

[NB: This sample agreement is provided for information only. Users of the Journal Comparison Service will receive a sample for signature from the cOAlition-S Office after registration to the service]

**(1) EUROPEAN SCIENCE FOUNDATION**

**and**

**(2) [PUBLISHER]**

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**AGREEMENT FOR SERVICES**

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For information - Not to complete

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THIS AGREEMENT is made on

2022

**BETWEEN**

1. **EUROPEAN SCIENCE FOUNDATION**, of 1, quai Lezay-Marnésia - BP 90015 67080 Strasbourg Cedex - France ( "**ESF**" ); and
  2. [ ], a company incorporated in [ ] (company number [ ]) whose registered office is at [ ] (the "**Publisher**")
- (each a "**Party**" and together the "**Parties**").

**1 BACKGROUND**

- (A) ESF is a not-for-profit organisation which has been set up to support, amongst other things, scientific research across Europe, and has developed the Journal Comparison Service (as defined below). ESF has been authorized to undertake all necessary actions to operate and maintain the Journal Comparison Service for and on behalf of cOAlition S, including by signing the agreement with the Publisher.
- (B) The Publisher owns the copyright and any database rights in the Publisher Data or has the necessary rights (e.g. by means of a license or written agreement) to the Publisher Data (as defined below) and has agreed to provide the Publisher Data to ESF, to be shared as part of the Journal Comparison Service, on the terms set out in this Agreement.

The Parties agree as follows:

**2 DEFINITIONS AND INTERPRETATION**

2.1 In this Agreement, unless the context requires otherwise, the following definitions apply:

- "Acceptable Use Policy"** the statement of acceptable use set out in Schedule 1 with which each End User Account Holder must comply.
- "Applicable Laws"** the laws of France and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services.
- "Business Day"** a day other than a Saturday, Sunday or public holiday in France.
- "Calendar Year"** a twelve (12) month period commencing on 1 January and ending on the following 31 December.
- "Commencement Date"** the date of this Agreement.
- "Confidential Information"** all confidential information (however recorded or preserved) disclosed by a Party or its Personnel to the other Party and that Party's Personnel in connection with this Agreement, whether or not labelled as confidential, which should reasonably be considered as confidential because of its nature and the manner in which it was disclosed. The Publisher Data shall not be considered Confidential Information.

<b>“Data Legislation”</b>	<b>Protection</b>	all applicable data protection and privacy legislation in force from time to time in France [and EU] including the General Data Protection Regulation (EU 2016/679); the French Data Protection Act of 6 January 1978 (DPA) and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the CNIL (Commission Nationale de l’Informatique et des Libertés) or other relevant regulatory authority and applicable to a Party.
<b>“Dispute”</b>		any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes and claims) .
<b>“End User”</b>		is either:  (i) an educational establishment, that participates in Open Access agreements with publishers, that would like to make use of the Journal Comparison Service and provide access to the same to selected staff members on the terms set out in this Agreement; or  (ii) a library consortium, that negotiates Open Access agreements with publishers, that would like to make use of the Journal Comparison Service and provide access to the same to selected staff members on the terms set out in this Agreement; or  (iii) a research funder or research performing organisation, that is a member of cOAlition S, that would like to make use of the Journal Comparison Service and provide access to the same to selected staff members on the terms set out in this Agreement.
<b>“End User Administrator”</b>		one End User Authorised User, nominated by the End User and notified to ESF in the Agreement or changed in writing to have administrative control over End User Authorised User accounts associated with that End User.
<b>“End User Agreement”</b>		an agreement with an End User in respect of access to and use of the Journal Comparison Service.
<b>“End User Authorized User”</b>		those employees, agents and independent contractors of the End User, who are authorised by the End User Administrator, to access and use the Journal Comparison Service in accordance with the terms of the End User Agreement.
<b>“Intellectual Rights”</b>	<b>Property</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database

rights, semi-conductor topography rights, moral rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

