OPEN ACCESS PREPAYMENT ACCOUNT AGREEMENT

AGREEMENT DATE: 2nd December 2019

PARTIES:

1. INFORMA UK LIMITED trading as TAYLOR & FRANCIS GROUP (company number 01072954) whose registered office is at 5 Howick Place, London, SW1P 1WG, United Kingdom ('the Publisher'), and

2. Fonds zur Förderung der wissenschaftlichen Forschung (also known as FWF and Austrian Science Fund), Haus der Forschung, Sensengasse 1, 1090 Vienna, Austria ('the Organization')

BACKGROUND:

1. The Publisher is a publisher of learned, scholarly and professional journals in printed form and other media under its Taylor & Francis, Routledge, and Cogent OA imprints (amongst others).

2. The Publisher has agreed to offer the Organization a discount on article publishing charges for qualifying open access articles paid from an advance prepayment fund held by the Publisher on behalf of the Organization, on the terms set out in this Agreement.

NOW IT IS AGREED:

1. Interpretation

In this Agreement, unless the context requires otherwise, the following expressions have the following meanings:

“Academic Member” means any individual in receipt of research funding from the Organization and any teaching and research staff employed by or otherwise accredited to the Organization;

“Additional Contributions” means additional monies paid into the Prepayment Fund by the Organization;

“Advance Payment” means the sum of funds needed to ‘top up’ the Organisation’s existing prepayment account to 100,000 Euros, exclusive of VAT, paid into the Prepayment Fund by the Organization;
“Article” means primary research material submitted to an Open Access Product or Open Select Product, to be subjected to peer review by that Open Access Product or Open Select Product, and, if deemed acceptable, to be published by that Open Access Product or Open Select Product;

“Article Publishing Charge” or “APC” means the charge levied by the Publisher on the acceptance of primary research material for publication in the eligible Open Access Product or Open Select Products, the amount of which is dependent on the publication in which such material is published;

“Austrian Science Fund APC Spend” means the amount in Euros (excluding tax) spent on Gold Open Access publication in the Open Select Products by the Organization.

“Commencement Date” means 1 January 2020;

“Confidential Information” means information which is disclosed orally, in writing, or by any other means and which: (i) by its nature is confidential; (ii) is designated by the disclosing party as confidential; and/or (iii) which the receiving party knows or ought to know is confidential, and which in each case is disclosed by or on behalf of the disclosing party to the receiving party in connection with this Agreement, and shall exclude the contents of this Open Access Prepayment Account Agreement, as agreed between the parties;

“Corporate Member” means any member of staff employed by or otherwise engaged by the Organization;

“Credit” means a figure in Euros (excluding tax) that is calculated based on the annual Austrian Science Fund APC Spend and offered to institutional members of Kooperation E-Medien Österreich (KEMÖ) under the terms of separate agreements with the effect of reducing certain agreed payments payable by institutional members of KEMÖ to the Publisher.

“Gold Open Access” means a form of open access in which the final published version of an article (or the Version of Record) is made permanently freely available online for anyone to access. An APC may be applicable.

“Licenced Materials” means the visual and audio material, databases, and other publications, that are recorded on or contained in electronic data media, or that are otherwise made available electronically by the Publisher to the Kooperation E-Medien Österreich Licencee in accordance with a separate Agreement.

“Member” means any Academic Member and Corporate Member (as relevant);

“Open Access Product” means:
- the Taylor & Francis and Routledge full open access journals (Taylor & Francis Open / Routledge Open),
- the Cogent OA full open access journals (the Cogent Series),
- the Cogent OA co-published full open access journals,
- the Informa Healthcare full open access journals,
• the Taylor & Francis and Routledge open access option within subscription-based journals (Taylor & Francis Open Select / Routledge Open Select), and
• the Informa Healthcare open access option within subscription-based journals;

"Open Select Product" means the Taylor & Francis and Routledge gold open access option within subscription-based journals (Taylor & Francis / Routledge Open Select).

"Prepayment Discount" means a discount against the Article Publishing Charge of any applicable Article as described in Schedule 1.

"Prepayment Fund" means the Advance Payment and any Additional Contributions held in a non-interest bearing account by the Publisher;

"Prepayment Fee" means the Article Publishing Charge less any Prepayment Discount which shall be deducted from the Advance Payment;

"Site" means the website at the URL [www.tandfonline.com](http://www.tandfonline.com);

2. The Publisher's Obligations

2.1 The Advance Payment shall only apply to peer-reviewed Articles fully or partly funded by the Organization.

2.2 The Publisher is authorized to collect payments under this Agreement both on its own behalf and on behalf of other companies in the Publisher's group which own or publish an Open Access Product or Open Select Product. In consideration of the payments made by the Organization and subject to the terms and conditions of this Agreement the Publisher shall during the term of this Agreement;

2.2.1 Debit Article Publishing Charges from the Prepayment Fund (upon authorization by the Organization) for any primary research material submitted by a Member who is author of the material that is subsequently selected for publication in an Open Access Product or Open Select Product;

2.2.2 List the Organization on the Site as an Open Access Prepayment Account holder; and

2.2.3 Provide a link on the Site to the home page of the Organization's Website.

2.3 The Publisher agrees to offer the Credit to institutional members of Kooperation E-Medien Österreich under the terms of separate agreements, a provisional draft template of which is at Schedule 1.

