ACME Electronic Resources Company

AGREED TERMS:

1.   Definitions

In this Agreement:

"**Effective Date**" means the date as set out on the first page of this Agreement, or if undated, the date of first availability of the Services for use by the Subscriber;

"**Acme**" means Acme and its Affiliates;

"**Fees**" means the fees as set out on the first page of this Agreement (excluding any Ancillary Fees), being the aggregate of the fees for the Information and fees for the Services, payable by the Subscriber to Acme;

"**Information**" means information, in whatever form, contained in a Service;

"**Authorized Site**" means a single organization or agency at a single location. If more than one office is located in a single metropolitan area, those offices are considered separate sites.

"**Permitted User**" means an individual who is authorized by the Subscriber to access Acme.com and use the Information and who is either an employee of the Subscriber including faculty, staff, visiting scholars or an individual currently enrolled as a student of the Subscriber.

"**Service**" means any service through which Information is supplied to the Subscriber by Acme.

2.   Services

2.1   Acme will supply the Information and the Services to the Subscriber and its authorized users within the geographic confines of the Authorized Site, and grants to the Subscriber a non-exclusive, non-transferable, non-sublicensable, non-assignable license to use the Information and the Services pursuant to the terms of this Agreement.

2.2   Acme retains control and ownership of the form and content of the Services. Neither the Subscriber nor the Permitted Users will acquire any ownership rights in the Services or the Information, and the Subscriber shall not alter the form or content of the Services without the written permission of Acme.

2.3   Acme may alter the form and content of the Services from time to time. The Information is either licensed from third party information providers or is proprietary to Acme. Should any license agreement with an information provider be terminated or suspended for any reason, or if Acme has reasonable grounds to believe that Information contained within the Service infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable, then that Information may be withdrawn from the Services.

3.   Use of the Services

3.1   The Subscriber and Permitted Users may:

(a)   review and download Information for their own use and

(b)   include in written works for internal consumption only, on an occasional and infrequent basis, individual articles from the Information, provided that such articles (or portions of articles) are attributed to the relevant author or provider of such article.

3.2   Acme reserves all other rights granted under U.S. Copyright law.

3.3   The Subscriber, and each Permitted User, shall not:

(a)   reproduce, distribute, display, sell, publish, broadcast or circulate the Information to any third party, including other individuals in the Subscriber's or its Affiliate's organizations, nor make the Information available for any such use;

(b) remove, conceal or alter any copyright notices contained in the Services or the Information;

(c) create or store in electronic form any shared library or archive of Information which could be used as a research application; or

(d) use this content in electronic reserves, electronic course packs, persistent linking from syllabi or by any other means of incorporating the content into course resources.

3.4 The Subscriber shall:

(a) guarantee that each Permitted User is aware of and complies with the conditions of use of the Services and/or the Information contained in this Agreement;

(b) guarantee that each Permitted User complies with any additional restrictions notified by means of any on-screen notices contained within an article of Information to which the additional restriction relates;

4. Fees

4.1 Acme may increase the rate of the Fees and/or any applicable Ancillary Fees. If the rate of such increase is greater than the consumer price index (CPI-U) in the United States (as quoted by the Bureau of Labor Statistics) over the latest 12 month period ending prior to the date of Acme's notice or 5% (whichever is the greater), then the Subscriber may, within 15 days of receipt of such notice, terminate this Agreement by written notice to Acme. If the Subscriber gives notice pursuant to clause 5.3, then such termination shall be effective on the date on which the Fees and/or any applicable Ancillary Fees would have increased.

5. Warranty, liability and indemnity

5.1 Acme shall make reasonable efforts to ensure: the accuracy and reliability of the Services; the timeliness of the Information; and that the Services do not contain any computer viruses. Except as specified in this Agreement, all express or implied representations, warranties, conditions and undertakings are excluded. This Agreement gives neither the Subscriber nor the Permitted Users any rights against third party information providers with respect to use of Information by the Subscriber and/or any Permitted User.

