

# The University of Tennessee Master License Agreement

This master agreement is dated Thursday, October 12, 2017, and is between Emerald Publishing Limited (“Licensor”), and The University of Tennessee, an instrumentality of the State of Tennessee (“Licensee”).

## Introduction:

- 1) The University of Tennessee, a public university system, is composed of the following:
  - a) Campuses:
    - i. Chattanooga;
    - ii. Health Science Center;
    - iii. Knoxville; and
    - iv. Martin.
  - b) Institutes:
    - i. Institute of Agriculture (which includes the University’s College of Veterinary Medicine);
    - ii. Institute for Public Service; and
    - iii. Space Institute.
  - c) Administration:
    - i. University System Administration.
- 2) Each site (“site” means the above-referenced campuses, institutes, and administration) may order its own license pursuant to the terms and conditions of this agreement.
- 3) Licensor and Licensee intend for this agreement to apply to all purchases made by Licensee that Licensee makes during the term of this agreement.
- 4) With the exception of amendments to this agreement, Licensor will accept only Licensee’s purchase orders for all future transactions.
- 5) For sake of clarity, this agreement does not modify any state laws or University policies regarding submitting purchases to a public bidding process (or, when allowable, the requirement that sole-source purchases be justified).
- 6) The Licensee is a non-profit, IRS 170(c) organization.
- 7) Licensee is legally separate from The Tennessee Board of Regents, but both entities are instrumentalities of the State of Tennessee, both are public higher education entities, and both entities have several libraries.

## Agreement: The parties agree as follows:

- 1) **Purpose:** This agreement will govern all transactions between Licensee and Licensor during the term of this agreement.
- 2) **Scope:** This agreement governs all interactions between the parties related to the subject matter of this agreement.
- 3) **Emerald General Terms and Conditions:** The General terms and conditions (as amended by special conditions) apply to all licenses granted to Licensee pursuant to this agreement. In the event of a conflict between the terms and conditions of this master agreement and the General terms and conditions, the terms and conditions of this master agreement prevail.

- 4) **Term:**
  - a. Term of master agreement: This agreement is effective beginning on the date listed in the introductory clause, and will remain in effect until terminated by either party.
  - b. Term of Each License: The term of each license granted to Licensee will be specified in each purchase order ("PO").
  - c. Automatic Renewal Prohibited: Because the Licensee is funded with tax appropriations, no license will automatically renew.
  
- 5) **Termination:**
  - a. Of master agreement: Either party may terminate this agreement by providing the other party 30 days' written notice.
  - b. Of each license: Termination of each license is governed by Schedule A. In the event that this master agreement is terminated while any then-current license remains effective, any then-current licenses will continue to be governed by this agreement until the then-current license expires or is terminated.
  
- 6) **Purchase Order:** Licensor agrees that Licensee's purchase order will be used for all transactions made during the term of this agreement. Any standard terms and conditions of any purchase order will not apply to this agreement.
  
- 7) **No Obligation on Licensee to Make Purchases/Not Exclusive:** The parties agree that this master agreement does not obligate Licensee to make any purchases from Licensor. Further, this agreement does not create an exclusive arrangement between Licensee and Licensor. For sake of clarity, binding commitments will be made in the Licensee's purchase orders.
  
- 8) **Illegal Immigrants:** In compliance with the requirements of Tenn. Code Ann. § 12-3-309, Licensor hereby attests that it shall not knowingly utilize the services of an illegal immigrant in the United States in the performance of this agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of this agreement.
  
- 9) **Entire agreement:** This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the parties. In the event Licensor's website, mobile applications, or other platforms contain click-wrap, browse-wrap, or shrink-wrap terms and conditions, Licensor states that such terms and conditions do not apply to Licensee.
  
- 10) **End Users:** Licensee is not liable to Licensor for violations of the terms of this agreement committed by an authorized user, provided that Licensee is not knowingly involved in such a violation, has not intentionally committed or contributed to such a violation, or has used reasonable efforts to rectify the violation upon request.
  
