

Type/Clase :	Contrat-type et guide de rédaction/Model contract with users's guide/Modelo de contrato con guías de redacción
Source/Procedencia :	John Cox Associates The Pippins, Lees Close Whittlebury, NN12 8XF United Kingdom
Date de publication :	14/04/2000
Date of publication :	
Fecha de publicación :	
Tél/Tel :	(44)1327 857908
Fax :	(44) 1327 858564
Web :	www.licensingmodels.com
✉ :	John.E.Cox@btinternet.com

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Public library licence: Version 2.0 14.4.00

THIS LICENCE IS AGREED the _____ day of _____ [200_]

BETWEEN

1 [FULL CONTRACTUAL NAME] of [full address] ("the Publisher")

and

2 [FULL CONTRACTUAL NAME] of [full address] ("the Licensee")

WHEREAS the Publisher holds the rights granted under this Licence

AND WHEREAS the Licensee desires to use the rights in its Library Premises and the Publisher desires to grant to the Licensee the licence to use the rights for the Fee, subject to the terms and conditions of this Licence.

IT IS AGREED AS FOLLOWS: -

1. KEY DEFINITIONS

1.1 In this Licence, the following terms shall have the following meanings: -

[Agent]	A third party appointed from time to time by the Licensee to act on the Licensee's behalf, who may undertake any or all of the obligations of the Licensee under this Licence, as agreed between the Licensee and the Agent.]
Commercial Use	Use for the purposes of monetary reward (whether by or for the Licensee or Library Staff or a Patron) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, the recovery of direct costs by the Licensee from Patrons is not deemed to be Commercial Use.
Fee	The Fee set out in Schedule 1 or in new Schedules to this Licence which may be agreed by the parties from time to time.
Library Premises	The physical premises of the library or libraries operated by the Licensee, as specified in Schedule 2.
Library Staff	current members of the staff of the Licensee (whether on a permanent, temporary or contract basis) who are permitted to access the Secure Network from within the Library Premises [or from such other places where Library Staff undertake their work for the Licensee (including but not limited to Library

Staff's offices), and who have been issued by the Licensee with a password or other authentication].

- Licensed Materials** the electronic material as set out in Schedule 1 or in new Schedules to this Licence that may be agreed by the parties from time to time.
- Patrons** Members of the public who are permitted to use the Licensee's library or information service and permitted to access the Secure Network but only from computer terminals within the Library Premises.
- [Publisher's Representative** A third party appointed from time to time by the Publisher to act on the Publisher's behalf, who may execute this Licence on behalf of the Publisher and undertake any or all of the Publisher's obligations under this Licence, as agreed between the Publisher and the Publisher's Representative.]
- Secure Network** A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Library Staff or Patrons whose access is permitted only from computer terminals within the Library Premises and whose conduct is subject to regulation by the Licensee.
- Server** The server, either the Publisher's server or a third party server designated by the Publisher, on which the Licensed Materials are mounted and may be accessed.
- [Subscription Period** That period nominally covered by the volumes and issues of the Licensed Material listed in Schedule 1, regardless of the actual date of publication.]

2. AGREEMENT

- 2.1 The Publisher agrees to grant to the Licensee the non-exclusive and non-transferable right to give Library Staff and Patrons access to the Licensed Materials via a Secure Network [for the purposes of research, retrieving information and private study], subject to the terms and conditions of this Licence, and the Licensee agrees to pay the Fee. [The Agent will be responsible for processing payment of the Fee (and will be entitled to receive any refund of the Fee) on behalf of the Licensee, unless notified otherwise, in which case the Fee will be paid by the Licensee direct to the Publisher {Publisher's Representative}].
- 2.2 [This Licence shall commence at the beginning of the Subscription Period, for each of the Licensed Materials as set out in Schedule 1 or in new Schedules to this Licence that may be added subsequently; and shall automatically terminate at the end of the Subscription Period, unless the parties have previously agreed to renew it.]
Or
[This Licence shall commence on [date] and shall remain in effect [until {date}] [for {three} years from that date and shall [continue thereafter to be in effect unless terminated by either party by six months written notice to the other] [then terminate

unless the parties agree in writing to renew or extend the Licence on the same terms or as may be agreed in writing at the time].]

