

## BioOne® Subscriber License for COUPERIN Member Institutions

---

THIS LICENSE IS AGREED as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

### BY AND BETWEEN

1. **BioOne, a non-profit corporation with offices at 21 Dupont Circle, Suite 800, Washington, DC 20036 (hereinafter referred to as 'BioOne')**

and

2. \_\_\_\_\_ with  
offices at

\_\_\_\_\_  
(hereinafter referred to as the 'Licensee').

### IT IS AGREED AS FOLLOWS:

#### 1. Key Definitions

In the License, the following terms shall have the following meanings:

##### 1.1 Authorized Users

Authorized Users are those individuals officially affiliated or registered with the Licensee, for example, those serving in the capacity of employees, consultants under contract with the Licensee, full- or part-time faculty and other teaching staff (including temporary or exchange faculty for the duration of their assignment), persons officially registered as full- or part-time students, registered patrons, and Walk-In Users. Authorized Users also include persons affiliated with remote sites of the Licensee as specified in Appendix D, provided such Authorized Users will work from, or otherwise maintain affiliation with, these access sites.

##### 1.2 Commercial Use

Use for the purposes of monetary reward (whether by or for the Licensee or an Authorized User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. Recovery of direct and indirect cost by the Licensee from Authorized Users, or use by the Licensee or by an Authorized User of the Licensed Material in the court of research funded by a commercial organization, is not deemed to constitute Commercial Use.

##### 1.3 Electronic Reserve

Any electronic or other databased collection of articles, chapters, or other materials from different copyrighted sources compiled for a specific course or series of instruction by the Library.

##### 1.4 Fees

The fee(s) set out in Appendix B, or in new Appendices to this License that may be agreed to by the parties from time to time.

##### 1.5 Licensed Material

The electronic material listed in Appendix C, or in new Appendices to this License that may be agreed to by the parties from time to time.

##### 1.6 Secure Network

A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorized Users approved by the Licensee and whose conduct shall be subjected to regulation by the Licensee.

##### 1.7 Subscription Period

That period nominally covered by the volumes and issues of the Licensed Material listed in Appendix C, regardless of the actual date of publication, or as otherwise pro-rated for less than one full calendar year in the Licensee's initial Subscription Period or in new

## BioOne® Subscriber License for COUPERIN Member Institutions

---

Appendices to this License that may be added subsequently by mutual agreement of the parties hereto.

### **1.8 Walk-in Users**

Persons who are not officially affiliated with the Licensee, but who are occasional users of the Licensee's library or information service and who are permitted to access the Secure Network from computer terminals within the Institution only. The payment of a fee in order to be considered a Walk-in User is deemed not to constitute Commercial Use under Para. 1.2 above.

## **2. Agreement**

**2.1** BioOne grants the Licensee the non-exclusive and non-transferable right to give Authorized Users access to the Licensed Material through BioOne's server(s) for the purposes of research, teaching and private study, subject to the terms and conditions of this License, and the Licensee agrees to pay the Fee.

**2.1.1** The Subscription Period for individual journals shall be as set out in Appendix C or in new Appendices to this License that may be added subsequently from time to time by mutual agreement of the parties hereto.

**2.1.2** On termination of this License, BioOne shall and Licensee may provide continuing free access for Authorized Users to that part of the Licensed Material which was published or added to the Licensed Material within the Subscription Period, either from BioOne's server(s), or from a third party's server, or by supplying electronic files to the Licensee. The terms governing access to this material shall be those in effect at the termination of the license.

## **3. Permitted Uses**

**3.1** The Licensee may, subject to Para. 4 below:

**3.1.1** Make temporary (less than 24 hours) local electronic copies by means of caching of all or part of the Licensed Material as is necessary to ensure efficient use by Authorized Users, provided that such use is subject to all the terms and conditions of this Agreement and does not result in the making available to Authorized Users of duplicate copies of the Licensed Material.

**3.1.2** Allow Authorized Users to have access to the Licensed Material, from BioOne's server or from another server designated or approved in writing by BioOne via the Secure Network.

**3.1.3** Allow Walk-in Users to have access to the Licensed Material, from BioOne's server or from another server designated by BioOne at computer terminals within the Library Premises only.

