

OXFORD

UNIVERSITY PRESS

SUBSCRIPTION AND PERPETUAL ACCESS AGREEMENT

Explanatory note for Customer

(This note does not form part of the legally binding agreement)

The following is a single framework agreement to cover purchase models for access to the OUP journals and online products that are offered under this agreement.

With the benefit of this framework agreement, you may efficiently make further purchases of our journals and online products which purchases will automatically be governed by the terms of this agreement, without having to renew the agreement annually and without the need to maintain in a Schedule to the agreement a regularly updated list of publications with their start and end dates (although we can do this if it is important to you).

To enable this flexibility, the agreement contains terms that address the various available purchase models (i.e. journals subscriptions, online product subscriptions and perpetual access publications). Certain clauses may not be relevant to the particular purchases you make under this agreement. The applicability of such clauses will be noted in the clause itself, and Clause 0 of the Terms and Conditions also makes clear that the terms in each Annex (which, respectively, deal with particular purchase models) apply only in relation to the relevant purchase model if it is being purchased.

If you have any queries about the scope of the agreement, please contact susan.goodgion@oup.com.

COMMERCIAL TERMS

- 1 PUBLISHER:** THE CHANCELLOR, MASTERS, AND SCHOLARS OF THE UNIVERSITY OF OXFORD trading as OXFORD UNIVERSITY PRESS USA of 198 Madison Avenue, New York, NY 10016, USA.
- 2 CUSTOMER:** UNIVERSITY OF KANSAS of 1425 Jayhawk Blvd., Rm 210-a, Lawrence, Kansas 66045-7544.
- 3 SITE(S):** The geographical location(s) listed in Schedule B.
- 4 PUBLICATION(S):** The Journals and/or Online Products published online by the Publisher and (i) listed in (a) Schedule A to this Agreement; and/or (b) an invoice relating to this Agreement; and/or (ii) as otherwise notified to the Customer in writing.
- 5 CHARGES:** The price set out in (a) the Publisher's or the Customer Agent's invoices; and/or (b) as otherwise notified to the Customer in writing, concerning (i) access to the Publications, (ii) Hosting Fees, if relevant, and (iii) Renewal Fees, if relevant.
- 6 CUSTOMER AGENT:** HARRASSOWITZ (Journals only)

7 **CUSTOMER CONTACT DETAILS:**


Name: Electronic Information/Angela Rathmel
E-mail: elecres@ku.edu
Telephone: (785) 864-4084

8 **GOVERNING LAW: INTENTIONALLY OMITTED.**


9 CONTRACTUAL PROVISIONS ATTACHMENT: The Provisions found in Contractual Provisions Attachment (Form KU-146a, Rev. 05-18), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

10 DATA PROTECTION ADDENDUM: The Parties agree to comply with all applicable federal and international laws and regulations, including without limitation the General Data Protection Regulation 2016/679, and the University's Data Protection Addendum ("DPA"), which is attached hereto and incorporated into this Agreement by this reference for all purposes.

THE PUBLISHER AND CUSTOMER EACH ACCEPT AND AGREE TO THE TERMS OF THIS AGREEMENT, WHICH INCORPORATES THE ATTACHED ANNEXES AND SCHEDULES.

Signed by 
For and on behalf of the Publisher

Name: Rebecca Seger
Position: Senior Director, Institutional Sales
Date: 7/8/2019

Signed by 
For and on behalf of the Customer

Name: Mary Roach
Position: Associate Dean
Date: 6/10/19

TERMS AND CONDITIONS

1 COMMENCEMENT AND DEFINITIONS

This Agreement will commence upon its execution by both parties and will continue thereafter until terminated in accordance with its terms. It will apply to all orders for Publications placed by the Customer that are accepted by the Publisher during the aforementioned period.

- 1.1 Regardless of when this Agreement commences or terminates, the Customer and Authorized Users may not access a Publication outside of the Publication Term for that Publication unless the Publisher expressly permits such access, which will be subject to the terms of the Legal Notice(s) for the relevant Publication(s)).
- 1.2 Any order placed by the Customer for access to the Publications will constitute an offer by the Customer to purchase the Publications referred to therein on a subscription basis or on a perpetual access basis (as specified in the order) subject to the terms of this Agreement. The Customer is responsible for ensuring that the terms of its order are complete and accurate.
- 1.3 An order made pursuant to this Agreement will be deemed to be accepted when the Publisher issues a written acceptance of the order.
- 1.4 In this Agreement, the following expressions will have the following meanings:

"Authorized User"	an individual who is authorized by the Customer to access the Customer's information services available through the Customer's Secure Network <u>AND</u> who is (i) a current student, faculty member, library patron, employee or contractor of the Customer; or (ii) an individual physically present on the Customer's premises and, if applicable, at the Sites
"Charges"	as defined at "Charges" in the Commercial Terms above
"Commercial Use"	use for the purposes of monetary reward (whether by or for the Customer, an Authorized User, or any other person or entity) whether by means of sale, resale, loan, transfer, hire, or any other form of exploitation
"Concurrency Restriction"	for each Publication, respectively, the maximum number of permitted concurrent Authorized Users for that Publication, if applicable, as specified in Schedule A and/or in the relevant invoice and/or as otherwise agreed in writing
"Content-Specific Terms"	in relation to an article, chapter or any other portion of any Publication, the specific terms under which that material is published (for example, but not limited to, Creative Commons terms) and as specified on the website of the Publication
"Customer Agent"	if/as specified at "Customer Agent" in the Commercial Terms above
"Fair Use"	use by the Customer or an Authorized User conforming to Paragraphs 107 and 108 of the U.S. Copyright Law as amended from time to time
"Hosting Fees"	the fees payable by the Customer for hosting services as further described in Annex 3
"Journals"	the online version of Publisher's journals listed in (i) Schedule A to this Agreement; and/or (ii) an invoice relating to this Agreement and/or (iii)

