THIS LICENCE IS AGREED the ___________ day of ___________ [200_]

BETWEEN

AUSTRALIAN ACADEMIC PRESS PTY. LTD., ABN 29 009 894 062, a company incorporated in Queensland and having its registered office at 32 Jeays Street, Bowen Hills, Queensland (hereafter called the “Publisher”, which expression shall include its successors and assigns) of the first part, AND

and

[FULL CONTRACTUAL NAME] of [full address] ("the Consortium")

WHEREAS the Publisher holds the rights granted under this Licence

AND WHEREAS the Consortium desires to enable Members of the Consortium ("Member") to use the rights and the Publisher desires to grant to the Consortium the licence to use the rights for the Fee, subject to the terms and conditions of this Licence.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

In this Licence, the following terms shall have the following meanings:

Authorised Users Those persons authorised by a Consortium Member to have access to the Licensed Materials. Authorised Users must be bona fide faculty members, students, researchers, staff members, clinical and adjunct title holders, alumni, librarians, executives, or employees of the Member, or contractors engaged by the Member, provided such contractors have been informed of, and agree to abide by, the Terms and Conditions of Use set forth herein and they access the Licensed Materials via the Member’s secure network from within the Library Premises or from such other places where Authorised Users work or study (including but not limited to Authorised Users’ offices and homes, halls of residence and student dormitories). Walk-in Users from the general public or business invitees may also be permitted by the Member to access the Licensed Materials from designated terminals with a Member-controlled IP address. These designated terminals shall be physically located in libraries or similar physical premises directly controlled by the Member.
**Commercial Use**
Use for the purposes of monetary reward (whether by or for the Consortium or a Member or an Authorised User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, neither recovery of direct costs by the Consortium or any Member from Authorised Users, nor use by the Consortium or a Member or by an Authorised User of the Licensed Materials in the course of research funded by a commercial organisation, is deemed to be Commercial Use.

**Course Packs**
A collection or compilation of materials (e.g. journal articles) assembled by members of staff of a Member for use by Authorised Users in a class for the purposes of instruction and distributed or stored in either print or secure electronic formats free of charge or at a direct cost-based fee.

**Electronic Reserve**
Electronic copies of materials (e.g. book chapters, journal articles) made and stored on the Secure Network by the Consortium or by a Member for use by students in connection with specific courses of instruction offered by a Member to its students.

**Fee**
The Fee set out in Schedule 2 or in new Schedules to this Licence which may be agreed by the parties from time to time.

**Licensed Materials**
The electronic material as set out in Schedule 2 or in new Schedules to this Licence that may be agreed by the parties from time to time.

**Member**
A university, other educational institution or research organisation that is in membership of the Consortium, and which has agreed by virtue of its membership to be bound by the terms and conditions of this Licence as a party to it jointly with the Consortium.

**Secure Network**
A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users approved by a Member whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Member.

**Server**
The server, either the Publisher’s server or a third party server designated by the Publisher, on which the Licensed Materials are mounted and may be accessed.

**Subscription Period**
That period nominally covered by the volumes and issues of the Licensed Material listed in Schedule 2, regardless of the actual date of publication.

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2. **AGREEMENT**

2.1 The Publisher agrees to grant to the Consortium the non-exclusive and non-transferable right, throughout the world, to give Members and Authorised Users access to the Licensed Materials via a Secure Network for the purposes of research, teaching and private study, subject to the terms and conditions of this Licence, and the Consortium agrees to pay the Fee direct to the Publisher.

2.2 This Licence shall commence at the beginning of the Subscription Period, for each of the Licensed Materials as set out in Schedule 2 or in new Schedules to this Licence that may be added subsequently and shall automatically terminate at the end of the Subscription Period, unless the parties have previously agreed to renew it.
2.3 On termination of this License, the Publisher shall provide continuing access for Authorised Users to that part of the Licensed Materials which was published and paid for, either from the Server or by supplying CD-ROMS to the Consortium subject to payment of such fees as the parties may agree except where such termination is due to a breach of the License by the Consortium which the Consortium has failed to remedy as provided in 10.1.1 and 10.1.3 of this License.

3. USAGE RIGHTS

3.1 The Consortium, subject to clause 6 below, may:

3.1.1 Make such temporary local electronic copies by means of caching or mirrored storage of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Members and by Authorised Users and not to make available to Authorised Users duplicate copies of the Licensed Material.

