Terms and Conditions for the Use of the ScienceOpen platform

1 Scope of Application

1.1 These General Terms and Conditions shall apply for the use of the services of the ScienceOpen platform on the websites specified herein by the User (hereinafter "User").

1.2 The Services are provided by ScienceOpen, Inc., 155 Middlesex Turnpike, Burlington, MA 01803, USA (hereinafter "ScienceOpen").

1.3 These General Terms and Conditions shall apply exclusively for this contractual relationship between ScienceOpen and the User in the version valid at the time the contract is concluded. The User's contrary or different terms and conditions shall not be recognized by ScienceOpen, unless ScienceOpen has expressly consented to their application.

1.4 ScienceOpen may amend these Terms and Conditions from time to time. In such event, ScienceOpen will inform the User about the changed conditions and highlight all changes. If the User does not agree with the amendments, the User may object to the changes within one month after receipt of the amendment notice. If the User does not object to the amendment within the time set forth, changes are deemed accepted. In the event of an objection the contract shall be valid in its unaltered version, but ScienceOpen may terminate the contract with notice. ScienceOpen's notice shall particularly indicate the right of objection, the signification of the User's behaviour and the resulting legal consequences.

2 Specifications of Service

2.1 ScienceOpen provides its users with an interactive social media online communication and publication platform, via which the users may exchange and publish scientific information and research results (in the preceding and hereinafter called "Service" or "Services"). The Services are aimed at scientists.

2.2 The Service is available on the website http://www.scienceopen.com.

2.3 The User may access his/her account with his/her user name and password. There the User may update his/her personal data.

2.4 In regard to the Service features free of costs, ScienceOpen is entitled to change such features at its sole discretion, to the extent to which this is not unreasonable for the User, or to stop performance under consideration of eventual terms for termination.

2.5 If ScienceOpen provides the User with the possibility to use Services against remuneration, ScienceOpen will inform the User about the payment obligations of such Service prior to its contractual statement.

2.6   For services which are offered by cooperation partners of ScienceOpen, eventual contracts are concluded between the User and such cooperation partner. As a rule, ScienceOpen itself shall not become a party to such contracts. The services, rights and duties of such contracts are subject to the contract between the User and the cooperation partner. As the case may be the cooperation partner's terms and conditions may be included and the User's personal data may be collected and used by the cooperation partner. Any of User's rights and claims against the cooperation partner shall be asserted in the relation to the respective cooperation partner only.

3   Requirements for Use

3.1   The ScienceOpen platform may only be used for non-commercial users who are at least 18 years of age.

3.2   For the use of ScienceOpen's Services the User needs internet access.

3.3   With the use of the ScienceOpen platform the User agrees to receive frequently changing advertisements as parts of the Services that are available on the ScienceOpen platform.

4   Costs

4.1   On general terms, ScienceOpen does not levy fees for the use of the ScienceOpen platform. However, with the order of a charged Service the User enters into a contractual relationship with ScienceOpen that is beyond the mere registration at ScienceOpen. The User will be informed about the costs arising for the use of the Service prior to his or her contractual statement.

4.2   While using the ScienceOpen platform, telecommunications and internet connection costs may eventually arise for the User that depend on the User's respective telecommunication contracts and therefore may not be subject of these Conditions.

5   Conclusion of the Contract with ScienceOpen

5.1   A contract between the User and ScienceOpen on the use of the ScienceOpen platform is concluded as follows:

5.1.1   After clicking the button "Register" on the website http://www.scienceopen.com the User shall complete the required fields. The User may correct, change or delete his or her entries in the questionnaire at any time before sending it. ScienceOpen will highlight User's erroneous entries. By clicking the button "Create account" the registration process is finalized and the questionnaire will be transferred to ScienceOpen. Hereby the User submits a binding offer for the conclusion of a contract for the use of the ScienceOpen platform. In response to the offer the User will receive an automatically generated confirmation email to the indicated email address. With the hyperlink contained in the confirmation e-mail the User will be able to fully activate the account. With the acceptance of the first login and the provision of service ScienceOpen accepts the offer.

5.1.2   Contract on charged services: For the use of charged services the User must accept the corresponding conditions that are not subject of these Conditions. The User will be informed on the payment obligations prior to his or her contractual statement. For example, fees are charged for the Open Access publication of a new expert contribution. Here, the user pays a fee for such service and receives in relation to the submission of his or her contribution copyediting, language polishing and a Document Object Identifier (DOI).

5.1.3 Contract conclusion with third parties: For the contract conclusion with third parties, especially with cooperation partners, sect. 2.6 shall apply. These contracts are, generally speaking, exclusively concluded between the User and the respective third party.

5.2 In the event of incomplete or incorrect data, namely an incorrect email address, ScienceOpen reserves the right to delete the corresponding User account. However, the User may register again by entering the data accurately and precisely.

5.3 Within the registration questionnaire on http://www.scienceopen.com these General Terms and Conditions may be accessed by a direct Link, saved via the save function of the web browser and printed via the print function of the web browser. ScienceOpen does not save any contractual text beyond these Conditions.

5.4 The ScienceOpen platform is available in the English language only.

5.5 Parts of the Services are available without restrictions. The General Terms and Conditions set out herein shall apply for such parts of the Services accordingly without registration.

6   User's Code of Conduct

6.1 ScienceOpen is technically unable to ascertain if a registered User actually is the person the User claims to be. ScienceOpen makes no representation in regard to the identity of a User. The User shall have to check other Users' identity for himself/herself.

The User shall,

– only use content for the use of the ScienceOpen platform that may be publicly displayed, including be made available on the internet, and that does not impinge upon third party rights;

– observe all applicable laws and third-party rights when using the ScienceOpen platform.

6.2 Using the ScienceOpen platform the User shall in particular not

– post racist, inhuman or offensive content or content against good morals;

– post content being pornographic or in contradiction to laws for the protection of the youth or to solicit, offer or distribute products being pornographic or in contradiction to laws for the protection of the youth;

– disturb other users in an unreasonable manner (particularly through spam);

– post legally protected content (e.g. by copyright, trademark, patent, industrial design or utility patent law) or to solicit, offer or distribute legally protected goods and services, in each case without being entitled to do so;

– conduct or promote actions which are anti-competitive or unfair competition, including progressive user recruitment (like those known for example as chain, snowball or pyramid schemes or Ponzi schemes);

–   block, overwrite, modify, copy ScienceOpen in its entirety or in part to the extent to which this is not necessary for the proper use of these Services;

–   divulge or publicly display user generated content beyond the ScienceOpen platform, unless and to the extent to which this results from designated functions of the ScienceOpen platform;

–   perform activities being suitable to affect the functionality of the ScienceOpen platform's infrastructure, particularly overload it;

6.3   In the event of a breach of the preceding provisions or any unlawful behaviour ScienceOpen is entitled according to its sole discretion to exclude the User from further use of the ScienceOpen platform temporarily, permanently, partly or entirely and, to the necessary extent, to take any other measures necessary to end the violation. In such cases ScienceOpen is in particular entitled to delete content from the ScienceOpen platform without prior notice.

7   Responsibility for user generated content, data and/or information

7.1   ScienceOpen shall not be responsible for content, data and/or information provided by its users and for content of linked external websites. ScienceOpen does particularly not warrant that such content is true or serves or may serve a certain purpose.

7.2   If the User discovers a use of the ScienceOpen platform being contradictory to law or these provisions he or she shall inform ScienceOpen correspondingly.

8   Termination and Deletion of the Account

8.1   The User may terminate the cost-free membership at any time without giving reasons in a written form with a 14-day notice or by email to info@scienceopen.com.

8.2   ScienceOpen may terminate the membership at any time without reason with 5 days prior notice.

8.3   The right of both Parties to terminate for cause shall remain unaffected. Cause exists for ScienceOpen in particular if the User breaches these Conditions not in a marginal manner or repeatedly, particularly if the User violates the code of conduct set forth in section 7.

8.4   In the event of the termination the account and the User's content will be deleted. ScienceOpen reserves the right not to delete the User's content. The User may claim deletion of his or her content in its entirety or in part if the User's content violates section 7, due to statutory duties or if personality rights are affected. In this event ScienceOpen reserves the right to amend the respective content to be conforming to law.

