LICENSE AGREEMENT

THE COMPANY OF BIOLOGISTS
AND
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

This License Agreement (this "Agreement") is made effective as of *date* (the "Effective Date") between The Company of Biologists, Bidder Building, Station Road, Histon, Cambridge, CB24 9FL, UK ("CoB"*)* and The Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, University of California Office of the President, 1111 Franklin Street, Oakland, CA 94607, USA ("UC").

I. INTENT

Through this Agreement, the Parties seek to facilitate a transition to Open Access (OA) publishing and transform the way that research is published, disseminated and accessed, by introducing a unique shared funding model and workflow that will allow Corresponding Authors affiliated with the University of California to publish accepted Eligible Articles in Eligible Journals in accordance with the terms provided below. This Agreement aims to contribute to the advancement of open access publishing by supporting CoB in transitioning its entire portfolio of peer-reviewed scholarly publications to a fully open access model. Both Parties enter the Agreement with the hope that this Agreement will encourage a more rapid global transition to full open access.

Through our participation, both UC and CoB commit to a joint process to implement and oversee the Agreement, and to co-operate and address issues that may arise during the course of the Agreement term.

II. DEFINITIONS

Affiliated Author(s): Authors who have full or part time UC appointments (including faculty, staff, and independent contractors) or who are students of UC.

Affiliated Corresponding Author(s): Affiliated Authors who are Corresponding Authors.

Article Processing Charge (APC): The fee the CoB charges for making an article Open Access under the Agreement. The APC is associated with a given Eligible Article and represents the total amount that is required to publish an article on an Open Access basis.

Author's Accepted Manuscript: The Author's Accepted Manuscript is the version of a journal article that has been peer-reviewed and accepted for publication, including all changes made by the author during the peer-review process. The content is the same as the

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published article, but it does not have the final formatting and copy-editing done by the CoB in the final published version.

Authorized Users: Authorized Users are:

> **Persons Affiliated with the University of California.** Full and part time employees (including faculty, staff, and independent contractors) and students of UC, regardless of the physical location of such persons. For authorized sites, see Appendix B.
>
> **Walk-ins.** Patrons not affiliated with UC who are physically present at UC's site(s) (“walk-ins”).

CoB Journal Portfolio: All journals (whether subscription only, Hybrid, or Full OA Journals) made available through the CoB’s online platform, including any new and transfer journals added during the term of the Agreement, all of which are included in this Agreement. The title list is included as Appendix D and shall be updated annually.

Content: All articles and other content published or otherwise made available to UC in the CoB Journal Portfolio (whether on a subscription or open license basis) during the term of this Agreement, including but not limited to all content included in the Subscribed Content and all Eligible Articles published Open Access under this Agreement.

Corresponding Author(s): The author on the paper who handles the manuscript and correspondence during the publication process, from manuscript correction and proof reading, to handling the revisions and re-submission of revised manuscripts up to the acceptance of the manuscripts. The Corresponding Author is identified during the article submission and confirmed at acceptance.

Creative Commons License: An open distribution license made available by Creative Commons allowing an author or other rights holder to communicate which rights they wish to extend in order to enable end-users to benefit from gratis rights to make uses of the original article, under CC BY version 4.0 described in more detail at https://creativecommons.org/licenses.

Eligible Article(s): An article that is eligible for financial support by UC Libraries under this Agreement. To be eligible for such support, articles must: 1) have an Affiliated Corresponding Author; 2) be of an Eligible Article Type in an Eligible Journal; and 3) have been accepted for publication and been entered into the CoB production system prior to the expiry of the term of this Agreement.

Eligible Article Types include:

For Hybrid Journals, original research articles as designated by CoB at time of publication, and for clarity, does not include review papers, editorials, commentaries, correspondence, corrections, additions, posters or any other content or material.

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For Full OA Journals: all paid article types (that is, all article types for which an APC is charged and which are confirmed for inclusion under this Agreement) as set out below.

For this Agreement, the following article types shall be Eligible Article Types:

- Research Article
- Research Report
- Techniques and Resources Article
- Techniques and Resources Report
- Short Report
- Tools and Resources
- Methods & Techniques
- Short Communication
- Resource Article (Disease Models and Mechanisms journal only)
- Review Article
- At a Glance Article

Eligible Journals: All Hybrid Journals, and Full OA Journals that charge an APC, that are included in the CoB Journal Portfolio.

Final Published Version: The Final Published Version is the branded and formatted PDF that appears on the CoB's website.

Full OA Journals: CoB's open access journals, which have no subscription-based payment option.

Hybrid Journals: The subscription journals in the CoB Journal Portfolio which offer an OA publishing option, listed in Appendix D.

Open Access (OA): In the context of this Agreement, a publishing model that allows content to be published digitally and made accessible without charge to the end-user, subject to the terms of an applicable Creative Commons license.

Payment Processing Software Provider: A third party system employed by CoB to collect, manage, and report on APC payments and other article charges.

"Secure Network" means a network or virtual network which or the relevant functionality of which is only accessible to Authorized Users by secure authentication pursuant to Section IV.2.a.i.

Subscribed Content: All content made available to UC under this License Agreement that is not in the public domain or that has not been issued under an open license or otherwise made openly available through the CoB Journal Portfolio.

III. OPEN ACCESS PUBLISHING TERMS

III.1. PUBLICATION OF ELIGIBLE ARTICLES

III.1.a. Open Access Publication. During the Term, all Affiliated Corresponding Authors will be given the opportunity to publish their accepted Eligible Articles in any Eligible Journal on an Open Access basis. UC agrees to inform Affiliated Corresponding Authors that the Agreement is in place and that Eligible Articles may be published in any Eligible Journal on an Open Access basis. Open Access publication will be the default choice presented to Affiliated Corresponding Authors of Eligible Articles in CoB's acceptance workflow. For Hybrid Journals, Affiliated Corresponding Authors will be given the option to opt out of this default choice and publish under the subscription model if they so choose. Neither the Affiliated Corresponding Author nor UC will be charged any APCs for articles that are published under the subscription model.

