DATASET SUB-LICENCE AGREEMENT FOR

THE BRITISH ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE AND THE HISTORY OF SCIENCE IN GREAT BRITAIN

JISC SERVICES LIMITED (OPERATING AS JISC COLLECTIONS) (Company Number 2881024), a company limited by guarantee incorporated in England and Wales whose registered office is at 4 Portwall Lane, Bristol BS1 6NB (“Jisc Collections”).

OFFERS to you, (the “Institution”), permission to access the Licensed Material and use such material only on the terms and conditions as set out in this Sub-Licence.

Acceptance of this Sub-Licence will be by receipt of the Order Confirmation Email (as defined below) by Jisc Collections as part of Licence Subscriptions Manger (as defined below). Acceptance shall be acceptance of all terms and conditions of this Sub-Licence and no variation or counter offer will be accepted by Jisc Collections. In the event that no or partial compliance is made as to the manner or form described for acceptance, no sub-licence will be granted and this offer is deemed withdrawn.

BACKGROUND

A. The British Association for the Advancement of Science and the History of Science in Great Britain is the collection of the British Science Association (“BSA”) held at the Bodleian Library, Oxford and the main office of the BSA in South Kensington, London and additional material sourced from third party owners (“BAASGB”) and all intellectual property rights therein are owned by or duly licensed to the Publisher (as defined below);

B. The Publisher has agreed with Jisc Collections to make BAASGB available to Eligible Bodies and their users and to permit Jisc Collections to sublicense Eligible Bodies to use BAASGB on the terms of the Sub-Licence (all as defined below);

C. Jisc Collections has developed an online ordering service, ‘Licence Subscriptions Manger’, by which nominated persons can place, order, and manage orders online on behalf of their institution, which will be used in connection with this Sub-Licence;

D. The Sub-Licence includes, for the benefit of the Institution, commitments on the part of the Publisher relating to use of and access to the relevant parts of BAASGB specified in the Order (as defined below).

IT IS AGREED AS FOLLOWS

1 DEFINITIONS

1.1 In this Sub-Licence, the following terms shall have the following meanings:
“Access Order and Acceptance Form” means the form used for Orders placed on Licence Subscriptions Manager. A sample copy of the form is attached hereto in Sub-Licence Annex 1 to this Sub-Licence and may be modified as necessary. Once the completed form has been submitted by the Institution, the Jisc Ordering Platform automatically generates the Order Confirmation Emails.

“Access Period” means the period from the Start Date until the expiry date stated in an Order.

“Access Services” means services set out in Clause 5.1.

“Access Support Hours” means 8.00am to 6.00pm in the United Kingdom, on a Working Day.

“Access Year” means the period from the Start Date until the expiry of the first Calendar Year, and each subsequent Calendar Year thereafter during the Access Period.

“Authentication Information” means passwords, user names and any other information necessary to access Licensed Material by means of the Secure Authentication.

“Calendar Year” means each year running from 1 January to 31 December.
“Commercial Use” means use for the purpose of earning monetary reward or generating profit (whether by or for the Institution or an Authorised User) by means of the sale, resale, loan, transfer, licence, hire or other form of exploitation of the Licensed Material, but, for the avoidance of doubt, excluding:

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

“Confirmation Notice” means, in relation to a notice sent through the Jisc Ordering Platform, the email generated by the platform confirming receipt of the notice and sent to each of the Publisher and the Institution.

“Data Protection Laws” means the Data Protection Act 1998, the General Data Protection Regulation 2018, the Data Protection Act 2018 and any other law applicable to the UK relating to the protection of personal data and the privacy of individuals, including where applicable guidance and codes of practice issued by the Information Commissioner.

“Educational Purposes” means education, teaching, tuition, training, instruction, learning, private study and/or research, including distance learning and teaching.

“Eligible Body” means further and higher education institutions, research councils and academic-realted and non-academic-realted affiliates in the UK as listed at https://subscriptionsmanager.jisc.ac.uk/about/jisc-banding from time to time.

“Jisc Ordering Platform” means the platform providing the Licence Subscriptions Manger.

“Licence Subscriptions Manger” means the online subscription ordering service developed by Jisc Collections (the Licence Subscriptions Manger can be found at https://subscriptionsmanager.jisc.ac.uk) or any such service as may replace the Licence Subscriptions Manger.

“Licensed Content” means the published content and other parts of a Licensed Product which form part of the content licensed in accordance with the Order (ie excluding any Metadata) to which access and use rights are granted under this Sub-Licence.
“Licensed Material” means the Licensed Content (e.g. published content) forming part of the content of the Licensed Product and all Metadata relating to the Licensed Product and Licensed Content.

“Licensed Product” means The British Association for the Advancement of Science and the History of Science in Great Britain, as set out or referred to in Sub-Licence Schedule 2, which can be ordered on the Jisc Ordering Platform for access and use under this Sub-Licence.

