PARTICIPATION CONTRACT

PUBLIC LIBRARY OF SCIENCE (PLOS), a California non-profit company whose registered office is at 1160 Battery Street, Koshland Building East, Suite 225, San Francisco, CA 94111, USA ("Publisher"), and

JISC SERVICES LIMITED (OPERATING AS JISC COLLECTIONS) (Company Number 2881024), a company limited by guarantee incorporated in England and Wales whose registered office is at 4 Portwall Lane, Bristol BS1 6NB ("Jisc Collections")

OFFERS to you, the Institution, participation in PLOS' Tiered Flat Fee (as described herein) on the terms and conditions as set out in this Participation Contract ("Agreement").

Acceptance of this Agreement will be by receipt of the Order Confirmation Email (as hereafter defined) by the Publisher and Jisc Collections as part of Licence Subscriptions Manager (as hereafter defined). Acceptance shall be acceptance of all terms and conditions of this Agreement and no variation or counter offer will be accepted by the Publisher or Jisc Collections.

BACKGROUND

1. PLOS is a non-profit open access publisher with a library of open-access journals offered under the Creative Commons Attribution (CC BY) license.

2. PLOS is offering unlimited publishing of Eligible Articles (as defined below) in its PLOS Computational Biology, PLOS Pathogens, PLOS Genetics, PLOS Neglected Tropical Diseases and PLOS ONE journals for a flat annual Participation Fee (hereinafter referred to as “PLOS Tiered Flat Fee”), pursuant to the terms of this Agreement.

3. Jisc Collections (as hereafter defined) has developed an online ordering service; the ‘Licence Subscriptions Manager’, whereby nominated persons can place, order, and manage subscriptions online on behalf of their institution, which will be used in connection with this Agreement.

4. PLOS negotiated an Offer with Jisc Collections based on Institution’s publishing trends with PLOS.

5. Jisc Collections and PLOS agreed to the Offer and the terms of this Agreement under separate agreement dated 21st September 2020 ("Master Agreement") whereby Jisc Collections will pay PLOS a Master Fee for Institution’s Participation in PLOS’ Tiered Flat Fee.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

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

"Eligible Author" means an author who is affiliated to or based at the Institution of an article submitted to the Publisher.

"Eligible Article" means an article by an Eligible Author accepted
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>for publication by the Publisher in respect of which the Institution agrees (under the verification process provided for in this Agreement) is covered by the Participation Fee.</td>
<td></td>
</tr>
<tr>
<td>Licence Subscriptions Manager</td>
<td>means the online subscription ordering service developed by Jisc Collections, or any such service as may replace Licence Subscriptions Manager. Licence Subscriptions Manager can be found at <a href="https://subscriptionsmanager.jisc.ac.uk">https://subscriptionsmanager.jisc.ac.uk</a>.</td>
</tr>
<tr>
<td>Offer</td>
<td>means the offer agreed between Jisc Collections and the Publisher for participation in PLOS' Tiered Flat Fee as set out in Annex 1.</td>
</tr>
<tr>
<td>Open Access Article</td>
<td>means an article or other published content by an Eligible Author that is accessible or submitted on the basis that it will be accessible immediately, on an open access basis under CC BY terms.</td>
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<tr>
<td>Order and Acceptance Form</td>
<td>means the form used by Jisc Collections as part of Licence Subscriptions Manager. A sample copy of the form is attached to this Agreement in Annex 2. Once the completed form has been received by Licence Subscriptions Manager, the system automatically generates an Order Confirmation Email to the Institution, Order Confirmation Email to Jisc Collections and an Order Confirmation Email to the Publisher repeating the information on the form regarding the name of the Institution, the start and end date of the Participation Period and confirming the date on which the Institution accepted the terms and conditions of this Agreement.</td>
</tr>
<tr>
<td>Order Confirmation Email</td>
<td>means the email automatically generated by Licence Subscriptions Manager after the Institution has completed the Order and Acceptance Form, confirming that the Institution has placed the order, the start and end date of the Participation Period and that the Institution has agreed to the terms and conditions of this Agreement.</td>
</tr>
<tr>
<td>Participation</td>
<td>means participation in PLOS' Tiered Flat Fee.</td>
</tr>
<tr>
<td>Participation Fee</td>
<td>means the applicable fee for Participation as set out in the Offer and in the Quote (if any).</td>
</tr>
<tr>
<td>Participation Period</td>
<td>means a period from the start date to the expiry of the Participation Period.</td>
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</table>
"Quote" means the fee quotation specified in the Order Confirmation Emails for the rights granted in this Agreement.

