

Please complete and sign this agreement and **post** to:

LISU, Loughborough University
Loughborough, Leics
LE11 3TU UK

OR Fax to: +44 (0)1509 635699 (and **post original** to LISU – in the event it is not received within 30 days of the start date of the licence, we have the right to rescind the licence)

WHO ELSE WRITES LIKE ...? Online Licence Agreement

THIS LICENCE IS AGREED the _____ day of _____ 20____

BETWEEN

1. LISU of Loughborough University, Leicestershire, LE11 3TU, UK ("the Publisher")

and

2. Full contractual name: _____ ("the Licensee")

Address:

Postcode:

Country:

WHEREAS the Publisher holds the rights granted under this Licence.

AND WHEREAS the Licensee desires to use the rights in its Library Premises and the Publisher desires to grant to the Licensee the licence to use the rights for the Fee, subject to the terms and conditions of this Licence.

IT IS AGREED AS FOLLOWS:

1. KEY DEFINITIONS

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

Commercial Use Use for the purposes of monetary reward (whether by or for the Licensee or Library Staff or a Patron) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, the recovery of direct costs by the Licensee from Patrons is not deemed to be Commercial Use.

Fee The Fee as agreed from time to time.

Library Premises The physical premises of the library or libraries operated by the Licensee.

Library Staff Current members of the staff of the Licensee (whether on a permanent, temporary or contract basis) who are permitted to access the Secure Network from within the Library Premises or from such other places where Library Staff undertake their work for the Licensee (including but not limited to Library Staff's offices), and who have been issued by the Licensee with a password or other authentication.

Licensed Materials The Website: whoelsewriteslike.com and the contents therein.

Patrons	Members of the public who are permitted to use the Licensee's library or information service and permitted to access the Secure Network from computer terminals within the Library Premises or from other places when they have been issued by the Licensee with a password or other authentication.
Secure Network	A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Library Staff or Patrons whose access is permitted and whose conduct is subject to regulation by the Licensee.
Server	The server, either the Publisher's server or a third party server designated by the Publisher, on which the Licensed Materials are mounted and may be accessed.
Subscription Period	One [or three] year[s] from the date of this Agreement, regardless of the actual date of publication.

2. AGREEMENT

- 2.1** The Publisher agrees to grant to the Licensee the non exclusive and non transferable right to give Library Staff and Patrons access to the Licensed Materials via a Secure Network for the purposes of research, retrieving information and private study, subject to the terms and conditions of this Licence, and the Licensee agrees to pay the Fee.
- 2.2** This Licence shall commence at the beginning of the Subscription Period and shall automatically terminate at the end of the Subscription Period, unless the parties have previously agreed to renew it.

3. USAGE RIGHTS

- 3.1** The Licensee, subject to Clause 5 below, may:
- 3.1.1** Make such temporary local electronic copies by means of cacheing of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Library Staff and Patrons.
 - 3.1.2** Allow Library Staff to have access to the Licensed Materials.
 - 3.1.3** Allow Patrons to have access to the Licensed Materials.
- 3.2** Library Staff and Patrons may, in accordance with the copyright law of the United Kingdom and subject to Clause 5 below:
- 3.2.1** Search, view, retrieve and display the Licensed Materials.
 - 3.2.2** Print off a copy of individual pages of the Licensed Materials.
- 3.3** Nothing in this Licence shall in any way exclude, modify or affect any of the Licensee's rights under the Copyright Designs and Patents Act 1988 or any statutory instruments made thereunder or any amending legislation.

4. SUPPLY OF COPIES TO OTHER LIBRARIES

- 4.1** Notwithstanding the provisions of Clauses 3.1 and 3.3, it is understood and agreed that neither the Licensee nor Authorised Users may provide, by electronic means, to a user at another library a copy of any part of the Licensed Materials for research or private study or otherwise.

5. PROHIBITED USES

- 5.1** Neither the Licensee nor Library Staff nor any Patron may:

- 5.1.1 Remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;
 - 5.1.2 Systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose;
 - 5.1.3 Mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web.
- 5.2 The Publisher's explicit written permission must be obtained in order to:
- 5.2.1 Use all or any part of the Licensed Materials for any Commercial Use;
 - 5.2.2 Systematically distribute the whole of the Licensed Materials to anyone;
 - 5.2.3 Publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this Licence;
 - 5.2.4 Alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen to Library Staff and Patrons. For the avoidance of doubt, no alteration of the words or their order is permitted.

6. PUBLISHER'S UNDERTAKINGS

6.1 The Publisher shall:

- 6.1.1 Make the Licensed Materials available to the Licensee from the Server in the media, format and time schedule. The Publisher will notify the Licensee at sixty (60) days in advance of any anticipated specification change applicable to the Licensed Materials. If the changes render the Licensed Materials less useful in a material respect to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this License under Clauses 9.1.2 and 9.4.
- 6.1.2 Provide the Licensee within 30 days of commencement, with information sufficient to enable the Licensee to access the Licensed Material.

6.2 The Publisher reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Licensee of such withdrawal. If the withdrawal results in the Licensed Materials being no longer useful to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this License under Clauses 9.1.2 and 9.4.

