;

3.1.3 allow access by Authorised Demonstrators in accordance with the provisions of this Agreement for the purpose of publicising and promoting the Product to the Library Services;

3.1.4 provide customer support services to Subscribing Library Services and their authorised users by e-mail or over the phone. This includes answering e-mail queries about the use, functionality and content of the Product within 24 hours;

3.1.5 use all reasonable efforts to ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage of Subscribing Library Services and their users.

3.1.6 use all reasonable endeavours to make the Product available to Subscribing Library Services and their authorised users at all times and on a twenty-four hour basis, save for routine maintenance, and to restore access to the Product as soon as possible in the event of an interruption or suspension of the service;

3.1.7 implement the industry standards as set out in Schedule 4;

3.1.8 provide Jisc Collections by March of each subscription year with a list of Library Services who have taken up the Offer, the option chosen by each of the Subscribing Library Services, the fee paid for such option and details of each Subscribing Library Services' subscription expenditure;

3.1.9 provide a one-time 30 day free of charge trial access to Library Services which email [email address].

4. RESPONSIBILITIES OF JISC COLLECTIONS

4.1 Jisc Collections agrees to:

4.1.1 promote and publicise the Offer to the Library Services via closed mailing lists and a restricted section on Jisc Collections' website; and

4.1.2 inform the Library Services of the terms and conditions of the Licence and attach a copy of the Licence with the promotion of the Offer.

5. TERM AND TERMINATION

5.1 The term of this Agreement will be for [yyy] years, which begins on [zzz] and will remain in full force and effect until [xxx], unless terminated earlier as provided for in this Clause 5.

5.2 Any party may terminate this Agreement at any time on the material or persistent breach by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith by written notice to the other party.

5.3 This Agreement may be terminated by Jisc Collections on written notice if the Publisher becomes insolvent, admits insolvency or a general inability to pay its debts as they become due, has appointed a receiver or administrative receiver over it or over any part of its undertaking or assets, passes a resolution for winding up other than a bona fide plan of solvent amalgamation or reconstruction, files a petition for protection under any applicable bankruptcy code, or has filed against it or becomes subject to an insolvent petition in bankruptcy or an order to that effect.

5.4 This Agreement may be terminated by either party if the Publisher loses the rights to the Product. The Publisher will reimburse all Subscribing Library Services a pro rata proportion of the then remaining fee for the unexpired period of their Licence.

6. FORCE MAJEURE

6.1 Either party's failure to perform any term or condition of this Agreement as result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities) ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Agreement.

6.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting

Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

7. ASSIGNMENT

- 7.1 Except as permitted for under this Agreement, neither this Agreement nor any of the rights and obligations under it may be sub-contracted, assigned or novated by either party without obtaining the prior written consent of the other party. The Publisher hereby consents to any assignment or novation by Jisc Collections to a legal entity set up to perform the obligations and enjoy the benefits of Jisc Collections.

8. GOVERNING LAW AND DISPUTE RESOLUTION

- 8.1 This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.
- 8.2 The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Managing Director of the Publisher and the Director of Jisc Collections. Where the parties agree that a dispute arising out or in connection with this Agreement would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement.
- 8.3 Any person to whom a reference is made under Clause 8.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 8.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 8.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

9. NOTICES

- 9.1 All notices required to be given under this Agreement shall be given in writing in English and sent by courier, or special delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received three (3) days after the date of posting in the case of special delivery or despatch in the case of courier:

if to Jisc Collections:

Liam Earney
Director
Jisc Collections
Brettenham House South
5 Lancaster Place
London WC2E 7EN
Liam.earney@jisc.ac.uk

if to the Publisher: [insert details]

10. GENERAL

- 10.1 This Agreement, its Schedules and Annexes constitute the entire agreement between the parties and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
- 10.2 The Schedules and Annexes shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules and Annexes.
- 10.3 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
- 10.4 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
- 10.5 Nothing in this Agreement shall be construed to create any relationship of partnership, agency or employment between any of the parties.
- 10.6 The parties will comply with all applicable laws and regulations relating to anti-corruption and anti-bribery. The parties represent and affirm that no bribes or corrupt actions have or will be offered, given, received or performed in relation to the procurement or performance of this Agreement. For the purposes of this clause, "bribes or corrupt actions" means any payment, gift, or gratuity, whether in cash or kind, intended to obtain or retain an advantage, or any other action deemed to be corrupt under the applicable country laws. Jisc Collections will not, directly or indirectly, make any such payment while this Agreement is in effect.

