

Licence Plus Agreement for NHS in Scotland

Terms and Conditions

Introduction

This Agreement records the terms on which CLA:

- i) grants a licence to the National Health Service in Scotland to photocopy, scan or otherwise reproduce, and to use or to re-use extracts from material published in hard copy and electronic form in which copyright subsists, along with such other additional rights in relation to that material as are agreed and set out in the attached Appendix; and
- ii) shall procure the supply to the National Health Service in Scotland from CLA or from a third-party content supply service certain copyright-fee-paid Digital Rights Management (DRM)-free material which may be used under the terms of the above licence as agreed and set out below.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following meanings shall apply:

Additional Rights:

the additional rights set out in the Appendix;

Agreement:

these terms and conditions together with the attached Annex and Appendix and the Supply Service Terms;

Annex:

the separate sheet indicating the Commencement Date, the Fee, the Term and details of the Content, signed by both CLA and the Licensee;

Authorised Persons:

i) for Paper Copies:

- a) employees of the Licensee, workers consultants and contractors engaged by the Licensee;
- b) members of the public known as “non-executive members” who sit on a Designated Committee of an NHS organisation when acting in connection with the activities of the Designated Committee;
- c) employees and workers of any HEI or FEI who are on temporary or permanent placement with the Licensee but only whilst, and to the extent, that they are engaged in the business of the Licensee or in providing such consultancy services to it;
- d) employees and workers of any Library Service Provider while providing library services to the Licensee;
- e) workers employed by local authorities or Integration Joint Boards who are engaged performing NHSS activities but only whilst, and to the extent that, they are engaged on such activities; and
- f) students of any HEI or FEI who are on temporary or permanent placement with the Licensee for training and/or receiving instruction as part of their course of study at their Further or Higher Education Institution, but only whilst, and to the extent that, they are engaged in such training and/or receiving such instruction; and

ii) for Digital Copies:

those individuals in (i) above who are permitted by the Licensee to have access to the Licensee’s Secure Network whose identity is authenticated at the time of login and periodically thereafter consistent with current best practice and whose conduct is subject to regulation by the Licensee;

where ‘workers’ has the meaning given to it by the Employment Rights Act 1996 and ‘consultants’ means individuals providing consultancy services to the Licensee. The term ‘consultants’ shall also include those members of a Designated Committee (not otherwise being an Authorised Person) when acting in connection with the activities of the Designated Committee;

CCC Electronic-Rights Works:

those works whether in digital or hard copy form, published by a Participating US Publisher identified on CLA’s website or other electronic means controlled by CLA as being available for scanning and digital use or re-use;

The Copyright
Licensing Agency Ltd

London Office:
Tel 020 7400 3100
Email cla@cla.co.uk
www.cla.co.uk

Edinburgh Office:
Tel 0131 272 2711
Email clascotland@cla.co.uk

Registered in England
Reg no. 1690026

CLA:

The Copyright Licensing Agency Ltd;

CLA's website:

www.cla.co.uk or such other website as may be notified to the Licensee. A reference to a list or other information on or which can be accessed via CLA's website or other electronic means controlled by CLA shall include:

- i) any such information which is stated to be of general application to all CLA licences and any stated to apply specifically to CLA licences for the NHS in Scotland or to public administration; and
- ii) information as periodically amended by CLA, any such amendment taking effect on the next Quarter Day after such amendment is first posted;

Commencement Date:

the date noted in the Annex;

Content:

the copyright-fee paid DRM-free material as set out in the Annex;

Copyright Notice:

a statement in the following, or substantially similar, terms: "This document has been supplied under a CLA Licence. It is protected by copyright and, except as may be permitted by law, it may not be further copied, stored or on-copied electronically, even for internal purposes without the prior permission of the Rightsholder or under the terms of a CLA Licence";

Designated Committee:

any group of individuals (at least 1 of whom must be an Authorised Person) created by the Licensee and having an advisory, consultative, tribunal or executive function in connection with its activities;

Digital Copies:

either electronic copies of Material Licensed For Scanning, in whole or part, or copies made in the course of, or as a result of, the access or use by Authorised Persons of Digital Material which, in all cases, are direct unaltered copies of the work copied and are made in accordance with the terms of the Licence;

Digital Material:

still images and text from publications created and distributed in electronic form (including certain e-books, e-journals and websites) published by a Participating Digital Material Publisher, CCC Electronic-Rights Works and electronic publications originating in other countries as identified on or which can be accessed via CLA's website or other electronic means controlled by CLA except Excluded Material. For the avoidance of doubt, material other than still images and text is not included in the Licence, nor is any material which is only referred to in, or can only be accessed by following an external link in an electronic publication of a Participating Digital Material Publisher and where that material is not itself included in such electronic publication;

Excluded Material:

those categories of work and individual works identified as Excluded Categories and Works as shown on CLA's website or other electronic means controlled by CLA. For the avoidance of doubt, categories of work or individual works may be excluded from Material Licensed for Photocopying, from Material Licensed for Scanning or from Digital Material or any combination thereof;

Fee:

the agreed fee as stated in the Annex;

FEI:

any Further Education Institute in the UK;

HEI:

any Higher Education Institution in the United Kingdom;

Integration Joint Boards:

has the meaning set out in the Public Bodies (Joint Working) (Scotland) Act 2014;

Library Service Provider:

any organisation which from time to time provides library services to, and for the purposes of, the Licensee;

Licence:

the licence granted by Clause 2;

Licensed Copies:

either Paper Copies or Digital Copies as appropriate;

Licensed Material:

any and all Material Licensed For Photocopying, Material Licensed For Scanning and Digital Material;

Licensee:

Health Board and Special Health Board (each as listed in the Schedule), Healthcare Improvement Scotland, the Common Services Agency for Scottish Health Service (each as defined in The National Health Service (Scotland) Act 1978) and the Mental Welfare Commission for Scotland which together comprise the NHSS, on whose behalf the licence fee has been paid;

Material Licensed For Photocopying:

original published editions of books, journals, magazines and other periodicals in which copyright subsists published in hard copy form in the Photocopying Mandate Territories or published by a Participating US Publisher EXCEPT any Excluded Material;

Material Licensed For Scanning:

original published editions of books, journals, magazines and other periodicals in which copyright subsists published in hard copy form in the Scanning Mandate Territories and CCC Electronic-Rights Works and, in both cases, Paper Copies derived therefrom by the Licensee EXCEPT any Excluded Material;

NES:

NHS Education for Scotland;

NHSS:

the National Health Service in Scotland;

Paper Copies:

photocopies onto paper made from original Material Licensed For Photocopying (or a copyright fee-paid copy) and paper printouts of Digital Copies made in accordance with the terms of the Licence;

Participating Digital Material Publisher:

a Rightsholder who has confirmed to CLA that it is willing to permit the use under the Licence of electronic publications in which it owns or controls the copyright and who has not withdrawn such permission as listed on CLA's website;

Participating US Publisher:

a publisher participating in the agreement between the Copyright Clearance Center (CCC) and CLA as listed on CLA's website;

Photocopying Mandate Territories:

the United Kingdom, Argentina, Australia, Austria, Barbados, Belgium, Canada (including Quebec), Chile, Denmark, Finland, France, Germany, Ghana, Greece, Hong Kong, Iceland, Ireland, Italy, Jamaica, Japan, Luxembourg, Malawi, Mexico, The Netherlands, New Zealand, Norway, The Philippines, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Trinidad and Tobago and Turkey as the list may be amended on CLA's website;

Prescribed Rate:

the rate of interest prescribed from time to time pursuant to The Late Payment of Commercial Debts (Interest) Act 1998;

Quarter Day:

1st January, 1st April, 1st July or 1st October;

Rightsholder:

any person owning or controlling the copyright in any Licensed Material;

Scanning Mandate Territories:

the United Kingdom, Australia, Canada (including Quebec), Chile, Denmark, Finland, France, Greece, Hong Kong, Iceland, Ireland, Jamaica, Japan, New Zealand, Norway, the Philippines, Singapore, Spain, South Africa, South Korea, Switzerland and Turkey as this list may be amended on CLA's website;

Secure Network:

the computer network operated or controlled by the Licensee (whether a standalone network or a virtual network within the Internet) which is accessible only by Authorised Persons;

Service User:

an individual receiving medical care, attention or advice from the Licensee;

Supply Service:

either: (a) CLA's content supply service; or (b) a third-party content supply service; as set out in the Annex;

Supply Service Terms:

the terms and conditions of supply of the Supply Service as updated from time to time, a hyperlink to the current version of which is set out in the Annex, or any such other terms as subsequently notified to the Licensee by CLA or the Supply Service; and

Term:

the fixed period shown on the Annex.

- 1.2 All references to the singular in this Agreement may include the plural and vice versa as the context so requires and references to any gender shall include both genders. Reference to a numbered Clause, the Appendix or the Annex relate to this Agreement.