<b>“Journal Service”</b>	<b>Comparison</b>	a service provided by ESF which allows End User Authorised Users to access collections of data provided by publishers (including the Publisher Data) to access information (including title and abstract) and compare the price and services of journals.
<b>“Normal Business Hours”</b>		The hours of 9.00am to 5.30pm Central European Time.
<b>“Personnel”</b>		in respect of a Party, that Party's employees, officers, representatives, advisers or sub-contractors involved in the provision of or access to the Journal Comparison Service.
<b>“Publisher Administrator”</b>		one Publisher Authorised User nominated by the Publisher, and notified to ESF in this Agreement or changed in writing to have administrative control over Publisher Authorised User accounts.
<b>“Publisher Users”</b>	<b>Authorised</b>	the Personnel of the Publisher, who are authorised by the Publisher Administrator to use the Journal Comparison Service to upload the Publisher Data.
<b>“Publisher Data”</b>		information and meta data relating to journals which the Publisher is responsible for the publication of, including: journal title; quality metrics, categories of service, and price, and any other information agreed between the Parties from time to time in writing.
<b>“Purpose”</b>		viewing and comparing journal information and prices during a Calendar Year.
<b>“Shared Personal Data”</b>		the personal data to be shared between the Parties under clause 8.1 of this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: name; email address; mobile phone number. Additional information may be collected to respond to queries sent through the feedback function (such as Browser name, Browser Version, Preferred UI language, Operating system name, Browser vendor, etc).
<b>“Term”</b>		the term of this Agreement as described in clause 11.1.

- 2.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 2.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 2.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 2.5 References to clauses and Schedules are to the clauses and Schedules of this Agreement.
- 2.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular, and a reference to one gender shall include a reference to the other genders.
- 2.7 This Agreement shall be binding on, and enure to the benefit of, the Parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.
- 2.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.9 A reference to writing or written means a formal letter (including registered letter if the clause so specifies) and does not include e-mails (unless specified otherwise). E-mails can however be used for day-to-day or operational communication relating to the Journal Comparison Service.
- 2.10 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### **3 THE JOURNAL COMPARISON SERVICE**

- 3.1 During the Term, ESF shall provide the Journal Comparison Service to the Publisher on and subject to the terms of this Agreement.
- 3.2 In providing the Journal Comparison Service, ESF shall:
- 3.2.1 comply with all Applicable Laws;
  - 3.2.2 provide the Publisher with reasonable written (including e-mail) notice of the format in which the Publisher Data should be supplied;
  - 3.2.3 process and store the Publisher Data in accordance with clause 6 (Data Security); and
  - 3.2.4 make Publisher Data available only to End User Authorised Users for use solely in connection with the Purpose and the license set out in clause 4.2.
- 3.3 ESF may sub-contract the provision of the Journal Comparison Service or any part thereof, but shall remain liable for actions of its subcontractors.
- 3.4 ESF shall use reasonable endeavours to make the Journal Comparison Service available during Normal Business Hours.
- 3.5 If the Publisher is unable to access the Journal Comparison Service during Normal Business Hours, ESF shall use reasonable endeavours to investigate and restore the Journal Comparison Service as soon as reasonably practicable following the Publishers notification.

### **4 USER ACCOUNTS**

- 4.1 All Intellectual Property Rights in the Journal Comparison Service remain the property of ESF or its licensors.
- 4.2 ESF hereby grants to the Publisher a non-exclusive, non-transferable, royalty-free, worldwide right to:
- 4.2.1 permit the Publisher Administrator to use the Journal Comparison Service during the Term solely for the purpose of:
- a) inputting and updating the Publisher Data; and
- b) granting and revoking access by the Publisher Authorised Users to the Journal Comparison Service;
- 4.2.2 permit the Publisher Authorised Users to use the Journal Comparison Service during the Term solely for the purpose of inputting and updating the Publisher Data.
- 4.3 The Publisher Administrator shall administer all Publisher Authorised User accounts. In relation to the Publisher Administrator and the Publisher Authorised Users, the Publisher undertakes that:
- 4.3.1 only one Publisher Administrator will be authorised to access the Journal Comparison Service;
- 4.3.2 it will not allow any Publisher Authorised User's account to be used by more than one individual.
- 4.4 The Publisher Administrator must ensure that each Publisher Authorised User:
- 4.4.1 sets up their Publisher User Account with a secure email address, meaning an e-mail address that is owned and/or managed and validated by the Publisher and secured in accordance with good password security practices; and
- 4.4.2 does not use any personal email addresses to access the Journal Comparison Service on behalf of the Publisher.
- 4.5 If any unauthorised use is made of the Journal Comparison Service and such use is attributable to the act or default of, or through, the Publisher or any Publisher Authorised User (including breach of any Acceptable Use Policy), ESF may (in its discretion):
- 4.5.1 suspend or terminate the account of the Publisher Authorised User on written notice to the Publisher; or
- 4.5.2 terminate this Agreement with immediate effect on written notice to the Publisher.

