ROCKEFELLER UNIVERSITY PRESS

-and-

CONSEJO SUPERIOR DE INVESTIGACIONES CIENTÍFICAS (CSIC)

______________________________________________

OPEN ACCESS JOURNALS LICENSE AGREEMENT

ROCKEFELLER UNIVERSITY PRESS READ-AND-PUBLISH

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THIS AGREEMENT is made the 7th day of March 2023

BETWEEN: ROCKEFELLER UNIVERSITY PRESS, 950 Third Avenue, 2nd Floor, New York, NY 10022, United States of America (“Publisher”)  

AND CONSEJO SUPERIOR DE INVESTIGACIONES CIENTÍFICAS (CSIC), Calle Serrano 117 – 28006, Madrid, Spain (“Institution”)

BACKGROUND

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C. This License is based on the Jisc model license for journals.

D. The Publisher has agreed with the Institution in the Rockefeller University Press Read-and-Publish Agreement to use this License as the model for any agreement between the Publisher and the Institution in relation to this License.

E. The Publisher has agreed with the Institution that this License is a mechanism for transition with the aim of the Publisher to transition its portfolio of journals to full open access over time.

IT IS AGREED AS FOLLOWS

1 DEFINITIONS

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

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<tr>
<th>Term</th>
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  - a current student registered with the Institution (including undergraduates and postgraduates);  
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  - a contractor of the Institution; or  
  - a member of staff of the Institution (whether permanent or temporary, including retired members of staff and any teacher who teaches students registered with the Institution); or  
  - without prejudice to Clause 4.2, a Walk-In User and, unless the context otherwise requires, all references to “Authorized Users” in this License include “Additional Authorized Users”. |
| **“Calendar Year”**           | means each year running from 1 January to 31 December. |
| **“Commercial Use”**          | means use for the purpose of earning a monetary reward or to generate a profit (whether by or for the Institution or an Authorized User) by means of the sale, resale, loan, transfer, license, hire or other forms of exploitation of the Licensed Material, but, for the avoidance of doubt, excluding:  
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  - use of the Licensed Material in the course of |
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<tr>
<th>Term</th>
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<td>“Continuing Access Rights”</td>
<td>means the access and license rights set out in Clause 2.1.2 (in respect of Continuing Licensed Material).</td>
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<td>means the Licensed Content in respect of which the Institution shall have Continuing Access Rights, as identified as such in Clause 9.</td>
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<td>“Licensed Content”</td>
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<td>“Open Access Article”</td>
<td>means an article that is published under a Creative Commons license.</td>
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<td>“Open Educational Resources”</td>
<td>means teaching, learning and research materials in any medium – digital or otherwise – that reside in the public domain or have been released under an open license that permits no-cost access, use, adaptation and redistribution by others with no or limited restrictions.</td>
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<td>“Secure Network”</td>
<td>means a network or virtual network which or the relevant functionality of which is only accessible to Authorized Users by Secure Authentication.</td>
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<td>“Start Date”</td>
<td>means the start date as specified in Clause 12.</td>
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<tr>
<td>“Subscription Period”</td>
<td>means the period from the Start Date until the expiry date as specified in Clause 12.</td>
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“Subscription Year” means the period from the Start Date until the expiry of the first Calendar Year, and each subsequent Calendar Year thereafter during the Subscription Period.

“Term” means the term of this License in accordance with Clause 12.

“Walk-In Users” means individuals, who are not otherwise Authorized Users, who are allowed by the Institution to access its information services from computer terminals or by other means (including wirelessly), from within the physical premises of the Institution and who have no rights to access the content remotely.

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(ii) to permit Authorized Users to access and make Permitted Use of the Licensed Material; and

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(ii) to permit Authorized Users to access and make Permitted Use of the Continuing Licensed Material.