Information regarding the agreed upon OA publishing terms and opportunities available to UC authors, shall comprise guidance as posted on the COB's website as guidance for any authors, and made prominently known to Affiliated Corresponding Authors in the submission and acceptance processes.

III.1.b. Author Identification. To identify Affiliated Corresponding Authors and direct them into the workflow for OA publication, CoB shall provide Corresponding Authors with a list of UC institutions to select from during the publishing process, in order to assist authors in identifying themselves as Affiliated Authors at the time of acceptance. CoB shall also identify Affiliated Authors via email domain as listed in Appendix C, and further agrees to make reasonable efforts to conform with additional ESAC recommended parameters for author identification (https://esac-initiative.org/about/oa-workflows/) and to integrate Research Organization Registry (https://ror.org/) or Ringgold (https://www.ringgold.com/) open research organization identifiers during the term of this Agreement. Affiliated Authors shall be requested to provide an ORCID (https://orcid.org/) and institutional email address to assist COB. Should UC determine during the term of the Agreement that additional authentication or identification methods are needed to accurately identify Affiliated Authors. The workflow shall in all cases accommodate an approval process whereby UC at its option shall have the capability to approve or reject authors as Affiliated Corresponding Authors, pursuant to the section on Multi-payer Workflow, below. UC shall use all reasonable efforts to ensure that any articles to be published as an Open Access Article under this Agreement, meet the criteria of Eligible Article. UC should make authors aware that to become Affiliated Corresponding Authors and for UC to benefit most from the Agreement, they should be prepared to take on the responsibilities of Corresponding Author.

III.1.c. Multi-payer Workflow. The basis of this Agreement is a shared funding model by which the UC Libraries provide financial support for Article Processing Charges ("APCs") for Eligible Open Access articles by Affiliated Corresponding Authors that are accepted for publication in Hybrid and Open Access Journals covered by the Agreement, and the Affiliated Corresponding Authors of those articles are also asked to contribute toward the APC if they have available funding. Each APC will be described in Appendix A, and may include a discount from the list price. The UC Libraries will automatically pay the first $1000 USD of the APC for every author. The remainder due on each APC (the “APC Remainder”) will be covered either by the authors themselves (utilizing research funds available to them), or by the UC Libraries when such funds are unavailable. This is referred to as the “Multi-payer Model.”

Following acceptance, authors that have identified themselves as Affiliated Corresponding Authors will be shown the discounted APC and the amount paid by UC Libraries as well as the APC Remainder, and will be asked to indicate whether they have research funds available to pay the APC Remainder or not. If authors indicate that they are unable to pay the APC Remainder, they will be asked to supply a reason from a standard list of reason codes, and UC Libraries will cover the entire APC for the publication of those articles. If the APC is less than $1000 USD, UC Libraries will pay the full APC amount and the author will not be charged additional fees.

Article Processing Charges (APCs). Eligible Articles for which the Affiliated Corresponding Author has selected the Open Access publishing option shall be subject to a negotiated agreed-upon applicable APC (which may include a discount) pursuant to the provisions of Appendix A, “Fees,” below. APCs shall cover all standard and customary services provided as part of the publishing and article hosting process, including but not limited to services outlined in Section III.1.l below (“Publishing Services Commitments”). The applicable APC shall be subject to a partial subvention (i.e. partial payment) by UC (“UC Subvention”), so that the Affiliated Corresponding Author is only responsible for the remainder of the applicable APC (the “APC Remainder”). The amount of UC Subvention shall be determined by UC at its sole discretion and may be changed by UC upon giving reasonable notice to CoB. Subvention amounts will be consistent for all articles of a given type. As of the Agreement Effective Date, the subvention amount set by UC is $1000 per Eligible Article. The list price APC, applicable APC (if different), UC Subvention amount, and APC Remainder shall all be visible to the author at appropriate decision points in the submission and acceptance workflow.

UC, at its option, may require that the UC Subvention and/or the APC Remainder (if covered by UC) be approved by UC prior to publication and that a process to enable such approval be available. To the extent possible, the option for automatic approval based on agreed-upon parameters shall be made available to UC.

III.1.d. Commitment to Support the Multi-Payer Workflow. CoB and UC will coordinate and collaborate to develop and implement communications plans to create awareness of this Agreement throughout the term of the Agreement.

III.1.e. Selection of Article Licenses/Copyright Retention. CoB will provide the option for all Affiliated Authors who are asked to sign a publication agreement to retain the copyright to their article when publishing in any CoB Journal. CoB shall provide all Affiliated

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Corresponding Authors with this option, regardless of whether the articles are published on an Open Access basis or on a subscription basis.

Eligible Articles will be published under a License to Publish form and if published on an Open Access basis, assigned with Creative Commons License CC BY 4.0,. In the event of any conflict between the Creative Commons licenses used under the terms of this Agreement and CoB's standard publishing terms, the Creative Commons licenses will take precedence.

III.1.f. Retroactive OA Assignment. In each year of the Term, any Eligible Articles from Affiliated Corresponding Authors that are accepted for publication but are not published as OA articles may be converted into an OA article provided that the Affiliated Corresponding Author has approved of and requests such conversion, either through the Payment Processing Software, or via correspondence directly with CoB. CoB will facilitate this retroactive OA publishing as long as the article was published during the Term of this Agreement, and the request to convert to OA is made within the same Year the article was published. CoB will use reasonable efforts to implement procedures, in consultation with UC, for contacting authors who do not choose OA publication to offer open access retroactively.

