

INSTITUTIONAL ONLINE SUBSCRIPTIONS TERMS & CONDITIONS

THIS AGREEMENT IS BETWEEN:

(1) **THE COMPANY OF BIOLOGISTS** a company limited by guarantee (company number 00514735) whose registered office is at Bidder Building, Station Road, Histon, Cambridge CB24 9LF, UK (“**The Company of Biologists**”) and

(2) [.....] [name of institution or company] a [.....] [type of institution or company] [(company number.....), if applicable] whose place of business is at [.....] (“the Licensee”)

THE COMPANY OF BIOLOGISTS agrees to provide electronic access to the Licensed Materials, as described in Appendix C (the “Licensed Materials”) to the Licensee, subject to the terms and conditions of this licence (the “Licence”), and payment of an initial fee for the first year from the Effective Date as specified by The Company of Biologists (“Initial Fee”) and, if this Licence is renewed, the Renewal Fee for each Renewal Term (each defined below), excluding all applicable taxes (if any) (payment of which shall be the sole responsibility of the Licensee), as of 1st January [...] (“Effective Date”).

IT IS AGREED AS FOLLOWS

1) DEFINITIONS

a) In this Licence, the following terms shall have the following meanings

“Affiliated Users” means users affiliated with the Licensee in some capacity other than as staff or students of the Licensee.

“Authorised Users” means an individual who is authorised by the Licensee to access the Licensee’s information services, whether from a computer or terminal on the Licensee’s secure network or offsite via a communications link to the Licensee’s secure network, via Secure Authorisation and who is:

- a current student registered with the Licensee (including undergraduates and postgraduates);
- an alumnus of the Licensee;
- a contractor of the Licensee;
- a member of staff of the Licensee (whether permanent or temporary, including retired members of staff and any teacher who teaches student registered with the Licensee);
- Affiliated Users; or
- Library Patrons.

“Commercial Use” means use for the purpose of earning monetary reward or generating profit (whether by or for the Licensee or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials but excluding:

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

“Copyright Policy” means the document set out in Appendix B, as may be amended by The Company of Biologists from time to time in accordance with the terms of clause 7(d).

"Initial Fee" has the meaning stated at the start of this Licence.

"Library Patrons" (also known as 'walk-in users') are individuals (other than Licensee's staff, students, and Affiliated Users) who are allowed by the Licensee to access the Licensee's information services from computer terminals within the physical premises of the Licensee at the Licensed Site. For the avoidance of doubt, Library Patrons may be given access to the Licensed Materials by any wireless Secure Network. Library Patrons are not allowed off-site access to the Licensed Material.

"Licensed Site" means the location from which Authorised Users may access the Licensed Materials onsite from a computer or terminal on the Licensee's Secure Network located at the Licensee's site and via which Authorised Users may access the Licensed Materials via a communications link to a valid IP address on the Licensee's Secure Network located at such site, as specified in Appendix A.

"Metadata" means data describing any article or research paper and includes index terms, bibliographic information, headers, references, digital object identifiers (DOIs), unique identifiers, dates, keywords, Funder information, grant identifiers, author affiliations, abstracts, or any other metadata which The Company of Biologists agrees to make available to the Licensee.

"Registration Information" means the IP addresses authorised by and registered with The Company of Biologists and set out in Appendix A.

"Renewal Fee" means the then current annual subscription fee to be payable for each Renewal Term.

"Renewal Term" means each year of the Term following the expiry of the Initial Term, subject to the provisions of clause 7(a).

"Secure Authentication" means access to the Licensed Materials by UK Access Management Federation compliant technology, Internet Protocol ("IP") ranges

"Secure Network" means a network which is only accessible to Authorised Users. A cache server or any server or network which can be accessed by unauthorised users is not a secure network for these purposes.

"Term" means the term of this Licence, including the Initial Term and any Renewal Term.

"Working Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are not open for business.

- b) Clause and Annex headings shall not affect the interpretation of this Licence.
- c) The Annexes form part of this Licence and shall have effect as if set out in full in the body of this Licence. Any reference to this Licence includes the Licence Annexes.
- d) Unless the context requires, words in the singular shall include the plural and vice versa.
- e) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- f) 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 term preceding those terms.
- g) References to web addresses in this Licence refer to the current web address, and any updated replacement content / address of such website.

