

Date of Agreement:

Perpetual Access eBook LICENCE AGREEMENT Individual ebooks or ebook packages purchased on a perpetual access basis

Browns Books, a company having its registered office at 5 Redcliff Road, Melton, East Yorkshire, HU14 3RS (the "**Supplier**").

UK Health Security Agency, a company having its registered office at 10 South Colonnade, London, E14 4PU (the "**Institution**")

OFFERS to you, the Institution, permission to access the Licensed Material (including selected Licensed Publications), make copies of certain Licensed Material, and to use and authorise the use of such material in accordance with the Joint Consortia Framework Agreement (as hereafter defined) and on the terms and conditions as set out in this Agreement.

You may accept this OFFER by placing an Order, and acceptance of your OFFER and this Agreement will take place on receipt of the Order Confirmation by the Supplier, as set out in the Joint Consortia Framework Agreement. (Thereafter further Orders may be placed under this Agreement, during the Term of this Agreement).

Acceptance is acceptance of all terms and conditions of this Agreement and no variation or counter offer will be accepted by the Supplier. In the event that you do not comply or only partial comply as to the manner or form described for acceptance, no licence will be granted and this offer is deemed withdrawn.

BACKGROUND

1. The Supplier owns or has the right to grant licences in respect of the works identified in the Joint Consortia Framework Agreement ("Offered Works").

2. The Joint Consortia Framework Agreement sets out the scope of works available to be licensed (which may be individual titles, including monographs, reference titles, text books, course books, or sections of them, or materials or packages or collections), the activities which will be licensed, the nature of the licence and perpetual rights which will be granted in respect of titles or other parts of the Offered Works which the Institution selects, and the fees payable in respect of the rights which will be licensed.
3. This Agreement is in the form provided for and negotiated as part of the Joint Consortia Framework Agreement for Books, eBooks, Standing Orders and Related Materials set up by Southern Universities Purchasing Consortium for use by the participating consortia as defined in the said Framework Agreement.
4. The Supplier has agreed to offer to licence Institutions and their authorised users to have access and to use to the parts of the Offered Works selected by the Institution in accordance with the Joint Consortia Framework Agreement, and in accordance with and subject to the terms of this Agreement which sets out the detailed terms of the licence including further rights and obligations of the parties in connection with this Agreement.

NOW THEREFORE THE SUPPLIER AND THE INSTITUTION AGREE AS FOLLOWS

1 DEFINITIONS

- 1.1 In this Agreement, the following definitions and rules of interpretation shall apply:

"Academic Year"	means the calendar year running from the beginning of the Institution's academic year.
"Access Services"	means the Supplier's obligations under clause 5.1.
"` Access Support Hours"	means 8.00 am to 6.00 pm in the United Kingdom, on a Working Day .
"Additional Authorised Users"	means individuals who have a status equivalent to those specified below for Authorised Users in relation to an Institution [but for monetary purposes are not included in the Licence Fee] and are alumni of the Institution, or retired members of staff, or users at a Partner

Organisation for which access has been agreed with the Supplier as outlined in Schedule 2

"Authentication Information" means passwords, user names and any other information necessary to access Licensed Material by means of the Secure Authentication.

"Authorised User" means an individual who is authorised by the Institution to have access to its information services (whether on-site or off-site) via Secure Authentication and who is:

- a current student registered with the Institution (including undergraduates and postgraduates);
- a member of staff of the Institution (whether permanent or temporary and any teacher who teaches students registered with the Institution);
- a contractor of the Institution; or
- a Walk-In User. Walk-in Users are not allowed off-site access to the Licensed Material

and, unless the context otherwise requires, all references to "Authorised Users" in this Agreement include agreed "Additional Authorised Users".

"Commercial Use" means use for the purpose of earning monetary reward or generating profit (whether by or for the Institution or an Authorised User) by means of the sale, resale, loan, transfer, licence, hire or other form of exploitation of the Licensed Material, excluding:

- use for which the Institution is entitled only to be reimbursed its costs (which may include overhead costs); or
- use of the Licensed Material in the course of research funded by a commercial or for-profit organisation.

"Confidential Information" means, in relation to each party, all information in respect of the business and financing of that party including any

ideas, business methods, finances, prices, businesses, financial, marketing, development or manpower plans, customer lists or details, computer systems and software, know-how or other matters connected with the services marketed, provided or obtained by that party and information concerning either party's relationship with actual or potential members or customers or any other third party and the needs and requirements of such persons

"Confirmation Notice" means, in relation to a notice sent through the Ordering Platform (if any), the email generated by the platform confirming receipt of the notice and sent to each of the Supplier and the Institution.

"Data Breach" means any act or omission that (i) compromises the security, confidentiality or integrity of the Personal Data that the Supplier Processes for and on behalf of the Institution (including, by way of example, the unauthorised loss or disclosure of any such Personal Data by the Supplier); (ii) compromises the physical, technical, administrative or organisational safeguards put in place by the Supplier that relate to the protection of the security, confidentiality or integrity of such Personal Data (including any breach of the [relevant] information technology and data security requirements); or (iii) causes the Institution or the Supplier to be in breach of data protection Law (in particular the GDPR and the DPA)

"Data Controller" has the meaning set out in the DPA up to and including 24 May 2018 and has the meaning of "Controller" set out in the GDPR from 25 May 2018

"Data Protection Particulars" means, in relation to any Processing under this Agreement: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing;

	(c) the type of Personal Data being Processed; and (d) the categories of Data Subjects
“Data Subject”	has the meaning set out in the DPA up to and including 24 May 2018 and from 25 May 2018 has the meaning set out in the GDPR
“Download”	means to download for temporary offline use all or part of the Licensed Materials permitting this onto a personal device.
“DPA”	means the Data Protection Act 1998 and the rules and regulations made or having effect under it
"Educational Purposes"	means education, teaching, tuition, training, instruction, learning, private study and/or research, and includes distance teaching and learning.
“GDPR”	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016
"Institution"	means the institution that has completed, and is referred to in, the Order, and has accepted the terms and conditions of this Agreement.
"Joint Consortia Framework Agreement"	means the Joint Consortia Framework Agreement for Books, eBooks, Standing Orders and Related Materials set up by Southern Universities Purchasing Consortium for use by the participating consortia and their members as defined in the said Framework Agreement.
“Law”	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory

	body, delegated or subordinate legislation or notice of any regulatory body
"Licence Fee"	<p>means the purchase fee payable for access to and use of the Licensed Material as set out in the Joint Consortia Framework Agreement and the Quote (if any Quote is required), and may comprise a fee</p> <ul style="list-style-type: none"> • for perpetual access to an individual title (an outright purchase fee or perpetual access fee); and/or • for perpetual access to a collection (collection subscription); <p>or other structure as set out in the Joint Consortia Framework Agreement; or for access and use of the relevant Licensed Material (as the context requires).</p>
"Licensed Material"	<p>means the Licensed Publications and all Metadata and MARC Records relating to Licensed Publications. This shall include Licensed Material supplied in perpetuity as well as Licensed Material originally supplied on a short term basis [such as short term loan or rental] that are included as part of a business model that includes conversion to perpetual access [such as Patron/Demand Driven Acquisition or Evidence Based Acquisition models].</p>
"Licensed Publications"	<p>means the electronic publications, including monographs, reference titles, and text books or other titles or parts or sections of them which the Institution has selected for use under this Agreement and for which the Institution has placed an Order which has been accepted as confirmed by an Order Confirmation.</p>
"MARC Records"	<p>MARC (Machine-Readable Cataloguing) records created by the Supplier, having the relevant fields set out in Schedule 1 as appropriate.</p>