III.1.g. Additional Publishing Charges. The APCs charged under this Agreement shall cover all standard and customary article publishing services as described in Section III.1.c above. For the avoidance of doubt, there shall be no other charges for publishing Eligible Articles, except in the limited case of submission fees or fees for specific, optional value-added services that are supplementary to publishing. Such additional fees, if ordered by the author, will be charged separately based on the invoice information provided by the author and shall not be charged to or the responsibility of UC Libraries under this Agreement.

III.1.h. Editorial Independence. For the avoidance of doubt, CoB is not obligated to accept or publish any article submitted to it by an Affiliated Author on the basis of this Agreement.

III.1.i. Publishing Services Commitments. CoB commits to upholding industry standards for all published open access articles in all its Fully Open Access and Hybrid Journals. CoB commits to complying with industry standards for ethical and quality publishing, including *The Principles of Transparency and Best Practice in Scholarly Publishing* (https://oaspa.org/information-resources/principles-of-transparency-and-best-practice-in-scholarly-publishing/) and *COPE (Committee on Publication Ethics) Core practices* (https://publicationethics.org/core-practices). Publishers that charge APCs commit to uniformly providing APC waivers for unaffiliated authors and authors from Low- and Lower- Middle-Income Economies as defined by the World Bank at https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups. CoB will deposit open access articles in digital preservation services, report open access articles to major discovery services including nonproprietary services

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such as CrossRef, and host and support open access articles on its platforms in the same way that it does for subscription content.

III.2. PAYMENT PROCESSING SOFTWARE PROVIDER

CoB may engage Copyright Clearance Center (CCC) as a third party Payment Processing Software Provider and technical partner for developing, deploying, and refining appropriate author and payment workflows. CoB shall cause CCC to abide by the obligations in this Section, and warrants that it shall ensure that CCC shall meet the requirements specified in this Agreement.

CoB will ensure CCC maintains the confidentiality of UC author and financial data that it holds or otherwise has access to under this Agreement and shall not share or utilize this data for any purpose other than to fulfill its obligations under this Agreement between UC and CoB.

UC and CoB agree to work as necessary with CCC to develop and optimize an appropriate workflow for handling author and UC payments based on the requirements in this Agreement, including gathering input from and testing with UC authors for any substantive changes to the workflow.

Should CoB transition to a different Payment Processing Software Provider during the term of this Agreement, CoB shall ensure that the obligations in this section continue to be fulfilled by that Provider.

III.3. REPORTING

On a monthly basis, CoB will provide regular article-level reports of UC’s publishing activity in a mutually agreeable format, following appropriate standards where possible, to ensure proper accounting and administration of this Agreement. Report should:

- Be delivered by email to openaccessinquiries@ucop.edu
- Be formatted as a .csv or Microsoft Excel file
- Include metadata points not available in the UC-facing interface of the CCC RightsLink reporting tool:
    - DOI
    - Article type
    - Article title
    - Acceptance date
    - Journal Issue
    - Corresponding Author name
    - Corresponding Author institution name
    - Article Open Access type (e.g. CC-BY)
    - Publication date
    - APC portion paid by Corresponding Author

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- The UC may request additional relevant data points as necessary for a stated business need or shared assessment interest.

IV. READING AND PERPETUAL ACCESS TERMS

IV.1. CONTENT; GRANT OF LICENSE

IV.1.a. Grant of License. CoB hereby grants to UC a non-exclusive, non-transferable, worldwide, systemwide perpetual right to access and use the Content, and to provide Content to Authorized Users in accordance with the terms of this Agreement.

CoB will provide online access and perpetual rights as provided for in Section V.6 to all Content in the CoB Journal Portfolio during the term of this Agreement, including Content in all new and transfer journals added to the CoB Journal Portfolio during the term of the Agreement.

IV.1.b Ownership of Intellectual Property. Nothing in this Agreement shall be interpreted to transfer ownership of any copyright, trademarks or service marks from CoB or its suppliers to the UC or Authorized Users.

IV.1.c. No Diminution of Rights. Nothing in this Agreement, including but not limited to Authorized Uses, shall be interpreted to diminish the rights and privileges of the UC or Authorized Users with respect to any of the Content, including exceptions or limitations to the exclusive rights of copyright owners, such as fair use, under Section 107 of the U.S. Copyright Act. In the event that any material included in the Content is in the public domain or has been issued under a Creative Commons or other open license, CoB shall not place access, use or other restrictions on that content beyond those found in the open license, where applicable.

IV.2. AUTHORIZED USE OF SUBSCRIBED CONTENT

IV.2.a. Access by and Authentication of Authorized Users. UC and its Authorized Users shall be granted access to the Subscribed Content pursuant to the following:

IV.2.a.i. IP Addresses. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by UC to CoB. The use of proxy servers is authorized as long as any proxy server IP addresses provided limit remote or off-campus access to Authorized Users accessing Content through the Secure Network. Authorized IP Addresses are listed in Appendix C. An updated list will be sent to CoB on an annual or as needed basis. UC and CoB shall use reasonable endeavours to cooperate in the implementation of new authentication protocols and procedures (such as Shibboleth) as they are developed during the term of this Agreement.

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IV.2.a.ii. CoB-Administered Authentication. Where CoB provides alternative methods of access and authentication beyond the UC-administered methods described herein, e.g. by allowing users to establish a personal login from an on-campus IP address (thereby enabling access via username and password when logging in to a vendor website) or such other device authentication through two factor authentication, which affiliates the device or application by use of a token, cookie, or vendor-managed proxy prefix, UC will not be responsible nor liable for claims of breach or validity of such use.

IV.2.b. Authorized Uses. The Subscribed Content may be used for purposes of research, education or other non-commercial use as follows:

(For the avoidance of doubt, the affirmative uses designated below shall not be interpreted to limit the use of any Content that is not Subscribed Content, except as limited by virtue of the CCBY version 4.0 licence terms).