2) LICENSED RIGHTS

- a) In respect of the Licensed Site, The Company of Biologists grants to the Licensee, subject to and in accordance with the terms of this Licence (including the Copyright Policy), a non-exclusive, non-transferable Licence (subject to payment of the Initial Fee and any Renewal Fees) to access and use the Licensed Materials and to allow Authorised Users to access and use the Licensed Materials in accordance with the terms of this Licence via Secure Authentication.
- b) This Licence covers access by Authorised Users from the Licensed Sites using the Registration Information.
- c) Sharing of online subscriptions with unauthorised users is not allowed. The Licensee shall ensure that Authorised Users may only access the Licensed Materials via the Licensee's Secure Network. **Use via open proxies and other less than 'Two Factor Authenticated' proxy servers are prohibited.**

In the event that the Licensee requests remote access by Authorised Users other than via the Secure Network, the Licensee shall be required to notify The Company of Biologists, and if The Company of Biologists agrees to such remote access, the Licensee shall inform The Company of Biologists of the specific IP address of the proxy server and deploy two factor authentication for off-site Authorised Users, namely that each Authorised User may only access the Licensed Materials by inputting either: (i) a username and a password; (ii) a staff ID and a PIN; or (iii) an email address and a software token. Proxy servers that only require a staff ID to log in (without additional password) are not allowed for authenticating users.

- d) This Licence is not intended to cover negotiated pricing for consortia use (for which a consortia Licence would be required).
- e) **Use of Licensed Materials.** The Licensed Materials may be used by Authorised Users for the purposes of research, teaching, and private study only, and not for any Commercial Use.
- f) Any use by Authorised Users of any websites operated by or on behalf of The Company of Biologists ("Websites") shall be in accordance with the terms and conditions of the Websites set out at: <http://www.biologists.com/terms-conditions/> and the Copyright and Permissions statement set out at: <http://www.biologists.com/copyright-permissions/> (both of the aforesaid hereinafter referred to as "Website Terms"). In the event of any conflict between the Website Terms and the terms of this Licence, the terms of this Licence shall prevail.

3) **USAGE RIGHTS, COPYING**

- a) Authorised Users may retrieve, display, download and print out copies of individual articles or other individual items from the Licensed Materials through use of a Secure Network but any use of the Licensed Materials shall be subject to the Copyright Policy.
- b) Each copy of the Licensed Materials (or any part thereof) shall carry an appropriate acknowledgement of the authors, journal, year, volume, issue, page citation and publisher.
- c) By purchasing a subscription and by using the Licensed Materials or otherwise using the journals and Websites of The Company of Biologists or any services accessible from the Websites the Licensee is agreeing to be bound by the Copyright Policy.
- d) On expiry of the Initial Term and any Renewal Term, Licensee shall be entitled to continue to exercise at no charge the non-exclusive licence granted in clause 2(a) above in respect of the Licensed Materials published during the Initial Term and any Renewal Term and made available to the Licensed Site, and in respect of which Licensee paid the full subscription fee. Such continuing access shall be provided in materially the same manner in which they were provided before the expiry of the Initial Term or any Renewal Term, save that the rights granted in this sub-clause shall cease immediately in respect of any Licensed Materials in which The Company of Biologists ceases to have the right to publish.

4) **PROHIBITED USES**

- a) The Licensee shall use reasonable efforts to ensure that the Authorised Users are aware of the prohibitions on the use of the Licensed Materials set out in this Licence and the Licensee shall use reasonable endeavours to ensure that its Authorised Users do not breach the prohibitions set out in this Licence in respect of their access to and use of the Licensed Materials. The Licensee shall be liable for any breach by Authorised Users of any of the provisions of this Licence, including but not limited to the provisions set out below.
- b) Authorised Users may not:
 - i) Remove or alter the author's name(s) or the publisher's copyright notices or other means of identification or any and all disclaimers as they appear in the Licensed Materials;
 - ii) Systematically make print or electronic copies of multiple extracts or make multiple copies of any part of the Licensed Materials for any purpose other than that permitted by this Licence;
 - iii) Prepare derivative works or download, mount or distribute any part of the Licensed Material on any electronic system or network, including without limitation the Internet and the World Wide Web, other than by the Licensee's Secure Network approved in advance by The Company of Biologists, except where expressly permitted under this Licence;
 - iv) Sell or resell the Licensed Materials unless The Company of Biologists has given prior written permission for the Authorised User to do so;