otherwise agreed in writing by both parties to be added to this Agreement

"Journals Subscription"	a purchased subscription for Journals
"Legal Notice"	for each Publication, the legal notice and/or terms of use of that Publication as specified on the website for the Publication in a document linked from the footer or header of the Publication's homepage
"Material"	any abstract, article, index, advertising, or other material contained in the Publications and accessed online
"Online Products"	the online version of Publisher's publications listed in (i) Schedule A to this Agreement; and/or (ii) an invoice relating to this Agreement and/or (iii) otherwise agreed in writing by both parties to be added to this Agreement
"Password(s)"	any password(s) given to the Customer by the Publisher or created by or for the Customer to access the Publication(s) and any other passwords or access control mechanisms required for Authorized Users to access the Secure Network
"Permitted Use"	for each Publication, respectively, the permitted use of that Publication, as provided in Clause 2 of this Agreement and in the Legal Notice for that Publication
"Perpetual Access Publication"	a Publication which is purchased on a perpetual access basis
"Perpetual Access Start Date"	for each Publication which is a Perpetual Access Publication, respectively, the date on which perpetual access starts for that Publication as specified in Schedule A and/or in the relevant invoice, or as otherwise agreed in writing
"Pre-Publication Titles"	any Publications which have not yet been published online as at the date on which the Customer's order for such Publications is received by the Publisher
"Publication"	as defined at "Publications" in the Commercial Terms above
"Publication Term"	as defined in Clause 2.1
"Renewal Fees"	the fees payable by the Customer for renewal of access to Subscription Publications as further described in Annex 1
"Secure Network"	a network (whether a stand alone network or a virtual network within the Internet, accessible offsite) which is accessible only to Authorized Users; without limitation, a cache server or any server or network which can be accessed by anyone other than Authorized Users is not a Secure Network
"Server"	either the Publisher's server or a third party server designated by the Publisher on which the Publications are mounted and through which the Customer and its Authorized Users may gain access to the Publications by means of the World Wide Web

"Site(s)"	as defined in the Commercial Terms above
"Subscription End Date"	for each Subscription Publication, respectively, the date on which the subscription ends for that Publication (as may be specified in Schedule A and/or in the relevant invoice and/or as otherwise agreed in writing) or any subsequent date agreed in writing by the parties under the renewal process in this Agreement
"Subscription Period"	for each Subscription Publication, respectively, the period commencing on the Subscription Start Date for that Publication and expiring on the Subscription End Date for that Publication as specified in Schedule A and/or in the relevant invoice and/or as otherwise agreed in writing) and subject to renewal for successive periods in accordance with this Agreement
"Subscription Publication"	a Publication which is purchased on a subscription basis
"Subscription Start Date"	for each Subscription Publication, respectively, the date the subscription starts for that Publication as specified in Schedule A and/or in the relevant invoice, or as otherwise agreed in writing
"Text And Data Mining"	in relation to any Publication(s) or any portion thereof, performing a computational analysis of anything recorded in that (those) Publication(s) or portion
"Update Fees"	the fees payable by the Customer for access to Updates as further described in Annex 3

1.5 The terms in Annexes 1, 2, and 3 will apply only in the following circumstances:

1.5.1 For any Subscription Publication: Annex 1 applies to each such Publication.

1.5.2 For any Journals Subscription: Annex 2 applies to each such Journals Subscription.

1.5.3 For any Perpetual Access Publication: Annex 3 applies to each such Publication.

2 GRANT OF ACCESS, PERMITTED USE AND LIMITATIONS ON USE

2.1 In this Agreement, "Publication Term" will mean:

2.1.1 for each Subscription Publication, the Subscription Period for that Publication; and

2.1.2 for each Perpetual Access Publication, a perpetual term beginning on the Perpetual Access Start Date for that Publication.

2.2 For each Publication, respectively, during the relevant Publication's Publication Term, the Customer may allow its Authorized Users, on a non-exclusive and non-transferable basis (and in all cases subject to the remaining terms and conditions of this Agreement, including the restrictions listed in Clause 2.3) to:

2.2.1 access the Server by means of a Secure Network to search the Publication and to view, retrieve, and display portions thereof;

2.2.2 save and print out single copies of portions of the Publication for personal use;

2.2.3 *if the Customer is an academic institution*, incorporate links to the Publication in electronic course packs and course management systems for use in connection with courses offered by the Customer for academic credit (provided that no person other than an Authorized User may use such links); and

2.2.4 *if the Customer is an academic library or library which is part of a non-commercial organisation*, then notwithstanding any restriction in Clause 2.4, the Publisher hereby grants the Customer the non-exclusive right during the Publication term for each Publication respectively, to supply (whether by post, fax or secure electronic transmissions, using Ariel or its equivalent, whereby the electronic file is deleted after printing) another academic library or library which is part of a non-commercial organisation, for the purposes of supplying an Authorized User of the recipient library with a single copy of an electronic original of an individual document from a Publication for the purpose of research or private study and not for Commercial Use.

If the Customer is located in the United States of America, the Customer agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: reproduction by libraries and archives").

2.2.5 *if the Customer is an academic institution*, carry out Non-Commercial Text And Data Mining in relation to the Licensed Work or portions thereof, including making and storing copies provided the Customer will make reasonable efforts to:

2.2.5.1. such copies are made and stored only to the extent necessary for the purposes of such computational analysis;

2.2.5.2. such copies are not transferred to any other person or used for any other purpose without the Licensor's consent;

2.2.5.3. such copies are destroyed once they are no longer necessary for the relevant computational analysis;

2.2.5.4. the Authorized Users acknowledge the use of the Licensed Work if any results of the computational analysis are published; and

2.2.5.5. the Authorized Users comply with all Licensor usage policies communicated to them or made available to them, including without limitation any security measures and conditions of access;

2.3 Nothing in this Agreement will limit an Authorized Users' rights to make Fair Use of the Publications.

2.4 Provided that nothing in this Agreement will limit the Customer's or an Authorized Users' rights under applicable copyright laws, the Customer and its Authorized Users may not:

2.4.1 remove or alter Publisher's copyright notices or other means of identification or disclaimers as they appear in the Publications;

2.4.2 systematically make multiple printed or electronic copies of portions of the Publications for any purpose except as permitted by law or as authorized by Publisher;

2.4.3 display or distribute or permit access to any part of the Publications via any method other than the Secure Network;

2.4.4 permit anyone other than Authorized Users to access or use the Publications; and

2.4.5 use all or any part of the Publications for any Commercial Use.