IV.2.b.i. Classroom Use. UC and Authorized Users may distribute single copies of individual articles or items of the Subscribed Content in print or electronic form to Authorized Users. For the avoidance of doubt, classroom handouts shall include the distribution of a copy for teaching purposes to all individual Authorized Users in a class at Authorized Sites (Appendix B) or to Authorized Users in any sites where they engage in remote learning.

IV.2.b.ii. Course Packs (Print and Electronic). UC and Authorized Users may use a reasonable portion of the Subscribed Content in the preparation of Course Packs or other educational materials solely for use by Authorized Users, provided that the Subscribed Content is made available within UC's Secure Network only. Each link may carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher as CoB. Links may be deleted by UC and Authorized Users when they are no longer used for such purpose.

IV.2.b.iii. Course Reserves (Print and Electronic). UC and Authorized Users may use a reasonable portion of the Subscribed Content for use in connection with specific courses of instruction offered by the University of California, provided that the Subscribed Content is made available within UC's Secure Network only. Each link may carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher as CoB. Links may be deleted by UC and Authorized Users when they are no longer used for such purpose.

IV.2.b.iv. Scholarly Sharing. Authorized Users may transmit to a third party in hard copy or electronically, minimal, insubstantial amounts of the Subscribed Content for personal use or scholarly or educational use but in no case for resale or commercial purposes. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Subscribed Content in the Authorized User's own scientific, scholarly and educational works.

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IV.2.b.v. Text and Data Mining. Authorized Users may use the Subscribed Content to perform and engage in text and/or data mining activities for academic research, scholarship, and other educational purposes and may utilize and share the results of text and/or data mining with research collaborators, and in their scholarly work, and make the results available for use by others, so long as such sharing does not include the sharing of Subscribed Content, and provided that the purpose is not to create a product for use by third parties that would substitute for the Subscribed Content.

IV.2.b.vi. Interlibrary Loan. UC may fulfill requests from other libraries, a practice commonly called Interlibrary Loan. UC agrees to fulfill such requests in accordance with Sections 107 and 108 of the United States Copyright Act. Requests may be fulfilled using electronic, paper, or intermediated means .

IV.2.b.vii

Bibliographic Citations. For the avoidance of doubt, UC and Authorized Users may use citation and abstract information in faculty profiling systems, in lists of publications on faculty and institutional web pages, and to create bibliographies, and store a single copy of an individual document being part of the Subscribed Content, including within secure personal bibliographic reference/citation management systems.

IV.2.c. Author Rights to Use Their Own Work. Notwithstanding any terms or conditions to the contrary in any author agreement between authors and CoB, Affiliated Authors whose work has been accepted for publication by CoB shall retain the non-exclusive, irrevocable, worldwide, royalty-free right to use their work for scholarly and educational purposes, including teaching, research, and institutional needs; immediate self-archiving or depositing the work in institutional, subject-based, national or other open repositories or archives (including the author's own web pages or departmental servers); and complying with all grant or institutional requirements associated with the work.

For the avoidance of doubt, it is the intent of the parties to this Agreement that Affiliated Authors are third party beneficiaries of this provision of the Agreement. Nothing in this section shall eliminate or limit any other rights that UC or any Affiliated Author may have to deposit, host or make available work published by CoB.

IV.2.d. Amount of Authorized Use.

V.2.d.i. Unlimited Access. Subject to the terms of this Agreement, UC and its Authorized Users shall have unlimited simultaneous user access to the Subscribed Content.

IV.3. SPECIFIC RESTRICTIONS ON USE OF SUBSCRIBED CONTENT

IV.3.a. Unauthorized Use. UC shall not knowingly permit anyone other than Authorized Users to access the Subscribed Content.

IV.3.b. Modification of Subscribed Content. UC shall not modify, manipulate, or

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create a derivative work of the Subscribed Content without the prior written permission of CoB, except as provided for under this Agreement.

IV.3.c. Removal of Copyright Notice. UC may not knowingly remove, obscure or modify any copyright or other notices included in the Subscribed Content.

IV.3.d. Commercial Purposes. Except as otherwise provided for, UC may not use the Subscribed Content for commercial purposes, including but not limited to the sale of the Subscribed Content, or fee-for-service use of the Subscribed Content; nor may UC impose special charges on Authorized Users for use of the Subscribed Content beyond reasonable printing or administrative costs. For the avoidance of doubt, research conducted by UC and Authorized Users that is supported by a commercial entity shall not be considered use for commercial purposes.

IV.4. MUTUAL PERFORMANCE OBLIGATIONS

IV.4.a. Notification and Cure of Unauthorized Use. In the event UC has notice of an unauthorized use of the Subscribed Content and cannot promptly remedy it, UC shall promptly notify CoB. In the event CoB has notice of unauthorized use of the Subscribed Content, CoB will promptly notify UC. UC will adopt reasonable measures to prevent access to and improper use of Subscribed Content by unauthorised persons, and take responsibility for terminating any access to the Subscribed Content by Authorised Users making improper use of the Subscribed Content, or having unauthorised access of which the UC has notice or knowledge. UC shall promptly notify CoB in the event that UC becomes aware of any infringement or unauthorised usage of the Subscribed Content, or breach of the terms of this Agreement. In the event that UC becomes aware of any such infringement, breach or unauthorised use, UC shall co-operate in the investigation and pursuit of such infringement, unauthorised use or breach and shall use all reasonable efforts to ensure that such activity ceases and to prevent any reoccurrence.

In the case of unauthorized use which is causing serious and immediate material harm to CoB, CoB may temporarily suspend such offending individual Authorized User's access to the Subscribed Content (e.g. by blocking an individual user’s IP address), provided that CoB immediately notifies the UC of any such suspension, including the reason for the block and any supporting details. Such temporary suspensions will be of the shortest duration possible sufficient to terminate the alleged unauthorized activity and prevent its resumption. Any unauthorized use that is considered a breach of obligations under this Agreement shall be subject to Section V. 3 (Early Termination) below, including the cure period.

