

Sample electronic license agreement of adhesion for the use of the work under the conditions of open access

1. General conditions

1.1. This document is an offer by _____ (indicate the name of the scientific institution) (hereinafter — the Licensee), which acts upon the Statute and Regulation on the Protection of Intellectual Property Rights in the NAS of Ukraine, approved by the Order of the Presidium of the NAS of Ukraine dated 16.01.2008 No. 15 as amended (hereinafter the Regulation), to the author of the work (hereinafter — the Licensor) regarding accession to the *electronic license agreement of adhesion for the use of the work under the conditions of open access* (hereinafter the Agreement) in _____ (indicate the name of the scientific periodical) (hereinafter the Periodical), published by _____ (indicate the name of the publisher — the institution of the NAS of Ukraine).

If the work is co-authored, this Agreement is made by one of the co-authors on behalf of all the co-authors by their letter of attorney, a copy of which is submitted to the Licensee together with the conclusion of this Agreement.

This electronic license agreement for the use of the work under open access conditions is made following Articles 48, 50, 51 of the Law of Ukraine “On Copyright and Related Rights” (hereinafter the Law) and Art. 444, 1107—1110 of the Civil Code of Ukraine and is a license agreement according to the second part of Article 50 of the Law.

According to Articles 634, 639, 641, and 642 of the Civil Code of Ukraine, if the person to whom the offer to conclude an agreement is addressed accepts this offer, the agreement is considered to be concluded on the terms specified in the offer.

1.2. The parties agree that this Agreement is an agreement of adhesion within the meaning of Art. 634, of the Civil Code of Ukraine and is concluded in electronic form with the help of information and communication systems by adhesion the Licensor to all its conditions as a whole.

1.3. The parties agree that:

— this Agreement is concluded

through the Licensee’s offer to conclude it (offer), which is placed on the Periodical’s web resource, and

with which the Licensor is acknowledged during the registration of the author’s account on the Periodical’s web resource,

and its acceptance (accept) by the Licensor;

— the Licensor’s response regarding the acceptance (accept) of the offer to conclude the Agreement is provided by:

registration by the Licensor of the author’s account of the Periodical with the information identifying the Licensor and

placing the mark “Yes” before the words “By placing a mark before the word “Yes”, the Licensor takes (accepts) the offer of the Licensee regarding the conclusion of the Electronic License Agreement for the use of the work under the conditions of open access in _____ (indicate the name of the scientific periodical), published by _____ (indicate the name of the publisher — the institution of the NAS of Ukraine)”.

2. Definitions

2.1. Definitions in this Agreement shall have the following meanings:

The Periodical’s web resource is a complex of integrated technical and software-hardware resources identified on the Internet, as well as information intended for network publication and assigned to one domain; it can contain information in text, graphic, and multimedia form and has a unique electronic address.

Open access — granting online access to scientific publications, preprints, and research data to users with the possibility of using them according to the terms of open access licenses.

An agreement of adhesion is an agreement, the terms of which are set by one of the parties in set forms or other standard forms, which can be concluded only by the adhesion of the other party to the proposed agreement entirely. The other party cannot offer its terms and conditions of the agreement (Article 634 of the Civil Code of Ukraine).

Research data, with the view of this Agreement, information on physical media or in electronic form (text records, tables, graphs, etc.), necessary to confirm the conclusions and results of research in scientific publications.

Limited access information is confidential information, secret and official information (Article 21 of the Law of Ukraine “On Information”, Article 6 of the Law of Ukraine “On Access to Public Information”), which includes state secrets, commercial secrets, know-how, etc.

Granting of interactive access is the distribution of the work and research data on the Internet or other interactive networks so that users can access the specified objects from the place and at the time chosen by them individually (taking into account Article 1 of the Law of Ukraine “On Copyright law and related rights” and Article 8 of the World Intellectual Property Organization Copyright Treaty).

A license, with the view of this Agreement, is a one-side power — permission to use a certain object of civil rights (information, work, etc.).

License for the use of an object of intellectual property ownership — a type of power regarding the management of property rights of intellectual property — permission to use an object of intellectual property ownership (in particular, a scientific publication) granted to another person (licensee) in a certain limited scope.

A public license for the use of a work is a license for the use of a work granted by the subject of copyright under the conditions determined by him. A person who uses a work based on a public license should comply with the conditions defined by the subject of the copyright under which it was issued (Article 444 of the Civil Code of Ukraine, Article 51 of the Law of Ukraine “On Copyright and Related Rights”). With the view of this Agreement, such a license may be also called an Open Access License for the use of the work.

Open access license for the use of research data is one-side power, permission to use research data. A one-side power may create obligations for the person who committed it and for other persons in cases allowed by law or by agreement with these persons (Article 202 of the Civil Code of Ukraine).

Creative Commons licenses are open-access licenses developed by the international non-profit organization Creative Commons, used in international practice to grant access to scientific publications, preprints, research data, and metadata.¹

The scientific publication, with the view of this Agreement, is a work (articles, theses, reports, materials of scientific events) of a scientific nature, approved for publication by the scientific (scientific-technical, technical) council of a scientific institution or institution of higher education, which has passed the procedure of scientific review and editorial and publishing handling, and contains the results of scientific, scientific and technical activities.

