

Text and Data Mining Sample Subscription

I. Anchor-provision for insertion in Agreement

Text and Data Mining: Subscriber who intends to use Publisher's Content as a source for text and data mining purposes, shall contact the Publisher with a proposal to agree upon the scope, purpose and deal terms of a text and data mining Subscription, substantially in the form as set out in Annex A to this Agreement. Subscriber and Publisher will in good faith analyse the effects of any agreed TDM on the usage stats of the subscribed Publisher's Content.

II. Annex A – Text and Data Mining Subscription ("TDMS")

By and Between [PUBLISHER] ("Publisher") and [INSERT COMPANY / GROUP] "Subscriber"

1. Definitions

"Authorised User" means any employee of the Subscriber [DEFINE, eg "Group" or "and any employee of any entity owned and/or effectively controlled by the Subscriber"].

"Publisher's Content" means the whole or any part of a copyright-protected literary work, of a database or of any other information product owned or controlled by the Publisher or its suppliers, and includes (without limitation) any illustration, table, figure, header information, abstracts, bibliographic information or any video or computer-animated design embedded or incorporated in such literary work, database or information product. For avoidance of doubt, Publisher's Content includes manuscripts of books, published journal articles, abstracts and bibliographic information contained in the institutional or subject repositories, where the Publisher has not expressly agreed to the text and data mining of any such content.

"Text and Data Mining" means to perform extensive automated searches of Publisher's Content, the sorting, parsing, addition or removal of linguistic structures, and the selection and inclusion of content into an index or database for purposes of classification or recognition of relations and associations.

"Text and Data Mining Output" means the result of any Text and Data Mining activity or operation, capable of fixation, reproduction and/or communication in any form, such as the creation of an index, reference, abstract, relative or absolute description or representation of Publishers' Content, an algorithm, formula, metrics, method, standard or taxonomy describing or based on Publishers' Content, a relational expression or measurement, whether scalable or not, of Publishers' Content, extraction, alternative representation or translation, expression or discussion of any extracts from mined Publisher's Content, whether in the form of a direct extraction or a representation in any form which is based on Publishers' Content.

2. Description and term of the TDM Project

Upon the terms and conditions of this TDMS Publisher grants Subscriber the non-exclusive, non-transferrable right and permits text and data mining of Publisher's Content [alternatively, limited to the Project and for the express purposes listed below].

[Subscriber may access and use the Publisher's Content for TDM provided hereunder in accordance with the provisions and during the term of this Agreement for as long as the Subscriber contemporaneously maintains a subscription to such Publisher Content on the "XYZ" online service]. [Alternative or additional option: During the continuance of this agreement, Subscriber may aggregate Publisher's Content with third party content solely for purposes of the Project]

Subscriber

The term of this Agreement shall commence on __ _____ 201_ and continue in perpetuity in accordance with the provisions of this Agreement and Schedule 1.

The Subscriber acknowledges that all right, title and interest in and to the Publisher's Content remain with the Publisher and its suppliers and that unauthorized use and/or redistribution of Publisher's Content or the TDM Output could materially harm the Publisher and its suppliers.

[If limited to a Project:

The Project relates to [INSERT PROJECT DETAILS].

For avoidance of doubt,

the Project is limited purely to internal non-commercial research purposes [OR:]

the Project is limited purely to internal commercial research purposes [OR:]

the Project extends to the following limited external commercial activities: [INSERT DESCRIPTION] which do not conflict, compete or take away from actual or contemplated offerings of the Publisher.]

3. Subscriber may:

- a) Text and Data Mining of locally loaded Publisher Content: load and technically format Publisher's Content on a Subscriber or third party server that enables access to and use of such Publisher's Content for TDM purposes by Authorized Users by using automated programs or devices to continuously and automatically (i) download, extract and index information from the Publisher's Content for the purpose of enhanced navigation of the "XYZ" database to which the Subscriber separately subscribes and (ii) extract semantic entities from the Publisher's Content for the purpose of recognition and classification of the relations between them and mount, load and integrate the results on a server used for the Subscriber's text-mining system (i.e., not in libraries, repositories or archives) and (iii) derive patterns within the Publisher's Content, and (iv) evaluate and interpret of the TDM Output for access and use by Authorized Users. [OR:]

- b) Text and Data Mining at Publisher Site: implement applications to analyse Publisher's Content and to use the application programmable interfaces ("APIs"), data, files and other materials provided by the Publisher, to develop and test the Subscriber's software application ("Application") and to integrate the Application with the API, in accordance with the API Documentation to enable the inclusion of content and data from the Services in the Developer Application ("Integration"), subject to the usage restrictions as set forth in the Content Usage Policies on [YYY.com/content usage policies](http://YYY.com/content-usage-policies).

Whether TDM is carried out under clause 3(a) with Publisher Content placed temporarily on Subscriber/Third-party agreed server, or under clause 3(b) at a site designated or controlled by the Publisher hereof, Publisher excludes any warranty regarding the quality of the data, formatting and errors or omissions. The Publishers' Content is made available "as is" and without warranty of fitting the description of the Content in meta-data or otherwise, any fitness for purpose, satisfactory quality, reliability, completeness and any disclaims any implied quality.

