

Paperpile LLC

PAPERPILE ACADEMIC SOFTWARE LICENSE AND SERVICES AGREEMENT

THIS **PAPERPILE** SOFTWARE LICENSE AND SERVICES AGREEMENT ("**Agreement**") is made and entered into effective as of the date set forth in the Purchase Order, Statement of Work, or similar document (the "**Effective Date**"), by and between Paperpile, LLC, a Delaware limited liability company ("**Paperpile**") and the following Ordering Activity under GSA Schedule contracts identified in the Order ("**Licensee**");

Institution Name: Name _____

Address: Street 1 _____
Street 2 _____
City, Zip/Postal Code _____

Telephone: Telephone _____

Email: Email of Contact _____

Contact Name and Title: Name _____

Institution Representative: Name _____

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. DEFINITIONS.

"Authorized Users" means individuals who have been authorized by the Licensee to (i) access the Paperpile software and (ii) to access Library Content through Paperpile's Software in compliance with the terms of the Licensee's applicable agreements with its content licensors.

"Paperpile's Software" means the Paperpile software application and/or web service that organizes User Content and Library Content and facilitates reference management. The Paperpile software has been developed for use with the Google Chrome desktop browser and requires a Google account (Google Apps for Education, Google Apps for business or consumer level Gmail account) and Chrome's desktop browser.

"Library Content" means journal articles and other content available through databases owned or properly licensed by the Licensee or Open Access content that is open and available to the public.

"User Content" means document, notes and other content created or provided by the user.

"Content" means the Library Content and User Content.

"Services" means the reference management system provided by Paperpile that allows Authorized Users to access and manage Content through the Paperpile Software. For purposes of clarity, Paperpile does not host Content or grants access to any Content – Paperpile only facilitates the organization and/or management of Content within the Licensee's credentialing system.

"User Data" means data relating to the Licensee and its Authorized Users' access and use of the Services.

2. THE SERVICES.

2.1 Distribution of Software and Provision of the Services. During the term of this Agreement and subject to the terms and conditions set forth herein, Paperpile agrees to (i) provide the Services to Licensee's Authorized Users' and (ii) make the Paperpile Software available to the Licensee's Authorized Users through the World Wide Web, Chrome Web Store, and other distribution methods used by Licensee. Development is in progress for platforms other than the Chrome desktop browser. If and when future or updated versions of Paperpile are published, Authorized User's will be granted access to them under the terms of this Agreement.

2.2 Credentialing. The Paperpile Software will work within Licensee's credentialing systems (such as EZProxy, Shibboleth, IP, username/password, institutional email verification, etc.) to ensure that only Authorized Users have access to the Paperpile Software and Library Content through the Paperpile Software. The Licensee is responsible to maintain the

accuracy and integrity of its credentialing systems in order to ensure that only Authorized Users are allowed to access the Paperpile Software and Library Content through the Paperpile Software. Licensee shall notify Paperpile of any significant security issues with its credentialing systems or any significant unauthorized access of Library Content through the Paperpile Software. Paperpile may, without liability and without further investigation, rely on the Licensee's credentialing systems to perform the Paperpile Service (access, download and store Library Content) in the name of the Authorized User.

2.3 Restrictions. Licensee shall only make the Paperpile Software available to its Authorized Users in accordance with applicable laws and government regulations and Licensee shall not (i) interfere with or disrupt the integrity or performance of the Services, (ii) engage in any act that would violate (or cause Paperpile to violate) copyright laws or the terms of its agreements with its content providers, or (iii) modify, decompile, disassemble, reverse engineer, or create derivative works based on the Paperpile Software.

3. FEES AND PAYMENT.

3.1 Subscription Fees. Licensee shall pay all fees as specified on the Order for Paperpile's Software in accordance with the GSA Schedule Pricelist..

3.2 Invoicing and Payment. Fees will be invoiced upon delivery of the Paperpile Software and are due 30 days from the invoice receipt date.

3.3 Reserved.

3.4 Taxes. Vendor shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

4. PROPRIETARY RIGHTS.

4.1 The Services and Paperpile Software. Subject to the limited rights expressly granted hereunder, Paperpile reserves all right, title and interest in and to the Services and the Paperpile Software, including all intellectual property rights related thereto. No rights are granted to Licensee or the Authorized Users hereunder other than as expressly set forth herein.

4.2 User Data. Paperpile collects some User Data with respect to the Licensee's and its Authorized Users' use of the Services. The User Data may be useful to Paperpile in modifying and improving the Services. Paperpile is permitted to use and disclose the User Data in an anonymous form and the information contained therein for studying, modifying and improving the structure, operation and performance of the Services. In addition, Paperpile may also anonymously disclose the User Data in various aggregated forms, without identifying the specific personal, email, or account information related to use of the Services.

5. CONFIDENTIALITY.

5.1 Definition. "*Confidential Information*" means all confidential information disclosed by a party ("*Disclosing Party*") to the other party ("*Receiving Party*"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including all copies thereof. However, Confidential Information will not include any information that: (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without use of or reliance on the Confidential Information of the Disclosing Party.

