Griffith REVIEW Licence Agreement

Griffith REVIEW
Journal Licence Agreement

This Agreement is made on the date specified in Item 1 of Schedule 1

BETWEEN

The party named in Item 2 of Schedule 1 (“Licensee”)

AND

Griffith University ABN 78 106 094 461
a body corporate established pursuant to the Griffith University Act 1998
Kessels Road
Nathan, Qld, 4111 AUSTRALIA (“Licensor”)

1. Key Definitions
In this Agreement, the following terms shall have the following meanings:

1.1 “Agreement” means this Journal Licence Agreement, including all schedules and annexures to it.

1.2 “Authorised Users” means:
   (a) employees, faculty, staff and students officially affiliated with Licensee; and
   (b) authorised clients of Licensee’s library facilities, including occasional public walk-in users who access the Licensed Materials through stations physically located on the Licensee’s premises.

1.3 “Commercial Use” means use of the Licensed Materials for the purposes of monetary reward (whether by or for Licensee or an Authorised User) by the means of sale, resale, loan, transfer, hire or other form of commercial exploitation.

1.4 “End Date” means the expiry date of the Subscription Period as set out in Item 4 of Schedule 1 to this Agreement.

1.5 “Fee” means the annual fees payable by Licensee for the Licence as set out in Item 5 of Schedule 1.

1.6 “Force Majeure Event” includes any act of God, war or threatened war, act or threatened act of terrorism, riot, strike, lockout, individual action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.

1.7 “Intellectual Property Rights” means copyright, trade mark, design, patent, semiconductor or circuit layout rights, business or company names, trade secrets, know-how, the right to have information kept confidential and any rights to
registration of such rights anywhere in the world, whether coming into existence before or after the date of this Agreement.

1.8 “Licence” means the licence from the Licensor to the Licensee set out in clause 2 below.

1.9 “Licensed Materials” means the electronic version of the Licensor’s journal(s) which Licensee subscribes to pursuant to this Agreement, as set out in Item 3 of Schedule 1 to this Agreement.

1.10 “Parties” means the Licensor and Licensee, and “Party” means either of them.

1.11 “Secure Network” means a network (whether a standalone or a virtual network within the Internet) which is only accessible to Authorised Users approved by Licensee 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 Licensee.

1.12 “Site” means the electronic site(s) on which the Licensed Materials will be displayed, as defined by the IP range set out in Item 6 of Schedule 1.

1.13 “Start Date” means the commencement date of the Subscription Period as set out in Item 4 of Schedule 1 to this Agreement.

1.14 “Subscription Period” means the period commencing on the Start Date and ending on the End Date and any such renewal of that period in accordance with clause 7.2.

1.15 In this Agreement:

(a) clause headings are inserted for ease of reference only and will not form part of this Agreement and will not be used in the interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa, words importing a gender include other genders;

(c) a reference to a person will be construed as a reference to an individual, firm, body corporate or other entity (whether incorporated or not);

(d) a reference to a position will be construed as a reference to the persons occupying that position from time to time;

(e) unless otherwise stipulated, all monetary amounts referred to in this Agreement will be deemed to be in Australian currency;

(f) a reference to this Agreement includes the recitals of and any schedules, annexures, and exhibits to this Agreement;

(g) “includes”, “including”, “for example”, “such as” and similar phrases are not words of limitation; and

(h) references to “month” and “year” mean a calendar month or calendar year, as the case may be.
2. **The Licence**

2.1 In consideration of receipt of the Fee, Licensor grants Licensee for the Subscription Period a personal, non-exclusive, non-transferable Licence to allow Authorised Users to access the Licensed Materials at the Site. Remote access to the Licensed Materials may only be either via Licensee’s Secure Network in accordance with clauses 4.1(a) and 4.1(b), or to Authorised Users who have been issued by Licensee with a password or other necessary authentication to access the Licensed Materials.

2.2 Licensor holds the copyright (or all necessary licences) for all works published in the Licensed Materials, as a compilation and as to the individual articles, collectively and individually, unless otherwise expressly noted.

2.3 Neither Licensee nor any Authorised User shall claim ownership of the Licensed Materials, or any Intellectual Property Rights in the Licensed Materials by reason of their use of or access to the Licensed Materials, nor make any Commercial Use of the Licensed Materials.

2.4 Licensor also hereby grants to Licensee a personal, non-exclusive, royalty-free, perpetual licence to use any Licensed Materials that were accessible by Licensee during the Subscription Period, with the exception of any portion of Licensed Materials that has been expunged from the Licensed Materials, damaged or sold. Such use by the Licensee shall be in accordance with the provisions of this Agreement, which provisions shall survive expiry of this Agreement. The means by which Licensee shall have access to such Licensed Materials shall be in an electronic form as determined by the Licensor. Where the Intellectual Property Rights in any Licensed Materials are assigned by Licensor to a third party, Licensor shall use reasonable endeavours to ensure that the assignee can provide ongoing access to the Licensee for the relevant portion of the Licensed Materials. This clause 2.4 will survive the expiration or termination of this Agreement.

3. **Permitted Uses**

3.1 All use of the Licensed Materials is subject to all applicable laws concerning Intellectual Property Rights. Reproduction of the Licensed Materials by Licensee is permitted as follows:

(a) **Downloading:** Downloading, printing, or saving of the Licensed Materials for personal use is permissible. No Commercial Use of any part of the Licensed Materials is permitted without the prior, express written permission of Licensor. Systematic downloading is forbidden.

(b) **Course Packs and Electronic Reserve:** Notwithstanding anything to the contrary in this Agreement, Licensee may incorporate articles or portions of articles from the Licensed Materials into printed course packs and electronic reserve collections for the use of Authorised Users in the course of instruction by Licensee, provided that such course packs and electronic reserve collections are not used for any Commercial Use and such reproduction is within the limits set out in the *Copyright Act 1968* (Cth). Licensee must ensure that each such article or portion of an article carries an acknowledgement of the source of such article or portion of an article which includes the name of the author of the applicable article, the
title of the article, and the phrase "Originally published in [title of Licensed Materials]." 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 Licensee, are visually impaired.

(c) Inter-library Loan: Licensee may supply to an authorised user of another not-for-profit library 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.

4. **Licensee’s Obligations**

4.1 Licensee agrees that it:

(a) will undertake all necessary authentication and verification processes to ensure that only Authorised Users can access the Licensed Materials;

(b) is responsible for creating and maintaining reasonable security measures and posting policies consistent with the rights and restrictions described in this Agreement to ensure that only Authorised Users can access the Licensed Materials;

(c) is prohibited from granting any sublicences to access the Licensed Materials to third parties;

(d) affirms that all IP addresses comprising the Site in the range listed in Item 6 of Schedule 1 are specifically controlled by Licensee for the use of Authorised Users;

(e) will not knowingly permit anyone other than Authorised Users to use the Licensed Materials;

(f) will not remove, cover, overlay, obscure, block, or change any copyright notices, legends, or terms of use which Licensor may display on the Licensed Materials in order to inform users about system features, terms of use, copyright notices or other matters; and

(g) will use all reasonable efforts to ensure that all Authorised Users are appropriately notified of the restrictions placed on Authorised Users’ use of the Licensed Materials by Authorised Users under this Agreement.

5. **Technical Access**

5.1 Licensor intends for the Licensed Materials to be available 24 hours per day, 7 days per week. However, Licensor does not warrant that access to the Licensed Materials will be uninterrupted or error free.

5.2 The Licensor will not be liable for damages or refunds should the Licensed Materials become unavailable or access to the Licensed Materials becomes slow or incomplete due to system back-up procedures, internet traffic volume, upgrades, overload of requests to the servers, interruption to utilities or telecommunications, general network failures or delays, or any other cause beyond Licensor’s reasonable control which may from time to time make the Licensed Material inaccessible to Licensee or its Authorised Users.
6. **Fee**

6.1 Licensee must pay the Fee annually in advance within 30 days of receipt of Licensor’s invoice in the manner specified by Licensor, or if no such manner is specified, by way of a cheque payable to Licensor.

6.2 Licensor will notify Licensee of any increase in the Fee payable by Licensee at least 45 days prior to each renewal of the Subscription Period. Such increased Fee must not exceed Licensor’s then standard fee for the grant of a licence to access the Licensed Materials.

7. **Term and Termination**

7.1 This Agreement will commence on the Start Date and will continue for the Subscription Period.

7.2 Unless either Party gives written notice to terminate this Agreement to the other Party at least 30 days prior to the End Date to terminate this Agreement, then this Agreement will automatically renew for further terms of 12 months on the same terms and conditions, subject to clause 6.2.

7.3 After the initial Subscription Period, either Party may terminate this Agreement by giving at least 30 days prior written notice to the other Party to terminate the Agreement at the end of the then current renewal term.

7.4 Either Party may terminate this Agreement by written notice to the other if:

(a) a Party breaches a material term of this Agreement and, where such breach is remediable, that breach is not remedied within 14 days of the defaulting Party receiving notice to do so; or

(b) a Force Majeure Event continues for more than 30 days.

7.5 Licensor may terminate this Agreement by written notice to Licensee if:

(a) a receiver or receiver and manager is appointed to all or a substantial part of the property of Licensee;

(b) a provisional liquidator or official manager is appointed to Licensee; or

(c) Licensee makes any arrangements or compromise with its creditors or with any class or members.

8. **Warranty and Liability**

8.1 While Licensor seeks to ensure the accuracy of the Licensed Materials, Licensor does not warrant their accuracy or completeness.

8.2 To the extent permitted by law, all implied terms, conditions and warranties are hereby excluded from this Agreement. If any such implied terms, conditions or warranties cannot be excluded from this Agreement, then Licensor’s liability in respect of such terms, conditions or warranties will be limited, at Licensor’s option, to:

(a) in the case of goods, repairing or replacing those goods or paying the cost of such repair or replacement; and

(b) in the case of services, to resupplying those services or paying the cost of resupply of those services.
8.3 In no circumstances is Licensor liable to Licensee or Authorised Users for any direct or indirect or consequential losses or expenses, however caused, or for loss of data, anticipated profits or savings, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.

8.4 Nothing in this Agreement will be deemed to exclude liability for personal injury or death caused by Licensor.

8.5 Licensor’s aggregate liability in respect of this Agreement will not exceed the Fee payable by Licensee during the 12 month period immediately preceding the date on which such liability was incurred.

9. **Indemnity**

9.1 Subject to clauses 9.2 and 9.3, Licensor shall indemnify and hold Licensee harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney’s fees, which arise from any claim by any third party of an alleged infringement of third party Intellectual Property Rights arising out of the use of the Licensed Materials by Licensee or any Authorised User. No limitation of liability set forth elsewhere in this Agreement is applicable to this indemnification.

9.2 Should Licensee wish to invoke the indemnity in clause 9.1, Licensee must promptly notify Licensor of all details known of any such claims. Licensor shall have the right to defend such claims at its own expense. Licensee shall provide all necessary assistance in investigating and defending such claims as Licensor may reasonably request and have the right to participate in the defence at its own expense, subject to following all reasonable instructions of Licensor.

9.3 The indemnity in clause 9.1 will not apply to the extent that the alleged infringement of third party Intellectual Property Rights arose from:

- (a) any breach of this Agreement by Licensee; or
- (b) the combination of the Licensed Materials by Licensee with other materials; or
- (c) any modification of the Licensed Materials by Licensee.

10. **General**

10.1 Neither party shall be liable for failure, default or delay in performing its obligations under this Licence to the extent that it was caused by a Force Majeure Event.

10.2 Licensor may assign or transfer any of its rights and obligations under this Licence, upon written notice to Licensee.

10.3 Licensee must not assign or novate any of its rights and obligations under this Agreement without the prior written consent of Licensor, which may be granted or withheld in Licensor’s absolute discretion.

10.4 Variations to this Agreement are only valid if they are recorded in writing and signed by both Parties.

10.5 No rights under this Agreement will be deemed to be waived except where the waiver is in writing and is signed by both Parties.
10.6 In the event that any provision of this Agreement is held to be invalid, that provision will be deemed to be deleted from this Agreement, and the remainder of the provisions shall continue in full force and effect.

10.7 A notice by any party under this Agreement must be:

(a) in writing;
(b) in English;
(c) addressed to the name and address of the addressee party as set out in the Schedule; and
(d) delivered by hand or prepaid post, or sent by facsimile.

10.8 The provisions of this Agreement constitute the whole of the agreement between the parties in respect of its subject matter, and supersede all prior arrangements, understandings, agreements and representations between the parties in respect of that subject matter.

10.9 This Agreement is governed by the laws of the State of Queensland in Australia and the parties agree to submit to the exclusive jurisdiction of the courts of the State of Queensland in respect of any disputes which may arise in connection with this Agreement.
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed:
For Licensee

By: ________________________________________________________
[Name]
[Title]
Dated:

For Griffith University
By: _______________________________________________________
[Name]
[Title]
Dated:
Schedule 1
Agreement Details

Item 1 – Agreement Date: ________________________________

Item 2 – Licensee’s Details:
Name: _________________________________________________
ABN/ACN: ____________________________________________
Address: _____________________________________________
Phone: ________________________________________________
Fax: _________________________________________________
Contact Name: __________________________________________

Item 3 – Licensed Materials: ____________________________

Item 4 – Subscription Period:
Start Date: ____________________________________________
End Date: _____________________________________________

Item 5 – Fee (annual amount): __________________________

Item 6 – IP Address Range: ____________________________