- 4. Except as expressly stated in this Agreement or otherwise permitted in writing by Publisher, the Subscriber and its Authorized Users may not:
 - a) perform systematic or substantive extracting, especially when performed for the purposes to create a product or service for use by third parties;
 - b) utilise the TDM Output to enhance institutional or subject repositories in a way that would compete with the value of the final peer-review journal article, or have the potential to substitute and/or replicate any other existing Publisher product, service and/or solution;
 - c) make the results of any TDM Output available on an externally facing server or website;
 - d) allow a third party to harvest any TDM Output to an internal server;
 - e) extract, develop or use Publisher's Content in any commercial activity;
 - f) abridge, modify, translate or create any derivative work based on the Publisher's Content, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;
 - g) remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the Publisher's Content;
 - h) In the case of Text and Data Mining at Publisher's site: use any robots, spiders, crawlers or other automated downloading programs, algorithms or devices to continuously and automatically search, scrape, extract, deep link, index or disrupt the working of the Publisher's Content;
 - i) substantially or systematically reproduce, retain or redistribute the Publisher's Content.

5. Security, Grant of Access Rights, Formats and Delivery Mechanisms

The Publisher and the Subscriber agree the following access protocols:

[INSERT AS APPLICABLE: onsite delivery, ftp file transfer, format (eg XML), use of manuscripts placed with the consent of the Publisher in any institutional or subject repository, application programming interfaces (APIs), use of “free” Publisher Content at Publisher website, including article abstracts].

Subscriber shall implement and maintain adequate and effective state of the art data security systems and measures, in line with international industry standards and best practice.

Publisher shall be entitled, at its sole discretion, cost and expense to audit Subscribers entire TDM environment, which would include the content loaded, the hardware environment, software deployed, physical and general controls in place to guard the content and ensure it is disseminated only to those individuals / institutions as per the Project’s terms and conditions.

In the event the Subscriber collects or otherwise processes or uses personal data Subscriber shall expressly obtain consent from the end user or any person that is a beneficiary of applicable data protection laws which shall be limited to the use the end user/affected person expressly consents to. Subscriber shall undertake the appropriate technical and security measures to protect any personal data Subscriber collects.

6. Fee: the commercial aspects of this TDMS are set out in Schedule 1 which forms an integral part of this Subscription.

7. Breach: In addition to any contractual rights and remedies under the applicable law, Publisher shall retain the right to deny access to any publisher-hosted content where the Subscriber is in breach of any of the conditions of this TDMS. Where Subscriber has made available any of Publisher’s Content or any resulting TDM Output available to third parties, Publisher shall be entitled to terminate this Agreement and also to charge the Subscriber any Subscription fee that would have been payable to the Publisher, had the use in question been agreed. Alternatively. For avoidance of doubt, the foregoing contractual remedies apply in addition and not in substitution of any rights and remedies for breach available in law, such as the right to terminate this Agreement, the right to claim damages and disgorging of any profits generated by reason of any TDM Output in contravention of this TDMS.

8. Termination

- a. Notice: Either Party may terminate this Agreement on a six-month notice. [alternatively: termination for breach only].

- b. Bankruptcy, receivership, assignment on behalf of creditors: this Agreement shall terminate automatically on declaration of bankruptcy, receivership or assignment or arrangement on behalf of or with creditors.
- c. [Removal of Data Set / Certificate of Destruction: Upon termination of this TDMS or upon termination of the Agreement, howsoever arising, the Subscriber shall procure the destruction of any copies of the Publisher's Content if locally loaded for purposes of Text and Data Mining. The Subscriber shall provide a certificate of destruction no later than 30 days after termination, signed by an authorized officer of the Subscriber.]
- d. TDM Output

For avoidance of doubt, clause 4 of this TDMS shall remain effective and survive termination of this Agreement.

SCHEDULE 1 – Fees and Commercial Terms and Conditions

[Note: Fees will vary depending on clause 2(a), 2(b) and 2(c) of TDMS and on whether or not the Publisher's Content is subscribed. Also, the fee will vary depending on the security and access protocols and the delivery of locally loaded content or online access of publisher-hosted content accessed through APIs or content syndication protocols.]

Subscriber shall pay a one-time / annual fee of [INSERT NUMBER, CURRENCY], payable on conclusion of this TDMS for TDM in line with the Project description

[If applicable: Subscriber shall pay the following fee for the limited external commercial/external uses permitted under the Project: [INSERT NUMBER, CURRENCY]].

[Alternatively:]

Subscriber shall not be charged for any TDMS, provided the scope remains purely internal and non-commercial and as circumscribed in the Project description.

[Alternatively:]

Subscriber shall not pay a fee, for as long as the Subscriber maintains an annual subscription on "XYZ".

III. Comments

[INSERT MORE COMMENTS / QUERIES IF ANY]