SCHEDULE 1: OFFER

[insert the offer negotiated with the Publisher here]

Provided always in the event that at any time during the term of this Agreement the Publisher agrees to make the Product available to any Library Service on better terms than the Offer provided under this Schedule (save for special cases determined between the Publisher and Jisc Collections), the Offer shall be varied to that better offer and the Publisher shall forthwith repay to the Subscribing Library Services the difference.

SCHEDULE 2: LIST OF LIBRARY SERVICES

Barking & Dagenham	Hartlepool
Barnet	Havering
Barnsley	Herefordshire
Bath & North East Somerset	Hertfordshire
Bedford	Hillingdon
Bexley	Hounslow
Birmingham	Isle of Wight
Blackburn with Darwen	Islington
Blackpool	Kensington & Chelsea
Bolton	Kent
Bournemouth	Kingston-upon-Hull
Bracknell Forest	Kingston-upon-Thames
Bradford	Kirklees
Brent	Knowsley
Brighton & Hove	Lambeth
Bristol	Lancashire
Bromley	Leeds
Buckinghamshire	Leicester
Bury	Leicestershire
Calderdale	Lewisham
Cambridgeshire	Lincolnshire
Camden	Liverpool
Central Bedfordshire	Luton
Cheshire East	Manchester
Cheshire West and Chester	Medway
City of London	Merton
Cornwall	Middlesbrough
Coventry	Milton Keynes
Croydon	Newcastle-upon-Tyne
Cumbria	Newham
Darlington	Norfolk
Derby	North East Lincolnshire
Derbyshire	North Lincolnshire
Devon	North Somerset
Doncaster	North Tyneside
Dorset	North Yorkshire
Dudley	Northamptonshire
Durham	Northumberland
Ealing	Nottingham
East Riding of Yorkshire	Nottinghamshire
East Sussex	Oldham
Enfield	Oxfordshire
Essex	Peterborough
Gateshead	Plymouth
Gloucestershire	Poole
Greenwich	Portsmouth
Hackney	Reading
Halton	Redbridge
Hammersmith & Fulham	Redcar & Cleveland
Hampshire	Richmond-upon-Thames
Haringey	Rochdale
Harrow	Rotherham

Rutland
Salford
Sandwell
Sefton
Sheffield
Shropshire
Slough
Solihull
Somerset
South Gloucestershire
South Tyneside
Southampton
Southend-on-Sea
Southwark
St Helens
Staffordshire
Stockport
Stockton-on-Tees
Stoke-on-Trent
Suffolk
Sunderland
Surrey
Sutton
Swindon

Tameside
Telford & Wrekin
Thurrock
Torbay
Tower Hamlets
Trafford
Wakefield
Walsall
Waltham Forest
Wandsworth
Warrington
Warwickshire
West Berkshire
West Sussex
Westminster
Wigan
Wiltshire
Windsor & Maidenhead
Wirral
Wokingham
Wolverhampton
Worcestershire
York

SCHEDULE 3: LICENCE

[PRODUCT] LICENCE AGREEMENT

THIS AGREEMENT is made _____ day of _____ 2016

BETWEEN: [FULL LEGAL NAME OF PUBLISHER], a company whose registered office is at [address] ("Publisher")

AND [LIBRARY SERVICE], whose principal place of business is at [address] ("Library Service")

BACKGROUND

1. [insert brief product description].
2. [insert product name] and all intellectual property rights therein are owned by or duly licensed to the Publisher.
3. The Publisher has agreed with Jisc Collections in the [insert product name] Agreement between Jisc Collections and the Publisher to use this Licence as the model for any agreement between the Publisher and a subscribing Library Service in relation to the offer agreed between Jisc Collections and the Publisher as attached to this Agreement in Annex 1.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

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

"Authorised Demonstrator" means a nominated employee of the Library Service who may use the Licensed Material in accordance with the provisions as laid down in this Licence free of charge for demonstration, training or administrative purposes.

"Authorised User" means an individual holding a valid library membership card and pin number issued by the Library Service. Such individuals are permitted to access and use the Licensed Material from computer terminals or otherwise within the physical premises of the Local Service and off site either via a valid IP address on the Library Service's Secure Network or via the website of the Publisher.