**3.1.4** Provide single printed or electronic copies of single articles at the request of individual Authorized Users.

**3.1.5** Provide interlibrary loans.

**3.1.6** Display, download or print the Licensed Material for the purpose of internal promotion or testing, or for training Authorized Users.

**3.2** Authorized Users shall be informed that they may, subject to Para. 4 below:

**3.2.1** Search, view, retrieve and display the Licensed Material.

**3.2.2** Electronically save parts of the Licensed Material for personal use.

**3.2.3** Print off single copies of parts of the Licensed Material.

**3.3** Authorized Users, except Walk-in Users, shall be informed that they may, subject to Para. 4 below:

**3.3.1** Create multiple copies of a discrete excerpt from the Licensed Material for classroom instruction use, consistent with existing "fair use" law and regulation. Each such copy shall carry appropriate acknowledgment of the source, listing

title and author of extract, title and author of work, and publisher.

**3.3.2** Incorporate parts of the Licensed Material in Electronic Reserves for the use of Authorized Users in the course of instruction. Each such item shall carry appropriate acknowledgment of the source, listing title and author of extract, title and author of work, and publisher. The electronic copy of such items shall be deleted by the Licensee when it is no longer required for such purpose.

**3.4** Nothing in this License shall in any way exclude, modify or affect anything the Licensee or any Authorized User is allowed to do in respect of any of the Licensed Materials consistent with existing "fair use" law, defined by the U.S. Copyright Code of 1976 (17 U.S.C. § 105-107).

#### **4. Prohibited Uses**

**4.1** Neither the Licensee nor Authorized Users may remove or alter the authors' names, copyright notices, trademarks, or other means of identification or disclaimers as they appear in the Licensed Material.

**4.2** Neither the Licensee nor Authorized Users may systematically make print or electronic copies of multiple extracts of the Licensed Material for any purpose other than temporary caching as permitted in Para. 3.1.1.

**4.3** Neither the Licensee nor Authorized Users may mount or distribute any part of the Licensed Material on any electronic or other data network including, without limitation, the Internet and the World Wide Web, other than through a Secure Network.

**4.4** BioOne's explicit written permission must be obtained in order to:

**4.4.1** Reproduce the whole or any part of the Licensed Material for any Commercial Use.

**4.4.2** Systematically make available or distribute the whole or part of the Licensed Material to anyone other than Authorized Users.

**4.4.3** Publish, distribute or make available the Licensed Material, works based on the Licensed Material or works which combine it with any other material, other than as permitted in this License.

**4.4.4** Alter, abridge, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this License, to Authorized Users. Unless specifically authorized in writing by BioOne or the copyright holder, no alteration of the words or their order is permitted.

#### **5. Warranties**

**5.1** BioOne warrants to the Licensee that it is duly licensed to use, in accordance with the terms and conditions hereof, the Licensed Material and that the Licensed Material, if used as contemplated in this License, does not knowingly infringe any copyright or other proprietary or intellectual property rights of any natural or legal person. BioOne will not be responsible for any claim, loss or liability attributable to errors, inaccuracies or other defects in the Licensed Material or any part thereof whether arising from any intentional act or omission or (to the maximum extent permitted by relevant laws) any negligence or otherwise, and BOTH PARTIES EXPRESSLY EXCLUDE ANY LIABILITY FOR BREACH OF ANY IMPLIED OR EXPRESS WARRANTY AS TO TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, BIOONE SHALL NOT BE LIABLE FOR ANY DIRECT OR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF USE OF ANY OF THE LICENSED MATERIAL. BioOne's maximum liability to Licensee hereunder is limited to the Fee paid by Licensee to BioOne for the then current Subscription Period.

