

## CORPORATE MEMBER DATABASE LICENSE AGREEMENT

**This License Agreement is made** as of the start date of Corporate Membership Term and is between ASM International, an Ohio corporation with its principal place of business in Materials Park, Ohio (the "Provider") and Corporate Member (the "Licensee");

**WHEREAS**, Provider holds right, title and interest in and to certain publications more particularly described below;

**WHEREAS** Licensee desires to obtain access in electronic format to those publications; and

**WHEREAS** Provider consents to grant to Licensee a limited license to obtain such access subject to appropriate terms and conditions.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and intending to be legally bound hereby, Provider and Licensee agree as follows:

### 1. KEY DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings: -

<b>Authorized Users</b>	current employee (whether on a permanent, temporary or contract basis) and contractors of the Licensee who are permitted to access the Secure Network from within the Licensee's Premises
<b>Commercial Use</b>	Use for the purposes of monetary gain, benefit or reward (whether by or for the Licensee or an Authorized User) by means of sale, resale, loan, reproduction, display, performance, distribution transfer, hire or any other form of exploitation of the Licensed Materials. For the avoidance of doubt, use by the Licensee or by an Authorized User of the Licensed Materials in the course of research, product development and related activity that results in no direct financial benefit to Licensee, undertaken in the normal course of business shall not constitute Commercial Use.
<b>Fee</b>	The Fee set out in the Corporate Membership Invoice.
<b>Licensee's Premises</b>	The physical premises owned or operated by the Licensee
<b>Licensed Materials</b>	The electronic material as set out in Corporate Membership Invoice or in new Schedules to this Agreement that may be agreed by the parties from time to time.
<b>Secure Network</b>	A data network (whether a stand alone network or a virtual network within the Internet) that is accessible only to Authorized Users approved by Licensee whose identity is authenticated at the time of log-in, and periodically thereafter, consistent with current best practice, and whose conduct is subject to control and supervision by the Licensee.
<b>Server</b>	The data server, either Provider's server or a third-party server, designated by Provider, on which the Licensed Materials are stored and from which they may be accessed.
<b>Subscription Period</b>	The period of time listed in the Corporate Membership Invoice, in which authorized users can access the content, regardless of the actual date of print publication.

### 2. GRANT

2.1 Provider grants to Licensee the non-exclusive, non-transferable right, without right of sublicense, throughout the world, to permit Authorized Users to access the Licensed Materials only via a Secure Network subject to the terms and conditions of this Agreement, and Licensee agrees to pay the Fee. Licensee may not access, use, reproduce, display, perform or distribute any of the Licensed Materials except as expressly provided in Paragraphs 2 and 3 of this Agreement.

2.2 The License granted by this Paragraph 2 shall commence at the beginning of the Subscription Period, for each of the Licensed Materials as set out in Corporate Membership Invoice or in new Schedules to this Agreement that may be added subsequently; and shall automatically terminate at the end of the Subscription Period, unless the parties previously have agreed in writing to renew such period.

2.3 Upon termination of this Agreement, Provider shall disable access for Authorized Users to that part of the Licensed Materials which was published and paid for within the Subscription Period from the Server, and Licensee shall delete completely all of the Licensed Materials from all memory, storage, caching, archival and other systems and shall take all reasonable measures ensure that such removal is accomplished as to all computers, systems and networks operated or used by Authorized Users.

### 3. USAGE RIGHTS

3.1 Subject to the restrictions of paragraph 4 of this Agreement, Licensee may:

- 3.1.1 make such temporary and locally cached electronic copies of portions of the Licensed Materials as are necessary solely to ensure efficient use by Authorized Users;
  - 3.1.2 permit Authorized Users to have access to the Licensed Materials from the Server via the Secure Network;
  - 3.1.3 use the Licensed Materials as part of an integrated information service for Authorized Users that will include links between the Licensed Materials and Licensee's own indexes, third party abstracting and indexing services and other information resources utilized by the Licensee;
  - 3.1.4 provide single printed or electronic copies of single articles at the request of individual Authorized Users;
  - 3.1.5 display, download or print the Licensed Materials for the purpose of internal testing or for training Authorized Users or groups thereof, and for internal corporate training programs (in respect of which appropriate acknowledgement of the source shall be made);
  - 3.1.6 provide print or electronic copies of the Licensed Materials to state, national or international regulatory authorities for the purposes of, or in anticipation of, regulatory approval or patent or trademark applications or other legal or regulatory purposes in respect of Licensee's products or services; and
  - 3.1.7 provide printed copies of the Licensed Materials for product, marketing or professional information purposes. It is understood and agreed that electronic copies are strictly forbidden for the purpose of this Paragraph 3.
- 3.2 Authorized Users may, subject to the copyright laws of the United States and other nations and subject to the restrictions described in Paragraph 4 of this Agreement:
- 3.2.1 search, view, retrieve and display the Licensed Materials;
  - 3.2.2 electronically save portions of the Licensed Materials for personal use, but not for Commercial Use;
  - 3.2.3 print a single copy of individual articles or items of the Licensed Materials; and
  - 3.2.4 distribute a single copy of individual articles or items of the Licensed Materials in print or electronic form to other Authorized Users.
- 3.3 Nothing in this Agreement shall in any way exclude, modify or affect any of Licensee's rights under the copyright laws of the United States or of any other country.