5.2 Protection. The Receiving Party will: (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care); (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of the Receiving Party's and its Affiliates' employees, contractors, and agents who need such access for purposes consistent with this Agreement and who are subject to confidentiality obligations at least as restrictive as those herein. The Receiving Party will provide prompt written notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. Upon request of the Disclosing Party during the Term, the Receiving Party will promptly return, or at the Disclosing Party's option destroy, any or all Confidential Information of the Disclosing Party in the Receiving Party's possession or under its control.

5.3 Compelled Disclosure. The Receiving Party may access or disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled access or disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the

Disclosing Party wishes to contest the access or disclosure. Paperpile recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Paperpile Warranty. Paperpile warrants that the Services will perform materially in accordance with any documentation provided to Licensee by Paperpile and Paperpile's Terms of Service, currently available at paperpile.com/tos. For any breach of such warranty, the Licensee's sole and exclusive remedy shall be the termination of this Agreement as provided in Section 7 below.

6.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES AND THE PAPERPILE SOFTWARE ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND PAPERPILE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Without limiting the foregoing, neither Paperpile nor any of its licensors warrants that the use of the Services or the Paperpile Software will be uninterrupted or error-free or makes any warranty as to the availability of the Services, the accuracy, timeliness, correctness, reliability, or the results of any use of the Services.

6.3 Content Disclaimer. Paperpile hereby disclaims any liability for the accuracy, completeness, or functionality of the Software. Paperpile shall have no responsibility or liability for any errors or omissions nor for any damages sustained by the Licensee or any of its Authorized Users from any use of the Paperpile Software.

6.4 Use of the Internet. The parties acknowledge and agree that Paperpile does not and cannot control the flow of data to or from Paperpile's facilities, Licensee's facilities, and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the Licensee's or its Authorized Users' connections to the Internet (or portions thereof). Although Paperpile will use commercially reasonable efforts to take such actions as it deems appropriate to remedy and avoid such events, Paperpile cannot guarantee that such events will not occur. Accordingly, Paperpile disclaims any and all liability resulting from or related to such events.

7. LIMITATION OF LIABILITY

7.1 Limitation of Liability. IN NO EVENT SHALL PAPERPILE'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED, IN THE AGGREGATE, AN AMOUNT EQUAL TO THE UNUSED PORTION OF LICENSEE'S SUBSCRIPTION PAID HEREUNDER.

7.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL PAPERPILE HAVE ANY LIABILITY TO LICENSEE OR ANY AUTHORIZED USER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT PAPERPILE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

8. TERM AND TERMINATION

8.1 Term of Agreement. Unless sooner terminated in accordance with the provisions hereof, this Agreement shall commence on the Effective Date and continue for the initial term described in Paperpile Site License Quote. Thereafter, unless sooner terminated in accordance with the terms hereof, the term of this Agreement may be renewed for additional periods of one year each (except that the fees for the Services shall be set at Paperpile's then-current rates) by executing a written order for the renewal term.

8.2 Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Paperpile shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

8.3 Surviving Provisions. Sections 1, 3, 4, 5, 6, 7.2, 7.3 and 8 shall survive any termination or expiration of this Agreement.

9. GENERAL PROVISIONS.

9.1 Purchase Orders and Forms. The terms, provisions or conditions of any purchase order or any associated documentation used or submitted by Licensee will be superseded exclusively by the terms of this Agreement, regardless of any failure of Paperpile to object to those terms, provisions or conditions.

9.2 Customer reference. Paperpile must submit a written request to the Licensee to review and approve any use of the Harvard Medical School or Harvard University name in Paperpile's customer sales presentations, on the Paperpile website, and/or in other Paperpile marketing activities or materials. Express written permission is required for any use of the Harvard Medical School and/or Harvard University name, logo, or insignia. In no event shall Paperpile claim that Licensee or Harvard University expressly endorses the Paperpile Software.

9.3 Force Majeure. In accordance with GSAR Clause 552.212-4(f), Neither Paperpile nor its licensors will be liable or deemed to be in default for any delays or failure in performance resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including but not limited to war, riot, embargoes, acts of civil or military authority, rain, fire, flood, accidents, earthquake(s), strikes or labor shortages, transportation facilities shortages or failures of equipment, or failures of the Internet.

9.4 Miscellaneous. This Agreement is not assignable or transferable by Licensee without the prior written consent of Paperpile and any attempt to do so shall be void. Any notice, report, approval or consent required or permitted hereunder shall be in writing and will be deemed to have been duly given if delivered personally or mailed by first-class, registered or certified U.S. mail, postage prepaid to the respective addresses of the parties as set forth in the introductory paragraph above (or such other address as a party may designate by ten (10) days' notice), or via email to the Licensee's Authorized Representative, provided receipt of such email is acknowledged. No failure to exercise, and no delay in exercising, on the part of either party, any privilege, any power or any rights hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or power hereunder preclude further exercise of any other right hereunder. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the home state of the subscribing Licensee without regard to conflict of law provisions thereof. Any waivers or amendments shall be effective only if made in writing and signed by a representative of the respective parties authorized to bind the parties. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. This Agreement may be executed in person, by facsimile, or by email of a copy signed electronically or by a writing instrument. This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated below.

Licensee: _____
(Institution Name)

By: _____
(Signature)

Name: _____
(Print Name)

Title: _____

Date: _____

Licensors: Paperpile, LLC

By: _____
(Signature)

Name: _____
(Print Name)

Title: _____

Date: _____