2.4 The Publisher shall use its reasonable endeavours to ensure that:

2.4.1 Ownership of copyright in individual Articles published on a Gold Open Access basis in an Open Access Product or Open Select Product and funded by the Organization will be retained by the relevant author(s);
2.4.2 Articles accepted for publication on a Gold Open Access basis and funded by the Organization will be published under the terms of the Creative Commons Attribution License (http://creativecommons.org/licenses/by/4.0);

2.4.3 Articles published on a Gold Open Access basis and funded by the Organization will clearly note this status in their PDF, HTML and .xml forms, making them identifiable as Open Access to bibliographic and bibliometric databases; and

2.4.4 Full text of Articles published on a Gold Open Access basis and funded by the Organization in the life and biomedical sciences will be sent to the PubMedCentral repository.

3. Editorial Independence

Nothing in this Agreement shall oblige the Publisher to publish any article submitted to the Publisher by a Member or the Organization. The Organization acknowledges that the selection of material via peer review to be published in the Open Access Product or Open Select Product is entirely at the discretion of the Publisher and/or the editors or proprietors of the Open Access Product or Open Select Product and the Organization waives any claim it may have against the Publisher in the event that the Publisher or its editors refuse or decline to publish any material (or part thereof) submitted by a Member or the Organization.

An Article will be considered to be selected for publication once the author(s) has been notified that the Article has been accepted following peer review, and the Publisher has received the applicable publishing agreement for the Open Access Product or Open Select Product signed by the rights holders in the Article.

4. Terms of Publication

The Organization acknowledges that before any material submitted by a Member or the Organization will be accepted for publication the author 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) in writing via the execution of a Publishing Agreement between author or owner and the Publisher.

5. Payment of Fees and Reporting

5.1 During the term of this Agreement the Organization agrees to pay to the Publisher the Prepayment Fees.

5.2 The Organization agrees to pay the Publisher the Advance Payment within 30 days of the date of this Agreement.

5.3 During the term of this Agreement the Publisher shall:

5.3.1 within thirty (30) days after the end of each month submit to the Organization a report detailing the balance of the Prepayment Fund at the commencement of the previous month, the
material published, the applicable Article Publishing Charges and the applicable Prepayment Discount deducted from the Advance Payment; and

5.3.2 Send the Organization a statement within **thirty (30) days** after an Article Publishing Charge is applied to the Prepayment Fund.

5.4 All amounts payable by the Organization under this Agreement shall be exclusive of any sales, value added or similar taxes.

5.5 Invoices are payable by the Organization within **thirty (30) days** of the date of invoice unless otherwise agreed between the parties or stated on the invoice.

6. Additional payments into the Prepayment Fund

6.1 In addition to the Advance Payment, the Organization may make such Additional Contributions as it wishes into the Prepayment Fund during the term of this Agreement. The Prepayment Discount shall apply to any such Additional Contributions made under this clause, except where the parties agree to apply a different discount percentage to any or all of the Additional Contributions.

6.2 If the Prepayment Fund reduces to a balance equal to or under €10,000 at any point during the agreement, the Organization agrees to make an Additional Contribution, the amount of which will be determined mutually between the Organization and the Publisher.

6.3 Notwithstanding the above, if the balance of the Prepayment Fund is less than the balance due from the Organization for any Article Publishing Charges, the Publisher will notify the Organization and, if authorized by the Organization, will invoice for the outstanding balance due. If not authorized by the Organization, the submission(s) will not be made available on an open access basis.

7. Term and Termination

7.1 This Agreement shall begin on the Commencement Date and shall continue until 31st **December 2022** unless terminated by either Party in accordance with the terms of this Agreement ("Initial Period"). After the Initial Period, this Agreement shall renew automatically for consecutive renewal terms of twelve (12) months (each a "Renewal Term"), unless either party gives the other written notice of its intention not to renew this Agreement at least one month prior to the expiration of the then current Renewal Term.

7.2 Either Party may terminate this Agreement at any time upon written notice to the other if the other Party commits a material breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within thirty (30) days after receiving written notice of the breach.
7.3 Either Party may terminate the Agreement forthwith on notice in writing to the other if the other Party is unable to pay its debts or ceases or threatens to cease to carry on business, goes into administration, receivership or administrative receivership, or any event analogous to any of the foregoing occurs in any jurisdiction.

7.4 In the event of termination of this Agreement in accordance with Clause 7.2 or 7.3, the Publisher shall refund all monies in the Prepayment Fund that have not been allocated to an Article.

7.5 On expiry of the Initial Period, and on written notice from the Organization of its intention not to renew this Agreement, the balance of the Prepayment Fund will be returned by the Publisher to the Organization.