2. GRANT OF LICENCE AND SUPPLY OF CONTENT

- 2.1 From the Commencement Date, CLA grants to the Licensee and, as appropriate, Authorised Persons and (to the extent expressly permitted below) Service Users, and the carers or guardians of Service Users, the non-exclusive right, subject to the terms and conditions set out in the following clauses to:

- 2.1.1 make, or permit the making of, Paper Copies and to distribute, or permit the distribution of, such Paper Copies to Authorised Persons;
- 2.1.2 scan, or permit the scanning of, Material Licensed for Scanning to produce Digital Copies provided that, subject to Clause 6, the Licensee shall use reasonable endeavours to identify whether it subscribes to a digital version of the work in question and, if so, to use that digital version instead of creating a Digital Copy by scanning;
- 2.1.3 make available, or permit the making available of, Digital Copies, in both cases solely to Authorised Persons and (subject to Clause 2.1.6) to Service Users, and the carers or guardians of Service Users, within the Secure Network. This includes, for the avoidance of doubt, the indexing, searching, opening, viewing, printing and presentation or display in electronic form of Digital Copies but not any storage beyond that permitted by Clause 7 (and subject to Clause 2.1.6 in the case of Service Users and the carers or guardians of Service Users);
- 2.1.4 make copies of Paper Copies;
- 2.1.5 supply Licensed Copies to any regulatory authority of the United Kingdom in connection with the making or monitoring of an application for regulatory or marketing approval of any of the Licensee's products or as part of the filing or pursuit of any Patent application in the United Kingdom and to external advisers in connection with the preparation and presentation of such applications or filings as required by law or by the rules of such regulatory authority provided that any such Licensed Copy shall:
- i) contain a Copyright Notice; and
 - ii) identify the publisher, author and/or creator of the literary or artistic work(s) included within the Licensed Copy and, where the Licensed Copy includes Digital Material, the Uniform Resource Locator (URL) of that Digital Material;

- 2.1.6 distribute a single Paper Copy to Service Users, or to the carers or guardians of Service Users, or, alternatively, make available, or permit the making available of, Digital Copies to Service Users, or to the carers or guardians of Service Users, (as set out in Clause 2.1.3) in either case for the personal use only of such Service Users, or carers or guardians of Service Users, provided that (i) each such Digital Copy shall contain a Copyright Notice and express wording stating that the Digital Copy may be printed out only once and must not be placed on the publicly accessible Internet or a publicly accessible website or online application and (ii) no rights for any use beyond that set out in (i) are granted hereunder; and
- 2.1.7 exercise the Additional Rights.
- 2.2 All the rights and permissions granted by Clause 2.1 (other than in Clause 2.1.5 and, if and to the extent stated otherwise in the Appendix, in Clause 2.1.7) must be exercised:
 - 2.2.1 for the Licensee's internal information purposes only (but without prejudice to Clause 2.1.5 and, if relevant, Clause 2.1.7); and
 - 2.2.2 within the United Kingdom only, provided that any Authorised Person located outside of the United Kingdom may access and view, but not print out Digital Copies.
- 2.3 From the Commencement Date, CLA shall procure the supply of the Content by the Supply Service to the Licensee in accordance with the Annex subject to the terms and conditions set out below and the Supply Service Terms. If there is any conflict or inconsistency between the Supply Service Terms and the remainder of this Agreement the latter shall take precedence.
- 2.4 For the purposes of the Licence and this Agreement, all Content shall be deemed supplied in the form in which it was published, as confirmed to the Licensee by the Supply Service, rather than the form in which it has been supplied to the Licensee by the Supply Service.
- 2.5 Unless stated otherwise in the Annex, the Content shall be ordered by the Licensee directly from the Supply Service and the Content shall be delivered in accordance with the standard (or equivalent base level) service of the Supply Service as operated from time to time. Any faults or other problems relating to the supply of the Content shall be addressed with the Supply Service in accordance with the Supply Service Terms.
- 2.6 Without prejudice to CLA's rights under Clause 12, where the Supply Service is operated by a third party CLA shall be able to receive details of the Content ordered by and supplied to the Licensee directly from the Supply Service.

3. PAYMENT AND TERM

- 3.1 The Licence and the supply of the Content shall commence on the Commencement Date and continue for the Term as stated in the Annex unless and until terminated in accordance with Clause 11.
- 3.2 NES shall pay the Fee together with any VAT payable within 30 days of receipt of an invoice from CLA.
- 3.3 CLA reserves the right to charge interest at the Prescribed Rate on late payment of any amounts due under this Agreement.