IV.5. COB PERFORMANCE OBLIGATIONS

CoB will use reasonable efforts to ensure that its performance will meet or exceed industry standards and practices. Additionally, CoB agrees to the following performance standards.

IV.5.a. Availability of Content. Upon the Effective Date of this Agreement, CoB will make Content available to the UC and Authorized Users.

IV.5.b. Persistent Linking. CoB will comply with the most current version of the OpenURL standard (ANSI/NISA Z39.88), and will provide a mechanism for persistent links to content.

IV.5.c. Online Terms and Conditions. In the event that CoB requires Authorized Users to agree to additional terms relating to the use of Content (commonly referred to as “click-through” or “clickwrap” licenses), or otherwise attempts to impose terms on Authorized Users through online terms and conditions invoked by the mere use or viewing of Content, such terms shall not materially differ from the provisions of this Agreement. In the event of any conflict between the click-through terms or online terms and conditions and this Agreement, the terms of this Agreement shall prevail, and for the avoidance of doubt, any Creative Commons license applied to Content shall take precedence over any click-through terms or online terms and conditions. Also for the avoidance of doubt, Authorized Users are not a party to this Agreement.

IV.5.d. CoB shall use reasonable efforts to provide continuous service seven (7) days a week, subject to scheduled maintenance and repair and unforeseen events. Scheduled down-time will be performed where reasonably practicable at a time to minimise inconvenience to subscribers worldwide. CoB shall have no liability for any reasonable period of interruption to access.

IV.5.e. Transfer or Acquisition of Titles. If any portion of the Content is transferred to or acquired from another party, CoB shall use reasonable efforts to ensure that UC does not lose access to Content subject to this Agreement as a result of the transfer or acquisition. Any archival and perpetual access rights that have been granted shall be honored, whether the CoB is acting as the transferring or acquiring party. If CoB is transferring any portion of the Content to another party, CoB will use reasonable efforts to assign all rights and obligations to the assignee. If CoB is acquiring works that become subject to this Agreement, CoB will use reasonable efforts to acquire the rights to perform under this Agreement, including but not limited to perpetual access rights. CoB agrees to communicate with the party from which it is acquiring works to exchange such relevant payment and rights information. For journal titles, CoB will use reasonable efforts to comply with the NISO Transfer Code of Practice.[1] in the context of a transfer of a journal title to another publisher.

IV.5.f. Notification of Modifications of Content. From time to time CoB may add, change, or modify portions of the Content, or migrate the Content to other formats. When such changes, modifications, or migrations occur, CoB shall give notice of any such changes to UC as soon as is practicable, but in no event less than sixty (60) days in advance of modification. If any of the changes, modifications, or migrations renders the Content substantially less useful to the UC or its Authorized Users, the UC may seek to terminate this

[1] http://www.niso.org/workrooms/transfer/

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Agreement pursuant to the termination provisions in Section V.3 of this Agreement.

IV.5.g. Withdrawal of Content. CoB reserves the right to withdraw from the Content 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. CoB shall give written notice of the withdrawal to UC as soon as is practicable, but in no event less than thirty (30) days in advance of withdrawal, specifying the Content to be withdrawn. If any such withdrawal renders the Content less useful to UC or its Authorized Users, and the withdrawal amounts to 10% or more of the Content, CoB shall reimburse UC for the withdrawal in an amount proportional to the total Fees owed by UC for the Content under this Agreement. If any such withdrawal renders the Content substantially less useful to UC or its Authorized Users, UC may seek to terminate this Agreement for breach pursuant to the termination provisions in Section V.3 of this Agreement.

IV.5.h. Itemized Holdings/Title List. CoB will provide to UC, prior to the beginning of the calendar year within the current term, an itemized holdings report that specifies the titles included in the Content for the next subscription term. CoB will use reasonable efforts to update itemized holdings reports as soon as is practicable when holdings information changes, and will provide this information to Discovery Service Systems in a timely manner and to UC on request. If the Content includes material covered by the NISO Knowledge Bases And Related Tools (KBART) Recommended Practice,[2] CoB will use reasonable endeavours to provide itemized holdings lists for the Content in KBART-compliant format, including a column/field for dates (YYYY-MM) of additions.

IV.5.i. Usage Statistics. CoB shall provide or make available both composite systemwide use data and itemized data for individual campuses and national laboratories, as outlined in Appendix B and as defined by IP ranges provided in Appendix C, on a monthly basis. Statistics shall meet or exceed the most recent project COUNTER Code of Practice Release, including but not limited to its provisions on customer confidentiality. When a release of a new COUNTER Code of Practice is issued, CoB shall use its best endeavours to comply with the implementation time frame specified by COUNTER to provide usage statistics in the new standard format.

CoB shall not provide UC's usage statistics in any form to any third party without UC's written authorization, unless the third party owns rights in the Content. In all cases, the disclosure of such data shall fully protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy laws. CoB shall not disclose or sell to other parties usage data or information about UC or its Authorized Users without UC's written permission or as required by law.

CoB agrees to use reasonable endeavours to adopt practices to meet community standards for measuring the impact and use of open access content, as such standards emerge.

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[2] http://www.niso.org/workrooms/kbart

IV.5.j. Confidentiality of Personally Identifiable Information. CoB agrees that no personally identifiable information, including but not limited to log-ins recorded in system logs IP addresses of patrons accessing the system, saved searches, usernames and passwords, will be shared with third parties, except to the degree necessary to perform under this agreement or in response to a subpoena, court order, or other legal requirement. If CoB is compelled by law or court order to disclose personally identifiable information of Authorized Users of patterns of use, CoB shall, where permitted by law, provide UC with adequate prior written notice as soon as is practicable, so that UC or Authorized Users may seek protective orders or other remedies. CoB will notify UC and Authorized Users as soon as is practicable if CoB's systems are breached and the confidentiality of personally identifiable information is compromised.

CoB undertakes to use reasonable efforts to comply with the NISO Consensus Principles on Users' Digital Privacy in Library, CoB, and Software-Provider Systems (NISO Privacy Principles), https://www.niso.org/publications/privacy-principles. In all cases, the disclosure of such data shall fully protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy laws.

CoB shall use reasonable endeavours to ensures that any third parties employed by CoB to perform functions under this Agreement conform to the requirements of this provision.

IV.5.k. Notice of the Use of Digital Rights Management Technology. In the event that CoB utilizes or implements any type of digital rights management (DRM) technology to control the access to or usage of the Content, CoB will provide to UC a description of the technical specifications of the DRM and how it impacts access to or usage of the Content. In no event may such Digital Rights Management Technology be used in such a way as to limit the usage rights of a UC or any Authorized User as specified in this Agreement or under applicable law. If the use of DRM renders the Content substantially less useful to the UC or its Authorized Users, the UC may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement in Section V. 3 (Early Termination), below.

IV.5.l. Use of Digital Watermarking Technology. In the event that CoB utilizes any type of watermarking technology for any element of the Content, CoB agrees that watermarks will not reduce readability of content and will not degrade image quality. These watermarks shall not contain user-related information, including but not limited to an account number, IP address, and usernames. If digital watermarking technology is implemented, CoB will notify UC at least thirty (30) days in advance of implementation, and CoB will provide the technical specifications for the technology used. If the use of the watermarking technology renders the Content substantially less useful to the UC or its Authorized Users, the UC may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement in Section V. 3 (Early Termination), below.

IV.5.m. Branding. CoB will provide UC the option to brand CoB's platform with the name of the UC and/or Authorized Sites at UC's discretion.

IV.6. PERPETUAL RIGHTS

IV.6.a. Perpetual License. Notwithstanding anything else in the Agreement, CoB grants to UC a nonexclusive, royalty-free, systemwide perpetual license to use any Content that is subscribed to or otherwise made available to UC during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which UC shall have access to such Content shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement. If CoB's means of access is not available, UC may provide substantially equivalent access to the Content by use of an archival copy or by engaging the services of third-party trusted archives (such as Portico) and/or participating in collaborative archiving endeavors to exercise its perpetual use rights.

IV.6.b. Archival Copy. In the event the CoB discontinues or suspends selling or licensing the Content, UC may use such archived Content under the same terms as this Agreement. If UC has a backup copy of the Content, the backup copy may be used as an archival copy.

IV.7. UC PERFORMANCE OBLIGATIONS

IV.7.a. License Terms Notification. UC will use reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Subscribed Content is granted under this Agreement.

IV.7.b. Protection from Unauthorized Use. UC will use reasonable efforts to restrict access to the Subscribed Content to Authorized Users only from IP addresses authorized by CoB.

IV.7.c. Maintaining Confidentiality of Access Passwords. Where access to the Subscribed Content is to be controlled by use of passwords, UC will use reasonable efforts to inform Authorized Users that they should not divulge their numbers and passwords to any third party. UC will also use reasonable efforts to maintain the confidentiality of any institutional passwords provided by CoB.

V. GENERAL TERMS

V.1. TERM

This Agreement shall be in effect from the Effective Date through the expiration date as set out in Appendix E unless terminated earlier in accordance with the provisions in Section V. 3. (Early Termination).

V.2. RENEWAL

This Agreement may be renewed at the end of the current term for a successive term, subject to mutual agreement in writing between the Parties.

V.3. EARLY TERMINATION

V.3.a. Early Termination for Financial Hardship. UC may terminate this Agreement without penalty if sufficient content acquisitions funds are not allocated to enable UC, in the exercise of its reasonable administrative discretion, to continue this Agreement. In the event of such financial circumstances, UC will notify CoB of the intent to terminate the Agreement as soon as is reasonably possible, but in any case, no less than 30 days prior to the commencement of the next calendar year of the term of the agreement, subject to any on-going obligations to make payments, and this transaction shall terminate on the last day of the period for which payment has been made without penalty of expense to UC of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available, or in the case of Eligible Articles, for which APC payments have been requested by Affiliated Corresponding Authors under the Multi-payer Workflow in Section III.1.c In the event of such termination, UC shall maintain its perpetual right to materials licensed under the subscription periods for which it has fully paid, subject to Section IV. 6. (Perpetual Rights).

V.3.b. Termination for Breach. If either party believes that the other has materially breached any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to use all reasonable means to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice. Once this Agreement ends, by early termination or otherwise, CoB may terminate access to the Subscribed Content by UC and Authorized users, subject to Section V. 6. (Perpetual Rights), above. In addition, authorized copies of Content made by Authorized Users prior to termination or expiry of this Agreement may be retained for educational purposes and used subject to the terms of this Agreement.

V.4. WARRANTIES

CoB warrants that, so far as CoB is aware, it has all necessary legal and equitable rights, permissions, and clearances to license the Content to UC for the purposes outlined in this Agreement, and that, so far as CoB is aware, the use of Content by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright or other rights of any third party.

V.4.a. Accessibility Requirements.
CoB conforms to the accessibility requirements of Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) 2.0 at level AA. CoB shall use best efforts to make Content comply with relevant California and U.S. accessibility laws. Cob agrees to promptly respond to and resolve any complaint regarding accessibility of Content.