3.1.2 Allow Authorised Users to have access to the Licensed Materials from the Server via the Secure Network.

3.1.3 Provide Authorised Users with integrated access and an integrated author, article title, and keyword index to the Licensed Material and all other similar material licensed from other publishers.

3.1.4 Provide single printed or electronic copies of single articles at the request of individual Authorised Users.

3.1.5 Display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorised Users or groups of Authorised Users.

3.2 Authorised Users may, in accordance with the copyright law of Australia and subject to clause 6 below:

3.2.1 Search, view, retrieve and display the Licensed Materials.

3.2.2 Electronically save individual articles or items of the Licensed Materials for personal use.

3.2.3 Print off a copy of parts of the Licensed Materials.

3.2.4 Distribute a copy of individual articles or items of the Licensed Materials in print or electronic form to other Authorised Users.

4. INTER-LIBRARY LOANS

Members may, subject to clause 6 below, supply to an Authorised User of another library within the same country as the Consortium a copy of an individual document being part of the Licensed Materials by post, fax or electronic transmission via the Internet or otherwise, for the purposes of research or private study and not for Commercial Use.
5. COURSE PACKS AND ELECTRONIC RESERVE

Members may, subject to clause 6 below, incorporate parts of the Licensed Materials in printed Course Packs and Electronic Reserve collections for the use of Authorised Users in the course of instruction at a Member’s institution. Each such item shall carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher. Copies of such items shall be deleted by the Member when they are no longer used for such purpose. Course packs in non-electronic non-print perceptible form, such as audio or Braille, may also be offered to Authorised Users who, in the reasonable opinion of the Member, are visually impaired.

6. PROHIBITED USES

6.1 Neither the Consortium nor any Member nor Authorised Users may:

6.1.1 remove or alter the authors’ names or the Publisher’s copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;

6.1.2 systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose other than back-up copies;

6.1.3 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.

6.2 The Publisher’s explicit written permission must be obtained in order to:

6.2.1 use all or any part of the Licensed Materials for any Commercial Use;

6.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorised Users;

6.2.3 publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this Licence;

6.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

7. PUBLISHER’S UNDERTAKINGS

7.1 The Publisher warrants to the Consortium that the Licensed Materials used as contemplated by this Licence do not infringe the copyright or any other proprietary or intellectual property rights of any person.
7.2 The Publisher shall:

7.2.1 make the Licensed Materials available to the Consortium from the Server in the media, format and time schedule specified in Schedule 2. The Publisher will notify the Consortium at least sixty (60) days in advance of any anticipated specification change applicable to the Licensed Materials. If the changes render the Licensed Materials less useful in a material respect to the Consortium, the Consortium may within thirty days of such notice treat such changes as a breach of this License under clause 10.1.2 and 10.4.

7.2.2 use reasonable endeavours to make available the electronic copy of each journal issue in the Licensed Materials within 10 days of publication of the printed version. In the event that for technical reasons this is not possible for any particular journal, as a matter of course, such journal shall be identified at the time of licensing, together with such reasons.

7.2.3 provide the Consortium, within 30 days of the date of this License, with information sufficient to enable the Consortium to access the Licensed Material.

7.2.4 use reasonable endeavours to ensure that the Server has adequate capacity and bandwidth to support the usage of the Consortium 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 term of this Licence.

7.2.5 use reasonable endeavours to make the Licensed Materials available to the Consortium and to Authorised Users at all times and on a twenty-four hour basis, save for routine maintenance (which shall be notified to the Consortium in advance wherever possible), and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service.

7.3 The Publisher reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Consortium of such withdrawal. If the withdrawal results in the Licensed Materials being no longer useful to the Consortium, the Consortium may within thirty days of such notice treat such changes as a breach of this License under clause 10.1.2 and 10.4.

7.4 Collection and analysis of data on the usage of the Licensed Materials will assist both the Publisher and the Consortium and its Members to understand the impact of this License. The Publisher shall make available to the Consortium usage data on the number of titles, abstracts and articles downloaded or printed, by journal title and by Member.

7.5 Except as expressly provided in this License, the Publisher makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Materials, merchantability or fitness of use for a particular purpose. The Licensed Materials are supplied ‘as is’.

7.6 Except as provided in clause 7.1, under no circumstances shall the Publisher be liable to the Consortium or any of its Members or any other person, including but not limited to Authorised Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials.
8. CONSORTIUM’S UNDERTAKINGS

8.1 The Consortium and each Member shall:

8.1.1 use reasonable endeavours to ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials;

8.1.2 use reasonable endeavours to notify Authorised Users of the terms and conditions of this Licence and take steps to protect the Licensed Materials from unauthorised use or other breach of this Licence;

8.1.3 use reasonable endeavours to monitor compliance and immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;

8.1.4 provide the Publisher, within 30 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Material in accordance with its obligation under clause 7.2.3. Should the Consortium make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect.

8.1.5 keep full and up-to-date records of all IP addresses and provide the Publisher with details of such additions, deletions or other alterations to such records as are necessary to enable the Publisher to provide Authorised Users with access to the Licensed Materials as contemplated by this License;

8.1.6 use reasonable endeavours to ensure that only Authorised Users are permitted access to the Licensed Materials.

8.2 The Consortium shall, in consideration for the rights granted under this Licence, pay the Fee within thirty (30) days of the date of signing this Agreement and within thirty (30) days of receipt of an invoice relating to each subsequent Subscription Period and receipt of such payment shall be a condition of this License coming into effect.

9. UNDERTAKINGS BY BOTH PARTIES

Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party.
10. TER**M AND TERMINATION**

10.1 In addition to automatic termination (unless renewed) under clause 2.2, this Licence shall be terminated:

10.1.1 if the Consortium defaults in making payment of the Fee as provided in this Licence and fails to remedy such default within thirty (30) days of notification in writing by the Publisher;

10.1.2 if the Publisher commits a material or persistent breach of any term of this Licence and fails to remedy the breach within thirty (30) days of notification in writing by the Consortium;

10.1.3 if the Consortium commits a wilful material and persistent breach of the Publisher’s copyright or other intellectual property rights or of the provisions of clause 3 in respect of usage rights or of clause 6 in respect of prohibited uses;

10.1.4 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

10.2 On termination all rights and obligations of the parties automatically terminate except for obligations in respect of Licensed Materials to which access continues to be permitted as provided in clause 2.3.

10.3 On termination of this Licence for cause, as specified in clauses 10.1.1 and 10.1.3, the Consortium shall immediately cease to distribute or make available the Licensed Materials to Authorised Users and shall return to the Publisher or destroy all Licensed Materials locally mounted pursuant to clause 3.1.1 and 3.1.2 except as provided in clause 2.3.

10.4 On termination of this Licence by the Consortium for cause, as specified in clause 10.1.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

11. GENERAL

11.1 This Licence constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Licence, whether oral or written.

11.2 Alterations to this Licence and to the Schedules to this Licence are only valid if they are recorded in writing and signed by both parties.

11.3 This Licence may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, except as provided in this Licence in respect [of the Agent] [and the management and operation of the Server] [and the Publisher’s Representative], without the prior written consent of the other party, which consent shall not unreasonably be withheld.

11.4 If rights in all or any part of the Licensed Materials are assigned to another publisher, the Publisher shall [use its best endeavours to] ensure that the terms and conditions of this Licence are maintained.
11.5 Any notices 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 in this Licence or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within 14 days of posting.

11.6 Neither party’s delay or failure to perform any provision of this Licence, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Licence.

11.7 The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence.

11.8 Either party’s waiver, or failure to require performance by the other, of any provision of this Licence will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

11.9 This Licence shall be governed by and construed in accordance with Australian law and the parties irrevocably agree that any dispute arising out of or in connection with this Licence will be subject to and within the jurisdiction of the courts of Queensland.
AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals): _______________ Date: ______________
Position / Title: ______________________

FOR THE CONSORTIUM: [FULL NAME]

Name (in block capitals): _______________ Date: ______________
Position / Title: ______________________
SCHEDULE 1

MEMBERS OF THE CONSORTIUM

A schedule dated [date] to the Licence dated [date] between [Publisher] and [Consortium]

List of Members and their addresses and Internet details, and a contact name at each

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _______________ Date: _______________
Position / Title: _______________________ 

FOR THE [MEMBER] [CONSORTIUM]: [FULL NAME]

Name (in block capitals: _______________ Date: _______________
Position / Title: _______________________
SCHEDULE 2

LICENSED MATERIALS, [SUBSCRIPTION PERIOD] AND ACCESS METHOD

A schedule dated [date] to the Licence dated [date] between [Publisher] and [Consortium]

THE LICENSED MATERIALS

ACCESS METHOD

Authentication via User ID/password and IP Address
Authentication via IP address

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER: [FULL NAME]

Name (in block capitals: _______________ Date: _______________
Position / Title: ______________________

FOR THE CONSORTIUM: [FULL NAME]

Name (in block capitals: _______________ Date: _______________
Position / Title: ______________________