Furthermore, subject to Clause 2.5, with respect to each Publication, the rights granted in Clause 2.2 are subject to any relevant (a) Concurrency Restriction(s), (b) Legal Notice, and/or (c) Content-Specific Terms.

2.5 In the case of any conflict or ambiguity between:

2.5.1 the Permitted Use specified in this Clause 2 and the Permitted Use specified in the Legal Notice for any Publication, this Clause 2 will take precedence in respect of that Publication;

2.5.2 the Permitted Use and the Content-Specific Terms for any portion of any Publication, the Content-Specific Terms will take precedence in relation to that portion of the Publication.

3 ACCESS AND SECURITY

3.1 If the Publisher is hosting the Publications:

3.1.1 in order to provide access to Journals, the Publisher shall provide the Customer with a customer number as necessary to enable the Customer to set up and activate the Customer's online access to the Journals; and

3.1.2 in order to provide access to Online Products, the Customer shall provide, in the manner requested by the Publisher (which may include entering information in an online registration system), with the information needed to activate and maintain access to the Online Products, including prompt reporting of any additions, deletions or other alterations to the information supplied. Delay in provision of such information will not affect the commencement date of this Agreement, nor the Publication Term of any Publication.

3.2 The Customer will obtain and maintain during the term of this Agreement at its cost all telecommunications and other equipment and software (including relevant licenses) needed to access the Publications online via the Customer's Secure Network.

3.3 The Customer shall maintain appropriate and reasonable policies, procedures and technical and organizational measures to ensure that the Publications and Password(s) are at all times used within the scope of the rights granted to the Customer and its Authorized Users in this Agreement. In particular the Customer shall notify all Authorized Users that the Publications are protected by copyright and the Authorized Users' access to and use of the Publications is subject to the restrictions and obligations contained in this Agreement.

The Customer shall notify Publisher ~~immediately~~ promptly upon becoming aware of any of the following: (a) any loss, theft, or unauthorized use of any Password(s); (b) any breach of the Secured Network that could compromise the security or integrity of the Publications or Password(s); or (c) any breach by an Authorized User of the terms of this Agreement.

3.4 The obligations in this Clause 3 are designed to protect the security and authorized use of the Publications. The Publisher is reliant on the Customer fulfilling its obligations under this Agreement in order to accomplish this goal and, accordingly, upon the Publisher's request, the Customer shall terminate access to the Publications by any Authorized User whose actions or omissions contravene the terms of this Agreement until such actions or omissions are remedied.

3.5 The Publisher reserves the right to terminate or suspend the Customer's access to the Publications or any portion thereof (in addition to any other available remedies) if:

- 3.5.1 the Publisher reasonably believes that any portion of the Publications is being accessed or used otherwise than in accordance with this Agreement (including, without limitation, in breach of this Clause 3 or Clause 2.4.2); provided that the Publisher will restore access when the matter has been resolved to the Publisher's reasonable satisfaction; or
- 3.5.2 the Customer commits a material breach of this Agreement which cannot be remedied using the terms specified in Clause 8.2.

4 RESPONSIBILITIES OF PUBLISHER

- 4.1 If the Publisher is hosting the Publications, the Publisher shall use all reasonable efforts:
 - 4.1.1 to make each Publication available online to the Customer throughout that Publication's Publication Term;
 - 4.1.2 to ensure that the Server has sufficient capacity and rate of connectivity to provide the Customer with a quality of service consistent with current industry standards for publishers publishing materials online;
 - 4.1.3 to restore the Customer's access to the Publications as soon as possible in the event of an interruption or suspension of the service; and
 - 4.1.4 to provide, or arrange for a third party to provide, customer support services to the Customer.
- 4.2 To the extent the following monthly usage reports are made available by the party hosting the Publication(s) on behalf of the Publisher (for clarity, this excludes any Publications self-hosted by the Customer) and subject to the last sentence of this Clause, the Publisher will make available to the Customer monthly usage reports throughout the Publication Term for each Publication, detailing the level of use of each Publication by the Customer's Authorized Users per month. The Publisher shall use reasonable efforts to ensure that such usage reports are compliant with the most recent release of the COUNTER Code of Practice for Journals and Databases (available at http://www.projectcounter.org/code_practice.html). The Customer acknowledges that the Publisher will not be able to provide accurate usage reports if the Customer stores the Publication(s) on any cache or proxy server, or accesses the Publications through an agent gateway.

5 PAYMENTS BY THE CUSTOMER

- 5.1 In consideration of the access granted by Publisher under this Agreement, the Customer shall pay the Charges due to Publisher for each Publication within 30 days of receipt of an appropriate invoice.
- 5.2 *If the Customer is purchasing Publications through a Customer Agent, the Customer will pay the Charges for those Publications to the Customer Agent. If the Customer Agent fails to pay such sums to the Publisher, the Publisher may suspend access to any or all Publications or any portion thereof or may terminate this Agreement without liability to the Customer, and the Customer further agrees that its sole remedy in such circumstances would be against the Customer Agent and not the Publisher. The Publisher's rights specified in this Clause are in addition to any rights and remedies that may be available in law or equity.*
- 5.3 Notwithstanding any other provision of this Agreement, the Publisher will not be obliged to grant access to a Publication, or continue to grant such access to the Customer, until the Charges or Renewal Fees for that period have been received by the Publisher.
- 5.4 The Charges and (for Subscription Publications) any Renewal Fees may be higher than the Charges or renewal fees for the previous 12 month period and may take into account, ~~without limitation,~~

changes to the Affiliates, the Sites, changes to the Publications, and/or the potential number of Authorized Users.

- 5.5 The Customer shall pay all amounts due to the Publisher without any deduction and/or withholding other than such amount (if any) it is required to deduct and/or withhold by law and/or upon other direction of any tax authority. In the event that the Customer is required to make such deduction and/or withholding, the Customer shall notify Publisher before any such deduction and/or withholding is made and paid to the authority concerned and, further, shall, at the written request of the Publisher, do all things in its power that may be necessary to enable or assist the Publisher to claim exemption or preferential rate therefrom under any double taxation and/or similar agreement and/or convention from time to time in force and shall provide the Publisher at the time of payment with such evidence as the Customer may possess and as may be reasonably required by the Publisher as to the deduction and payment of the tax and/or of the sums withheld.