8. Force Majeure

Either Party's failure to perform any term or condition of this Agreement as a result of conditions beyond its reasonable control such as, but not limited to, war, strikes, fires, floods, governmental restrictions, acts of terrorism, public health emergencies, power failures, or damage or destruction of any network facilities or servers shall not be deemed a breach of this Agreement.

9. Notice

Any notice, request, statement or other communication to be given hereunder to any Party shall be in writing addressed to the Party as follows:

If to the Publisher:

If to the Organization:

or mailed or delivered to such other address as each Party may designate by notice given in like manner, and any such notice, request, statement or other communication, shall be deemed
to have been given when received, except that if mailed by registered or certified mail, return receipt requested, or delivered by overnight courier service, it shall be deemed to have been given when mailed as aforesaid or when delivered.

General enquiries about the Agreement or its administration shall be addressed to the Parties as follows:

If to the Publisher:

If to the Organization:

10. Liability

10.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its own negligence or any other liability the exclusion or limitation of which is expressly prohibited by law.

10.2 Except as provided for in Clause 10.1 above, the Publisher excludes all liabilities to the fullest extent permitted by law and in no event shall the Publisher be liable to the Organization for:

(a) loss of profits, business, revenue, goodwill, anticipated savings; and/or
(b) indirect, special or consequential loss or damage.

11. Severability

In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.
12. Confidentiality

12.1 Each Party undertakes that it shall not at any time and for a period of five years after termination or expiry of this Agreement disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by clause 12.2.

12.2 Each Party may disclose the other Party's Confidential Information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 12.2; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No Party shall use any other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

13. Waivers

This Agreement constitutes the complete understanding of the Parties and supersedes all prior understandings between the Parties with respect to the subject matter of this Agreement. No modification, amendment, or waiver of any provisions shall be valid unless agreed in writing and signed by both Parties. Any waiver in one or more instances by either of the Parties of any breach by the other of any terms or provisions contained in this Agreement shall not be considered a waiver of any succeeding or preceding breach.

14. Assignment

The Publisher may assign this Agreement to its successors, subsidiaries, or assigns. This Agreement may not be assigned by the Organization, except with the prior written consent of the Publisher.

15. No Partnership or Agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of the other Party, or authorize the other Party to make or enter into any commitments for or on behalf of the other Party.

16. Third Parties

A person who is not a Party to this Agreement shall have no rights under the provisions of the Contracts (Rights of Third Parties) Act 1999 which shall be specifically excluded from the scope of this Agreement.
17. Law and Jurisdiction

17.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in accordance with English law.

17.2 Each Party agrees that the English courts shall have jurisdiction to settle any claim or matter arising under this Agreement or its subject matter or formation (including non-contractual disputes or claims) and each Party irrevocably submits to the exclusive jurisdiction of the English Courts.

18. Clause Headings

Clause headings are for convenience only and, being no part of this Agreement, shall not be used to modify, interpret or change it.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by Mr. Klement Tockner

For and on behalf of Fonds zur Förderung der wissenschaftlichen Forschung (also known as FWF and Austrian Science Fund)

Signed by Ian Jones

For and on behalf of INFORMA UK LIMITED (TRADING AS TAYLOR & FRANCIS GROUP)
Schedule 1

Additional terms; Credit and Prepayment Discount

The amount of the Credit in respect of each calendar year shall be a percentage of the total Austrian Science Fund APC Spend two years previously (for example, the Credit for 2020 will be based on the Austrian Science Fund Open Select APC spend in 2018). The Publisher and the Organisation shall calculate and mutually agree in good faith the amount of the relevant year’s Austrian Science Fund APC Spend prior to calculating the Credit. The Advance Payment amount of 100,000 Euros makes the Organisation eligible of the Prepayment discount of 30% against the Article Publishing Charge over the whole term of the agreement, meaning that the Article Publishing Charge will be deducted from the Prepayment Fund for each APC.

The percentage of the Credit shall be as follows:

(a) If applied to current or previously Licensed Materials, the Credit shall be 94% of the Austrian Science Fund APC Spend;

(b) If applied to future Licensed Materials the Credit shall be 94% of the Austrian Science Fund APC Spend.

The Licensee may choose to use their share of the Credit for either current or previously Licensed Materials or future Licensed Materials.

The Credit must be used by the end of the calendar year in which it was issued.

The Parties acknowledge and agree that they intend to review the Credit arrangement in good faith as part of overall renewal discussions prior to the expiry of this Agreement.

Nothing in this Agreement shall oblige the Publisher to publish any article submitted to the Publisher. The Licensee acknowledges that the selection of material via peer review to be published in the Open Access Product(s) is entirely at the discretion of the Publisher and/or the editors or proprietors of the Open Access Product(s) and the Licensee waives any claim it may have against the Publisher in the event that the Publisher or its editors refuse or decline to publish any material (or part thereof) submitted to the Publisher.

The Publisher acknowledges and agrees that the final published article may be posted in a Repository if published on a Gold Open Access basis.