A ***derivative work*** is the result of the creative processing of another work without harming its protection or its creative translation into another language (Article 17 of the Law of Ukraine “On Copyright and Related Rights”).

A ***manuscript of a work***, with the view of this Agreement, is a manuscript of a scientific nature in written or electronic (digital) form, which is intended to be submitted for printing in a scientific periodical or an open-access information resource in the form of a scientific paper, which has not passed the procedures of scientific review and editorial and publishing handling and is not published yet.

3. Subject of the agreement

3.1. The Licensor grants the Licensee permission to produce and publish a copy of the Work in electronic (digital) or other form in _____ (*name of Periodical*), which is published by _____ (*indicate the name of the publisher — the institution of the NAS of Ukraine*), following the rules of publication, in _____ (*name of the Periodical*) specified by the Licensee.

The Licensor provides a copy of the manuscript of the Work in electronic (digital) form to the Licensee together with the conclusion of this Agreement.

Licensor(s) affirm(s) that (s)he/they have not granted and will not grant permission to produce and publish a copy of the Work to another publisher; the ownership of the Work has not been transferred to other persons, and license to use the Work has not been granted to other persons.

3.2 The Licensee performs editorial and publishing handling of the Work manuscript and bringing the published Work to the public by placing a copy of the published Work in electronic (digital) form on the Periodical’s web resource and providing interactive access to the Work on the Internet or other interactive networks.

3.3 The use of the manuscript of the Work during the editorial and publishing handling of the Work, publication of the Work, as well as the use of the published copy of the Work by the Licensor(s) and users is performed under the terms of the Creative Commons open access license (hereinafter the CC License), the type of which is determined by the Regulation on Open Science at the NAS of Ukraine, approved by the Order of the Presidium of the NAS of Ukraine dated 12.06.2024 No. 350, to wit (*Specify the type of CC license in accordance with the recommendations listed in Appendix 4 to the Regulation on the use of intellectual property objects in the NAS of Ukraine, approved by the Order of the NAS of Ukraine dated January 16, 2008 (as amended)*): _____

3.4. The ways of use of the Work are determined by the CC License specified in Clause 3.3 of this Agreement.

3.5. The Territory of use of the Work is defined as the world.

¹ About CC Licenses. Creative Commons. URL: <https://creativecommons.org/about/cclicenses/>

3.6. The CC License granting term is the term of validity of intellectual property ownership of the Work.

3.7. The Licensee has the right to enter into sub-licensing publishing agreements regarding the production and publication of a copy of the Work with other persons if this is necessary for the publishing of the Work in the Periodical or the publishing of the Work in other countries.

4. Disclaimer

4.1. Licensor(s) claim(s) that:

a) manuscript of the Work:

— is original, (s)he (they) is (are) the author (co-authors) of the Work;

— is read and approved by all the authors specified in the Agreement. Only contributors who made a significant contribution to the manuscript are listed as authors. The order of authorship indicated in the manuscript was approved by all authors;

— has not been published previously;

— has not been submitted for consideration to any other scientific journal (periodical), and it also will not be submitted for consideration to another scientific journal (periodical) during consideration of the Work in the Periodical; The Work is not made available to the public before the date of submission of the manuscript of the Work to the Periodical;

— does not contain limited access information — confidential, secret, and official information, in particular, state secrets, commercial secrets, know-how;

— does not contain false or illegal statements;

b) during the creation of the Work, the Licensor did not violate the intellectual property rights of other persons. If the Work contains works (their excerpts) created by other persons, the Licensor has used such works in compliance with the law and the rules of citation;

c) if the Work is an official work, the Licensor's employer granted him (her) the right to enter into a license agreement with the Publisher for the use of the Work for the purpose of publication;

d) if the Licensor's employer has established the procedure for reviewing official works before their publication, the Licensor has agreed to the possibility of publishing the Work following the procedure established by the employer;

e) there is no conflict of interest. If there is a conflict of interest, the Licensor is obliged to inform the editorial board of the Periodical about any private interest that could affect the presented results or their interpretation.

5. Other conditions

5.1. The copy of the Work conformed by the Licensee and the Licensor(s) and accepted for publication is an integral part of this Agreement.

5.2. Changes to the Work during editorial and publishing handling of the manuscript of the Work are performed by the Licensee in agreement with the Licensor(s).

5.3. If the Work is meant to be published along with a reference to the research data needed to confirm the research results presented in the Work, the Licensor specifies a hyperlink (Digital Object Identifier hereinafter — DOI) to such data in the open access information resource while registering the author's account of the Periodical.

5.4. When referencing a published Work, the Licensor (co-authors of the Work) should provide a hyperlink to an electronic copy of the published Work by indicating its DOI provided by the Licensee for publication of the Work.

5.5. If the type of the license specified in Clause 3.3 of this Agreement does not intend to grant the right for derivative works distribution, the editorial policy of the Periodical may provide the rules for the distribution of translations of the Work in languages other than the language of the published Work and the Licensee has the right to grant a public license for distribution of the Work translation or enter into sublicensing agreements regarding the distribution of the translation of the Work.

