

HeadLine model licence agreement
Based around NESLI Seventh draft 25/09/98
(NB additions/alterations to NESLI licence are underlined)

THIS AGREEMENT is made the _____ day of _____ 199_

BETWEEN

1 [NAME] of [ADDRESS] ["the Publisher"]

and

2 [NAME] of [ADDRESS] ["the Licensee"]

NB for consortium agreements then all sites will be named here as the "Licensee" with one contact person representing the consortium.

RECITALS

WHEREAS the Publisher holds the Rights granted under this Agreement

AND WHEREAS the Licensee desires to use the Rights and the Publisher desires to grant to the Licensee the licence to use the Rights for the Licence Fee

IT IS AGREED AS FOLLOWS:-

1. INTERPRETATION

- 1.1 The contract shall be varied in part or whole only by the agreement of both parties in writing.
- 1.2 The agreement contains the whole of the agreement between the parties and supersedes any prior agreement.
- 1.3 The termination of this Agreement shall not prejudice the rights and remedies of either party against the other in respect of any prior breach of covenant, terms, warranty or condition.
- 1.4 Where the context implies words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine.
- 1.5 The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the Schedules. The parties agree to reserve the right to amend the content of the Schedules hereto from time to time and that any amendment to the Schedules shall be in writing and signed by both parties.

- 1.6 The parties adopt the definitions set out in Schedule 1 to this Agreement.
- 1.7 The failure of any party to enforce any provision on any one occasion shall not affect its right to enforce another provision or the same provision on another occasion.
- 1.8 The invalidity or un-enforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
- 1.9 Nothing contained in this Licence shall constitute or shall be construed as constituting a partnership, joint venture or contract of employment between the parties.
- 1.10 This Licence shall be governed by and construed in accordance with English law and the parties irrevocably submit to the jurisdiction of the English courts.

2. AGREEMENT

- 2.1 The Publisher agrees to grant the Rights to the Licensee for the Term and the Licensee agrees to pay the Licence Fee to the Publisher.

3. THE RIGHTS GRANTED UNDER THIS LICENCE

- 3.1 The Publisher hereby grants to the Licensee for the duration of this Licence the following non-exclusive rights ["the Rights"] and licenses the Licensee to:
 - 3.1.1 access at any time the Licensed Material as set out in Schedule 2 from the Publisher's server, or from another server designated by the Publisher or (in cases where these options are not sufficiently available) to store the Licensed Materials as set out in Schedule 2 locally on the Licensee's Secure Network;
 - 3.1.2 index (article author, article title and keyword) the Licensed Materials and where stored locally retain backup copies of both the Licensed Materials and the index;
 - 3.1.3 make the Licensed Materials accessible to Authorised Users for their research, teaching and private study purposes in accordance with the terms and conditions of this Agreement;
 - 3.1.4 permit Authorised Users to print and/or download individual articles and other items from searches of the Licensed Materials (but not an entire issue of an individual journal) for research, teaching and private study purposes;
 - 3.1.5 permit Electronic Document Deliveries between Authorised Users of the Licensee;
 - 3.1.6 provide access to and permit copying from the Licensed Materials (subject to limitations set forth above) by Walk-in Users for their research, teaching and private study by means of workstations located at the Library Facility as defined in Schedule 3. Remote access to the Licensed Materials other than to

Authorised Users falls outside this Agreement and must be negotiated separately;

- 3.1.7 provide, or permit the Managing Agent to provide, Authorised and Walk-in Users with integrated access and an integrated article author, article title and keyword index to the Licensed Material and all other similar material licensed from other publishers for their research, teaching and private study purposes;
 - 3.1.8 supply to an authorised user of another library (whether by post, fax or secure electronic transmission, using the RLG Ariel system or its equivalent, whereby the electronic file is deleted immediately after printing), for the purposes of research or private study, a single paper copy of an electronic original of an individual document. (N.B. Other permissions relating to inter-library loan may be added through ongoing discussion between the Publishers Association and JISC.)
 - 3.1.9 permit the reproduction and inclusion of copies (hard copy or electronic form) of items from the Licensed Materials in course packs in print or digital form and/or distribution to Authorised Users for their use in connection with classroom instruction. Copies of such items which are included in on-line course packs will be deleted by the Licensee when they are no longer used for such purpose.
- 3.2 For the avoidance of doubt nothing in this Licence shall in any way exclude, modify or affect:
- 3.2.1 anything the Licensee is allowed expressly, ~~impliedly~~ implicitly or by any virtue of any operation of law to do to any of the Licensed Materials;
 - 3.2.2 any statutory rights granted to librarians and users by the Copyright Designs and Patents Act 1988 and any supervening legislation.
- 3.3 For the avoidance of doubt the Rights granted by this Licence shall extend only to Authorised Users for so long as they continue to be Authorised Users of the Licensee.
- 3.4 The Rights are granted to the Licensee by the Publisher throughout the world.

4. USAGE RESTRICTIONS

- 4.1 Except as expressly permitted in Clause 3.1 above, the Licensed Materials may not, directly or indirectly, be used by the Licensee nor Authorised Users or Walk-in Users for any:
 - 4.1.1 substantial or systematic reproduction;
 - 4.1.2 re-distribution, re-selling, loan or sub-licensing;
 - 4.1.3 systematic supply or distribution in any form to anyone other than an Authorised User of the Licensee.

4.2 Neither the Licensee nor Authorised Users or Walk-in Users may mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network.

5. TERM AND TERMINATION

5.1 This Licence shall commence at the beginning of the Subscription Year, for the Licensed Material set out in Schedule 2, and remain in effect until the end of the Subscription Year, when the Licence shall automatically terminate unless the parties have previously agreed to renew it.

OR: (LIFETIME OF THE PROJECT)This Licence shall commence on XXXXXXX for the Licensed Material set out in Schedule 2, and remain in effect until the end of the HeadLine project, December 31st 2000, when the Licence shall automatically terminate unless the parties have previously agreed to renew it.

OR: (RETURNING TO PREVIOUS ARRANGEMENT) This Licence supersedes the licence formerly held between (INDIVIDUAL INSTITUTION XXXXXX) and the publisher and shall commence on XXXXXXX for the Licensed Material set out in Schedule 2, and remain in effect until the end of the HeadLine project, December 31st 2000, when the Licence shall automatically return to the previous Licence held between the publisher and (INDIVIDUAL INSTITUTION XXXXXX), unless the parties have previously agreed to renew it in this form.

5.2 Either party may terminate this Agreement at any time upon written notice to the other if the other party defaults by failing to perform any obligation on its part. The termination will become effective thirty days after receipt of written notice unless during the relevant period of thirty days the defaulting party has remedied the default. Upon termination by the Licensee on a default of the Publisher, the Publisher shall forthwith repay the Licensee a rateable proportion of the Licence Fee as represents the paid but unexpired Term.

5.3 In the event that this Agreement terminates because of expiration of the Subscription Year the Publisher shall provide continuing access for Authorised and Walk-in Users to that part of the Licensed Material which was published within the Subscription Year(s), either from the Publisher's server, or through a third party, or by supplying electronic files to the Licensee, provided that the Licensee continues to observe its obligations with respect to security (as set out in Clause 8) and the restrictions on usage (as set out in Clause 4).

5.4 On termination of the licence for cause as specified in Clause 5.2, the Publisher shall provide continuing access for Authorised and Walk-in Users to that part of the Licensed Material to which the Licensee was lawfully entitled until the breach occurred. Access will be provided either from the Publisher's server, or through a third party, or by supplying electronic files to the Licensee, provided that the Licensee continues to observe its obligations with respect to security (as set out in Clause 8) and the restrictions on usage (as set out in Clause 4).

6. DELIVERY AND ACCESS TO THE LICENSED MATERIAL

6.1 The Publisher will deliver to the Licensee or its Managing Agent the Licensed Materials in the media, format and in the time frequency as stipulated in Schedule 4.

6.2 The Publisher will make available to the Licensee or its Managing Agent the electronic copy of the Licensed Material, not later than the start of business hours on the day of publication of the printed version. In the event that for technical reasons this is not possible for any particular Licensed Material, as a matter of course, such journal shall be identified at the time of licensing, together with the reasons therefor.

OR: For material other than electronic journals (for instance CD-ROMS, online databases): The Publisher will make available to the Licensee or its Managing Agent the material within (X) days after the date of this agreement, or by XXXXXX - insert date agreed by publisher and licensee..(with updates every XXXX)

6.3 The Publisher will notify the Licensee or its Managing Agent at least sixty days in advance of an intended specification change applicable to the Licensed Materials.

6.4 The Publisher will promptly inform the Licensee or its Managing Agent of any changes that affect the Licensed Materials. The Publisher will reimburse the Licensee, if Licensed Material initially included in the Agreement is subsequently withdrawn or discontinued, the proportion of the Fee representing the price of that Licensed Material that has been withdrawn or discontinued.

6.5 The Publisher will provide the Licensee or its Managing Agent, within 30 days of the beginning of the Subscription Year, with information sufficient to enable the Licensee to access the Licensed Material, including details of access codes, identity codes, passwords and the like.

6.6 The Publisher will use its reasonable endeavours to ensure that its server, or another server designated by the Publisher, has adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the terms of this Licence.

6.7 The Publisher will use reasonable endeavours to make the Licensed Materials available to the Licensee at all times and on a twenty-four hour basis, save for routine maintenance and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service.

7. LICENCE FEE

7.1 The Licensee agrees to pay to the Publisher the Licence Fee set out in Schedule 5 for the Term as set out in clause 5.1.

7.2 It is agreed that all amounts stipulated to be payable by the Licensee under this Agreement shall unless otherwise stated be exclusive of Value Added Tax and that the Licensee agrees to pay Value Added Tax where applicable at the appropriate rate upon submission of a VAT invoice.

7.3 Save as provided by 7.2, the Licence Fee shall be deemed to be full and sufficient consideration for any other services and products provided by the Publisher to carry this Agreement into effect.

8. LICENSEE'S UNDERTAKINGS

8.1 Neither the Licensee nor Authorised Users or Walk-in Users may modify, adapt, transform, translate or create any derivative work based on any material included in the Licensed Materials, or otherwise use any materials, in a manner that would infringe the copyright or other proprietary rights therein.

Neither the Licensee nor Authorised Users or Walk-in Users may remove, obscure, modify or alter authors' names or copyright notices, other notices or disclaimers as they appear in the Licensed Material.

8.2 The Licensee will take all reasonable steps to ensure that the Licensed Material is used in accordance with the terms and conditions of this Agreement, and shall inform the Authorised Users and the Walk-in Users of the permitted use, restrictions and provisions set out herein.

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

8.4 Nothing in this Agreement shall make the Licensee liable for breach of the terms of the Agreement by any Authorised User or Walk-in User unless the Licensee condoned or encouraged such breach to continue after having received notice of such breach by the Publisher.

9. IMPLEMENTATION AND EVALUATION

9.1 The Licensed Materials will be stored or cached either locally, centrally at a server designated by the Publisher or at the Publisher's server centrally, or in a combination of these possibilities (Schedule 4). *(or include something about if they are running directly from CD-ROMS)*

9.2 The Publishers will ensure that the Licensee or its Managing Agent is able to monitor use, and to gather the relevant management information needed for collection development. The Licensee may share the gathered information with other Licensees *under NESLI under the HeadLine project.* –The usage data will be compiled by the Licensee or its Managing Agent consistent with any applicable privacy laws. The anonymity of individual users and the confidentiality of their searches shall be fully protected. The usage data compiled by the Licensee or its Managing Agent will be disclosed to the Publisher on a quarterly basis *(OR 'on request').*

10. WARRANTIES, UNDERTAKINGS, INDEMNITIES

10.1 The Publisher warrants that it owns and will retain and keep for the duration of this Agreement the intellectual property rights in the Licensed Materials, or where such intellectual property rights are owned by third parties, it has obtained any necessary licences to such intellectual property rights, to permit access and use of the Licensed Materials by the Licensee, its Authorised Users and Walk-in Users in accordance with the terms and conditions of this Licence. The Publisher undertakes to indemnify the Licensee for and against any loss, damage, costs, claims and expenses arising in the

event that any action is brought by a third party challenging the Publishers' entitlement to such rights. This indemnity shall survive the termination of this Licence however terminated. The indemnity shall not apply if the Licensee has modified the Licensed Material in any way not permitted by this Licence.

10.1.1 It shall be a condition of such indemnity that control of any and all relevant claims is given to the Publisher which shall have discretion to settle and/or defend such claim as it deems appropriate and the Licensee shall provide to the provide to the Publisher such reasonable co-operation and assistance in relation to any such claim as the Publisher shall require.

10.1.2 The Licensee takes all reasonable steps to mitigate its losses in respect of any such claim and makes no admissions in that respect without the Publisher's permission.

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

11. FORCE MAJEURE

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

12. ASSIGNMENT

12.1 This Licence may not be assigned by either party to any other natural or legal person, nor may either party sub-contract any of its obligations, without the prior written consent of the other party, which consent shall not unreasonably be withheld. Nothing in this term shall preclude the Licensee from performing any of its obligations through the Managing Agent.

13. NOTICES

13.1 Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out at the head of this Agreement or to such other address as notified by either party to the other as its address for service of notices and all such notices shall be deemed to have been received within 14 days of posting.

14. EXPERT

14.1 Any dispute under or arising out of this Agreement shall be referred to an expert, who shall be such person as may be appointed by agreement between the parties, or, in

default of such agreement, nominated on the application of any party by the president for the time being of the Institute of Chartered Accountants in England and Wales.

14.2 Any person to whom a reference is made under Clause 14.1 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing stating his reasons therefor) shall be final and binding on the parties.

14.3 Each party shall provide the expert with such information as he may reasonably require for the purposes of his determination.

14.4 The costs of the expert shall be borne 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.

SCHEDULE 1

DEFINITIONS

In this Agreement, the following terms shall have the following meanings:-

"Authorised Users"	current members of the staff of the Licensee (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently studying at the Licensee's institution, who are permitted to access the Secure Network, and who have been issued by the Licensee with a password or other authentication
"Electronic Document Delivery"	the electronic delivery of digital files
"Licence Fee"	the fee as set out in Schedule 5
"Licensed Material"	the material as set out in Schedule 2 together with any additional material that may be agreed from time to time between the Publisher and the Licensee
"Managing Agent"	the organisation appointed from time to time as Managing Agent for the NESLI HeadLine project .
"NESLI"	refers to the UK National Electronic Site Licence Initiative who wrote the original version of this licence. This has been adapted slightly to suit the needs of the HeadLine project.

"Remote"	means in the case of Walk-in Users the premises and places other than the Library Facility <u>(not sure if this needs altering for our purposes)</u>
"Rights"	the non-exclusive non-transferable rights granted by this Agreement for the Term set out in this Agreement
"Schedule"	a Schedule forms a part of a Licence. They can be replaced by updated versions subsequently, yet preserving the integrity of the licence as a whole
"Secure Network"	a network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users and Walk-in Users taking into account the Access Security Procedure as defined in Schedule 6
"Site"	means the premises of the Licensee and other such places where Authorised Users work and study, including without limitation halls of residence and lodgings and homes of Authorised Users <u>(this may need altering for HeadLine?)</u>
"Subscription Year"	the period nominally covered by the volumes and issues of the Licensed Material listed in Schedule 2, regardless of the actual date of publication
"Term"	the duration of the licence between the Publisher and the Licensee
"Walk-in Users"	persons who are not Authorised Users but who are registered as permitted users of the Licensee's library or information service and who are permitted to access the Secure Network by workstations located at the Library Facility as defined in Schedule 3

SCHEDULE 2

LICENSED MATERIALS

[To be supplied by the Publisher]

SCHEDULE 3

LIBRARY FACILITY

The Library Facility will consist of the following premises:-

NB this will include all sites that are accessing material under this licence, so may include more than one institution.

[To be supplied by the Licensee]

SCHEDULE 4

FORMAT/MEDIA/DELIVERY FREQUENCY/STORAGE

[List of format, media and delivery schedule of each item of the Licensed Materials to be supplied by the Publisher]

SCHEDULE 4B

TECHNICAL NOTES

[List of technical requirements, number of concurrent users permitted, downloading onto hard disc policy to be supplied by the Publisher]

SCHEDULE 5

LICENCE FEE

The Licence Fee is calculated as follows:-

SCHEDULE 6

ACCESS SECURITY PROCEDURES

[To be supplied by the Licensee]

IN WITNESS WHEREOF, the parties have set their hands as of the date first written above.

THE PUBLISHER

LICENSEE

By:

By:

Title:

Title:

For and on behalf of

For and on behalf of