- v) Alter, edit, abridge or otherwise modify the Licensed Materials or any part of them for any purpose whatsoever or incorporate any part of any Licensed Materials (whether in amended or unamended form) into any other work;
- vi) Make any Commercial Use of the Licensed Material (in whole or in part); or
- vii) provide access to and/or permit use of the Licensed Content by anyone, or transmit any part of the Licensed Material (other than Metadata) by any means to anyone, other than an Authorised User, except as otherwise may be permitted under Appendix B (including by way of inter-library lending).

- c) The Licensee must seek and obtain The Company of Biologists' permission prior to carrying out or attempting to carry out any of the foregoing uses. Email permissions@biologists.com.
- d) This clause 4 shall continue to apply after termination of this Licence for any reason.

5) RESPONSIBILITIES OF THE COMPANY OF BIOLOGISTS

- a) The Company of Biologists shall provide access to the Licensed Material from the commencement of the Initial Term and during any Renewal Term, subject to receipt by The Company of Biologists of the Initial Fee and any Renewal Fee, as applicable.
- b) The Company of Biologists shall use reasonable efforts to provide continuous access to the Licensed Materials, seven (7) days a week, subject to scheduled maintenance and repair and unforeseen events.
- c) Scheduled down-time will be performed where reasonably practicable at a time to minimise inconvenience to subscribers worldwide. The Company of Biologists shall have no liability for any reasonable period of interruption to access.

6) OBLIGATIONS OF LICENSEE

- a) Licensee shall pay the Initial Fee, and also any Renewal Fee (prior to the commencement of the applicable Renewal Term) by bank transfer or through a recognised agent, in accordance with the provisions of clause 7 below.
- b) The Licensee shall be solely responsible for the Licensee's Secure Network, its compatibility with the Websites and The Company of Biologists' network and the ability of Authorised Users to access the Licensed Material via the Licensee's Secure Network.
- c) The Licensee will:
 - i) Use reasonable endeavours to ensure that Authorised Users are aware of and undertake to respect and not to infringe the intellectual property rights subsisting in the Licensed Materials;
 - ii) Use reasonable endeavours to ensure that Authorised Users and potential Authorised Users are aware of and abide by the terms and conditions of this Licence, the Copyright Policy, the Website Terms and any other access controls as requested by The Company of Biologists;
 - iii) Make access to the Licensed Materials available to Authorised Users only from an IP address authorised by The Company of Biologists;
 - iv) Adopt reasonable measures to prevent access to and improper use of Licensed Materials by unauthorised persons, and take responsibility for terminating any access to the Licensed Materials by Authorised Users making improper use of the Licensed Materials, or having unauthorised access of which the Licensee has notice or knowledge;
 - v) Promptly notify The Company of Biologists in the event that the Licensee becomes aware of any infringement or unauthorised usage of the Licensed Materials, or breach of the terms of this Licence. In the event that Licensee becomes aware of any such infringement, breach or unauthorised use, Licensee shall co-operate in the investigation and pursuit of such infringement, unauthorised use or breach and shall use all reasonable efforts to ensure that such activity ceases and to prevent any reoccurrence; and
 - vi) Supply The Company of Biologists with complete and accurate Registration Information at all times. Licensee shall notify The Company of Biologists of any changes to the Registration Information.
- d) Licensee acknowledges that The Company of Biologists is the owner or licensee of the intellectual property rights subsisting in the Licensed Materials (including but not limited to The Company of Biologists' copyright, trade mark rights and database rights) and that other than as expressly set out

in this Licence, no rights to such intellectual property rights are granted to the Licensee or Authorised Users under this Licence.

- e) The Licensee shall notify The Company of Biologists promptly in the event that the Licensee becomes aware of any claim by any third party that the Licensed Materials infringe the intellectual property rights of a third party.