#### **4. PROHIBITED USES**

- 4.1 Neither Licensee nor any Authorized User may:
- 4.1.1 remove or alter any author's name or Provider's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;
  - 4.1.2 make print or electronic copies of multiple extracts of the Licensed Materials for any purpose, or duplicate any portion of any content, organization, or functionality of any web site from which the Licensed Materials are made available;
  - 4.1.3 provide, by electronic means, to a user at another library or elsewhere, a retained electronic copy of any part of the Licensed Materials; or
  - 4.1.4 store or distribute any part of the Licensed Material on any electronic network including, without limitation, the Internet and the World Wide Web, other than the Secure Network.
- 4.2 Provider's explicit written permission must be obtained in order to:
- 4.2.1 use all or any part of the Licensed Materials for any Commercial Use;
  - 4.2.2 distribute the whole or any part of the Licensed Materials to anyone other than Authorized Users;
  - 4.2.3 publish, distribute, display or otherwise make available the Licensed Materials, works based on or derived from the Licensed Materials or works which combine them with any other material, other than as expressly permitted in this Agreement;
  - 4.2.4 alter, abridge, adapt or modify any of the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen to Authorized Users; for the avoidance of doubt, no alteration of the words or their order is permitted.

#### **5. PROVIDER'S UNDERTAKINGS**

- 5.1 Provider warrants to Licensee that, to its knowledge, the Licensed Materials used as contemplated by this Agreement do not infringe the copyright or any other similar proprietary or intellectual property rights of any person. Provider shall indemnify and hold Licensee harmless from and against any loss, damage, cost, liability and expenses (including reasonable legal and professional fees) arising out of any breach of this warranty. This indemnity shall not apply if the Licensee has altered the Licensed Materials in any way not permitted by this Agreement.
- 5.2 Provider shall:

- 5.2.1 make the Licensed Materials available to Licensee from the Server for the Subscription Period, and notify Licensee at least ten days in advance of any anticipated change of specification in respect of access method, display or any other feature that may substantially affect the manner in which Authorized Users access and make use of the Licensed Materials;
- 5.2.2 use reasonable means to make available the electronic copy of each Handbook volume in the Licensed Materials within one year of publication of the printed version thereof. In the event that, for technical reasons, this is not feasible for any particular volume, as a matter of course, such volume shall be identified at the time of licensing;
- 5.2.3 provide Licensee, within thirty days of the date of this Agreement, technical information reasonably sufficient to enable Licensee to access the Licensed Material;
- 5.2.4 use reasonable means to make the Licensed Materials available to Licensee and to Authorized Users at all times and on a twenty-four hour basis, save for scheduled routine maintenance;
- 5.2.5 use reasonable means to restore access to the Licensed Materials in the event of an unscheduled interruption or suspension of the service;
- 5.2.6 provide technical support and assistance to enable Licensee to make proper use of the Licensed Materials, including the provision of Help Desk facilities between 9:00 am and 5:00 pm U.S. Eastern Time, Monday through Friday, with the exception of U.S. holidays.
- 5.3 Provider reserves the right at any time to withdraw 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 copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Provider shall give written notice to the Licensee of such withdrawal.
- 5.4 Provider reserves the right to make changes to the method of access, search engine, interface or retrieval options. Provider shall notify the Licensee at least ten days in advance of such change. Licensee shall have thirty days to review the changes.
- 5.5 Provider shall provide to the Licensee, or facilitate the collection and provision to Provider and Licensee of usage data, on a quarterly basis, for Provider's and Licensee's private internal use only. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws and as may be further agreed between the parties from time to time, and the anonymity of individual users and the confidentiality of their searches shall be protected. In the case that Provider assigns its rights to another party under paragraph 9.3 of this Agreement, Licensee may at its discretion require the assignee either to keep such usage information confidential or to destroy it.
- 5.6 Except as expressly provided in this Agreement, Provider 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 or fitness for a particular purpose. The Licensed Materials are supplied "as is."
- 5.7 Except as provided in paragraph 5.1 of this Agreement, under no circumstances shall Provider be liable to Licensee or any other person, including but not limited to Authorized Users, for any special, punitive, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials. Irrespective of the cause or form of action, Provider's aggregate liability for any claims, losses or damages arising out of or relating to any breach of this Agreement shall in no circumstances exceed the Fee actually paid by Licensee to Provider under this Agreement in respect of the Subscription Period during which such claim, loss or damage occurred. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Regardless of the cause or form of action, Licensee may bring no action arising from this Agreement more than twelve months after the cause of action arises.

## **6. LICENSEE'S UNDERTAKINGS**

### **6.1 Licensee shall:**

- 6.1.1 ensure that only Authorized Users are permitted access to the Licensed Materials;
- 6.1.2 ensure that all Authorized Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and that they are made aware of and undertake to abide by the terms and conditions of this Agreement;
- 6.1.3 immediately upon becoming aware of any unauthorized use or other breach, inform Provider and take all steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
- 6.1.4 provide Provider, within 30 days of the date of this Agreement, with information sufficient to enable the Provider to provide access to the Licensed Material in accordance with its obligation under paragraph 5.2.3 of this Agreement. Should Licensee make any significant change to such information, it shall notify Provider not less than ten days before the change takes effect.

