The University of Tennessee
Master License Agreement

This master agreement is dated ____________, is between _____ (“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) Schedule A: The terms and conditions of Schedule A 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 Schedule A, the terms and conditions of this master agreement prevail.

3) 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.

4) **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.

5) **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.

6) **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.

7) **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.

8) **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.

9) **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.

10) **Governing Law:** The internal laws of the State of Tennessee, without giving effect to its principles of conflicts of law, govern this agreement.

11) **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.
12) **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.

13) **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.

   **Licenser:**

   **Licensee:**
   - The University of Tennessee
   - 301 Andy Holt Tower
   - Knoxville, TN 37996
   - ATTN: Contracts
   - Fax: 865-974-2701
   - Email: breagan@tennessee.edu

14) **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 Licenser agrees to accept Licensee’s electronic signature. If Licenser chooses to require Licensee to provide an “original” or “wet ink” signature, Licenser shall pay for all printing and shipping costs in advance.

15) **Sales Tax Registration:** If applicable, in compliance with the requirements of Tenn. Code Ann. § 12-3-306, the Licenser 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.

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

18) **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.

19) **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. Licensor will make reasonable efforts to notify Licensee if anyone complains to Licensor that Licensor’s licensed materials are not adequately accessible.

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

**The University of Tennessee**

Signature:________________________  Signature:________________________

Name:________________________    Name:________________________

Title:________________________    Title:________________________
Schedule A

1. Definitions. As used herein, the following terms shall have the meanings designated below:
   a. _____ is an online service available from_____ on the Worldwide Web including all products, services and features offered through the service.
   b. "Authorized Users" are:
      (i) Full and part time students and employees (including faculty, staff, affiliated researchers and independent contractors) of Licensee and the institution of which it is a part, regardless of the physical location of such persons; and
      (ii) Licensee's patrons who are physically present at Licensee's site(s).
   c. "Licensed Material" means the electronic edition of the scholarly journal(s).
   d. "Subscription Term" means the length of usage time bought by the subscriber, usually one year.

2. Grant of License
   a. Licensee and its Authorized Users acknowledge and agree that – as between _____ on one hand and Licensee and its Authorized Users on the other hand – and/or its suppliers own all right, title, and interest, including copyright and copyright rights, in the Licensed Material and any trademarks or service marks relating thereto. Neither Licensee nor its Authorized Users shall have any right, title, or interest in the Licensed Materials except as expressly set forth in this Agreement.
   
   b. _____ hereby grants to Licensee a non-exclusive, revocable, non-transferable license to view, print, display, and email to oneself the Licensed
Material and the right to provide the Licensed Material to Authorized Users for the same use in accordance with paragraph 4 of this Agreement, below.

c. Licensee shall not permit anyone other than its Authorized Users to use the Licensed Material, except as expressly set forth in this Agreement, and shall use its best efforts to enforce such prohibition.

d. Licensee shall not alter, delete, make additions to, or in any way modify the Licensed Material or create derivative works based upon Licensed Material without the prior written permission of ______, and shall use its best efforts to enforce such prohibition.

e. Licensee may not remove, obscure, or modify any copyright, trademark, or other notice(s) included in the Licensed Material or allow Authorized Users to do so. Licensee shall use its best efforts to enforce such prohibition.

f. Licensee may not use the Licensed Material for commercial purposes, including, but not limited to, the sale of Licensed Material or bulk or partial reproduction or distribution of the Licensed Material in any form, and shall prohibit the Authorized Users from doing the same. Licensee shall use its best efforts to enforce such prohibition.

3. Delivery of/Access to Licensed Material

Upon payment by Licensee to ______, ______ will provide the Licensed Material to the Licensee in digital form between ______ locations and authorized networks of Licensee.

4. Authorized Use of Licensed Material

The Licensed Materials may be used for purposes of research, education, or other non-commercial use subject to the following restrictions:

a. Print Copy. Licensee and Authorized Users may print only such portion(s) of the Licensed Material for personal use so long as personal use would qualify as “fair use” under the U.S. Copyright Act.

b. Permanent Access/Backup Copy. Licensee may create one (1) copy of the entire set of Licensed Material to be maintained as a backup or archival copy during the term of this Agreement. Following termination of subscription, Licensee may use this copy for permanent access to content and may host it internally, subject to the terms and conditions of this Agreement.
c. Electronic Links. Licensee may provide electronic links to the Licensed Materials from Licensee's web page(s), and is encouraged to do so in ways that will increase the usefulness of the Licensed Material to Authorized Users. Licensee must make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by_______. This clause is not applicable to linking in electronic reserves, which is addressed in subparagraph 4(i) below.

d. Caching. Licensee and Authorized Users may make such local digital copies of the Licensed Material as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.

e. Indices. Licensee may use the Licensed Material for the preparation of or access to integrated indices to the Licensed Material, including author, article, abstract and keyword indices.

f. Interlibrary Loan. Licensee may fulfill “Interlibrary Loan” requests from other institutions. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Act (17 U.S.C. §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works. All Interlibrary Loans shall be made by post, fax or secure electronic transmission whereby the electronic file is deleted after printing.

g. Fair use. Nothing in this Agreement is intended to limit any rights Licensee or Authorized Users might have under the fair use provisions of U.S. and international copyright law.

h. Multiple copying and coursepack use. Authorized Users may create multiple copies of a discrete excerpt from the Licensed Material for classroom instruction use, consistent with existing "fair use" law. Each such copy shall carry appropriate acknowledgement of the source (or author), copyright, and publisher. Additional multiple copying rights may be granted by the______in its sole discretion upon written request to______.