7) PAYMENT AND TERM

- a) The initial term of this Licence shall be one year from the Effective Date ("Initial Term"). Provided that the Licensee has paid the then current annual subscription fee (each a "Renewal Fee"), in full, either prior to the expiry of the Initial Term or prior to the relevant anniversary thereof the Licence shall automatically be renewed for additional periods of one calendar year (each a "Renewal Term"). Notwithstanding the aforesaid, where payment of the applicable Renewal Fee has not been received in full prior to the expiry of the Initial Term or prior to the relevant anniversary thereof, the Initial Term or Renewal Term, as applicable, may be extended by The Company of Biologists for a discretionary grace period, subject to Licensee giving reasonable justification for the delay to The Company of Biologists. The Licence may be renewed for the next Renewal Term if payment of the Renewal Fee is received by The Company of Biologists prior to the expiry of the discretionary grace period.
- b) Payment of the Renewal Fee in accordance with clause 6(a) will indicate the Licensee's ongoing acceptance of the terms and conditions of this Licence (including the Copyright Policy) for the period of the applicable Renewal Term.
- c) The Company of Biologists may, from time to time, amend the Renewal Fee payable in respect of a subsequent Renewal Term by giving the Licensee notice of the applicable Renewal Fee for the subsequent Renewal Term, either prior to the expiration of the Initial Term or the preceding Renewal Term, as applicable.
- d) The Company of Biologists may modify the terms of this Licence by providing Licensee notice of such modification at least sixty (60) days' prior to the end of the Initial Term or any Renewal Term (as applicable). Such modifications shall take effect at the start of the subsequent Renewal Term (if any). Modifications to this Licence shall also be posted on The Company of Biologists' web site found at www.biologists.com.
- e) The Licensee shall notify The Company of Biologists (by sending an email to the email address: subscriptions@biologists.com) if, at any time, it wishes to increase the number of Licensed Sites. The Company of Biologists shall review such request and confirm the required increase to the amount of the Initial Fee or Renewal Fee, as applicable. The Company of Biologists shall only grant access to such additional Licensed Site after:
 - (i) such increase to the Initial Fee or Renewal Fee (if any) has been paid by Licensee in full; and
 - (ii) Appendix A has been amended to incorporate details of the additional Licensed Site, which shall then replace the earlier version of Appendix A.
- f) Licensee shall notify The Company of Biologists if, at any time, it wishes to increase the number of journals that it subscribes to, either during the Initial Term or any Renewal Term, or for a subsequent Renewal Term, and The Company of Biologists shall review such request. The Company of Biologists shall confirm the required increase to the amount of the Initial Fee or Renewal Fee, as applicable. and such increase shall be calculated on a pro rata basis if Licensee wishes to add one or more journals to its subscription during the course of the Initial Term or any Renewal Term. The Licensee shall pay the required increase to the Initial Fee or Renewal Fee as applicable, following receipt of an invoice from The Company of Biologists. The Company of Biologists shall not grant access to the additional journal title(s) pursuant to this clause, unless and until the increased Initial Fee or increased Renewal Fee has been paid by Licensee.
- g) Licensee shall notify The Company of Biologists if, at any time, it wishes to decrease the number of journals that it subscribes to for the subsequent Renewal Term, and The Company of Biologists shall review such request. The Company of Biologists shall confirm the amendment to the amount of the Renewal Fee for the subsequent Renewal Term. The Licensee shall pay the amended amount of Renewal Fee for the subsequent Renewal Term by the due date, following receipt of an invoice from The Company of Biologists.