4. CONDITIONS APPLYING TO CREATION AND USE OF LICENSED COPIES

- 4.1 With the exception of the Content and any part of Digital Material that is 'free to view' the Licensee or Library Service Provider must own, or have subscribed to, or where the relevant Authorised Person falls within (i)(c) or (i)(f) of the definition of "Authorised Persons", that HEI or FEI as applicable must own or have subscribed to an original or a copy on which it has paid a copyright fee (which shall include material supplied in either hardcopy or electronic form by a supplier licensed by CLA to provide such a service such as, but without limitation, document delivery and press cuttings suppliers) of any Licensed Material it copies, scans or uses under the terms of the Licence.
- 4.2 No Licensed Copy shall exceed the greater of 5% of any item of Licensed Material, or:
 - 4.2.1 in the case of a periodical publication, 2 whole articles in any single issue or (except for any CCC Electronic-Rights Works), where the issue or a substantial part of it is dedicated to a particular theme, any number of articles dealing with that particular theme; or
 - 4.2.2 in the case of a published report of judicial proceedings, the entire report of a single case; or
 - 4.2.3 in the case of a book, 1 chapter.

For Digital Material that is not made available or otherwise structured as a conventional book, journal, magazine or other periodical or where the Digital Material is not divided into distinct sections identifiable as the equivalent of a book chapter or of an article in a journal, magazine or other periodical, the Licensee shall ensure, as far as is reasonably practicable, that copying is limited to small extracts that are equivalent to the limits set out above, at all times bearing in mind in particular the requirement contained in Clause 4.5 that no copying shall substitute for the purchase of original Licensed Material.

- 4.3 Licensed Copies of the same Licensed Material made for a single occasion or purpose shall be treated as 1 copy and Clause 4.2 interpreted accordingly.
- 4.4 Licensed Copies may not be sold or otherwise disposed of (whether or not for valuable consideration) nor rented nor loaned to any third party or used for any external marketing or promotional purposes or exploited for purposes other than for the Licensee's internal information purposes.
- 4.5 The making of Licensed Copies (other than in respect of the Content) shall not directly or indirectly substitute for the purchase of original Licensed Material (including, for the avoidance of doubt, access to Digital Material whether by way of subscription or otherwise) or for the commissioning, reproduction, hire or any other use of an original artistic work within Licensed Material.
- 4.6 Licensed Copies may not be made or used for the delivery of education or training to third parties by the Licensee but may be made and used for the training of Authorised Persons provided that the Licensee shall not receive as consideration any payment or any other form of remuneration.
- 4.7 For the avoidance of doubt, where the original is in full colour, Paper Copies and Digital Copies may be made in black and white (known as halftones) provided that no colour separations are made and provided that the Licensee complies with the provisions of Clause 5.

5. FURTHER CONDITIONS APPLYING TO THE CREATION AND USE OF DIGITAL COPIES

- 5.1 The Licensee shall not edit, amend, manipulate, add to or delete from Digital Copies nor shall it authorise the same except to the extent necessary to make the Digital Copies perceptible on a computer screen to an Authorised Person. Electronic notation superimposed on, or electronic marking-up of, a Digital Copy which clearly distinguishes such notation or marking-up from the original text (such as by the use of different colours) shall not be a breach of this condition.

