

SCHEDULE 4: LICENSE (INSTITUTION)

DATED

20...

[PUBLISHER (in capitals and bold)]

("the Publisher")

-and-

[INSTITUTION (in capitals and bold)]

("the Licensee")

PRODUCT NAME (in capitals and bold) LICENSE AGREEMENT

PRODUCT NAME (in capitals and bold)] LICENSE AGREEMENT

[NAME OF PUBLISHER] ("Publisher"), [ADDRESS]

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

Acceptance of this License will be by delivery of a completed Acceptance of License Form attached hereto to the Publisher or to an authorised representative who will accept delivery on behalf of the Publisher. Acceptance shall be acceptance of all terms and conditions of this License and no variation or counter offer will be accepted by the Publisher.

It is recorded that this License Agreement is a schedule to, and forms part of, the [insert product name] agreement between SOUTH AFRICAN NATIONAL LIBRARY AND INFORMATION CONSORTIUM ("SANLiC") and the Publisher ("the Consortium Agreement"). This agreement is accordingly subject to the terms and conditions of the Consortium Agreement and, in the event of any conflicting provisions, the terms and conditions of the Consortium Agreement shall prevail.

RECITALS

WHEREAS [insert product name] and all intellectual property rights therein are owned by or licensed to [insert publisher];

AND WHEREAS the terms of this License and the fee were negotiated and agreed under the Consortium Agreement between SANLiC and the Publisher dated [insert date]

AND WHEREAS the parties are desirous to contract on the basis of the terms and conditions of this License

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

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

"Acceptance of License Form" means the form as attached to this License.

"Authorised Users" means individuals who are authorised by the Licensee to access the Licensee's information services whether from a computer or terminal on the Licensee's Secure Network, or off site via a connection to a valid IP address on the Licensee's Secure Network and who are affiliated to the Licensee as a current student, faculty member or employee of the Licensee. Persons who are not a current student, faculty member or an employee of the Licensee, but who are permitted to access the Secure Network

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"Commercial Use"	means use of the Licensed Material for the purpose of monetary reward (whether by or for the Licensee 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 the recovery of direct cost by the Licensee from Authorised Users, nor use by the Licensee 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 for the purpose of education, teaching, non-commercial distance learning, private study and/or research.
"Fee"	means the fee set out in the Offer negotiated and agreed under the Consortium Agreement dated [insert date], as contained in Schedule 1 of that Agreement;
"Licensed Material"	means the material listed in Schedule 2 of the Consortium Agreement.
"Library Premises"	means the physical premises of the library or libraries operated by the Licensee as listed in the Acceptance of License Form.
"Licensee"	means the organisation that signs the Acceptance of License Form and the word "Institution" may be used interchangeably with "Licensee" in this agreement.
"Offer"	means the offer agreed between SANLiC and the Publisher as set out in Schedule 1 of the Consortium Agreement.
"SANLiC"	means South African National Library Information Consortium (RF) NPC, a non-profit company duly incorporated in terms of the company laws of the Republic of South Africa with registration number 2003/008624/08;

"Secure Authentication" means access to the Licensed Material by (Internet Protocol ("IP") ranges or by a username and password provided by the Licensee or by another means of authentication agreed between the Publisher and the Licensee.

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

2. GRANT OF LICENSE

2.1 In consideration for the Fee, the Publisher hereby grants to the Licensee, upon payment of the Fee, a non-exclusive license to access and use the Licensed Material and to allow Authorised Users to access and use the Licensed Material on the terms and conditions as set out in this License.

3. USE OF THE LICENSED MATERIAL

3.1 Throughout the term of this License, the Licensee may for educational and research purpose only:

3.1.1 make such local temporary copies of all or part of the Licensed Material as are necessary to ensure efficient use of the Licensed Material, provided that such use is subject to all the terms and conditions of this License;

3.1.2 provide Authorised Users with integrated access and an integrated article author, article title and keyword index to the Licensed Materials and all other similar material licensed from other publishers;

3.1.3 allow Authorised Users to:

3.1.3.1 access the Licensed Material by Secure Authentication in order to search, retrieve, display and view the Licensed Material;

3.1.3.2 electronically save parts of the Licensed Material;

3.1.3.3 print out single copies of parts of the Licensed Material;

3.1.3.4 incorporate parts of the Licensed Material in printed and electronic course packs, study packs, resource lists and any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-

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- 3.1.3.7 provide single printed or electronic copies of single articles at the request of individual Authorised Users;
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- 4.1 Save as provided herein, the Licensee and Authorised Users may not:
 - 4.1.1 use all or any part of the Licensed Material for any Commercial Use or for any purpose other than Educational and Research Purposes;
 - 4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear.
 - 4.1.3 alter, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this License. For the avoidance of doubt, no alteration of the words or their order is permitted;
 - 4.1.4 display or distribute any part of the Licensed Material on any electronic

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4.1.5 make printed or electronic copies of multiple extracts of the Licensed Material for any purpose, beyond those authorised by this License;

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

4.2 This Clause shall survive termination of this License for any reason.

5. RESPONSIBILITIES OF THE PUBLISHER

5.1 The Publisher shall:

5.1.1 provide access and use of the Licensed Material in accordance with the provisions as laid down in this License.

5.1.2 make the Licensed Materials available to the Licensee and its Authorised Users either from the Publisher's server or the server of a third party in the format and time schedule specified in the Offer contained in Schedule 1 of the Consortium Agreement.

5.1.3 provide for customer support services to the Licensee and to Authorised Users via e-mail or phone, including answering e-mail inquiries relating to the use, functionality and content of the Licensed Material.

5.1.4 provide electronic product documentation free of charge. The Publisher allows copies of all documentation to be made provided it is either duplicated in full, or a proper ownership acknowledgement is included;

5.1.5 make available to the Licensee COUNTER-compliant usage statistics on at least a quarterly basis; and

5.1.6 to inform the Licensee from time to time of the dark archives that the Publisher uses for archiving the Licensed Material in the event of a force majeure or if the Publisher ceases to exist.

5.1.7 implement the industry standards as set out in **Annexure A**.

5.2 The Publisher reserves the right at any time to withdraw from the Licensed Material any item or part of an item:

- 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
- for which the Publisher has reasonable grounds to believe it infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.

5.3 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 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 THE LICENSEE

6.1 The Licensee shall:

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 use all reasonable efforts to ensure that Authorised Users are made aware of the terms of this License;

6.1.3 use all reasonable efforts to ensure that the Authorised Users comply with the terms of this Agreement. The Licensee will immediately on becoming aware of any unauthorised use or other breach notify the Publisher and take all reasonable steps to ensure that such activity ceases and to prevent any recurrence;

6.1.4 provide the Publisher with lists of valid IP addresses and update those lists on a regular basis the frequency of which will be agreed by the parties from time to time; and

6.1.5 undertake to the Publisher that the Licensee's computer system through which 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, and that during the term of this License, the Licensee will continue to make best efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

7. FEE

7.1 The Licensee shall pay the Publisher in accordance with the terms of payment as set out in Schedule 1 of the Consortium Agreement and the Publisher will invoice the Licensee in accordance with the provisions of the Consortium Agreement.

8. TERM AND TERMINATION

8.1 The term of this License will commence upon the date of signature and will remain in full force and effect until [insert here date as agreed with Publisher], unless terminated earlier as provided for in this Clause 8.

- 8.2 The Institution may terminate this Agreement without penalty upon thirty (30) days' notice given by the Institution to [Publisher] if sufficient institutional funds are not allocated to permit it, in the exercise of its reasonable administrative discretion, to continue its Agreement. Notwithstanding the foregoing, if access to the Licensed Material was provided but not yet paid for prior to termination, [Publisher] shall be entitled to receive a pro rata portion of the Fees attributable to the period of time that access was provided.
- 8.3 Any party may terminate this License at any time on the material or persistent breach by the other of any obligation on its part under this License 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 termination of this License by the Publisher due to a material or persistent breach by the Licensee, the Publisher shall cease to authorise all on-line access to the Licensed Materials
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10. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

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- 10.2 The Publisher reserves the right to change the content, 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 Licensee 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 Licensee 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 Licensee 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 Licensee 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. 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 License.
- 10.6 Nothing in this License shall make the Licensee liable for breach of the terms of this License by any Authorised User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
- 10.7 The Licensee represents to the Publisher that its 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 Authorised Users about the conditions of use of the Licensed Material; and that during the term of this License, the Licensee will continue to make all reasonable efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

11. FORCE MAJEURE

- 11.1 Either party's failure to perform any term or condition of this License as a 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 License.
- 11.2 If either party to this License is prevented or delayed in the performance of any of its obligations under this License 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 Save as permitted for under this Agreement, neither this Agreement nor any of the rights under it may be ceded or 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 License and agrees to be bound to all the terms of this License.

13. GOVERNING LAW AND DISPUTE RESOLUTION

- 13.1 This License 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 License 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 case the party instituting proceedings shall be entitled to choose the jurisdiction and forum out of which to institute such proceedings.
- 13.2 Where the parties agree that a dispute arising out of or in connection with this License 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. In default of agreement upon whom to appoint as a suitable expert, such expert shall upon the request of either party be appointed by the President of the Law Society of the Cape of Good Hope or its successor body or, in the case of the matter falling within the jurisdiction outside of the Republic of South Africa, by the President of an equivalent body within that jurisdiction.
- 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 License 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 License, and 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 the Publisher: [insert contact name, address, fax and e-mail]

if to the Licensee: [insert contact name, address, fax and e-mail]

15. GENERAL

- 15.1 This Agreement and its Annexures constitute the entire agreement between the parties relating to the Licensed Material and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
- 15.2 The Annexures shall have the same force and effect as if expressly set in the body of this License and any reference to this Agreement shall include the Annexures.
- 15.3 No provision in this Agreement is intended to be enforceable by a person who is not a party to this Agreement.
- 15.4 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
- 15.5 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
- 15.6 This Agreement may be signed in counterparts and, if so signed, all such counterparts taken together shall be deemed to be and construed as one instrument. An electronic copy of a signed counterpart shall be sufficient proof of signature of this Agreement.

ANNEXURE A: INDUSTRY STANDARDS

1. In order that the Institutions can fully assess the use and therefore value of the Licensed Material the Publisher will provide the Institution with fully COUNTER-compliant usage statistics every three months (www.projectcounter.org)
2. Implement the Standardized Usage Statistics Harvesting Initiative (SUSHI) protocol (<http://www.niso.org/workrooms/sushi>).
3. In order to ensure that the Licensed Material is archived and preserved for future scholarship, the Publisher will Archive the Licensed Material in at least one of the following archiving solutions Portico, CLOCKSS or LOCKSS and inform the Institution in which of the archiving solutions the Licensed Material may be found. **[DETAIL HERE THE ARCHIVING SOLUTIONS WHERE THE LICENSED MATERIAL HAS BEEN DEPOSITED]**
4. In order to ensure that the Licensed Material is accessible to all the Authorised Users of the Institution, the Publisher will Use all reasonable efforts to meet the W3C standards(www.w3.org/WAI/Resources/#in
5. In order to ensure that Authorised Users can discover and find the Licensed Material, the Publishers will use all reasonable efforts to meet the Open URL Standard (www.niso.org/kst/reports/standards?step=2&gid=&project_key=d5320409c5160be4697dc046613f71b9a773cd9e).
6. In order to ensure that journal content remains easily accessible by Institutions and their Authorised Users when there is a transfer of material between parties, and to ensure that the transfer process occurs with minimum disruption, the Publisher will use all reasonable efforts to keep to the Code of Practice of Project Transfer (www.projecttransfer.org).
7. Because an estimated 40% of full text usage on publisher sites is driven by library databases (including Google Scholar and Next Generation Discovery Tools), a major part of this access flows through OpenURL link resolvers that rely on detailed knowledge base title data provided by the Publisher. In order to ensure accurate, up to date representation of the Licensed Material and to ensure Authorised Users have ease of access the Publisher will use all reasonable efforts to give the link-resolver vendors and A-Z vendors the following information about each title in the Licensed Material on a monthly basis:
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 - ISSN or eISSN
 - Previous title, if appropriate

- Previous ISSN or eISSN, if appropriate
 - First volume and issue made available as part of the offer or, if volume and issue are not available, first year, final volume and issue or year and URL.
-
- Provide the link-resolver vendors with the algorithm or syntax for constructing an article-level link from an article's metadata within the Licensed Material. Further information about this industry standard can be found at: <http://www.uksg.org/kbart/s5/guidelines>

ANNEXURE B: CONTACT DETAILS OF LICENSEE

Library Premises and IP addresses:

No.	Library Premise(s)	Contact person	Address	IP addresses/passwords
1.				
2.				
3.				
4.				
5.				

Contact persons for [insert publisher] support and communications regarding the administration of the License

Primary contact for Licensee:.....

Dept:.....

Phone No:..... Fax No:

E-mail Address:

Deputy contact for Licensee:.....

Dept:.....

Phone No:..... Fax No:

E-mail Address:

Invoice address for Licensee:

.....

..... Postcode.....

Purchase order no:.....

Note: any changes to the contact details and IP addresses must be notified to the Publisher in writing.