Persons who do not hold a valid library membership card issued by the Library Service are permitted to access the Licensed Material with the help of an Authorised Demonstrator via computer terminals or otherwise within the physical premises of the Library Service ["Walk-In Users"] and shall be deemed to be Authorised Users only for the time they are within the physical premises of the Library Service. Walk-In Users may not be given means to access the Licensed Material when they are not within the physical premises of the Library Service. For the avoidance of doubt,

Walk-In Users may not be given access to the Licensed Material by any wireless network provided by the Library Service unless such network is a Secure Network.

"Commercial Use" means use for the purpose of monetary reward (whether by or for the Library Service or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Material.

"Jisc Collections" means Jisc Services Ltd (operating as Jisc Collections) (Company Number 2881024), a company limited by guarantee incorporated in England and Wales whose registered office is at One Castlepark, Tower Hill, Bristol BS2 0JA.

"Licence Fee" means the fee for the Licence as set out in Schedule 1. The fee will be in line with the Offer.

"Licensed Material" means the material licensed in this Licence known to the parties as "[insert product name]" being "[insert description]" supplied by the Publisher as further described in Schedule 2.

"Offer" means the offer agreed between Jisc Collections and the Publisher for "[insert product name]" as set out in Annex 1.

"Personal Use" means for any purpose other than Commercial Use, including but not limited to education, teaching, distance learning, private study and/or research.

"Secure Authentication" means access to the Licensed Material by Internet Protocol ("IP") ranges or by a valid library membership card and/or PIN code provided by the Library Service by other means of authentication agreed between the Publisher and the Library Service.

"Secure Network" means a network which is only accessible to Authorised Users by Secure Authentication.

1.2 Headings in this Licence are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

2. LICENCE GRANT

2.1 The Publisher hereby grants to the Library Service, subject to and in accordance with the terms of this Licence, a non-exclusive non-transferable licence to access and use the Licensed Material and to allow Authorised Users and Authorised Demonstrators to access and use the Licensed Material via Secure Authentication.

- 2.2 In consideration for the Publisher's licensing of the Licensed Material pursuant to Clause 2.1, the Library Service undertakes to pay to the Publisher the Licence Fee in accordance with the provisions of Schedule 1.

3. PERMITTED USES

- 3.1 This Licence permits the Library Service to:
- 3.1.1 supply to another library in the United Kingdom (whether by post, fax or secure electronic transmission provided the electronic file is deleted immediately after printing) a single paper copy of an original of an individual document within the Licensed Material.
 - 3.1.2 provide single printed or electronic copies of single parts of the Licensed Material at the request of individual Authorised Users;
 - 3.1.3 display, download and print parts of the Licensed Material for the purpose of promoting or testing the Licensed Material or for training Authorised Users;
 - 3.1.4 make and distribute copies of training material as may be required for the purpose of using the Licensed Material in accordance with this Licence;
 - 3.1.5 publicly display or publicly demonstrate the Licensed Material, including remotely as part of a professional presentation at a seminar, conference, or workshop, or other such similar professional and/or staff training activity;
 - 3.1.6 allow Authorised Users for Personal Use only to:
 - 3.1.6.1 access the Licensed Material by Secure Authentication in order to search, retrieve, display and view the Licensed Material. Such access may be either at library premises or remotely using Secure Authentication;
 - 3.1.6.2 electronically save parts of the Licensed Material;
 - 3.1.6.3 print out single copies of parts of the Licensed Material;
- 3.2 This Licence shall be deemed to complement and extend the rights of the Library Service and Authorised Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 and nothing in this Licence shall constitute a waiver of any statutory rights held by the Library Service and Authorised Users from time to time under these Acts or any amending legislation.

4. RESTRICTIONS

- 4.1 Except where this Licence states otherwise, the Library Service and Authorised Users may not:
- 4.1.1 sell or resell the Licensed Material unless the Publisher has given the Library Service or Authorised User permission in writing to do so;
 - 4.1.2 remove, obscure or alter copyright notices, acknowledgments or other means of identification or disclaimers;
 - 4.1.3 alter or adapt the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise allowed under this Agreement. For the avoidance of doubt, no alteration of the words or their order is allowed;
 - 4.1.4 display or distribute any part of the Licensed Material, on any electronic network, including the internet other than by a Secure Network;

- 4.1.5 use all or any part of the Licensed Material for any Commercial Use or for any purpose other than that covered by the terms of this Licence; and
 - 4.1.6 provide access and/or allow use of the Licensed Material by anyone other than Authorised Users.
- 4.2 This Clause will continue to apply after termination of this Licence for any reason.

