

## Example

# BAR Digital Collection License Agreement Libraries

**THIS AGREEMENT** is dated [INSERT DATE] (the “Effective Date”)

**BETWEEN:**

- 1) **British Archaeological Reports (Oxford) Ltd** with limited liability under the laws of England, Company No: 02725280 and whose registered office is at 264, Banbury Road, Oxford, England, OX2 7DY (hereinafter called “**BAR**”)
  
- 2) [Company Name], with limited liability under the laws of [INSERT] , Company No: [INSERT] and whose registered office is at [INSERT] (hereinafter called the “**Licensee**”)

**WHEREAS:-**

- A. BAR holds a comprehensive collection of archaeological publications and reports (the “**BAR Series**”). A minimum of 90% of the BAR Series has been digitised to form the BAR Digital Collection, available via the Platform.
  
- B. The Licensee desires to obtain a perpetual licence to the BAR Digital Collection. BAR desires to grant to the Licensee the licence to the BAR Digital Collection, subject to payment of the Fees, on the terms and conditions of this Agreement.

**DEFINITIONS**

Additional Titles	New titles published in the BAR Series; in same calendar year as the Effective Date; and in subsequent calendar years, which have been digitised.
Annual Hosting and Maintenance Fee	Annual amount due in advance to access the Platform, as further described in Schedule 1.

Authorised Users	Current members of the faculty and other staff of the Licensee (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently studying at the Licensee's institution, who are permitted to access the Secure Network from within the Participating Library or from such other places where faculty, staff and current student's work or study (including but not limited to offices and homes, halls of residence and student dormitories) and who have been issued with a password or other authentication, together with other persons who are permitted to use the Participating Library or information service and access the Secure Network but only from computer terminals within the Participating Library's premises.
BAR Digital Collection	The epub and/or pdf versions of a minimum of 90% the BAR Series as of the last calendar year prior to the Effective Date. By way of example, if this Agreement is signed in 2020, the BAR Digital Collection covers titles published up until December 2019.
BAR Series	Defined in recital A above.
CLOCKSS/PORTICO	Organisations dedicated to preserving scholarly publications in original formats and safeguarding access to e-books and digital collections.
Commercial Use	Use for the purposes of monetary reward (whether by or for the Licensee or an Authorised User) by means of sale, resale, loan, transfer, hire or other form of exploitation.
Course Pack	A collection or compilation of printed materials (e.g. book chapters) assembled by the Licensee for use by students who are Authorised Users in a class for the purposes of instruction.
Effective Date	Means the date at the beginning of the first page of this Agreement.
EULA	BAR's End User Licence Agreement, which is applicable to Authorised Users, as available on the Platform.
Fee(s)	The Fees and payment details set out in Schedule 1 or in new Schedules to this Agreement.
Instalment Fee	The Instalment Fee, as set out in Schedule 1, is an annual license fee, payable in advance in accordance with Schedule 1, for annual Additional Titles.
Licensed Materials	The BAR Digital Collection and, if selected by Licensee, the Additional Titles for each year that the Licensee has paid the Instalment Fee.
Licence Term	For the Bar Digital Collection: from the Effective Date in perpetuity. For Additional Titles: from the Effective Date and

	each subsequent calendar year, in perpetuity on receipt of the Instalment Fee.
Participating Libraries	The list of libraries detailed in Schedule 2.
Platform	A secure, online access point where Authorised Users may gain access to and search the Licensed Materials, available at <a href="https://www.fulcrum.org/barpublishing">https://www.fulcrum.org/barpublishing</a> which is either proprietary to or licensed by BAR.
Platform Term	is defined in clause 11.
Secure Network	A network (whether a standalone network or a virtual network within the internet) which is only accessible to Authorised Users approved by the Licensee whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice.
Virtual Learning Environment	A software system designed to manage and support teaching and learning in education, including systems variously referred to as Course Management Systems, Learning Management Systems, Learning Support Systems, Managed Learning Environments, and similar names.

