

INSTITUTIONAL ONLINE SUBSCRIPTIONS TERMS & CONDITIONS

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1) DEFINITIONS

- a) “Authorised Users” means faculty staff and students or Affiliated Users whereby they are permitted by the Licensee to access 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, as well as Library Patrons.

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- b) “Commercial Use” means use for the purpose of monetary reward (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.
- c) “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).
- d) “Licensed Site” means the licensed site 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.
- e) “Registration Information” means the IP addresses authorised by and registered with The Company of Biologists and set out in Appendix A.
- f) “Secure Authentication” means access to the Licensed Materials by UK Access Management Federation compliant technology, Internet Protocol (“IP”) ranges.
- g) “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.
- h) “Term” means the term of this Licence, including the Initial Term and any Renewal Term.

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, as defined in clause 7) 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.
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In the event that 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.

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- 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.

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- a) In consideration of The Company of Biologists licensing of the Licensed Materials pursuant to clause 2(a), Licensee shall pay the Initial Fee, and also any Renewal Fee prior to the commencement of the applicable Renewal Term by either cheque, bank transfer or through an agent.
- 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;
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 - 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) 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) **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 7(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 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 has been paid by Licensee; 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.

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- a) The Company of Biologists shall have the right to terminate access to the Licensed Materials by any Authorised User 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.
- b) Either party may terminate this Licence by written notice with immediate effect if the other party materially breaches any of the terms and conditions of this Licence and/or the Copyright Policy and the Licence shall terminate forthwith where such breach cannot be rectified, or if it can be rectified, the Licence shall terminate where the party in breach fails to rectify such breach within sixty (60) days of receipt of the aforesaid notice stating the breach and the action required to rectify it.
- c) Either Party shall be entitled to terminate this Licence by written notice with immediate effect if the other party takes, suffers or undergoes, any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction and/or if the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- d) 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).
- e) Termination of this Licence for any reason shall not affect the liabilities or obligations of the parties accruing up until the date of termination.
- f) The provisions of the following clause headings shall survive termination of this Licence for any reason: sub-clause 3(d), clause 4, clause 6, this clause 8, and clauses 10, 11, and 12.

9) CONTENT

- a) 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.

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- 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.
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- 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.
- 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) NEITHER THE COMPANY OF BIOLOGISTS NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING OR DELIVERING THE LICENSED MATERIALS SHALL BE LIABLE TO THE LICENSEE IN CONTRACT, NEGLIGENCE OR OTHERWISE FOR:
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 - 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.
- i) TO THE FULLEST EXTENT PERMITTED BY LAW, THE COMPANY OF BIOLOGISTS LIMITS ITS LIABILITY UNDER THIS LICENCE 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.
- j) 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; (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) Any notice required or admitted to be given by either party to the other hereunder shall be in writing 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.
- c) Any provision of this Licence which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms thereof.
- 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.
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- h) The Company of Biologists shall not be liable to the Licensees or any Authorised Users for any failure and/or delay in the provision of the Licensed Materials arising as a result of any civil commotion, war, trade dispute, strike, failure of electronic or mechanical equipment or communication lines, telephone or other connectivity problems or for any other reason beyond the control of The Company of Biologists.

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 Limited

For **[Licensee]**

Name

Name

Title

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 have a minimum of Two-Factor Authentication for off-site Authorised Users in place? YES / NO

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

PLEASE NOTE: If the Licensee maintains or provides service to users that are: (i) outside one single geographical contiguous location; and/or (ii) within related or unrelated institutions/agencies/libraries who may or may not share administrative structure, networks or IP address ranges, then the Licensee may need to obtain a multi-site Licence, and any use by the Licensee of the Licensed Materials provided under this Licensee outside of the Licensed Site shall be a material breach of this Licence and The Company of Biologists reserves the right, at its sole discretion, to suspend the Licensee's access to Licensed Materials while a multi-site Licence is put in place between the parties, or to exercise its rights granted in clause 8 of the Licence.]

OR

[MULTI SITE LICENCE

The Licence granted hereunder is a multi-site Licence, a “Multi-Site Institution” being: a non-contiguous site i.e. a single institution with separate branches or departments that operate independently and may or may not share IP addresses and/or network services with the Licensee OR affiliates, partners or franchises that may or may not operate independently of the Licensee and may or may not be located on the same site and may or may not share IP addresses and/or network services with another site.

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 have a minimum of Two-Factor Authentication for off-site Authorised Users in place? 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 have a minimum of Two-Factor Authentication for off-site Authorised Users in place? YES / NO**

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

Please continue on a separate sheet if required

APPENDIX B – COPYRIGHT POLICY

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