

# INSTITUTIONAL ARCHIVING AGREEMENT

This Institutional Archiving Agreement (hereinafter “this Agreement”) is made this XX day of XX 2018 between the UNIVERSITY, a not-for-profit institution of higher learning based in the United Kingdom, with its principal office located at XXXXXXXXXXXXXXXXXXXX (hereinafter the “UNIVERSITY”), of the one part, and XXXX, with its principal office at XXXXXXXXXXXXXXXXXXXX, (“PUBLISHER”) of the other part (individually a “Party” and collectively the “Parties”).

## 1. Preamble

- 1.1. WHEREAS, pursuant to UNIVERSITY policy (“the Policy”), the UNIVERSITY may request or require its employees to deposit copies of the versions of their articles that have been accepted for publication by a third party (an “Accepted Manuscript”) in the UNIVERSITY’s Institutional Repository or Repositories (“IRs”);
- 1.2. AND WHEREAS certain UNIVERSITY employees may wish to enter into publishing agreements with PUBLISHER for peer-review, editing, publication, and distribution of their articles;
- 1.3. AND WHEREAS the UNIVERSITY and PUBLISHER agree that Authors benefit from publication in peer-reviewed scholarly journals managed by PUBLISHER and that PUBLISHER invests resources in developing and marketing its journals, managing the peer-review process, and editing, designing, and distributing journals that include articles written by Authors in the form of Accepted Manuscripts and Versions of Record; and
- 1.4. NOW THEREFORE, in light of the Policy, the Parties have agreed to the terms and conditions of this Agreement to facilitate the use of Accepted Manuscripts by the UNIVERSITY.

## 2. Definitions

- 2.1. “*Accepted Manuscript*” shall mean the version of the Work created by the Author which is accepted for publication by PUBLISHER as of the date of acceptance, including all changes made as a result of the peer-review process and which may also include the abstract, text, bibliography and all accompanying tables, illustrations, data, and a header, article ID, cover sheet and/or an “Accepted Manuscript” watermark, but

excluding any other editing, typesetting or other changes made by PUBLISHER and/or its licensors.

- 2.2. "*Agreement*" shall mean this Institutional Archiving Agreement, which is subject to change from time to time in material respects not in conflict with this Institutional Archiving Agreement.
- 2.3. "*Author*" shall mean a UNIVERSITY employee who is bound by the Policy and who wishes to publish a Version of Record with PUBLISHER.
- 2.4. "*Embargo Period*" shall mean a period set by PUBLISHER which shall comply with the Research Excellence Framework (REF) 2021 Guidance on Submissions and Panel Criteria being a maximum of 12 months for Main Panels A and B and 24 months for Main Panels C and D after Publication. An Embargo Period shall be set by PUBLISHER for each of its journals.
- 2.5. "*Gold Open Access*" shall mean where a Version of Record is made available free to read by PUBLISHER immediately upon Publication in accordance with certain licence terms.
- 2.6. "*Institutional Repositories ("IRs")*" shall mean the set of services managed by the UNIVERSITY to support the showcasing, preservation and dissemination of digital materials created by the UNIVERSITY and its community members.
- 2.7. "*Metadata*" shall mean the textual information that may serve to discover, identify, interpret and/or manage articles published by PUBLISHER, either on its own behalf or on behalf of its licensors, and may include for the Work, but not be limited to, the article title, journal title, ISSN, names of authors, article number, date of acceptance, copyright line and abstract.
- 2.8. "*Publication*" shall mean the date a Version of Record is made available by PUBLISHER on its website(s).
- 2.9. "*Version of Record*" shall mean the peer-reviewed, edited, formatted, and typeset version of the Work, including any tagging, indexing and other enhancements added by PUBLISHER and/or its licensors and also including any post-publication corrections or enhancements and other changes made by PUBLISHER and/or its licensors.
- 2.10. "*Work*" means an article written by an Author and accepted for publication by PUBLISHER in one of the journals listed in Appendix A.