## 1. AGREEMENT

- 1.1. In consideration of the payment of the Fees and subject to the terms and conditions of this Agreement, BAR hereby grants the Licensee a non-exclusive, non-transferable, perpetual and revocable worldwide right to make non- Commercial Use of the Licensed Materials and to provide access to the Licensed Materials to Authorised Users for the purposes of research, teaching and private study as set out in this Agreement for the Licence Term.
- 1.2. In consideration of the payment of the Annual Hosting and Maintenance Fee and subject to the terms and conditions of this Agreement, BAR will provide the Platform for the Platform Term.
- 1.3. Where the Licensee is acting on behalf of Participating Libraries the rights and responsibilities referenced in this Agreement in regard to the Licensee shall apply to all Participating Libraries covered under this Agreement and the Licensee warrants that it has the authority to enter into this Agreement on behalf of the Participating Libraries.
- 1.4. This Agreement shall commence on the Effective Date and shall remain in full force and effect for the Platform Term and the Licence Term unless terminated under the provisions of clause 11 of this Agreement.

## 2. USAGE RIGHTS

- 2.1. The Licensee, subject to clause 3 below, may:
  - 2.1.1. provided that the appropriate copyright acknowledgement is included, incorporate extracts of the Licensed Materials in printed Course Packs and in Virtual Learning Environments for the use by Authorised Users in a course of instruction, at the Licensee's institution, but not for Commercial Use. Each such extract shall carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher. Copies of such items shall be deleted by the Licensee when they are no longer used for such purpose. Course Packs in non-

electronic non-print perceptible form, such as audio or Braille, may also be offered to Authorised Users who are visually impaired.

- 2.1.2. allow Authorised Users to have access to the Licensed Materials via the Platform via the Secure Network.
- 2.1.3. provide an Authorised User with single printed or electronic copies of individual chapters at the request of individual Authorised Users.
- 2.1.4. temporarily display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorised Users or groups of Authorised Users.
- 2.1.5. use metadata extracted from the Licensed Materials to manage library operations, provided that the metadata is not edited or altered by any Authorised Users in any way.
- 2.1.6. Allow its Authorised Users to, on acceptance of BAR's EULA:
  - 2.1.6.1. browse, search, retrieve, display, download, print and store individual chapters for scholarly research, educational and personal use as long as such use is in accordance with the "research and private study" or "criticism and review" or "quotation" "fair dealing" principles of English and international copyright law.
  - 2.1.6.2. Copy and digitally store single copies of a reasonable number of chapters. Copying and storing entire books by Authorised Users is not permitted.
  - 2.1.6.3. obtain remote access to the Licensed Materials through secure access procedures established by the Licensee.
- 2.1.7. Nothing in this Agreement shall in any way exclude, modify or affect any of the Licensee's rights under the Copyright Designs and Patents Act 1988 or any statutory instruments made thereunder or any amending legislation

### **3. PROHIBITED USES**

3.1. Neither the Licensee nor Authorised Users may:

- 3.1.1. make Commercial Use of the Licensed Materials;
- 3.1.2. Grant access to the Licensed Materials or the Platform to anyone but Authorised Users.
- 3.1.3. remove or alter the authors' names or BAR's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;
- 3.1.4. systematically make print or electronic copies of multiple extracts or make multiple copies of any part of the Licensed Materials for any purpose other than expressly permitted by this Agreement;
- 3.1.5. prepare derivative works or download, mount or distribute any part of the Licensed Material on any electronic system or network, including without limitation the internet, except where expressly permitted by this Agreement;
- 3.1.6. reverse engineer, decompile, alter, abridge or otherwise modify the Licensed Materials or any part of them for any purpose whatsoever, except as expressly provided in this Agreement;

- 3.1.7. Sub-licence any of the Licensed Materials other than as expressly permitted by this Agreement;
  - 3.1.8. Use any Licensed Material (or part thereof) in any way that is unlawful or in breach of any person's legal rights under any applicable law, or in any way that is offensive, indecent, discriminatory or otherwise objectionable;
  - 3.1.9. Use any Licensed Materials to compete with BAR, whether directly or indirectly;
  - 3.1.10. Circumvent or remove, or make any attempt to circumvent or remove, any technological measures applied to any Licensed Content for the purpose of preventing unauthorised use;
  - 3.1.11. Attempt to alter, edit, adapt nor make Commercial Use of the Platform, or attempt to decompile, de-obfuscate or reverse – engineer the Platform; or
- 3.2. BAR's explicit prior written permission (to be given at BAR's sole discretion) must be obtained in order to:
- 3.2.1. use all or any part of the Licensed Materials for any Commercial Use;
  - 3.2.2. systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorised Users;
  - 3.2.3. grant access to the Platform to anyone but the Authorised Users;
  - 3.2.4. publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this Agreement;
  - 3.2.5. alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen or as otherwise permitted in this Agreement, to Authorised Users. For the avoidance of doubt, no alteration of the words or images or their order is permitted; or
  - 3.2.6. conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to the Platform

#### **4. ARCHIVAL RIGHTS**

- 4.1. Licensee may make one electronic copy of all the Licensed Materials to be maintained as a backup for archival purposes. Use of CLOCKSS/ PORTICO is also permitted.

#### **5. LICENSEE'S OBLIGATIONS**

- 5.1. The Licensee will:
  - 5.1.1. use reasonable efforts to ensure that all Authorised Users are aware of the importance of respecting the intellectual property rights in the Licensed Materials and of the terms and conditions of this License, and use reasonable efforts to notify Authorised Users of the terms and conditions of this License and take steps to protect the Licensed Materials from unauthorized use or other breach of this License;

- 5.1.2. comply with all computer security procedures required by BAR and implement reasonable measures to prevent unauthorised access to or use of the Platform or the Licensed Material;
- 5.1.3. issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not disclose passwords or other access information to any third party;
- 5.1.4. use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Agreement;
- 5.1.5. use all reasonable efforts to monitor compliance and notify BAR immediately and provide full details upon becoming aware of any unauthorised use of any of the Licensee's or Authorised Users' passwords or of any material breach Licensee or by an Authorised User of the terms of this Agreement;
- 5.1.6. if BAR withdraws from the Licensed Materials any item or part of an item for which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable the Licensee will take reasonable steps to ensure that Authorised Users also cease to use withdrawn material;
- 5.1.7. promptly and diligently investigate any such breach and initiate disciplinary procedures in accordance with the Licensee's standard practice and shall use all reasonable effort to bring an end to the breach as quickly as possible, to mitigate its effect and to prevent any recurrence;
- 5.1.8. keep full and up-to-date records of all IP addresses and provide BAR with details of such additions, deletions or other alterations to such records as are necessary to enable BAR to provide Authorised Users with access to the Licensed Materials as contemplated by this License; and
- 5.1.9. provide BAR, within 30 days of the Effective Date, with information sufficient to enable BAR to provide access to the Platform and the Licensed Material in accordance with its obligation under clause 7.1.1. Should the Licensee make any significant change to such information, it will notify BAR not less than ten (15) days before the change takes effect.

## **6. FEES**

- 6.1.** The Licensee shall, in consideration for the rights granted under this Agreement, pay the Fee(s) as set out in Schedule 1 and receipt of such initial payments shall be a condition precedent of this Agreement coming into effect. New Schedules to this Agreement may be agreed by the parties in writing in advance from time to time.
- 6.2.** The Licensee may elect to pay the Instalment Fee, to be determined by BAR on an annual basis and as set out in Schedule 1 for the first year, for the Additional Titles. BAR agrees that annual adjustments of the Instalment Fee shall be reasonable and in accordance with the quantity of the Additional Titles in that calendar year. The Instalment Fee is payable in advance.
- 6.3.** The Licensee will pay the Annual Hosting and Maintenance Fee for each year of the Platform Term, to be determined by BAR on an annual basis and as set out in Schedule 1 for the first year. The Annual Hosting and Maintenance Fee is payable in advance.
- 6.4.** The Fees are exclusive of all value-added, goods and service and consumption taxes payable in connection with the arrangements contemplated by this Agreement.

- 6.5. If a party is required to deduct withholding tax under applicable law from fees paid to the other party, it must at the time of paying give evidence of payment of the withholding tax as reasonably required by the other party in order for the other party to claim tax credits or deductions. The other party may also supply the paying party with documentation allowing a reduced withholding tax rate under an applicable tax treaty.
- 6.6. Each party is responsible for complying with all tax laws that apply to it in connection with this Agreement and indemnifies the other party against any liability arising from its failure to do so.