- 11) **Governing Law:** The internal laws of the State of Tennessee, without giving effect to its principles of conflicts of law, govern this agreement.
  
- 12) **Modification; Waiver:** No amendment of this agreement will be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the party granting the

waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.

13) **Severability:** The parties intend as follows:

- a. that if any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
- b. that if an unenforceable provision is modified or disregarded in accordance with this Severability section, then the rest of the agreement will remain in effect as written; and
- c. that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

14) **Notice:** All instructions, notices, consents, demands, or other communications required or contemplated by this agreement shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or email address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

**Licensor:**

Emerald Publishing  
Howard House  
Bingley  
BD16 1WA  
England

**Licensee:**

The University of Tennessee  
301 Andy Holt Tower  
Knoxville, TN 37996  
ATTN: Contracts  
Fax: 865-974-2701  
Email: [breagan@tennessee.edu](mailto:breagan@tennessee.edu)

15) **Counterparts:** If the parties sign this agreement in several counterparts, each will be deemed an original but all counterparts will constitute one instrument. Licensee will execute this agreement via DocuSign, and Licensor agrees to accept Licensee's electronic signature. If Licensor chooses to require Licensee to provide an "original" or "wet ink" signature, Licensor shall pay for all printing and shipping costs in advance.

16) **Sales Tax Registration:** If applicable, in compliance with the requirements of Tenn. Code Ann. § 12-3-306, the Licensor hereby attests that it has registered with the State of Tennessee's Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this agreement.

17) **Consortia Purchases:** Participating sites will be eligible for any applicable discounts for order placed via eligible consortia.

18) **Third-Party Payment:** In the event that a participating site makes a purchase through a consortia or another third party, Licensee may make payment through such third-party.

19) **Confidentiality; Website Listing:**

- a. Confidentiality: The University of Tennessee's obligation to keep information confidential will not apply if disclosure is required by the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503. Under no circumstances will the existence of this agreement be considered confidential.
- b. Website Listing: The University of Tennessee will list the existence of this agreement, and a short summary of this agreement, on its primary procurement website. While the document is a public record, The University of Tennessee does not routinely post online complete contracts for public inspection.

20) **Accessibility:**

- a. Licensee is committed to purchasing or recommending electronic and information technology (EIT) that provides the same programs, benefits and services that they do to individuals without disabilities except when it is technically unfeasible to do so. Electronic and information technology ("EIT") is information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. EIT includes, but is not limited to, the following:
  - Telecommunications products
  - Information kiosks
  - Automated teller machines
  - Internet and intranet websites
  - Electronic books and electronic book reading systems
  - Search engines and databases
  - Course management systems
  - Classroom technology and multimedia
  - Personal response systems ("clickers")
  - Office equipment
- b. For web-based technology, Licensor must ensure that products provided under this Agreement conform to the W3C Web Content Accessibility Guidelines, version 2.0 (WCAG 2.0) at conformance levels A and AA. In the event products provided under this Agreement do not fully conform to WCAG 2.0 A and AA, Licensor must advise Licensee in writing of the nonconformance and should provide detailed information regarding the plans to achieve conformance, including but not limited to an intended timeline.
- c. For non-web based EITs, Licensor warrants that the products or services to be provided under this contract comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Licensor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services.

Licensor further agrees to indemnify and hold harmless Licensee from any claims arising out of its failure to comply with the aforesaid requirements.

- d. Failure to comply with these requirements will constitute a breach and be grounds for termination of the agreement.

The parties are signing this agreement on the date stated in the introductory clause.

**The University of Tennessee**

DocuSigned by:  
Signature: David Miller  
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Name: David Miller

Title: Chief Financial Officer

**Emerald Publishing Limited**

DocuSigned by:  
Signature: Emma Tregenza  
0BD237B6F0E4499...

Name: Emma Tregenza

Title: Group Head of Legal