

## **SUBJECT TO CONTRACT**

### **BIG PHARMA JOURNALS COLLECTION LICENCE AGREEMENT**

**BIG PHARMA PUBLISHING LTD** ("Publisher") of 1 Hochstrasse, Berlin, Germany.

OFFERS to you, the Institution, permission to access the Licensed Material and use such material only on the terms and conditions as set out in this Licence.

#### **RECITALS**

**WHEREAS** Big Pharma Journals Collection is a collection of 17 pharmacology research journals;

**AND WHEREAS** Big Pharma Journals Collection and all intellectual property rights therein are owned by or duly licensed to the Publisher.

#### **IT IS AGREED AS FOLLOWS**

##### **1. DEFINITIONS**

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

"Authorised User"

means an individual who is authorised by the Institution to have access to its information services (whether on-site or off-site) via Secure Authentication and who is a UK-based current student of the Institution (including undergraduates and postgraduates); a UK-based member of staff of the Institution (whether permanent or temporary including retired members of staff over 60 years of age); or a Walk-In User. Walk-In Users are persons who are allowed by the Institution to access its information services from computer terminals or otherwise within the physical premises of the Institution. For the avoidance of doubt, Walk-In Users may be given access to the Licensed Material by any wireless Secure Network. Walk-In Users are not allowed off-site access to the Licensed Material.

"Commercial Use"

means use for the purpose of monetary reward (whether by or for the Institution or

an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Material. For the avoidance of doubt, neither recovery of direct cost by the Institution from Authorised Users, nor use by the Institution or Authorised Users of the Licensed Material in the course of research funded by a commercial organisation is deemed to constitute Commercial Use.

"Educational Purposes"

means use for the purpose of education, teaching, distance learning in the UK only, private study and/or research.

"Licence Fee"

means the fee for the Licence as set out in Schedule 1. The fee will be in line with the Offer.

"Licensed Material"

means the material listed in Schedule 2.

"Secure Authentication"

means access to the Licensed Material by UK Access Management Federation compliant technology, Internet Protocol ("IP") ranges or by a username and password provided by the Institution or by another means of authentication agreed between the Publisher and the Institution.

"Secure Network"

means a network which is only accessible to Authorised Users by Secure Authentication.

1.2 Headings in this Licence are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

## **2. LICENCE GRANT**

2.1 The Publisher hereby grants to the Institution, subject to and in accordance with the terms of this Licence, a non-exclusive non-transferable licence to access and use the Licensed Material and to allow Authorised Users to access and use the Licensed Material via Secure Authentication and for Educational Purposes.

- 2.2 In consideration for the Publisher's licensing of the Licensed Material pursuant to Clause 2.1, the Institution undertakes to pay to the Publisher the Licence Fee in accordance with the provisions of Schedule 1.

### **3. PERMITTED USES**

- 3.1 This Licence permits the Institution for Educational Purposes only to:
- 3.1.1 provide Authorised 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;
  - 3.1.2 supply to another library in the United Kingdom (whether by post, fax or secure electronic transmission provided the electronic file is deleted immediately after printing) a single paper copy of an electronic original of an individual document, for the purpose of non-commercial research or private study;
  - 3.1.3 provide single printed or electronic copies of single articles at the request of individual Authorised Users;
  - 3.1.4 display, download and print parts of the Licensed Material for the purpose of promoting or testing the Licensed Material or for training Authorised Users;
  - 3.1.5 make and distribute copies of training material as may be required for the purpose of using the Licensed Material in accordance with this Licence;
  - 3.1.6 allow Authorised Users for Educational Purposes only to:
    - 3.1.6.1 access the Licensed Material by Secure Authentication in order to search, retrieve, display and view the Licensed Material;
    - 3.1.6.2 electronically save parts (not more than one page) of the Licensed Material for personal use;
    - 3.1.6.3 print out single copies of parts (not more than one page) of the Licensed Material for personal use;
    - 3.1.6.4 incorporate parts (not more than one page) of the Licensed Material in printed and electronic course packs to be used in the course of instruction and/or in virtual learning environments hosted on a Secure Network. Authorised Users must specify the title and copyright owner of the Licensed Material used in the course packs. Course packs in other formats, such as Braille, may also be offered to Authorised Users;
    - 3.1.6.5 incorporate parts (not more than one page) of the Licensed Material in printed or electronic form in assignments and

portfolios, theses and in dissertations (“the Academic Works”), and to make reproductions of the Academic Works for personal use and library deposit. Reproductions of the Academic Works can be provided to sponsors of those Academic Works. Authorised Users must specify the title and copyright owner of the Licensed Material used in the Academic Works;

3.1.6.6 publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other similar event; and

3.1.6.7 not prior to 12 months after publication by the Publisher, save and/or deposit in perpetuity articles forming parts of the Licensed Material of which they are the authors on any network including networks open to the public and to communicate to the public such parts via any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created but not on a third party publisher network. If possible there should be citation information and best efforts must be used to include a link to the on-line abstract in the journal in which the article was published. Additionally, the final published version of the article may not be used, only a named author’s own format (which may include amendments made following peer review);

3.2 This Licence shall be deemed to complement and extend the rights of the Institution and Authorised Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 and nothing in this Licence shall constitute a waiver of any statutory rights held by the Institution and Authorised Users from time to time under these Acts or any amending legislation.

#### **4. RESTRICTIONS**

4.1 Except where this Licence states otherwise, the Institution and Authorised Users may not:

4.1.1 sell or resell the Licensed Material unless the Publisher has given the Institution or an Authorised User permission in writing to do so;

4.1.2 remove, obscure or alter copyright notices, acknowledgements or other means of identification or disclaimers;

4.1.3 alter or adapt the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise allowed under this Licence. For the avoidance of doubt, no alteration of the words or their order is allowed;

- 4.1.4 display or distribute any part of the Licensed Material on any electronic network, including the internet other than by a Secure Network;
  - 4.1.5 use all or any part of the Licensed Material for any Commercial Use or for any purpose other than Educational Purposes; or
  - 4.1.6 provide access and/or allow use of the Licensed Material by anyone other than Authorised Users.
- 4.2 This Clause will continue to apply after termination of this Licence for any reason.

## **5. RESPONSIBILITIES OF THE PUBLISHER**

- 5.1 The Publisher agrees to:
- 5.1.1 make the Licensed Material available to the Institution and Authorised Users from the start of the Subscription Period;
  - 5.1.2 use all reasonable efforts to make the Licensed Material available to the Institution and Authorised Users 24 hours a day (except when routine maintenance is carried out), and to restore access to the Licensed Material as soon as possible after any interruption or suspension of the service;
  - 5.1.3 provide customer support services to Authorised Users by e-mail or over the phone. This includes answering e-mail queries about the use, functionality and content of the Licensed Material within 24 hours;
  - 5.1.4 use all reasonable efforts to ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage of the Institution;
  - 5.1.5 provide electronic product documentation to the Institution free of charge. The Publisher will allow copies of all documentation to be made and distributed by the Institution to Authorised Users provided it is either duplicated in full, or a proper ownership acknowledgement is included;
- 5.2 The Publisher reserves the right at any time to withdraw from the Licensed Material any item or part of an item:
- i) for which the Publisher no longer retains the right to publish and for which the Publisher has been unable to secure the provisions as set out in Clauses 8.7 and 8.8; or
  - ii) for which the Publisher has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.

In the event of a withdrawal, the Publisher shall give written notice thereof to the Institution. If the withdrawn material represents more than ten per cent (10%) of the Licensed Material, the Publisher shall make a pro rata refund of the Licence Fee to the Institution. The refund will take into account the amount of material withdrawn and the length of the Subscription Period remaining.

## **6. RESPONSIBILITIES OF INSTITUTION**

### **6.1 The Institution agrees to:**

- 6.1.1 give passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not give their passwords or other access information to anyone else;
- 6.1.2 provide lists of valid IP addresses to the Publisher and update those lists regularly as agreed by the parties from time to time;
- 6.1.3 use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Material;
- 6.1.4 use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Licence; and
- 6.1.5 use all reasonable efforts to monitor compliance with the terms of this Licence and notify the Publisher immediately and provide full particulars on becoming aware of any of the following:
  - i) any unauthorised access to or use of the Licensed Material or unauthorised use of any of Institution's password(s); or
  - ii) any breach by an Authorised User of the terms of this Licence.

As soon as the Institution is aware of any breach of the terms of this Licence, the Institution further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Institution's standard practice and use all reasonable efforts to ensure that such activity ceases and to prevent any recurrence.

- 6.2 The Institution undertakes to the Publisher that the computer system through which the Licensed Material will be used is configured, and procedures are in place, to prohibit access to the Licensed Material by any person other than an Authorised User, that it shall inform the Authorised Users about the conditions of use of the Licensed Material, and that during the term of this Licence, the Institutions will make best efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

## **7. LICENCE FEE**

- 7.1 The Institution will pay the Licence Fee to the Publisher for the rights granted to the Licensed Material in the amount and upon terms as set out in Schedule 1.

## **8. TERM AND TERMINATION**

- 8.1 The term of this Licence be for two years, which will commence upon the date of signature.
- 8.2 This Licence will be automatically renewed unless the Institution gives the Publisher sixty days' cancellation notice prior to the termination date.
- 8.3 Any party may terminate this Licence at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Licence by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith by written notice to the other party.
- 8.4 Upon a breach, or reported breach of this Licence by the Institution or an Authorised User, the Publisher reserves the right to terminate on-line access to the Licensed Material by the Institution and Authorised Users.
- 8.5 Upon termination of this Licence (except for a material breach by the Institution of its obligations under this Licence), the Publisher will provide (at the option of the Institution) the Institution and its Authorised Users with continuous access to and use of the full text of the Licensed Material which was published during the term of this Licence either by one or more of the following options:
- i) continuing online access to archival copies of the same Licensed Material on the Publisher's server, for a reasonable fee;
  - ii) supplying archival copies of the same Licensed Material to the Institution in an electronic medium mutually agreed between the parties, for a small fee;
  - iii) granting access to the same Licensed Material through Portico.

For the avoidance of doubt access and use of archival copies shall be subject to the terms and conditions as set out in Clauses 3 and 4 of this Licence.

- 8.6 On termination of this Licence by the Institution due to a material breach or repeated other breaches by the Publisher, the Publisher will reimburse the Institution a pro rata proportion of the then remaining Licence Fee for the unexpired part of the Subscription Period. The Publisher shall not be obligated to return any portion of the Licence Fee for termination by the Publisher due to the Institution's breach pursuant to Clause 8.3.
- 8.7 Upon termination of this Licence, any copies of parts of the Licensed Material made by the Institution or Authorised Users must be deleted from the Institution's servers or networks.

- 8.8 Upon termination of this Licence, copies of Authored Articles may be retained by their Authors and used subject to the restrictions of Clause 4.1.7 of this Licence.

## **9. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

- 9.1 The Institution acknowledges that all intellectual property rights in the Licensed Material are the sole and exclusive property of the Publisher or duly licensed to the Publisher and that this Licence does not assign or transfer to the Institution any right, title or interest therein except for the right to access and use the Licensed Material in accordance with the terms and conditions of this Licence.

## **10. REPRESENTATION, WARRANTIES AND INDEMNIFICATION**

- 10.1 The Publisher warrants to the Institution that the Licensed Material and all intellectual property rights therein are owned by or licensed to the Publisher and that the Licensed Material used as contemplated in this Licence does not infringe any intellectual property rights of any natural or legal person. The Publisher agrees that the Institution shall have no liability and the Publisher will indemnify, defend and hold the Institution harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the Institution in defending against any third party claim of intellectual property rights infringements or threats of claims thereof with respect of the Institution's or Authorised Users use of the Licensed Material, provided that:

- i) the use of the Licensed Material has been in full compliance with the terms and conditions of this Licence;
- ii the Institution provides the Publisher with prompt notice of any such claim or threat of claim;
- iii) the Institution co-operates fully with the Publisher in the defence or settlement of such claim; and
- iv) the Publisher has sole and complete control over the defence or settlement of such claim.

- 10.2 The Publisher reserves the right to change the content (including removal of an entire journal on ceasing to have the right to publish), presentation, user facilities or availability of parts of the Licensed Material and to make changes in any software used to make the Licensed Material available at their sole discretion. The Publisher will notify the Institution of any substantial change to the Licensed Material.

- 10.3 While the Publisher has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Material, the Publisher makes no representation and gives no warranty express or implied with regard to the information contained in or any part of the Licensed Material including

(without limitation) the fitness of such information or part for any purposes whatsoever and the Publisher accepts no liability for loss suffered or incurred by the Institution or Authorised Users as a result of their reliance on the Licensed Material.

- 10.4 In no circumstances will the Publisher be liable to the Institution for any loss resulting from a cause over which the Publisher does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, unauthorised access, theft, or operator errors.
- 10.5 The Institution agrees to notify the Publisher immediately and provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Material and do all things reasonably required to assist the Publisher in such claims. It is expressly agreed that upon such notification, or if the Publisher becomes aware of such a claim from other sources, the Publisher may remove such work(s) from the Licensed Material. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Licence.
- 10.6 Nothing in this Licence shall make the Institution liable for breach of the terms of this Licence by any Authorised User provided that the Institution did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
- 10.7 Except as provided for in Clause 10.1, neither the Institution nor the Publisher will be liable to the other in contract or negligence or otherwise for:
- i) any special, indirect, incidental, punitive or consequential damages;
  - ii) loss of direct or indirect profits, business, contracts, revenue or anticipated savings; or
  - iii) for any increased costs or expenses.
- 10.8 The Institution may not recover from the Publisher damages arising out of or in any way related to this Licence in an aggregate amount in excess of £3,000.
- 10.9 No party limits its liability for:
- i) death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement; and
  - ii) its own fraud or that of its employees or agents in the course of their engagement.

## **11. FORCE MAJEURE**

- 11.1 Either party's failure to perform any term or condition of this Licence as result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities ["Force Majeure"]) shall not be deemed to be, or to give rise to, a breach of this Licence.
- 11.2 If either party to this Licence is prevented or delayed in the performance of any of its obligations under this Licence by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

## **12. ASSIGNMENT**

- 12.1 Except as permitted for under this Licence, neither this Licence nor any of the rights and obligations under it may be assigned by either party without obtaining the prior written consent of the other party, such consent shall not unreasonably be withheld or delayed. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Licence and agrees to be bound to all the terms of this Licence.

## **13. GOVERNING LAW AND DISPUTE RESOLUTION**

- 13.1 This Licence shall be governed by and construed in accordance with German 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 German courts.
- 13.2 The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Managing Director of the Publisher and the current Vice Chancellor of the Institution. Where the parties agree that a dispute arising out of or in connection with this Licence would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement.
- 13.3 Any person to whom a reference is made under Clause 13.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 13.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

- 13.5 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.

#### **14. NOTICES**

- 14.1 All notices required to be given under this Licence shall be given in writing in English and sent by courier, or special delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Licence, and all such notices shall be deemed to have been received three (3) days after the date of posting in the case of special delivery or despatch in the case of courier:

if to the Institution:

[insert details]

if to the Publisher:

Managing Director  
Big Pharma Publishing Ltd  
1 Hochstrasse  
Berlin  
Germany

#### **15. CONFIDENTIALITY**

- 15.1 Each party shall use its best endeavours to safeguard confidential information of the other party. For the purpose of this Licence confidential information means the information consisting of or concerning the terms and conditions of this Licence, the pricing of the Licensed Material for the Institution and information obtained by the Institution from the Publisher about its pricing structures during the negotiations regarding this Licence.