- 2.3 On termination of this License, the Publisher shall provide continuing access for Authorised Users to that part of the Licensed Materials which was published and paid for within the Subscription Period, either from the Server[or from the archive described in 6.4] or by supplying [electronic files] [CD-ROMS] [printed copies] to the Licensee [subject to payment of such fees as the parties may agree] [except where such termination is due to a breach of the License by the Licensee which the Licensee has failed to remedy as provided in 9.1.1 and 9.1.2 of this License { in which case such continuing access shall be provided in respect of Licensed Materials published up to the date of such breach}].

3. USAGE RIGHTS

- 3.1 The Licensee, subject to clause 5 below, may:

3.1.1 [Load the Licensed Materials on the Licensee's server on the Secure Network.]

3.1.2 [Make such back-up copies of the Licensed Materials as are reasonably necessary.]

3.1.3 Make such [temporary] local electronic copies [by means of cacheing {or mirrored storage}] of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Library Staff and Patrons [and not to make available to Library Staff or Patrons duplicate copies of the Licensed Material].

3.1.4 Allow Library Staff to have access to the Licensed Materials from the Server via the Secure Network.

3.1.5 Allow Patrons to have access to the Licensed Materials from the Server via the Secure Networks, but only from public work stations/terminals within the Library Premises. For the avoidance of doubt, remote access by Patrons to the Licensed Materials is strictly prohibited.

3.1.6 Provide[, or permit the Agent to provide,] the Licensee with integrated access and an integrated author, article title[, abstract] and keyword index to the Licensed Material and all other similar material licensed from other publishers.

3.1.7 Provide single printed [or electronic] copies of single articles at the request of individual Library Staff or Patrons.

3.1.8 Display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Library Staff.

- 3.2 Library Staff and Patrons may, in accordance with the copyright law of [*jurisdiction*] and subject to clause 5 below:

3.2.1 Search, view, retrieve and display the Licensed Materials.

3.2.2 Print off a copy of individual articles or items of the Licensed Materials.

3.2.3 [Electronically save individual articles or items of the Licensed Materials for personal use.]

3.3 [Nothing in this Licence shall in any way exclude, modify or affect any of the Licensee's rights under the Copyright Designs and Patents Act 1988 or any statutory instruments made thereunder or any amending legislation.]

or

[Nothing in this Licence shall in any way exclude, modify or affect any of the Licensee's rights under Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21.]

or

[Nothing in this Licence shall in any way exclude, modify or affect any of the Licensee's statutory rights under the copyright laws of *{jurisdiction}*.]

4. SUPPLY OF COPIES TO OTHER LIBRARIES

4.1 [The Licensee may, subject to clause 5 below, supply to a Patron of another library {within the same country as the Licensee} (whether by post or fax [or secure transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing]), for the purposes of research or private study and not for Commercial Use, a single paper copy of an electronic original of an individual document being part of the Licensed Materials.]

Or

[The Licensee may, subject to clause 5 below, supply to a Patron of another library {within the same country as the Licensee} a copy of an individual document being part of the Licensed Materials by post, fax or electronic transmission via the Internet or otherwise, for the purposes of research or private study and not for Commercial Use.]

Or

[Notwithstanding the provisions of Clauses 3.1 and 3.3, it is understood and agreed that neither the Licensee nor Authorised Users may provide, by electronic means, to a user at another library a copy of any part of the Licensed Materials for research or private study or otherwise.]