“Metadata” means textual and other data associated with the Licensed Products and/or Licensed Content that describes the creation, content, and context of each part of the Licensed Product or Licensed Content, such as the name of the Publisher, the name of the owner of rights in the Licensed Material or any parts of it (including any copyright), subject matter, the date of publication, the location of the digital file, and in relation to Licensed Content, additionally the name of the creator and/or contributing author (or authors) and other authors.

“Mount” means to copy to or install on a computer, computer network or system.

“Order” means an order placed by the Institution in relation to Licensed Products by means of completing the Access Order and Acceptance Form and submitting the same on the Jisc Ordering Platform.

“Order Confirmation” means the generation of the Order Confirmation Email to each of the Institution, Jisc Collections and the Publisher.

“Order Confirmation Email” means, in the case of Orders placed on the Jisc Ordering Platform, the emails to each of the Institution Jisc Collections and the Publisher automatically generated by the Jisc Ordering Platform after the Institution has placed an Order, confirming that the Institution has placed the relevant order, the start and end date of the Access Period and that the Institution has agreed to the terms and conditions of this Sub-Licence.

“Permitted Use” means use in accordance with Clause 3 subject to the restrictions in Clause 4.

“Personal Data” means personal data as defined in the Data Protection Laws.

“Prohibited Act” means, directly or indirectly (a) to offer, promise or give any person working for or engaged by any party to the Sub-Licence a
financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Sub-Licence; (c) committing any offence: (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; (iii) defrauding, attempting to defraud or conspiring to defraud; (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

“Publisher” means John Wiley and Co. Limited.

“Publisher Commitments” has the meaning given in Clause 2.3.

“Publisher Platform” means the computing platform operated by or on behalf of the Publisher, including a cloud or virtual platform, on which the Licensed Material is hosted and can be accessed.

“Secure Authentication” means access by UK Access Management Federation compliant technology, Internet Protocol (“IP”) ranges or by username and password provided by the Institution or by other authentication means reasonably agreed between the Publisher and the Institution.

“Secure Network” means a network or virtual network which or the relevant functionality of which is only accessible to Authorised Users by Secure Authentication.

“Start Date” means the start date as specified in the Order.

“Sub-Licence Fee” means the fee payable for access to and use during the Access Period of the Licensed Material as set out in this Sub-Licence.

“Term” means the term of this Sub-Licence in accordance with Clause 10.
“Working Day” means a day other than a Saturday, Sunday or public holiday in England when banks in London are not open for business.

1.2 Clause, Schedule and Annex headings shall not affect the interpretation of this Sub-Licence.

1.3 The Schedules and Annexes form part of this Sub-Licence and shall have effect as if set out in full in the body of this Sub-Licence. Any reference to this Sub-Licence includes the Sub-Licence Schedules and Sub-Licence Annexes.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 A reference to writing or written includes email and any written submission made on the Jisc Ordering Platform.

1.7 Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words term preceding those terms.

1.8 References to web addresses in this Sub-Licence refer to the current web address, and any updated or replacement content/address.

2 SUB-LICENCE GRANT AND JISC COLLECTIONS’ RESPONSIBILITIES

2.1 Jisc Collections hereby grants to the Institution a non-exclusive, non-transferable right and licence for (except as expressly set out in Clause 3.1.1) the Access Period:

   (i) to access and make Permitted Use of the Licensed Material; and
   
   (ii) to permit Authorised Users to access and make Permitted Use of the Licensed Material;

2.2 Except as expressly provided in this Sub-Licence, such access shall be on the Publisher Platform through Secure Authentication.

2.3 Jisc Collections has agreed with the Publisher that the Publisher will meet the Publisher’s responsibilities and commitments set out in this Sub-Licence (the “Publisher Commitments”), including the requirements set out in Clauses 5 to 7, 9, 12.2, 13 and 15.3 and, subject to being informed in accordance with Clause 8.4, Jisc Collections will take all such reasonable steps as it considers appropriate to procure that the Publisher meet the
Publisher Commitments and remedy any failure by the Publisher to meet the Publisher Commitments.

3  **PERMITTED USES**

3.1  The Institution shall be entitled, for Educational Purposes only:

3.1.1  to Mount and use, both during the Access Period and thereafter, Metadata in bespoke or commercially available library information systems to manage library operations, including combining such Metadata with metadata from other sources and/or relating to other materials, and downloading, printing, communicating, displaying, supplying for use by others, and providing public access to the same;

3.1.2  to communicate, perform, display, download and print parts of, or extracts from, Licensed Content,

3.1.3  to provide Authorised Users with access to the Licensed Content for Educational Purposes via a Secure Network for the purposes set out in Clause 3.2;

3.1.4  to display, download and print the whole of, or parts of, or extracts from, Licensed Content for the purpose of promoting or testing, and training in the use of the Licensed Material;

3.1.5  to convert or adapt Licensed Material into Braille or other formats or forms suitable for providing access to, and use by, Authorised Users with impaired mental and/or physical abilities and to provide access to such converted or adapted form for the purposes of this Clause 3;

3.1.6  to provide single printed or electronic copies of individual documents or other parts of Licensed Content to individual Authorised Users, at their request, for Educational Purposes;

3.1.7  to make and distribute copies of training, teaching or course material reproducing parts of Licensed Content, as may be required by the Institution for the purpose of using the Licensed Material in accordance with Clause 3.2; and

3.1.8  to provide access to and permit use, in accordance with this Sub-Licence of, any archived copies of the Licensed Material made in accordance with Sub-Licence Schedule 4(1(b)) and/or 4(1(c)), if and for so long as the Publisher so fails to provide such access; and if no such archived copies are maintained, to make and supply to a reasonably agreed recognised secure repository a copy of the Licensed Material in electronic form, for the sole purpose of the repository retaining the same for use by the Institution and its Authorised Users (without prejudice to any other
3.2 The Institution shall be entitled to permit Authorised Users, for Educational Purposes only:

3.2.1 to access the Licensed Material by Secure Authentication in order to search, retrieve, display and view the Licensed Material;

3.2.2 to copy and paste, download, print and save electronic or print copies of parts of or extracts from Licensed Material, for individual use or for use in tutorials or study groups;

3.2.3 to copy and paste, download, print, save, convert or adapt copies or parts of or extracts from Licensed Material for the purposes of criticism, review, caricature, parody or pastiche. Authorised Users must specify the source, owner and creator, and publisher and any applicable copyright or database right notice of the publisher of the Licensed Material used in such ways unless this would not be possible for reasons of practicality or otherwise;

3.2.4 to mark-up or comment (electronically or otherwise) parts of Licensed Material (including by tagging, highlighting paragraphs and sentences, bookmarking, inserting hyperlinks, exporting references, and writing personal commentary, and saving the same);

3.2.5 to convert or adapt Licensed Material into formats or forms suitable for providing access to, and use by, Authorised Users with impaired mental and/or physical abilities and to make copies of such converted or adapted Licensed Material for use in accordance with this Clause 3.2;

3.2.6 to incorporate parts of or extracts from the Licensed Content in printed or electronic form in assignments, portfolios, theses, dissertations and other submissions (“Academic Works”), and to make reproductions of the Academic Works for personal use, library deposit and/or to provide to sponsors of the Academic Works. Authorised Users must specify the source, owner and creator, and publisher and any applicable copyright or database right notice of the publisher of the Licensed Content used in the Academic Works;

3.2.7 to incorporate parts of or extracts from the Licensed Material in electronic or printed course packs or management systems to be used in the course of instruction and/or virtual learning and/or research environments hosted on a Secure Network. Authorised Users must specify the source, owner and creator, and publisher and
any applicable copyright or database right notice of the publisher of the Licensed Material used in the course packs;

3.2.8 to display publicly, communicate to the public or perform in public parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other similar event. Authorised Users must specify the source, listing title and author of the extract, title and author of the work, copyright notice, and each publisher of the Licensed Material used in such ways;

3.2.9 to save and/or deposit in perpetuity parts of the Licensed Material in electronic repositories on a Secure Network operated by the Institution, access to and use of which is limited to Authorised Users;

3.2.10 to Mount a copy of the Licensed Material (as supplied on request by the Publisher on a hard drive for a refundable fee), and use such copy for the purposes of, and to perform and engage in computational analysis (including text and data mining) using the Licensed Material for the purpose of research and other Educational Purposes but not for Commercial Use, and to permit Authorised Users to distribute and display and otherwise use (publicly or otherwise), other than for Commercial Use, the results, provided that such results do not reproduce the whole or a substantial part of any Licensed Content. Copies of Licensed Content made under this Clause 3.2.10 shall be deleted promptly after the computational analysis has been completed;

3.2.11 to download Licensed Material in whole or in part for the Authorised User’s personal Educational Purposes onto personal computing devices including tablets, e-book readers and laptops, and stand-alone computers, without any limit in number. The Publisher and Jisc Collections makes no warranty as to the suitability of any Licensed Material for use on such devices; and

3.2.12 to provide access to, communicate to, and share material resulting from any use under this Clause 3.2 with other Authorised Users for their use in accordance with this Sub-Licence.

3.3 The provisions of this Sub-Licence are without limitation to the rights of the Institution or Authorised Users to do any act permitted under the Copyright, Design and Patents Act 1988, including Part I, Chapter III (Acts Permitted in relation to Copyright Works), or The Copyright and Rights in Databases Regulations 1997, or permitted under any CC-BY or other open access licence applicable to the Licensed Material or otherwise which, apart from the rights granted under this Sub-Licence, would not infringe the intellectual property rights in the Licensed Material and, notwithstanding any provision of this Sub-Licence, the Institution and Authorised Users shall remain entitled to do any such acts.
3.4 Unless expressly set out in this Clause 3, there shall be no limit on the number of Authorised Users to which this Sub-Licence (including Clause 3.1 and Clause 3.2) applies.

