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## KNOWLEDGE EXCHANGE LICENCE AGREEMENT

### Clause 1: Definitions

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

1.1 **Authorised Users:** individuals who are authorised by the Institution to access the Institution's information services whether on-site or off-site via Secure Authentication and who are affiliated to the Institution as a current student (including but not limited to undergraduates and postgraduates), member of staff (whether on a permanent or temporary basis including retired members of staff and any teacher who teaches Authorised Users in the United Kingdom, Germany, Netherlands or Denmark) or contractor of the Institution. Persons who are not a current student, member of staff or a contractor of the Institution, but who are permitted to access the Institution's information services from computer terminals or otherwise within the physical premises of the Institution ["Walk-In Users"] are also deemed to be Authorised Users, only for the time they are within the physical premises of the Institution. Walk-In Users may not

1.2 be given means to access the Licensed Material when they are not within the physical premises of the Institution. For the avoidance of doubt, Walk-In Users may not be given access to the Licensed Material by any wireless network provided by the Institution unless such network is a Secure Network.

1.3 **Commercial Use:** the use for the purpose of monetary reward (whether by or for the Institution or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Work. For the avoidance of doubt, neither recovery of direct cost by the Institution from Authorised Users, nor use by the Institution or Authorised Users of the Licensed Work in the course of research funded by a commercial organisation is deemed to constitute Commercial Use.

The use of metadata by commercial search machines does not constitute commercial use as long as that metadata is not sold, lent, distributed otherwise or re-licensed via that search machine or the access to that metadata on that search machine is exclusively being charged for.

1.4 **Educational Purposes:** the use for the purpose of education, teaching, distance learning, private study and/or research.

1.5 **Fee:** the fee as set out in Schedule 1. The fee shall be in line with the offer agreed under the BioOne Agreement between Knowledge Exchange and the Publisher set out in Schedule B.

1.6 **Intellectual Property Rights:** patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

1.7 **JORUM Repository:** the central repository of learning and teaching material in the United Kingdom funded by the UK funding bodies.

1.8 **Licensed Material:** the material listed in Schedule 2.

1.9 **Secure Authentication:** access to the Licensed Material by Shibboleth compliant technology, Internet Protocol ("IP") ranges or by a username and password provided by the Institution or by another means of comparable future developments of authentication agreed between the Publisher and the Institution.

1.10 **Repository:** an online locus for collecting, preserving, and disseminating the learning and teaching material of the Institution.

1.11 **Secure Network:** a network which is only accessible to Authorised Users by Secure Authentication.

1.12 Subscription Period: the period nominally covered by the Licensed Material as identified in Schedule 2, regardless of the actual date of publication.

1.13 Headings contained in this Licence 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.

1.14 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.

## **Clause 2: Licence grant**

2.1 (a) The Publisher hereby grants to the Institution, subject to and in accordance with the terms of this Licence Agreement, a non-exclusive licence to access and use the Licensed Material and to allow Authorised Users to access and use the Licensed Material via Secure Authentication, **or**

(b) The Publisher hereby grants to the Institution subject to and in accordance with the terms of this Licence Agreement, a non-exclusive licence to mount the Licensed Materials, allow the Institution to communicate the Licensed Materials via a Secure Network to Authorised Users, to allow Authorised Users to access and use the Licensed Material via Secure Authentication.

2.2 The Publisher hereby grants to the Institution, subject to and in accordance with the terms of this Licence Agreement, a non-exclusive licence for the metadata associated with the Licensed Material for use in local library catalogues, union catalogues, and such other library and information systems including but not limited to search machines of Institution and third parties.

2.3 In consideration for the Publisher's licensing of the Licensed Material pursuant to Clause 2.1, the Institution undertakes to pay to the Publisher the Fee in accordance with the provisions of Schedule 1.

## **Clause 3: Permitted uses**

3.1 The Institution may:

3.1.1 make such local temporary copies of the Licensed Material as are necessary to ensure efficient use of the Licensed Material by Authorised Users, provided that such use is subject to all the terms and conditions of this Licence Agreement;

3.1.2 provide Authorised Users with integrated access and an integrated article author, article title and keyword index to the Licensed Material and all other similar material licensed from other publishers;

3.1.3 allow Authorised Users to:

3.1.3.1 access the Licensed Material by Secure Authentication in order to search, retrieve, display and view the Licensed Material;

3.1.3.2 electronically save parts of the Licensed Material;

3.1.3.3 print out single copies of parts of the Licensed Material;

3.1.3.4 incorporate parts of the Licensed Material in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;

3.1.3.5 incorporate parts of the Licensed Material in printed or electronic form in assignments and portfolios, theses and in dissertations ("the Academic Works"), including reproductions of the Academic Works for personal use and library deposit. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner;