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2.1.2 to communicate, perform, display, download and print parts of, or extracts from, the Licensed Content,

2.1.3 to provide Authorized Users with access to the Licensed Content for Educational Purposes via a Secure Network for the purposes set out in Clause 2.2;

2.1.4 to display, download and print the whole of, or parts of, or extracts from, the Licensed Content for the purpose of promoting or testing, and training in the use of the Licensed Material;

2.1.5 to convert or adapt the Licensed Material into Braille or other formats or forms suitable for providing access to, and use by, Authorized Users with impaired mental and/or physical abilities and to provide access to such converted or adapted form for the purposes of this Clause 2;

2.1.6 to supply to another library in the country of the Institution (whether by post, fax or, provided the electronic file is deleted immediately after printing, secure electronic transmission), a single copy of the whole of, or parts of or extracts from, the Licensed Content, and to download such Licensed Content for such purpose;

2.1.7 to provide single printed or electronic copies of individual articles or other parts of the Licensed Content to individual Authorized Users, at their request, for Educational Purposes;

2.1.8 to make and distribute copies of training, teaching or course material reproducing parts of the Licensed Content, as may be required by the Institution for the purpose of using the Licensed Material in accordance with Clause 2.2; and
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3.1.5 make any Commercial Use of the Licensed Material (in whole or in part);

3.1.6 use the Licensed Materials (in whole or in part) other than for Educational Purposes; or

3.1.7 provide access to and/or permit use of the Licensed Content by anyone or transmit any part of the Licensed Material (other than Metadata) by any means to anyone, other than an Authorized User.
3.2 The Institution shall not provide access to Walk-In Users to the Licensed Content at a location other than the Institution’s premises (but, for the avoidance of doubt, may provide access on such premises by wireless means).

3.3 The restrictions in this Clause 3 are subject to Clause 2.3.

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5.1 The Publisher shall:

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5.1.2 during the Continuing Use Period,

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During the Subscription Period and, subject to Clause 10, during the Continuing Use Period, the Publisher shall at all times:

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Institution shall be entitled to claim fair damages and/or compensation from the Publisher.

5.2 During the Subscription Period, the Publisher, in respect of the Licensed Material made available under Clause 5.1:

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5.2.2 shall use reasonable efforts to provide support to Authorized Users by email or by a telephone help desk, and assist Authorized Users with general enquiries in connection with the Licensed Material, including relating to access, use, functionality and content of the Licensed Material, and shall use reasonable endeavors to answer any such query within one working day of such query being made;

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7.1 During the Subscription Period, the Publisher shall use reasonable efforts to implement the standards and other provisions of License Schedule 4.

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8.1 The Institution shall:

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8.1.2 provide to the Publisher lists of valid IP addresses for the purpose of managing access to the Licensed Material and update those lists regularly as agreed by the parties in writing from time to time;

8.1.3 use reasonable efforts to ensure that only Authorized Users are permitted access to the Licensed Material;

8.1.4 inform the Authorized Users in writing about the conditions of use of the Licensed Material provided for in this License and to the extent that such terms apply to them, use reasonable efforts to ensure that all Authorized
Users are made aware of and undertake to abide by the terms of this License; and

8.1.5 configure the computer system through which the Licensed Material used by the Institution and Authorized Users, and put in place procedures, in accordance with reasonably appropriate accepted standards, for the purpose of preventing access to the Licensed Material by any person other than an Authorized User.

8.2 The Institution shall use reasonable efforts to monitor compliance with the terms of this License and shall promptly notify the Publisher in writing, providing full particulars (to the extent that it is not prohibited by law or contractual obligation from doing so), on becoming aware of any of the following:

8.2.1 any unauthorized access to or use of the Licensed Material or unauthorized use of Authentication Information; and/or

8.2.2 any act by an Authorized User which gives rise to a breach of this License.

8.3 As soon as the Institution is aware of any breach of the terms of this License, the Institution shall:

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8.3.2 if the Institution considers this appropriate, take steps against the individual concerned in accordance with the Institution’s disciplinary procedure

but the Institution shall not have any other liability for any breach relating to the security of the Secure Network or use by Authorized Users of any Licensed Material.

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11.1 Subject to Clauses 12.2 to 12.7, this License shall commence upon 1 January 2023 and this Agreement will remain in full force and effect until 31 December 2024, unless terminated earlier as provided for with this Clause 11, until the expiry of the Subscription Period.