"Member Institution"	an entity permitted to access the terms of this Agreement by SUPC or a Participating Consortium.
"Metadata"	means [textual] data associated with the Licensed Publications that describes the creation, content, and context of each part of the Licensed Publications, including in each case the name of the author (or authors), the name of the Supplier, the name of the copyright owner, subject matter, the date of publication, the location of the digital file, and all other metadata typically included in the applicable MARC Records.
"Mount"	means to map or copy to a computer or a computer network.
"Order"	means an order placed by the Institution in accordance with the Joint Consortia Framework Agreement in relation to Offered Works [and/or in relation to the Licensed Material and Licensed Publications] [that the Institution has requested the Supplier to provide under the terms and conditions of this Agreement].
"Order Confirmation"	means the acceptance and confirmation, as defined in the Joint Consortia Framework Agreement, of the Order (whether on an ordering Platform or otherwise), confirming that the Institution has placed the relevant Order, the start and end date of the Subscription Period applicable to that Order, and that the Institution has agreed to the terms and conditions of this Agreement.
"Ordering Platform"	means the online ordering service hosted and provided by the Supplier or such other electronic ordering application as used by the Institution and agreed by the Supplier.
"Partner Fee"	means a fee for access and use of the Licensed Material by any Alumni, retired staff or other Additional

Authorised Users at a Partner Organisation outlined in **Schedule 2**.

"Partner Organisation"	means any organisation which the Supplier has agreed with the Institution in writing, that the Institution can permit to access and use the Licensed Material.
"Permitted Use"	means use in accordance with clause 3 subject to the restrictions in clause 4.
"Perpetual Access Period"	means the indefinite period following purchase of licensed Publications (including following the Term of this Agreement) during which the Institution and Authorised Users are permitted to access and use the Licensed Materials.
"Personal Data"	has the meaning set out in the DPA up to and including 24 May 2018 and from 25 May 2018 has the meaning set out in the GDPR. For the purposes of this Agreement, Personal Data shall include Sensitive Personal Data
"Platform"	means the computing platform operated by or on behalf of the Supplier on which the Licensed Material is hosted and can be accessed.
"Processing"	has the meaning set out in the DPA up to and including 24 May 2018 and has the meaning set out in the GDPR from 25 May 2018, and "Process" and "Processed" shall be construed accordingly
"Processor"	Has the meaning of "Data Processor" as set out in the DPA up to and including 24 May 2018 and has the meaning set out in the GDPR from 25 May 2018
"Prohibited Act"	means, directly or indirectly (a) to offer, promise or give any person working for or engaged by any party to the Agreement a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper

performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence: (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; (iii) defrauding, attempting to defraud or conspiring to defraud; (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

"Quote"	means the pricing quotation in accordance with the Joint Consortia Framework Agreement provided by the Supplier directly to the Institution for access to and use of the Licensed Material applicable to the Institution. Once the Institution has accepted the price quotation from the Supplier and confirmed this by placing its Order, such quote shall form the Licence Fee for the Licensed Material the subject of the Order.
"Secure Authentication"	means access by UK Access Management Federation compliant technology, Internet Protocol ("IP") ranges or by username and password provided by the Institution or by other authentication means reasonably agreed between the Supplier and the Institution.
"Secure Network"	means a network which is only accessible to Authorised Users by Secure Authentication.
"Sensitive Personal Data"	means Personal Data that reveals such categories of data as are listed in Article 9(1) of the GDPR
"Service Levels"	means the additional service levels, if any, to which the Access Services are to be provided, as set out in Joint Consortia Framework Agreement and Schedule 3

"Start Date"	means the start date as set out in the Order.
"Subscribed Collection"	a collection of Licensed Publications to which the Institution has access for a defined period either as part of a Patron/Demand Driven or Evidence Based Acquisition process. A proportion of the Licensed Publications would be purchased as outlined in Schedule 2 in order to convert to Perpetual Access
"Term"	means the term of this Agreement in accordance with clause 11.
"Trigger Threshold"	means the point at which any PDA usage, action or payment is registered or required.
"Walk-In Users"	means individuals, other than current students, staff members, contractors of the Institution or agreed Additional Authorised Users, who are allowed by the Institution to access its information services from computer terminals or by other means (including wirelessly), from within the physical premises of the Institution or Partner Organisation. Walk-in Users are not allowed off-site access to the Licensed Material
"Working Day"	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business

- 1.2 Clause, Schedule and Annex headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules and Annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules and Annexes.

- 1.5 A reference to an organisation shall include any company, corporation, institution or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular, and a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to writing or written includes fax and email and submission on the Ordering Platform.
- 1.9 Any obligation on a party not to do something includes an obligation not to permit that thing to be done.
- 1.10 Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 LICENCE GRANT

- 2.1 In respect of Licensed Material supplied in perpetuity the Supplier hereby grants to the Institution:
 - 2.1.2 a perpetual, irrevocable, non-exclusive licence:
 - a) to make Permitted Use of the Licensed Materials; and
 - b) to permit Authorised Users to access and make Permitted Use of the Licensed Materials.
- 2.2 In respect of Licensed Material that does not have a perpetual licence (see Schedule 4) the Supplier hereby grants to the Institution:
 - 2.1.2 A non –exclusive non-transferable right for the period that is expressly provided for:
 - a) To access and make Permitted Use of the Licensed Materials; and
 - b) To permit Authorised Users to access and make Permitted Use of the Licenced Materials

- 2.2 Except as expressly provided below, such access shall be on the Platform through Secure Authentication.