i. Electronic reserve. Authorized Users may link to and incorporate Licensed Material in an electronic reserve for the use of Authorized Users in the course of instruction. Each item should carry an appropriate acknowledgment of the source (or author), copyright, and publisher. The electronic copies of such items shall be deleted by the Licensee when they are no longer required for such purpose.

j. Text Mining. Authorized Users may use the Licensed Material to perform and engage in text mining /data mining activities for legitimate academic research and other educational purposes.
5. Access by and Authentication of Authorized Users

Licensee and its Authorized Users shall be granted access to the Licensed Materials pursuant to one of the following:

a. IP Addresses. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by Licensee to_____. Authorized Users shall be identified and authenticated by the use of usernames and passwords assigned by Licensee. Licensee shall be responsible for issuing and terminating passwords, verifying the status of Authorized Users, and updating such information on a regular basis.

b. Developing Protocols. In the event Licensee develops alternate processes of identifying and authenticated Authorized Users during the term of this Agreement, Licensee may use such protocols only upon prior written approval by_____.

6. Performance

a. Availability of Licensed Material.____ shall use reasonable efforts to make the Licensed Material available to Licensee within a reasonable amount of time following payment by Licensee.

b. Documentation.____ will use reasonable effort to provide and maintain help files and other appropriate user documentation.

c. Support.____ will offer activation or installation support.____ will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Material.

d. Service.____ shall use reasonable efforts to provide service twenty-four (24) hours a day, seven (7) days a week; however, during said time, periods of downtime will occur. Down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of ______, including, but not limited to, public or private telecommunications services or internet nodes or facilities. Scheduled down-time necessary for upgrades and maintenance, among other reasons, will be performed at a time intended to minimize inconvenience to Licensee.
e. Notification of Modifications of Licensed Material. ______ may, from time to time, add to, modify, delete and/or migrate portions or all of the Licensed Materials to other formats.

f. Completeness of Content. Where applicable, ______ shall use reasonable efforts to ensure that the online content is at least as complete as print versions of the Licensed Material and represents complete, accurate, and timely replications of the corresponding content contained within the print versions of such Materials. ______ will cooperate with Licensee to identify and correct errors or omissions.

g. Withdrawal of Licensed Material. ______ reserves the right to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. ______ shall inform Licensee of such withdrawal within a reasonable amount of time following the removal of any item pursuant to this subparagraph.

h. Usage Data. ______ shall provide to Licensee statistics regarding the usage of the Licensed Material by Licensee and/or its Authorized Users in conformance with the COUNTER Code of Practice.

i. Accessibility. ______ shall use reasonable efforts to ensure that the Licensed Material adheres to the following standards and guidelines: Section 508 of the Rehabilitation Act or W3C WAI WCAG 2.0 Level A.

7. Licensee Performance

a. Provision of Notice of License Terms to Authorized Users. Licensee must use its best efforts to provide notice to Authorized Users of the license terms granted hereunder, including, but not limited to, the allowed and prohibited uses and access of the Licensed Material.

b. Protection from Unauthorized Use. In the event of any unauthorized use of the Licensed Material by an Authorized User, (a) ______ may terminate such Authorized User's access to the Licensed Material, (b) ______ may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee must terminate such Authorized User's access to the Licensed Material upon ______'s request.

c. Maintaining Confidentiality of Access Passwords. Where access to the Licensed Material is to be controlled by use of passwords, Licensee shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party. Licensee shall use its best
efforts to maintain the confidentiality of any institutional passwords provided by______.

8. Mutual Performance

a. Confidentiality of User Data. ______ and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Material by Licensee and its Authorized Users, unless said information must be disclosed pursuant to applicable state or federal law. Such data may be used solely for purposes directly related to the Licensed Material and may only be provided to third parties in aggregate form unless disclosure under applicable laws requires otherwise. 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 unless applicable laws require otherwise.

b. Implementation of Developing Security Protocols. Licensee and_______ shall cooperate in the implementation of security and control protocols and procedures as they are developed by either party during the term of this Agreement.

9. Term

This Agreement shall continue in effect for the duration of any Subscription Term.

10. Disclaimer of Warranties

EXCEPT FOR THE REPRESENTATION STATED HEREIN, THE LICENSED MATERIAL IS PROVIDED ON AN "AS IS" BASIS, AND______ DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, ORAL OR WRITTEN) RELATING TO THE LICENSED MATERIALS OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.______ MAKES NO WARRANTIES RESPECTING ANY HARM THAT MAY BE CAUSED BY THE TRANSMISSION OF A COMPUTER VIRUS, WORM, TIME BOMB, LOGIC BOMB OR OTHER SUCH COMPUTER PROGRAM.______ FURTHER DISCLAIMS ANY WARRANTY OF NON-INFRINGEMENT.______ FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO AUTHORIZED USERS OR TO ANY THIRD PARTY.
11. Limitation of Liability

[paragraph text]

12. Assignment and Transfer

Licensee may not transfer or assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of [insert name].

13. Dispute Resolution

In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement that are not affected by the dispute.

14. General

a. Force Majeure

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to, Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, terrorism, insurrections, labor disputes, and/or any other cause beyond the reasonable control of the party whose performance is affected.
b. Survival

Notwithstanding any termination or expiration of this Agreement, paragraphs 8, 11, and 12 shall survive.

c. Headings

The paragraph headings in this Agreement are used for convenience only, are not substantive, and shall not be interpreted to define, describe, or otherwise limit the interpretation of the provision under the paragraph headings or of the Agreement as a whole.