V.5. LIMITATIONS ON WARRANTIES

a. Subject to Section V.5.e below, notwithstanding anything else in this Agreement, neither

[redacted]

party shall be liable for any indirect, special, incidental, punitive or consequential damages, or any loss of data, business interruption, or loss of profits, that arises from the use of the Content, or the inability to use the Content.

b. CoB makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Content, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.

c. Except for the express warranties stated elsewhere in this Agreement, CoB provides the Content on an 'as is' basis and disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Content or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability, or fitness for a particular purpose. CoB gives no warranties (express or implied) regarding the accuracy, completeness relevance or applicability of any of the Content. Whilst the Content is published by CoB in good faith, statements and contributions made by authors and contributors are the responsibility of such parties, and CoB accepts no liability for any such statements or contributions.

d. WHERE PERMITTED TO DO SO BY LAW, COB LIMITS ITS LIABILITY UNDER THIS AGREEMENT TO THE VALUE OF THE FEE PAID OR PAYABLE TO COB DURING THE PREVIOUS TWELVE (12) MONTHS.

e. NOTHING IN THIS AGREEMENT SHALL OPERATE TO LIMIT LIABILITY FOR: (I) DEATH OR PERSONAL INJURY TO THE EXTENT THAT IT RESULTS FROM A PARTY'S NEGLIGENCE, OR THE NEGLIGENCE OF ITS EMPLOYEES OR AGENTS IN THE COURSE OF THEIR ENGAGEMENT; OR (II) A PARTY'S FRAUD OR FRAUD OF ITS EMPLOYEES OR AGENTS IN THE COURSE OF THEIR ENGAGEMENT.

V.6. <u>INDEMNITIES</u>

a. CoB shall indemnify and hold harmless UC and Authorized Users for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, that arise from any third party claim that alleges copyright infringement or other intellectual property infringement arising from the use of the Content by the UC or any Authorized User, provided that the use of the Content has been in full compliance with the terms of this Agreement. This indemnity shall be subject to the cap on liability set out in Section VI.5.d above. This Section V.6.a. shall survive the termination of this Agreement.

b. UC shall indemnify COB against all losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, that arise from:
i) any unauthorised use or dissemination of the Subscribed Content by UC or any Authorised Users; and

ii) any violation of this Agreement or of any third party's rights by UC or Authorised User, including but not limited to infringement of any copyright or any other property right. This Section V.6.b. shall survive the termination of this Agreement.

c. The obligations to indemnify contained above in this Section V.6 are subject to:

i) the indemnified party providing the indemnifying party prompt notice of any claim or threat of claim;
ii) the indemnified party co-operating fully with the indemnifying party in the defence or settlement of such claim; and
iii) the indemnifying party having sole and complete control over the defence or settlement of such claim.

V.7. ASSIGNMENT AND TRANSFER

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, except as otherwise provided in Section IV.5. (CoB Performance Obligations). Neither party to this Agreement may unreasonably withhold or delay such written consent.

V.8. GOVERNING LAW

This Agreement shall be interpreted and construed according to, and governed by, the laws of California, USA, excluding any such laws that might direct the application of the laws of another jurisdiction.

V.9. DISPUTE RESOLUTION & VENUE

In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise good faith efforts to resolve the dispute as soon as possible. In the event that the parties cannot, by exercise of their good faith efforts, resolve the dispute, they shall submit the dispute to informal mediation, as further described below in this paragraph. The parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute. The party invoking mediation shall give to the other party written notice of its decision to seek informal mediation, and the notice must include a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute.

If the dispute is not resolved within thirty (30) calendar days of the meeting among the parties' executives, either party may pursue a legal action in court. The non-exclusive jurisdiction and venue for any and all actions arising out of or brought under the Agreement is in a state court of competent jurisdiction, situated in Alameda County, California (or, if applicable, the federal court located in the Northern District of California). During such court action, the parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute.

V.10. Force Majeure

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

V.11. Entire Agreement

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. For the avoidance of doubt, online terms and conditions as defined in Section IV.5.d. (CoB Performance Obligations/Online Terms and Conditions) shall not modify the terms of this Agreement and any Creative Commons license shall take precedence over online terms and conditions defined in section IV.5.d.

V.12. Amendment

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of CoB and UC.

V.13. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

V.14. Waiver of Contractual Right

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

V.15. Notices

All notices given pursuant to this Agreement shall be in writing (which shall be understood to include electronic mail ("Email"). Notices if sent by registered or certified mail, shall be deemed received within five (5) business days after mailing. If any notice is sent by Email or

[redacted]

facsimile, it shall be deemed received on the date that the Email or facsimile was sent. However, if the time of deemed receipt of any notice is not before 5.30 p.m. local time on a business day at the address of the recipient, it is deemed to have been received at the commencement of business on the next business day. For the avoidance of doubt, any notice or communication contemplated by this Agreement may be executed electronically, including via Email, and signatures will be considered as equally valid as a manually executed signature if they meet the legal definition of an "electronic signature," including signatures incorporated in an electronic format (e.g., ".pdf" or ".tif"). Either party may from time to time change its Notice Address by written notice to the other party.