3 PERMITTED USES

- 3.1 For the purposes of clause 3 ‘parts’ shall mean a section of the Licensed Material, or a link to the Licensed Material, that is permitted for download or copy and paste within a specific ebook. The Institution shall be entitled, for Educational Purposes only:
- 3.1.1 to Mount and use MARC Records and use Metadata in its own bespoke or commercially available library information systems to manage library operations, including combining such Metadata with metadata from other sources and/or relating to other materials, and downloading, printing, communicating, displaying, supplying for use by others, and providing public access to the same;
 - 3.1.2 to display, download and print parts of Licensed Publications for the purpose of promoting or testing the Licensed Material or for training, teaching or instructing Authorised Users;
 - 3.1.3 to convert or adapt parts of Licensed Materials into Braille or other formats suitable for providing access to Authorised Users with impaired abilities for whom the content proves not to be fully accessible, and provide access to such converted or adapted form for the purposes of its own use under this clause and for the purpose of this clause 3.1 (including 3.1.4). Where the parts required exceed the usual permitted amounts for copying then publisher permission will be sought.
 - 3.1.4 to provide Authorised Users with access to the Licensed Material for Educational Purposes via a Secure Network for the purposes set out in clause 3.2;
 - 3.1.5 subject to any to any digital rights management technologies on the Platform, supply to another library in the United Kingdom (whether by post, fax or, provided the electronic file is deleted immediately after printing, secure electronic transmission), a single copy of parts of or extracts from, Licensed Publications;
 - 3.1.6 to provide single printed or electronic copies of parts of Licensed Publications to individual Authorised Users for Educational Purposes at their request;
 - 3.1.7 to make and distribute copies of training, teaching or course material reproducing parts of Licensed Publications, as may be required by the Institution for the purpose of using the Licensed Material in accordance with this clause 3;

- 3.2 The Institution shall be entitled to permit Authorised Users for Educational Purposes only:
- 3.2.1 to access the Licensed Material by Secure Authentication in order to search, retrieve, display and view the Licensed Material;
 - 3.2.2 to convert or adapt parts of Licensed Materials into Braille or other formats suitable for providing access to Authorised Users with impaired abilities
 - 3.2.3 to comment electronically on parts of Licensed Publications (including by tagging, highlighting paragraphs and sentences, bookmarking, inserting hyperlinks, exporting references, and writing personal commentary, and saving the same);
 - 3.2.4 to download and/or save electronically copies of parts of Licensed Publications, including parts referred to in clause 3.2.2;
 - 3.2.5 to copy and paste, download and print out copies of parts of Licensed Publications, including parts referred to in clause 3.2.2, for individual use or for use in tutorials or study groups; provided that all downloading, printing and/or electronic storage of materials retrieved must be retrieved directly from the on-line system for each and every print or digital copy
 - 3.2.6 to incorporate parts of the Licensed Publications in printed or electronic form in assignments and portfolios, theses and in dissertations (“Academic Works”), and to make reproductions of the Academic Works for personal use, library deposit and/or to provide to sponsors of the Academic Works, provided that Authorised Users specify the source, listing title and author of the extract, title and author of the work, copyright notice, and each publisher of the Licensed Publications used in the Academic Works;
 - 3.2.7 to incorporate parts of the Licensed Material in electronic course packs or management systems to be used in the course of instruction and/or virtual learning environments hosted on a Secure Network. Authorised Users must specify the title and copyright owner of the Licensed Material used in the course packs. Course packs in other formats, such as Braille, may also be offered to Authorised Users;
 - 3.2.8 to publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other similar event, provided that Authorised Users specify the source, listing title and author of the extract, title and author of the work, copyright notice, and each publisher of the Licensed Material used in such ways;
 - 3.2.9 subject to any to any digital rights management technologies on the Platform, and any provisions requested by the publishers of the Licensed Publications, to download and

make copies of the whole or any parts of the Licensed Material for the purposes of, and to perform and engage in computational analysis (including text and data mining) using the Licensed Material for the purpose of research and other Educational Purposes but not for Commercial Use, and to permit Authorised Users to distribute and display and otherwise use (publicly or otherwise), other than for Commercial Use, the results, provided that such results do not reproduce the whole or a substantial part of any Licensed Material. Copies of Licensed Material made under this Clause 3.2.9 shall be deleted promptly after the computational analysis has been completed;

3.2.10 to save and/or deposit in perpetuity parts of the Licensed Material that are incorporated in Academic Works (see clause 3.2.6) in electronic repositories on a Secure Network operated by the Institution, access to and use of which is limited to Authorised Users;

3.2.11 to download, or permit the download of, Licensed Publications in whole or in part for the Authorised User's personal Educational Use onto personal computing devices without number including tablets, e-book readers and laptops, and stand-alone computers using any DRM software required by the Supplier for that purpose; and

3.2.12 to provide access to, communicate to, and share material resulting from any use under this Clause 3.2 with other Authorised Users for their use in accordance with this Licence.

3.3 The provisions of this Agreement are without limitation to the rights of the Institution or Authorised Users to do any act permitted under Chapter III (Acts Permitted in relation to Copyright Works) of the Copyright, Design and Patents Act 1988 and, notwithstanding any provision of this Agreement, the Institution and Authorised Users shall remain entitled to do any such acts.

3.4 Unless expressly set out in this clause 3, or in relation to specific Licensed Publications or specific Permitted Uses in the Joint Consortia Framework Agreement, there shall be no limit on the number of Authorised Users to which this Agreement (including clause 3.1) applies.

4 RESTRICTIONS

4.1 Except where this Agreement provides otherwise, the Institution shall not, and shall not grant an Authorised User the right to:

4.1.1 sell, resell, or sub-license the Licensed Material or MARC Records, in whole or in part, unless the Supplier has given permission in writing to do so;

- 4.1.2 remove, obscure or alter copyright notices, acknowledgements or other means of identification, or disclaimers, other than Metadata and MARC Records;
- 4.1.3 alter or adapt the Licensed Material (other than Metadata and MARC Records), including any alteration of the words of Licensed Material or their order, except to the extent necessary to make it perceptible on a computer screen, or as otherwise provided under this Agreement;
- 4.1.4 display or distribute any part of the Licensed Material (other than Metadata and MARC Records) on any electronic network, including the internet, other than on a Secure Network;
- 4.1.5 make any Commercial Use of the Licensed Material (in whole or in part);
- 4.1.6 use the Licensed Materials (in whole or in part) other than for Educational Purposes;
- 4.1.7 provide access to and/or permit use of the Licensed Material (other than Metadata and MARC Records) by anyone, or transmit any part of the Licensed Material by any means to anyone, other than an Authorised User. The Institution shall not provide access to Walk-In Users to the Licensed Material at a location other than the Institution's premises (but, for the avoidance of doubt, may provide access on such premises by wireless means).

5 RESPONSIBILITIES OF THE SUPPLIER

- 5.1 The Supplier shall:
 - 5.1.1 at all times make the Licensed Materials available through the Platform to the Institution and Authorised Users for access, download and Permitted Use.
 - 5.1.2 allocate and use sufficient resources (including servers and communications and network equipment) to provide the Access Services in accordance with the terms of this Agreement;
 - 5.1.3 subject to routine maintenance (which the Supplier shall use reasonable endeavours to conduct between 00.00 and 8.00 UK time and which the Supplier shall in any event conduct in such a manner to minimise disruption of the Access Services), provide the Access Services on a continuous and uninterrupted basis and shall, on any interruption or suspension of the Access Services occurring, restore the Access Services as soon as reasonably practicable.
- 5.2 Without prejudice to clause 5.1, the Supplier shall ensure that the Access Services meet the Service Levels, as defined in the Joint Consortia Framework Agreement, Framework

Agreement Terms, Schedule 2 clause 6 ‘Key Performance Indicators, and any other Service Levels agreed in writing, at all times.

- 5.3 The Supplier, in respect of the Licensed Materials made available under clause 5.1:
 - 5.3.1 shall not, without the agreement of the Institution, such agreement not to be unreasonably withheld, implement any digital rights management technologies or access management technologies which have a material adverse impact on the performance or useability of the Licensed Materials in accordance with this Agreement, for example by repeatedly requiring an Authorised User to provide active confirmation in relation to their use of or access to the Licensed Materials, which impair the useability of DOIs or other links
 - 5.3.2 shall implement any digital rights management technologies necessary to meet the requirements of section 70.1.5 of the specification in the Joint Consortia Framework agreement, which are used, in accordance with reasonable criteria (such as retention periods) and/or thresholds notified to the Supplier by the Institution;
 - 5.3.3 shall during the Access Support Hours, provide support to Authorised Users and/or Institutions by e-mail or by a telephone help desk, to assist Authorised Users with general enquiries in connection with the Licensed Material, including relating to access, use, functionality and content of the Licensed Material, and shall use reasonable endeavours to answer any such query within 24 hours of such query being made;
 - 5.3.4 shall provide the Institution, via Consortium Management groups, with regular reports detailing its performance in respect of the Service Levels as agreed in the Joint Consortia Framework Agreement.

Withdrawal of publications

- 5.4 The Supplier reserves the right at any time to withdraw from the Licensed Material any Licensed Material (including any Licensed Publication or part of a Licensed Publication):
 - 5.4.1 which the Supplier is no longer entitled to make available on their platform; or
 - 5.4.2 which the Supplier has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.
- 5.5 The Supplier shall promptly give written notice of such withdrawal to the Institution. If, in the Institution’s reasonable opinion, such withdrawal from a collection or package results in the Licensed Material being no longer useful to the Institution or the Authorised Users, the Institution may on receipt of such notice, on written notice to the Supplier,

terminate the application of this Agreement to all such Licensed Material with immediate effect.

5.6 If the Supplier withdraws Licensed Material then the Supplier shall compensate the Institution as follows. For a collection of Licensed Material the Licence fee shall mean the Licence fee paid for the whole collection:

- a) 100% of the Licence Fee paid for Licensed Material withdrawn within the first 12 months of the supply of such Licensed Material (the “Supply Date”);
- b) 80% of the Licence Fee paid for Licensed Material withdrawn from 13 to 24 months of the Supply Date;
- c) 60% of the Licence Fee paid for Licensed Material withdrawn from 25 to 36 months of the Supply Date;
- d) 40% of the Licence Fee paid for Licensed Material withdrawn from 37 to 48 months of the Supply Date;
- e) 20% of the Licence Fee paid for Licensed Material withdrawn from 49 months to 60 months of the Supply Date; and
- f) 10% of the Licence Fee paid for such Licensed Material withdrawn thereafter

5.7 Provided that if there is no Licence Fee which is directly attributable to such Licensed Material, the parties will agree a reasonable apportionment of the Licence Fee attributable to the Licensed Materials of which the such withdrawn Licensed Material forms a part.

6 RESPONSIBILITIES OF THE SUPPLIER: AUTHORISED USERS

6.1 The Supplier shall not require Authorised Users to enter into an end user licence agreement or other terms and conditions of use in connection with their access to or use of the Licensed Materials under this Agreement or otherwise impose any restrictions on an Authorised User’s use of the Licensed Materials, save that, where the Supplier has only more restricted rights in relation to any specific Licensed Publication than those provided for in this Agreement as Permitted Use for Educational Purposes, it shall make that clear to the Authorised User on access to the Licensed Publications via the Access Services,

- 6.2 The parties acknowledge that the Institution is the Data Controller and the Supplier is the Processor. The only Processing of Personal Data that the Supplier is authorised to do is listed in Annex 1 (Data Protection Particulars) of this Agreement.
- 6.3 The Supplier shall Process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in Annex 1 (Data Protection Particulars) of this Agreement and in accordance with the Institution's written instructions from time to time and shall not Process Personal Data for any other purpose. If the Supplier is required by Law to Process Personal Data otherwise than in accordance with this Clause, immediately inform the Institution of the legal requirement before Processing Personal Data (unless prohibited from doing so by Law).
- 6.4 The Supplier shall provide all reasonable assistance to the Institution in the preparation of any data protection impact assessment, as defined in the GDPR, prior to commencing any Processing. Such assistance may, at the discretion of the Institution, include:
- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the purposes specified in Annex 1 (Data Protection Particulars) of this Agreement;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 6.5 The Supplier will not Process Personal Data, or disclose Personal Data to any party who carries on business, outside the EEA except with the Institution's prior written consent and where such consent is given, take such actions and enter into such agreements as the Institution may require to ensure that such transfer or disclosure complies with Law.
- 6.6 The Supplier will keep a record of any Processing of Personal Data it carries out under this Agreement.
- 6.7 The Supplier shall not disclose Personal Data to any person except under this Agreement or with the Institution's written consent.
- 6.8 The Supplier shall ensure that access to Personal Data is limited to:

- (a) those employees who need access to Personal Data to meet the Supplier's obligations under this Agreement; and
- (b) in the case of any access by any employee, such part or parts of Personal Data as is strictly necessary for performance of that employee's duties.

6.9 The Supplier shall ensure that employees that require access to Personal Data:

- (a) are informed of the confidential nature of Personal Data;
- (b) have undertaken training in Law relating to handling Personal Data; and
- (c) are aware both of the Supplier's duties and their personal duties and obligations under Law and this Agreement.

6.10 The Supplier shall ensure that all persons authorised to Process Personal Data are under an appropriate contractual or other legal obligation of confidentiality in respect of Personal Data.

6.11 The Supplier shall not disclose Personal Data to any Data Subject or to a third party other than at the request of the Institution or as provided for in this Agreement.

6.12 The Supplier shall, taking into account the nature of the Processing, implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data that have been reviewed and approved by the Institution as appropriate having taken account of the:

- (a) nature of the Personal Data to be protected;
- (b) harm that might result from a Data Breach;
- (c) state of technological development; and
- (d) cost of implementing any measures.

Appropriate technical and organisational measures include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, taking reasonable steps to ensure the

reliability of its employees with access to Personal Data and regularly assessing and evaluating the effectiveness of such measures adopted.