4 RESTRICTIONS

4.1 Except where this Sub-Licence provides otherwise, the Institution shall not, and shall not grant an Authorised User the right to:

4.1.1 sell, resell, or sub-license the Licensed Material, in whole or in part, unless the Publisher has given permission in writing to do so;

4.1.2 remove, obscure or alter copyright notices, acknowledgements or other means of identification, or disclaimers, other than Metadata;

4.1.3 alter or adapt the Licensed Material (other than Metadata), except to the extent necessary to make it perceptible on a computer screen;

4.1.4 display or distribute any part of the Licensed Material (other than Metadata) on any electronic network, including the internet, other than on a Secure Network;

4.1.5 make any Commercial Use of the Licensed Material (in whole or in part);

4.1.6 use the Licensed Materials (in whole or in part) other than for Educational Purposes; or

4.1.7 provide access to and/or permit use of the Licensed Content by anyone, or transmit any part of the Licensed Material (other than Metadata) by any means to anyone, other than an Authorised User.

4.2 The Institution shall not provide access to Walk-In Users to the Licensed Content at a location other than the Institution’s premises (but, for the avoidance of doubt, may provide access on such premises by wireless means).

4.3 The restrictions in this Clause 4 are subject to Clause 3.3 (Acts permitted by legislation or other rights in relation to copyright works).

5 RESPONSIBILITIES OF THE PUBLISHER

5.1 During the Access Period the Publisher shall make the Licensed Material available through the Publisher Platform to the Institution and Authorised Users for access, download and Permitted Use.

5.2 During the Access Period the Publisher shall at all times:
allocate and use sufficient resources (including servers and communications and network equipment) to provide the Access Services in accordance with the terms of this Sub-Licence; and

subject to routine maintenance (which the Publisher shall use reasonable endeavours to conduct outside Access Support Hours and which the Publisher shall in any event conduct in such a manner to minimise disruption of the Access Services), provide the Access Services on a continuous and uninterrupted basis and shall, on any interruption or suspension of the Access Services occurring, restore the Access Services as soon as reasonably practicable.

During the Access Period, the Publisher, in respect of the Licensed Material made available under Clause 5.1:

shall not, without the agreement of the Institution, such agreement not to be unreasonably withheld, implement any digital rights management technologies or access management technologies which have a material adverse impact on the performance or usability of the Licensed Material in accordance with this Sub-Licence or on the exercise by the Institution of its rights under this Sub-Licence, for example by repeatedly requiring an Authorised User to provide active confirmation in relation to their use of or access to the Licensed Material, which impair the usability of DOIs or other links, or which require the downloading of software onto any platform used for accessing or using the Licensed Material;

shall provide support to Authorised Users by e-mail or by a telephone help desk, and assist Authorised Users with general enquiries in connection with the Licensed Material, including relating to access, use, functionality and content of the Licensed Material, during the Access Support Hours, and shall use reasonable endeavours to answer any such query within 24 hours of such query being made;

shall provide to the Institution electronic product documentation relating to the Licensed Material which is reasonably sufficient to enable Authorised Users to access and make use of the Licensed Material, which the Institution shall be entitled to copy and distribute, provided such documents are copied in full and such copies include an acknowledgement of the Publisher as the licensor of the Licensed Material.

Withdrawal of publications

The Publisher reserves the right at any time to withdraw from the Licensed Material any Licensed Material (including any Licensed Product or Licensed Content or part of Licensed Content) ("Withdrawn Material"): 
5.4.1 which the Publisher no longer entitled to publish; or

5.4.2 which the Publisher has reasonable grounds to believe infringes copyright or is unlawful.

5.5 The Publisher shall promptly give written notice of such withdrawal to the Institution.

6 RESPONSIBILITIES OF THE PUBLISHER: AUTHORISED USERS

6.1 The Publisher shall not require Authorised Users to enter into an end user licence agreement or other terms and conditions of use in connection with their access to or use of the Licensed Material under this Sub-Licence or otherwise impose any restrictions on an Authorised User's use of the Licensed Material other than provided in this Sub-Licence. No such end user licence agreement or terms or conditions or restrictions sought to be imposed shall be of any effect; provided that, where the licence the Publisher has, in relation to specific Licensed Content, more restricted rights than Permitted Use, it shall make that clear in the Metadata for the Licensed Product or Licensed Content and notify the Authorised User on access to the Licensed Content.

6.2 The Publisher shall not, and shall not seek to, collect Personal Data in relation to any Authorised User other than as is reasonably and properly required for the administration of this Sub-Licence, and shall fully comply with its obligations under the applicable Data Protection Laws in relation to the collection, use and retention, and any other processing of any such Personal Data.

