1. Applicability

These terms and conditions shall apply to all offers, proposals and agreements between Elsevier and any third party or its agent (the “Client”) relating the license or sale of Elsevier’s products and services (“Products”) and, along with the Elsevier Order Form forms the entire agreement between the parties.”

2. Payment and Fees

Client shall pay fees to Elsevier as set forth in the Order Form (the “Fees”). Unless otherwise stated therein, Fees are due within thirty (30) days of the date of invoice. Late payments will be subject to interest at the then current rate of interest. The Fees include all sales, use, value added, withholding or similar tax, and Client shall be liable for any such taxes in addition to the Fees. Client shall make all payments due under the Agreement without any deduction by way of set-off, counterclaim, discount, abortion or otherwise. Where the Client is indebted to Elsevier for any other products or services, Elsevier may set-off any such amounts against the Fees. Client shall make all payments within the current order until any outstanding monies are fully paid. Elsevier shall be entitled to apply any monies received from the Client, to clear any of the Client’s outstanding debts to Elsevier. Products shall be at the Client’s risk as from delivery. In the event that the Client fails to make any payment required hereunder when due.

3. License and Restrictions on Use

Elsevier grants to Client a non-exclusive, non-transferable right to access and use the Products identified in the relevant Order Form and to provide the Products to its Authorized Users as defined in the relevant Order Form. The Client may use the Products for the sole purpose of providing authorized third party access to the Products only as permitted by law, the parties acknowledge that to the extent disclosure is required by law, such disclosure shall be made without waiting for authorization to do so. Client, its employees, officers, directors and agents shall take reasonable care to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement. The parties agree, both for themselves and for their respective employees, officers, directors and agents, that in the event of an improper disclosure of Confidential Information, the client, its employees, officers, directors and agents will take reasonable steps to ensure that the information is reconstituted and is not further disclosed. Client agrees to obtain written consent from Elsevier to the use of Confidential Information for any purpose other than the performance of this Agreement. Each party agrees to take reasonable care to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement.

4. Withdrawal of Content; Discontinuation of Products

Elsevier reserves the right to withdraw from the Products content that it no longer retains the right to provide that it has reasonable grounds to believe is unlawful, harmful, false or misleading. In addition, for the Client’s own benefit, the content is routinely updated. Elsevier may withdraw content for editorial, usage, currency, or other commercially reasonable reasons. Elsevier reserves the right to discontinue the Products, by providing at least ninety (90) days prior written notice, along with a prorated refund of any prepaid license Fees for the discontinued Product.

5. Term & Termination

Client’s use of the Products is subject to the Term Start and Term End Date listed within each applicable Order Form. Unless renewed, the licenses granted hereunder will automatically renew for up to three (3) successive one (1) year terms, subject to the appropriate adjustments to Fees, unless either party gives the other written notice of termination at least sixty (60) days prior to expiration of the current term. Either party may terminate the Agreement and all license grants hereunder if the other commits a material breach and fails to cure within thirty (30) days after receipt of written notice. Upon termination, all licensing rights granted herein will immediately cease, and Client will return or destroy all Elsevier Products.

6. Intellectual property

Client acknowledges that all right, title and interest in and to the Products and documentation, all copies thereof, and all modifications, changes, conversions, upgrades, additions and enhancements thereto, including all associated intellectual property, including technology, patents, copyrights, trademarks, including all names, service marks, logos, know-how, marks, work products, trade secrets, and all other intellectual property rights inherent therein and appurtenant thereto, including all ideas, concepts, know-how, or techniques relating thereto developed during the course of this agreement by Elsevier, belong to Elsevier or its suppliers, subject only to the limited rights and license expressly granted to Client herein. Client acknowledges further that the unauthorized redistribution of the Products could materially and irreparably harm Elsevier and its suppliers. Except as otherwise provided for in writing, any modification or enhancement to any Product developed by Client with or without advice or support by Elsevier or by Elsevier for Client, whether or not reimbursed by Client and whether or not developed in conjunction with Client’s employees, agents, or contractors, are the exclusive property of Elsevier. All rights not expressly granted by Elsevier in this Agreement are expressly reserved by Elsevier.

