TERMS

1. INTERPRETATION

1.1 In this Agreement (as defined below), unless the context requires otherwise, the following expressions have the following meanings:

"Agreement": means as defined in the Schedule;
"Chargeable Users": as set out in the Schedule;
"Customer Support": the Helpdesk (as set out in the Schedule) providing reasonable e-mail and telephone support;
"Commencement Date": as set out in the Schedule;
"Licence Fee": as set out in the Schedule;
"Licensed Resources": as indicated on the Schedule;
"Network": the Licensee's local area network system of connected computers at the Site;
"Schedule": the attached schedule preceding the Terms to this Agreement;
"Site": the premises located at the Site Addresses set out in the Schedule; and
"Supply Period": as set out in the Schedule or as otherwise extended pursuant to Clause 4.1.

1.2 The Agreement contains the entire agreement and undertaking between the parties relating to the Licensed Resource and supersedes any prior agreement.

1.3 The termination of this Agreement shall not prejudice the rights and remedies of either party against the other in respect of any prior breach of covenant, terms, warranty or condition.

1.4 The failure of any party to enforce any provision of this Agreement on any one occasion shall not affect its right to enforce another provision or the same provision on another occasion.

1.5 Nothing contained in this Agreement shall constitute or shall be construed as

constituting a partnership, joint venture, or contract of employment between the parties.

2. DELIVERY AND GRANT OF RIGHTS

2.1 In consideration of the payments made by the Licensee and subject to the Licensee observing its obligations under this Agreement, the Licensor grants to the Licensee the following non-exclusive rights ("the Rights"), subject to the agreed Authorised Users, for the Supply Period to:

(a) access via the Network at any time (subject to Clause 7) the Licensor's server, or as the case may be any service provided by an agent on its behalf, for the purpose of accessing the Licensed Resource for research, teaching, and private study purposes by means of workstations located at the Site connected to the Network;
(b) make the Licensed Resource accessible directly or remotely via the Network to the Authorised Users for their research, teaching, and private study purposes in accordance with the Licensee's customary policies and practices acceptable to the Licensor;
(c) create a hypertext link to any part of the Licensed Resource provided that no person other than an Authorised User may use such hypertext link; and

2.2 The Rights are personal to the Licensee and do not extend to its subsidiary or parent organisations, or to any other related or affiliated organisations. The Licensee may not assign, sub-license, transfer, charge or otherwise dispose of its rights under this Agreement without the prior written consent of the Licensor.

2.3 Title to, and ownership of, the Licensed Resource (including any copies made by or on behalf of the Licensee including by the Authorised Users) is not transferred to the Licensee and remains vested in the Licensor, subject to the Rights granted in Clause 2.1. The Licensee acknowledges that any rights not expressly granted in this Licence are reserved to the Licensor.

2.4 The Licensee is responsible for the provision of and payment for the computer equipment and telecommunication services necessary for access to and use of the Licensed Resource. The Licensor shall not issue credits or refunds against
charges incurred by the Licensee in relation to such telecommunication services or those incurred contacting Customer Support. The Licensee accepts that the Licensor has no control over such telecommunication services and that the Licensee shall have no liability to the Licensee for the acts or omissions of providers of telecommunication services or for failures in or failures of their apparatus or of the Licensee's computer equipment.

3. USAGE RESTRICTIONS

Except as expressly permitted in Clause 2.1, the Licensee warrants that it will not, nor will it licence or permit others to, directly or indirectly, without the Licensor's prior written consent:

(a) sell, distribute, license, rent or otherwise exploit the Licensed Resource, or any element of it, for any commercial purpose;
(b) make the Licensed Resource, or any element of it, available by any means to persons other than Authorised Users;
(c) make the Licensed Resource, or any element of it, available on, or by, electronic bulletin boards, news groups, Web sites, FTP or any other means of posting or transmitting material on the Internet, an on-line service or wide area network;
(d) remove or obscure the Licensor's copyright notice from the Licensed Resource;
(e) use the Licensed Resource to create any derivative work, product or service, or merge the Licensed Resource with any other product, database, or service;
(f) alter, amend, modify, translate, or change the Licensed Resource or any element of it;
(g) undertake any activity that may have a damaging effect on the Licensor's ability to achieve revenue through selling and marketing any part of the Licensed Resource or its printed equivalent;
(h) otherwise use the Licensed Resource supplied in accordance with this Agreement in a manner that would infringe the copyright or other proprietary rights contained within it;
(i) make the Licensed Resource or any part of it available by remote access to any person other than Authorised Users; or
(j) make mass, automated or systematic extractions from or hard copy storage of the Licensed Resource.

4. TERM AND TERMINATION

4.1 This Supply Period shall begin on the Commencement Date and continue for an initial period ("the Initial Term"). The Term may be renewed for additional periods subject to signing of the appropriate license and payment of appropriate fees, and acceptance thereof by the Licensor in accordance with Clause 5.1.

4.2 Licensor may terminate this Agreement or part of the Licensed Material at any time upon thirty days' written notice to the Licensee.

4.3 If termination of the Supply Period occurs as a result of notice being given by the Licensee under Clause 4.4, 4.6, 4.7 or 9.2 or by the Licensor under Clause 9.2 the Licensor shall repay the Licensee a pro-rata proportion of the Licence Fee as represents the paid for but unexpired Supply Period at the date of termination.

4.4 Either party may terminate this Agreement at any time upon written notice to the other if the Licensee is unable to exercise the Rights due to the Licensed Resource being unavailable for a period in excess of 50 hours (in aggregate) in any continuous period of 1,000 hours as a result of any act or omission of the Licensor (including, without limitation, any temporary or permanent discontinuation of provision of access to the Licensed Resource by the Licensor).

4.5 Without prejudice to any other rights the Licensor may have, the Licensor may suspend the provision of the Licensed Resource to the Licensee with immediate effect on written notice without liability if the Licensor believes any Licensed Resource is being used in a manner that contravenes the provisions of this Agreement, or in the event of delay or failure to pay in accordance with Clause 5 below.

4.6 Either party may terminate this Agreement (at any time upon written notice to the other if the other party commits a material breach of any term of this Agreement (for the avoidance of doubt non-payment of any fees as they fall due under this Agreement by the Licensee shall constitute a material breach). The termination will become effective thirty days after receipt of written notice unless, in the case of a remediable breach, during the relevant period of thirty days the defaulting party has remedied the breach.
4.7 Either party may terminate the Agreement forthwith on notice in writing to the other if the other party is unable to pay its debts or ceases or threatens to cease to carry on business, goes into administration, receivership or administrative receivership, or any event analogous to any of the foregoing occurs in any jurisdiction.

4.8 On termination of the Supply Period, the Licensee shall have no further rights of any kind to the Licensed Resource and the Licensee agrees to destroy and use its best endeavours to procure that all Authorised Users destroy, all parts of the Licensed Resource stored on its Network or in CD-Rom or other hard copy form both on paper and in any digital information storage media or other physical media storage, including, but not limited to, system servers, hard disks, diskettes, and back up tapes.

5. LICENCE FEE/ACCESS FEE

5.1 The Licensee agrees to pay to the Licensor the Licence Fee and any other payments under this Agreement within 30 days of the date of invoice.

5.2 All amounts specified as payable by the Licensee under this Agreement shall be exclusive of any sales, use, value added or similar taxes.

6. CHARGEABLE USERS

6.1 The Licence Fee and is assessed on the number of the Licensee's Chargeable Users during the 12 month period prior to the applicable payment date. The Licensee must immediately notify the Licensor if at any time the actual number of Chargeable Users exceeds the number of Chargeable Users stated in the Schedule. The Licensee acknowledges that in the event that such number of Chargeable Users increases during the initial 12 month period of this Agreement or in any subsequent 12 month period the Licence Fee will be increased in accordance with the Licensee's then applicable charges for any subsequent 12 month period.

7. LICENSEE'S UNDERTAKINGS

7.1 The Licensee will take all reasonable steps to ensure that the Licensed Resource is used only in accordance with the terms and conditions of this Agreement and shall inform Authorised Users of the permitted use restrictions and other provisions set out in this Agreement.

7.2 The Licensee shall put into place reasonable procedures to monitor the compliance with the terms and conditions of this Agreement by the Authorised Users.

7.3 The Licensee will notify the Licensor immediately of infringements that come to the Licensee's notice and the Licensee agrees to co-operate with the Licensor as appropriate to stop further abuse should it occur.

7.4 Subject to Clause 4.8, nothing in this Agreement shall make the Licensee liable for breach of the restrictions set out in the terms and conditions of this Agreement by any Authorised User as long as the Licensee complied with the terms of Clauses 6, 7.1, 7.2 and 7.3 and did not cause, intentionally assist in or encourage such breach nor allowed it to continue after having received notice of such breach whether from the Licensor or otherwise. However, in the event of continuing abuse the Licensor shall be entitled to terminate this Agreement.

7.5 The Licensor shall be entitled to monitor the use of the Licensed Resource through the Licensor's servers, or as the case may be any service provided by an agent on its behalf, so as to monitor compliance with this Agreement.

8. WARRANTIES, UNDERTAKINGS AND INDEMNITIES

8.1 The Licensor warrants to the Licensee that it has full right and authority to grant the Rights to the Licensee and that the use by the Licensee of the Licensed Resource in accordance with this Agreement will not infringe the rights of any third party.