- 6.13 The Supplier shall, upon becoming aware, immediately and in any event within 24 hours notify the Institution of any Data Breach and shall work together with the Institution to provide the Institution with full co-operation and assistance, including to investigate the Data Breach (including by (i) assisting with any investigation launched by the Institution; (ii) facilitating interviews with the Supplier's employees and others involved in the matter; and (iii) making available all relevant records reasonably required by the Institution to investigate the Data Breach or otherwise comply with Law or the requests of any competent regulatory authority in relation to the Data Breach or its investigation).
- 6.14 The Supplier shall not engage another Processor to Process Personal Data except with the Institution's prior specific written authorisation and, where such authorisation is given, enter into a contract with the Processor that imposes the same contractual obligations set out in this Clause on that Processor, and remain liable for any Processor that it engages in accordance with the terms of this Clause.
- 6.15 The Supplier shall assist and fully co-operate with the Institution to enable it to comply with its obligations as a Data Controller under and in accordance with Law including in relation to the security of Processing, data subject right requests, reporting personal Data Breaches to the supervisory authority and conducting data privacy impact assessments. The Supplier shall notify the Institution within 24 hours if it receives a request from a Data Subject to exercise its rights under Law or any communication from a Data Subject, the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Agreement.
- 6.16 The Supplier shall promptly comply with any request from the Institution requiring the Supplier to amend, transfer or delete Personal Data. At the Institution's request, the Supplier shall provide to the Institution a copy of all Personal Data held by it in the format and on the media reasonably specified by the Institution.
- 6.17 The Supplier shall at any time on the request of the Institution, return all Confidential Information and/or data (including any Personal Data that the Supplier Processes for and on behalf of the Institution) to that Institution and/or permanently delete the same from its systems, including any back-up copies.

- 6.18 The Supplier shall at the Institution's option, delete or return to the Institution all Personal Data on termination of the Agreement and delete any existing copies of Personal Data except to the extent that the Institution is required to retain Personal Data by Law.
- 6.19 The Supplier shall make available to the Institution all information necessary to demonstrate the Supplier's compliance with the obligations under this Clause and allow for and contribute to audits, including inspections, conducted by the Institution or another auditor mandated by the Institution. The Supplier shall immediately inform the Institution if, in its opinion, an instruction from the Institution infringes Law.
- 6.20 The Supplier shall, in connection with this Agreement, comply in all respects with Law relating to data protection and have established procedures to ensure continued compliance with Law. The Supplier shall comply with its obligations as a Processor under and in accordance with Law.
- 6.21 The Supplier shall only collect any Personal Data in a form which is fully compliant with Law which will contain a data protection notice informing the data subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purpose for which their Personal Data will be Processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, Processed to enable Processing in respect of the Data Subject to be fair and compliant under Law.
- 6.22 The Institution may, at any time on not less than 30 working days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 6.23 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Institution may on not less than 30 working days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 6.24 The Supplier shall Process Personal Data in performing the Services as notified by the Institution only for as long as required and for no longer than the term of this Agreement.
- 6.25 The Supplier warrants that it shall:
- (a) Process the Personal Data in compliance with Law; and
 - (b) take appropriate technical and organisational measures against Data Breach.

- 6.26 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Institution against all costs, claims, damages or expenses incurred by the Institution or for which the Institution may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this Clause.

7 RESPONSIBILITIES OF THE SUPPLIER: INFORMATION AND LIBRARY MANAGEMENT STANDARDS

- 7.1 During the Perpetual Access Period, the Supplier shall:
- 7.1.1 at least monthly (and otherwise promptly on request by the Institution), provide access to usage statistics fully compliant with the current version of the COUNTER Code of Practice (www.projectcounter.org);
 - 7.1.2 implement the Standardized Usage Statistics Harvesting Initiative (SUSHI) protocol (www.niso.org/workrooms/sushi);
 - 7.1.3 allow the Journals Usage Statistics Portal (JUSP) (<https://jusp.jisc.ac.uk/>) to collect usage statistics on behalf of the Institution and display them to the Institution via the Journals Usage Statistics Portal;
 - 7.1.4 provide, in accordance with the specifications of the Joint Consortia Framework Agreement (paragraph 7.1.3), the means for the Institution to continue to access the Licensed Material via an archiving service for use only in the event that the Supplier ceases trading or any of the provisions of clause 11.2.1 to 11.2.8 apply to the Supplier, and inform the Institution where the Licensed Material has been archived, and provide the Institution with sufficient authority and information to enable the Institution to access such Licensed Material.
 - 7.1.5 meet the W3C standards (www.w3.org/WAI/Resources/#in) to ensure that the Licensed Material is accessible to all Authorised Users;
 - 7.1.6 meet the Open URL Standard (http://www.niso.org/kst/reports/standards?step=2&project_key=d5320409c5160be4697dc046613f71b9a773cd9e) to ensure that Authorised Users can search for and find the Licensed Material; and
 - 7.1.7 provide metadata in appropriate collection groupings to standard industry-relevant knowledge-base providers for the purposes of library discovery as an alternative or addition to MARC records in library catalogues

- 7.1.8 meet any other reasonable standards that are generally agreed for adoption amongst the Higher Education Institutions during the period of the Joint Consortia Framework Agreement
- 7.2 The Supplier shall provide the Institution with:
 - 7.2.1 the MARC Records relating to the Licensed Publications promptly following the Order Confirmation; and
 - 7.2.2 the persistent URL relating to the Licensed Publications, at the title level (and chapter level if appropriate) promptly following the Start Date, and
 - 7.2.3 for packages and collections any updates or amendments thereto promptly if and when required.
- 7.3 (If providing access to e-textbooks) The Supplier shall provide the Institution with a data analytics dashboard and a purchasing portal to give real-time information on usage of the Licensed Material and expenditure. Data made available for analysis should include but not be limited to:
 - 7.3.1 Summary of the most read titles for the selected period;
 - 7.3.2 Number of Authorised Users who have logged in and accessed a title;
 - 7.3.3 Total time spent by Authorised Users accessing titles;
 - 7.3.4 Average reading time per active user per day;
 - 7.3.5 Total number of Authorised Users active on the platform each day;
 - 7.3.6 The total reading time (in hours) by title;
 - 7.3.7 Total reading time across all Authorised Users by day;
 - 7.3.8 Use of features (such as favourites, downloads, and highlights) for titles;
 - 7.3.9 For PDA agreements, access to remaining deposit and alerts to titles that may soon be activated for purchase.
- 7.4 The Supplier shall during the Agreement Period:
 - 7.4.1 collect, and provide the Institution with, all other statistics and other information set out in the Joint Consortia Framework Agreement or otherwise

reasonably requested by the Institution in relation to the activities of Authorised Users under this Agreement;

7.4.2 permit the Institution to share such information and statistics with SUPC under the terms of the framework agreement and on request from UK sector bodies such as SCONUL for the purposes of their annual return.

8 RESPONSIBILITIES OF INSTITUTION

8.1 The Institution agrees:

8.1.1 to provide Authentication Information only to Authorised Users and take reasonable steps to prevent Authorised Users from providing their Authentication Information to anyone else;

8.1.2 to provide to the Supplier lists of valid IP addresses for the purpose of managing access to the Licensed Materials and update those lists regularly as agreed by the parties from time to time;

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

8.1.4 to the extent that such terms apply to them, use reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Agreement;

8.2 The Institution shall use reasonable efforts to monitor compliance with the terms of this Agreement and shall promptly notify the Supplier, providing full particulars (to the extent that it is not prohibited by law or contractual obligation from doing so), on becoming aware of any of the following:

8.2.1 any unauthorised access to or use of the Licensed Material or unauthorised use of Authentication Information; or

8.2.2 any act by an Authorised User which gives rise to a breach of this Agreement.