7. Representations & Warranties

Either party’s representations and warranties that: (a) it has used and shall use reasonable efforts to ensure that the Products are accurate, up-to-date, and compiled and reviewed consistent with accepted industry practices; and (b) use of the Products in accordance with the terms and conditions herein will not infringe the proprietary or intellectual property rights of any third party. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, ELSEVIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ELSEVIER IS SOLELY RESPONSIBLE FOR ITS USE OF THIRD-PARTY INFORMATION PROVIDED TO IT THROUGH THE PRODUCTS. ELSEVIER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY, GUARANTEE OR REPRESENTATION MADE BY ELSEVIER OR ANY AGENT OR REPRESENTATIVE OF ELSEVIER EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

8. Elsevier Indemnities

Elsevier shall indemnify and defend and hold harmless Client from and against any loss, damage, costs, liability and expenses (including reasonable attorneys’ fees) arising from or out of any third-party action or claim alleging that use of the Products, in the form delivered by Elsevier to Client and in accordance with the terms and conditions herein, infringes the intellectual property rights of such third party. If any such action or claim is made, Client shall promptly notify and reasonably cooperate with Elsevier, including by providing information and assistance, at Elsevier’s expense, as needed to defend an assertion by a third party. In the event any Products are determined to be subject to the proprietary or intellectual property rights of any third party, Elsevier agrees, at its option, to either (i) procure for Client the right to continue using such Products, (ii) modify or substitute the Product in question so as to make it non-infringing, or (iii) discontinue and terminate this Agreement applicable to the infringing Products upon written notice to Client and refund to Client a prorated portion of the Fees paid hereunder for the length of time Client was unable to use such Products. If such refund occurs, Elsevier will be released from all liability for all other third-party actions.

9. Liability Limitation

In no event will the Elsevier Covered Entities be liable for any indirect, special, exemplary or consequential damages, (including lost profits or revenues) or any other damages arising from the use of or inability to use the Products, even if advised of the possibility of such damages. The foregoing limitations shall apply regardless of the form of action whether in contract, tort or otherwise.

10. Confidentiality

To the extent permitted by applicable laws, Client and its employees, officers, directors and agents shall maintain as confidential and not disclose to any non-affiliated third party without Elsevier’s prior written consent except as required by law. The parties agree, both for themselves and for their respective employees, officers, directors and agents, that in the event of an improper disclosure of Confidential Information, the Client, its employees, officers, directors and agents will take reasonable steps to ensure that the information is reconstituted and is not further disclosed. Client agrees to obtain written consent from Elsevier to the use of Confidential Information for any purpose other than the performance of this Agreement. Each party agrees to take reasonable care to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement. The parties acknowledge that to the extent disclosure is required by law, such disclosure shall be made without waiting for authorization to do so. Elsevier agrees to use all reasonable means to safeguard the confidentiality of all Confidential Information provided by the Client.

11. Privacy

Privacy policies, where applicable, to the extent required by law, such disclosure shall be made without waiting for authorization to do so. Additionally, if Client is required to disclose information about the Client’s product or service under any other order or agreement, Client shall not provide the information about the Client and the remainder of such provision shall continue in full force and effect. Failure or delay by Elsevier in enforcing or partially enforcing any provision (or prosecuting any breach) of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any modifications to the agreed Product descriptions, budget or schedule, as set out in the order acknowledgement, may result in an adjustment to the final price and/or delivery schedule at Elsevier’s discretion.

12. Choice of Law/Venue

This agreement will be governed by and construed in accordance with the laws of the State of Pennsylvania without regard to the conflict of laws principles and the parties irrevocably consent to the exclusive jurisdiction of the Federal District Court of the Eastern District of Pennsylvania or state courts of Philadelphia County, Pennsylvania.

13. Privacy

Privacy policies, where applicable, to the extent required by law, such disclosure shall be made without waiting for authorization to do so. In the event that the Client is required to disclose information about the Client’s product or service under any other order or agreement, Client shall not provide the information about the Client and the remainder of such provision shall continue in full force and effect. Failure or delay by Elsevier in enforcing or partially enforcing any provision (or prosecuting any breach) of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any modifications to the agreed Product descriptions, budget or schedule, as set out in the order acknowledgement, may result in an adjustment to the final price and/or delivery schedule at Elsevier’s discretion.

14. General

This Agreement may be assigned by either party to assign the Agreement or any part of it without the prior written consent of Elsevier. If any provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonableness it shall to the extent of such illegality, invalidity, voidness, voidability or unreasonableness be deemed severable and the remainder of this Agreement, and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect. Failure or delay by Elsevier in enforcing or partially enforcing any provision (or prosecuting any breach) of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any modifications to the agreed Product descriptions, budget or schedule, as set out in the order acknowledgement, may result in an adjustment to the final price and/or delivery schedule at Elsevier’s discretion.