5. PROHIBITED USES

5.1 Neither the Licensee nor Library Staff nor any Patron may:

5.1.1 remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;

5.1.2 systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose [other than back-up copies permitted under clause 3.1.2];

- 5.1.3 mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network.
- 5.2 The Publisher's [Representative's] explicit written permission must be obtained in order to:
 - 5.2.1 use all or any part of the Licensed Materials for any Commercial Use;
 - 5.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Library Staff;
 - 5.2.3 publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this Licence;
 - 5.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen [or as otherwise permitted in this Licence,] to Library Staff and Patrons. For the avoidance of doubt, no alteration of the words or their order is permitted.

6. PUBLISHER'S UNDERTAKINGS

- 6.1 The Publisher warrants to the Licensee that the Licensed Materials used as contemplated by this Licence do not infringe the copyright or any other proprietary or intellectual property rights of any person. The Publisher shall indemnify and hold the Licensee harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Licensee claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this Licence for any reason. This indemnity shall not apply if the Licensee has amended the Licensed Materials in any way not permitted by this Licence.
- 6.2 The Publisher shall:
 - 6.2.1 make the Licensed Materials available to the Licensee from the Server in the media, format and time schedule specified in Schedule 1. The Publisher will notify the Licensee [and the Agent] at least [ninety (90)] [sixty (60)] days in advance of any anticipated specification change applicable to the Licensed Materials. If the changes render the Licensed Materials less useful in a material respect to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this License under clause 9.1.2 and 9.4.
 - 6.2.2 use all reasonable endeavours to make available the electronic copy of each journal issue in the Licensed Materials [not less than {XX} days before the date] [within {XX} days] [not later than the day] of publication of the printed version. In the event that for technical reasons this is not possible for any particular journal, as a matter of course, such journal shall be identified at the time of licensing, together with such reasons.

- 6.2.3 provide the Licensee [and the Agent,] within 30 days of commencement, with information sufficient to enable the Licensee to access the Licensed Material.
- 6.2.4 use all reasonable endeavours to ensure that the Server has adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Licence.
- 6.2.5 use all reasonable endeavours to make the Licensed Materials available to the Licensee and to Library Staff and to Patrons at all times and on a twenty-four hour basis, save for routine maintenance (which shall be notified to the Licensee in advance wherever possible), and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service.
- 6.3 The Publisher reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Licensee of such withdrawal. If the withdrawal [represents more than ten per cent (10%) of the book, journal or other publication in which it appeared, the Publisher shall refund to the Licensee that part of the Fee that is in proportion to the amount of material withdrawn and the remaining un-expired portion of the Subscription Period][results in the Licensed Materials being no longer useful to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this License under clause 9.1.2 and 9.4].
- 6.4 The Publisher undertakes to [use reasonable endeavours to] provide or to make arrangements for a third party to provide an archive of the Licensed Materials for the purposes of long term preservation of the Licensed Materials, and to permit Authorised Users to access such archive after termination of this License.]
- 6.5 Collection and analysis of data on the usage of the Licensed Materials will assist both the Publisher and the Licensee understand the impact of this License. The Publisher shall provide to the Licensee or facilitate the collection and provision to the Licensee and the Publisher by the Licensee [or by the Agent] of such usage data on the number [of titles] [of abstracts and] of articles downloaded, by journal title, on [a monthly] [a quarterly][an annual] basis for the Publisher's and the Licensee's private internal use only. Such usage data shall be compiled in a manner consistent with applicable privacy [and data protection] laws [and as the parties may agree from time to time], and the anonymity of individual users and the confidentiality of their searches shall be fully protected. In the case that the Publisher assigns its rights to another party under clause 10.3, the Licensee may at its discretion require the assignee either to keep such usage information confidential or to destroy it.
- 6.6 Except as expressly provided in this License, the Publisher makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Materials, merchantability or fitness of use for a particular purpose. The Licensed Materials are supplied 'as is'.