8) TERMINATION

- a) Without affecting any other right or remedy to it, The Company of Biologists may terminate this Licence with immediate effect by giving written notice to the Licensee if the Licensee:
- i. Wilfully and repeatedly infringes, or wilfully permits Authorised Users repeatedly to infringe, the copyright in the Licensed Material; or
 - ii. Has committed a breach of clause 4 (Prohibited Uses) or clause 6 (Obligations of Licensee) and fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so.
- b) Without affecting any other right or remedy available to it, The Company of Biologists may terminate access to the Licensed Materials by any Authorised User after promptly notifying the Licensee of such termination, at any time during the Term if such Authorised User infringes the copyright in the Licensed Materials or otherwise breaches the terms of this Licence, including but not limited to the provisions set out in the paragraph entitled 'Prohibited Uses', or the Copyright Policy, and both parties shall work together to prevent any further unauthorised use.
- c) Without affecting any other right or remedy to it, and without affecting the rights of The Company of Biologists to terminate under clause 8(a) above, either party may terminate this Licence with immediate effect by giving written notice to the other party if:
- i. the other commits a material or persistent breach of any term of this Licence where such breach cannot be remedied or, if such breach is remediable, fails to remedy that breach within a period of ninety (90) days after being notified in writing to do so; or
 - ii. the other party becomes insolvent, admits insolvency or a general inability to pay its debts as they become due, has appointed a receiver or administrative receiver over it or over any part of its undertaking or assets, passes a resolution for winding up other than a bona fide plan of solvent amalgamation or reconstruction, files a petition for protection under any applicable bankruptcy code, or has filed against it or becomes subject to an insolvency petition in bankruptcy or an order to that effect, or, if any step or action is taken in another jurisdiction, in connection with analogous procedure in the relevant jurisdiction.
- d) On expiry or termination of this Licence for any reason subject to any express provision set out elsewhere in this Licence:
- i. all rights and licences granted pursuant to this Licence shall cease and the Licensee shall cease to access and use, and permit access to and use of, the Licensed Material; and
 - ii. The Company of Biologists shall cease to make available Licensed Material for access and use by the Licensee and Authorised Users
- provided that the Licensee may retain and use, and permit the use of Metadata, and that the copies of parts of the Licensed Material made by the Licensee or Authorised Users in accordance with this Licence may be retained, subject to the terms of clause 4 to the extent that these are applicable.
- e) Licensee may terminate the Licence at any time without cause on giving The Company of Biologists no less than thirty (30) days' notice prior to the expiration of the Initial Term or any Renewal Term (as applicable).
- f) The provisions of the following clause headings shall survive termination of this Licence for any reason:
- i. Clause 3(d)
 - ii. clause 4,
 - iii. clause 6,
 - iv. this clause 8,
 - v. clause 10,
 - vi. clause 11,
 - vii. clause 12 and

viii. clause 14.

- g) Termination or expiry of this Licence 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 Licence which existed at or before the date of termination or expiry.

9) CONTENT

The Company of Biologists shall use reasonable efforts to ensure that the online version of the Licensed Materials is equivalent to the print journals, and represents a complete, faithful and timely replication of the print versions of such journals in all material respects. The Company of Biologists will endeavour to correct any errors or omissions in accordance with its standard procedures and policies in force at the time that notification of the error is received.