## **5 PUBLISHER OBLIGATIONS**

- 5.1 Each Publisher Authorized User and Publisher Administrator shall be subject to the terms of the Acceptable Use Policy. The Publisher shall take all necessary steps to ensure that each Publisher Authorized User and Publisher Administrator complies with the terms of the Acceptable Use Policy.
- 5.2 The Publisher shall, in accordance with the terms of this Agreement, supply the Publisher Data to ESF once in every Calendar Year, and at the latest on 31 October of that Calendar Year, unless ESF has notified the Publisher of a change in period.

- 5.3 If the Publisher acquires any new journals within any Calendar Year, the Publisher Data in respect of those new journals shall be notified to ESF in accordance with clause 5.4.2 below.
- 5.4 The Publisher shall:
- 5.4.1 take all reasonable steps to ensure that:
- a) the Publisher Data is materially accurate and complete as at the date of the supply of the Publisher Data to ESF;
  - b) any changes which will materially affect the accuracy of the Publisher Data and which become known to the Publisher or its Personnel are communicated to ESF within two weeks of the Publisher becoming aware of the same;
- 5.4.2 provide the Publisher Data relating to any journals it has acquired and the date on which it acquired that journal, when reasonably practicable. For example, this might be when the acquisition is public and the journal is officially included in the publishing program; and
- 5.4.3 not attempt to access (directly or indirectly through any intermediaries) any part of the Journal Comparison Service made for use by End Users only (the “**Restricted Areas**”). In the event that the Publisher or its Publisher Authorised User becomes aware that it is able to access the Restricted Areas, the Publisher shall promptly notify ESF of the same.
- 5.4.4 represent and warrant that the Publisher Data does not violate any applicable laws, regulations or third party rights.

## **6 DATA SECURITY**

- 6.1 ESF shall use reasonable endeavours to secure the Publisher Data, and shall use security practices and systems, as are appropriate in accordance with good industry practice, to the use of the Publisher Data to prevent, and take remedial action against, unauthorised access, processing, copying, modification, storage, reproduction, display or distribution of the Publisher Data.
- 6.2 In particular, ESF shall:
- 6.2.1 Implement the Journal Comparison Service so that a Publisher and its user can only access Publisher Data of that Publisher;
- 6.2.2 apply appropriate security features, including two-factor authentication, to all Accounts
- 6.2.3 undertake regular audits of its security measures applied to the Journal Comparison Service, and take appropriate steps to improve data security where applicable.
- 6.3 If ESF becomes aware, following notification by the Publisher or otherwise, of any misuse of any of the Publisher Data, or any security breach in respect of the Journal Comparison Service, that could compromise the security or integrity of the Publisher Data or otherwise adversely affect the Journal Comparison Service, ESF shall take steps to remedy the issue as soon as reasonably practicable.
- 6.4 The Publisher shall at all times promptly grant all reasonable cooperation desired by ESF for security purposes.

## 7 CONFIDENTIALITY

7.1 During the term of this Agreement and during a time period of two (2) years after its termination, each Party shall, in relation to the Confidential Information of the other Party that it receives or has received, save as expressly permitted by this clause 7:

7.1.1 keep the Confidential Information confidential and not make or release copies of it;

7.1.2 not disclose the Confidential Information to any other person other than with the prior written consent of the other Party;

7.1.3 not use the Confidential Information for any purpose except the performance of its obligations and/or the exercise of its rights under this Agreement; and

7.1.4 not use any Confidential Information so as to procure any commercial advantage over the other Party or any third party.

7.2 During the term of this Agreement a Party may disclose the Confidential Information of the other Party to its Personnel but only to the extent reasonably necessary to perform properly its obligations and/or exercise its rights under this Agreement and provided that:

7.2.1 before disclosure of any of the Confidential Information to any of the Personnel it procures that each such Personnel is aware of the obligations in clause 7.1 and that each such Personnel undertakes in writing to observe the obligations in clause 7.1; and

7.2.2 it shall be responsible for any failure by any of the Personnel to observe the obligations in clause 7.1 as though it were a breach of clause 7.1 committed by that Party.