- 5.2** BioOne shall:
- 5.2.1** Make available the electronic copy of each journal covered by this License promptly after it is available.
  - 5.2.2** Provide the Licensee with information sufficient to enable access to the Licensed Material, within no more than 5 working days of the receipt by BioOne of a complete list of Authorized IP Addresses for the Licensee, or any revisions thereto.
  - 5.2.3** Use all reasonable efforts to ensure that the BioOne server(s) have adequate capacity to support the usage of the Licensee and its Authorized Users at a level commensurate with the standards of access to information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this License.
  - 5.2.4** Use all reasonable efforts to make the Licensed Materials available to the Licensee and to Authorized Users at all times and on a twenty-four hour basis, save for routine maintenance and down-time, and to restore access to the Licensed Material as soon as reasonably possible in the event of an interruption or suspension of the service. BioOne will make all reasonable efforts to notify Licensee of scheduled downtime at least 24 hours in advance. In the event of an interruption or suspension of service lasting more than 72 consecutive hours, the Licensee's contract will be extended by an equal number of hours.
- 5.3** BioOne reserves the right at any time to withdraw from the Licensed Material 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 unlawful. BioOne shall give notice to the Licensee of such withdrawal. In the event that the total amount of material removed constitutes more than ten percent (10%) of the total content of the Licensed Material, BioOne will refund ten percent (10%) of the then current Subscription Fee.
- 5.4** BioOne will ensure that an electronic archive of all Licensed Material is made available through BioOne. If BioOne is unable to ensure that this responsibility is met, the archive will be transferred to one or more depositories.
- 5.5** The Licensee shall:
- 5.5.1** Use reasonable efforts to ensure that Authorized Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Material and of the sanctions that the Licensee imposes for failing to do so.
  - 5.5.2** Use reasonable efforts to ensure that Authorized Users are made aware of and undertake to abide by the terms and conditions of this License; and immediately on becoming aware of any unauthorized use or other breach, inform BioOne and take reasonable steps, including appropriate disciplinary action, both to ensure that such activity ceases and to prevent any recurrence.
  - 5.5.3** Keep full and up-to-date records of all Licensee's authorized IP Addresses, and if appropriate, provide BioOne with periodic lists of additions, deletions or other alterations to such records as agreed between the parties from time to time.
  - 5.5.4** Use its best efforts to ensure that only Authorized Users are permitted access to the Licensed Material. Subject to the provisions of Section 5.6, allowing access to the Licensed Materials to persons not Authorized Users shall constitute a material breach of this License not capable of remedy for purposes of Section 6.2.2 if the Licensee knew or reasonably should have known that such person was not an authorized user.
- 5.6** Nothing in this License shall make the Licensee liable for breach of the terms of the License by any Authorized User provided that the Licensee did not cause, knowingly

assist, or condone the continuation of such breach after becoming aware of an actual breach having occurred.

- 5.7** The Licensee shall, in consideration for the rights granted under this License, pay the Fee in accordance with Para. 2.1 within 60 days of signature and, if applicable, within 60 days of each subsequent renewal.
- 5.8** BioOne and the Licensee shall both permit and enable the collection and distribution of usage data for BioOne's and the Licensee's use. BioOne use of such data will be approved by the Board of Directors. Such usage information shall be compiled in a manner consistent with the applicable privacy laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected. In the case that either party assigns its rights to another party under Para. 7.1 herein, the other party may at its discretion require the assignee to either keep such usage information confidential or destroy it.
- 5.9** Each party shall use its best efforts to safeguard the intellectual property, confidential information and proprietary rights of the other party and third parties. This intellectual property, confidential information and proprietary rights shall include but not be limited to the source code of both BioOne and third parties.

**6. Term and Termination**

- 6.1** This Agreement shall commence on the date first set forth above and continue for one (1) year. Unless terminated sooner in accordance with its terms or allowed to expire (upon tender of sixty (60) days notice by either party), this Agreement will be automatically renewed for successive one (1) year terms, subject to applicable adjustment to the License Fees.
- 6.2** This License is terminated if either party gives written notice to the other in the following circumstances:
- 6.2.1** The Licensee defaults in making payment of the Fee in accordance with Para. 2.1 and fails to remedy such default within thirty (30) days of notification in writing by BioOne.
- 6.2.2** Either party commits a material or persistent breach of any term of this License and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the other party.
- 6.2.3** Either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
- 6.3** On termination all rights and obligations of the parties automatically terminate except for:
- 6.3.1** Those specified in Paragraphs 2.1.2, 3, 4, 5.1, 5.5 and 5.9 above.
- 6.3.2** All obligations in respect of Licensed Material to which access continues to be permitted.
- 6.4** On termination of this License for cause, as specified in Paragraphs 6.2.1 to 6.2.2 above, the Licensee shall immediately cease to distribute or make available the Licensed Material.
- 6.5** On termination of this License by the Licensee for cause, as specified in Para. 6.2.3, BioOne shall within thirty (30) days repay a prorated proportion of the Fee as represents the paid but unexpired part of the Subscription Period.

