1. KEY DEFINITIONS

1.1

**Authorised Users** Current members of the faculty and other staff of Members (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently studying or doing research at a Member’s institution, who are permitted to access the Secure Network from within the Library Premises or from such other places where Authorised Users work or study (including but not limited to Authorised Users’ offices and homes, halls of residence and student dormitories) and who have been issued by a Member with a password or other authentication together with other persons, including walk-in users, who are permitted to use a Member’s library or information service and permitted to access the Secure Network but only from computer terminals within the Member’s Library Premises. This definition of Authorized Users does not include alumni of a Member’s institution who do not otherwise meet the criteria set forth in this definition of Authorized Users. [...]
Virtual and Managed Learning Environments (MLEs / VLEs) Software systems designed to include the whole range of information systems and processes for an Institution that contribute directly, or indirectly, to learning and the management of that learning. Services include, but are not limited to, access control, provision of e-learning content, communication tools, and administration of user groups.

2. AGREEMENT

2.1 The Publisher agrees to grant to the Consortium the perpetual non-exclusive and non-transferable right, throughout the world, to give Members and Authorised Users access to the Licensed Materials via a Secure Network, subject to the terms and conditions of this Licence, and the Consortium agrees to pay the Fee.

3. USAGE RIGHTS. The Consortium and Authorized Users may make all use of the Licensed Materials as is consistent with the Fair Use Provision of the United States or German law. Nothing in this Agreement shall be interpreted to limit in any way whatsoever Consortium's or any Authorized User's rights under the Fair Use provisions of the United States or German law to use the Licensed material.

3.1 The Consortium, subject to clause 6 below, may:

3.1.1 Locally host, or designate a provider, under contract and legal control of the Licensee, to host on the Licensee's behalf, a single copy of the Licensed Material for access only to Authorised Users

3.1.2 License and deliver the Metadata, only for non-commercial use in local catalogues (e.g. the OPAC of a University), union catalogs (e.g. catalog of a common library network such as GBV), any other library and information system, with the exception of search engines run or controlled by a commercial corporation (e.g. Google), provided that the metadata is not sold, lent, re-licensed, or distributed in any manner that violates any of the terms of this Agreement, and provided that the full text in any such databases is accessible only to Authorised Users as defined herein. Metadata can be accessed also by other than Authorised Users.

3.1.3 Perform reformatting / content migration of the locally hosted Licensed Material solely for the purpose of long-term accessibility and preservation.

3.1.4 Perform by itself or designate a provider, contracted by the Consortium and under the legal control of the Consortium, to host a single copy of the Licensed Material, solely for the purposes of preservation and long-term storage. Any such copy of the Licensed Material shall only be accessible to users at the Consortium or the provider who are charged with preserving the Licensed Materials for long-term storage and use and not by any other users or for any other purpose.

3.2 The Consortium and Members, subject to clause 6 below, may:

3.2.1 Allow Authorised Users to have access to the Licensed Materials from the Server via the Secure Network and to obtain remote access to the Licensed Materials via secure access procedures established by Consortium. Access shall be provided by Publisher and may be allowed by the Consortium and Members via Publisher's server in addition to access via the local host according to 3.1.1.

3.2.2 Provide Authorised Users with integrated access and an integrated author, article title, abstract and keyword index to the Licensed Material and all other similar material licensed from other publishers.

3.2.3 Provide single printed or electronic copies of single articles at the request of individual Authorised Users.

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

3.2.5 Compile, index, and catalogue the Licensed Materials or parts thereof (including, without limitation, the Header Data and Abstracts). Anything created or compiled may be integrated into the Products and Services of Eligible Institutions provided that any Full Text articles from the Licensed Materials and incorporated into such products are accessible only by Authorised Users and provided any such Products and Services developed hereunder are non-commercial.

3.3 Authorised Users may, in accordance with the German copyright law and subject to clause 6 below:
3.3.1 Search, view, retrieve and display the Licensed Materials.

3.3.2 Electronically save individual articles or items of the Licensed Materials for personal use in moderation.

3.3.3 Print off a copy of parts of the Licensed Materials in moderation.

3.3.4 Distribute a copy of individual articles or items of the Licensed Materials in print or electronic form on an occasional basis to other Authorised Users; for the avoidance of doubt, this sub-clause shall include the distribution of a copy for teaching purposes to each individual student Authorised User in a class at the Member's institution.

3.3.5 Distribute single copies of parts of the Licensed Material in print or electronic form to colleagues, whether Authorised Users or not, for the purposes of scientific research and communication or to be used for the basis of discussion groups and consistent with the fair use provision in 3.

4. SUPPLY OF COPIES TO OTHER LIBRARIES

Members may, subject to clause 6 below, supply to an Authorised User of another library a copy of an individual document being part of the Licensed Materials by post or fax for the purposes of research or private study and not for Commercial Use, a practice commonly called Interlibrary Loan. Publisher permits Inter Library Loan (ILL) of articles or components of the Licensed Materials for non-commercial use by way of ILL services of German Libraries. Additionally, the Consortium and Members may use Science Online to supply single copies of articles to a requesting library by electronic transmission for ILL purposes as described above provided the requesting library deletes the electronic file immediately after printing and provided the end user receives a print copy and not an electronic copy.

5. COURSE PACKS AND ELECTRONIC RESERVE

Members may, subject to clause 6 below, incorporate reasonable portions of the Licensed Materials in printed Course Packs and Electronic Reserve collections for the use of Authorised Users in the course of instruction at a Member's institution, but not for Commercial Use. Each such item shall carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher. With Electronic Reserve, Consortium agrees to remove content at the end of the specific course of instruction. Course packs in non-electronic non-print perceptible form, such as audio or Braille, may also be offered to Authorised Users who, in the reasonable opinion of the Licensee, are visually impaired.

Furthermore, the incorporation of parts of the Licensed Material in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) is permitted, provided such material is hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title, author, and publisher. Authorised Users may also provide hyperlinks to the Licensed Materials on Science Online from web pages controlled by the Licensee or the Authorised User in the course of instruction at the Licensee's institution.

6. PROHIBITED USES

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

6.1.1 Remove, cover, obscure, or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;

6.1.2 Systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose, except as provided in Sections 3.1.4 and 5;

6.1.3 Mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network other than permitted in this Licence;

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

6.2.1 Use all or any part of the Licensed Materials for any Commercial Use;
6.2.2 Systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorised Users other than permitted in this Licence;

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

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

6.3 Neither the Consortium nor any Member may:

6.3.1 Download portions of the Online Journals for the purpose of creating systematic and persistent local copies (not including transient, dynamic caches of individually requested material).

7. PUBLISHER'S UNDERTAKINGS

7.1 The Publisher warrants to the Consortium that the Licensed Materials used as contemplated by this Licence do not infringe the copyright or any other proprietary or intellectual property rights of any natural or legal person. The Publisher shall indemnify and hold the Consortium and its Members harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Consortium or any of its Members claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this Licence for any reason. This indemnity shall not apply if the Consortium or any of its Members has amended the Licensed Materials in any way not permitted by this Licence.

7.2 The Publisher shall:

7.2.1 Make the Licensed Materials and Metadata available to the Consortium from the Server or a trusted third party depository, perpetually.

7.2.2 Deliver to Consortium one copy of the Licensed Materials and Metadata for the local host according to Section 3.1.4, including re-deliveries, within reason, at a later date in case of technical difficulties. If the copy of the Licensed Materials is approved complete by the Consortium, re-deliveries of Licensed Materials are at the expense of the Consortium.

7.2.3 Standards of Licensed Materials confirmed by Publisher:

--- Metadata and content connected by non-proprietary persistent identifier (e.g. DOI)

--- Content and applications disconnected - apart from the freely available Acrobat Reader required to download pdf files.

--- Content deliverable as logical units

--- No digital rights management by licensor

7.2.4 Use reasonable endeavours to make available the electronic copy of each journal issue in the Licensed Materials not later than the day of publication of the printed version.

7.2.5 Provide the Consortium, with information sufficient to enable the Consortium and Members to access the Licensed Material.

7.2.6 Use reasonable endeavours to ensure that the Server has adequate capacity and bandwidth to support the usage of the Consortium 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.

7.2.7 Publisher intends for the site to be available 24-hours per day, 7 days per week. However, Publisher will not be liable for damages or refunds should the site become unavailable temporarily or access to the site becomes slow or incomplete due to system back-up procedures, regular maintenance (which typically occurs
8-10am pacific time each Saturday), Internet traffic volume, upgrades, overload of requests to the servers, general network failures or delays, or any other cause beyond the control of Publisher (including, but not limited to force majeure events, networking problems, IP address changes) which may from time to time make the site inaccessible for Authorized Users. If the site cannot be accessed by Consortium in conformance with the terms of this Agreement, Consortium shall immediately notify Publisher and Publisher shall use reasonable efforts to restore access as soon as possible. In the event that Publisher fails to repair access within 48 hours, Publisher shall make adjustments to ensure Consortium receives the access Consortium has paid for under this Agreement upon Consortium's request.