9   Availability

9.1   ScienceOpen shows best effort to provide to Users access to the ScienceOpen platform. However, temporary Service interruptions due to the usual maintenance requirements, system disturbances, internet disturbances of other providers or of operators, and to force majeure, may occur. Therefore, the User is not entitled to a steady and continuous access to the ScienceOpen platform. ScienceOpen does not owe any definite Service availability.

9.2 In the domain of internet and mobile communications a performance free of disturbances is not possible. ScienceOpen is not responsible for the steady availability of its technical systems, the accuracy or completeness, correctness or actuality of the information provided to the User or for errors of data transfer.

10 Liability

10.1 ScienceOpen shall be liable according to the applicable statutory provisions for damages of the User caused by intent or gross negligence, whereas the liability for personal injury and damages according to the German Product Liability Act (or other similar applicable laws in other applicable legislations) is not excluded by the following.

10.2 In other cases the liability of ScienceOpen for damage claims is restricted in accordance with the following provisions unless an explicit guarantee assumed by ScienceOpen provides otherwise:

10.2.1 ScienceOpen shall only be liable for slight negligence if the damage has been caused by the violation of a material contract obligation (cardinal duties). Cardinal duties are such contractual obligations whose performance is required for the proper implementation of the contract and upon whose compliance User could reasonably rely. To the extent ScienceOpen is liable for slight negligence, its liability shall be restricted to the typically foreseeable damages.

10.2.2 The liability of ScienceOpen for damages caused by loss of data and/or programs lost by slight negligence shall be limited to the typical cost of restoration, which would have been incurred in case of regular and appropriate data backup by the User.

10.2.3 The provisions of the above paragraph shall apply correspondingly to the limitation of damages for unsuccessful expenses (§ 284 of the German Civil Code [BGB]).

10.3 The above liability restrictions shall also apply to vicarious agents of ScienceOpen.

10.4 ScienceOpen shall not be liable for costs arising out of services used by the User that are expressly not provided by the ScienceOpen platform.

11 Indemnification

11.1 The User shall indemnify, defend and hold harmless ScienceOpen and ScienceOpen's affiliates, directors, attorneys, employees, shareholders and agents, from and against any claims, arising out of or related in any way to the User's infringement of these Conditions or third parties' rights. This shall also include reasonable attorneys' fees. ScienceOpen may at its sole discretion decide whether to lead defence by itself or ask the User to take over such defence.

11.2 The aforementioned duties shall not apply to the extent to which the User is not responsible for the relevant infringement.

11.3 In the event of any claims filed by third parties the User shall immediately provide ScienceOpen with all information necessary for the assessment of the third parties' claims.

12   Grant of Rights by the User

12.1   The content made available on the ScienceOpen platform by the User will be made available to other Users within the framework of ScienceOpen, especially for browsing. However, ScienceOpen may use the content as described below.

12.2   By making the content available on the ScienceOpen platform, the User grants to ScienceOpen a transferable, sub-licensable and <u>non-exclusive</u> right of use free of charge, unlimited in space or time in regard to the content, with the right to use the content in all known types of use. The grant of rights also includes all unknown types of use. The aforementioned rights of use shall especially include the following rights without limitation:

12.3   The right to reproduce, distribute, translate, rent, exhibit, recite, perform, publicly display and make publicly available (wireless or wirebound), broadcast, to combine with other works or products (including advertisement) and to change the content in connection with ScienceOpen in any form or manner and to use the combined and changed works in the aforementioned framework.

12.4   The right to use the content beyond ScienceOpen as well as in other internet media and internet based types of use, e.g., RSS feeds, other internet portals and communities as well as for additional end devices that can browse the platform (e.g. for cell phones and smart phones, game consoles, tablet computers etc.), within the scope of the preceding grant of rights.

12.5   In general the user name will be automatically linked to the content. However, the User resigns from the right to be explicitly mentioned as copyright holder for copies or excerpts of such content if there are technical limitations or limitations to display content (e.g. when browsed on a mobile device) as the case may be.

12.6   The grant of rights is free of charge, and in return to the right to use ScienceOpen. The statutory provisions of §§ 32, 32a, 32c UrhG (German Copyright Act) shall remain unaffected.