8.2 The Licensor shall indemnify the Licensee for the amount of any award of damages against the Licensee by a court of competent jurisdiction as a result of any claim arising from a breach of the warranty in Clause 8.1 provided that the Licensee must inform the Licensor immediately upon becoming aware of any claim, not attempt to compromise or settle the claim and give reasonable assistance to the Licensor who shall be entitled to assume sole conduct of any defence and shall have the right at its option.

Cite them right: Academic Licence UK/ROW
(a) to procure the right for the Licensee to continue using the Licensed Resource;
(b) to make such alterations, modifications or adjustments to the Licensed Resource that it becomes non-infringing without incurring a material reduction in performance or function; or
(c) to replace the Licensed Resource with non-infringing substitutes provided that such substitutes do not entail a material reduction in performance or function.

8.3 The Licensor shall not be liable to the Licensee for any loss or damage whatsoever resulting from omissions or inaccuracies in the Licensed Resource regardless of how caused. The Licensor does not warrant that access to the Licensed Resource will be free from errors or faults. In the event of a fault, the Licensee shall notify Customer Support of the same by telephone, electronic mail or in writing.

8.4 Without prejudice to the generality of the foregoing, the Licensor shall not be liable for any claim arising from:
(a) any failure or malfunction resulting wholly or to any material extent from the Licensee's negligence, operator error, use other than in accordance with the User Documentation or any other misuse or abuse of the Licensed Resource;
(b) the failure by the Licensor to implement recommendations previously advised by the Licensor in respect of, or solutions for, faults in the Licensed Resource;
or
(c) the decompilation or modification of the Licensed Resource or its merger with any other program or any maintenance repair, adjustment, alteration or enhancement of the Licensed Resource by any person other than the Licensor or its authorised agent; or
(d) the Licensee or any Authorised User being unable to exercise the Rights due to the Licensed Resource being unavailable as a result of any act or omission of the Licensor provided that the period for which the Licensed Resource is not available shall not exceed a period of 50 hours (in aggregate) in any continuous period of 1000 hours.

8.5 The Licensee shall use its best efforts to safeguard the intellectual property, confidential information including without limitation the terms of this Agreement, and proprietary rights of the Licensor.

8.6 The Licensed Resource is provided "as is." Neither the Licensor nor anyone else makes any warranties of any kind, either express or implied, including but not limited to, warranties of satisfactory quality, accuracy or fitness for a particular purpose. Except as otherwise expressly provided in this Clause 8 and Clause 11, all conditions, warranties, terms, representations, and undertakings express or implied, statutory or otherwise in respect of the Licensed Resource are to the fullest extent permitted by law expressly excluded.

No oral or written information or advice given by any representative of the Licensor or by anyone else shall create any warranties.

8.7 The content of the Licensed Resource is subject to change without notice.

9. FORCE MAJEURE

9.1 Either party's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, floods, governmental restrictions, power failures, or damage or destruction of any network facilities or services, shall not be deemed a breach of this Agreement.

9.2 If any event set out in Clause 9.1 shall continue for a period in excess of 30 days either party shall be entitled to terminate this Agreement forthwith by written notice to the other.

10. NOTICE

Any notice to be served on either party by the other made under this Agreement shall be in writing sent by prepaid recorded delivery or registered post to the address of the addressee as set out in the Schedule or to such other address as notified by either party to the other as its address for service of notices and all such notices shall be deemed to have been received within 48 hours after posting.

11. LIABILITY

11.1 Neither party excludes or limits liability to the other party for death or
personal injury caused by its own
negligence or any other liability the
exclusion or limitation of which is
prohibited by law.

11.2 Except as provided for in Clause
11.1 above, the liability of the Licensor in
respect of any and all claims (whether in
contract or in tort) arising out of or in
connection with this Agreement is limited
in respect of each event or series of
connected events to the greater of
US$10,000 or an amount equal to the fees
paid under this Agreement.

11.3 Except as provided for in Clause
11.1, notwithstanding anything else
contained in this Agreement, in no event
shall the Licensor be liable to the Licensee
for:
(a) loss of profits, business, revenue,
goodwill, anticipated savings; and/or
(b) indirect, special, incidental or
consequential loss or damage; and
(c) any inaccuracy in the Licensed
Resource.

12. GOVERNING LAW

The Agreement is governed by and
construed in accordance with English Law
and the parties agree to submit to the
exclusive jurisdiction of the English courts.

13. SEVERABILITY

In the event any provision of this
Agreement is held by a court or other
tribunal of competent jurisdiction to be
contrary to law, the remaining provisions
of this Agreement will remain in full force
and effect.

14. WAIVERS

No provision of this Agreement or breach
thereof may be waived except in a writing
signed by the party against whom the
waiver is sought to be enforced.

15. THIRD PARTY RIGHTS
Nothing in this Agreement is intended to
confer rights on any third party, whether
pursuant to the Contracts (Rights of Third
Parties) Act 1999 or otherwise.