5.6. If the type of license specified in Clause 3.3 of this Agreement provides the use of the Work for non-commercial purposes and the Licensee receives requests from persons regarding the use of the Work for commercial purposes, the Licensee has the right to enter into sublicense agreements with the specified persons regarding the use of the Work for commercial purposes.

5.7. This contract implies no payment, except for cases when the publishing of the Work in publications published in foreign countries, or other use of the Works, contracts between the Licensee and publishers, other persons includes the payment of money reward for the use of the Work. The conditions and procedure for payment of such money reward to the Licensor are determined by an addendum to this Agreement.

5.8. In the copy of the published Work, in the copyright sign, the Licensee is indicated as the publisher of the Work, or the publisher of the Work, who has been granted the right to publish the Work and to indicate the publisher in the copyright sign by the institution of the NAS of Ukraine based on a sublicensing publishing agreement.

5.9. The Licensor and the Licensee agree that under the Law of Ukraine “On Copyright and Related Rights”, the use of works (or their excerpts) created by other persons in the Work is possible in the following cases:

— free use of works for citation and other cases specified in Articles 22—28 of the Law of Ukraine “On Copyright and Related Rights”;

— use of works with access granted under an open access license, according to the terms of this license;

— obtaining permission to use works according to a license agreement or other powers.

5.10. If the Licensee receives a claim to terminate copyright violation in the Work, the Licensee's actions are determined by Art. 56 "Procedure for termination of violations of copyright and related rights using the Internet" of the Law of Ukraine "On Copyright and Related Rights".

5.11. If the Licensee receives a claim regarding the use of information with limited access in his(her) Work, the Licensee's actions are determined by the current legislation.

5.12. The parties determine that in the case of the creation of the Work by co-authors, the Licensor is the only contact person during the publishing and editorial processing of the Work and is responsible for interaction with other co-authors regarding the processing of the Work during preparation for publication.

6. Protection of personal data

6.1. The procedure for processing and protecting personal data received during the fulfillment of the terms of this Agreement and policies to ensure the security of personal data are determined by the Periodical's policy on the use of personal data, published for review on the Periodical's web resource.

6.2. The list of personal data of the Licensor to which open access is provided and which are included in the metadata and the terms of use of personal data are determined by the Periodical's policy on the use of personal data. The Licensor indicates them during registration of the Author's account at the Periodical's web resource.

6.3. The Licensor confirms that (s)he fully and in due form understands the terms of use of personal data defined by the Periodical's policy (about the purpose of collecting personal data, the composition and content of this personal data, the persons whom the personal data may be given, etc.), and (s)he is also familiar with their rights defined by the Law of Ukraine "On the Protection of Personal Data".

6.4. By checking "Yes" concerning the acceptance (accept) of the proposal to conclude this Agreement during the registration of the author's account of the Periodical, the Licensor

— affirms that he read and understood the terms of use of personal data defined by the Periodical's policy on the use of personal data;

— gives voluntary consent to the processing of his personal data in connection with the conclusion and execution of this Agreement;

— gives permission to distribute his(her) personal data, defined by the policy of the Periodical, under the conditions of open access.

7. Liability of the parties

7.1. The parties agree to fulfill the terms of this Agreement properly.

7.2. The licensor (co-authors) is(are) liable for the copyright violation, information rights, and disclosure of information with limited access.

8. Dispute settlement procedure

8.1. All disputes that may arise between the Parties will be resolved through negotiations based on the current legislation of Ukraine and business practices.

8.2 If disputes cannot be resolved by negotiations, they shall be resolved in court following the current legislation of Ukraine.

9. Agreement duration period and termination

9.1. The Agreement is effective from the date of its signing and is concluded for the period of validity of intellectual property rights to the Work.

If the Agreement is concluded, but the Work was not accepted for publication based on the results of the review, the Agreement shall be considered terminated from the date the Licensee sends the notification about the rejection of Work for publication to the Licensor's e-mail address.

9.2. This Agreement may be brought to an early termination

9.2.1. By mutual agreement of the parties;

9.2.2. Under court decision;

9.2.3. By the Licensee in case of violation by the Licensor of the terms of this Agreement;

9.2.4. Initiated by one of the Parties with mandatory warning of the other Party in writing for at least 15 (fifteen) calendar days prior to the date of termination of the Agreement;

9.2.5. Initiated by the Licensor if (s)he does not agree with the changes to the terms of the Agreement made by the Licensee according to the procedure set forth in Section 10 of this Agreement. The Licensor must send the Licensee a notice of termination of the Agreement within 5 (five) working days from the day of publication of information about changes to the terms of the Agreement by the Licensee on the Periodical's web resource. In this case, the Agreement shall be considered terminated from the date of entry into force of the respective changes to the Agreement.

9.2.6. By the Licensee in case of non-acceptance of the Work for publication based on the results of the review of the Work.

10. Amendments to the Agreement

10.1. The Licensee has the right to make changes to this Agreement at his discretion by setting out a new version of the Agreement, amongst other things, which will take effect from the day they are published on the Periodical's web resource.