7.3 The obligations contained in clause 7.1 shall not apply to any Confidential Information which:

7.3.1 is or becomes generally available to the public other than through breach of this Agreement by the Party receiving the Confidential Information (the "**Receiving Party**");

7.3.2 is already known or available to a Party before its disclosure in the context of this Agreement;

7.3.3 subsequently comes lawfully into the possession of the Receiving Party from a person who has not derived it directly or indirectly from the other Party, who is rightfully in possession of such Confidential Information and who is not bound as to its use or disclosure by an obligation of confidence or secrecy to the other Party; or

7.3.4 the Parties agree in writing is not confidential or may be disclosed.

7.4 A Party may disclose Confidential Information to the extent such disclosure is required by:

7.4.1 any applicable law or by any governmental or administrative authority or by an order of any court or other authority of competent jurisdiction; or

7.4.2 regulations of any recognised investment, stock or securities exchange on which that Party's securities are traded or by the French "*Autorité des Marchés Financiers*" (AMF) or other regulatory organisation,

provided that, to the extent legally permitted, that Party gives the other Party as much written notice of such disclosure as possible.

- 7.5 Each Party acknowledges and agrees that if the Confidential Information is used or disclosed other than in accordance with the provisions of this Agreement, damages alone may not be an adequate remedy and the Party whose Confidential Information has been used or disclosed shall, without proof of special damage, be entitled to apply for an injunction or other equitable relief for any threatened or actual breach of the provisions of this clause 7 in addition, and without prejudice, to any damages or other remedy to which it may be entitled.
- 7.6 On expiry or earlier termination of this Agreement each Party shall return to the other Party all documents and materials containing the other's Confidential Information, including copies, and shall erase all the other's Confidential Information from its computer and other software or media storage systems, provided that a Receiving Party may retain materials containing Confidential Information to the extent required by law or any applicable governmental, administrative or regulatory authority or by an order of any court or other authority of competent jurisdiction.
- 7.7 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information are granted to the other Party or to be implied from this Agreement.
- 7.8 Neither Party makes any express or implied warranty or representation concerning its Confidential Information including as to accuracy, completeness or otherwise whatsoever.
- 7.9 The provisions of this clause 7 shall apply during the term of this Agreement and for two (2) years following its expiry or termination.

## **8 DATA PROTECTION**

- 8.1 This clause sets out the framework for the sharing of personal data between the Parties as separate controllers. Each Party acknowledges that one Party will disclose to the other Party Shared Personal Data in the management and administration of Publisher Authorised User Accounts.
- 8.2 Each Party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one Party shall, if not remedied within thirty (30) days of written notice from the other Party, give grounds to the other Party to terminate this Agreement with immediate effect on prior written notice to the other Party.
- 8.3 The Publisher shall:
- 8.3.1 ensure that it has all necessary notices and consents or other lawful bases in place to enable lawful transfer of the Shared Personal Data to the other Party for the use and administration of the Publisher Authorised User Accounts; and
  - 8.3.2 process the Shared Personal Data only for the use and administration of the Publisher Authorised User Accounts.
- 8.4 Each Party shall provide all reasonable assistance to the other Party in complying with all applicable requirements of the Data Protection Legislation.
- 8.5 Further details relating to the processing of personal data are set out in our privacy policy. In the event of a conflict between the privacy policy and this Agreement or Acceptable Use Policy, the privacy policy prevails.