## **7. BAR'S OBLIGATIONS**

- 7.1. On receipt of the BAR Digital Collection licence fee, the Instalment fee and the Annual Hosting and Maintenance fee, as described in Schedule 1, BAR shall:
- 7.1.1. make the Licensed Materials available to the Licensee and Authorised Users via the Platform.
  - 7.1.2. use reasonable endeavours to make the Licensed Material available as described in Schedule 1 for twenty-four hours a day save for routine maintenance, of which BAR shall insofar as possible notify the Licensee in advance, or emergency maintenance.
  - 7.1.3. restore access to the Licensed Material as soon as possible in the event of an outage, interruption or suspension of the Platform.
  - 7.1.4. offer reasonable levels of customer support to assist the Licensee in use of the Platform. BAR will make personnel available during normal business hours in USA (EST) or the United Kingdom for feedback, problem solving or general questions from the Participating Library representatives.
- 7.2. BAR will use reasonable endeavours to provide or to make arrangements for a third party to provide an archive of the Licensed Materials for the purposes of long-term preservation of the Licensed Materials.
- 7.3. BAR reserves the right at any time to withdraw, without notice, from the Licensed Materials 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 third party rights or is defamatory, obscene, unlawful or otherwise objectionable.
- 7.4. BAR will use reasonable endeavours to provide Platform usage data to the Licensee through the platform or on the Licensee's written request.

## **8. ACKNOWLEDGMENT OF COPYRIGHT**

- 8.1. The Licensee acknowledges that all copyright, patent, trademark, database rights and all other intellectual property rights in or relating to the Licensed Materials or the Platform are the sole property of BAR or its licensors and that this Agreement does not in any way give rise to any right title or interest in the Licensed Materials or the Platform except as described in this Agreement. All rights not expressly granted to the Licensee under the Agreement are reserved for and by BAR and its licensors.

## **9. REPRESENTATIONS AND WARRANTIES**

- 9.1. Except as expressly provided in this Agreement, BAR makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy

of the information contained in the Licensed Materials, merchantability, "up time" or fitness of use for a particular purpose. The Licensed Materials and the Platform are supplied 'as is'.

9.2. Under no circumstances shall BAR be liable to the Licensee or any other person, including but not limited to Authorised Users, for:

- 9.2.1 any events beyond BAR's reasonable control;
- 9.2.2 any special, exemplary, incidental, punitive or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials or the Platform;
- 9.2.3 any business losses, including without limitation, loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill; or any liability for loss or corruption of any data, database or software.

9.3. Subject to clause 9.2 and 9.5, irrespective of the cause or form of action, BAR's aggregate liability for any claims, losses, or damages arising out of any negligence, breach of statutory duty or breach of this Agreement shall in no circumstances exceed £5,000.

9.4. Licensee accept that BAR has an interest in limiting the personal liability of BAR's officers and employees and, having regard to that interest, Licensee acknowledges that BAR is a limited liability entity; Licensee agrees that it will not bring any claim personally against BAR's officers or employees in respect of any losses Licensee suffers in connection with this Agreement (this will not, limit or exclude the liability of the limited liability entity itself for the acts and omissions of BAR's officers and employees).

9.5. Nothing in this Agreement will:

- 9.3.1 limit or exclude any liability for death or personal injury resulting from negligence;
- 9.3.2 limit or exclude any liability for fraud or fraudulent misrepresentation;
- 9.3.3 limit any liabilities in any way that is not permitted under applicable law; or
- 9.3.4 exclude any liabilities that may not be excluded under applicable law.

## **10. UNDERTAKINGS BY BOTH PARTIES**

10.1. Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party.

## **11. TERM AND TERMINATION**

11.1. This Agreement may be terminated immediately in writing:

- 11.1.1. by BAR if the Licensee defaults in making payment of the any of the annual Fees as provided in this Agreement and fails to remedy such default within thirty (30) days of notification in writing by BAR. If Licensee fails to pay the Instalment Fee, no new Additional Titles will be licensed; and if Licensee fails to pay the Annual Hosting and Maintenance Fee, access to the Platform will be withdrawn;
- 11.1.2. if either party commits a material or persistent breach of any term of this Agreement and fails to remedy the breach if capable of remedy within sixty (60) days of notification in writing by the other, the non breaching party may terminate on fifteen (15) days' written notice;
- 11.1.3. by BAR if the Licensee commits any breach of clause 2, clause 3 or clause 5;



- 11.1.4. if the other party becomes insolvent or becomes subject to receivership, liquidation or similar external administration, the other party may terminate this Agreement on thirty (30) day's written notice.
- 11.2. On termination of this Agreement by BAR for cause, as specified in clauses 11.1.2, 11.1.3, 11.1.4, the licence granted to the Licensee in clause 1.1 will be revoked. Licensee shall immediately cease to have access to the Platform or to distribute or make available the Licensed Materials to Authorised Users and shall return to BAR or destroy all Licensed Materials.
- 11.3. On termination of this Agreement by the Licensee for cause, as specified in clauses 11.1.2 and 11.1. 4, BAR shall forthwith provide electronic copies of the Licensed Materials to the Licensee for hosting locally on a server within the Secure Network for access by Authorised Users under the terms of clauses 2, 3 and 5 of this License, which shall survive such termination.
- 11.4. The Initial Platform Term shall commence on the Effective Date and continue until 30<sup>th</sup> of March 20xx unless terminated earlier in accordance with this Agreement. After expiry of the Initial Platform Term, the Further Platform Term will renew automatically each year for a further one year, unless terminated earlier in accordance with this Agreement. (Initial Platform Term and Further Platform Term together: the "**Platform Term**").
- 11.5. If both parties agree in writing the Platform Term can be terminated with no less than 12 months' prior written notice.
- 11.6. Licensee may elect to discontinue receiving the Additional Titles at any time on no less than one month's prior written notice. Licensee waives any entitlement to reimbursement of any Instalment Fee.
- 11.7. Subject always to clause 11.2, termination of this Agreement in whole or in part will not affect the perpetual licence granted in clause 1.1 to the Licenced Materials. The Definitions, clauses 2, 3, 5, 8, 9, 10, 11.3, 11.7, 12 and Schedule 3 and those clauses which are intended by their nature to survive termination and continue to have effect (in accordance with their express terms or otherwise indefinitely) will continue to have effect following termination.

## **12. DATA PROTECTION**

- 12.1. The parties agree to comply with Schedule 3 in relation to the protection of personal data.

## **13. GENERAL**

- 13.1. This Agreement constitutes the entire full and complete understanding between the parties and supersedes all prior arrangements and undertaking whether written or oral.
- 13.2. Alterations to this Agreement and to the Schedules to this Agreement are only valid if they are recorded in writing and signed by both parties.
- 13.3. BAR may assign, novate or subcontract this Agreement at its sole discretion. Licensee may not assign, novate or subcontract this Agreement to any other person or organisation, nor may Licensee sub-contract any of its obligations, without the prior written consent of the BAR, which consent shall not unreasonably be withheld.
- 13.4. Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this Agreement or to such other address as notified by either party to the other as its address

for service of notices. All such notices shall be deemed to have been received within 7 days of posting.

13.5. Neither party's delay or failure to perform any provision of this Agreement, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Agreement for a period of thirty days.

13.6. The invalidity or un-enforceability of any provision of this Agreement shall not affect the continuation or enforceability of the remainder of this Agreement.

13.7. Either party's waiver, or failure to require performance by the other, of any provision of this Agreement will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

13.8. This Agreement shall be governed by and construed in accordance with English law; the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the courts of England and Wales.

13.9. Except as otherwise explicitly set forth herein, the relationship of the parties hereto will be that of independent contractors. Except as otherwise explicitly set forth here, nothing contained herein shall be deemed to create an agency, joint venture, or partnership relationship between the parties or subject the parties to any implied duties, rights or obligations respecting the conduct of their affairs, which are not expressly stated herein. Neither party will have any right or authority to assume or create any obligation or responsibility, either express or implied, on behalf of or in the name of the other party except as expressly provided in this Agreement.

**AS WITNESS** the hands of the duly authorised representatives of the parties the day and year below first written

**FOR BAR: Birgit Thaller**

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Position / Title: Managing Director

**FOR THE LICENSEE: [FULL NAME]**

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Position / Title: \_\_\_\_\_

**SCHEDULE 1**  
**LICENSED MATERIALS AND FEES**

**MATERIAL ON PERPETUAL ACCESS**

Product: BAR Digital Collection, this will include a minimum of 90% of the BAR Series  
Format: epdf and/or epub  
Fee: £\$€ due on signature of this Agreement.  
Schedule: A minimum of 80% of the collection will be made available within two weeks of receipt of the cleared Fee and receipt of access information;  
The remaining 10 % of the titles will be added during 2020 and 2021.

Should Licensee wish to receive the Additional Titles, the Instalment Fee is payable on signature of this Agreement and thereafter annually in advance on the 1<sup>st</sup> of January of each calendar year.