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11.4.2 the other party commits a material or persistent breach of any term of this License which breach is irremediable or, if such breach is remediable, fails to remedy that breach within a period of sixty (60) days after being notified in writing to do so.

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11.6.3 has committed a breach of Clause 4 (Restrictions) or Clause 8.1 (Responsibility of Institution) and fails to remedy that breach within a period of sixty (60) days after being notified in writing to do so.

11.7 For the avoidance of doubt the Institution shall not be deemed to be in breach of this License on the grounds that an act of an Authorized User, if carried out by the Institution, would have been a breach of this License, without prejudice to any express obligations applicable to the Institution under this License.
11.8 All licenses and rights granted to the Institution shall end on termination of this License unless otherwise stated expressly. Termination or expiry of this License shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this License which existed at or before the date of termination or expiry.

12 **ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

12.1 Subject to Clause 12.2, the Institution acknowledges that all copyright in the Licensed Material are the exclusive property of the Publisher or its licensors and that this License does not assign or transfer to the Institution any right, title or interest in such copyright except for the right to access and use the Licensed Material in accordance with the terms and conditions of this License. The Publisher acknowledges that all copyright in the Open Access Articles remain the exclusive property of the author(s) and that this License does not assign or transfer to the Publisher any right, title or interest in such copyright except for the right to publish the Open Access Articles under the terms and conditions of the Creative Commons license chosen by the Eligible Author.

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13.3 In relation to any claim made or action brought to which Clause 14.2 applies, the Institution shall:

13.3.1 promptly give the Publisher written notice;

13.3.2 give the Publisher immediate and complete control of the defense and settlement of such claim provided that the Publisher gives the Institution reasonable security in respect of any liability the Institution may have in respect of such claim or action and any indemnity to which the Institution may be entitled under Clause 14.2; and

13.3.3 give the Publisher all reasonable assistance with the defense and settlement of such claim.

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Licensed Material from the Licensed Material or obtain for the Institution the right to continue accessing and using such Licensed Material in accordance with this License.

13.7 Nothing in this License shall make the Institution liable for any act by any Authorized User which gives rise to a breach of the terms of this License, provided that the Institution did not cause or knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

13.8 Except as provided for in Clause 14.1 or 14.2, neither the Institution nor any Authorized User nor the Publisher will be liable to the other in contract or negligence or otherwise for:

13.8.1 any special, indirect, incidental, punitive or consequential damages; or
13.8.2 loss of direct or indirect profits, business, contracts, revenue or anticipated savings; or
13.8.3 any increased costs or expenses.

13.9 No party excludes or limits its liability under this License for:

13.9.1 death or personal injury to the extent it results from its negligence, or that of its employees or agents in the course of their engagement; or
13.9.2 its own fraud or that of its employees or agents in the course of their engagement.

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14.1 Without prejudice to Clause 15.2, neither party shall have any liability under or be deemed to be in breach of this License for any failure to perform any term or condition of this License which result from circumstances beyond the reasonable control of such party, including war, strikes, flood, governmental restrictions, power, telecommunications or Internet failures or damage to or destruction of any network facilities not arising from an act or omission of such party or its employees or contractors (“Force Majeure Event”).

14.2 Each party shall promptly notify the other party in writing of any Force Majeure Event which is causing delay or failure in performance of such party’s obligations under this License, or will or is likely to do so, including the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this License, and use reasonable endeavors to mitigate the effect of the Force Majeure Event on the performance of its obligations.
14.3 Provided it has complied with Clause 14.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this License by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of this License or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

14.4 If a Force Majeure Event prevents, hinders or delays the Affected Party’s performance of its obligations for a continuous period of more than 60 (sixty) days, the party not affected by the Force Majeure Event may terminate this License by giving not less than 14 (fourteen) days' written notice to the Affected Party.

15 ASSIGNMENT

15.1 Subject to Clauses 16.1 and 16.2 this License is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this License, without the prior written consent of the other party, such consent shall not be unreasonably withheld or delayed.