## 9 INTELLECTUAL PROPERTY RIGHTS PUBLISHER

- 9.1 The Publisher hereby grants to ESF a non-exclusive, non-transferable, worldwide licence for the Permitted Use during the term of this Agreement, to:
- 9.1.1 copy and store the Publisher Data directly in connection with the Journal Comparison Service;
  - 9.1.2 adapt the Publisher Data only to the extent necessary for aggregation and display through the Journal Comparison Service; and
  - 9.1.3 display the Publisher Data to End Users of the Journal Comparison Service;
  - 9.1.4 publish elements of the Publisher Data in aggregated form, provided that all details of the Publisher or which allow the Publisher to be identified are removed (such as the Publisher name, journal name and ISSN);
  - 9.1.5 grant a license to the End User to
    - a) download a copy of the Publisher Data;
    - b) use the Publisher Data (including in aggregated form) to inform purchasing decisions and to assess the services publishers provide; and
    - c) publish elements of the Publisher Data in aggregated form, provided that all details of the Publisher or which allow the Publisher to be identified are removed (including but not limited to elements such as the Publisher name, journal name and ISSN).
- 9.2 The Publisher represents and warrants that it has the right to license the receipt and use of the Publisher Data as specified in this Agreement.
- 9.3 ESF acknowledges that:
- 9.3.1 all Intellectual Property Rights in the Publisher Data remain the property of the Publisher and/or its licensors; and
  - 9.3.2 it shall have no rights in or to the Publisher Data other than the right to use the Publisher Data in accordance with the express terms of this Agreement.
- 9.4 The Publisher undertakes to defend ESF from and against any claim or action that the provision, receipt or use of the Publisher Data (wholly or in part) in accordance with this Agreement infringes any Intellectual Property Right of a third party (“**IPR Claim**”) and shall be responsible for any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against ESF as a result of or in connection with any IPR Claim, provided that, if any third party makes an IPR Claim, or notifies an intention to make an IPR Claim against ESF, ESF shall:
- 9.4.1 give written notice of the IPR Claim to the Publisher as soon as reasonably practicable;
  - 9.4.2 not make any admission of liability in relation to the IPR Claim without the prior written consent of the Publisher;
  - 9.4.3 at the Publisher’s request and expense, allow the Publisher to conduct the defence of the IPR Claim including settlement; and

- 9.4.4 at the Publisher's expense, co-operate and assist to a reasonable extent with the Publisher's defence of the IPR Claim.
- 9.5 Clause 9.4 shall not apply where the IPR Claim in question is attributable to:
- 9.5.1 possession, use development, modification or retention of the Publisher Data (wholly or in part) by ESF other than in accordance with this Agreement; or
- 9.5.2 ESF's use of the Publisher Data (wholly or in part) in combination with any data not supplied or specified by the Publisher to the extent that the infringement would have been avoided by the use of the Publisher Data (wholly or in part) not so combined.
- 9.6 If any IPR Claim is made, or in the Publisher's reasonable opinion is likely to be made, against ESF, the Publisher shall, at its own expense:
- 9.6.1 procure for ESF the right to continue using, developing, modifying or retaining the Publisher Data (wholly or in part) in accordance with this Agreement; and/or
- 9.6.2 modify the Publisher Data (wholly or in part) so that they cease to be infringing.
- 9.7 If the Publisher fails to comply with Clause 9.6, ESF shall be entitled to terminate this Agreement immediately by notice in writing to the Publisher.

## **10 LIABILITY**

- 10.1 Neither Party excludes or limits liability to the other Party for:
- 10.1.1 fraud or fraudulent misrepresentation;
- 10.1.2 death or personal injury caused by negligence;
- 10.1.3 any liability arising under clause 9.4; and/or
- 10.1.4 any matter in respect of which it would be unlawful for the Parties to exclude liability.
- 10.2 Subject to clause 10.1 neither Party shall in any circumstances be liable to the other Party whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- 10.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- 10.2.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- 10.2.3 any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 10.3 Subject to clause 10.1, ESF's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall in all circumstances be limited to EUR 50,000.

## **11 TERM AND TERMINATION**

- 11.1 This Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with this clause 11.
- 11.2 Either Party may give not less than three (3) months' prior written notice to the other Party, to terminate this Agreement.
- 11.3 Either Party may, without liability to the other, terminate this Agreement with immediate effect on giving prior written notice to the other Party:
- 11.3.1 if the other Party suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;
  - 11.3.2 if the other Party commits a material breach of this Agreement which is incapable of remedy;
  - 11.3.3 if the other Party commits a material breach of this Agreement which is capable of remedy and fails to remedy that breach within thirty (30) days of being notified in writing of the breach; and/or
  - 11.3.4 if the other Party repeatedly commits breaches of this Agreement such as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- 11.4 In the event this Agreement expires or is terminated for any reason, ESF shall remove the Publisher Data from the Journal Comparison Service within a period of three (3) months as from the end of the Agreement.
- 11.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.
- 11.6 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

## **12 ALTERNATIVE DISPUTE RESOLUTION**

- 12.1 The Parties shall meet and use their reasonable endeavours to resolve any Dispute. If the Dispute is not resolved within 14 days, the Dispute shall be referred to a senior representative of each of the Parties who shall attempt to settle the Dispute in good faith. If the Dispute is not resolved within a further period of 30 days, either Party may choose to continue resolving the Dispute in an amicable matter or refer the Dispute to the court set out in clause 13.12.