8.3 As soon as the Institution is aware of any breach of the terms of this Agreement, the Institution shall:

8.3.1 take reasonable steps to investigate such breach for the purpose of ensuring that the relevant activity ceases and preventing any recurrence; and

8.3.2 if the Institution considers this appropriate, take steps against the individual concerned in accordance with the Institution's disciplinary procedure.

8.4 The Institution shall:

- 8.4.1 configure the computer system through which the Licensed Material used by the Institution and Authorised Users, and put in place procedures, in accordance with reasonably appropriate accepted standards for the purpose of preventing prevent access to the Licensed Material by any person other than an Authorised User; and
- 8.4.2 inform the Authorised Users about the conditions of use of the Licensed Material provided for in this Agreement.

9 CONTENT SUPPLIED UNDER PATRON/DEMAND DRIVEN ACQUISITION AND EVIDENCE BASED ACQUISITION MODELS

See Schedule 4

10 For FEES AND PAYMENT

- 10.1 The Institution shall pay to the Supplier the Licence Fee and, where applicable, the Partner Fee or Third-Party platform fee in the amounts set out in the Joint Consortia Framework Agreement and Quote, and Schedule 2.
- 10.2 Upon confirmation of the Institution's requirements for Additional Authorised Users in respect of a Partner Institution, the Supplier shall issue an invoice for the Partner Fee agreed if relevant.
- 10.3 The Institution shall pay the Licence Fee, and any Partner Fee, within 30 days on receipt by the Institution of the Supplier's invoice.
- 10.4 All sums payable under this agreement are exclusive of VAT and any other similar or equivalent taxes or duties. Where any taxable supply for VAT purposes is made under this agreement by the Supplier to the Institution, the Institution shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

11 TERM AND TERMINATION

- 11.1 Subject to this clause 11, this Agreement shall commence upon the Start Date of the first Order made by the Institution under the Joint Consortia Framework Agreement, and shall continue indefinitely unless terminated earlier in accordance with this clause 11,

11.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

11.2.1 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

11.2.2 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

11.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

11.2.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

11.2.5 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

11.2.6 a person becomes entitled to appoint a receiver over all or any of the assets of the other party;

11.2.7 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or

11.2.8 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 11.2.1 to 11.2.7; or

11.2.9 the other party commits a material or persistent breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of sixty (60) days after being notified in writing to do so. For the avoidance of doubt the Institution shall not be deemed to be in breach of this Agreement on the grounds that an act of an Authorised User, if carried out by the

Institution, would have been a breach of this Agreement, without prejudice to any express obligations applicable to the Institution under this Agreement.

12 CONSEQUENCES OF TERMINATION

12.1 On expiry or termination of this Agreement for any reason and subject to any express provisions set out elsewhere in this Agreement:

12.1.1 the Supplier shall provide the Institution and its Authorised Users with continuous access to and use of the full text of all Licensed Publications by continuing online access to the ebooks on the Supplier's server;

12.1.2 In the event that the Supplier is no longer able to provide access as in 12.1.1 this access will be provided by means of the archiving services as referred to in clause 7.1.3

12.1.3 the Institution may retain and use, and permit the use of, Metadata and copies of parts of the Licensed Material made by the Institution or Authorised Users, subject to the terms of clauses 3 and 4 to the extent that these are applicable.

12.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement (including clauses 2.1.2, 2.2, 4, 5, 6, 8, 9, 11 to 23) shall remain in full force and effect.

12.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

12.4 Termination or expiry of this Agreement shall not affect any rights accrued to any content or material purchased under any previous agreement(s) between the Institution and the Supplier.

13 ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

13.1 The Institution acknowledges that all copyright in the Licensed Material are the exclusive property of the Supplier or its licensors and that this Agreement does not assign or transfer to the Institution any right, title or interest in such copyright except for the right

to access and use the Licensed Material in accordance with the terms and conditions of this Agreement.

14 REPRESENTATION, WARRANTIES AND INDEMNITIES

- 14.1 The Supplier warrants to the Institution that all copyright in the Licensed Material is owned by or validly licensed to the Supplier and that the Permitted Use of the Licensed Material will not infringe any copyright of any person.
- 14.2 The Supplier shall indemnify the Institution against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and reasonable legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Institution arising out of or in connection with any claim by or action brought by any third party that the access and Permitted Use by the Institution or any Authorised User in accordance with this Agreement infringes the copyright of that third party.
- 14.3 In relation to any claim made or action brought, to which clause 14.2 applies, the Institution shall:
- 14.3.1 promptly give the Supplier written notice;
- 14.3.2 shall give the Supplier immediate and complete control of the defence and settlement of such claim provided that the Supplier gives the Institution reasonable security in respect of any liability the Institution may have in respect of such claim or action and any indemnity to which the Institution may be entitled under clause 14.2; and
- 14.3.3 shall give the Supplier all reasonable assistance with the defence and settlement of such claim.
- 14.4 The indemnity in clause 14.2 will not apply to the extent that the relevant claim arises as a result of any change, alteration or amendment in any way to any Licensed Material by the Institution or any Authorised User.
- 14.5 While the Supplier has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Materials the Supplier makes no representation and gives no warranty, express or implied, with regard to the information contained in or in any part of the Licensed Materials including the fitness of such information or part for any purposes whatsoever and, subject to clause 14.2 the Supplier accepts no liability for

loss suffered or incurred by the Institution or Authorised Users as a result of their reliance on the Licensed Material.

14.6 In relation to any claim or action referred to in clause 14.2, or any other claim by a third party, of which the Institution becomes aware, that the access to or use of any Licensed Publication infringes any copyright, the Supplier may at its option and expense, and on written notice to the Institution (and without prejudice to the Institution's rights under clause 5.70 (*Withdrawing material*) or clause 14.2 (*Infringement Indemnity*), remove such Licensed Publication from the Licensed Material or obtain for the Institution the right to continue accessing and using such Licensed Publication in accordance with this Agreement.

14.7 Nothing in this Agreement shall make the Institution liable for any act by any Authorised User which gives rise to a breach of the terms of this Agreement, 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.

14.8 No party excludes or limits its liability under this Agreement for:

14.8.1 death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement; or

14.8.2 its own fraud or that of its employees or agents in the course of their engagement.

14.9 Except as provided for in Clause 14.1 or 14.2, neither the Institution nor any Authorised User nor the Supplier will be liable to the other in contract or negligence or otherwise for:

14.9.1 any special, indirect, incidental, punitive or consequential damages; or

14.9.2 loss of direct or indirect profits, business, contracts, revenue or anticipated savings; or

14.9.3 for any increased costs or expenses.