5.2 Acme accepts liability only for: death or personal injury caused by its negligence; direct physical loss or damage to the Subscriber's site caused by its negligence; or any other direct loss or damage caused by its negligence or willful misconduct. Neither Acme, nor any other member of the Acme Group, will be held liable in relation to the accuracy or timeliness of the Information or for any loss or damage of any type in connection with the provision of or failure to provide the Services, except as set out in clause 5.1. The total liability of Acme under this Agreement shall, to the extent permitted by law, under no circumstances exceed the Fees paid by the Subscriber in the twelve months preceding such claim.

5.3 The Subscriber shall indemnify Acme and, where relevant, any third party information provider or supplier, for any loss or damage suffered arising out of any use of the Information.

6. Term and termination

6.1 The initial term of this Agreement shall be one year commencing on the Effective Date. Thereafter the term shall continue, save that any or all of the Services may be cancelled by either Acme or the Subscriber on 3 months' prior written notice to the other.

6.2 Without prejudice to any rights of either party, this Agreement may be terminated:

(a) in the event of a party committing any breach of this Agreement which is remediable and not remedied within 21 days of written notice from the other party requiring such remedy;

(b) immediately on written notice being given by a party if the other party commits any irremediable breach of this Agreement or repeats any breach as has previously been the subject of a notice under paragraph (a) above;

(c) immediately on a party giving written notice to the other party if:

(i) an order is made or an effective resolution is passed for the liquidation or winding up of the other party;

(ii) the other party enters into any composition with its creditors;

(iii) the other party has a receiver, manager, administrative receiver or administrator appointed in respect of it or substantially all of its assets; or

(iv) the other party is affected in any jurisdiction other than the United States by any matter of substantially similar effect to any of the matters referred to in paragraphs (i) to (iii) above.

6.3 On termination of this Agreement for any reason the Subscriber shall pay to Acme any Fees which would have been payable until the end of the then-current term.

6.4 If the Subscriber commits a material breach of this Agreement, Acme may suspend any Service without notice or penalty until such breach is remedied.

7. Confidentiality

7.1 The parties acknowledge and confirm that during the term of this Agreement and following its termination the parties shall treat as confidential and shall not (other than in the proper provision of the Services or as required by any applicable law) use or disclose to any person, firm or company, the terms of this Agreement and any confidential information relating to the business of and belonging to the other party, nor permit its use or disclosure. This obligation of confidentiality shall not apply to information which is publicly known (through no fault of the non-disclosing party) or not of commercial value to such other party.

8. General

8.1 The terms and conditions set out in this Agreement represent the entire agreement between both parties relating to the Services and supersede all prior agreements and representations. No failure or delay by any party in exercising any right, power or remedy under this Agreement shall operate as a waiver of any such right, power and/or remedy. Neither party will be liable for any loss or failure to perform an obligation due to circumstances beyond its reasonable control.

8.2 In the event of conflict between these agreed terms and the click-through license located at Acme's website, the terms on the website shall prevail in relation to the provision of that Service.

8.3 All notices shall be in writing, and delivered by courier or registered mail, or by either facsimile or electronic mail with confirmation, to the addresses specified on the signature page of this document, or other address stipulated in writing by one party to the other. Notice shall be deemed received on the date 3 business days after being sent, if by courier or registered mail, or on the date actually received, if by fax or electronic mail.

8.4 Neither party may assign this Agreement without the prior written consent of the other party, provided however that Acme may transfer any of its rights and obligations to any member of the Acme Group.

8.5 This Agreement shall be governed by, construed in accordance with the law of the State of Western Australia. Any dispute, if not amicably settled, shall be submitted to the courts of the State of Western Australia.

Executed for an on behalf of _____

Authorized signatory:_____

Name (printed):_____

Date:_____

On behalf of Acme Electronic Resources Company

Authorized signatory:_____

Name (printed):_____

Date:_____