10) WARRANTY, DISCLAIMERS, INDEMNITY AND LIMITATION OF LIABILITY

- a) THE COMPANY OF BIOLOGISTS WARRANTS THAT SO FAR AS THE COMPANY OF BIOLOGISTS IS AWARE, THE COMPANY OF BIOLOGISTS HAS THE RIGHT TO MAKE THE LICENSED MATERIALS AVAILABLE TO THE LICENSEE AND THE AUTHORISED USERS UNDER THIS LICENCE AND THAT, TO THE BEST OF THE COMPANY OF BIOLOGISTS' KNOWLEDGE, THE USE OF THE LICENSED MATERIALS IN ACCORDANCE WITH THE TERMS OF THIS LICENCE DOES NOT INFRINGE UPON ANY COPYRIGHT, PATENT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY.
- b) THE COMPANY OF BIOLOGISTS MAY PROVIDE AUTHORISED USERS WITH LINKS TO THIRD PARTY WEBSITES. WHERE SUCH LINKS EXIST, THE COMPANY OF BIOLOGISTS DISCLAIMS ALL RESPONSIBILITY AND LIABILITY FOR THE CONTENT OF SUCH THIRD-PARTY WEBSITES. USERS AND THE LICENSEE ASSUME SOLE RESPONSIBILITY OF SUCH ACCESS TO THIRD PARTY WEBSITE AND USE OF ANY CONTENT ON SUCH WEBSITES.
- c) OTHER THAN AS EXPRESSLY SET OUT ABOVE THE LICENSED MATERIALS ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, OR IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOTWITHSTANDING THAT SUCH PURPOSE, USE OR CONDITIONS MAY BE KNOWN TO THE COMPANY OF BIOLOGISTS AND THE COMPANY OF BIOLOGISTS ACCEPTS NO LIABILITY FOR LOSS SUFFERED OR INCURRED BY THE LICENSEE OR AUTHORISED USERS AS A RESULT OF THEIR RELIANCE ON THE LICENSED MATERIAL.
- d) THE USE OF THE LICENSED MATERIALS IS AT THE AUTHORISED USER'S OWN RISK AND IN PARTICULAR, THE AUTHORISED USER MUST SATISFY THEMSELVES REGARDING THE ACCURACY AND VALIDITY OF ANY CONTENT AND THE COMPANY OF BIOLOGISTS ACCEPTS NO LIABILITY FOR LOSS SUFFERED OR INCURRED BY THE LICENSEE OR AUTHORISED USERS AS A RESULT OF THEIR RELIANCE ON THE LICENSED MATERIAL.
- e) ACCESS TO THE LICENSED MATERIALS MAY BE INTERRUPTED AND MAY NOT BE ERROR FREE.
- f) THE LICENSEE SHALL INDEMNIFY THE COMPANY OF BIOLOGISTS AGAINST ALL CLAIMS, CAUSES OF ACTION, LOSSES, LIABILITIES AND DAMAGES (INCLUDING COSTS AND EXPENSES OF LEGAL REPRESENTATIVES) INCURRED BY THE COMPANY OF BIOLOGISTS IN DEFENDING A CLAIM ARISING FROM:
- i. ANY UNAUTHORISED USE OR DISSEMINATION OF THE LICENSED MATERIALS BY THE LICENSEE OR ANY AUTHORISED USERS; AND
 - ii. ANY VIOLATION OF THIS LICENCE OR OF ANY THIRD PARTY'S RIGHTS BY THE LICENSEE OR AUTHORISED USER, INCLUDING BUT NOT LIMITED TO INFRINGEMENT OF ANY COPYRIGHT OR ANY OTHER INTELLECTUAL PROPERTY RIGHT.
- g) THE OBLIGATIONS TO INDEMNIFY CONTAINED ABOVE IN THIS CLAUSE 10 ARE SUBJECT TO:
- i. THE INDEMNIFIED PARTY PROVIDING THE INDEMNIFYING PARTY WITH PROMPT NOTICE OF ANY CLAIM OR THREAT OF CLAIM;
 - ii. THE INDEMNIFIED PARTY CO-OPERATING FULLY WITH THE INDEMNIFYING PARTY IN THE DEFENCE OR SETTLEMENT OF SUCH CLAIM; AND
 - iii. THE INDEMNIFYING PARTY HAVING SOLE AND COMPLETE CONTROL OVER THE DEFENCE OR SETTLEMENT OF SUCH CLAIM.

- h) IN RELATION TO ANY CLAIM OR ACTION REFERRED TO IN CLAUSE 10(F), OR ANY OTHER CLAIM BY A THIRD PARTY OF WHICH THE COMPANY OF BIOLOGISTS BECOMES AWARE, THAT THE ACCESS TO OR USE OF ANY LICENSED MATERIAL INFRINGES ANY COPYRIGHT, THE COMPANY OF BIOLOGISTS MAY AT ITS SOLE DISCRETION, AND ON WRITTEN NOTICE TO THE LICENSEE REMOVE SUCH LICENSED MATERIAL FROM THE LICENSED MATERIAL OR OBTAIN FOR THE LICENSEE THE RIGHT TO CONTINUE ACCESSING AND USING SUCH LICENSED MATERIAL IN ACCORDANCE WITH THIS LICENCE.
- i) NEITHER THE COMPANY OF BIOLOGISTS NOR ITS AUTHORS, AGENTS OR SUBCONTRACTORS INVOLVED IN CREATING, PRODUCING OR DELIVERING THE LICENSED MATERIALS SHALL BE LIABLE TO THE LICENSEE IN CONTRACT, NEGLIGENCE OR OTHERWISE FOR:
 - i. ANY DIRECT OR INDIRECT LOSS OF PROFITS, OR LOSS OF GOODWILL; OR
 - ii. ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF THE LICENSEE'S OR ANY AUTHORISED USER'S USE OR INABILITY TO USE THE LICENSED MATERIALS OR ANY MATERIALS CONTAINED THEREIN, OR OTHERWISE.
- j) TO THE FULLEST EXTENT PERMITTED BY LAW, THE COMPANY OF BIOLOGISTS LIMITS ITS LIABILITY UNDER THIS LICENCE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), FOR BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, TO THE VALUE OF THE INITIAL FEE AND/OR ANY RENEWAL FEES PAID TO THE COMPANY OF BIOLOGISTS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE NOTIFICATION OF A CLAIM TO THE COMPANY OF BIOLOGISTS.
- k) NOTHING IN THIS LICENCE SHALL OPERATE TO LIMIT OR EXCLUDE LIABILITY FOR:
 - i. DEATH OR PERSONAL INJURY TO THE EXTENT THAT IT RESULTS FROM A PARTY'S NEGLIGENCE, OR THE NEGLIGENCE OF ITS EMPLOYEES OR AGENTS IN THE COURSE OF THEIR ENGAGEMENT; OR
 - ii. A PARTY'S FRAUD OR FRAUD OF ITS EMPLOYEES OR AGENTS IN THE COURSE OF THEIR ENGAGEMENT; OR ANYTHING ELSE WHICH CANNOT BE LIMITED OR EXCLUDED BY LAW.

11) JURISDICTION AND DISPUTE RESOLUTION

- a) This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- b) In the event of any claim or dispute arising out of or in connection with this Licence, including any question regarding its existence, validity or termination, the parties will first attempt to settle such claim or dispute by discussion between the Company Secretary or Director of The Company of Biologists and a Senior Executive of the Licensee (such as the Vice Chancellor if Licensee is an Institution, or a Senior Director if the Licensee is a company). In the event that the dispute is not resolved by such senior executives within thirty (30) days, the parties will then attempt to settle any such dispute between them by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") model mediation procedure. The mediation will take place in London, England and will be initiated by one party giving written notice to the other ("ADR") notice requesting a mediation. A copy of that request should be sent to CEDR. Unless otherwise agreed between the parties, CEDR shall nominate a mediator.
- c) If the dispute is not settled by mediation within sixty (60) days of the receipt of the mediation request by CEDR pursuant to clause 11(b) above, or such further period as the parties shall agree in writing, the parties irrevocably agree that any dispute arising out of or in connection with the Licence, including a dispute as to validity or existence of the Licence, and/or this clause 11, shall be resolved:
 - i. by binding arbitration under the London Court of International Arbitration (LCIA) Rules, which Rules are deemed to be incorporated by reference into this clause. The language of such arbitration shall be English, the arbitration shall be conducted by a single arbitrator and the seat or legal place of arbitration shall be London, England. In the event of a failure by the Parties to agree on the sole arbitrator within thirty (30) days of one party calling on the other to do so, the arbitrator shall be appointed by the LCIA, and the arbitrator shall be and shall remain independent and impartial of each party ii; or

- ii. at the sole option of The Company of Biologists, by proceedings brought in the courts of England, which courts are to have exclusive jurisdiction.

12) GENERAL

- a) Licensee may not assign or sub-license this Licence or any rights granted under it without The Company of Biologists' prior written consent.
- b) If any provision or part-provision of this Licence is or becomes invalid, illegal or unforeseeable, 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 deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Licence.
- c) Nothing in this Licence shall constitute or imply, or be deemed to constitute or imply, any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Licence.
- d) This Licence and the Appendices constitutes the entire agreement of the parties about its subject matter and supersedes all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and, subject to clause 7(d), may not be amended or modified except by agreement in writing signed by both parties. Other than expressly set out in this Licence, each of the parties agrees that in entering into this Licence it does not rely on, and shall have no remedy in respect of, any statement, representation or warranty (whether negligently or innocently made and whether or not made in connection with the terms of this Licence) of any person (whether a party to this Licence or not). Notwithstanding the aforesaid, nothing in this clause 12(d) shall operate to limit or exclude any liability for fraud.
- e) No failure or delay by a party to exercise any right or remedy provided under this Licence or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- f) A person who is not party to this Licence is not intended to have any rights to, and shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence.
- g) The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Licence are not subject to the consent of any other person, and a person who is not a party to this Licence shall not be entitled to require its consent to any amendment.

13) FORCE MAJEURE

- a) Neither party shall have any liability under or be deemed to be in breach of this Licence for any failure to perform any term or condition of this Licence which result from circumstances beyond the reasonable control of such party, including war, strikes, flood, governmental restrictions, pandemics, epidemics, 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').
- b) 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 Licence, 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 Licence, and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- c) Provided it has complied with clause 13(b), if a party is prevented, hindered or delayed in or from performing any of its obligations under this Licence by a Force Majeure Event ('Affected Party'), the Affected Party shall not be in breach of this Licence 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.
- d) 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 Licence by giving 14 days' written notice to the Affected Party.

14 NOTICES

- a) Any notice required or admitted to be given by either party to the other hereunder shall be in writing and shall be delivered by hand or email or by pre-paid first-class post or other next Working Day delivery services addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice, and any notice to be given by email to The Company of Biologists shall be sent to subscriptions@biologists.com.
- b) Any notice or communication shall be deemed to have been received:
 - i. if delivered by hand, on signature of a delivery receipt; or
 - ii. 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.
 - iii. if sent by email, on delivery of the 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.
- c) 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.

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IN WITNESS WHEREOF, The Company of Biologists and the Licensee have caused this Licence to be executed by their duly authorised representatives as of the date set forth below.

For The Company of Biologists

For [\[Licensee\]](#)

Name: Shelly Turner

Name:

Title: Head of Sales and Business Development

Title:

Signature:

Date:

Signature:

Date:

SAMPLE

APPENDIX A

[SINGLE SITE LICENCE

The Licence granted hereunder is a single site Licence, a “Single Site”, being the physical premises of the library or libraries operated by the Licensee at a single site. A single site is a single contiguous geographic region from within which the Licensee’s “Authorised Users” and public visitors can access the Licensed Materials over a secure network. A typical single site would have a single billing address for all subscription purchases and all physical locations accessing the Licensed Materials would be located on the same physical campus.

The Single Site licensed hereunder is as follows:

Name of library:

Address:

Contact Name:

Contact Email:

Registration Information (Secure Authentication by IP addresses):

Please answer the following questions regarding your IP addresses;

- | | | | |
|----|---|-----|----|
| 1. | Do any of the IP addresses to be registered relate to a Proxy Server? | YES | NO |
| 2. | Do you allow access to off-site Authorised Users? | YES | NO |
| 3. | If so, do you have a minimum of Two-Factor Authentication for off-site Authorised Users in place, namely that each Authorised User may only access the Licensed Materials by inputting a username and password? | YES | NO |

Please list your IP addresses below, annotating any Proxy Servers accordingly

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OR

[MULTI SITE LICENCE]

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The Multi Site Institution licensed hereunder is as follows:

Description of multi-site institution:

1st Site

Name of Licensed premises:

Address of Licensed premises:

Contact Name:

Contact Email:

Registration Information (Secure Authentication by IP addresses):]
Please answer the following questions regarding your IP addresses;

- | | | | |
|----|---|-----|----|
| 1. | Do any of the IP addresses to be registered relate to a Proxy Server? | YES | NO |
| 2. | Do you allow access to off-site Authorised Users? | YES | NO |
| 3. | If so, do you have a minimum of Two-Factor Authentication for off-site Authorised Users in place, namely that each Authorised User may only access the Licensed Materials by inputting a username and password? | YES | NO |

Please list your IP addresses below, annotating any Proxy Servers accordingly

2nd-Site

Name of Licensed premises:

Address of Licensed premises:

Network Contact Name:

Network Contact Email:

Registration Information (Secure Authentication by IP addresses):]
Please answer the following questions regarding your IP addresses;

- | | | | |
|----|---|-----|----|
| 1. | Do any of the IP addresses to be registered relate to a Proxy Server? | YES | NO |
| 2. | Do you allow access to off-site Authorised Users? | YES | NO |
| 3. | If so, do you have a minimum of Two-Factor Authentication for off-site Authorised Users in place, namely that each Authorised User may only access the Licensed Materials by inputting a username and password? | YES | NO |

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Please continue on a separate sheet if required

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