5. RESPONSIBILITIES OF THE PUBLISHER

- 5.1 The Publisher agrees to:
- 5.1.1 make the Licensed Material available to the Library Service and Authorised Users from the start of the subscription period;
 - 5.1.2 allow nominated staff of the Library Service to act as Authorised Demonstrators in accordance with the provisions as laid down in this Licence for the purpose of publicising and promoting the Licensed Material to target audiences;
 - 5.1.2 use all reasonable efforts to make the Licensed Material available to the Library Service and Authorised Users 24 hours a day (except when routine maintenance is carried out), and to restore access to the Licensed Material as soon as possible after any interruption or suspension of the service;
 - 5.1.3 provide customer support services to Authorised Users by e-mail or over the phone. This includes answering e-mail queries about the use, functionality and content of the Licensed Material within 24 hours;
 - 5.1.4 provide on-site training from appropriate staff employed by the Publisher as follows: **[a clause covering agreed training to be inserted here for each product]**
 - 5.1.5 use all reasonable efforts to ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage of the Library Service;
 - 5.1.6 provide electronic product documentation to the Library Service free of charge. The Publisher will allow copies of all documentation to be made and distributed by the Library Service to Authorised Users provided it is either duplicated in full, or a proper ownership acknowledgement is included;
 - 5.1.7 implement the industry standards as set out in Schedule 3;
 - 5.1.8 provide access to the Licensed Material using an Secure Authentication agreed between the Library Service and the Publisher, subject to securing any necessary permissions, licences or consents (including, without limitation, any necessary permissions, licences or consents in respect of intellectual property rights).
- 5.2 In the event that the Publisher withdraws from the Licensed Material any item or part of an item:
- for which the Publisher no longer retains the right to publish; or
 - for which the Publisher has reasonable grounds to believe it infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable

or when the Licensed Material become available to the public (via, for instance but not limited to, Google), the Publisher shall give written notice thereof to the Library Service. If the withdrawn or publicly available material represents more than ten per cent (10%) of the Licensed Material, the Publisher shall make a pro rata refund of the Licence Fee to the Library

Service. The refund will take into account the amount of material withdrawn or publicly available and the length of the subscription period remaining.

6. RESPONSIBILITIES OF THE LIBRARY SERVICE

6.1 The Library Service agrees to:

6.1.1 issue library barcode with PIN code/and or other access information only to Authorised Users and use all reasonable endeavours to ensure that Authorised Users do not divulge their PIN code and/or other access information to any third party;

6.1.2 promote and publicise the availability of the Licensed Material to target audiences;

6.1.3 provide lists of valid IP addresses to the Publisher and update those lists regularly as agreed by the parties from time to time;

6.1.4 use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Material;

6.1.5 use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Licence; and

6.1.6 use all reasonable efforts to monitor compliance with the terms of this Licence and notify the Publisher immediately and provide full particulars on becoming aware of any of the following:

i) any unauthorised access to or use of the Licensed Material or unauthorised use of any of Library Service's library barcode and PIN codes; or

ii) any breach by an Authorised User of the terms of this Licence.

As soon as the Library Service is aware of any breach of the terms of this Licence, the Library Service further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Library Service's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence.

6.2 The Library Service undertakes to the Publisher that the computer system through which the Licensed Material will be used is configured, and procedures are in place, to prohibit access to the Licensed Material by any person other than an Authorised User, that it shall inform the Authorised Users about the conditions of use of the Licensed Material, and that during the term of this Licence, the Library Services will make best efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

7. LICENCE FEE

7.1 The Library Service will pay the Licence Fee to the Publisher, for the rights granted to the Licensed Material in the amount and upon terms as set out in Schedule 1.

7.2 The Publisher will issue an invoice for the Licence Fee to the Library Service in accordance with Schedule 1.

7.3 The terms of payments to the Publisher are set out in Schedule 1.

8. TERM AND TERMINATION

8.1 The term of this Licence will be for [period of time], which begins on [dd-mm-yyyy] and will remain in full force and effect until [dd-mm-yyyy], unless terminated earlier as provided for in this Clause 8.