7.2.6 The Publisher reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish (not applicable for the assignment of rights to publish to a third party, e.g. another publisher, when clause 10.4 shall apply), or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.

7.3 The Publisher shall provide to the Consortium Members usage data as provided as part of its standard package from HighWire Press on the number of downloads of TOC's, searches, abstracts, full-text HTML, and PDF's, on a monthly basis for the Publisher's and the Consortium Member's private internal use only. Article usage by topic and top 10 articles may also be provided. [...] 

7.4 Except as expressly provided in this License, the Publisher makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Materials, merchantability or fitness of use for a particular purpose. The Licensed Materials are supplied 'as is'.

7.5 Except as provided in clause 7.1, under no circumstances shall the Publisher be liable to the Consortium or any of its Members or any other person, including but not limited to Authorised Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials.

7.6 With the exception of Science and ScienceNow, Publisher reserves the right to discontinue any Knowledge Environment web publication without penalty.

8. CONSORTIUM'S UNDERTAKINGS

8.1 The Consortium and each Member shall:

8.1.1 Use reasonable endeavours to ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and of the sanctions which each Member imposes for failing to do so;

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

8.1.3 Use reasonable endeavours to monitor compliance and in due course upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence. If the specific abuser(s) cannot be identified or stopped, Publisher has the right to withhold, suspend, or terminate access to all or any portion of the site of the breaching Member. Publisher will not be liable for any damages beyond a prorated refund for the remaining unused portion of the subscription;

8.1.4 Provide the Publisher, within 60 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Material in accordance with its obligation under clause 7.2.3. Should the Consortium make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect;

8.1.5 Keep full and up-to-date records of all IP addresses and provide the Publisher with details of such additions, deletions or other alterations to such records as are necessary to enable the Publisher to provide Authorised Users with access to the Licensed Materials as contemplated by this License. Publisher requires advance notification in the event that Consortium changes IP addresses from one account to another because of company merger, acquisition, or spin-off: in such events, the subscription fee will be adjusted accordingly;
8.1.6 Use reasonable endeavours to ensure that only Authorised Users are permitted access to the Licensed Materials;

8.1.7 Bear all costs necessary for accessing and viewing Published Materials including equipment, software, phone lines, telecommunications, and Internet connections;

8.1.8 Agree to cooperate with reasonable requests to post notices in writing near Licensed Materials or on system's gateway web pages to alert users to terms of use;

8.1.9 Consortium and its Authorized Users will have access to Fora, chat rooms, or discussion groups which may be posted from time to time on Licensed Materials. While it is not the Consortium's responsibility to enforce or monitor user's behaviour in such discussion groups, Consortium foregoes any claims it might have of copyright or 'moral rights' with respect to any of its employee's or Authorized User's postings, except that Consortium reserves the right to use such postings for educational purposes at your institution.

8.2 Nothing in this Licence shall make the Consortium or any Member liable for breach of the terms of the Licence by any Authorised User provided that the Consortium and the Member did not cause, knowingly assist or condone the continuation of such breach to continue after becoming aware of an actual breach having occurred. Nothing in this Licence shall make the Consortium liable for breach of the terms of the Licence by any Member provided that the Consortium did not cause, knowingly assist or condone the continuation of such breach to continue after becoming aware of an actual breach having occurred.

8.3 [...]

9. UNDERTAKINGS BY BOTH PARTIES

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

10. GENERAL

10.1 This Licence constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Licence, whether oral or written.

10.2 Alterations to this Licence and to the Schedules to this Licence are only valid if they are recorded in writing and signed by both parties.

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

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

10.5 Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this Licence or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within 14 days of posting. Any such notices shall also be sent by email within 14 days of posting.

10.6 Neither party's delay nor failure to perform any provision of this Licence, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Licence.

10.7 The parties shall work closely and trustingly together in order to prevent claims by third parties. Between the parties the liability excludes any damage to assets and is limited to the compensation of damage which is caused wilfully or through gross negligence.

10.8 The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence. >
10.9 Either party's waiver, or failure to require performance by the other, of any provision of this Licence will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

10.10 This Licence shall be governed by and construed in accordance with German law; the parties irrevocably agree that any dispute arising out of or in connection with this Licence will be subject to and within the jurisdiction of the courts of Germany.

[...]