- 5.2** Except as may be permitted by Clauses 4.7, 5.1 and 9 no digital manipulation, morphing, colour or shade adjustment or any other form of manipulation, may be made of Digital Copies or Digital Material under the Licence.
- 5.3** Digital Copies may not be placed on the publicly accessible Internet or be linked either directly or indirectly by hypertext links (or the like) to or from any external or third party website.
- 5.4** Except as permitted by the Licence, no other copying, dissemination, publication, communication or making available to the public, repackaging or distribution, in any form, of Digital Copies, in whole or in part, is permitted.
- 5.5** Where any work appearing within Digital Material or Material Licensed for Scanning incorporates, or has adjacent to it, the identity of the author or creator of the artistic and/or literary work, the Licensee shall ensure that every Digital Copy of that work shall include the identity of such author or creator. In cases where the Digital Material or Material Licensed for Scanning, does not incorporate, or have adjacent to it, the identity of the author or creator of the artistic or literary work, the Licensee shall use reasonable endeavours to ensure that every Digital Copy of that work shall include the identity of such author or creator.
- 5.6** The Licensee may subcontract to third parties the making of Licensed Copies, provided that:
- 5.6.1** the Licensee takes all reasonable steps to ensure that any such third party operates appropriate management and security procedures so as to ensure compliance with the terms of the Licence;
- 5.6.2** a record is kept of all such subcontracts and that such a record is provided on request to CLA;
- 5.6.3** the Licensee shall be fully responsible for any acts or omissions of its subcontractors with respect to Licensed Material made available to such subcontractors to the extent that such acts or omissions would breach the Licence if they were acts or omissions of the Licensee; and
- 5.6.4** the use of a sub-contractor located outside the United Kingdom shall be deemed not to be a breach of Clause 2.
- 5.7** For the avoidance of doubt, and with the exception of the Content, nothing in this Licence shall operate to limit any rights which the Licensee may have in relation to the use of material supplied to the Licensee in electronic form under the terms and conditions of that supply. This Agreement is without prejudice to any acts which the Licensee is permitted to carry out by the terms of the Copyright, Designs and Patents Act 1988 (as the same may be subsequently re-enacted or amended) it being recognised that such permitted acts must be construed in accordance with the principles set out in Article 9(2) of the Berne Convention, as already reflected in the legislation applicable in the UK.
- 6. FURTHER CONDITIONS APPLYING TO THE USE OF CCC ELECTRONIC-RIGHTS WORKS**
- 6.1** Notwithstanding Clause 2.1.2, the Licensee may only scan, or permit the scanning of, hard copies of a CCC Electronic-Rights Work under the Licence where the same is not reasonably available in digital form for the Licensee to purchase whether by subscription or otherwise.
- 6.2** The use of CCC Electronic-Rights Works is subject to such special limitations or other terms, if any, as are applicable to any individual work as identified on CLA's website.
- 7. STORAGE AND DELETION OF DIGITAL COPIES**
- 7.1** The Licensee may store Digital Copies on the Secure Network and such stored Digital Copies may be indexed and searchable.
- 7.2** Subject to Clause 7.1, Digital Copies may not be stored on a server, or systematically indexed, with the intention of creating an electronic library or similar information resource.
- 7.3** On termination of this Licence the Licensee shall:
- 7.3.1** delete, as soon as practicable, from the hard drives of all its central and local servers those of any third party subcontractor and any and all Digital Copies which may be stored there (save for those Digital Copies the retention of which is required by law), but;
- 7.3.2** shall be entitled, except where such termination is by CLA for cause, to retain Digital Copies stored pursuant to Clause 7.1 for record purposes and shall be entitled to access such Digital Copies only to prove that such Digital Copies were a necessary part of the product or project for which they were originally identified as being stored.
- The Licensee shall not otherwise be entitled to access or use such Digital Copies under the Licence except where necessary for technical backup purposes or where required by law. If so requested in writing by CLA, the Licensee shall certify that it has deleted Digital Copies in compliance with this Clause.
- 7.4** The Licensee shall immediately delete from the hard drives of all its central and local servers and of any third party subcontractor and any and all Digital Copies which may be stored there upon notice from CLA that the copyright holder believes that the Licensed Material contained in the Digital Copies infringes copyright or is or may be defamatory, obscene or otherwise unlawful.
- 7.5** The provisions of this Clause 7 are without prejudice to, and are subject to the provisions of, Clause 4.5.
- 8. OTHER OBLIGATIONS**
- 8.1** The Licensee shall:
- 8.1.1** notify Authorised Persons of, and ensure their compliance with, the provisions of the Licence; and
- 8.1.2** use reasonable endeavours to display adjacent to every copying machine used to make Paper Copies, and every scanner used to produce Digital Copies, any Licensee support material which CLA may periodically supply, or make available on CLA's website, to the Licensee.
- 8.2** In exercising its rights under the Licence, the Licensee shall be responsible for complying with all applicable laws of any kind including (without limitation) moral rights, data protection, the obtaining of any consents which may be required from any person, firm or company (other than those consents relating solely to copyright and/or database right), privacy or personality rights of any kind, defamation or obscenity.
- 8.3** CLA shall have the right on giving reasonable notice to the Licensee to enter any of the Licensee's premises to monitor and to verify the observance by the Licensee of its obligations under the Licence.