12.7   The User shall only post content if he or she is the copyright holder and/or if he or she disposes of sufficient rights therefor (e.g. use and exploitation rights) and if he or she is entitled to a use according to sect. 12.2, especially the right to public display, making publicly available, and change; sublicensing is permitted.

12.8   Additionally, if posted content also depicts other persons in a recognizable manner, such posting may only be made if such third person has given its respective consent.

13   Grant of Use Rights to the User

The User is entitled to browse all content published on the ScienceOpen platform. He or she is not allowed to download for permanent storage, change or divulge or publish content available on ScienceOpen not owned by the User.

14   Privacy

14.1   The service of an interactive social media online platform such as ScienceOpen is based on the exchange and publishing of user information, news and data. Every User is free to decide which User related information beyond his user name is available to others. Confidentiality of any transmissions may not be assured.

14.2   ScienceOpen collects, uses and processes personal data within the execution of the contract according to statutory provisions and the data and privacy policy.

14.3   As for the rest and subsequent to the User's consent the provisions of the privacy statement shall apply.

14.4   The Service also provides the service of an in-platform chat and mailing, via which it is possible to communicate with other users. The users can request each other as "Friends". The friend request takes place via the input of the e-mail address of the other user known to you and must be answered with YES or NO. If YES is selected, the user can then communicate privately with each other or receive e-mails of other users.

14.5   It is possible for the users to follow other users. In this case, each user decides for his or herself which other user he or she wants to follow without the other user have to agree to it.

14.6   The users can create private or open groups to which other users can join. Any user may join an open group. In order to join a private group (Private Collaboration) the user must be invited and agree to the invitation.

14.7   An "Invite a Friend" function is only available for registered users. It allows the users to invite other scientists to the network.

14.8   Every scientific contribution, which is displayed on the ScienceOpen platform or which has been uploaded by an user to the ScienceOpen platform can be commented and/or be reviewed according to established scientific standards by other registered users. In this case, the commenting or reviewing user can suggest the contribution to other scientists and invite them to write a review. The suggestion or invitation may be send via the platform to an already registered user or by e-mail to a scientist who is not yet a member of the platform with which he or she will be invited to the platform.

Here the guidelines for Comments and Peer Reviews can be viewed.

15   Applicable Law, Place of Performance and Venue.

15.1   This contract is subject to the laws of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG), even if the User's residence or place of business is located in a foreign country.

15.2   Place of Performance is Burlington/Boston, USA.

15.3   The principal place of business of ScienceOpen shall be the exclusive venue for all current and future claims arising out of or in connection with the business relationship with merchants, public law legal entities or special public law funds, unless statutory provisions provide for another exclusive venue. The same venue applies if the User does not have a domestic general venue in Germany, if he or she has moved his residence or usual place of abode to another country after conclusion of the contract or his residence or general abode is unknown at the time the law suit is filed. Statutory provisions of the Regulation (EC) No 44/2001 (European Union Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) shall remain unaffected.

16   Additional Terms and Conditions for Users based outside Europe

16.1   Mandatory non-waivable rules of foreign law are not affected by these Terms and Conditions.

16.2   Digital Millennium Copyright Act (DMCA) Notice Information

ScienceOpen respects the intellectual property rights of third parties and responds to allegations that copyrighted material has been posted, uploaded or shared on or through the ScienceOpen platform without authorization from the copyright holder in accordance with the safe harbor set forth in the Digital Millennium Copyright Act (DMCA). ScienceOpen will also, in appropriate circumstances and at its discretion, disable and/or terminate the accounts of users who may infringe or repeatedly infringe the copyrights of others in accordance with the DMCA.

16.2.1 Notification of Alleged Copyright Infringement

The DMCA provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you have a good faith belief regarding the use of materials on the ScienceOpen platform infringes your copyright, you may send to the ScienceOpen a notice requesting that the material be removed, or access to it be blocked. If you believe that your work has been copied and made available through the ScienceOpen platform in a way that constitutes copyright infringement, you may send a written notice to ScienceOpen's designated DMCA agent (as set forth below) that contains the following:

a.   A description of the copyrighted work that you claim has been infringed and, if multiple copyrighted works are covered by a single notification, a list of all such works.

b.   Identification of the URL or other specific location that contains the material that you claim infringes your copyright described in paragraph a. above. You must provide us with reasonably sufficient information to locate the allegedly infringing material.

c.   A physical or electronic signature of the copyright holder or a person authorized to act on his or her behalf of the owner of an exclusive right that is allegedly infringed;

d.   A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or applicable law.

e.   A statement by you that the information contained in your notice is accurate and that you attest under the penalty of perjury that you are the copyright owner or that you are authorized to act on the owner's behalf.

f.   Your name, mailing address, telephone number, and e-mail address.