### 3. **Terms of Use of Accepted Manuscripts**

- 3.1. Reserving its rights, and without any admission about any assertion by the UNIVERSITY of non-exclusive rights in the Accepted Manuscripts according to its Policy, PUBLISHER recognises that the UNIVERSITY may deposit the Accepted Manuscripts in the UNIVERSITY's IRs at any time.
- 3.2. With the exception of Works that PUBLISHER has published on a Gold Open Access basis, which the UNIVERSITY may make publicly available on the UNIVERSITY's IRs or otherwise at any time under the applicable licence terms, the UNIVERSITY shall not make any version of the Works publicly available on the UNIVERSITY's IRs until after the Embargo Period. After the Embargo Period, the UNIVERSITY may make only the Accepted Manuscript available in the UNIVERSITY's IRs, under a CC BY-NC-ND 4.0 licence or its equivalent, which includes the following acknowledgement or an agreed alternative with a live hyperlink to the online Version of Record in its final, definitive and citable form:

“This is a peer-reviewed, un-copyedited version of an article accepted for publication/published in [PUBLISHER's publication]. PUBLISHER is not responsible for any errors or omissions in this version of the manuscript or any version derived from it. The Version of Record is available online at [LINK] [Article DOI].”

For the avoidance of doubt, neither the CC BY-NC-ND licence nor its equivalent are intended by PUBLISHER to exclude the exception to copyright for non-commercial text and data mining which is set out in section 29A of the Copyright, Designs and Patents Act 1988.

- 3.3. The UNIVERSITY recognises PUBLISHER's ownership of and/or exclusive worldwide right to publish the Version of Record in its final, definitive, and citable form. This shall include, but not be limited to, the rights to:
  - 3.3.1. distribute and sell the Version of Record in electronic, printed or any other format or medium whether now known or hereafter developed (including without limitation in print, digital and electronic form) at its own expense;
  - 3.3.2. reproduce and authorise reproduction of the Version of Record in whole or in part for use by third parties, and communicate the Version of Record to the public in print and/or digital form, whether or not in combination with the works of others;

- 3.3.3. translate or have translated the Version of Record in all languages and publish the translated versions of the original;
- 3.3.4. authorise the Version of Record in whole or in part to be included as part of document delivery, abstracting, and indexing services;
- 3.3.5. include the Version of Record, whether in whole or in part, in a computerised database and to make this database available to third parties; and
- 3.3.6. use or permit others to use the Version of Record or parts thereof in third-party works.

#### **4. Representations and Warranties**

The UNIVERSITY represents and warrants that

- 4.1. it shall make the Authors fully aware of this Agreement and how it applies to the Work, including, but not limited to, the deposit of the Accepted Manuscript on the UNIVERSITY's IRs and its public availability on the UNIVERSITY's IRs only after the Embargo Period, under a CC BY NC ND 4.0 licence or its equivalent;
- 4.2. it shall keep the Accepted Manuscripts in the UNIVERSITY's IRs secure in order to prevent unauthorised access and use. In the event of the UNIVERSITY becoming aware of any such unauthorised access and/or use it shall notify PUBLISHER promptly in writing and shall assist with any reasonable requests PUBLISHER makes for its assistance in dealing with such access;
- 4.3. it shall not allow the Accepted Manuscripts to be accessible via the UNIVERSITY's IRs until after their Embargo Periods;
- 4.4. it shall not at any time make any additions or enhancements to the Accepted Manuscripts nor exploit them for any commercial use; and
- 4.5. if requested to do so by an Author, it shall grant a waiver of the application of the Policy and the applicability of this Agreement to the Work and shall provide PUBLISHER with written confirmation of that waiver.

#### **5. Term and termination**

- 5.1. This Agreement shall enter into force on the date on which it is signed by the last contracting Party (the "Effective Date"). Each Work accepted by PUBLISHER after the Effective Date shall be subject to the terms of this Agreement.

