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**Contents:**

[AGREEMENT SUMMARY](#)

[BACKGROUND](#)

[DEFINITIONS](#)

[LICENSE GRANT](#)

[PERMITTED USES](#)

[RESTRICTIONS](#)

[OPEN ACCESS PUBLISHING](#)

[RESPONSIBILITIES OF THE PUBLISHER](#)

[WITHDRAWAL OF PUBLICATIONS](#)

[RESPONSIBILITIES OF THE PUBLISHER: AUTHORISED USERS](#)

[RESPONSIBILITIES OF INSTITUTION](#)

[CONTINUING LICENSED MATERIAL](#)

[FEES AND PAYMENT](#)

[TERM AND TERMINATION](#)

[ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS](#)

[REPRESENTATION, WARRANTIES AND INDEMNITIES](#)

[FORCE MAJEURE](#)

[ASSIGNMENT](#)

[GOVERNING LAW AND JURISDICTION](#)

[DISPUTE RESOLUTION](#)

[NOTICES:](#)

[GENERAL:](#)

[LICENCE SCHEDULE 1: LICENCE FEE:](#)

[LICENSE SCHEDULE 2: OFFERED TITLES](#)

[LICENSE SCHEDULE 3: INDUSTRY STANDARDS AND RELATED OBLIGATIONS:](#)

[LICENSE SCHEDULE 4 : OPEN ACCESS PROVISIONS](#)

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  - 10.2.3. otherwise within five Working Days after the date of such notice at any time, by providing to the Institution the electronic copies in reasonably agreed industry standard format of the Continuing Licensed Material. The Institution may give written notice to the Publisher from time to time which option it elects at that time, and, subject to Clause 9.6, the Publisher will promptly give effect to that election.
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- 10.4. On receipt by the Institution of copies of the Continuing Licensed Material under Clause 10.2.3, the Institution shall be entitled, for the Continuing Use Period, to:
  - 10.4.1. Mount the Continuing Licensed Material on a Secure Network operated by or on behalf of the Institution for the purposes set out in Clause 3.1.2; and
  - 10.4.2. make such copies of, and/or re-format, the Continuing Licensed Material as necessary to ensure that access and Permitted Use of the

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- 10.4.3. If the Publisher gives written notice that it will no longer provide access on the Publisher Platform in accordance with Clause 10.2.1, or on an alternative archive platform in accordance with Clause 10.2.2, the Publisher shall continue to make the Continuing Licensed Material available by means of the Publisher Platform until the earlier of (a) the expiry of 30 (thirty) Working Days after the date of any notice or (b) written notice by the Institution that it no longer requires the Publisher to make the Continuing Licensed Material available by means of the Publisher Platform.
- 10.5. At the start of the Continuing Use Period, the Publisher shall provide the Institution with a list confirming all Continuing Licensed Content and all Continuing Licensed Material.

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- 11.1. The Institution shall pay to the Publisher the License Fee set out in License Schedule 1 within 30 days after the due date for payment, on receipt of a correctly rendered invoice. Due date for payment will be no more than 30 days prior to the beginning of the Subscription Period or Continuing Use Period, unless otherwise requested.
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- 12.1. Subject to Clauses 11.2 to 11.7, this License shall commence upon **[Insert Start Date]** and this Agreement will remain in full force and effect until **[Insert End Date]**, unless terminated earlier as provided for with this Clause 11, until the expiry of the Subscription Period.
- 12.2. The Institution shall have the right to terminate this License during the Subscription Period, by giving not less than 30 (thirty) days' written notice to the Publisher, such notice to expire at the end of the relevant Subscription

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- 12.5.2. the other party commits a material or persistent breach of any term of this License which breach is irremediable or, if such breach is remediable, fails to remedy that breach within a period of sixty (60) days after being notified in writing to do so.
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- 12.6.1. has committed a breach of Clause 5 and fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so; or
- 12.6.2. is no longer entitled to make the Licensed Material available for access and Permitted Use by the Institution and Authorized Users.
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  - 12.7.1. fails to pay any undisputed amount due under this License on the . for payment and remains in default for not less than sixty (60) days after being notified in writing to make such payment;
  - 12.7.2. wilfully and repeatedly infringes, or wilfully permits Authorized Users to repeatedly infringe, the copyright in the Licensed Material; or
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- 12.9. All licenses and rights granted to the Institution shall end on termination of this License unless otherwise expressly stated. Termination or expiry of this License shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this License which existed at or before the date of termination or expiry.

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- 14.3. In relation to any claim made or action brought to which Clause 13.2 applies, the Institution shall:
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- 14.7. Nothing in this License shall make the Institution liable for any act by any Authorized User which gives rise to a breach of the terms of this License, provided that the Institution did not cause or knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
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## **15. FORCE MAJEURE**

- 15.1. Without prejudice to Clause 14.2, neither party shall have any liability under or be deemed to be in breach of this License for any failure to perform any term or condition of this License which result from circumstances beyond the reasonable control of such party, including but not limited to war, strikes, flood, natural disaster, governmental restrictions, power, telecommunications or Internet failures or damage to or destruction of any network facilities not arising from an act or omission of such party or its employees or contractors (“Force Majeure Event”).
- 15.2. Each party shall promptly notify the other party in writing of any Force Majeure Event which is causing delay or failure in performance of such party’s obligations under this License, or will or is likely to do so, including the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this License, and use reasonable endeavors to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 15.3. Provided it has complied with Clause 15.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this License by a Force Majeure Event (“Affected Party”), the Affected Party shall not be in breach of this License or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 15.4. If a Force Majeure Event prevents, hinders or delays the Affected Party’s performance of its obligations for a continuous period of more than 60 (sixty) days, the party not affected by the Force Majeure Event may terminate this

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## 16. ASSIGNMENT

- 16.1. This License is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this License, without the prior written consent of the other party, such consent shall not be unreasonably withheld or delayed.
- 16.2. If the Institution merges with any other Eligible Body or transfers the whole or part of its activities as an Eligible Body to another Eligible Body, the Institution or successor Institution (as the case may be), and the Authorized Users who were Authorized Users through the Institution, shall be entitled to receive the benefit of this License, subject to remaining bound by the obligations under this License:
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  - 16.2.2. in respect of the Continuing Licensed Material, in perpetuity.
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- 16.4. In any assignment to which the other party has given consent under Clause 16.1, the assigning party shall procure and ensure that the assignee shall assume all rights and obligations of the assigning party under this License and agrees to be bound to all the terms of this License.

## 17. GOVERNING LAW AND JURISDICTION

- 17.1. This License and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Australia..
- 17.2. The parties irrevocably agree that any dispute arising out of or in connection with this License will be subject to and within the jurisdiction of the courts of New South Wales.

## 18. DISPUTE RESOLUTION

- 18.1. If any dispute arises out of or in connection with this License or the performance, validity or enforceability of it (“Dispute”), the parties shall attempt to settle it by negotiation. To this end they shall use their respective reasonable endeavors to consult or negotiate with each other in good faith, and recognising their mutual interests, attempt to reach a just and equitable settlement satisfactory to both parties. Negotiations shall be conducted between the Managing Director (or equivalent position) of the Publisher, or its nominated representative, and the current Vice Chancellor (or equivalent post) of the Institution, or its nominated representative.
- 18.2. If the dispute cannot be resolved by the parties within one month of being escalated as referred to in Clause 18.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (the “Mediator”) chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.
- 18.3. Where the parties agree that a Dispute would best be resolved by the decision of an independent expert, they will use reasonable efforts to agree upon the nature of the expert required, on the appointment of the expert and, with the expert, the terms of his appointment.
- 18.4. Any person to whom a reference is made under Clause 18.3 shall act as expert and not as an arbitrator and their decision (which shall be given by the expert in writing and shall state the reasons for the decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 18.5. Each party shall provide such expert with such information and documentation as the expert may reasonably require for the purposes of forming their decision.

- 18.6. The costs of the expert shall be borne by the parties 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.
- 18.7. Subject to Clause 19.1, except where urgent interim measures are sought, nothing in this Clause 18 shall prevent either party commencing or continuing court proceedings in relation to the Dispute under Clause 18.

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- 19.1. Any notice given to a party under or in connection with this License shall be in writing and shall be delivered by email, at its address set out below:
- 19.1.1. if to the Publisher: [insert details]
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- 19.2. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

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- 1.10. use all reasonable endeavours to conform to all the Plan S technical guidance and requirements. <https://www.coalition-s.org/principles-and-implementation/>;
- 1.11. use all reasonable endeavours to follow the Recommended Practice on Access and Licensing Indicators (NISO RP-22-2021)

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