15.2 If the Institution merges with any other Eligible Body or transfers the whole or part of its activities as an Eligible Body to another Eligible Body, the Institution or successor Institution (as the case may be), and the Authorized Users who were Authorized Users through the Institution, shall be entitled to receive the benefit of this License, subject to remaining bound by the obligations under this License:

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15.2.2 in respect of the Continuing Licensed Material, in perpetuity.

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15.4 In any assignment to which the other party has given consent under Clause 16.1, the assigning party shall procure and ensure that the assignee shall assume all rights and
obligations of the assigning party under this License and agrees to be bound to all the
terms of this License.

16 **GOVERNING LAW AND JURISDICTION**

16.1 This License and any dispute or claim (including non-contractual disputes or claims)
arising out of or in connection with it or its subject matter or formation shall be governed
by and construed in accordance with the law of New York State.

16.2 The parties irrevocably agree that any dispute arising out of or in connection with this
License will be subject to and within the jurisdiction of the courts of New York State.

17 **DISPUTE RESOLUTION**

17.1 If any dispute arises out of or in connection with this License or the performance, validity
or enforceability of it ("Dispute"), the parties shall attempt to settle it by negotiation. To
this end they shall use their respective reasonable endeavors to consult or negotiate
with each other in good faith, and recognising their mutual interests, attempt to reach
a just and equitable settlement satisfactory to both parties. Negotiations shall be
conducted between the Managing Director (or equivalent position) of the Publisher, or
its nominated representative, and the current Vice Chancellor (or equivalent post) of
the Institution, or their nominated representative.

17.2 If the dispute cannot be resolved by the parties within one month of being escalated as
referred to in Clause 18.1, the dispute may by agreement between the parties be
referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between
the parties. All negotiations connected with the dispute shall be conducted in
confidence and without prejudice to the rights of the parties in any further proceedings.

17.3 Where the parties agree that a Dispute would best be resolved by the decision of an
independent expert, they will use reasonable efforts to agree upon the nature of the
expert required, on the appointment of the expert and, with the expert, the terms of his
appointment.

17.4 Any person to whom a reference is made under Clause 18.1 shall act as expert and
not as an arbitrator and their decision (which shall be given by the expert in writing and
shall state the reasons for the decision) shall be final and binding on the parties except
in the case of manifest error or fraud.

17.5 Each party shall provide such expert with such information and documentation as the
expert may reasonably require for the purposes of forming their decision.
17.6 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

17.7 Subject to Clause 18.1, except where urgent interim measures are sought, and Clause 18.4, nothing in this Clause 17 shall prevent either party commencing or continuing court proceedings in relation to the Dispute under Clause 16.

18 **NOTICES**

18.1 Any notice given to a party under or in connection with this License shall be in writing and shall be delivered by hand or email, or by pre-paid first-class post or other next Working Day delivery service at its address set out below:

18.1.1 if to the Publisher: Office of General Counsel, Care/of Susan King, Executive Director, Rockefeller University Press, 950 Third Avenue, 2nd Floor, New York, NY 10022, United States of America

18.1.2 if to the Institution: Unidad de Recursos de Información Científica para la Investigación. CSIC, Care of Agnès Ponsati, Director, C/ Joaquin Costa 22, 28002 Madrid, Spain

18.1.3 Any notice or communication shall be deemed to have been received:

18.1.4 if delivered by hand, on signature of a delivery receipt; or

18.1.5 if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or

18.1.6 if sent by email, on delivery of the email (as evidenced by a delivery receipt) if delivered during working hours on a Working Day, and otherwise on the first Working Day following delivery.

18.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19 **GENERAL**

19.1 This License its Schedules and Annexes constitute the entire agreement between the parties and supersede all prior communications, promises, assurances, warranties, representations and understandings and agreements (whether written or oral) relating
to its subject matter, but without prejudice to any continuing rights and obligations arising under any prior formal license agreements between the Institution and the Publisher.

19.2 This License may not be amended or modified except by agreement of both parties in writing.

19.3 Nothing in this License shall be construed to create any relationship of joint venture, partnership, agency or employment between any of the parties.

19.4 If any provision or part-provision of this License is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this License.