6.6 Except as provided in clause 6.1, under no circumstances shall the Publisher [or the Publisher's Representative] be liable to the Licensee or any other person, including but not limited to Authorised Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials. Irrespective of the cause or form of action, the Publisher's aggregate liability for any claims, losses, or damages arising out of any breach of this Licence shall in no circumstances exceed the Fee paid by Licensee to the Publisher under this Licence in respect of the Subscription Period during which such claim, loss or damage occurred. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. [Regardless of the cause or form of action, the Licensee may bring no action arising from this Licence more than [six (6)][twelve (12)] months after the cause of action arises.]

7. LICENSEE'S UNDERTAKINGS

7.1 The Licensee shall:

- 7.1.1 use all reasonable endeavours to ensure that all Library Staff and Patrons are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and of the sanctions which the Licensee imposes for failing to do so [as specified in Schedule 3];
- 7.1.2 use all reasonable endeavours to ensure that the Library Staff are made aware of and undertake to abide by the terms and conditions of this Licence and take steps to protect the Licensed Materials from unauthorised use or other breach of this Licence;
- 7.1.3 use all reasonable endeavours to monitor compliance and immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
- 7.1.4 [issue passwords or other access information only to Library Staff and use all reasonable endeavours to ensure that Library Staff do not divulge their passwords or other access information to any third party;]
- 7.1.5 provide the Publisher, within 30 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Material in accordance with its obligation under clause 6.2.3. Should the Licensee make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect.
- 7.1.6 keep full and up-to-date records of all Library Staff and their access details, and provide the Publisher with details of such additions, deletions or other alterations to such records as are necessary to enable the Publisher to provide Authorised Users with access to the Licensed Materials as contemplated by this Licence;

- 7.1.7 use all reasonable endeavours to ensure that only Library Staff and Patrons are permitted access to the Licensed Materials.
- 7.2 [{Subject to applicable law,} The Licensee agrees to indemnify, defend and hold the Publisher harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any claim or legal action taken against the Publisher related to or in any way connected with any use of the Licensed Materials by the Licensee or Authorised Users or any failure by the Licensee to perform its obligations in relation to this Licence, provided that] nothing in this Licence shall make the Licensee liable for breach of the terms of the Licence by any Authorised User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach to continue after becoming aware of an actual breach having occurred.
- 7.3 The Licensee shall, in consideration for the rights granted under this Licence, pay the Fee within [thirty (30)] [sixty (60)] days [of signature] [of receipt of invoice] and, if applicable, within [thirty (30)] [sixty (60)] days [of receipt of invoice relating to] [prior to] each subsequent Subscription Period [and receipt of such payment shall be a condition of this License coming into effect]. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

8. UNDERTAKINGS BY BOTH PARTIES

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

9. TERM AND TERMINATION

- 9.1 In addition to automatic termination (unless renewed) under clause 2.2, this Licence shall be terminated:
- 9.1.1 if the Licensee [wilfully] defaults in making payment of the Fee as provided in this Licence and fails to remedy such default within [thirty (30)] [sixty (60)] days of notification in writing by the Publisher;
- 9.1.2 if either party commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within [thirty (30)] [sixty (60)] days of notification in writing by the other party;
- 9.1.3 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
- 9.2 On termination all rights and obligations of the parties automatically terminate except for obligations in respect of Licensed Materials to which access continues to be permitted as provided in clause 2.3.
- 9.3 On termination of this Licence for cause, as specified in clauses 9.1, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Library Staff and Patrons [and shall return to the Publisher or destroy all Licensed Materials locally mounted pursuant to clause 3.1.1 and 3.1.2] except as provided in clause 2.3.

9.4 On termination of this Licence by the Licensee for cause, as specified in clause 9.1.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

10. GENERAL

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

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

10.3 This Licence may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, except as provided in this Licence in respect of [the Agent] [and the management and operation of the Server] [and the Publisher's Representative], without the prior written consent of the other party, which consent shall not unreasonably be withheld.

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

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

10.6 Neither party's delay or failure to perform any provision of this Licence, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Licence.

