

OPEN ACCESS LICENSE AGREEMENT

This OPEN ACCESS LICENSE AGREEMENT (this “Agreement”), dated as of _____, 201__ (the “Effective Date”), by and between Wolters Kluwer Health, Inc., operating as Medical Research / Lippincott Williams & Wilkins, a Delaware corporation, having its principal place of business at Two Commerce Square, 2001 Market Street, Philadelphia, PA 19103 (the “Publisher”), and the World Health Organization (“WHO”, and together with the Publisher, the “Parties”).

1. Grant of License

WHO hereby grants to the Publisher and its Affiliates the non-exclusive, worldwide, royalty free, perpetual (for the duration of the applicable copyright) right and license to use the Work for all commercial or educational purposes, including, but not limited to, publishing, reproducing, marketing, distributing (themselves and through distributors), sublicensing, and selling copies of the Work throughout the world for the Term. If the individual author of the Work is a United States government employee, such license grant shall be limited to the extent the author is able to grant such license.

2. Warranties, Indemnification, and Limitation of Liability

a. WHO represents and warrants that:

(i) it has the right and power to enter into this Agreement, to grant the rights and licenses granted pursuant to this Agreement, and to perform all of its other obligations contained in this Agreement;

(ii) it has not previously assigned, transferred or otherwise encumbered the rights or licenses granted pursuant to this Agreement; and that the person executing this Agreement on WHO’s behalf is authorized to do so;

(iii) to the best of its knowledge, the Work and the licenses granted herein do not and will not infringe upon, violate or misappropriate any intellectual property rights or any other proprietary right, contract or other right or interest of any third party;

(iv) if the Work is a multi-authored Work, WHO has obtained written permission from each author of the Work to enter into this Agreement on behalf such author, and each such author has read, understands and has agreed to the terms of this Agreement; and

(v) WHO has obtained any necessary releases and permissions to quote from other sources in the Work and to include any works and materials in the Work and all such releases and permissions are in full force and effect.

b. WHO shall indemnify the Publisher for legal liability incurred by it on the grounds that the work is a violation of the above warranty. However, as soon as the Publisher becomes aware of circumstances which are likely to give rise to an obligation on the part of WHO to indemnify it as provided above, it shall notify WHO and take steps to minimize liability, and shall follow any instructions given by WHO regarding the defense against the claim concerned.

c. The Publisher represents and warrants that it has the right and power to enter into this Agreement and to perform its obligations contained in this Agreement, and that the person executing this Agreement on the Publisher’s behalf is authorized to do so.

d. The Publisher hereby indemnifies WHO and agrees to defend and hold the WHO harmless from and against any and all liability, damage, loss, costs or expenses (including reasonable attorney’s fees and costs of settlement) incurred by the WHO arising out of, or relating to any misrepresentation in, or breach or alleged

breach of the Publisher's representations or warranties in this Agreement. The obligations of this indemnification will survive any termination or expiration of this Agreement.

e. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER, AND HEREBY DISCLAIMS ALL OTHER, REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THE ABSENCE OF LATENT OR OTHER DEFECTS, ACCURACY, OR THE PRESENCE OR ABSENCE OF ERRORS, WHETHER OR NOT DISCOVERABLE.

f. EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY BASED UPON ANY LEGAL THEORY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF THIS LICENSE OR THE USE OF THE WORK, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

3. Creative Commons License.

The WHO acknowledges and agrees that the Work will be published by the Publisher in [INSERT NAME OF JOURNAL] (the "Journal") and made freely available to users under the terms of the Attribution 3.0 IGO Creative Commons License, as currently displayed at <https://creativecommons.org/licenses/by/3.0/igo/legalcode> (the "CC BY 3.0 IGO"). The Author acknowledges and agrees that that Publisher is the exclusive "Licensor", as defined in the CC BY 3.0 IGO, of the Work and that the Publisher may make the Work freely available to all users under the terms of the CC BY 3.0 IGO.

4. Royalties.

The WHO acknowledges and agrees that this Agreement entitles WHO to no royalties or fees. WHO waives any and all rights to collect royalties or other fees in relation to the Work or in respect of any use of the Work by the Publisher or its sublicensees.

5. Miscellaneous.

a. Assignment. This Agreement may not be assigned or transferred, in whole or in part, by either party without the prior written consent of the other party. Notwithstanding the above, the Publisher may assign this Agreement without the written consent of the Author (i) to an entity succeeding, whether by sale, merger or other corporate reorganization, to substantially all of the Publisher's assets and business activity, or (ii) to a corporation or organization that obtains the right to publish the Journal from the Publisher. The Publisher may assign this Agreement to any of its affiliates. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

b. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Facsimile or Portable Document Format (PDF) signatures will be deemed original signatures for purposes of this Agreement.

c. Entire Agreement; Amendment. This Agreement sets forth the entire agreement of the parties on the subject hereof and supersedes all previous or contemporaneous oral or written representations or agreements relating to the rights and duties provided herein, and may not be modified or amended except by written agreement of the parties.

d. Force Majeure. Neither party shall be liable for any default or delay on its part in performing any obligation under this Agreement if such default or delay is caused by natural disaster, accident, war, civil disorder, strike or any other cause beyond the reasonable control of such party. In the event that either

party is prevented by such an occurrence or circumstance for a period of more than ninety (90) days from fulfilling its obligations under this Agreement, the other party may terminate this Agreement upon thirty (30) days' written notice.

- e. **Disputes.** Any dispute relating to the interpretation or application of this Agreement shall, unless amicably settled, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the parties or, in the absence of agreement, with the rules of arbitration of the International Chamber of Commerce. The parties shall accept the arbitral award as final.
- f. **Headings.** All headings are for reference purposes only and shall not affect the meaning or interpretation of any provision hereof.
- h. **Status of the Parties.** The parties are independent contractors. Nothing in this Agreement is intended to or shall be construed to constitute or establish any agency, joint venture, partnership or fiduciary relationship between the parties, and neither party has the right or authority to bind the other party nor shall either party be responsible for the acts or omissions of the other.
- i. **Waiver; Amendment.** The waiver by either party of or the failure by either party to claim a breach of any provision of this Agreement shall not be, or be held to be, a waiver of any subsequent breach or affect in any way the further effectiveness of any such provision. No term or condition of this Agreement may be waived except by an agreement by the parties in writing.
- j. **Privileges and immunities.** Nothing in or relating to this Agreement shall be deemed a waiver of any of the privileges and immunities of WHO in conformity with the Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on November 21, 1947 or otherwise under any national or international law, convention or agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each party to this Agreement has caused this Agreement, effective as of the Effective Date, to be signed by its duly authorized representative.

WHO

Print Name:

WOLTERS KLUWER HEALTH, INC., OPERATING AS MEDICAL RESEARCH /
LIPPINCOTT WILLIAMS & WILKINS

By: _____

Name:

Title:

Schedule A

This Schedule A must be completed by Author in its entirety. The Publisher is unable to publish the Work unless this Schedule A is completely filled out.

Article Tracking #: _____

Article Title (the "Work"): _____

Corresponding Author Name (the "Author") (please print): _____

Copyright Owner's Name (please print): World Health Organization_____

Name of Journal in which Work is to be Published: _____