- 6.2 Licensee hereby acknowledges that the business of Provider is dependent upon Provider's intellectual property rights in the Licensed Materials, and that any infringement thereof constitutes a fundamental breach of this Agreement, in which event this Agreement shall immediately terminate. In such event Provider shall be entitled to immediate injunctive relief and the immediate removal of all electronic copies of the Licensed Materials held by the Licensee without any rebate of the Fee and without prejudice to any other rights or remedies to which it may be entitled.
- 6.3 Licensee agrees to indemnify, defend and hold Provider harmless from and against any loss, damage, cost, liability and expense (including reasonable legal and professional fees) arising out of or relating to any claim or legal action taken against Provider related to or in any way connected with any use of the Licensed Materials by Licensee or Authorized Users, or any failure by Licensee to perform its obligations under this Agreement.
- 6.4 Licensee shall, in consideration for the rights granted under this Agreement, pay the Fee within thirty days of receipt of invoice and, if applicable, within thirty days of receipt of invoice relating to each subsequent Subscription Period. Receipt of such payment shall be a condition of this Agreement coming into effect. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added and similar tax. Licensee shall be liable for any such tax in addition to the Fee.
- 6.5 Licensee is limited to the number of concurrent users as specified in the Corporate Membership Invoice. If the number of concurrent users exceeds the agreed upon number, Provider may employ means to restrict access to the agreed upon users, or invoice Licensor at a higher rate.

## **7. UNDERTAKINGS BY BOTH PARTIES**

- 7.1 Each party shall use its best efforts to safeguard the intellectual property, confidential information and proprietary rights of the other party.
- 7.2 Neither party shall disclose the terms and conditions or the subject matter of this Agreement (including, without limitation, the content of the Schedules, the list of the Licensed Materials and any usage data compiled and supplied under paragraph 5.5 of this Agreement) or any other information about the other party's business to any third party without the prior written consent of the other. This provision shall survive the termination of this Agreement, and any information obtained or received which comes within these restrictions shall remain confidential, except that this obligation of confidentiality shall not apply to any information that at the time of disclosure is in the public domain or is made available at any time by an independent third party which has not obtained it directly or indirectly in breach of any confidentiality agreement with either of the parties hereto.

## **8. TERM AND TERMINATION**

- 8.1 In addition to the termination or expiration pursuant to paragraphs 2.2 and 6.2 hereof, this Agreement and all rights granted hereunder shall terminate in the event:
  - 8.1.1 Licensee defaults in making payment of the Fee;
  - 8.1.2 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 thirty days of notification in writing by the other party; or
  - 8.1.3 either party becomes insolvent or becomes subject to bankruptcy, receivership, liquidation or similar external administration.
- 8.2 Upon termination of this Agreement all rights and obligations of the parties automatically terminate except as specifically provided in this Agreement, and except for obligations in respect of Licensed Materials to which access continues to be permitted as provided in paragraph 2.3.
- 8.3 On termination of this Agreement for cause pursuant to its paragraph 8.1, Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorized Users.
- 8.4 On termination of this Agreement by Licensee for cause, as specified in paragraph 8.1.2 above, Provider shall forthwith refund the proportion of the Fee that represents the paid but unexpired portion of the Subscription Period, prorated to the month.

## **9. GENERAL**

- 9.1 This Agreement constitutes the entire agreement of the parties with regard to its subject and supersedes all prior communications, representations, understandings and agreements relating to the subject matter of this Agreement, whether oral or written.
- 9.2 Amendments to this Agreement or to any Schedules to this Agreement are valid only if made in a document signed by both parties.
- 9.3 This Agreement may not be assigned by either party to any other person or entity, nor may either party subcontract any of its obligations, except as provided in this License in respect and the management and

- operation of the Server, without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 9.4 If rights in all or any part of the Licensed Materials are assigned to another publisher, Provider shall use reasonable means to ensure that the terms and conditions of this Agreement are maintained.
- 9.5 In the event Licensee shall come under the control of any third party other than that by which it is controlled at the date of this Agreement, Provider shall have the right to terminate this Agreement. Control shall mean either the ownership of more than fifty per cent of the ownership interest carrying the right to vote at general meetings or the power to nominate a majority of the board of directors.
- 9.6 Neither party's delay or failure to perform any provision of this Agreement as result of circumstances beyond its control (including, without limitation, war, strike, flood, 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.
- 9.7 The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability of the remainder of this Agreement.
- 9.8 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.
- 9.9 This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without reference to its choice of law principals. Any action to enforce or defend any right or obligation under this Agreement, or otherwise relating to its subject matter, may be brought only in state or federal court located within the State of Ohio, and the parties consent to the exercise of jurisdiction by and venue in such courts.

AS WITNESS the hands of the parties the day and year below first written

**FOR THE PROVIDER: ASM International**

Signed \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

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

Signed \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_