6 ACKNOWLEDGMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Customer acknowledges that, as between the Publisher and the Customer, all copyrights, patent rights, trademarks, services marks, database rights, trade secrets and other intellectual property rights relating to the Publications, and the Publisher's trademarks OXFORD, and OXFORD UNIVERSITY PRESS (collectively the "Publisher Intellectual Property"), are owned or controlled by Publisher, and the Customer further acknowledges that this Agreement does not convey to the Customer any right, title, or interest therein except for the right to access and use, and permit its Authorized Users to access and use, the Publications in accordance with the terms and conditions of this Agreement.
- 6.2 The Customer acknowledges that neither it nor any of its Authorized Users may create any derivative work based on the Publications without the prior written permission of the Publisher.

7 REPRESENTATIONS AND WARRANTIES

- 7.1 The Publisher represents and warrants that it has the power to enter into this Agreement and to grant the access conferred herein to the Customer, and that the Publications do not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary or contract right of any third party.
- 7.2 The Customer represents and warrants that it has the power and authority to enter into and perform this Agreement; and that the signatory for the Customer (including if this Agreement is signed by a Customer Agent on behalf of a Customer) has the full power and authority to sign this Agreement on behalf of the Customer and bind the Customer to its obligations under this Agreement.
- 7.3 THE PUBLISHER PROVIDES ACCESS TO THE PUBLICATIONS ON AN "AS IS" BASIS. SAVE AS PROVIDED ABOVE AND TO THE EXTENT PERMITTED BY LAW, THE PUBLISHER GIVES NO WARRANTY, EXPRESS OR IMPLIED, AND MAKES NO REPRESENTATION THAT (I) THE PUBLICATIONS WILL BE OF SATISFACTORY QUALITY, SUITABLE FOR ANY PARTICULAR PURPOSE OR FOR ANY PARTICULAR USE UNDER SPECIFIED CONDITIONS, NOTWITHSTANDING THAT SUCH PURPOSE, USE, OR CONDITIONS MAY BE KNOWN TO PUBLISHER; OR (II) THAT THE PUBLICATIONS WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION OR THAT ANY ERRORS WILL BE CORRECTED; OR (III) THAT THE MATERIAL PUBLISHED IN THE PUBLICATIONS IS EITHER COMPLETE OR ACCURATE.
- 7.4 IN NO CIRCUMSTANCES WILL THE PUBLISHER BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS RESULTING FROM A CAUSE OVER WHICH 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, UNAUTHORIZED ACCESS, THEFT, OR OPERATOR ERRORS; NOR FOR ANY CONSEQUENTIAL,

INCIDENTAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR LOSS OF PROFITS, INCLUDING IN THE FOREGOING CASES, WITHOUT LIMITATION, DAMAGES FOR LOSS OF DATA OR CORRUPTION OF DATA, LOSS OF PROGRAMS, LOSSES ARISING FROM INACCURACIES IN, OR CORRUPTION CAUSED BY, THE PUBLICATIONS, LOSS OF BUSINESS OR GOODWILL, OR OTHER DAMAGES OR LOSSES OF ANY NATURE ARISING OUT OF THE ACCESS TO, OR INABILITY TO ACCESS THE PUBLICATIONS.

- 7.5 THE CUSTOMER AGREES THAT THE ENTIRE LIABILITY OF THE PUBLISHER TO THE CUSTOMER AND/OR ITS AUTHORIZED USERS AND/OR, IF THE CUSTOMER IS PURCHASING PUBLICATIONS THROUGH A CUSTOMER AGENT, TO THE CUSTOMER AGENT ARISING OUT OF ANY KIND OF LEGAL CLAIM (WHETHER IN CONTRACT, TORT, BY STATUTE OR OTHERWISE) IN ANY WAY CONNECTED WITH THE USE OR INABILITY TO USE THE PUBLICATIONS WILL BE THE REFUND OF ANY SUMS ACTUALLY RECEIVED BY THE PUBLISHER UNDER THIS AGREEMENT FOR ACCESS TO THE AFFECTED PUBLICATIONS DURING THE TWELVE MONTH PERIOD IN WHICH THE CLAIM ARISES.

8 TERMINATION

- 8.1 The Customer may terminate this Agreement at any time for convenience provided that, in such case, any outstanding Charges will be promptly paid and no refund of any Charges will be due.
- 8.2 If a party commits a material breach of this Agreement (and in the case of a breach capable of remedy fails to remedy the same within 30 days of a written request to do so), then the other party may terminate this Agreement with immediate effect by giving the breaching party written notice of termination. Without limitation, a breach by the Customer of the provisions of Clauses 2.3, 3.1, 3.3, 4.1 and 5.1 above would constitute a material breach of this Agreement. The rights in this Clause are in addition to any rights and remedies that may be available in law or equity.
- 8.3 The Publisher reserves the right to withdraw from the Publications, and/or cease providing hosting services for, content that it no longer retains the right to provide access to or that it determines may be unlawful, defamatory, obscene, harmful, false, infringing or otherwise objectionable.

9 GENERAL

- 9.1 This Agreement is personal to the Customer and the access granted under it does not extend to its subsidiary or parent organisations (unless expressly provided herein), nor may such access or any other rights or obligations under this Agreement be assigned by the Customer without the prior written consent of the Publisher. The Publisher may assign any or all of its rights and obligations under this Agreement to an affiliate, a successor to its business or a transferee of Publisher's right to publish and distribute any Publication(s). The rights and obligations of this Agreement will bind and benefit any successors and permitted assigns of the parties. Any attempted assignment in violation of this Clause will be null and void and of no force or effect.
- 9.2 Except where expressly stated otherwise, all notices required to be given under this Agreement will be given in writing in English and left at or sent by first class registered or recorded delivery to the appropriate address shown at the head of this Agreement, or such other address as the party concerned may from time to time designate by notice pursuant to this Clause. Such notices will be deemed to be delivered (i) when left at the addressee's address; or (ii) if posted 10 (ten) days after posting. All notices to Publisher shall be marked for the attention of the Group Legal Director. All notices to the Customer shall be marked for the attention of the contact named in the cover page of this Agreement.
- 9.3 Subject to Clause 9.4, this Agreement constitutes the entire agreement of the parties about its subject matter, supersedes all prior communications, understandings and agreements (whether written or oral) relating to its subject matter.