Product: Publications in the applicable calendar year. - BAR Digital Standing Order  
Format: epdf and/or epub  
Instalment Fee: £\$€ for 2020. Future cost of Additional Titles is notified by BAR in advance, calculated based on the quantity of new publications.  
Schedule: The Additional Titles will be made available on publication date.

**ANNUAL HOSTING AND MAINTENANCE FEE**

Annual Hosting and Maintenance Fee: £\$€ plus VAT (if applicable), payable on signature of this Agreement and thereafter annually in advance on the 1<sup>st</sup> of January of each calendar year.

The Annual Hosting and Maintenance Fee will be waived in the event that the Licensee purchases digital content over the value of £\$€ excluding VAT (if applicable) for that calendar year from BAR.

**PAYMENT TERMS**

Invoices shall be due and payable no later than (30) days after being issued by BAR Publishing and are payable by bank transfer to BAR's bank account: .

Bank Name : xx  
Branch: xx  
Acc No : xx  
Sort Code : xx  
IBAN : xx  
SWIFT BIC: xx

BAR may charge the Licensee interest on any monies due and outstanding beyond the due date for payment specified in this agreement at the rate of 8% per annum above the sterling base rate of HSBC Bank Plc in the UK for the time being in force, compounded at monthly intervals. Payment of interest shall be without prejudice to BAR's rights to terminate the relevant licence for non- payment.

**ACCESS METHOD**

- Authentication via User ID/password and IP Address
- Authentication via IP address
- Authentication via Shibboleth:
- Authentication via OpenAthens\*

\*Please be aware that access through OpenAthens will be supported at the Licensee's request and at its expense.

## University Contact Information

General and Technical Contact

[INSERT]

Billing Contact and Address

[INSERT]

Licensing Contact:

[INSERT]

SCHEDULE 2 – Participating Library/Libraries – IP addresses

[List]

## SCHEDULE 3: DATA PROTECTION

This Schedule 3 governs all processing of personal data that is subject to the GDPR and the Data Protection Laws (as defined below) and necessary for the provision of services by BAR to the Licensee pursuant to the Agreement. To the extent of any conflict between this Schedule 3 and the terms of the Agreement or any other document or exhibit, this Schedule 3 shall control with respect to personal data that is subject to the Data Protection Laws.

### 1. Definitions

#### 1.1. For purposes of this Schedule 3:

- 1.1.1. The term “Data Protection Laws” means: the Electronic Communications (EC Directive) Regulations 2003, together with any legislation which replaces it; and the General Data Protection Regulation (EU 2016/679) (“GDPR”), the Data Protection Act 2018 and any legislation which amends, re-enacts or replaces either in England and Wales.
- 1.1.2. the term “personal data” shall mean any information relating to an identified or identifiable natural person that is subject to the Data Protection Laws and is processed for or on behalf of the Licensee;
- 1.1.3. the term “processing” shall mean any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction; and
- 1.1.4. the term “data subjects” shall mean any living individuals whose personal data are protected by the Data Protection Laws and who can be identified, directly or indirectly, in particular by reference to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of those individuals.
- 1.1.5. the term “controller” means the entity that establishes the purposes and means of processing, gives directions to processors on how to process the personal data at issue and is responsible for compliance with the Data Protection Laws.
- 1.1.6. the term “processor” means the entity that processes personal data on behalf and under the directions of the controller.

### 2. Scope

- 2.1. This Schedule is applicable to processing of personal data that falls under the Data Protection Laws.
- 2.2. In particular, the personal data that is subject to this Schedule is:
  - 2.2.1. information about Licensee and Authorised Users gathered through the use of Cookies; information about Licensee and Authorised Users gathered to provide technical support; identification of Licensee’s representatives authorised to access Platform administrative features; information about authors and contributors to the Works; Authorised User information.
- 2.3. The personal data that is subject to this Schedule as referenced above is further related to the following categories of data subjects:
  - 2.3.1. BAR’s employees and agents, BAR’s authors and contributors, Licensee, Authorised Users.
- 2.4. Pursuant to the Agreement, personal data is processed by BAR on behalf of the Licensee for the purpose(s) of:
  - 2.4.1. Providing access to Licensed Content hosted on the Platform, troubleshooting Licensee access issues, facilitating BAR’s administrative functions in relation to the Platform and improving the Platform’s functionality.