9. PERSONS SUFFERING FROM A PRINT DISABILITY

- 9.1** The provisions of this Clause shall only apply where an Authorised Person is a Print Disabled Person in accordance with Clause 9.3.
- 9.2** Notwithstanding the provisions of Clause 4.2 the Licensee, and as appropriate Authorised Persons, may make and supply a copy of part or the whole of any work within Licensed Material in any alternative manner or form that gives a Print Disabled Person access to the work including allowing for the Print Disabled Person to have access as feasibly and comfortably as person without a visual impairment or any of the disabilities referred to in Clause 9.3 (an "Accessible Format Copy") but must respect the integrity of the work and not include any changes to the work which are not necessary in order to make an Accessible Format Copy for the exclusive use of the Print Disabled Person for whom it is intended on and subject to, the following conditions:
- 9.2.1** the Licensee must have lawful access to any work from which it makes an Accessible Copy;
- 9.2.2** each Accessible Copy that exceeds the limits set out in Clause 4.2 shall contain:
- i)** a statement that it is a copy of the original work made under a CLA Licence for the personal use of a Print Disabled Person and that it may not be further copied (including any electronic copying or transmission) or dealt with without permission or save as may be permitted by law; and
 - ii)** the title, as well as the name of the author and publisher, of the original work and the published edition from which it is copied;
- 9.2.3** the Licensee may only charge for the supply of an Accessible Format Copy an amount which does not exceed the cost of making and supplying it;
- 9.2.4** that the Accessible Copy is only to be used for the personal use of a Print Disabled Person (or a person acting on behalf of a Print Disabled Person) who is an Authorised Person; and
- 9.2.5** Accessible Copies may only be distributed in the United Kingdom except that Accessible Copies of works published within the United Kingdom may be distributed elsewhere in the European Union and a third country that is a party to the Marrakesh Treaty 2013.
- 9.3** An Authorised Person is to be regarded as a "Print Disabled Person" for the purposes of this clause if he or she is a person who:
- 9.3.1** is blind;
- 9.3.2** has a visual impairment which cannot be improved so as to give that person visual function substantially equivalent to that of a person who has no such impairment;
- 9.3.3** has a perceptual or reading disability, including dyslexia, and is, as a result, unable to read printed works to substantially the same degree as a person without an impairment or disability;
- 9.3.4** is otherwise unable, due to physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading; or
- 9.3.5** would otherwise be regarded as having a disability in accordance with s.6 of the Equality Act 2010.
- 9.4** This clause is without prejudice to and does not purport to prevent or restrict the doing of any act which by virtue of and in accordance with the Copyright, Designs and Patents Act 1988 (the "Act") would not infringe copyright including where the Licensee is an authorised body under the Act, i.e. is an educational establishment or a body that is not conducted for profit, which may make, communicate, make available or lend accessible copies (and make intermediate copies in order to so) subject to and in accordance with the relevant terms of the Act.

10. INDEMNITY

- 10.1** In this Clause 'Qualifying Claim' shall mean any complaint made in writing that the Licensee acting in pursuance of the Licence has infringed copyright and/or database right in Licensed Material or in the typographical arrangement of the published edition in which Licensed Material is contained.
- 10.2** In the case of any Qualifying Claim, CLA shall indemnify the Licensee in respect of all reasonable legal costs, expenses and damages awarded against or incurred by the Licensee including any ex gratia payments made with the prior written consent of CLA, provided that the Licensee has complied with the terms of this Licence and has given CLA notice of any Qualifying Claim within 10 working days or, in the case of a Claim Form, within 5 working days of the same having been received by the Licensee.
- 10.3** The indemnity conferred by this Clause shall not apply:
- 10.3.1** if the Licensee is in material breach of any term of the Agreement; or
- 10.3.2** during any period, or in respect of matters arising during such period, while the Agreement is in suspense pursuant to Clause 11.
- 10.4** CLA shall take over responsibility for any negotiations for the settlement of any Qualifying Claim and, if such Qualifying Claim cannot be resolved by negotiation CLA, shall assume full responsibility for the conduct of the defence of such Qualifying Claim. The Licensee shall co-operate with CLA in this respect where reasonably requested by CLA to do so.
- 10.5** The Licensee shall ensure that no admission or offer of payment or indemnity shall be made or given by or on its behalf or on behalf of CLA without CLA's written consent and shall ensure that all correspondence received in connection with a Qualifying Claim is promptly passed to CLA.
- 10.6** The Licensee shall indemnify CLA in respect of all reasonable expenses, damages and legal costs awarded against or incurred by CLA in respect of any claim arising out of the Licensee's breach of any term of the Licence.