19.5 The rights of the parties arising under this License shall not be waived except in writing. Any waiver of any of a party’s rights under this License or of any breach of this License 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 License 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.
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Journal of General Physiology Online ISSN 1540-7748

Back files / back issues included in the Offer: All content from Volume 1, Issue 1 of each journal

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Licence duration periods
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Licence Schedule 2

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use all reasonable efforts to provide link-resolver vendors and other library systems suppliers quarterly with full details of the Licensed Material in accordance with the most current KBART standard (http://www.uksg.org/kbart/s5/guidelines); and also with related data of (i) the first and final year, volume, and issue and (ii) the algorithm or syntax for constructing an article-level link from an article’s metadata within the Licensed Material;

use all reasonable efforts to provide relevant information to third party discovery tools (such as Scopus, Summon, Primo), in accordance with NISO recommendations (https://groups.niso.org/apps/group_public/download.php/14820/rp-19-2014_ODI.pdf);


use all reasonable endeavors to conform to all the Plan S technical guidance and requirements. https://www.coalition-s.org/principles-and-implementation/;

use all reasonable endeavors to follow the Recommended Practice on Access and Licensing Indicators (NISO RP-22-2015)

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LICENSE SCHEDULE 4

OPEN ACCESS PROVISIONS

1 Definitions

In this Schedule, the following terms shall have the following meanings:

“Accepted Manuscript” means the version of a journal article that has been peer-reviewed and accepted for publication, and includes changes made by the author during the peer-review process. a.k.a Author Accepted Manuscript (AAM).

“Article Metadata” means data describing any article or research paper and includes index terms, bibliographic information, headers, references, digital object identifiers (DOIs), unique identifiers, dates, keywords, funder information, grant identifier, author affiliations, abstracts, or any other metadata which the Publisher agrees to make available.

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(iv) The Publisher will make all published Open Access Articles available to anyone on its website at all times and on a twenty-four-hour basis, save for routine maintenance (which shall be notified in advance wherever possible) and save for emergency maintenance or unexpected downtime, and will restore access as soon as possible in the event of an interruption or suspension of the service. In case of prolonged and/or repeated interruption
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(v) The Publisher will ensure that its server has adequate capacity and bandwidth to support access to published Open Access Articles at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time.

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(i) The Publisher will identify approved Open Access Articles that have been submitted by Eligible Authors and will clearly indicate the availability of this Open Access Schedule to Eligible Authors, both within its submitting process and on its website. This will make clear that Eligible Authors do not need to pay APCs for Open Access Articles.

(ii) Eligible Authors may opt-out of publishing Open Access Articles and in such cases, the Publisher is not required to seek the approval of the Institution.

(iii) In the event that an Eligible Author is not identified on acceptance, and their articles are discovered not to have been published Open Access, the Publisher will contact the Eligible Authors and offer them the opportunity to convert to Open Access free of an APC.

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(v) The Eligible Author will be identified through at least one of the following parameters: the persistent identifier, the ROR ID, stated as affiliation in the article to be published.

(vi) Upon acceptance for publication of verified submissions, the Publisher will send the Institution details of Open Access Articles and will include the following details:

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● Date of acceptance
● Journal Title
● Article title
● DOI

(vii) The Publisher shall use all reasonable efforts to label Open Access Articles as funded by YY in the Rockefeller University Press Read-and-Publish; the Open Access Articles in the version of record shall state the following "Open access funding provided by Consejo Superior de Investigaciones Científicas (CSIC)"

3. **Annual Account performance reports**

   (i) In addition to regular Account statements, the Publisher shall provide the Institution with annual reports of the total number of Articles published in conformity with this Agreement. This list shall be provided both in machine readable form in a structured format as comma separated value file format (csv) and in human readable format and shall include the following details:
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   ● Eligible Author, incl. ORCID
   ● Institution
   ● Acceptance date and Publication date

   (ii) The annual reports shall include the time span of the last calendar year and shall be delivered in the first quarter of the following year. The Publisher will also deliver Metadata, including license information to CrossRef and other relevant third parties.

   (iii) The Publisher will report annually how many of the Publisher’s journals have flipped during the year from/to a subscription model to/from an open access model, including hybrid model, and which proportion of articles are published open access in each individual Publisher’s journal.
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