

**DATED**

**20XX**

**[PUBLISHER (in capitals and bold)]**

-and-

**SOUTH AFRICAN NATIONAL LIBRARY AND INFORMATION CONSORTIUM**

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**PRODUCT NAME ( in capitals and bold)] AGREEMENT**

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- 1.2 Headings contained in this Agreement 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. AGREEMENT**

- 2.1 In consideration for the Publisher agreeing to provide access to the Material listed in **Schedule 2** to SANLiC Participants on the basis of the Offer in **Schedule 1** and the terms of this Agreement and to allow its use in accordance with the terms and conditions of the SANLiC License as attached hereto in **Schedule 4** and SANLiC agrees to promote the Offer to the SANLiC Participants.

## **3. RESPONSIBILITIES OF THE PUBLISHER**

- 3.1 The Publisher agrees to:
  - 3.1.1 make the Material available to SANLiC Participants in accordance with the Offer as set out in **Schedule 1**;
  - 3.1.2 provide access and allow use of the Material in accordance with the provisions as laid down in the SANLiC License as attached hereto in **Schedule 4**;
  - 3.1.3 make COUNTER-compliant monthly usage data available to SANLiC Participants.
  - 3.1.4 provide for customer support services to SANLiC Participants and to their users via e-mail or phone, including answering e-mail inquiries relating to the use, functionality and content of the Material;
  - 3.1.5 provide SANLiC by February of each subscription year with a list of SANLiC Members who have taken up the Offer, the option chosen by each of them, the fee due for such option and details of each subscribing SANLiC Participant's subscription expenditure.
- 3.2 The Publisher hereby warrants and undertakes that it will not, for the duration of this Agreement, approach any SANLiC Participant directly and make any offer to it relating to the subscription to, or licensing of, any Material, on terms that are more favourable than the terms contained in the Offer set out in **Schedule 1**. The parties agree that, should the Publisher breach this warranty and approach a SANLiC Participant directly as contemplated, any offer made to such SANLiC Participant shall be deemed to constitute

an offer made to all SANLiC Participants collectively and SANLiC shall be entitled, on their behalf, to accept or reject such offer.

- 3.3 The Publisher hereby agrees that no payments will be due to it by any SANLiC Participant in respect of the Material until such time as the Publisher has returned signed copies of this Agreement and the SANLiC License to SANLiC.

#### **4. RESPONSIBILITIES OF SANLiC**

- 4.1 SANLiC agrees to:

- 4.1.1 promote and publicise the Offer to the SANLiC Participants via closed mailing lists and a restricted section on the SANLiC web site;
- 4.1.2 inform the SANLiC Participants of any variation from the Model SANLiC License and attach a copy of the agreed SANLiC License with the promotion of the Offer;
- 4.1.3 serve as a channel of communication between the Publisher and the SANLiC Participants;
- 4.1.4 advise the Publisher on the suitability of products and services for the SANLiC Participants;
- 4.1.5 advise the Publisher on training opportunities;
- 4.1.6 use its best endeavours to ensure payment by SANLiC Participants to the Publisher;
- 4.1.7 use its best endeavours to resolve breaches of intellectual property rights and contract law in SANLiC licenses between the Publisher and the SANLiC Participants.

#### **5. TERM AND TERMINATION**

- 5.1 This Agreement will commence on the commencement date stipulated in the Offer contained in **Schedule 1** and will remain in full force and effect until the stipulated termination date unless terminated earlier as provided for in this Clause 5.
- 5.2 This Agreement will not be automatically renewed at the end of the term stipulated in **Schedule 1** and may only be renewed by written agreement between the parties.
- 5.3 Any party may terminate this Agreement at any time on the material or persistent breach by the other of any obligation on its part under this Agreement 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, save in the case of a breach by the Publisher of its warranty in terms of clause 3.2, in which event SANLiC may terminate this Agreement with immediate effect by written notice to the Publisher as soon as SANLiC becomes aware of such breach. Such termination shall not affect any new offer that SANLiC may have accepted in terms of clause 3.2.

- 5.4 If the term of this agreement stipulated in **Schedule 1** exceeds one year, any SANLiC Participant will be entitled to opt-out of its subscription in respect of the Material, including any license agreement in respect of such material, without penalty and without prejudice to any SANLiC participants who choose to maintain their subscriptions, at the start of a new subscription year if sufficient library acquisitions funds are not allocated to permit the SANLiC Participant, in the exercise of its reasonable administrative discretion, to continue with this agreement. In the event of such financial circumstances, the SANLiC Participant agrees to notify the publisher of the intent to terminate the Agreement as soon as is reasonably possible, but in any case, no less than thirty (30) days prior to next payment date. Notice of such termination shall be given to the Publisher by SANLiC on the SANLiC Participant's behalf.

## **6. FORCE MAJEURE**

- 6.1 Either party's failure to perform any term or condition of this Agreement 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 Agreement.
- 6.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement 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.

## **7. ASSIGNMENT**

- 7.1 This Agreement may not be ceded or assigned by either party to any other person or organisation without the prior written consent of the other party.

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

- 8.1 This Agreement shall be governed by and construed in accordance with South African law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the South African courts, save in the case where the defendant has no attachable assets in the Republic of South Africa or is ordinarily resident in, or its principal place of business or corporate headquarters are situated in, or it is domiciled in, a state outside of the area of jurisdiction of a court of the Republic of South Africa, in which event the person instituting proceedings shall be entitled to choose the jurisdiction and forum out of which to institute such proceedings.
- 8.2 Where the parties agree that a dispute arising out of or in connection with this Agreement would best be resolved by a decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement.
- 8.3 Any person to whom a reference is made under Clause 8.2 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.
- 8.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 8.5 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.

## **9. NOTICES**

- 9.1 All notices required to be given under this Agreement shall be given in writing in English and sent by electronic mail, fax or first class registered or recorded 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 Agreement, and all such notices shall be deemed to have been received (a) 24 hours after successful transmission in the case of electronic mail or fax; (b) fourteen (14) days after the date of posting in the case of first class registered or recorded delivery:

if to SANLiC:

Glenn Truran  
SANLiC  
PostNet Suite 310  
Private Bag X1005  
CLAREMONT



Name: \_\_\_\_\_

for and on behalf of

**[PUBLISHER (in capitals and bold)]**

who warrants his / her authority

SIGNED by:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

WITNESSED by:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

for and on behalf of

**SOUTH AFRICAN NATIONAL LIBRARY AND INFORMATION CONSORTIUM (RF) NPC,**

who warrants his / her authority



## **SCHEDULE 1: OFFER**

**(Insert formal offer document)**

Provided always in the event that at any time during the term of this Agreement the Publisher agrees to make the Material available to any SANLiC Participant in the same band on better terms than the Offer provided under this Schedule, the Offer shall be varied to that better offer and the Publisher shall forthwith repay to the Institutions the difference.

## **SCHEDULE 2: MATERIAL**

[Insert here the list of Licensed Material –indicate the number of volumes and issues for each title.]

### SCHEDULE 3: LIST OF ELIGIBLE SANLiC PARTICIPANTS

Cape Peninsula University of Technology
Central University of Technology
Durban University of Technology
Mangosuthu University of Technology
Nelson Mandela Metropolitan University
North-West University
Rhodes University
Tshwane University of Technology
UNISA
University of Cape Town
University of Fort Hare
University of Johannesburg
University of KwaZulu-Natal
University of Limpopo
University of Pretoria
Stellenbosch University
University of the Free State
University of Venda
University of Western Cape
University of the Witwatersrand
University of Zululand
Vaal University of Technology
Walter Sisulu University
CSIR (Council for Scientific & Industrial Research)
HSRC (Human Sciences Research Council)
MRC (Medical Research Council)
NRF (National Research Foundation)
ARC (Agricultural Research Council)
Mintek (Minerals Technology)
National Library of South Africa
University of Botswana
University of Namibia

## **SCHEDULE 4: LICENSE (INSTITUTION)**

[Insert the SANLiC model license]