- 2.5. Personal data shall be processed by BAR on behalf of the Licensee for the Platform Term

### **3. Roles**

- 3.1. Licensee agrees that it is responsible for compliance as the data controller under the Data Protection Laws with respect to the processing defined in section 2.
- 3.2. BAR agrees that it is responsible for compliance as the data processor under the Data Protection Laws with respect to the processing and personal data defined in section 2 that is subject to the Data Protection Laws.

### **4. Processing Requirements**

- 4.1. BAR shall process personal data received from the Licensee or collected or otherwise processed on behalf of the Licensee only on documented written instructions from the Licensee as set out in this Agreement, including with regard to transfers of personal data to third countries and will not process that data in any other way or for any other purpose.
- 4.2. BAR shall only process the personal data defined in section 2 of this Schedule that are necessary for the provision of the Platform as described in the Agreement.

### **5. Security and Confidentiality**

- 5.1. BAR represents that it implements technical and organizational measures to ensure a level of security appropriate to the risks for the rights and freedoms of persons, taking into account the nature of processing and the information made available to BAR.
- 5.2. BAR shall inform the Licensee without undue delay after having become aware of any data breach concerning personal data that falls under the GDPR and that is processed on behalf of the Licensee.
- 5.3. BAR represents that the persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate obligation of confidentiality.

### **6. Accountability**

- 6.1. Where necessary and at Licensee's sole cost, BAR shall assist the Licensee with conducting Data Protection Impact Assessments for the processing of personal data processed by BAR on behalf of the Licensee.
- 6.2. BAR shall make available to the Licensee all information reasonably necessary to demonstrate compliance with the Data Protection Laws and that has been requested in writing by Licensee.
- 6.3. BAR shall allow for and contribute to audits conducted or reasonably required by Licensee at Licensee's sole cost strictly for the purpose of verifying the appropriateness of technical and organizational measures relied on to ensure compliance with the Data Protection Laws. A request for audit, detailing the scope of the audit and the methods intended to be employed, will be sent to BAR at least one month in advance of the planned audit. BAR and the Licensee will agree on the auditing methods deployed before the audit takes place.

### **7. Rights of data subjects**

- 7.1. Licensee is responsible for assessing any requests from data subjects in the exercise of their rights granted by the Data Protection Laws, which are related to processing of personal data in the scope of this Schedule, and to provide a resolution to such requests.

- 7.2. BAR shall promptly direct to the Licensee all requests it may receive directly from data subjects in the exercise of their rights in relation to the processing subject to this Schedule.
- 7.3. BAR shall assist the Licensee by implementing appropriate technical and/or organizational measures, insofar as it is possible, for the fulfilment of BAR's obligations to inform the individuals about the details of the processing and to respond to requests for access, rectification, erasure, and portability of personal data as provided for by the Data Protection Laws, as well as for requests to object to processing of such data.

#### **8. Sub-processor Obligations**

- 8.1. Licensee authorizes BAR to engage sub-processors as necessary for the fulfilment of the Agreement and the processing set forth in section 2 of this Schedule. BAR shall inform the Licensee of the identity of and any intended changes concerning the addition or replacement of subcontractors having access to personal data processed on behalf of the Licensee no less than one week in advance of any intended change concerning sub-processors and shall only proceed with such change if no objection is raised by the Publisher.
- 8.2. When BAR engages a sub-contractor for carrying out processing activities on behalf of BAR, the same data protection obligations set out in this Schedule shall be contractually imposed on that subcontractor, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of the GDPR and its applicable implementing laws.
- 8.3. At the time of execution of the Agreement, BAR had or will have agreements with the following sub-processors that can potentially process personal data:

The University of Michigan, who have entered into the EU's Model Clauses with BAR, as they are based in the USA.

#### **9. Return or Destruction of Licensee Data**

Any rights BAR may have to retain, use or process in any way whatsoever personal data that is subject to this Schedule on behalf of the Licensee shall immediately cease upon termination or expiration of the Agreement. All such personal data must be destroyed or returned to the Licensee within 30 days of such termination or expiration, including any and all backups and archived data in accordance with industry standards. Notwithstanding the foregoing, if applicable law requires continued storage of such personal data by BAR, BAR shall be allowed to keep one copy of such personal data to satisfy its requirements with such applicable law.