"Transaction Management Charge" means the fee payable to Jisc Collections in connection with arranging and managing this contract as set out in Schedule 1.

"Version of Record" means the final typeset and edited version of the article published in a journal.

1.2 Headings in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

2. AGREEMENT

2.1 In consideration for the Master Fee payable by Jisc Collections to Publisher, the Publisher will provide the Institution with Participation in PLOS' Tiered Flat Fee on the terms and conditions as set out in this Agreement.

3. RESPONSIBILITIES OF THE PUBLISHER

3.1 The Publisher agrees to publish Eligible Articles submitted during the Participation Period under the conditions outlined in this Clause 3.

3.2 The Version of Record of all Eligible Articles that follow the terms of this Agreement shall be:

(i) made immediately Open Access, as the Version of Record on the Publisher website with no embargo period;
(ii) published under the terms of the CC-BY licence;
(iii) deposited by the Publisher on acceptance in PubMed Central.

3.3 The Publisher will provide the Institution with a report every six months detailing the Eligible Articles published, containing the following information: Article DOI; article title; article type; Institution name; publisher journal ID; journal title; journal E-ISSN; article final editorial acceptance date; article online date (as the online date of publication); corresponding author name; co-author names; corresponding author email; FundRef ID; funding acknowledgement in article; data availability statement included in article; APC list price for journal; whether the article has been deposited in PMC. Institution will notify Publisher in writing within fourteen (14) days of receipt of the report of any incorrect information or discrepancy in the report, and absent such notification will be deemed to have accepted the report as correct.
Publisher will review manuscripts submitted by Eligible Authors in accordance with Publisher’s ethical, editorial, and technical standards and requirements, and all related editorial and publication decisions will be made in Publisher’ sole discretion.

Submission of manuscripts by Eligible Authors are subject to separate terms and conditions between Publisher and Eligible Author.

4. RESPONSIBILITIES OF INSTITUTION

4.1 The Institution agrees to:

4.1.1 pay Jisc Collections the applicable Participation Fee for the Participation Period in accordance with Annex 1.

4.1.2 inform Eligible Authors that this Agreement is in place and that their Eligible Articles can be made Open Access Articles on acceptance by the Publisher;

4.1.3 use reasonable efforts to ensure that Eligible Authors shall identify themselves as being eligible, and shall verify the eligibility of an Eligible Author in the course of the Publisher’s publishing workflow.

5. RESPONSIBILITIES OF JISC COLLECTIONS

5.1 Jisc Collections agrees to:

5.1.1 collect and save the details of the Institution as part of Licence Subscriptions Manager and after acceptance of the terms and conditions of the Participation Contract by such Institutions, notify Publisher of the order;

5.1.2 issue an invoice to Participating Institution upon receipt of its Order and Acceptance Form, in respect of the Participation Fee due under this Participation Contract;

5.1.3 Share with Publisher a central point of contact at the Institution;

5.1.4 Receive payments from Participating Institutions that have completed the Order and Acceptance Form.

6. EDITORIAL INDEPENDENCE

6.1 All parties acknowledge that the Institution is in no way involved with the Publisher’s editorial process.

6.2 Nothing herein contained shall oblige the Publisher to publish any article submitted to the Publisher by an Eligible Author or the Institution. The Institution acknowledges that the selection of material to be published is entirely at the discretion of the Publisher and the Institution waives any claim it may have against the Publisher in the event that the Publisher refuses or declines to publish any material (or part thereof) submitted by an Eligible Author or the Institution.

7. TERMS OF PUBLICATION

7.1 The Institution acknowledges that before any material submitted by an Eligible Author or the Institution will be accepted for publication the Eligible Author or and (if different) the owner of any copyright in such material will be required to agree to the applicable
terms and conditions of publication (including without limitation the terms relating to open access).

7.2 Data Protection: All parties agree to comply with all applicable data protection laws. Each party is considered to be a data controller of any data it processes concerning any identifiable person. If any party becomes a data processor for another party, a suitable data protection agreement shall be entered into as necessary.

8. TERM AND TERMINATION

8.1 The term of this Agreement will commence January 1 [2021][2022][2023] and will remain in full force and effect until the end of the Participation Period as set out in such Subscription Order and Acceptance Form, unless terminated earlier as provided for in this Clause.