- 9.4 Any existing perpetual access agreement between the Publisher and the Customer will remain in effect in relation to perpetual access purchases already made under such agreement prior to this Agreement coming into force; including current electronic files, titles back to 2003 via a GWLA order, and retrospective content with a Perpetual Access start date back to 1996 where available on journal purchases; provided however that any update(s) to such online products purchased by the Customer after this Agreement comes into force will be treated as a Publication and subject to the terms of this Agreement.
- 9.5 Subject to the requirements of any laws local to the parties: this Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all the counterparts will together constitute the one agreement; and the parties agree to be bound by photocopy, scanned, facsimile, electronic or other copies, which will have the same effect for all purposes as an ink-signed original.
- 9.6 Amendments to the Agreement and any Addendum to the Agreement are only valid and binding if they are recorded in writing and signed by both parties.
- 9.7 Notwithstanding anything to the contrary herein, neither the Customer nor the Publisher shall be responsible to the other for any failure to perform any obligation under this Agreement due to Acts of God, war, riot, embargoes, acts of civil or military authorities, fire, flood, typhoon, wind storm, snow storm, blizzard, hurricane, or other cause that is outside the control of the party and could not be avoided by the exercise of due care. Notwithstanding the occurrence of any of the events set forth in this Clause, the parties shall at all times use reasonable efforts to perform all obligations under this Agreement in a timely manner, taking account of the existing circumstances.
- 9.8 No provision in this Agreement is intended to be enforceable by any third party.
- 9.9 The rights of the parties arising under this Agreement will 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 will not be construed as a waiver of any other rights or of any other further breach.
- 9.10 Headings used in this Agreement are for convenience only and are deemed not to be part of the Agreement.
- 9.11 Both parties agree to maintain the confidentiality of any data relating to the usage of the Publications by Authorized Users. Such data may be used solely for purposes directly related to the Publications. Such data may only be provided to third parties in aggregate form and raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party, except to the extent such disclosure is required by law.

ANNEX 1 – ADDITIONAL TERMS FOR SUBSCRIPTION PUBLICATIONS

1. Except where expressly stated otherwise, the terms in this Annex will apply only in relation to Subscription Publications, if any, purchased under this Agreement.
2. Except as set out in Annex 2 where expressly agreed otherwise in writing, following the expiry of the Subscription Period the Customer will not be entitled to continuing access to the Subscription Publication or any portion thereof.
3. For each Subscription Publication, no later than 30 days before the end of the Subscription Period for that Publication, the Publisher shall notify the Customer of the Renewal Fees for the following 12 month period (or such other period as may be agreed by the parties) and shall invoice the Customer for this amount. Upon payment of such Renewal Fees, the Subscription Period for that Publication will be extended by that further period. Payment for that period will be due to the Publisher within 30 days from the date of the invoice.

ANNEX 2 – ADDITIONAL TERMS FOR A JOURNALS SUBSCRIPTION

1. Except where expressly stated otherwise, the terms in this Annex will apply only in relation to a Journals Subscription, if any, purchased under this Agreement.
2. Subject to Clause 3 of this Annex, and notwithstanding the expiry of the Subscription Period, the Customer will be entitled to perpetual access on the same terms as this Agreement to the portion(s) of the Journals that were published for the first time during the Subscription Period, provided, if applicable, that the Customer shall pay any relevant Hosting Fees, following the same procedure for Hosting Fees set out in Annex 3, Clauses 3(a)-(e). For the avoidance of doubt, the Customer will retain perpetual access rights to Publications as referenced in Clause 9.4.
3. If the Publisher ceases to hold the publication rights to any of the Journals, and is no longer able to provide the access thereto described in Clause 2 of this Annex, the Publisher shall make all reasonable efforts to ensure that continuing access is provided:
 - a. by the new publisher of the relevant Journal(s); or
 - b. through Portico, CLOCKSS, or a similar 3rd party archive and in such case the Publisher shall provide all relevant details of the Customer to the 3rd party in order to enable access to the 3rd party archive by the Customer; provided that such access will be subject to Customer fulfilling the 3rd party's terms and condition for access; or
 - c. by providing the Customer with an electronic copy of the relevant portion(s) of the relevant Journal(s) for the purpose of self-hosting by the Customer; provided that this will be subject to the Publisher's approval and to the parties agreeing additional terms and conditions in connection with the Publisher providing the electronic copy and with the self-hosting of such electronic copy.
4. In this Clause, "Standard Rate Subscription" shall mean a full rate institutional subscription for Journals taken out by a Customer directly with the Publisher (i.e. not via a consortium or network). For further clarification, titles the Publisher acquires from a Third Party Publisher will be migrated into the Customer's collection and the Customer does not need to maintain a separate subscription to the title(s). The Charge(s) for these transfer titles will be included in the renewal pricing for subsequent years' according to the terms as noted above.
 - a. The Charges are conditional on each Customer retaining any Standard Rate Subscription that it held directly with the Publisher in the year preceding the Subscription Start Date.
 - b. If the Customer fails to renew any Standard Rate Subscription or replace any such Standard Rate Subscription with a Standard Rate Subscription of an equal or higher value, then the Charges will be increased by an amount equivalent to the online only subscription rate current at the time of the Subscription State Date for each cancelled Standard Rate Subscriptions.
 - c. For avoidance of doubt, Clause 4(b) of this Annex shall not apply if a Customer has converted a Standard Rate Subscription to an online-only model rate subscription.

ANNEX 3 – ADDITIONAL TERMS FOR PERPETUAL ACCESS PUBLICATIONS

1. Except where expressly stated otherwise, the terms in this Annex will apply only in relation to Perpetual Access Publications, if any, purchased under this Agreement.
2. For the avoidance of doubt, in the case of Perpetual Access Publications, the Charges do not include perpetual access to any updates. Should any updates be published, they may be purchased by the Customer, subject to payment of any Charges or fees. Any updates so purchased will become part of the Publications and subject to the terms of this Agreement.
3. Subject to Clause 4 of this Annex, the provisions relating to hosting services are as follows:
 - a. The Publisher shall calculate the Hosting Fees payable for hosting services on the basis of a rolling twelve (12) month period or such other hosting period as may be specified by the Publisher.
 - b. No later than sixty (60) days before the end of any current hosting period, the Publisher may send the Customer an invoice for the Hosting Fees for renewal of such hosting services for a further twelve (12) month period or such other period as may be specified by the Publisher. These Hosting Fees may be higher than the Hosting Fees for the then current hosting period. If the Customer does not pay the Hosting Fees prior to commencement of the hosting period to which they relate, the Publisher may terminate such hosting services on written notice to the Customer.
 - c. If the Publisher does not wish to continue hosting all or any of the Publications, whether due to ceasing publication of the Publication in question or otherwise, it shall give the Customer not less than ninety (90) days' notice of the termination of such hosting services and shall credit the Customer all Hosting Fees applicable to the unexpired term of the then current hosting period on a pro rata basis.
 - d. If the Publisher terminates such hosting services pursuant to Clauses 3(b) or 3(c) of this Annex, above, the Publisher shall enable continuing access to the Publications in question by providing the Customer an electronic file containing the content of the Publications in XML format, or such other format as the Publisher may determine in its discretion, for the purpose of self-hosting by the Customer. Such provision will be subject to the parties agreeing additional terms and conditions in connection with the provision and self-hosting of such electronic copy. For the avoidance of doubt, the Publisher will not be obligated to provide the Customer with any Publication or part(s) thereof that the Publisher no longer has the right to publish, grant access to or otherwise distribute in this way. This Agreement will apply (or will continue to apply), regardless of who is hosting the Publications, unless expressly stated otherwise herein.
4. On Publications with module updates and where applicable, the Publisher will notify the Customer in writing that a Perpetual Access Publication Update is available and subject to an Update fee. In order to receive access to the updated Publications, the Customer must pay an annual Update fee to access to the Publications. The Customer will not be entitled to receive any Updates in respect of such Publications until all Update fees have been paid for the relative Publications. The Update fees are payable as follows:
 - a. The Publisher shall calculate the Update fees payable for such Publications on the basis of a rolling twelve (12) month period or such other period as may be specified by the Publisher.

- b. No later than sixty (60) days before the end of any current period, the Publisher will send the Customer written notice of any Update fees for a further twelve (12) month period or such other period as may be specified by the Publisher.
- 5. Except where Publisher is merely acting as a distributor for a third party's content, if the Publisher ceases to hold the publication rights of any of the Perpetual Access Publications, and is no longer able to provide access, the Publisher shall make all reasonable efforts to ensure that continuing access is provided:
 - a. by the new publisher of the relevant Publication; or
 - b. through Portico, CLOCKSS, or a similar 3rd party archive and in such case the Publisher shall provide all relevant details of the Customer to the 3rd party in order to enable access to the 3rd party archive by the Customer. Such access will be subject to Customer fulfilling the 3rd party's terms and condition for access; or
 - c. by providing the Customer with an electronic copy of the relevant Publications for the purpose of self-hosting by the Customer. Such provision will be subject to Publisher approval and the parties agreeing additional terms and conditions in connection with the provision and self-hosting of such electronic copy.

6. **RIGHT OF CANCELLATION: PRE-PUBLICATION TITLES**

- a. If the Publisher accepts an order for Perpetual Access Publications which includes any Pre-Publication Titles, the Publisher reserves the right, at any time prior to activating the Customer's access to such Pre-Publication Titles, to amend or cancel such order (as may be appropriate) to remove any one or more such Pre-Publication Titles from the order and the scope of this Agreement. For the avoidance of doubt, any such amendment or cancellation under this Clause will not extend to or otherwise affect any Publications in respect of which access has already been activated.
- b. If the Publisher amends or cancels an order in accordance with Clause 6(a) of this Annex, its sole liability to the Customer will be limited to the repayment by the Publisher of any and all sums received by the Publisher under this Agreement for the Pre-Publication Titles affected by such amendment or cancellation.

SCHEDULE A

PUBLICATIONS

SUBSCRIPTION PUBLICATIONS

Online Products

Grove Art Online
Grove Music Online
Oxford Bibliographies Online
Oxford Research Encyclopedias

PERPETUAL ACCESS PUBLICATIONS

Oxford Bibliographies Online
Oxford Reference Library (ebooks are included in this resource)
University Press Scholarship Online

Journals

The following Custom Journal Collection will be reviewed annually by both parties and once agreed upon for renewal for another 12 months, shall be updated by an Amendment to this Schedule A, including both title list and charges.

2019 Custom Collection = \$ 84,565.07

<i>Acta Biochimica et Biophysica Sinica</i>
<i>Aesthetic Surgery Journal</i>
<i>Age and Ageing</i>
<i>Alcohol and Alcoholism</i>
<i>American Journal of Clinical Pathology</i>
<i>American Journal of Epidemiology</i>
<i>American Journal of Hypertension</i>
<i>Annals of Behavioral Medicine</i>
<i>Annals of Oncology</i>
<i>Applied Linguistics</i>
<i>Archives of Clinical Neuropsychology</i>
<i>Behavioral Ecology</i>
<i>Bioinformatics</i>
<i>Biology of Reproduction</i>
<i>Biostatistics</i>
<i>Brain</i>
<i>Briefings in Bioinformatics</i>
<i>British Medical Bulletin</i>
<i>Carcinogenesis</i>
<i>Cardiovascular Research</i>