3.1.3.6 supply to an authorised user of another library (whether by post, fax or secure electronic transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing) a single paper copy of an electronic original of an individual document;

3.1.3.7 provide single printed or electronic copies of single articles at the request of individual Authorised Users;

3.1.3.8 display, download and print parts of the Licensed Material for the purpose of promotion of the Licensed Material, testing of the Licensed Material, or for training Authorised Users;

3.1.3.9 publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other such similar activity;

3.1.3.10 make such copies of training material and network such training material as may be required for the purpose of using the Licensed Material in accordance with this Licence Agreement;

3.1.3.11 deposit in perpetuity the learning and teaching objects as referred to in Clause 3.1.3.4 in Repositories operated by the Institution and in the United Kingdom in the JORUM Repository. The access and use of such learning and teaching objects shall be governed by the terms and conditions of the applicable repository;

3.1.3.12 save and/or deposit in perpetuity the Licensed Material in Repositories operated by the Institution and/or by an Authorised User. Access. The use of such Repositories shall be limited to Authorised Users and funding bodies;

3.1.3.13 save and/or deposit in perpetuity parts of the Licensed Material of which they are the authors on any network including networks open to the public and to communicate to the public such parts via any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created.

3.2 This Licence Agreement shall be deemed to complement and extend the rights of the Institution and Authorised Users under the Copyright Law and other applicable legislation in the countries of the partner organisations of Knowledge Exchange and nothing in this Licence Agreement shall constitute a waiver of any statutory rights held by the Institution and Authorised Users from time to time under these legislations or any amending legislation.

#### **Clause 4: Restrictions**

4.1 Save as provided herein, the Institution and Authorised Users may not:

4.1.1 sell or resell the Licensed Material unless the Institution or an Authorised User has been granted prior written consent by the Publisher to do so;

4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear;

4.1.3 alter, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this Licence Agreement. For the avoidance of doubt, no alteration of the words or their order is permitted;

4.1.4 display or distribute any part of the Licensed Material on any electronic network, including without limitation the internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, other than by a Secure Network or unless permitted in this Licence Agreement;

4.1.5 use all or any part of the Licensed Material for any Commercial Use or for any purpose other than Educational Purposes.

4.2 This Clause shall survive termination of this Licence Agreement for any reason.

#### **Clause 5: Responsibilities of the publisher**

5.1 The Publisher agrees to:

5.1.1 make the Licensed Material available to the Institution and Authorised Users from the commencement of the Subscription Period;

5.1.2 in the event the Licensed Material consist of journals, use all reasonable endeavours to make the electronic copy of each journal covered by this Licence Agreement available, not later than the start of business hours on the day of publication of the printed version. In the event that for technical reasons this is not possible for any particular journal, as a matter of course, such journal shall be identified at the time of licensing, together with the reasons therefore;

5.1.3 use all reasonable endeavours to make the Licensed Material available to the Institution and Authorised Users at all times and on a twenty-four hour basis, save for routine maintenance, and to restore access to the Licensed Material as soon as possible in the event of an interruption or suspension of the service;

5.1.4 provide for customer support services to Authorised Users via e-mail or phone, including answering e-mail inquiries relating to the use, functionality and content of the Licensed Material within 24 hrs of request;

5.1.5 use all reasonable endeavours to ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage of the Institution at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Licence Agreement;

5.1.6 provide electronic product documentation to the Institution free of charge. The Publisher will allow copies of all documentation to be made and distributed by the Institution to Authorised Users provided it is either duplicated in full, or a proper ownership acknowledgement is included;

5.1.7 use all best efforts to comply with the Open URL Standard ([http://www.niso.org/committees/committee\\_ax.html](http://www.niso.org/committees/committee_ax.html))

5.1.8 use all best efforts to comply with the W3C standards ([http://www.w3.org/WAI/Resources/#in\\_](http://www.w3.org/WAI/Resources/#in_))

5.1.9 make available to the Institution COUNTER-compliant usage statistics, on at least a quarterly basis (<http://www.projectcounter.org/>);

5.1.10 permit the Institution to make cancellations and substitutions of the Licensed Material per annum;

5.1.11 inform the Institution once a year of the dark archives that the Publisher uses for the deposit of its content in the event of a force majeure or if the publisher ceases to exist; and

5.1.12 use all best efforts to comply with the Code of Practice of Project Transfer relating to the transfer of titles between publishers <http://www.projecttransfer.org/>.

5.2.13 use all best efforts to provide correct and catalogue records and to provide the Institution with updated catalogue records from time to time.