## **13 GENERAL**

- 13.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.2 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

- 13.3 This Agreement, including its Schedules sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements, or understandings between them relating to such subject matter. The Parties acknowledge that they are not relying on any representation, agreement, term, or condition that is not set out in this Agreement.
- 13.4 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 13.5 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.6 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 13.7 This Agreement does not create any right enforceable by any person who is not a party to it.
- 13.8 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other Party, or authorise either Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 13.9 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes preventing said Party from fulfilling its obligations, if said events, circumstances or causes are beyond its control and could not reasonably have been foreseen at the time of the execution of this Agreement, and if the effects of said events, circumstances or causes cannot be avoided by appropriate measures, as provided under Article 1218 of the French civil code ("**Force Majeure**").
- The following events shall be considered as cases of Force Majeure: fire, war, terrorist attack, unfavourable weather conditions, force majeure on the part of a sub-contractor of ESF, pandemics/epidemics (in so far not known at the time of signature of this Agreement), failure in goods, equipment, software or materials of third parties, governmental measures, disruption of internet, data network or telecommunication facilities, unavailability of third party servers, and electricity outages.
- In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three (3) months, the Party not affected may terminate this Agreement by giving not less than thirty (30) days' prior written notice to the affected Party.
- 13.10 Any notice required to be given under this Agreement, shall be in writing and shall be sent by pre-paid first class post or recorded delivery to the address of the relevant Party as set out at the beginning of this Agreement. Any notice shall be deemed to have been duly received at 9.00 am on the second Business Day after posting.
- 13.11 Except as set out in this Agreement, neither Party may assign, novate or sub-contract any of its rights or obligations under this Agreement without the written consent of the other Party or as otherwise set out in this Agreement.
- 13.12 The validity, construction and performance of this Agreement shall be governed by French law and shall be subject to the exclusive jurisdiction of the competent courts within the jurisdiction of the Strasbourg Court of Appeals, except that a Party may seek an interim injunction in any court of competent jurisdiction.

This Agreement has been entered into on the date stated at the beginning of it.

For information - Not to complete

## SCHEDULE 1

### ACCEPTABLE USE POLICY

This policy tells you how you may access our Journal Comparison Service (the “**Service**”). It applies to anyone who uses the Service.

**1 Who we are. The Service is operated by the European Science Foundation (we or us). You can contact us at:**

cOAlition S Office  
European Science Foundation  
1, quai Lezay – Marnésia  
67080 Strasbourg – France  
E-mail: [info@coalition-s.org](mailto:info@coalition-s.org)

**2 Changes to this policy.** Given the fact that technology is continuously evolving, we may make changes to this policy at any time. Any changes will be displayed upon your next log-in and your approval will be requested before you can continue making use of the Service.

**3 How you may use the Service.**

**3.1 If you are accessing the Service on behalf of a publisher.** You will only access and use our Service to upload the Publisher Data in relation to journals, including name of journal, price, quality metrics and service using one of the two cOAlition S approved Frameworks.

**3.2 If you are accessing the Service on behalf of a college or university, a funder or any other authorised user.** You confirm that you do not work for or on behalf of any other publisher. You will only access and use the Service to download the Publisher Data, use the Publisher Data (including in aggregated form) solely to inform purchasing decisions, to assess the services publishers provide and publish elements of the Publisher Data in aggregated form, provided that all details of the publisher or which allow the publisher to be identified are removed (including but not limited to elements such as the publisher name, journal name and ISSN).

The publisher, college, university, funder or other authorized user on whose behalf you access the Service have concluded an agreement with us. You are required to comply with any obligations the publisher, college, university, funder or other authorized user issues to you in addition to this policy. The template agreement that the publisher, college, university, funder or other authorized user have concluded can be found for your information through the Service.