- 8.2 Any party may terminate this Licence at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Licence by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith by written notice to the other party.
- 8.3 Upon termination of this Licence by the Publisher due to a material breach or repeated other breaches by the Library Service, the Publisher shall cease to authorise on-line access to the Licensed Material by the Library Service and Authorised Users.
- 8.4 On termination of this Licence by the Library Service due to a material breach or repeated other breaches by the Publisher, the Publisher will reimburse the Library Service a pro rata proportion of the then remaining Licence Fee for the unexpired part of the subscription period. The Publisher shall not be obligated to return any portion of the Licence Fee for termination by the Publisher due to the Library Service's breach pursuant to Clause 8.3.
- 8.5 Upon termination of this Licence copies of parts of the Licensed Material made by the Library Service or Authorised Users may be retained. Such copies may be used after termination of this Licence subject to the terms of Clauses 3 and 4 of this Licence, which terms shall survive any termination of this Licence.

9. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Library Service acknowledges that all Intellectual Property Rights in the Licensed Material are the sole and exclusive property of the Publisher or duly licensed to the Publisher and that this Licence does not assign or transfer to the Library Service any right, title or interest therein except for the right to access and use the Licensed Material in accordance with the terms and conditions of this Licence.

10. REPRESENTATION, WARRANTIES AND INDEMNIFICATION

- 10.1 The Publisher warrants to the Library Service that the Licensed Material and all intellectual property rights therein are owned by or licensed to the Publisher and that the Licensed Material used as contemplated in this Licence does not infringe any intellectual property rights of any natural or legal person. The Publisher agrees that the Library Service shall have no liability and the Publisher will indemnify, defend and hold the Library Service harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the Library Service in defending against any third party claim of intellectual property rights infringements or threats of claims thereof with respect of the Library Service's or Authorised Users use of the Licensed Material, provided that:
- i) the use of the Licensed Material has been in full compliance with the terms and conditions of this Licence;
 - ii) the Library Service provides the Publisher with prompt notice of any such claim or threat of claim;
 - iii) the Library Service co-operates fully with the Publisher in the defence or settlement of such claim; and
 - iv) the Publisher has sole and complete control over the defence or settlement of such claim.
- 10.2 While the Publisher has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Material, the Publisher makes no representation and gives no warranty express or implied with regard to the information contained in or any part of the Licensed Material including (without limitation) the fitness of such information or part for any

purposes whatsoever and the Publisher accepts no liability for loss suffered or incurred by the Library Service or Authorised Users as a result of their reliance on the Licensed Material.

- 10.3 In no circumstances will the Publisher be liable to the Library Service for any loss resulting from a cause over which the Publisher does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, unauthorised access, theft, or operator errors.
- 10.4 The Library Service agrees to notify the Publisher immediately and provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Material and do all things reasonably required to assist the Publisher in such claims. It is expressly agreed that upon such notification, or if the Publisher becomes aware of such a claim from other sources, the Publisher may remove such work(s) from the Licensed Material. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Licence.
- 10.5 Nothing in this Licence shall make the Library Service liable for breach of the terms of this Licence by any Authorised User provided that the Library Service did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
- 10.6 Except as provided for in Clause 10.1, neither the Library Service nor the Publisher will be liable to the other in contract or negligence or otherwise for:
- i) any special, indirect, incidental, punitive or consequential damages;
 - ii) loss of direct or indirect profits, business, contracts, revenue or anticipated savings; or
 - iii) for any increased costs or expenses.
- 10.7 No party limits its liability for:
- i) death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement; and
 - ii) its own fraud or that of its employees or agents in the course of their engagement.

11. FORCE MAJEURE

- 11.1 Either party's failure to perform any term or condition of this Licence as result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities ["Force Majeure"]) shall not be deemed to be, or to give rise to, a breach of this Licence.
- 11.2 If either party to this Licence is prevented or delayed in the performance of any of its obligations under this Licence by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

12. ASSIGNMENT

- 12.1 Except as permitted for under this Licence, neither this Licence nor any of the rights and obligations under it may be assigned by either party without obtaining the prior written consent of the other party, such consent shall not unreasonably be withheld or delayed. In any permitted

assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Licence and agrees to be bound to all the terms of this Licence.