6.3 Except as expressly provided in this License, the Publisher makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Materials, merchantability or fitness of use for a particular purpose. The Licensed Materials are supplied 'as is'.

6.4 Except as provided in Clause 6.1, under no circumstances shall the Publisher be liable to the Licensee or any other person, including but not limited to Authorised Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials. Irrespective of the cause or form of action, the Publisher's aggregate liability for any claims, losses, or damages arising out of any breach of this Licence shall in no circumstances exceed the Fee paid by Licensee to the Publisher under this Licence in respect of the Subscription Period during which such claim, loss or damage occurred. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Regardless of the cause or form of action, the Licensee may bring no action arising from this Licence more than twelve (12) months after the cause of action arises.

7. LICENSEE'S UNDERTAKINGS

7.1 The Licensee shall:

- 7.1.1** Use all reasonable endeavours to ensure that all Library Staff and Patrons are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and of the sanctions which the Licensee imposes for failing to do so;
- 7.1.2** Use all reasonable endeavours to ensure that the Library Staff are made aware of and undertake to abide by the terms and conditions of this Licence and take steps to protect the Licensed Materials from unauthorised use or other breach of this Licence;
- 7.1.3** Use all reasonable endeavours to monitor compliance and immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
- 7.1.4** Issue passwords or other access information only to Library Staff and Patrons and use all reasonable endeavours to ensure that Library Staff and Patrons do not divulge their passwords or other access information to any third party;
- 7.1.5** Provide the Publisher, within 30 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Material in accordance with its obligation under Clause 6.1.2. Should the Licensee make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect.
- 7.1.6** Use all reasonable endeavours to ensure that only Library Staff and Patrons are permitted access to the Licensed Materials.

7.2 The Licensee agrees to indemnify, defend and hold the Publisher harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any claim or legal action taken against the Publisher related to or in any way connected with any use of the Licensed Materials by the Licensee or Authorised Users or any failure by the Licensee to perform its obligations in relation to this Licence, provided that nothing in this Licence shall make the Licensee liable for breach of the terms of the Licence by any Authorised User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach to continue after becoming aware of an actual breach having occurred.

7.3 The Licensee shall, in consideration for the rights granted under this Licence, pay the Fee within thirty (30) days of receipt of invoice and, if applicable, within thirty (30) days of receipt of invoice relating to each subsequent Subscription Period. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

8. UNDERTAKINGS BY BOTH PARTIES

8.1 Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party.

9. TERM AND TERMINATION

9.1 In addition to automatic termination (unless renewed) under Clause 2.2, this Licence shall be terminated:

- 9.1.1** If the Licensee defaults in making payment of the Fee as provided in this Licence and fails to remedy such default within thirty (30) days of notification in writing by the Publisher;

- 9.1.2** If either party commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the other party;
- 9.1.3** If either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
- 9.2** On termination all rights and obligations of the parties automatically terminate.
- 9.3** On termination of this Licence, as specified in Clause 9.1, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Library Staff and Patrons.
- 9.4** On termination of this Licence by the Licensee, as specified in Clause 9.1.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

10. GENERAL

- 10.1** This Licence constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Licence, whether oral or written.
- 10.2** Alterations to this Licence are only valid if they are recorded in writing and signed by both parties.
- 10.3** This Licence may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, except as provided in this Licence in respect of and the management and operation of the Server, without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 10.4** If rights in all or any part of the Licensed Materials are assigned to another publisher, the Publisher shall use its reasonable endeavours to ensure that the terms and conditions of this Licence are maintained.
- 10.5** 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 Licence or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within 14 days of posting.
- 10.6** Neither party's delay or failure to perform any provision of this Licence, as 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) shall be deemed to be, or to give rise to, a breach of this Licence.
- 10.7** The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence.
- 10.8** Either party's waiver, or failure to require performance by the other, of any provision of this Licence will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.
- 10.9** This Licence shall be governed by and construed in accordance with English law; subject to Clause 11, the parties irrevocably agree that any dispute arising out of or in connection with this Licence will be subject to and within the jurisdiction of the courts of England.

11. USE OF AN EXPERT TO RESOLVE DISPUTES

- 11.1** If any difference arises between the parties on the meaning of this Licence or their rights and obligations, it shall first be referred to an independent expert appointed by agreement of the parties, or, in default of an agreement, by the President for the time being of the Chartered Institute of Library and Information Professionals.

- 11.2** Any expert so appointed shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing stating the reasons for his decision) shall be final and binding on the parties.
- 11.3** Each party shall provide the expert with such information as he may reasonably require for the purposes of his decision.
- 11.4** The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable or, if no determination is made by the expert, by the parties in equal proportions.

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

FOR THE PUBLISHER: LISU, Loughborough University, Loughborough, Leicestershire, LE11 3TU

Signature:

Name (in block capitals): CLAIRE CREASER

Position / Title: LISU Director

Date:

FOR THE LICENSEE:
[full name]:

Signature:

Name (in block capitals):

Position / Title:

Date: