

**DATED June 2008**

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**THE HIGHER EDUCATION FUNDING COUNCIL FOR (1)  
ENGLAND**

**and**

**THE BRITISH LIBRARY (2)**

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**GRANT AGREEMENT**

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**THIS AGREEMENT** is made on 27 June 2008 **BETWEEN**

- (A) **THE HIGHER EDUCATION FUNDING COUNCIL FOR ENGLAND** whose address for correspondence is at Northavon House, Coldharbour Lane, Bristol, BS16 1QD (“**HEFCE**”); and
- (B) **THE BRITISH LIBRARY** whose address for business purposes is 96 Euston Road, London NW1 2DB (the “**Library**”).

1. **RECITALS:**

1.1 The Library’s aim is to ensure that access to its collections is widely available and that this access is delivered in an optimal manner. Undertaking activities funded by HEFCE to lead and co-ordinate new developments in research information provision will assist the Library in achieving this aim.

1.2 HEFCE is a body corporate established by section 62 of the Further and Higher Education Act 1992 (“the Act”) and is responsible under section 65 of the Act for administering funds made available by the Secretary of State for Innovation, Universities and Skills and others for the purpose of providing support for activities eligible for funding under that section.

1.3 Leading and co-ordinating new developments in the collaborative provision of research information in the UK constitutes activities falling within Section 65 of the Further and Higher Education Act 1992.

1.4 HEFCE has agreed to make a grant to the Library to meet expenditure in connection with the establishment and coordination of new developments in the collaborative provision of research information in the UK, through support of the Research Information Network (the RIN).

1.5 This Agreement sets out the terms and conditions subject to which HEFCE has agreed to make that grant available to the Library.

1.6 HEFCE may receive funds from other funding bodies to pass on to the Library on their behalf and, where this occurs, this agreement will cover all of these funds and not just those derived from HEFCE.

1.7 The Chief Executive of HEFCE is responsible and accountable to Parliament, as HEFCE’s Accounting Officer, for payments made to the Library and for satisfying himself that such payments are consistent with the purposes for which they were given to HEFCE and comply with the conditions attached to them. The Accounting Officer is also responsible for satisfying himself that the corporate governance, risk management and internal control system of the Library is appropriate and sufficient to safeguard public funds and that the Library observes the conditions of this Agreement. The Library acknowledges these responsibilities of the HEFCE Chief Executive. However, it is the responsibility of the Accounting Officer for the British Library to provide

assurance that the grant funding it receives for the activities covered by this agreement has been used for the purposes provided.

## 2. **Definitions**

2.1 In this Agreement, unless the context otherwise requires, definitions are as follows:

**“Agreement”** means this agreement comprising all of its clauses and schedules.

**“Commencement Date”** means the date of this Agreement;

**“Grant payment”** means the monies paid as a grant by HEFCE to the Library to fund the activities described in 1.4.

**“Confidential Information”** means secret or confidential commercial, financial, marketing, technical or other information (including, without limitation, information in or relating to), know-how, trade secrets and other information in any form or medium whether disclosed orally or in writing before or after the date of this Agreement, together with any reproductions of such information in any form or medium or any part(s) of this information (and **“confidential”** means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available);

**“Force Majeure”** means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under this Agreement including Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, whether of the affected party's own employees or others, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services;

**“Month”** means a calendar month.

2.2 References to any Act of Parliament are to such Act as amended or re-enacted from time to time and include subordinate legislation made under it.

2.3 References to clauses and the schedule are to clauses of, and the schedule to, this Agreement.

## 3. **Grant payments**

3.1 HEFCE agrees to make grant payments of a variable amount to the Library for subject to, and in accordance with, the terms and conditions of this Agreement on such dates as may be agreed between HEFCE and the Library, based on the recommendations of the funders' group which represents all funding bodies from whom HEFCE may channel funds (see 1.6).

3.2 Through the instrument of the RIN, the Library shall, unless otherwise agreed in writing by HEFCE, use the proceeds of the grant payment to develop the evidence

base, provide guidance and advice, and promote change in matters relating to the provision of research information in the UK".

3.3 The Library will incur both direct and indirect costs in undertaking these activities. Indirect costs shall be reasonable and in accordance with the normal accounting principles.

3.4 The Library will not normally pay the cost of overheads for these activities from grant payments received by HEFCE, as set out in the Memorandum of Understanding for these activities.

3.5 HEFCE may require the Library to pay back any funds provided in advance of need. However, the Library may carry over funds unspent at the year end by agreement with HEFCE.

3.6 If in HEFCE's reasonable opinion the Library has materially failed to meet the terms of this Agreement, HEFCE shall be entitled to withhold or ask for repayment of any part of the payments referred to in clause 3.1 until such time as HEFCE (in its sole discretion) is satisfied that the Library has remedied any such failure.

3.7 HEFCE shall be under no obligation to make any further payments to the Library other than those specifically agreed. HEFCE is willing to review the funding arrangements due to changes in circumstances where these were not reasonably foreseeable.

#### **4. Duration and business plans**

4.1 This Agreement shall come into force on the Commencement Date and (subject to the provisions for earlier termination in clause 7) shall last until 30 June 2011. A review of the funding arrangement will be undertaken during 2010, to determine whether the activity of RIN should continue beyond 2011.

4.2 The Library shall, within 6 months of the date of this agreement, produce a business plan setting out in detail how grant payments will be spent over the three years covered by this agreement. The business plan will include information and projections for the remainder of the three-year operating period; a risk assessment of the significant risks facing the activities covered by this agreement, and plans to mitigate such risks; and any other information and projections as HEFCE shall reasonably request. Revised business plans will be submitted in April 2009 and April 2010 addressing amendments to proposed expenditure each year.

#### **5. Financial control and audit**

5.1 The Library shall manage its financial and operational performance such that, at all times, it fully and effectively performs its obligations under the terms of this Agreement. The Library shall promptly notify HEFCE in writing of any material failure to properly, fully and effectively perform its obligations under the terms of the grant provided.

5.2 The Library shall use the funds provided to it by HEFCE under this Agreement only for the expenditure specifically proposed in the business plan referred to in clause 4.2. The Library shall set up and maintain adequate and effective accounting and other systems that cover all aspects of its business, assets, personnel and premises in respect of grant payments received from HEFCE. The Library shall ensure that all reasonable steps are taken to achieve value for money in the use of the grant.

5.3 The Library shall promptly notify HEFCE in writing of any significant variances of expenditure to the figures contained in the business plans referred to in clause 4.2 and of the corrective action it will take.

5.4 The Library's internal audit service shall undertake coverage of the activities covered by this agreement at an early stage, and a copy of the internal audit report shall be provided to HEFCE.

5.5 HEFCE shall receive from the Library annually by 30 September in relation to the most recent financial year ended 31 March:

- The Financial Statements from the British Library
- The NAO's External Audit Management Letter to the British Library
- The Annual Internal Audit Report
- The financial results for RIN in the form of an income and expenditure account
- A written statement from the RIN accounting officer that the funds have been used for the purpose for which they were given and that the income and expenditure account for the year is consistent with the Financial Statements of the British Library

5.6 The Library shall promptly provide to HEFCE (or shall provide HEFCE with access to) such of its accounting and other information, records, personnel and assets as HEFCE (or any person appointed by HEFCE including the HEFCE audit service) shall reasonably require from time to time in order to discharge HEFCE's functions in respect of public funds or for any other reasonable purpose. The Library shall promptly provide HEFCE with the results of any internal or external audit work which is about, or significantly impacts upon, the grant payment or relevant expenditure. A senior member of the management of the Library will be available upon reasonable notice to answer reasonable questions that may arise as a result of such access or information.

5.7 HEFCE reserves the right to appoint an independent third party to report on areas of performance of this Agreement by the Library which cause HEFCE concern. Before exercising this right, HEFCE shall consult the Library and other relevant parties.

5.8 HEFCE shall be entitled to inform any of the co-funders of the activities covered by this agreement and the National Audit Office of any material matters which come to HEFCE's attention as a result of the monitoring referred to in this clause 5.

5.9 The books and records of the Library relating to the discharge of its responsibilities to HEFCE under this Agreement shall be open to inspection by the Comptroller and Auditor General as and when he requires in order to discharge his statutory duties as auditor of HEFCE.

5.10 The Library should have due regard for all relevant legislative requirements which impact on the activities it undertakes under this agreement. This includes, but is not restricted to, HEFCE's Single Equality Scheme guidance to ensure equality and fair treatment irrespective of race, gender, disability, sexual orientation, age, religion or belief.

## 6. **Force Majeure**

6.1 Neither party shall be deemed to be in breach of contract if a force majeure event directly causes either party to be unable to comply with all or a material part of its obligations under this Contract. A force majeure event means the occurrence, after the date of the contract of:

- a. War, civil war, armed conflict or terrorism
- b. Nuclear, chemical or biological contamination (unless the source or cause is the result of the Contractor's actions)
- c. Pressure waves caused by device travelling at supersonic speeds

## 7. **Termination**

7.1 Subject to 3.7 HEFCE may immediately terminate this Agreement by giving notice in writing to the Library if any one or more of the following events happens

- a. The Library commits a material breach of any of its obligations under this Agreement which is incapable of remedy;
- b. The Library fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under this Agreement (save as to payment) after having been required in writing to remedy or desist from such breach within a period of 60 days;
- c. Any steps are taken or negotiations commenced by the Library or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the Library and any of its creditors;
- d. The Library has any distress or execution levied on its assets which is not paid out within seven days of its being levied;
- e. The Library stops or suspends making payments (whether of principal or interest) with respect to all or any class of its debts or announces an intention to do so or the Library suspends or ceases or threatens to suspend or cease to carry on its business;
- f. A secured lender to the Library takes any steps to obtain possession of the property on which it has security or otherwise to enforce its security.

7.2 The termination of this Agreement shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

## 8. **Consequences of Termination**

8.1 Upon termination of this Agreement for any reason whatsoever:

- a. (Subject to clause 9.1) the relationship of the parties shall cease save as (and to the extent) expressly provided for in this clause 10;
- b. The provisions of clauses 8, 11, 13 and 15 and any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect;
- c. Each of the parties shall immediately return to the other party, if so requested by the other party in writing (or, if the other party so requests by notice in writing, destroy) all of the other party's property (except, for the avoidance of doubt, the sums properly paid by HEFCE to the Library pursuant to clause 3) in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information and shall certify that it has done so, and shall make no further use of such Confidential Information.

## 9. **Assignment**

9.1 This Agreement is personal to both parties. Neither party shall assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement, without prior consent.

## 10. **General**

10.1 The Library shall not pledge the credit of HEFCE nor represent itself as being HEFCE nor an agent, partner, employee or representative of HEFCE and the Library shall hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied on behalf of HEFCE and nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of the Library shall be deemed to be or have become an employee of HEFCE.

10.2 This Agreement contains the entire agreement between the parties in relation to its subject-matter. Each of the parties irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind this Agreement because of breach of any warranty not contained in this Agreement, or any misrepresentation whether or not contained in this Agreement, unless such misrepresentation was made fraudulently.

10.3 No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is signed by an authorised signatory or the Chief Executive of each of the parties to this Agreement.

10.4 Each of the parties shall, and shall use their reasonable endeavours to procure that any necessary third parties shall, execute and deliver to the Library such other

instruments and documents and take such other action as is necessary to fulfil the provisions of this Agreement in accordance with its terms.

## 11. **Intellectual Property Rights (IPR)**

11.1 The Library will ensure that the IPR for any material which is generated or delivered as part of its funded services or generated in support of the activities covered by this agreement shall vest in HEFCE. The vesting of IPR in HEFCE is intended to ensure that the long term integrity of the service is protected on behalf of the higher education sector. This is not intended to impinge on the use of any IPR generated which the Library wishes to exploit for commercial purposes.

11.2 During the life of this Agreement, the Library shall seek HEFCE's agreement before utilising any material which is or may be subject to any IPR restrictions.

11.3 The principles in these IPR clauses should be reflected in relevant agreements between the Library and its subcontractors.

## 12. **Data Protection**

12.1 The Contractor shall at all times comply with the Data Protection Act 1998 covering any individual personal data processing to be performed in connection with this Contract.

## 13. **Alternative Dispute Resolution**

13.1 In the event of any dispute arising out of or in connection with this Agreement the parties will in good faith seek to resolve that dispute by using an alternative dispute resolution ("ADR") method acceptable to both parties before pursuing any other remedies available to them.

13.2 If the matter has not been resolved by an ADR method within 60 days of the initiation of such a procedure, the parties will be free to pursue their remedies without further reference to this clause 13.

13.3 Nothing in this clause 13 should prevent any party seeking a preliminary injunction or other judicial relief at any time if in its judgement such action is necessary to prevent irreparable damage.

## 14. **Third Party Rights**

14.1 The Comptroller and Auditor General shall have the right to enforce clause 5.12 of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999.

14.2 Save in relation to the party referred to in clause 16.1, for the purpose of section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do

not intend any terms of this Agreement to be enforced by any third parties but any third party right which exists or is available independently of that Act is preserved.

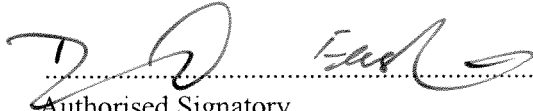
15. **Jurisdiction**

15.1 All disputes arising out of or relating to this Agreement and not settled under the procedures referred to in clause 13 shall be subject to the exclusive jurisdiction of the English Courts to which the parties irrevocably submit.

**IN WITNESS OF THE ABOVE** the parties have signed this Agreement on the date written at the head of this Agreement.

**SIGNED** by


duly authorised by and  
for and on behalf of HEFCE

)   
) .....  
) Authorised Signatory  
)

Name: David Eastwood  
Position: Chief Executive, HEFCE

**SIGNED** by

duly authorised by and for and  
on behalf of the British Library

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) .....  
) Authorised Signatory  
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Name: Ronald Milne  
Position: Director of Scholarship and Collections