8.2 Either Publisher or Institution may terminate this Agreement at any time without cause on the anniversary date as set out on the Subscription Order and Acceptance Form (and subsequently in the Order Confirmation Email) by giving the other party sixty (60) days’ notice to that effect. A copy of such notice shall be sent to Jisc Collections.

8.3 Any party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith by written notice to the other party. In the event of termination under this Clause, this Agreement shall terminate the obligations of all three parties.

8.4 This Agreement terminates automatically in the event the of termination or expiration of the Master Agreement between Publisher and Jisc Collections.

9. FORCE MAJEURE

9.1 Either party’s failure to perform any term or condition of this Agreement as result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Agreement.

9.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

10. ASSIGNMENT

10.1 Except as permitted for in this Clause, neither this Agreement nor any of the rights and obligations under it may be assigned by either party. A party may assign their rights and obligations under this Agreement in the event of an acquisition of substantially all of the assets of a part. In such case, this Agreement will bind and inure to the benefit
of and be enforceable by the parties, their respective successors, and permitted assigns.

11. **LIABILITY**

11.1 Except as provided for in this Clause, under no circumstances will any party be liable to the other in contract or negligence or otherwise under this Agreement, even if a party has been advised of the possibility of such damages, for:

i) any special, indirect, incidental, punitive, exemplary or consequential damages;

ii) loss of direct or indirect profits, business, contracts, revenue or anticipated savings; or

iii) for any increased costs or expenses.

11.2 In no event will any party’s total liability to the other party for all damages, losses, and causes of action arising out of this Agreement (whether in contract, tort including negligence, warranty or otherwise) exceed the amount paid by Institution during the twelve (12) months immediately preceding the claim or one hundred dollars, whichever is greater. Liability for wilful misconduct shall remain unaffected.

11.3 No party limits its liability for:

i) death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement; and

ii) its own fraud or that of its employees or agents in the course of their engagement.

12. **GOVERNING LAW AND DISPUTE RESOLUTION**

12.1 This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.

12. **NOTICES**

12.1 All notices required to be given under this Agreement shall be given in writing in English and sent by courier, or special delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received three (3) days after the date of posting in the case of special delivery or despatch in the case of courier:

if to the Institution: as stated in the Order and Acceptance Form

if to Jisc Collections Caren Milloy
Director of Licensing
Jisc Collections
15 Fetter Lane
London EC4A 1EW
caren.milloy@jisc.ac.uk

if to the Publisher: Sara Rouhi
13. GENERAL

13.1 This Agreement, its Schedules and Annexes constitute the entire agreement between the parties relating to the Participation and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of all parties in writing.

13.2 The Schedules and Annexes shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules and Annexes.

13.3 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

13.4 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

13.5 The parties will comply with all applicable laws and regulations relating to anti-corruption and anti-bribery. The parties represent and affirm that no bribes or corrupt actions have or will be offered, given, received or performed in relation to the procurement or performance of this Agreement. For the purposes of this clause, “bribes or corrupt actions” means any payment, gift, or gratuity, whether in cash or kind, intended to obtain or retain an advantage, or any other action deemed to be corrupt under the applicable country laws. The Institution will not, directly or indirectly, make any such payment while this Agreement is in effect.
ANNEX 1: PARTICIPATION FEES AND OFFER

1. By completing the Order and Acceptance Form as part of Licence Subscriptions Manager the Institution accepts the terms of this Agreement and accepts that it must pay to Jisc Collections the total sum of the Participation Fee for the Participation Period in accordance with the applicable Quote. All prices are exclusive of VAT, which will be payable by the Institution where applicable.

2. The Institution shall pay to Jisc Collections the Transaction Management Charge in accordance with the table below, based on exchange rates at the time of invoicing:

<table>
<thead>
<tr>
<th>Participation Fee payable by Institution (p/a) exc VAT</th>
<th>Transaction Management Charge (p/a) exc VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;£1,000</td>
<td>£50</td>
</tr>
<tr>
<td>£1,001 to £10,000</td>
<td>£100</td>
</tr>
<tr>
<td>&gt;£10,001</td>
<td>£200</td>
</tr>
</tbody>
</table>

3. The Participation Fee and Transaction Management Charge shall fall due and payable by the Institution within forty-five (45) days on receipt by the Institution of Jisc Collections’ invoice.
ANNEX 2: ORDER AND ACCEPTANCE FORM (EXAMPLE)