If to CoB:

CoB Contact [redacted]
Head of Sales and Business Development
The Company of Biologists
Bidder Building
Station Road
Histon
Cambridge, CB24 9LF, UK
Phone: [redacted]
Email: [redacted]

If to UC:

Licensing contact: [redacted]
Assistant Director for Systemwide Licensing
Licensing Analyst
California Digital Library
University of California, Office of the President
1111 Franklin Street
Oakland, CA 94607 USA
Phone: [redacted]
Email: [redacted]

Invoicing contact: CDL Acquisitions
CDL Acquisitions Coordinator
University of California
Geisel Library
9500 Gilman drive 0175K
La Jolla, California 92093-0175 USA
Phone: [redacted]
Email: cdl-acquisitions@ucop.edu

Technical contact: CDL Support

[redacted]

California Digital Library
University of California, Office of the President
1111 Franklin Street
Oakland, CA 94607 USA
Phone: [redacted]
Email: cdlsupport-l@ucop.edu

V.16. EXECUTION

The parties agree that scanned and/or electronically signed versions of this originally executed Agreement are acceptable in lieu of printed signed copies and are to be given full force and effect under law.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

CoB:

DocuSigned by:

BY: [redacted]________________ DATE: 06/06/2024

Signature of Authorized Signatory of CoB

[redacted]
Head of Sales and Business Development
The Company of Biologists
Bidder Building
Station Road#
Histon
Cambridge, CB23 9LF, UK
[redacted]

UC:

BY: [redacted]________________ DATE: 6/6/2024

Signature of Authorized Signatory of UC

[redacted]
Director of Shared Collections
California Digital Library
University of California, Office of the President
1111 Franklin Street
Oakland, CA 94607 USA
[redacted]

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APPENDIX A - FEES

The financial terms of this Agreement shall consist of a Base Fee, which assures a minimum level of revenue for CoB and a maximum level of expenditure for UC, and article-level publishing fees payable by UC and its authors in the form of Article Processing Charges (APCs). The total APCs that would be payable under this Agreement are counted toward and are intended to constitute the majority of the Base Fee, as described in Fee Control Mechanisms below.

Base Fee
The Base Fee for 2024 shall be based on UC's 2022 spend extrapolated for the publishing output in 2023

[redacted]	Base Fee

The Base Fee for each year will be subject to the cost control mechanisms described below (Fee Control Mechanisms).

Article Processing Charges (APCs)
In 2024 to 2026, the APCs for CoB journals will be equal to 2024 list price APCs with a negotiated reduction in rate applied.

Throughout the year, authors publish articles, and APC revenue to CoB accumulates through the Multi-payer Model, as described in Section III.1.c.

Eligibility for inclusion of an article in the accounting for a given year shall be determined by article acceptance date, and will include acceptance for publication in either fully open access and in hybrid/subscription journals covered by this Agreement that are accepted for publication from January 2024 forward.

Fee Control Mechanisms
The Parties agree to the following fee control parameters to apply under this Agreement, which cap total payments by UC and provide for a baseline level of revenue for CoB:

- **Annual Cost Control Corridor to apply**: The total APC payments from all sources (from the UC libraries and from authors when possible under the Multi-Payer Model described above) is intended to fall between 98% and 102% of the Base Fee in a given year.
  - **APC charges below the Base Fee**: If, at the end of the year, the total amount of APCs payable from all sources is less than 98% of the Base Fee, UC will make a reconciliation payment to CoB to ensure that CoB receives no less than 98% of the Base Fee.
  - **APC charges that exceed the Base Fee**: If, during the course of the year, the total amount of APCs payable from all sources reaches 102% of the Base Fee, no further APC payments from the UC library shall be due for additional publishing. However, articles shall continue to be published Open Access, and the author experience is unchanged; CoB may

continue to collect payments from authors under the Multi-payer Model when they are able to contribute.

- **Base Fee variance**: The Base Fee in Years 2 and 3 shall vary by up to 2% in either direction from the previous year's Base Fee, depending on the final actual total payment to CoB from UC in the previous year:
  - If the total APC payments from all sources in the previous year were between 98% and 102% of the Base Fee, the new Base Fee is set at the actual total payments made during the previous year.
  - If the total APC payments from all sources in the previous year were below 98% of the Base Fee, such that UC made a reconciliation payment to CoB at the end of the year under the provisions of the annual cost corridor bullet above, the new Base Fee for the coming year is set at 98% of the previous year's Base Fee.
  - If the total APC payments from all sources in the previous year reached 102% of the Base Fee, such that UC library payments to CoB stopped, the new Base Fee for the coming year is set at 102% of the previous year's Base Fee.

<u>Payments</u>

UC Library payments will be aggregated for bulk payment.

Each year, UC will pre-pay the majority of the expected library costs for the year, with a reconciliation payment to be made at the end of the year, calculated as follows:

a. The UC upfront contribution to the Base Fee is calculated based on projected author publication and payment patterns, taking into account observed behavior in previous contract years . In 2024, it is projected that about 75% of Eligible Articles will be made open access, and just over 50% of those authors will be able to pay the APC Remainder (as was observed in 2023); therefore, in 2024 the expected UC library contribution towards the Base Fee is [redacted]

b. UC pays 90% of the expected UC library contribution within 60 days of the start of the year. In 2024 , the amount of payment shall be [redacted]

c. Within 60 days of the end of the year, a reconciliation payment will be made by UC (or credit issued), with actual UC library fees due calculated based on OA article volume and the amount paid by authors through the Multi-payer Model, and the Fee Control Mechanisms described above.

d. Based on the outcome of the reconciliation, new values for the expected UC library contribution for the upcoming year will be calculated, and the appropriate up-front payment will be made accordingly.

[redacted]

APPENDIX B: AUTHORIZED/PARTICIPATING SITES

University of California, Berkeley (including Lawrence Berkeley Lab)

University of California, Davis

University of California, Irvine

University of California, Los Angeles

University of California, Merced

University of California, Riverside

University of California, San Diego

University of California, San Francisco

University of California, Santa Barbara

University of California, Santa Cruz

University of California Office of the President

Appendix C: IP Addresses

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Appendix D : Title List (Indicating Hybrid, Full OA, Subscription only)

Hybrid:
- Development
- Journal of Cell Science
- Journal of Experimental Biology

Fully Open Access:
- Biology Open
- Disease Models & Mechanisms

Subscription:
- n/a

Appendix E: Term

Year 1	January 1, 2024 – December 31, 2024
Year 2	January 1, 2025 – December 31, 2025
Year 3	January 1, 2026 – December 31, 2026