7 RESPONSIBILITIES OF THE PUBLISHER: INFORMATION AND LIBRARY MANAGEMENT STANDARDS

7.1 During the Access Period, the Publisher shall implement the standards and other provisions of Sub-Licence Schedule 3.

8 RESPONSIBILITIES OF INSTITUTION

8.1 The Institution shall:

8.1.1 provide passwords and other confidential Authentication Information only to Authorised Users and take reasonable steps to prevent Authorised Users from providing such Authentication Information to anyone else;

8.1.2 provide to Jisc Collections lists of valid IP addresses for the purpose of managing access to the Licensed Material and update those lists regularly as agreed by the parties from time to time;
8.1.3 use reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Material;

8.1.4 inform the Authorised Users about the conditions of use of the Licensed Material provided for in this Sub-Licence and to the extent that such terms apply to them, use reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Sub-Licence; and

8.1.5 configure the computer system through which the Licensed Material used by the Institution and Authorised Users, and put in place procedures, in accordance with reasonably appropriate accepted standards, for the purpose of preventing access to the Licensed Material by any person other than an Authorised User.

8.2 The Institution shall use reasonable efforts to monitor compliance with the terms of this Sub-Licence by itself and Authorised Users and shall promptly notify the Publisher and Jisc Collections, providing full particulars (to the extent that it is not prohibited by law or contractual obligation from doing so), on becoming aware of any of the following:

8.2.1 any unauthorised access to or use of the Licensed Material or unauthorised use of Authentication Information; or

8.2.2 any act by an Authorised User which gives rise to a breach of this Sub-Licence.

8.3 As soon as the Institution is aware of any breach of the terms of this Sub-Licence by itself, the Institution shall:

8.3.1 take reasonable steps to investigate such breach for the purpose of ensuring that the relevant activity ceases and preventing any recurrence; and

if the Institution considers this appropriate, take steps against the individual concerned in accordance with the Institution's disciplinary procedure, but the Institution shall not have any other liability for any breach relating to the security of the Secure Network or use by Authorised Users of any Licensed Material.

8.4 As soon as the Institution is aware of any failure by the Publisher to meet the Publisher Commitments which the Institution considers Jisc Collections should raise with the Publisher, it will promptly give notice of such failure to Jisc Collections, setting out details of the failure and its impact on the Institution and Authorised Users, and provide such further information and details as Jisc Collections may request in connection with such failure.

9 FEES AND PAYMENT

9.1 The Institution shall pay to Jisc Collections the Sub-Licence Fee in the amounts set out in Sub-Licence Schedule 1.
9.2 All sums specified under this Sub-Licence, unless otherwise stated, are exclusive of VAT and any other similar or equivalent taxes or duties, where applicable, and any applicable VAT will be payable in addition.

10 TERM AND TERMINATION

10.1 Subject to Clauses 10.3 to 10.6, this Sub-Licence shall commence upon the Start Date of the Order, and shall continue, unless terminated earlier in accordance with this Clause 10, until 15 June 2030.

10.2 On termination of the Access Period the Publisher will make the Licensed Material accessible free, open and authentication/password-free globally through the Platform (i.e. without need for authentication or geographical limitation) via a suitable open access licence (e.g. CC-BY or PD).

10.3 The Institution shall have the right to terminate this Sub-Licence during the Access Period, by giving not less than 60 (sixty) days’ written notice to Jisc Collections, such notice to expire on at the end of the relevant Access Year.

10.4 Without affecting any other right or remedy available to it, either party may terminate this Sub-Licence with immediate effect by giving written notice to the other party if:

10.4.1 the other party becomes insolvent, admits insolvency or a general inability to pay its debts as they become due, has appointed a receiver or administrative receiver over it or over any part of its undertaking or assets, passes a resolution for winding up other than a bona fide plan of solvent amalgamation or reconstruction, files a petition for protection under any applicable bankruptcy code, or has filed against it or becomes subject to an insolvency petition in bankruptcy or an order to that effect; or

10.4.2 the other party commits a material or persistent breach of any term of this Sub-Licence which breach is irremediable or, if such breach is remediable, fails to remedy that breach within a period of sixty (60) days after being notified in writing to do so.

10.4.3 the Publisher gives notice to Jisc Collections under the agreement between the Publisher and Jisc Collections in relation to conduct by the Institution with Authorised Users, or otherwise in respect of provisions corresponding to Clauses 10.4.1 and 10.4.2 above.

10.5 Without affecting any other right or remedy available to it, the Institution may terminate this Sub-Licence with immediate effect by giving written notice to Jisc Collections if the Publisher:
10.5.1 has failed to comply with the provisions of Clause 5 and 6 and fails to remedy the non-compliance within a period of sixty (60) days after being notified by Jisc Collections in writing to do so; or

10.5.2 is no longer entitled to make the Licensed Material available for access and Permitted Use by the Institution and Authorised Users.

10.6 Without affecting any other right or remedy available to it, Jisc Collections may terminate this Sub-Licence with immediate effect by giving written notice to the Institution if the Institution:

10.6.1 fails to pay any undisputed amount due under this Sub-Licence on the due date for payment and remains in default for not less than sixty (60) days after being notified in writing to make such payment;

10.6.2 wilfully and repeatedly infringes, or wilfully permits Authorised Users repeatedly to infringe, the copyright in the Licensed Material; or

10.6.3 has committed a breach of Clause 4 (Restrictions) or Clause 8.1 (Responsibility of Institution) and fails remedy that breach within a period of sixty (60) days after being notified in writing to do so.

10.7 For the avoidance of doubt, the Institution shall not be deemed to be in breach of this Sub-Licence on the grounds that an act of an Authorised User, if carried out by the Institution, would have been a breach of this Sub-Licence, without prejudice to any express obligations applicable to the Institution under this Sub-Licence.

11 CONSEQUENCES OF TERMINATION

11.1 On expiry or termination of this Sub-Licence for any reason and subject to any express provisions set out elsewhere in this Sub-Licence:

11.1.1 all rights and licences granted pursuant to this Sub-Licence shall cease and the Institution shall cease to access and use, and permit access to and use of, the Licensed Material; and

11.1.2 the Publisher may cease to make available Licensed Material for access and use by the Institution and Authorised Users

provided that the Institution may retain and use, and permit the use of, Metadata, and that copies of parts of the Licensed Material made by the Institution or Authorised Users in accordance with this Sub-Licence may be retained, subject to the terms of Clauses 3 and 4 to the extent that these are applicable.
11.2 Any provision of this Sub-Licence that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Sub-Licence (including Clauses 2.1, 4, 6.2, 8 and 10 to 21) shall continue in force.

11.3 Termination or expiry of this Sub-Licence shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Sub-Licence which existed at or before the date of termination or expiry.

12 **ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

12.1 Subject to Clause 12.2, the Institution acknowledges that all copyright in the Licensed Material are the exclusive property of the Publisher or its licensors and that this Sub-Licence does not assign or transfer to the Institution any right, title or interest in such copyright except for the right to access and use the Licensed Material in accordance with the terms and conditions of this Sub-Licence.

12.2 The Publisher and Jisc Collections hereby acknowledge that any copyright and database rights arising from any computational analysis (including any text mining/data mining) of the Licensed Material referred to in Clause 3.2.10 shall, as between the Institution and Authorised User on the one hand, and the Publisher and Jisc Collections (and any licensor of the Publisher or other rights holder in the Licensed Materials), on the other, be the property of the relevant Authorised Users or the Institution, as the case may be.

12.3 For the avoidance of doubt, the Publisher and Jisc Collections hereby acknowledges that any database rights created by the Institution as a result of exercising any rights in relation to Metadata under Clause 3.1.1 shall be the property of the Institution.

13 **REPRESENTATION, WARRANTIES AND INDEMNITIES**

13.1 The Publisher warrants to the Institution that:

13.1.1 all intellectual property rights in the Licensed Material are owned by or validly licensed to the Publisher and that the Permitted Use of the Licensed Material will not infringe any intellectual property of any person; and

13.1.2 the content of the Licensed Material is not unlawful.

13.2 The Publisher shall indemnify the Institution (for itself and for the benefit of any Authorised Users) against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and reasonable legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Institution or Authorised Users
arising out of or in connection with any claim by or action brought by any third party that the
access and Permitted Use by the Institution or by any Authorised User in accordance with
this Sub-Licence infringes the intellectual property rights of that third party.

13.3 In relation to any claim made or action brought to which Clause 13.2 applies, the Institution
shall:

13.3.1 promptly give the Publisher and Jisc Collections written notice;

13.3.2 give the Publisher immediate and complete control of the defence and settlement
of such claim provided that the Publisher gives the Institution reasonable security
in respect of any liability the Institution may have in respect of such claim or action
and any indemnity to which the Institution may be entitled under Clause 13.2; and

13.3.3 give the Publisher (and, so far as relevant, Jisc Collections) all reasonable
assistance with the defence and settlement of such claim.

13.4 The indemnity in Clause 13.2 will not apply to the extent that the relevant claim arises as a
result of any change, alteration or amendment in any way to any Licensed Material by the
Institution or any Authorised User.

13.5 While the Publisher and Jisc Collections have no reason to believe that there are any
inaccuracies or defects in the information contained in the Licensed Material neither the
Publisher nor Jisc Collections make any representation or give any warranty, express or
implied, with regard to the information contained in or in any part of the Licensed Material
including the fitness of such information or part for any purposes whatsoever and, subject to
Clause 13.2, the Publisher and Jisc Collections accept no liability for loss suffered or incurred
by the Institution or Authorised Users as a result of their reliance on the Licensed Material.