**4 Your User Account.** You may only access the Service through your own end user account using your registered email address and your preferred second factor authentication method (mobile phone or authenticator app). You must not use any other person’s account to access the Service, nor allow any other person to use your account. You are responsible and liable for any abuse of your account by you or someone else (whether or not authorized by you). You are required to take all the necessary steps to prevent any access to your account by someone else, such as but not limited to protecting and keeping safe your registered email address and preferred second factor authentication method, using the Service correctly and ensuring that protection measures (e.g. anti-virus software, firewalls, etc.) are in place. In case you become aware of your registered email address and preferred second factor authentication method having been compromised in any way, you will alert us immediately so that we can take measures, such as blocking the account to prevent damage being done or adverse effects arising.

- 5 **You may use the Service only for lawful and responsible purposes.** You may not use the Service for illegal or irresponsible actions.

The following is in any event considered to be illegal or irresponsible (non-exhaustive):

- 5.1 to use the Service in any way that breaks or violates any laws, or in any way that is or could be illegal, fraudulent or involves promoting scams;
- 5.2 to send, spread, publish or display materials which (i) infringes (via uploading or otherwise) any copyright, trademark, patent, trade and/or other secrets or other (intellectual) property rights of third parties or us; (ii) endanger a person's security or health or which could harm institutions, the public safety or public health; (iii) are excessively violent or which incite violence, threaten with violence, having a harassing content or contain hate generating comments; or (iv) promote illegal drugs, violate the export regulations or that are connected to illegal gambling or illegal arms trafficking;
- 5.3 to use, send, spread, publish or display the publisher data to anyone else unless you are authorized by that publisher to do so, or use the publisher data in any way that infringes the intellectual property rights of the publisher.
- 5.4 to send or help any other person to send spam or to collect or use (personal) information in any other way without the permission of the owner of that information, including but not limited to phishing, internet scamming, theft of passwords, spidering or harvesting;
- 5.5 to knowingly send or upload any data or material which contains viruses or other (potentially) harmful code.
- 5.6 You also agree not to:
- a) share any data relating to any one publisher with any other publisher;
  - b) access any part of the Service unless you are an authorised user, nor to bypass the user identification or security of the Service, network or an account or to provide yourself access to data which was not meant for you;
  - c) damage or interfere with the Service or our network or infrastructure, including but not limited to developing or using programs that hinder other users, create excessive requests (e.g. distributed denial of service attacks) or infiltrate in and/or damage a computer, a computer system or a network or which alter the software components of a computer, a computer system or a network; or
  - d) gain or attempt to gain access to the accounts of third parties, or to infiltrate or attempt to infiltrate in the security of the computer software or hardware, electronic communication systems of the Service or a third party.

## 6 **Our rights if you breach this policy**

- 6.1 You recognize and accept that compliance with this policy is an essential obligation, that needs to be met to be able to use the Service.
- 6.2 Without prejudice to any liability provisions, in the event of reasonable evidence to suspect that this policy has been breached, we are entitled to:
- a) issue a warning to you;
  - b) immediately stop you from using our Service and/or terminate our agreement(s) with you, the publisher or end user which relate to the Service;

- c) take legal action against you to recover any of our losses caused by your breach; or
- d) notify law enforcement authorities and/or relevant third parties if we suspect that you have broken any law or the breach might lead to criminal or civil prosecution; or
- e) take any other appropriate action.

6.3 A breach of this policy might also lead to criminal and/or civil prosecution. You recognize and accept that we will comply with the competent authorities and/or relevant third parties to investigate criminal and other undesirable activities relating to the (mis)use of the Service.

6.4 Without prejudice to the above, in the event of a breach of this policy, you shall defend, indemnify and hold us harmless for any damages, losses, expenses, liabilities or claims that we might incur as a result of the breach.

**7 Our liability to you.** We do not accept liability for actions taken by us in accordance with the previous article where we have reasonable evidence to suspect that you have breached this policy. If we stop you from using the Service, we may agree to reinstate your user account if the breach has been resolved and no irreparable damage has been caused.

For information - Not to complete

**SCHEDULE 2**

**PUBLISHER ADMINISTRATOR**

Please complete the following form to notify ESF of your Publisher Administrator. All fields must be completed.

Salutation	
First name	
Surname	
Role	
Email address	
Mobile Phone number	

Signed by [NAME OF DIRECTOR] for and on behalf of [European Science Foundation]

.....  
[SIGNATURE OF DIRECTOR]  
Director

Signed by [NAME OF DIRECTOR] for and on behalf of [PUBLISHER]

.....  
[SIGNATURE OF DIRECTOR]  
Director

For information - Not to complete