11. TERMINATION AND BREACH

- 11.1** The NES may terminate the Agreement on either the first anniversary or the second anniversary of the Commencement Date (i.e. 31 April 2020 or 31 April 2021 respectively) by in each case serving not less than 6 months' prior notice in writing on CLA.
- 11.2** If the Licensee commits any material breach of any of the provisions of the Agreement and remains in breach 14 days after receiving notice to remedy such breach (where the breach is remediable) then CLA, without prejudice to any of its other rights, may by notice either terminate the Agreement or suspend the Agreement until CLA shall be satisfied such breaches will not recur.
- 11.3** Either party may terminate the Licence by notice in writing to the other if and when a supervisor, administrator, receiver, administrative receiver or other encumbrancer takes possession of, or is appointed over, the whole or any substantial part of the other party's assets or if and when the other party enters into any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement under the Insolvency Act 1986) or if and

when a petition is presented for the purpose of the making of an administration order or the winding-up of the other party which is not discharged within 7 days of the presentation of such a petition or if the other party is placed into liquidation or administration or if the other party is dissolved or if a resolution for the winding up of the other party is passed (other than a voluntary liquidation for the purpose of reconstruction in which all creditors' claims will be discharged in full) or if a bankruptcy petition is presented against the other party which is not discharged within 7 days of its presentation.

12. DATA COLLECTION

- 12.1** Notwithstanding Clause 2.6, CLA may, no more than once in each year, require the Licensee to participate in a data collection exercise to identify the type of photocopying and scanning of Licensed Material and the use or re-use of Digital Material under the Licence which will assist CLA in distributing the Fee to authors, artists and publishers.
- 12.2** The data collection exercise may, without limitation, take the form of a survey or record keeping or online reporting exercise, or any combination of these, including the recording of the creation of Digital Copies, in accordance with any guidelines on data collection on CLA's website.
- 12.3** If selected, the Licensee shall co-operate with CLA in conducting the data collection exercise and undertakes to ensure that its employees comply with its obligations under this Clause.
- 12.4** CLA undertakes not to disclose any information obtained as a result of any data collection exercise except:
 - 12.4.1** as required by a court or other authority of competent jurisdiction; or
 - 12.4.2** in aggregated form from which the identity of the Licensee cannot directly be identified.

13. GENERAL

- 13.1** All notices given under the Agreement shall be in writing and be sent by first class post, in the case of the Licensee to: the address shown in the Annex, and in the case of CLA to: Customer Services Manager, Barnard's Inn, 86 Fetter Lane, London EC4A 1EN, (or any other address notified to the Licensee by CLA), and shall be deemed to have been served on the second working day (which shall exclude weekends and English public holidays) following the date of posting.
- 13.2** The Agreement may only be varied if such variance is acknowledged in writing on behalf of a duly authorised officer both of CLA and of the Licensee.
- 13.3** The Agreement is personal to the Licensee and may not be assigned or otherwise disposed of in whole or in part.
- 13.4** The Agreement shall be governed by Scots law and the parties agree to submit to the exclusive jurisdiction of the Scottish courts as regards any claim or matter arising in relation to the Licence.
- 13.5** The parties do not intend that any term of the Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Agreement.

Appendix

Additional Rights

A. COLLABORATION

In order to facilitate collaborative working between licensed organisations, this Section A records certain amendments to the attached terms and conditions by which CLA grants a licence within the United Kingdom to photocopy, scan or otherwise reproduce, and to use or re-use extracts from material published in hard copy and electronic form in which copyright subsists.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Section A, the following words and expressions shall have the following meanings:

Authorised Persons of the Licensee:

the Authorised Persons defined as such in the Terms and Conditions, provided that such Authorised Persons are also directly engaged in activities relating to the Collaboration Project;

Authorised Persons of the Collaboration Partner:

the Authorised Persons defined as such in the Collaboration Partner's CLA Licence, provided that such Authorised Persons are also directly engaged in activities relating to the Collaboration Project;

CCC:

Copyright Clearance Center, Inc., together with its subsidiary RightsDirect B.V., and any other CCC affiliates identified by CLA to the Licensee in writing from time to time.

CCC Collaboration Amendment:

An amendment to a CCC Corporate Licence which authorises sharing among Authorised Persons, which amendment provides rights of substantially the same scope as this Section A.

CCC Corporate License:

a CCC Annual Copyright License, CCC Multinational Copyright License or RightsDirect Multinational Copyright License, or other similar repertory-based copyright licence agreement offered by CCC and identified by CLA to the Licensee in writing from time to time.

CLA Licence:

a blanket licence issued by CLA for business (or for the law and pharmaceutical sectors), public administration, education or higher education and any additional or replacement blanket licences issued by CLA of which CLA may notify to the Licensee from time to time;

Collaboration Partner:

an organisation: (a) which holds either a CLA Licence or holds both a CCC Corporate License and a CCC Collaboration Amendment; (b) which is not significantly engaged in the business of Document Delivery ((a) and (b) collectively the Qualifying Criteria); and (c) the identity of which has been notified in writing by the Licensee to CLA and which CLA has confirmed to the Licensee complies with the Qualifying Criteria in accordance with this Section A;

Collaboration Project:

a formal relationship of co-operation between the Licensee and one Collaboration Partner in which Document Delivery does not constitute a significant proportion of the activities thereof;

Document Delivery Service:

the bulk or systematic supply of copies of items of published material, whether in paper or electronic form;

Secure Network of the Collaboration Partner:

the Secure Network defined as such in the Collaboration Partner's CLA Licence; and

Terms and Conditions:

the terms and conditions to which this Section A is attached.

1.2 All other capitalised expressions used in this Section A have the same meaning as defined in the Terms and Conditions.

1.3 All references to the singular in this Section A may include the plural and vice versa as the context so requires and references to any gender shall include both genders. All references to a Paragraph are to a paragraph of this Section A.

2. AMENDMENT TO ORIGINAL AGREEMENT

2.1 CLA and the Licensee agree that:

2.1.1 solely for the purposes of and to the extent necessary for the Licensee and a Collaboration Partner to operate each Collaboration Project, the Terms and Conditions shall be amended such that:

- a) the Authorised Persons of the Licensee shall be extended to include the Authorised Persons of the Collaboration Partner;
- b) the Licensee's Secure Network shall be extended to include the Secure Network of the Collaboration Partner; and
- c) the Licence shall be extended accordingly;

at all times subject to and in accordance with the Terms and Conditions as amended by this Section A; and

2.1.2 the Licensee can confirm to each Collaboration Partner that its Licence has been extended as set out above.

2.2 The extension of the Licence set out above shall take effect in respect of a Collaboration Partner on the issue of CLA's written approval of such Collaboration Partner in accordance with Paragraphs 2.3.1 and 2.3.2.

- 2.3** The Licensee agrees and acknowledges that it shall at its cost:
- 2.3.1** be responsible for confirming that each Collaboration Partner fulfils the Qualifying Criteria;
 - 2.3.2** submit to CLA details of each Collaboration Partner in such form as requested by CLA:
 - a)** on the first application for an extension of the Licence under this Section A by the Licensee; and/or
 - b)** as and when required by the Licensee to subsequently add or remove a Collaboration Partner from the extended Licence throughout the term of the Terms and Conditions;

for approval by CLA which, if granted, CLA shall confirm to the Licensee in writing; and
 - 2.3.3** at all times ensure that the Authorised Persons of the Licensee, and ensure and/or procure that each Collaboration Partner ensures, that the Authorised Persons of the Collaboration Partner who are granted rights in respect of each Collaboration Project under Paragraph 2.1 above comply with the terms and conditions of the Terms and Conditions, the Licence and this Section A.
- 2.4** Other than as expressly modified by the terms of this Section A, the Terms and Conditions shall remain in full force and effect. The Licence shall only be extended as expressly set out in this Section A. No further rights are granted by CLA. In particular, and without limitation, this Section A does not permit the creation of an electronic library or similar corporate information resource that would substantially replace the Content or Licensee's or any Collaboration Partner's need to purchase or subscribe to a particular work.
- 3. USAGE**
- 3.1** CLA may, no more than twice in consecutive twelve (12) month period during the term of the Terms and Conditions, require the Licensee to participate in a usage exercise to identify the type and volumes of published material which has been shared under the terms of this Section A.
 - 3.2** The above usage exercise may, without limitation, take the form of a survey or record keeping or online reporting, or any combination of these.
 - 3.3** If selected, the Licensee shall co-operate with CLA in conducting this exercise and undertakes to ensure that its employees and other personnel comply with its obligations under this Paragraph.
 - 3.4** CLA undertakes not to disclose any information obtained as a result of such exercise except:
 - 3.4.1** as required by a court or other authority of competent jurisdiction; or
 - 3.4.2** in aggregated form from which the identity of the Licensee cannot be identified.
- 4. TERM AND TERMINATION**
- 4.1** This Section A shall terminate automatically with respect to a Collaboration Partner if the Collaboration Partner no longer fulfils the Qualifying Criteria. The Licensee must immediately notify CLA in writing on becoming aware of such termination.
 - 4.2** This Section A shall be suspended or terminated immediately in its entirety upon the suspension or termination of the Terms and Conditions.