13.6 In relation to any claim or action referred to in Clause 13.2, or any other claim by a third party
of which the Institution becomes aware, that the access to or use of any Licensed Material
infringes any copyright, the Publisher may at its option and expense, and on written notice to
the Institution (and without prejudice to the Institution’s rights under Clause 5.5 (Withdrawing
Material) or Clause 13.2 (Infringement Indemnity), remove such Licensed Material from the
Licensed Material or obtain for the Institution the right to continue accessing and using such
Licensed Material in accordance with this Sub-Licence.

13.7 Nothing in this Sub-Licence shall make the Institution liable for any act by any Authorised
User which gives rise to a breach of the terms of this Sub-Licence, provided that the Institution
did not cause or knowingly assist or condone the continuation of such breach after becoming
aware of an actual breach having occurred.
13.8 Except as provided for in Clause 13.1 or 13.2, neither the Institution nor any Authorised User nor the Publisher nor Jisc Collections will be liable to the other in contract or negligence or otherwise for:

13.8.1 any special, indirect, incidental, punitive or consequential damages; or

13.8.2 loss of direct or indirect profits, business, contracts, revenue or anticipated savings; or

13.8.3 for any increased costs or expenses.

13.9 No party excludes or limits its liability under this Sub-Licence for:

13.9.1 death or personal injury to the extent it results from its negligence, or that of its employees or agents in the course of their engagement; or

13.9.2 its own fraud or that of its employees or agents in the course of their engagement.

14 **FORCE MAJEURE**

14.1 Without prejudice to Clause 13.2, neither party shall have any liability under or be deemed to be in breach of this Sub-Licence for any failure to perform any term or condition of this Sub-Licence which result from circumstances beyond the reasonable control of such party, including war, strikes, flood, governmental restrictions, power, telecommunications or Internet failures or damage to or destruction of any network facilities not arising from an act or omission of such party or its employees or contractors (“Force Majeure Event”).

14.2 Each party shall promptly notify the other party in writing of any Force Majeure Event which is causing delay or failure in performance of such party’s obligations under this Sub-Licence, or will or is likely to do so, including the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Sub-Licence, and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

14.3 Provided it has complied with Clause 14.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Sub-Licence by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of this Sub-Licence or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

14.4 If a Force Majeure Event prevents, hinders or delays the Affected Party’s performance of its obligations for a continuous period of more than 60 (sixty) days, the party not affected by the Force Majeure Event may terminate this Sub-Licence by giving 14 days’ written notice to the Affected Party.
ASSIGNMENT

15.1 Subject to Clauses 15.2 and 15.3, this Sub-Licence is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Sub-Licence, without the prior written consent of the other party, such consent shall not be unreasonably withheld or delayed.

15.2 If the Institution merges with any other Eligible Body or transfers the whole or part of its activities as an Eligible Body to another Eligible Body, the Institution or successor Institution (as the case may be), and the Authorised Users who were Authorised Users through the Institution, shall be entitled to receive the benefit of this Sub-Licence for the remainder of the current Access Period, subject to remaining bound by the obligations under this Sub-Licence:

15.3 If the Publisher is subject to any merger or acquisition, or if the Publisher or any licensor or other owner of any rights in any Licensed Material relevant to the licences or rights granted under this Sub-Licence transfers or grants any rights inconsistent with the Institution’s rights under this Sub-Licence, this Sub-Licence shall continue in effect, and Publisher shall procure that any such transfer or grant of rights is subject to the Institution's rights under this Sub-Licence or that the Institution is compensated in such amount as may be fair and reasonable in the circumstances in respect of the loss of any such rights which cannot be preserved for the Institution.

15.4 In any assignment to which the other party has given consent under Clause 15.1, the assigning party shall procure and ensure that the assignee shall assume all rights and obligations of the assigning party under this Sub-Licence and agrees to be bound to all the terms of this Sub-Licence.

GOVERNING LAW AND JURISDICTION

16.1 This Sub-Licence and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

16.2 The parties irrevocably agree that any dispute arising out of or in connection with this Sub-Licence will be subject to and within the jurisdiction of the courts of England and Wales.

DISPUTE RESOLUTION

17.1 If any dispute arises out of or in connection with this Sub-Licence or the performance, validity or enforceability of it (“Dispute”), the parties shall attempt to settle it by negotiation. To this end they shall use their respective reasonable endeavours to consult or negotiate with each other in good faith, and recognising their mutual interests, attempt to reach a just and equitable settlement satisfactory to both parties. Negotiations shall be conducted between
the Director (or equivalent position) of Jisc Collections, or its nominated representative, and
the current Vice Chancellor (or equivalent post) of the Institution, or their nominated
representative.