10.7 The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence.

10.8 Either party's waiver, or failure to require performance by the other, of any provision of this Licence will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

10.9 [This Licence shall be governed by and construed in accordance with { *jurisdiction* } law; {subject to clause 11,} the parties irrevocably agree that any dispute arising out of or in connection with this Licence will be subject to and within the jurisdiction of the courts of { *jurisdiction* }.]

[11. USE OF AN EXPERT TO RESOLVE DISPUTES

- 11.1 If any difference arises between the parties on the meaning of this Licence or their rights and obligations, it shall first be referred to an independent expert appointed by agreement of the parties, or, in default of an agreement, by the [President] [Chair] for the time being of the [Institute of Chartered Accountants] [*professional body*].
- 11.2 Any expert so appointed shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing stating the reasons for his decision) shall be final and binding on the parties.
- 11.3 Each party shall provide the expert with such information as he may reasonably require for the purposes of his decision.
- 11.4 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable or, if no determination is made by the expert, by the parties in equal proportions.]

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

FOR THE LICENSEE: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

SCHEDULE 1

LICENSED MATERIALS, [SUBSCRIPTION PERIOD] AND ACCESS METHOD

A schedule dated [date] to the Licence dated [date] between [Publisher] and [Licensee]

THE LICENSED MATERIALS

Title	[Subscription Period]	Format	Delivery Schedule	Fee
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List of Licensed Material, for each item list title, [initial Subscription Period, including, where relevant, the start date and end date,] format, delivery schedule (if applicable) and Fee [for the initial Subscription Period]. If back files are provided free of charge as part of the License, these should be listed specifically.

ACCESS METHOD

- Authentication via User ID/password and IP Address
- Authentication via IP address

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

FOR THE LICENSEE: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

SCHEDULE 2

LIBRARY PREMISES

A schedule dated [date] to the Licence dated [date] between [Publisher] and [Licensee]

List of addresses of the Licensee's Library Premises, Domain Name(s) and IP addresses and/or ranges:

Class B Network: first two network numbers plus asterisks for host addresses, ie: 125.64..**

*Class C network: first three network numbers plus an asterisk for host address, ie: 125.64.133.**

Single station: all four numbers, ie 125.64.133.20; or ranges, ie 125.64.133.20-125.64.133.40

Library name & address	Domain name(s)	IP addresses/ranges
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Network contact: Name:

Telephone:

Fax:

E-mail address:

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

FOR THE LICENSEE: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

(Optional Schedule)

SCHEDULE 3

LICENSEE'S COPYRIGHT ENFORCEMENT POLICY

A schedule dated [date] to the Licence dated [date] between [Publisher] and [Licensee]

List any documents evidencing the policy, with attached copies

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

FOR THE LICENSEE: [FULL NAME]

Name (in block capitals: _____

Date: _____

Position / Title: _____

PUBLIC LIBRARY LICENSE: Version 2.0

Commentary and guidance on use

1. The first step

1.1 Download both the license text and this commentary. You will need both in order to complete the license. You will need to refer to both documents as you work through the license text, so you may find it helpful to print them out and mark up the license before making changes to the text on your PC.

2. General remarks

2.1 This license and commentary use American English (e.g. 'center' for 'centre' and 'license' for the noun 'licence'). If you wish to change them, you should use your Spellchecker or Find & Replace function when you have finished.

2.2 This license can be used as a guide to negotiation, in order to highlight issues that need discussion and agreement. You may wish to list the issues of substance, and your negotiating position on each, before you start. By all means use the license as an agenda, if you prefer.

2.3 The license is designed to provide the words you will need to express the agreement you have reached, once your negotiations have been completed, all the business issues have been resolved. As there are no set solutions to any of the business issues, the text contains optional and alternative wording throughout. Read the text carefully and select the text appropriate for the terms you have negotiated.

2.4 The use of words in square brackets - [] or { } indicates optional wording that may be included or omitted, or where two or three alternatives are provided for.

2.5 Please remember that if you are uncertain about what to do, seek legal advice from a professional.

3.1 The License refers to 'Agent' and to 'Publisher's Representative' and refers to both throughout the text, as indicated in the comments on specific clauses in 4 below. The 'Agent' refers to a subscription agent or some other intermediary acting on behalf of the Licensee and authorised to negotiate on its behalf. The 'Publisher's Representative' acts on behalf of the Publisher and is authorised to negotiate and complete the License. References to the Agent should be deleted if the Licensee is dealing direct; references to the Publisher's Representative should be deleted if the Publisher is dealing directly with the Licensee.

4. Clause by clause commentary: specific points of issue

1.1 The wording in the definition of Library Staff provides optional wording for access from outside the Library Premises themselves, for instance, if their offices are based in another non-library building; if this is not required, delete it. Patrons are restricted to access in the library itself. These may include, local business users or

members of the public, and should reflect current library policy. Both parties need to be clear about who has access.

The definition of definition of Agent should be deleted if the Consortium is dealing direct with the Publisher (or the Publisher's Representative). References in clauses 2.1, 3.1.6, 6.2.1, 6.2.3, 6.5.5 and 10.3 should also be deleted.

Note that Publisher's Representative is relevant only when the Publisher has appointed another person or company to act on his behalf, as might be the case, for instance, in some newly industrialized countries. It should otherwise be deleted, along with [Publisher's Representative] in clauses 2.1, 5.2, 6.6 and 10.3.

Subscription Period is a definition applicable when the License is modelled on a 'traditional' journal subscription model. If the License is a 'pay-TV' model, where access to the Licensed Materials is for a set period, this should be deleted; in such a case, see clauses 2.2 and 2.3 as well.

2.1 If there is no Agent involved in representing the Licensee, delete the last sentence in [].

2.2 This provides two alternatives:

The first is based on the 'traditional' journal subscription model, giving continuing rights of access to the volumes purchased; the definition of Subscription Period and clause 2.3 should be retained.

The second is based on access for a period of time to all files - the cable-TV model. If this alternative is chosen, the definition of Subscription Period and clause 2.3 may not be applicable; Schedule 1 should also be adjusted.

2.3 Applies where the 'traditional' journal subscription model is the basis of the License; select the format for continuing access from the three options. The provision for further payment is optional, and the words "[subject to the payment of such fees as the parties may agree]" should be deleted if continuing access is provided free of charge. Note that:

a) the exception for breach by the Licensee is optional. It reflects the good faith basis of any intellectual property license. It is up to the parties in negotiation to discuss this and agree on its retention or deletion.

b) the exception does not operate in the case of bankruptcy or composition with creditors (9.1.3).

c) the proviso at the end of 2.3 is optional. It provides for continuing access to Licensed Material published and paid for up to the date of breach, even though the breach is by the Licensee, on the principle that what has been bought should be retained. Retain or delete as appropriate.

3.1.1 & 3.1.2 Only apply if the journals are mounted locally - see also 5.1.2 and 9.3.

3.1.3 Use the options to reflect the technical solution you have agreed.

3.1.5 Will the index provide abstracts? Include or delete as appropriate. If there is no Agent involved in representing the Consortium, delete the words referring to the Agent in [].

3.3 These alternatives are drafted to cover the UK, the US and other jurisdictions. You may feel that the third option covers both parties' requirements.

4 Three alternatives cover the issue of supplying copies to other libraries: the first allows electronic files to be used to generate paper copies for supply to other libraries. Note the optional limitation to the country in which the Licensee is based; this should be included or deleted as appropriate. The second allows copies to be sent electronically as well as on paper. The same optional limitation to the country of supply is in { } brackets and should be included or deleted as appropriate. The third prohibits the supply of copies to other libraries using the electronic files under the License.

5.1.2 The phrase at the end should be deleted unless the Licensed Materials are mounted locally.

6.2.1 Select the notice period required - or any alternative you may have negotiated.

6.2.2 This clause addresses the issue of availability - before print, on the print publication date, or within an agreed period of the print publication date. Select the appropriate wording and specify the number of days where {XX} appears.

6.2.3 If there is no Agent involved in representing the Consortium, delete the words referring to the Agent in [].

6.3 Select one of the two alternatives in the second part of the clause to reflect what has been agreed as a consequence of withdrawal.

6.4 This (optional) clause commits the Publisher to assume responsibility for archiving - i.e. long-term preservation of the Licensed Materials. If the Publisher has more specific detailed arrangements and it is agreed that these should be recorded in the License, then the wording of 6.4 should be replaced or amended as appropriate.

6.5 This clause deals with usage data. Select the appropriate alternatives on the nature of the data and the frequency of its provision. The reference to 'data protection' laws applies in the European Union and certain other jurisdictions - not the USA; delete if appropriate. If there is no Agent involved in representing the Consortium, delete the words referring to the Agent in [].

6.6 This clause is a standard provision that the materials are supplied 'as is'. Under US law, it **MUST BE PRINTED IN UPPER CASE**.

6.7 This clause limits the Publisher's liability to the value of the licence, and disclaims liability for consequential or indirect loss. This sort of limitation is a common device in commercial contracts. However, if this license is being made with a public institution, such a clause may be unacceptable for constitutional reasons; many public institutions, including universities, in many US states are legally unable to accept such

limitations. Check on the position. In any case, under US law, it MUST BE PRINTED IN UPPER CASE.

7.1.4 If access is controlled by IP address, delete.

7.1.5 Note that this clause requires libraries to pass to the Publisher only the information necessary to activate access under the License, and no more.

7.2 This indemnity clause is optional, as it may not be lawful in some countries or states that preclude public institutions giving indemnities (as with 6.6 above). In any case, under US law, it MUST BE PRINTED IN UPPER CASE.

7.3 Select whether the renewal Fee is payable 30 or 60 days before or within 30 or 60 days of the start of the Subscription period, or simply within 30 days of receipt of invoice. If payment is not a condition of the License coming into effect, delete the words in [].

9.3 The second part of the clause in brackets should be deleted except where the Licensed Materials are to be mounted locally.

10.1 This is an important 'boilerplate' provision. Neither party can rely on any statements made by the other unless they are included in this licence. It is included because it makes both the publisher and the library explicitly record every aspect of the licence, so that there is clarity if any issue arises between them afterwards.

10.3 Include or delete the references to the Server and to the Publisher's Representative as appropriate. If there is no Agent involved in representing the Consortium, delete the words "[in respect of the Agent]".

10.4 Note the optional wording. Use depends on the 'strength' of the Publisher's undertaking and what is practical when a journal title changes hands - sometimes because the society that owns it changes publisher.

10.9 The vexed question of jurisdiction! Some public institutions are legally unable to agree to any other jurisdiction but their own country or state. Note that it is optional. Note also the optional reference to clause 11.

12 This clause, which is adopted in the PA/JISC licence, suggests the use of an expert as the first recourse to resolve disputes. Note that an expert is not an arbitrator, and is not subject to the rules of arbitration set out, for instance, in the rules of the American Arbitration Association or the UK's Arbitration Act 1996. It is an informal low cost device that should work well in the academic environment. Note that this clause requires both parties to agree on the appropriate body whose head will nominate the expert if the parties are unable to agree; it is usual to choose the accountants' professional association, or law society or bar association.

Although clause 12 is not intended to preclude recourse to the courts, it may be unlawful for some public institutions under local law to accept any dispute resolution procedure other than recourse to the courts. If so, delete the whole clause.

Schedule 1

Complete with all the details requested, title by title, and include the access method.

Schedule 2

This is important in order to provide access to users at all the library premises or branches, while preventing unauthorised access.

Schedule 3

This is designed to provide comfort to the publisher by showing evidence that the licensee has proper policies and procedures to ensure a reasonable level of copyright compliance.