**7. General**

- 7.1** This License may not be assigned by either party to any other person or organization without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 7.2** If rights in all or any part of the Licensed Material are assigned to another publisher, BioOne shall use its best efforts to ensure that the terms and conditions of this License

**BioOne® Subscriber License for COUPERIN Member Institutions**

---

- are maintained.
- 7.3** Alterations to this License and to the Appendices to this License (which may be altered separately from the body of this License without affecting the validity of the License as a whole) are only valid if they are recorded in writing and signed by both parties.
- 7.4** Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this License or to such other address as notified by either party to the other as its address for the service of notices and all such notices shall be deemed to have been received within 3 business days of posting.
- 7.5** Either party's failure to perform any term or condition of this Agreement, as a result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures or damage to or destruction of any network facilities, or other Acts of God) shall not be deemed to be, or to give rise to, a breach of this Agreement.
- 7.6** The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
- 7.7** The failure of either party to require performance by the other party of any provision of this Agreement will not affect its full right to require such performance at any subsequent time; nor will the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

As witness the hands of the parties the day and year below first written.

**For BioOne** \_\_\_\_\_ Date \_\_\_\_\_.  
*By its agent Publishers Communication Group*

Name \_\_\_\_\_ Claire Winthrop \_\_\_\_\_.

Title \_\_\_\_\_ Director, Global Sales \_\_\_\_\_.

Signature \_\_\_\_\_.

**For the Licensee** \_\_\_\_\_ Date \_\_\_\_\_.

Name \_\_\_\_\_.

Title \_\_\_\_\_.

Signature \_\_\_\_\_.

**BioOne® Subscriber License for COUPERIN Member Institutions**

---

**Appendix A**

**BioOne.2 Amendment**

**THIS AMENDMENT TO THE SUBSCRIBER LICENSE** executed in 21 September, 2010(*Month, Year*), by and between PCG as agent for BioOne and \_\_\_\_\_  
\_\_\_\_\_ (Licensee) **IS AGREED TO** as stated herein.

1. **Licensed Material** is hereby defined as inclusive of the electronic publications in the new collection produced and updated by BioOne as “BioOne.2,” in addition to the original collection produced and updated by BioOne and now named “BioOne.1”.
2. **Fees** are as stated in the BioOne COUPERIN Opt-In Proposal spreadsheet as applicable to the Licensee, and as such will be invoiced to Licensee for the **Subscription Period**.
3. All other terms and conditions of the **Subscriber License** will remain unchanged unless modified by mutual agreement of the parties hereto.

As witness the hands of the parties the day and year below first written.

**For BioOne**  
*By its agent PCG*

Date \_\_\_\_\_.

Name \_\_\_\_\_.

Title \_\_\_\_\_.

Signature \_\_\_\_\_.

**For the Licensee**

Date \_\_\_\_\_.

Name \_\_\_\_\_.

Title \_\_\_\_\_.

Signature \_\_\_\_\_.

## **BioOne® Subscriber License for COUPERIN Member Institutions**

---

### **Appendix B**

#### **Fees**

BioOne subscriber fees, credits and discounts are included as part of the BioOne Couperin Opt-In Proposal Spreadsheet. BioOne does not require pricing be included as part of this Subscriber License.



**Appendix C**

**List of Licensed Material included in the BioOne Database**

A list of titles available as part of the BioOne service may be found on the BioOne Web site, and is subject to change from time to time. BioOne does not require the list of title be included as part of this Subscriber License.

For purposes of this Subscriber License, the Licensed Material shall include (*check one*):

the BioOne Databases identified as “BioOne.1” and “BioOne.2”

or the BioOne Database identified as “BioOne.1” only

or the BioOne Databases identified as “BioOne.2” only

## **BioOne® Subscriber License for COUPERIN Member Institutions**

---

### **Appendix D**

#### **Licensee's Authorized Access Sites**

Subscriber IP addresses should be submitted on the BioOne Order Form/Price List. BioOne does not require IP addresses be included as part of this Subscriber License.