17.2 If the dispute cannot be resolved by the parties within one month of being escalated as
referred to in Clause 17.1, the dispute may by agreement between the parties be referred to
a neutral adviser or mediator (the "Mediator") chosen by agreement between the parties. All
negotiations connected with the dispute shall be conducted in confidence and without
prejudice to the rights of the parties in any further proceedings.

17.3 Where the parties agree that a Dispute would best be resolved by the decision of an
independent expert, they will use reasonable efforts to agree upon the nature of the expert
required, on the appointment of the expert and, with the expert, the terms of his or her appointment

17.4 Any person to whom a reference is made under Clause 17.3 shall act as expert and not as
an arbitrator and his decision (which shall be given by the expert in writing and shall state the
reasons for the decision) shall be final and binding on the parties except in the case of
manifest error or fraud.

17.5 Each party shall provide such expert with such information and documentation as the expert
may reasonably require for the purposes of forming his or her decision.

17.6 The costs of the expert shall be borne by the parties in such proportions as the expert may
determine to be fair and reasonable in all circumstances or, if no determination is made by
the expert, by the parties in equal proportions.

17.7 Subject to Clause 17.1, except where urgent interim measures are sought, and 17.4, nothing
in this Clause 17 shall prevent either party commencing or continuing court proceedings in
relation to the Dispute under Clause 16.

18 NOTICES

18.1 Any notice given to a party under or in connection with this Sub-Licence shall be in writing
and shall be delivered by hand or email, or by pre-paid first-class post or other next Working
Day delivery service at its address set out below:
18.1.2 if to the Institution: as stated in the Access Order and Acceptance Form.

18.2 Any notice or communication shall be deemed to have been received:

18.2.1 if delivered by hand, on signature of a delivery receipt; or

18.2.2 if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or

18.2.3 if sent by email, on delivery of the email (as evidenced by a delivery receipt) if delivered during working hours on a Working Day, and otherwise on the first Working Day following delivery; or

18.2.4 if sent via the Jisc Ordering Platform (if any), on delivery of the Confirmation Notice.

18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19 PREVENTION OF FRAUD AND CORRUPTION

19.1 Each party represents and warrants that neither it, nor to the best of its knowledge any of its employees, agents or contractors have at any time prior to the Start Date:

19.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

19.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

19.2 Neither party during the term of this Sub-Licence shall offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing any act in relation to the obtaining or execution of this Sub-Licence or for showing or refraining from showing favour or disfavour to any person in relation to this Sub-Licence.

19.3 Each party shall take all reasonable steps in accordance with good industry practice to prevent fraud by its employees, and the party (including its shareholders, members and directors), in connection with this Sub-Licence and shall notify the other party in writing immediately if it has reason to suspect that any fraud is occurring or is likely to occur.
19.4 If a party or its staff engages in conduct prohibited by Clause 19.1.1 or commits fraud in relation to this Sub-Licence, the other shall be entitled to:

19.4.1 terminate this Sub-Licence and recover from the first party the amount of any loss suffered resulting from the termination, including the cost reasonably incurred by making other arrangements for the provision of access to the Licensed Material and any additional expenditure incurred by the other party throughout the remainder of this Sub-Licence; and

19.4.2 recover in full from the first party any other loss sustained in consequence of any breach of this clause.

20 THIRD PARTY RIGHTS

20.1 Except as expressly provided elsewhere in this Sub-Licence, a person who is not a party to this Sub-Licence is not intended to have any rights to, and shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Sub-Licence.

20.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Sub-Licence are not subject to the consent of any other person, and a person who is not a party to this Sub-Licence shall not be entitled to require its consent to any amendment.

21 GENERAL

21.1 This Sub-Licence its Schedules and Annexes constitute the entire agreement between the parties and supersede all prior communications, promises, assurances, warranties, representations and understandings and agreements (whether written or oral) relating to its subject matter, but without prejudice to any continuing rights and obligations arising under any prior formal licence agreements between the Institution and the Publisher or Jisc Collections.

21.2 This Sub-Licence may not be amended or modified except by agreement of both parties in writing.

21.3 Nothing in this Sub-Licence shall be construed to create any relationship of partnership, agency or employment between any of the parties.

21.4 If any provision or part-provision of this Sub-Licence is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Sub-Licence.
21.5 The rights of the parties arising under this Sub-Licence shall not be waived except in writing. Any waiver of any of a party’s rights under this Sub-Licence or of any breach of this Sub-Licence by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Sub-Licence shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
(g) provide relevant information to third party discovery tools (such as Scopus, Summon), as applicable, in accordance with NISO recommendations (https://groups.niso.org/apps/group_public/download.php/14820/rp-19-2014_ODI.pdf); and

(h) meet any other reasonable standards that are generally agreed for adoption amongst the United Kingdom Higher Education Institutions during the Term.

* urls and web addresses are for guidance and may change