

**Euromonitor Passport GMID Agreement 2010**  
**Schedule 4 Part 2 – General Licence Conditions**

**1. Definitions**

In these General Licence Conditions, unless the context clearly requires an alternative interpretation, the following terms shall have the meanings ascribed to them:

- 1.1 "Authorised User" means a type of User who is a currently registered student of the Licensee, a faculty member or an employee of the Licensee, in each case authorised by the Licensee to access the Licensee's library and information services whether from a computer or terminal on the Licensee's Secure Network or offsite via a Secure Access Management System or, in the case of Licensed Materials, access to the Licensee's onsite library facilities.
- 1.2 "Charges" means the charges payable by the Licensee to Eduserv for the Licensee's rights to access and use the Licensed Work pursuant to this Licence.
- 1.3 "Commercial Exploitation" is the use of the Licensed Work for monetary gain whether for the Licensee or for a User.
- 1.4 "Documentation" means the Products' user manuals and other like documentation (if any) in either printed or electronic form.
- 1.5 "Error" means an error in data of one or more of the following types:
  - 1.5.1 "data error" – where data is incorrectly collected or entered;
  - 1.5.2 "format error" – where the data does not match the specification, description or other documentation relating to it;
  - 1.5.3 "media error" – where any medium on, by or through which data is transferred to a Licensed Institution is at fault.
- 1.6 "Intellectual Property" means copyright, database right, patents, design rights and trademarks whether registered or unregistered; semi-conductor topography rights and all other industrial commercial or intellectual property rights existing in any jurisdiction and all rights to apply for the same.
- 1.7 "Licensed Material" means data, journals, publications, downloaded materials and related Documentation produced or existing in physical form as more fully described in Schedule 4 Part 1.
- 1.8 "Other Permitted Users" means the following categories of User that are permitted to have access to the Products via a Licensee's library and information services whether from a computer terminal on

the Licensee's Secure Network or offsite via a Secure Access Management System or via the Licensee's onsite library facilities:

- 1.8.1** students undertaking a course of study leading to a qualification awarded by the Licensee;
  - 1.8.2** teachers of Authorised Users and librarians involved in their instruction and support who are not employed by the Licensed Institution;
  - 1.8.3** retired members of staff of a Licensed Institution;
  - 1.8.4** bona fide members of a Licensee's Alumni Association;
  - 1.8.5** visiting academics, researchers and research supervisors from other educational or research establishments;
  - 1.8.6** visiting students from other educational establishments;
  - 1.8.7** any person associated with the Licensee but not employed by the Licensee such as pastoral and welfare workers or support people.
- 1.9** "Products" means the data, datasets, journals, publications, databases and related Documentation in non-physical form as more fully described in Schedule 4 Part 1.
- 1.10** "Secure Access Management System" means a system which may be used to verify the bona fides and access permissions afforded to Users of the Licensee's library and information services including by way of example and not by way of limitation the Secure Access Management System known as "Athens".
- 1.11** "Secure Network" means a network (whether a standalone network or a virtual network within the Internet) which is only accessible to Users whose identities are authenticated by the Institution at the time of login and periodically thereafter consistent with current best practice and whose conduct is subject to regulation by the Institution. A cache server or other server or network which can be accessed by unauthorised users is not a secure network for these purposes.
- 1.12** "Site" means the place or places within the Territory at which the Licensee is licensed to use the Licensed Work and Documentation in accordance with the Licence.
- 1.13** "Territory" means the world.
- 1.14** "Updates" means the provision of additional data, revised datasets or new or revised editions of Products provided on a physical medium.

- 1.15** "User" means any person given permission by the Licensee to use the Licensed Work and Documentation and comprising "Authorised Users" plus "Other Permitted Users" and "Walk-in Users" if the same are identified in Part 1 of this Schedule 4 Licence as permitted.
- 1.16** "Walk-in User" means a person other than an Authorised User who is permitted to access the Secure Network of the Licensed Institution only via a computer or terminal within the Licensed Institution's premises.

## **2. Authority**

The Licensor warrants that it has the authority to grant the Licence granted hereunder.

## **3. Grant of Rights**

The Licensor hereby grants to the Licensee a non-exclusive, non-transferable Licence to use the Products and the Licensed Materials accessed in the Territory upon and subject to the General Licence Conditions in Part 2 of this Schedule 4 and, if applicable, the Special Licence Conditions in Part 3 of this Schedule 4 for the whole of the Licence Period.

## **4. Use**

**4.1** The Licensee will nominate from time to time a responsible person to control access to and distribution of the Licensed Work in accordance with the provisions of the Licence.

**4.2** The Licensed Work may be accessed and used by any employee, student or other person authorised by the Licensee for the purposes of the normal business of the Licensee's organisation at any Site in the Territory. Permitted use of the Licensed Work includes:

**4.2.1** teaching;

**4.2.2** research;

**4.2.3** personal educational development;

**4.2.4** administration and management of the business of the Licensee's organisation;

**4.2.5** development work associated with any of the above.

General exclusions:

**4.2.6** paid for consultancy or services leading to commercial exploitation of Product;

**4.2.7** work of significant benefit to the employer of students on industrial placement or part-time courses.

In 4.2.6 and 4.2.7 above, the Licensor may allow such use in return for acknowledgement of use of Product and/or for an agreed fee.

- 4.3 No persons shall be excluded from access and use of the Licensed Work for reasons of nationality or citizenship.
- 4.4 If required by the Licensor, the Licensee shall ensure that all persons who are provided by the Licensee with the right to access, use or download the Licensed Work sign a declaration of understanding of the Licensor's Intellectual Property. An example of this type of declaration as commonly used in UK academic institutions is shown in Part 4 of this Schedule 4.
- 4.5 The Licensee shall use reasonable endeavours to satisfy itself that all Users are authorised by the Licensee for the purposes of the normal business of the Licensee's organisation.
- 4.6 The Licensee will nominate from time to time suitably competent persons to act as technical contacts by and through whom all technical enquiries, support and information requests will be made by the Licensee.

## 5. **Extent of Permitted Reproduction**

- 5.1 In the case of the Products, Authorised End Users may print or download full or partial results of searches of the data for the purposes set out in Condition 4.2 above.
- 5.2 The Licensee shall not permit others to access, print or download the Products or make or copy Licensed Materials.
- 5.3 Material downloaded or copied under this Licence during the Licence Period may be used in perpetuity but subject to the provisions of the Licence.

## 6. **Payment Terms**

The Licensee shall pay to Eduserv the Charges shown in Part 1 of this Schedule 4 (or Schedule 5 if applicable) or otherwise due under the Licence.

## 7. **Proprietary Rights**

- 7.1 The Licensee shall not acquire any title, copyright or other proprietary rights in the Licensed Work.
- 7.2 The Licensee agrees not to remove or in any way modify any proprietary marking including any trade mark or copyright notices on or in the Products or its carrier medium or on any Licensed Materials. The Licensee shall incorporate such proprietary markings in any derivative material. Users shall be required by the Licensee to acknowledge clearly the Licensor's copyright in any derivative material.
- 7.3 The Licensee shall not make any modifications, additions or enhancements to the Licensed Works without the Licensor's prior written consent.

## 8. **Confidentiality**

- 8.1** The Licensee hereby acknowledges that the Licensed Work contains confidential information of the Licensor or of third parties. The Licensee undertakes to keep confidential the Licensed Work and save for access permitted to Users pursuant to the Licence shall not divulge the Licensed Work to any third party without the prior written consent of the Licensor.
- 8.2** The Licensor and Licensee shall keep confidential the contents of this Licence and all information of the other party designated as confidential and obtained under or in connection with the Licence and shall not divulge the same to any third party without the prior written consent of the disclosing party.
- 8.3** The Licensor and Licensee may divulge confidential information of the other party only to those employees, agents or subcontractors bound under equivalent conditions of confidence who are directly involved in the use of Product, and shall ensure that such persons are aware of and undertake to comply with these obligations of confidentiality.
- 8.4** The provisions of this Condition 8 shall not apply to any information which:
- 8.4.1** is or becomes public knowledge other than by breach of this Condition;
  - 8.4.2** is in the possession of the receiving party without restriction before the date of receipt from the disclosing party;
  - 8.4.3** is obtained from a third party who is lawfully authorised to disclose the same;
  - 8.4.4** is independently created or generated without breach of the Licence.
- 8.5** The obligations of the parties as to disclosure and confidentiality shall continue in force notwithstanding the termination of the Licence for any reason whatsoever.

## **9. Inspection Rights**

The Licensor may upon reasonable notice send a representative to a Site to verify compliance with this Licence.

## **10. Warranty**

- 10.1** Unless otherwise provided in the Special Conditions, the Licensor warrants that the Licensed Work is substantially in accordance with the Documentation or in the Licensor's or the Products owner's product description documentation. The Licensor does not warrant that the Licensed Work will meet the Licensee's requirements or that the Licensed Works will be Error free.
- 10.2** The Licensee acknowledges that the Licensed Work has not been prepared to meet the Licensee's individual requirements and that it is the Licensee's responsibility to ensure that the Licensed Work meets the Licensee's requirements.
- 10.3** The Licensor shall not be liable for any failure of Product to provide any facility or function not described in the Documentation referred to in Condition 10.1.
- 10.4** The Licensee's sole and exclusive remedy under the warranty given in this Condition shall be limited to the correction or replacement of the Licensed Work in whole or in part.

## **11. Limitations of Liability**

- 11.1** The Licensor shall indemnify the Licensee in respect of any liability for death or personal injury to any person or loss of or damage to the Licensee's tangible property caused by the Licensor's negligence, provided that the Licensor's liability in respect of loss or damage to property shall not exceed the amount of £100,000 (one hundred thousand pounds) (or such greater sum as may be agreed between the Licensor and Licensee) in respect of any one incident or series of incidents attributable to the same cause.
- 11.2** The Licensor's liability under Condition 10 shall be in lieu of any condition or warranty of any kind whatsoever, express or implied, statutory or otherwise, including as to the quality or fitness for any particular purpose, of the Licensed Work.
- 11.3** The Licensor shall not in any circumstances be liable whether in contract, tort or otherwise for any consequential or indirect loss or damage howsoever arising and of whatsoever nature suffered or incurred by the Licensee including (without limitation) loss of profits, loss of contracts, loss of data, loss of operation time or loss of use of any equipment or process suffered indirectly by the Licensee and loss of anticipated savings.
- 11.4** Save as provided in Conditions 10, 11 and 12, the Licensor shall not be liable to the Licensee either in tort, contract or otherwise whatsoever for any loss, damage, injury or expense howsoever arising out of or in connection with the supply or use of the Licensed Work or the manner of performance of the Licence.
- 11.5** The Licensee will indemnify the Licensor in respect of any claim for loss, damage or injury of any person or property occasioned by the act, neglect or default of the Licensee except, and insofar as the Licensor is liable as aforesaid.

## **12. Copyright Indemnity**

- 12.1** The Licensor shall indemnify the Licensee against any damages, costs, claims or expenditure incurred by the Licensee as a result of any infringement or alleged infringement of copyright or any intellectual property rights of a third party when the Licensed Work is used by the Licensee for the purposes licensed hereunder provided that:
- 12.1.1** the Licensor shall be promptly notified by the Licensee upon the Licensee becoming aware of any such alleged infringement and, at its own expense, the Licensor shall conduct all negotiations for settlement of such allegations and any litigation that may arise therefrom;
- 12.1.2** the Licensee shall, at the request of the Licensor, give all reasonable assistance for the purposes of courtesy and defending such claims or demand or action and shall be indemnified against all costs and expenses in so doing;
- 12.1.3** the Licensee shall not make any admissions which may be prejudicial to the defence of such claim or demand or action.

**12.2** If at any time an allegation of infringement of copyright is made in respect of the Licensed Work the Licensor may at its own expense modify or replace Licensed Work with materials of equivalent performance so as to avoid infringement.

**12.3** The Licensor shall have no liability for any claim of infringement based on:

**12.3.1** use of other than an unaltered release of the Licensed Work; or

**12.3.2** use of a combination of the Licensed Work with data not supplied by the Licensor; or

**12.3.3** the Licensee's refusal to use a modified or replacement of the Licensed Work supplied pursuant to Condition 12.2.

**12.4** The foregoing states the entire liability of the Licensor with respect to infringement or alleged infringement of any third party proprietary rights in the Licensed Work.

### **13. Publicity**

Both the Licensee and Licensor may use the name of the other in advertising or publicity relating to the Licensed Work subject to prior written consent having been obtained. Such consent shall not be unreasonably withheld.

### **14. Liquidation**

If the Licensor shall make an arrangement with its creditors or shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction where the emergent company assumes the obligations of the Licensor) or if a receiver shall be appointed for the whole or any part of the Licensor's assets or undertaking then the Licensee shall have the right to continue to use the Licensed Work in accordance with and subject only to Condition 4 in perpetuity.

### **15. Termination**

**15.1** Either party may terminate this Licence by written notice to the other if the other party is in breach of its obligations under the Licence, and in the event of a breach capable of being remedied, fails to remedy the breach within thirty days of receipt of notice in writing specifying the nature of the breach.

**15.2** Further, the Licensee may terminate this Licence on written notice if the Licensor shall make an arrangement with or assignment in favour of its creditors or shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or have a receiver appointed of its property or assets or any part thereof. If termination is invoked by the Licensee under the provisions of this Condition 15.2 all the material provided under this Licence may continue to be used and all Commercial Exploitation restrictions removed.

### **16. Post Termination**

Termination of the Licence howsoever arising shall not affect the rights of either party under the Licence which may have accrued up to the date of termination.

### **17. Force Majeure**

Neither party hereto shall be liable for any delay or failure to perform its obligations caused by any industrial dispute or other circumstances beyond its reasonable control.

**18. Assignment**

The Licence is personal to the Licensee and the Licensee may not assign or otherwise transfer its rights or obligations under this Licence without the prior written consent of the Licensor.

**19. Notices**

Any notice to be served hereunder shall be in writing and sent by hand or registered post to the address of the recipient as set out in Schedule of Particulars, or as otherwise notified from time to time.

**20. Severability**

If any provision of this Licence shall finally be held illegal or unenforceable such provisions shall be severed and the remainder of the Licence shall remain in full force and effect unless the business purpose of the Licence is substantially frustrated thereby.

**21. Waiver**

No waiver of any breach of this Licence shall constitute a waiver of any other breach of the same or other provision of this Licence and no waiver shall be effective unless made in writing.

**22. Recovery of Sums Due**

Whenever, under the Licence any sum of money shall be recoverable from or payable by the Licensor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Licensor, under this Licence or any contract with the Licensee.

**23. Licensor's Personnel**

**23.1** The Licensee reserves the right to refuse to admit to a Site a person employed by the Licensor, or by a sub-contractor, whose admission would be, in the opinion of the Licensee, undesirable.

**23.2** If and when directed by the Licensee, the Licensor shall provide a list of names and addresses of all the persons who may at any time require admission in connection with the performance of the Licence, to any Site, specifying the capacities in which they are concerned with the Licence and giving such other particulars as the Licensee may reasonably require.

**23.3** The decision of the Licensee as to whether any person is to be refused admission to a Site and as to whether the Licensor has failed to comply with the provisions in Condition 23.2 shall be final and conclusive.

**24. Arbitration**

All disputes, differences or questions between the parties to the Licence with respect to any matter or thing arising out of or relating to the Licence, except those for which the decision of the Licensee or any other person is by the Licence expressed to be final and conclusive, shall, after written notice by either party to the Licence to the other, be referred to a single arbitrator agreed for the purpose, or in default of such agreement

to be appointed at the request of either party by the President of the British Computer Society. Such reference shall be deemed to be a submission to arbitration under the Arbitration Act 1950 and 1979 or any statutory modification or enactment thereof.

**25. Law**

This Licence shall be considered as a contract made in England and subject to English law in the jurisdiction of English courts.

**26. Entire Agreement**

**26.1** This Licence together with the Agreement constitutes the entire contract between the Licensor and the Licensee as to the subject matter hereof and supersedes all previous communications, representations and arrangements, either written or oral, and the Licensee hereby acknowledges that no reliance is placed on any representation made but not embodied in this Licence or the Agreement.

**26.2** In the event of a conflict between these General Licence Conditions and any Special Licence Conditions in Part 3 of this Schedule 4, then the Special Licence Conditions shall prevail.