5.2. The Parties may agree in writing to terminate this Agreement and either Party may unilaterally and immediately terminate this Agreement upon serving prior written notice to the other Party. Nevertheless, rights and obligations of the Parties with respect to Accepted Manuscripts deposited on the UNIVERSITY'S IRs during the term of this Agreement shall survive the termination of this Agreement for any reason.

## 6. **Governing Law and Dispute Resolution**

6.1. This Agreement, and any disputes arising therefrom that cannot be settled amicably between the Parties, including, but not limited to, disputes as to the formation and interpretation of this Agreement, shall be governed by the laws of England and Wales and the Parties agree to the exclusive jurisdiction of the courts in England & Wales.

## 7. **Administrative provisions**

7.1. Any communication with reference to the performance of this Agreement, all notifications, and any related correspondence shall be made in writing and addressed to the following:

XXX	XXX
UNIVERSITY	PUBLISHER
XXX	XXX
XXX	XXX
XXX	XXX
UK	UK

## 8. **Miscellaneous**

8.1. This Agreement constitutes the whole agreement and the sole understanding between the UNIVERSITY and PUBLISHER on the subject of treatment of Accepted Manuscripts by Authors. For the avoidance of doubt, any document submitted by an Author purporting to give the UNIVERSITY greater rights than afforded by this Agreement shall be invalid and nothing in this Agreement shall be construed as PUBLISHER giving any warranty or representation to the UNIVERSITY that it has the rights needed from any co-authors of the Works to apply the Policy to those co-authors.

- 8.2. Nothing in this Agreement shall be construed as an agreement by PUBLISHER to publish the Version of Record. Any agreement to publish the Version of Record shall be made between the Author and PUBLISHER separately.
- 8.3. For the avoidance of doubt, where the UNIVERSITY has entered into any agreement prior to this Agreement relating to the publication of Works on a Gold Access Open basis, this shall remain in place and shall not be affected by this Agreement.
- 8.4. No third party shall have any rights under this Agreement which it would not have but for the Contracts (Rights of Third Parties) Act 1999.
- 8.5. No modifications of or changes to this Agreement, or waiver of any provision, shall be valid unless made in writing and signed by authorised representatives of the Parties.
- 8.6. To facilitate the deposit of Accepted Manuscripts in the UNIVERSITY'S IRs, PUBLISHER will make available their Metadata to the UNIVERSITY's IRs in a timely manner, using an industry-recognised system such as the JISC Publications Router, or its own comparable equivalent, including, but not limited to, via an API connection or other mechanism, at its sole discretion. PUBLISHER will provide annual reports to the UNIVERSITY on the status of such deposits. The UNIVERSITY will provide PUBLISHER with all the assistance required by PUBLISHER to facilitate the delivery of the Metadata.
- 8.7. The UNIVERSITY shall provide PUBLISHER with reports confirming access to and downloads of Accepted Manuscripts from the UNIVERSITY's IRs. The exact format and regularity of such reports shall be agreed in writing by the Parties.

**As Witness to the Hands of the Parties**

**For the UNIVERSITY**

**Signed**

**Name**

**Title**

**Date**

**For PUBLISHER**

**Signed**

**Name**

**Title**

**Date**

## **Appendix A: List of Journals**

And any other journals agreed in writing by the UNIVERSITY and PUBLISHER from time to time during the term of this Agreement.

## **Appendix B: Accepted Manuscripts [OPTIONAL]**

PUBLISHER shall make Accepted Manuscripts by the Authors, and their Metadata, available to the UNIVERSITY in a timely manner, using an industry-recognised system such as the JISC Publications Router, or its own comparable equivalent, including, but not limited to, via an API connection or other mechanism, at its sole discretion. PUBLISHER will provide annual reports to the UNIVERSITY on the status of such deposits. The UNIVERSITY will provide PUBLISHER with all the assistance required by PUBLISHER to facilitate the delivery of the Accepted Manuscripts and their Metadata.