13. GOVERNING LAW AND DISPUTE RESOLUTION

- 13.1 This Licence shall be governed by and construed in accordance with English law and 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 English courts.
- 13.2 The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Managing Director of the Publisher and the current Head of Library Service of the Library Service. Where the parties agree that a dispute arising out of or in connection with this Licence would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement.
- 13.3 Any person to whom a reference is made under Clause 13.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 13.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 13.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

14. NOTICES

- 14.1 All notices required to be given under this Licence shall be given in writing in English and sent by courier, or special delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Licence, and all such notices shall be deemed to have been received three (3) days after the date of posting in the case of special delivery or despatch in the case of courier:

if to the Library Service: [insert details]

if to the Publisher [insert details]

15. GENERAL

- 15.1 This Licence, its Schedules and Annexes constitute the entire agreement between the parties relating to the Licensed Material and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
- 15.2 The Schedules and Annexes shall have the same force and effect as if expressly set in the body of this Licence and any reference to this Licence shall include the Schedules and Annexes.
- 15.3 The invalidity or unenforceability of any provision of this Licence shall not affect the continuation in force of the remainder of this Licence.
- 15.4 The rights of the parties arising under this Licence shall not be waived except in writing. Any waiver of any of a party's rights under this Licence or of any breach of this Licence by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Licence shall

not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

- 15.5 The parties will comply with all applicable laws and regulations relating to anti-corruption and anti-bribery. The parties represent and affirm that no bribes or corrupt actions have or will be offered, given, received or performed in relation to the procurement or performance of this Licence. For the purposes of this clause, “bribes or corrupt actions” means any payment, gift, or gratuity, whether in cash or kind, intended to obtain or retain an advantage, or any other action deemed to be corrupt under the applicable country laws. The Institution will not, directly or indirectly, make any such payment while this Licence is in effect.

SCHEDULE 1: LICENCE FEE

1. The Library Service shall pay the Publisher a Licence Fee for the period [insert dates] of £ [insert amount] (exclusive of VAT) as payment for the rights granted in this Licence. Such Licence Fee shall fall due and payable by the Library Service within 45 days on receipt by the Library Service of the Publisher's invoice. The Licence Fee is shown exclusive of VAT, which will be payable in addition by the Library Service where applicable.

[Note: Please do not include in this Licence or ask the Library Service to sign any further terms and conditions other than after consulting Jisc Collections.]

SCHEDULE 2: LICENSED MATERIAL

The Licensed Material consists of the following:

SCHEDULE 3– INDUSTRY STANDARDS

The Publisher agrees to implement the following industry standards to enhance access and use of the Licensed Material.

The Publisher will:

1. Provide the Library Service with usage statistics every three months.
2. Use all reasonable efforts to meet the W3C standards (www.w3.org/WAI/Resources/#in and www.jisc-collections.ac.uk/Guide-for-Publishers/industry_standards/Accessibility-standards) to ensure that the Licensed Material is accessible to all Authorised Users;
3. Use all reasonable efforts to meet the Open URL Standard (www.niso.org/kst/reports/standards?step=2&gid=&project_key=d5320409c5160be4697dc046613f71b9a773cd9e) to ensure that Authorised Users can discover the Licensed Material;

ANNEX 1 – OFFER

This Offer is identical to the offer included in Schedule 1 of the [insert product name] Agreement between [insert name publisher] and Jisc Collections dated [insert date].

IN WITNESS the hands of the above parties on the date first above written: -

SIGNED by: _____

Position: (Signature)

for and on behalf of

[PUBLISHER]

WITNESSED by: _____

Position: (Signature)

Address:

SIGNED by: _____

Position: (Signature)

for and on behalf of

[LIBRARY SERVICE]

WITNESSED by: _____

(Signature)

Position:

Address:

:

SCHEDULE 4 – INDUSTRY STANDARDS

The Publisher agrees to implement the following industry standards to enhance access and use of the Licensed Material.

The Publisher will:

1. Provide the Library Service with usage statistics every three months.
2. Use all reasonable efforts to meet the W3C standards (www.w3.org/WAI/Resources/#in and www.jisc-collections.ac.uk/Guide-for-Publishers/industry_standards/Accessibility-standards) to ensure that the Licensed Material is accessible to all Authorised Users;
3. Use all reasonable efforts to meet the Open URL Standard (www.niso.org/kst/reports/standards?step=2&gid=&project_key=d5320409c5160be4697dc046613f71b9a773cd9e) to ensure that Authorised Users can discover the Licensed Material;

IN WITNESS the hands of the above parties on the date first above written: -

SIGNED by: _____

Position: (Signature)

for and on behalf of

[PUBLISHER]

WITNESSED by: _____

Position: (Signature)

Address:

SIGNED by: _____

Position: (Signature)

for and on behalf of

**JISC SERVICES LIMITED
(OPERATING AS JISC COLLECTIONS)**

WITNESSED by: _____

(Signature)

Position:

Address: