

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

Avertissement: Les contrats et guides de la présente collection ont été sélectionnés à seule fin d'illustration. Leur contenu et leur utilisation n'engagent pas la responsabilité de *Juris International*.

Please note: The contracts and guides contained in the present collection have been selected for illustrative purposes only. *Juris International* shall not be liable for their contents or use.

Advertencia: Los contratos y las guías de la presente colección han sido seleccionados únicamente a manera de ilustración. Su contenido y utilización no comprometen la responsabilidad de *Juris internacional*.

Corporate (single or multiple site) licence: Version number 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 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.]

Authorised Users current members of the staff (whether on a permanent, temporary or contract basis) [and contractors] of the Licensee who are permitted to access the Secure Network from within the Licensee's Premises [or from such other places where Authorised Users undertake their work for the Licensee (including but not limited to Authorised Users' offices and homes)] and who have been issued by the Licensee with a password or other authentication.

Commercial Use Use for the purposes of monetary reward (whether by or for the Licensee or an Authorised User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, use by the Licensee or by an Authorised User of the Licensed Materials in the course of research, product development and related activity in the normal course of business does not constitute 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.
Licensee's Premises	The physical premises owned or operated by the Licensee, as specified in Schedule 3.
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.
[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 Authorised Users approved by the Licensee whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, 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, throughout the world, to give Authorised Users access to the Licensed Materials via a Secure Network 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 5.4] or by supplying [electronic files] [CD-ROMS] [printed copies] to the Licensee [subject to the 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 8.1.1 and 8.1.2 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 4 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 Authorised Users [and not to make available to Authorised Users of duplicate copies of the Licensed Material].
- 3.1.4 Allow Authorised Users to have access to the Licensed Materials from the Server via the Secure Network.
- 3.1.5 Provide[, or permit the Agent to provide,] Authorised Users 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].
- 3.1.6 Use the Licensed Materials as part of an integrated information service for Authorised Users that will include links between the Licensed Materials and the Licensee's own indexes, third party abstracting and indexing services and other information resources utilised by the Licensee.
- 3.1.7 Provide single printed or electronic copies of single articles at the request of individual Authorised Users.
- 3.1.8 Display, download or print the Licensed Materials for the purpose of internal testing or for training Authorised Users or groups thereof, and for internal corporate training programmes (in respect of which appropriate acknowledgement of the source shall be made).
- 3.1.9 Provide print or electronic copies of the Licensed Materials to national or international regulatory authorities for the purposes of, or in anticipation of, regulatory approval or patent and/or trademark applications or other legal or regulatory purposes in respect of the Licensee's products or services.

- 3.1.10 [Provide printed {or electronic} copies of the Licensed Materials for product, marketing or [medical] [professional] [necessary trade] information purposes, subject to the terms specified in Schedule 2. {It is understood and agreed that electronic copies are strictly forbidden for the purpose of this clause.}]
- 3.1.11 [The Licensee may, subject to clause 4 below, supply to an Authorised User of another library not being the Licensee's (whether by post, 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 4 below, supply to an Authorised User of another library not being the Licensee's single copies 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.]
- 3.2 Authorised Users may, in accordance with the copyright law of [*jurisdiction*] and subject to clause 4 below:
- 3.2.1 Search, view, retrieve and display the Licensed Materials.
- 3.2.2 Electronically save parts of the Licensed Materials for personal use.
- 3.2.3 Print off a copy of individual articles or items of the Licensed Materials.
- 3.2.4 Distribute a copy of individual articles or items of the Licensed Materials in print or electronic form to other Authorised Users.
- 3.3 Nothing in this Licence shall in any way exclude, modify or affect any of the Licensee's rights under the copyright laws of [*jurisdiction*.]

4. PROHIBITED USES

- 4.1 Neither the Licensee nor Authorised Users may:
- 4.1.1 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;
- 4.1.2 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];
- 4.1.3 [except as provided in clause 3.1.12,] provide, by electronic means, to a user at another library or elsewhere, a retained electronic copy of any part of the Licensed Materials;

- 4.1.4 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
- 4.2 Publisher's [Representative's] explicit written permission must be obtained in order to:
 - 4.2.1 use all or any part of the Licensed Materials for any Commercial Use, other than as permitted in clauses 3.1.9 and 3.1.10;
 - 4.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorised Users;
 - 4.2.3 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;
 - 4.2.4 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 Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

5. PUBLISHER'S UNDERTAKINGS

- 5.1 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.
- 5.2 The Publisher shall:
 - 5.2.1 [supply the Licensed Materials to the Licensee][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 change of specification in respect of access method, display or any other feature that may affect the manner in which Authorised Users access and make use of the Licensed Materials.
 - 5.2.2 [use 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.

- 5.2.3 provide the Licensee [and the Agent], within 30 days of the date of this License, with information sufficient to enable the Licensee to access the Licensed Material.
- 5.2.4 [use 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.
- 5.2.5 [use reasonable endeavours to] make the Licensed Materials available to the Licensee and to Authorised Users at all times and on a twenty-four hour basis, save for scheduled routine maintenance (which shall be notified to the Licensee [not less than fourteen (14) days in advance] [in advance wherever possible]);
- 5.2.6 use its best endeavours to restore access to the Licensed Materials [within two (2) hours] [as soon as possible] in the event of an unscheduled interruption or suspension of the service;
- 5.2.7 provide adequate and competent technical support and assistance to enable the Licensee to make proper use of the Licensed Materials [, including the provision of Help Desk facilities [{during normal working hours} {between 9.00 am and 5.00 pm in whatever time zone in which access to the Licensed Materials is being made}].
- 5.3 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 [not less than ninety (90) days in advance] 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 substantially and materially less useful to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this License under clause 8.1.2 and 8.4].
- [5.4 Publisher undertakes to [use reasonable endeavours to] provide or 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.]
- 5.5 The Publisher shall provide to the Licensee or facilitate the collection and provision to the Publisher and the Licensee by the Licensee [or the Agent] of usage data on the number [of titles] [of abstracts and] of articles downloaded or printed, 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 may be agreed between the parties 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 9.3, the Licensee may at its discretion require the assignee either to keep such usage information confidential or to destroy it.

- 5.6 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'.
- 5.7 Except as provided in clause 5.1, 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.]

6. LICENSEE'S UNDERTAKINGS

- 6.1 The Licensee shall:
- 6.1.1 ensure that only Authorised Users are permitted access to the Licensed Materials.
 - 6.1.2 ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and that they are made aware of and undertake to abide by the terms and conditions of this Licence;
 - 6.1.3 [monitor compliance and] immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
 - 6.1.4 [issue passwords or other access information only to Authorised Users and ensure that Authorised Users do not divulge their passwords or other access information to any third party;]
 - 6.1.5 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 5.2.3. 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.

- 6.1.6 keep full and up-to-date records of all Authorised Users and their access details and provide the Publisher with details of such additions, deletions or other alterations as are necessary to enable the Publisher to provide Authorised Users with access to the Licensed Materials as contemplated by this License.
- 6.2 The Licensee hereby acknowledges that the business of the Publisher is entirely dependent upon the Publisher's intellectual property rights in the Licensed Materials, and that any material and persistent breach thereof constitutes a fundamental breach of this Licence, in which event, notwithstanding clause 8, this Licence shall immediately terminate; the Publisher shall be entitled to immediate injunctive relief and [the return of all of the Licensed Materials][the immediate removal of all electronic copies of the Licensed Materials held by the Licensee] without any rebate of the Fee and without prejudice to any other rights or remedies to which it may be entitled.
- 6.3 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
- 6.3 The Licensee shall, in consideration for the rights granted under this Licence, pay the Fee within thirty (30) days [of receipt of invoice] [of signature] and, if applicable, within thirty (30) 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.

7. UNDERTAKINGS BY BOTH PARTIES

- 7.1 Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party.
- 7.2 Neither party shall disclose the terms and conditions or the subject matter of this Licence (including, without limitation, the content of the Schedules, the list of the Licensed Materials and any usage data compiled and supplied under clause 5.5) or any other information about the other party's business to any third party without the prior written consent of the other. This provision shall survive the termination of this Licence, and any information obtained or received which comes within these restrictions shall remain confidential, PROVIDED always that this obligation shall not apply to any information which at the time of disclosure is in the public domain or is made available at any time by an independent third party which has not obtained it directly or indirectly in breach of any confidentiality agreement with either of the parties hereto.

8. TERM AND TERMINATION

- 8.1 In addition to automatic termination (unless renewed) under clause 2.2, this Licence shall be terminated:

- 8.1.1 if the Licensee defaults in making payment of the Fee as provided in this Licence;
 - 8.1.2 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) days of notification in writing by the other party;
 - 8.1.3 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
- 8.2 On termination all rights and obligations of the parties automatically terminate except as specifically provided in this Licence, and except for obligations in respect of Licensed Materials to which access continues to be permitted as provided in clause 2.3.
- 8.3 On termination of this Licence for cause, as specified in clauses 8.1, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorised Users [and shall return to the Publisher or destroy all Licensed Materials locally mounted pursuant to clause 3.1.1 and 3.1.2].
- 8.4 On termination of this Licence by the Licensee for cause, as specified in clause 8.1.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

9. GENERAL

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 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.
- 9.5 [If either party shall come under the control of any third party other than that by which it is controlled at the date of this Licence, the other shall have the right immediately to terminate or renegotiate the terms of this Licence. Control shall mean either the ownership of more than fifty per cent (50%) of the ordinary share capital carrying the right to vote at general meetings or the power to nominate a majority of the board of directors.]

- 9.6 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.
- 9.7 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.
- 9.8 The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence.
- 9.9 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.
- 9.10 [This Licence shall be governed by and construed in accordance with { *jurisdiction* } law; {subject to clause 10,} 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* }.]

[10. USE OF AN EXPERT TO RESOLVE DISPUTES

- 10.1 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*].
- 10.2 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.
- 10.3 Each party shall provide the expert with such information as he may reasonably require for the purposes of his decision.
- 10.4 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
--------------	------------------------------	---------------	--------------------------	------------

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

TERMS FOR DISTRIBUTION OF MULTIPLE COPIES TO THIRD PARTIES

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

Optional: only include if this is provided for under 3.1.11

Terms for the distribution of multiple print copies to third parties for marketing, medical/professional information purposes. Specify price per page per copy or price per article per copy. Reporting requirements should also be specified here.

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 3

LICENSEE'S PREMISES

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

List of addresses (including country where applicable) of the Licensee's Premises or sites, Domain Name(s) and IP addresses and/or ranges:

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

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

Single station: all four numbers, i.e. 125.64.133.20; or ranges, i.e. 125.64.133.20-125.64.133.40

Library name & address	Domain name(s)	IP addresses/ranges
-----------------------------------	-----------------------	----------------------------

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: _____

CORPORATE AND SPECIAL LIBRARIES 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 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, 3.1.5, 5.2.1, 5.2.3, 5.5 and 9.3 should also be deleted.

The wording in the definition of Authorised Users includes both full time permanent and part-time/temporary staff. The inclusion of contractors (consultants, IT

contractors etc) is optional. Both parties need to be clear about who has access. It also provides for remote access as an option.

The definition of Licensee's Premises, and Schedule 2, are important. In many cases of licenses to corporate licensees, the concept of the Secure Network is more important to the corporation rather than the specific location or number of sites. Corporate licensees are just as anxious to preserve the integrity and security of their networks as the Publisher. However, if the list were to be omitted, the Publisher would have no recourse if the Licensee were to acquire another business and substantially increase the number of sites during the term of the License.

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, 4.2, 5.6 and 9.3.

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 pay-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 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 (8.1.3).

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 4.1.2 and 8.3.

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

3.1.5 Will the index provide abstracts? The reference to similar material from other publishers applies where the Agent can provide it. Include or delete as appropriate. If there is no Agent involved in representing the Consortium, delete the words referring to the Agent in [].

3.1.10 This is optional, and applies if the Licensed Materials can be used in multiple copies for marketing or information purposes. If use extends to electronic copies, as many corporate licensees require, delete the last sentence in { }.

3.1.11 This clause is optional, and should be deleted if the right to supply of copies to other libraries is prohibited under the license, or is not required by the Licensee. If such a right is relevant, two alternatives cover the issue:

the first allows electronic files to be used to generate paper copies for such supply. 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 for this purpose. The same optional limitation to the country of supply is in { } brackets and should be included or deleted as appropriate.

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.

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

4.1.3 Delete if inter-library loan is prohibited or irrelevant.

5.2.1 The alternatives provided should be selected depending on whether the Licensed Materials are mounted locally or are accessed from the Server. Select the appropriate notice period, or an alternative you may have agreed.

5.2.2 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.

5.2.2, 5.2.4 & 5.2.5 'reasonable endeavours' is optional. It represents the difference between a firm commitment, and an obligation to do the best one reasonably can in the circumstances.

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

5.2.5 & 5.2.6 Select alternative time obligations.

5.2.7 The provision of Help Desk facilities is provided for as an option, and includes further options regarding Help Desk availability. Choose the appropriate wording.

5.3 Is 90 days advance notice required? Select one of the two alternatives in the second part of the clause to reflect what has been agreed as a consequence of withdrawal.

5.4 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 5.4 should be replaced or amended as appropriate.

5.5 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 [].

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

5.6 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**.

6.1.4 If access is controlled by IP address, delete.

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

6.1.6 As with 6.1.4, this clause does not apply unless passwords are required to access the Licensed Materials. If access is controlled by IP address, delete.

6.2 This indemnity clause is optional, as it may not be lawful in some countries or states that preclude public institutions giving indemnities (as with 5.6 above). In any case, under US law, it **MUST BE PRINTED IN UPPER CASE**.

6.3 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 30 days from receipt of invoice. If payment is not a condition of the License coming into effect, delete the words in [].

8.3 The second part of the clause in brackets should be deleted except where the LicensedMaterials are to be mounted locally.

9.1 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.

9.3 Include or delete the references to the Agent, to the Server and to the Publisher's Representative as appropriate.

9.4 Note the alternative, which 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.

9.5 The change of control clause is optional.

9.10 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 10.

10 This clause proposes the use of an expert to resolve disputes. Note that an expert is not an arbitrator, and is not subject to the rules of arbitration set out in the rules of the American Arbitration Association or the UK's Arbitration Act 1996. It is a low cost device to resolve differences informally. 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. Clause 12 is not intended to preclude recourse to the courts; if it is not required, delete the whole clause.

Schedule 1

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

Schedule 2

This is optional and should be deleted unless multiple copying is provided under clause 3.1.11.

Schedule 3

This is optional; see comment on 1.1, definition of Licensee's Premises, above. If the definition is not required, delete Schedule 3. If retained, complete with the details requested in order to provide access to all the sites covered by the License.