<i>Cerebral Cortex</i>
<i>Chemical Senses</i>
<i>Clinical Infectious Diseases</i>
<i>Communication Theory</i>
<i>Communication, Culture & Critique</i>
<i>ELT Journal</i>
<i>Endocrinology</i>
<i>Environmental History</i>
<i>EP Europace</i>
<i>European Heart Journal</i>
<i>European Heart Journal - Cardiovascular Imaging</i>
<i>European Journal of Cardio-Thoracic Surgery</i>
<i>European Journal of Public Health</i>
<i>European Sociological Review</i>
<i>Family Practice</i>
<i>FEMS Microbiology Ecology</i>
<i>FEMS Microbiology Letters</i>
<i>FEMS Microbiology Reviews</i>
<i>Geophysical Journal International</i>
<i>Glycobiology</i>
<i>Health Education Research</i>
<i>Health Policy and Planning</i>
<i>Health Promotion International</i>
<i>Human Communication Research</i>
<i>Human Molecular Genetics</i>
<i>Human Reproduction</i>
<i>Human Reproduction Update</i>
<i>ILAR Journal</i>
<i>Inflammatory Bowel Diseases</i>
<i>Integrative and Comparative Biology</i>
<i>International Immunology</i>
<i>International Journal for Quality in Health Care</i>
<i>International Journal of Epidemiology</i>
<i>ISLE: Interdisciplinary Studies in Literature and Environment</i>
<i>Japanese Journal of Clinical Oncology</i>
<i>JNCI: Journal of the National Cancer Institute</i>
<i>Journal of Analytical Toxicology</i>
<i>Journal of Antimicrobial Chemotherapy</i>
<i>Journal of Chromatographic Science</i>
<i>Journal of Communication</i>
<i>Journal of Crohn's and Colitis</i>
<i>Journal of Economic Geography</i>
<i>Journal of Experimental Botany</i>

<i>Journal of Heredity</i>
<i>Journal of Mammalogy</i>
<i>Journal of Medical Entomology</i>
<i>Journal of Neuropathology & Experimental Neurology</i>
<i>Journal of Pediatric Psychology</i>
<i>Journal of Petrology</i>
<i>MHR: Basic science of reproductive medicine</i>
<i>Molecular Biology and Evolution</i>
<i>Monthly Notices of the Royal Astronomical Society</i>
<i>Music Therapy Perspectives</i>
<i>Mutagenesis</i>
<i>Nephrology Dialysis Transplantation</i>
<i>Neurosurgery</i>
<i>Nicotine and Tobacco Research</i>
<i>Notes and Queries</i>
<i>Nutrition Reviews</i>
<i>Occupational Medicine</i>
<i>Pain Medicine</i>
<i>Past & Present</i>
<i>Pathogens and Disease</i>
<i>Protein Engineering, Design and Selection</i>
<i>QJM: An International Journal of Medicine</i>
<i>Rheumatology</i>
<i>Schizophrenia Bulletin</i>
<i>Social Problems</i>
<i>Social Work</i>
<i>Socio-Economic Review</i>
<i>Systematic Biology</i>
<i>The American Historical Review</i>
<i>The American Journal of Clinical Nutrition</i>
<i>The British Journal of Criminology</i>
<i>The British Journal of Social Work</i>
<i>The English Historical Review</i>
<i>The Gerontologist</i>
<i>The Journal of Clinical Endocrinology & Metabolism</i>
<i>The Journal of Deaf Studies and Deaf Education</i>
<i>The Journal of Infectious Diseases</i>
<i>The Journal of Nutrition</i>
<i>The Journals of Gerontology: Series A</i>
<i>The Journals of Gerontology: Series B</i>
<i>The Oral History Review</i>
<i>Toxicological Sciences</i>
<i>Transactions of The Royal Society of Tropical Medicine and Hygiene</i>

SCHEDULE B

SITES

University of Kansas Libraries of 1425 Jayhawk Blvd., Rm 210-a, Lawrence, Kansas 66045-7544
[REDACTED]

University of Kansas Medical Center 2100 W. 39th Ave. Kansas City, KS 66160-7180 [REDACTED]

(FOR JOURNALS ONLY)

CONTRACTUAL PROVISIONS ATTACHMENT

1. **Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the University of Kansas or any of its affiliates ("University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, the University may terminate this agreement at the end of its current fiscal year. The University agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided under the contract for which it has not been paid. The University will pay contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement under this provision, title to any such equipment shall revert to contractor at the end of the University's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Kansas Law and Venue:** All matters arising out of or related to this agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit arising out of or related to this agreement shall reside only in courts located in the State of Kansas.

5. **Required Non-Discrimination Provision:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. Contractor specifically agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University. The provisions of this paragraph (except the provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the University cumulatively total \$5,000 or less during the fiscal year. In accordance with the Governor's Executive Order 18-04, the University has policies prohibiting sexual harassment, discrimination, and retaliation. The University's applicable policies on sexual harassment, discrimination, and retaliation are available at <http://policy.ku.edu/> and provide for confidentiality and anonymous reporting.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance individuals in employment without regard to race, color, religion, sex, national origin, protected veteran status or disability.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the University has agreed to binding arbitration, or the payment of damages or penalties. Further, the University does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages or rights of action available to the University at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes:** The University shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance:** The University shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require the University to establish a "self-insurance" fund to protect against any such loss or damage.

11. **Information/Confidentiality:** As a state agency, the University's contracts are generally public records. Accordingly, no provision of this contract shall restrict the University's ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 et seq.). Moreover, no provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq. If the University receives a request, the University shall consult with Contractor to determine whether there are any applicable exemptions from required disclosure and to limit the extent of such disclosure to the greatest extent permissible by law.

12. **The Eleventh Amendment:** The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and need not be reserved, but the University here reiterates that nothing in or related to this contract shall be deemed a waiver of the Eleventh Amendment.

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

14. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g) and agrees to handle any student education records it receives pursuant to this Agreement in a manner that enables the University to be compliant with FERPA and its regulations. Contractor agrees to protect the privacy of student data and educational records in a commercially reasonable manner and shall not transmit, share, or disclose any data about a student without the student's written consent, except to other University officials who seek the information within the context of his/her professionally assigned responsibilities and used within the context of official University business. Contractor shall promptly report to the University any disclosure of University's student educational records.

APPENDIX A

DATA SECURITY MEASURES (Revised MAT 3-4-19)

The Following terms and conditions shall apply to the Contractor to the extent that Contractor owns, supports, or is otherwise responsible for host(s), network(s), environment(s), or provides technology products (including hardware or software) which may contain University Data (including Personal Data subject to the European Union General Data Protection Regulation (GDPR)):

1. INFORMATION SECURITY ARCHITECTURE

a. Contractor shall establish policies, procedures, and supporting business practices in order to implement and maintain a secure working environment for offices, rooms, facilities, and secure areas where sensitive information is created, modified, stored and transmitted. These policies should be part of an information security management program and include an overall Information Security Policy as well as policies addressing security incident response, human resources security, physical/environmental security, access control, risk management, management of operations and communications, and information systems acquisition, development, and maintenance.

b. Contractor shall require annual security awareness training for all staff that addresses password management, privacy and proper handling of sensitive information, physical security, social engineering, identify theft prevention, email and internet usage, proper use of encryption, viruses and malware, copyright, and reporting of suspicious activity or abuse.

c. Contractor personnel and subcontractors shall agree to report all information security events within 24 hours of discovery. Contractor shall establish communication channels and business processes for the reporting of information security events.

d. Contractor shall ensure that University Data will be stored in and transmitted between data centers in the United States. If stored in a multi-tenant environment, University Data shall be segregated from other data.

e. Contractor represents and warrants that the design and architecture of Contractor's systems (including but not limited to applications and infrastructure) shall be informed by the principle of defense-depth; controls at multiple layers designed to protect the confidentiality, integrity and availability of data.

f. Contractor shall make appropriate personnel vetting/background checks, have appropriate separation of duties, and undertake other such workflow controls over personnel activities as necessary to safeguard University Data.

g. Contractor shall follow change management procedures designed to keep Contractor's systems current on security patches, and prevent unintended or unauthorized system configuration changes that could expose system vulnerability or lead to a Data Breach.

h. To the extent that the Work involves software that was developed, in whole or part, by Contractor, then Contractor represents and warrants that such portion of the Work was developed within a software development life cycle (SDLC) process that includes a control process intended to eliminate existing and potential security vulnerabilities.

i. Contractor shall have appropriate technical perimeter hardening. Contractor shall monitor its system and perimeter configurations and network traffic for vulnerabilities, indicators of activities by threat actors, and/or the presence of Malicious Code.

j. Contractor shall have access, authorization, and authentication

technology appropriate for protecting University Data from unauthorized access or modification, and capable of accounting for access to University Data. The overall access control model of Contractor's systems shall follow the principle of least privilege.

k. Contractor shall conduct regular User Access reviews to ensure that user accounts are modified to remove access or de-provisioned in a timely manner after an employee no longer requires access to University Data. Appropriate security measures, including but limited to password changes at regular intervals and multi-factor authentication shall be used to protect Contractor's employee accounts.

l. Contractor shall safeguard University Data with encryption controls over University Data both at rest and in transit. Contractor shall discontinue use of encryption methods and communication protocols which become obsolete or have become compromised.

m. Contractor shall maintain a process for backup and restoration of data. Contractor represents and warrants that within the context of the Work, the appropriate members within Contractor's entity are included in and familiar with a business continuity and disaster recovery plan.

n. Contractor's facilities will have adequate physical protections, commensurate with leading industry practice for similar Work. Ingress and egress to secure areas shall be restricted and monitored by physical access control measures to ensure that only authorized personnel are allowed access.

o. Contractor shall, at its own expense, conduct an information security and privacy risk assessment, no less than annually, in order to demonstrate, substantiate, and assure that the security and privacy standards and practices of Contractor meet or exceed the requirements set out in this Appendix. Upon written request, Contractor shall furnish University with an executive summary of the findings of the most recent risk assessment. Further:

i. Intentionally deleted.

ii. If the findings of the risk assessment identifies either: a potentially significant risk exposure to University Data, or other issue indicating that security and privacy standards and practices of Contractor do not meet the requirements set out in this Appendix, then Contractor shall notify University to communicate the issues, nature of the risks, and the corrective active plan (including the nature of the remediation, and the time frame to execute the corrective actions).

p. The technical and organizational measures described in this section are subject to technological advancements and further development. Contractor is permitted to implement suitable alternative measures, as long as the alternative measures do not reduce the level of security applied to University Data. University shall regularly audit and assess compliance with the technical and organizational security measures.

2. COMPELLED DISCLOSURE

If any member of Contractor is served with any subpoena, discovery request, court order, or other legal request or order that calls for disclosure of any University Data, then Contractor shall promptly notify the University unless specifically prohibited by law from doing so. Notification is not prompt if, due to Contractor's delay, University lacks sufficient time to raise objections to the disclosure, obtain a protective order, or otherwise protect University Data by limiting disclosure. Contractor shall at University's expense, provide University prompt and commercially reasonable assistance in University's efforts to protect University Data.

APPENDIX A

DATA SECURITY MEASURES (Revised MAT 3-4-19)

3. DATA BREACH RESPONSE

a. If Contractor has reason to believe that Data Breach(es) may have occurred on any of Contractor's equipment, software, products, host(s), network(s), or environment(s), then Contractor shall within 24 hours alert the University while also taking such immediate actions as may be necessary to preserve relevant evidence, identify the nature of the event, and contain any Data Breach. Within 2 business days of discovery, Contractor shall provide the University a written notice describing the Data Breach incident, and provide University further information updates to help University understand the nature and scope of the event. Contractor shall advise University as to what information and assistance is needed from University in order to eliminate the cause, and mitigate the adverse effects of any Data Breach. Contractor shall prioritize devoting sufficient resources as may be required for this effort.

b. ~~University may direct Contractor to provide notice and credit monitoring, at Contractor's expense, to the third parties (such as private individuals, entities, and official bodies) determined by University in its reasonable discretion to require notification, or University may do so itself. Further, Contractor shall be responsible for costs incurred to engage third-party law firms and/or IR/forensics firms. Unless Contractor is compelled by law to provide notification to third parties in a particular manner, University shall control the time, place, and manner of such notification.~~

c. If recovery from the adverse effects of the Data Breach necessitates Contractor's assistance in the reinstallation of Contractor's technology product(s) (including hardware or software) that are connected with the Work, then Contractor shall cause such assistance in reinstallation to be provided. If Contractor is responsible for the Data Breach, then reinstallation assistance shall be at no cost to the University.

d. If it appears to the University, in its sole discretion, that services or technology provided by the Contractor are a source of the Data Breach, and present an unreasonable risk, then the University may opt to discontinue use of that source of the Data Breach and the University's corresponding payment obligations under the contract shall be adjusted equitably.