5.2.14 comply with the ONIX standard for machine readable licences [http://www.editeur.org/onix\\_licensing.html](http://www.editeur.org/onix_licensing.html)

5.2 The Publisher reserves the right at any time to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish and for which the Publisher has been unable to secure the provisions as set out in Clauses 8.7 and 8.8, or any item or part of an item for which the Publisher has reasonable grounds to believe it infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Institution of such withdrawal. If the withdrawn material represents more than ten per cent (10%) of the Licensed Material the Publisher shall make a pro rata refund of part of the Fee to the Institution, taking into account the amount of material withdrawn and the remaining unexpired portion of the Subscription Period.

## **Clause 6: Responsibilities of the Institution**

6.1 The Institution agrees to:

6.1.1 issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;

6.1.2 provide lists of valid IP addresses to the Publisher and update those lists on a regular basis the frequency of which will be agreed by the parties from time to time;

6.1.3 use all reasonable efforts, including without limitation by use of Secure Authentication, to ensure that only Authorised Users are permitted access to the Licensed Material;

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

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

(a) any unauthorised access to or use of the Licensed Material or unauthorised use of any of Institution's password(s); or

(b) any breach by an Authorised User of the terms of this Licence Agreement. Upon becoming aware of any breach of the terms of this Licence Agreement, the Institution further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Institution's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence.

6.2 The Institution 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 Agreement, the Institution will make best efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

#### **Clause 7: Fee**

7.1 The Publisher will invoice the Institution or their agent for the Fee payable at the address set out below:

SURFdiensten B.V., Onderdoor 74, Houten, The Netherlands

DEFF, a part of Danish Agency for Libraries and Media, H. C. Andersens Boulevard 2, Copenhagen, Denmark,

Universitätsbibliothek Johann Christian Senckenberg on behalf of DFG, Bockenheimer Landstrasse 134-138, 60325 Frankfurt am Main

The JISC Content Procurement Company Limited, Ground Floor, Brettenham House South, Lancaster Place, London WC2E 7EN, United Kingdom

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

#### **Clause 8: Term and termination**

8.1 This Licence Agreement shall commence at the beginning of Subscription Period and, unless terminated earlier as provided for in this Clause 8.2, will remain in full force and effect for three years.

8.2 The Institution may terminate this Licence Agreement without cause at the anniversary of the commencement of the Subscription Period of this Licence Agreement by providing Publisher with a written notice to that effect three months prior to the anniversary of the commencement of the Subscription Period.

8.3 Any party may terminate this Licence Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Licence 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.

8.4 Upon termination of this Licence Agreement by the Publisher due to a material breach or repeated other breaches by the Institution, the Publisher shall cease to authorise on-line access to the Licensed Material by the Institution and Authorised Users.

8.5 After termination of this Licence Agreement (save for a material breach by the Institution of its obligations under this Licence Agreement) the Publisher will provide (at the option of the Institution) the Institution and its Authorised and Walk-in Users with access to and use of the full text of the Licensed Material which was published and paid for within the Subscription Period, either by:

i) continuing online access to archival copies of the same Licensed Material on the Publisher's server which shall be without charge; or

ii) by supplying archival copies of the same Licensed Material in an electronic medium mutually agreed between the parties which will be delivered to the Institution or to a central archiving or other archival facility (excluding an archival facility of a STM publisher) without charge; or

iii) supplying without charge archival copies via ftp protocol of the same Licensed Material. For the avoidance of doubt access and use of archival copies shall be subject to the terms and conditions as set out in Clauses 3 and 4 of this Licence Agreement. 8.6 The Publisher will provide two options for archival access, and the Institution may select either:

i) the Licensed Material as subscribed to during the term of the Subscription Period or

ii) the Licensed Material subscribed to on the day prior to termination of this Licence Agreement.

8.7 The Institution is permitted to mount the archival copies of the Licensed Material supplied by the Publisher in accordance with Clauses 8.5 (ii) and 8.5 (iii), communicate, make available and provide access to such Licensed Material via a Secure Network to Authorised Users in accordance with the terms of this Licence Agreement. The Institution is further permitted to make such copies or re-format the Licensed Material contained in the archival copies supplied by the Publisher in any way to ensure their future preservation and accessibility in accordance with this Licence;

8.8 In the event that ownership of a part or parts of the Licensed Material is sold by the Publisher or otherwise transferred to another publisher, the Publisher will supply such material free of charge to the Institution in accordance with the procedure described in Clause 8.5. In addition, the Publisher will use all reasonable efforts to retain a non-exclusive copy of the volumes published and make them available free of charge through the Publisher's server.

8.9 In the event that the Publishers ceases to publish a part or parts of the Licensed Material, a digital archive will be maintained of such Licensed Material and be made available free of charge through the Publisher's server or via a third party server or by supplying such material free of charge to the Institution in accordance with the procedure described in Clause 8.5;

8.10 The archival copies supplied in accordance with Clause 8.5 (ii) and (iii) will contain all textual content of the Licensed Material but may not contain all links and other features and functionality associated with the online version available via the Publisher's server. Access and use of such copies will not attract a fee charged by the Publisher.

8.11 On termination of this Licence Agreement by the Institution due to a material breach or repeated other breaches by the Publisher, the Publisher will reimburse the Institution a pro rata proportion of the then remaining Fee for the unexpired part of the Subscription Period. The Publisher shall not be obligated to return any portion of the Fee for termination by the Publisher due to the Institution's breach pursuant to Clause 8.2.

#### **Clause 9: Acknowledgement and protection of Intellectual Property Rights**

9.1 The Institution acknowledges that all Intellectual Property Rights in the Licensed Material are the property of the Publisher or duly licensed to the Publisher and that this Licence Agreement does not assign or transfer to the Institution 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 Agreement.

9.2 For the avoidance of doubt, the Publisher hereby acknowledges that any database rights created by the Institution as a result of local mounting of the Licensed Material as referred to in Clause 8.7 shall be the property of the Institution.

#### **Clause 10: Representation, warranties and indemnification**

10.1 The Publisher warrants to the Institution 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 Agreement does not infringe any Intellectual Property Rights of any natural or legal person. The Publisher agrees that the Institution shall have no liability and the Publisher will indemnify, defend and hold the Institution harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the Institution in defending against any third party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of the Institution's or Authorised Users use of the Licensed Material, provided that: (1) the use of the Licensed Material has been in full compliance with the terms and conditions of this Licence Agreement; (2) the Institution provides the Publisher with prompt notice of any such claim or threat of claim; (3) the Institution co-operates fully with the Publisher in the defence or settlement of such claim; and (4) the Publisher has sole and complete control over the defence or settlement of such claim.

10.2 The Publisher reserves the right to change the content (including removal of an entire journal on ceasing to have the right to publish), presentation, user facilities or availability of parts of the Licensed Material and to make changes in any software used to make the Licensed Material available at their sole discretion. The Publisher will notify the Institution of any substantial change to the Licensed Material.

10.3 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 Institution or Authorised Users as a result of their reliance on the Licensed Material.

10.4 In no circumstances will the Publisher be liable to the Institution 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.

10.5 The Institution agrees to notify the Publisher immediately, 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 Agreement.

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

10.7 Save as provided for in Clause 10.1, neither the Institution 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 for any increased costs or expenses.

10.8 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.

#### **Clause 11: Force majeure**

11.1 Either party's failure to perform any term or condition of this Licence 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 Licence Agreement.

11.2 If either party to this Licence Agreement is prevented or delayed in the performance of any of its obligations under this Licence 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.

#### **Clause 12: Assignment**

12.1 Save as permitted for under this Licence Agreement, neither this Licence Agreement 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 Agreement and agrees to be bound to all the terms of this Licence Agreement.

#### **Clause 13: Governing law and dispute resolution**

13.1 This Licence Agreement shall be governed by and construed in accordance with the governing law of the Institution and the parties irrevocably agree that any dispute arising out of or in connection with this Licence Agreement will be subject to and within the jurisdiction of the courts of the country of the Institution.

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 Vice Chancellor or CEO of the Institution. Where the parties agree that a dispute arising out or in connection with this Licence 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.

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.

#### **Clause 14: Notices**

14.1 All notices required to be given under this Licence Agreement shall be given in writing 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 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 the Institution:

SURFdiensten B.V., Onderdoor 74, Houten, The Netherlands

DEFF, a part of Danish Agency for Libraries and Media, H. C. Andersens Boulevard 2, Copenhagen, Denmark,

Universitätsbibliothek Johann Christian Senckenberg on behalf of DFG, Bockenheimer Landstrasse 134-138, 60325 Frankfurt am Main

The JISC Content Procurement Company Limited, Ground Floor, Brettenham House South, Lancaster Place, London WC2E 7EN, United Kingdom

if to the Publisher

**BIOONE** a company having registered number EIN 52-2187678 and having its registered office at

21 Dupont Circle, Suite 800, Washington, DC 20036 ("Publisher") or not-for-profit organisation whose principal place of business is at 21 Dupont Circle, Suite 800, Washington, DC 20036.

**Clause 15: General**

15.1 This Licence Agreement and its Schedules 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 shall have the same force and effect as if expressly set in the body of this Licence Agreement and any reference to this Licence Agreement shall include the Schedules.

15.3 The invalidity or unenforceability of any provision of this Licence Agreement shall not affect the continuation in force of the remainder of this Licence Agreement.

15.4 The rights of the parties arising under this Licence Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Licence Agreement or of any breach of this Licence 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 Licence 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.

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