15 FORCE MAJEURE

15.1 Without prejudice to clause 14.2, neither party shall have any liability under or be deemed to be in breach of this Agreement for any failures to perform any term or condition of this Agreement which result from circumstances beyond the reasonable control of such party, including war, strikes, flood, governmental restrictions, and power,

telecommunications or Internet failures or damage to or destruction of any network facilities not arising from an act or omission of such party or its employees or contractors ("Force Majeure Event").

- 15.2 Each party shall promptly notify the other party in writing of any Force Majeure Event which is causing delay or failure in performance of such party's obligations under this Agreement, or will or is likely to do so, including the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement, and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 15.3 Provided it has complied with clause 15.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 15.4 If a Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 60 (sixty) days, the party not affected by the Force Majeure Event may terminate this Agreement by giving 14 days' written notice to the Affected Party.

16 ASSIGNMENT

- 16.1 Subject to clauses 16.2 and 16.3, this Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement, without the prior written consent of the other party, such consent shall not be unreasonably withheld or delayed.
- 16.2 If the Institution merges with any other Member Institution or transfers the whole or part of its activities as a Member Institution to another Member Institution, the Institution or successor Institution (as the case may be), and the Authorised Users who were Authorised Users through the Institution, shall be entitled to receive the benefit of this Agreement, subject to remaining bound by the obligations under this Agreement, in perpetuity.
- 16.3 If the Supplier is subject to any merger or acquisition, or the Supplier or any licensor or other owner of any rights in any Licensed Material relevant to the licences or rights

granted under this Agreement, transfers or grants any rights inconsistent with the Institution's rights under this Agreement, this Agreement shall continue in effect, and the Supplier shall procure that any such transfer or grant of rights is subject to the Institution's rights under this Agreement or that the Institution is compensated in accordance with clause 5.6 in respect of the loss of any such rights which cannot be preserved for the Institution.]

- 16.4 In any assignment to which the other party has given consent under clause 16.1, the assigning party shall procure and ensure that the assignee shall assume all rights and obligations of the assigning party under this Agreement and agrees to be bound to all the terms of this Agreement.

17 GOVERNING LAW AND JURISDICTION

- 17.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.2 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 courts of England and Wales.

18 DISPUTE RESOLUTION

- 18.1 If any dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("Dispute"), the parties shall attempt to settle it by negotiation. To this end they shall use their respective reasonable endeavours to consult or negotiate with each other in good faith, and recognising their mutual interests, attempt to reach a just and equitable settlement satisfactory to both parties. Negotiations shall be conducted between the managing director of the Supplier, or its nominated representative, and the current Vice Chancellor (or equivalent post) of the Institution, or their nominated representative.
- 18.2 Where the parties agree that a Dispute would best be resolved by the decision of an independent expert, they will use reasonable efforts to agree upon the nature of the expert required, on the appointment of the expert and, with the expert, the terms of his appointment

- 18.3 Any person to whom a reference is made under this clause 18 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 the decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 18.4 Each party shall provide such expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 18.5 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.
- 18.6 Subject to clause 18.3, nothing in this clause 18 shall prevent either party commencing or continuing court proceedings in relation to the Dispute under clause 17.

19 NOTICES

- 19.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand, by fax or email, or by pre-paid first-class post or other next working day delivery service at its address set out in this Agreement.
- 19.2 Any notice or communication shall be deemed to have been received:
- 19.2.1 if delivered by hand, on signature of a delivery receipt; or
- 19.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or
- 19.2.3 if sent by fax or email, on delivery of the fax or email (as evidenced by a delivery receipt) if delivered during working hours on a Working Day, and otherwise on the first Working Day following delivery; or
- 19.2.4 if sent via the Ordering Platform (if any), on delivery of the Confirmation Notice.
- 19.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20 PREVENTION OF FRAUD AND CORRUPTION

- 20.1 Each party represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Start Date:

- 20.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 20.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 20.2 Neither party during the term of this Agreement shall offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing any act in relation to the obtaining or execution of this Agreement or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement.
- 20.3 Each party shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its employees and the party (including its shareholders, members and directors) in connection with this Agreement and shall notify the other party in writing immediately if it has reason to suspect that any fraud is occurring or is likely to occur.
- 20.4 If a party or its staff engages in conduct prohibited by clause 20.2 or commits fraud in relation to this Agreement, the other shall be entitled to:
- 20.4.1 terminate this Agreement and recover from the first party the amount of any loss suffered resulting from the termination, including the cost reasonably incurred by making other arrangements for the provision of access to the Licensed Materials and any additional expenditure incurred by the other party throughout the remainder of this Agreement; or
- 20.4.2 recover in full from the first party any other loss sustained in consequence of any breach of this clause.

21 THIRD PARTY RIGHTS

- 21.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, and in any event a person who is not a party to this Agreement shall not be entitled to require their consent to any amendment of this Agreement.
- 21.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

22 VARIATION

- 22.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

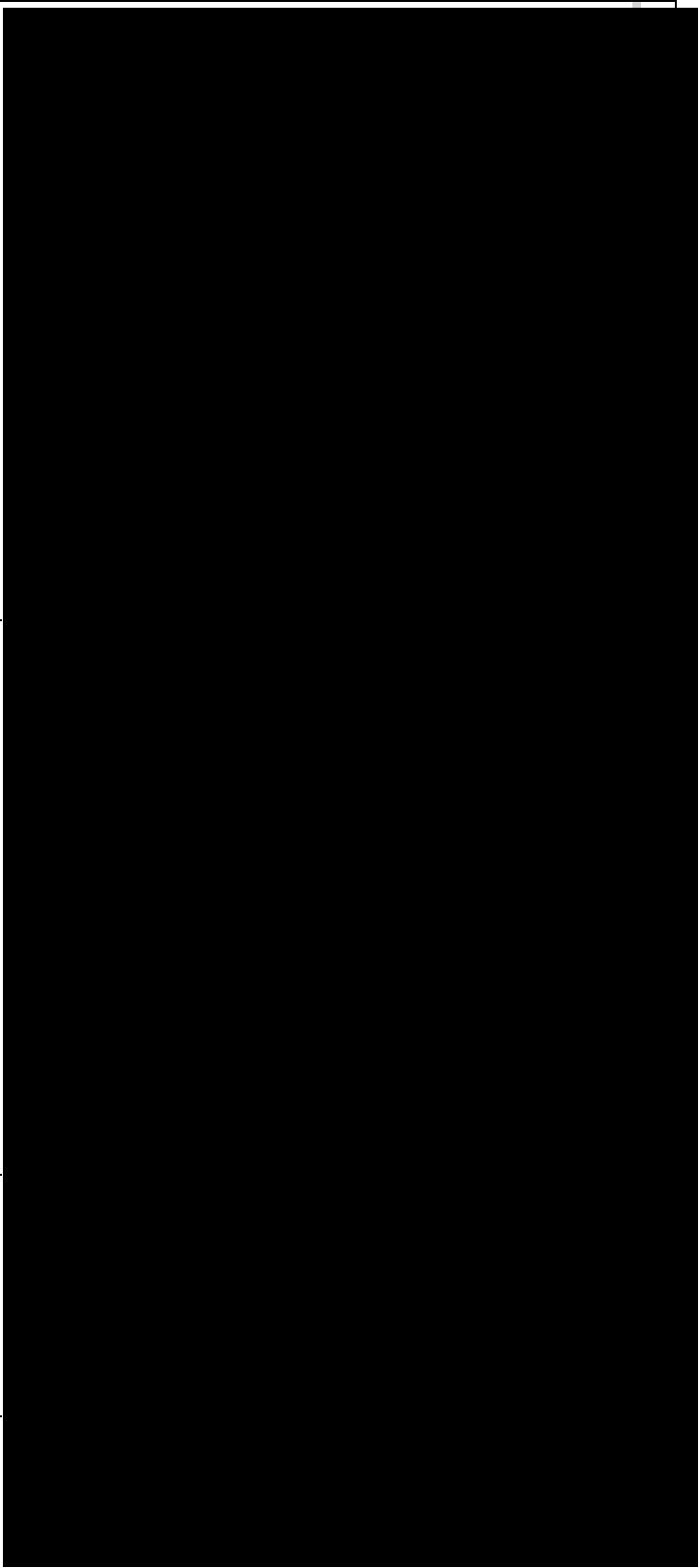
23 GENERAL

- 23.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.
- 23.3 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 23.4 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 23.5 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

<div>Signed for and on behalf of the Supplier</div> <div>DocuSigned by:</div> <div></div>	<div>Signed for and on behalf of the Buyer</div> <div>DocuSigned by:</div> <div></div>
<div>Date Signed: 17th June 2024</div>	<div>Date Signed: 17/06/2024</div>

Annex 1: Data Protection Particulars

DATA PROTECTION PARTICULARS

The subject matter and duration of the Processing	
The nature and purpose of the Processing	
The type of Personal Data being Processed	
The categories of Data Subjects	

SCHEDULE 1 MARC RECORDS

MARC records must be provided in line with the standards set out in Appendix B of the Framework Agreement. This is ‘Metadata Profiles: MARC21 Records for print and Electronic Books’ (first edition, April 2021) published by National Acquisitions Group (NAG) and Southern Universities Purchasing Consortium (SUPC) at <https://nag.org.uk/wp-content/uploads/2021/07/NAG-SUPC-Metadata-Profiles-MARC21-Records-for-Print-Electronic-Books-v2.pdf>

SCHEDULE 2 - Additional Authorised Users/Alumni



SCHEDULE 3 - Service Level s in addition to the Joint Consortia Framework Agreement
Service Levels

SCHEDULE 4 – Special Terms for Patron Driven and for Evidence Based Acquisition

A. Patron/Demand Driven Acquisition

1 Institution Rights

- 1.1 In respect of any Licensed Publications forming part of a Subscribed Collection using this business model, the Institution may:
- 1.2 choose which Publications it wishes to make visible to Authorised Users for potential single individual access for a defined period (“Short Term Loan” STL) and/or for user-driven purchase following multiple accesses or a minimum online reading period (“Auto-purchase”) and
- 1.3 at any time during the duration of the PDA plan applicable to those Licensed Publications the Institution may:
 - 1.3.1 notify the Supplier of the titles of Publications which it wishes to add to or remove from the Collection;
 - 1.3.2 adjust any system settings enabled by the Institution relating to auto-purchase, mediation, loan periods etc;
 - 1.3.3 ask the Supplier to terminate access to the Subscribed Collection, or otherwise enable this themselves on the Supplier system where permitted.

2 Supplier Obligations

The Supplier will:

- 2.1 confirm the titles to be included within the Subscribed Collection, having carried out any deduplication requested by the Institution.
- 2.2 agree with the Institution, or permit them to enable themselves, any Trigger Thresholds for Short Term Loan or Auto-purchase actions.
- 2.3 alert the Institution when any agreed spend thresholds are reached.
- 2.4 provide any agreed management information relating to Short Term Loans and Auto-purchases as part of this agreement.
- 2.5 at the end of the duration of the PDA plan, or at agreed intervals, provide confirmed lists and MARC records if required for any titles purchased via this agreement.

- 2.6 credit the Institution where Licensed Publications which should have been removed as part of the deduplication process were not, and where costs were incurred.
- 2.7 provide regular invoicing for any STL or Auto-purchases at intervals agreed with the Institution
- 3 The Supplier will make any Publications purchased via this model available for access and Permitted Use by the Institution and its Authorised Users in accordance with the standard terms of this licence for ebooks purchased in perpetuity.

B. Evidence Based Acquisition

- 4 In respect of any Licensed Publications forming part of a Subscribed Collection, and subject to clause 2, the Institution may:
 - 4.1 at any time during the Subscription Period applicable to that collection; and
 - 4.2 within 60 (sixty) days of the expiry of such Subscription Period or the termination of the application of this Agreement to relevant Licensed Publications or a date notified to the Supplier in writing, whichever is the earlier (the “Perpetual Use Notice Period”)
 - 4.3 notify the Supplier of the titles of Licensed Publications which it wishes to propose as Perpetually Licensed Publications (a “Proposed Perpetual Use Publication

5 Perpetually Licensed Publications

- 5.1 Proposed Perpetually Licensed Publications will only qualify as Perpetually Licensed Publications if the aggregate Order cost of Proposed Perpetually Licensed Publications is no more than the current Licence Fee applicable to the Subscribed Collection. If the aggregate Order cost of Proposed Perpetually Licensed Publications exceeds the current Licence Fee for the Subscribed Collection, the Supplier will give the Institution the option, by notice in writing identifying:
 - 5.1.1 the Proposed Perpetually Licensed Publications;
 - 5.1.2 the Order cost of each such publication and the aggregate Order costs of all such publications;
 - 5.1.3 the current applicable Licence Fee for the Subscribed Collection
- 5.2 The institution will elect within such period as set out in the Order, but in any event not less than 30 working Days:
 - 5.2.1 which Proposed Perpetually Licensed Publications (if any) the Institution wishes at that time to be Perpetually Licensed Publications; and/or

5.2.2 pay an additional Licence Fee in respect of such additional Proposed Perpetually Licensed Publications that it wishes to become Perpetually Licensed Publications

5.2.3 and, without prejudice to clause 6 on payment of such Fee, those Proposed Perpetually Licensed Publications shall become Perpetually Licensed Publications.

6 Variation of Perpetual Licensed Publications

- 6.1 The Institution may at any time until expiry of the Perpetual Use Notice Period, on written notice to the Supplier, vary such Perpetually Licensed Publications.

7. Expiry of Perpetual Use Notice Period

- 7.1 On expiry of the Perpetual Use Notice Period, the Supplier shall make the Perpetually Licensed Materials available for access and Permitted Use by the Institution and its Authorised Users in accordance with the standard terms of this licence for ebooks purchased in perpetuity.

8. General

- 8.1 At the start of the Perpetual Use Period the Supplier will provide the Institution with a list confirming all Proposed Perpetually Licensed and all Perpetually Licensed titles.