If you believe in good faith that a notice of copyright infringement has been wrongly filed by ScienceOpen against you, the DMCA permits you to send ScienceOpen a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA. Notices and counter-notices with respect to the ScienceOpen platform should be sent to ScienceOpen's designated DMCA agent:

Dr. Stephanie Dawson
ScienceOpen
Pappelallee 78/79
10437 Berlin
Germany
info@scienceopen.com
Tel.: +49-30-6098490277

Please note that you may be liable for damages, including court costs and reasonable attorneys' fees, if you misrepresent that content uploaded by a user of the ScienceOpen platform is infringing your copyright. ScienceOpen suggests that you consult with your legal advisor before filing a notice or counter-notice.

Upon receiving a proper notice, ScienceOpen will remove or disable access to the allegedly infringing material. We will also advise the alleged infringer of the DMCA Counter Notice Procedure described below in Section 16.2.2 by which the alleged infringer may respond to your claim and request that we restore this material.

16.2.2   Counter Notice Procedure

If you believe your own copyrighted material has been removed from the ScienceOpen platform in error, you may submit a written counter notice to our designated DMCA agent (as identified above) that includes the following:

a.   Identification of the material that has been removed or disabled and the location at which the material appeared before it was removed or disabled.

b.   A statement that you consent to the jurisdiction of the Federal District Court in which your address is located, or if your address is outside the United States, the District of Delaware or any other judicial district in which ScienceOpen may be found.

c.   A statement that you will accept service of process from the party that filed the notice or the party's agent.

d.   Your name, address and telephone number.

e.   A statement under penalty of perjury that you have a good faith belief that the material in question was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

f.   Your physical or electronic signature.

If you send our Designated Agent a valid, written counter notice meeting the requirements described above, we will restore your removed or disabled material within 10 to 14 business days from the date we receive your counter notification, unless our Designated Agent first receives notice from the party filing the original notice informing us that such party has filed a court action to restrain you from engaging in infringing activity related to the material in question.

Please note that if you misrepresent that the disabled or removed content was removed by mistake or misidentification, you may be liable for damages, including costs and attorney's fees.

16.2.3   Repeat Infringer Policy

In accordance with the DMCA and other applicable laws, we will, at our discretion, disable and/or terminate access to the ScienceOpen platform by users who may infringe or repeatedly infringe the copyrights of others.

16.2.4   Access for Rights holders

ScienceOpen generally allows registrations only for scientific users which have registered at ORCID (www.orcid.org). We nevertheless provide access for rights holders upon special application, so that rights holders can check and find eventual copyright infringements on the ScienceOpen platform.

If you are, or represent, a rights holder and want to apply for access for the aforementioned purpose, please state so during the sign-up process. If you have problems with the sign-up process, you may contact ScienceOpen's designated DMCA agent (as stated above) to request a manual registration.

Additional term for user outside Europe:

This Agreement shall be deemed entered into in Berlin, Germany and will be governed by and interpreted in accordance with the laws of Germany, state of Berlin. The parties agree that any dispute arising under this Agreement shall be resolved exclusively in the courts within Berlin, Germany. The parties agree to accept service of process by electronic mail, with a confirming hard copy sent either by international courier service or by regular mail, return receipt requested, to or at the address listed hereinabove. The Parties waive any jurisdictional or venue defenses available to them. Should either party initiate an action outside of the venue of Berlin, Germany in violation of this provision, the costs and reasonable attorney fees incurred by the party opposing the venue of that action shall be awarded to it by the court dismissing that action. Notwithstanding the foregoing venue restrictions, a judgment of the German courts may be entered in any court of competent jurisdiction for the purpose of enforcing that judgment. A final judgment by the German courts shall be non-appealable in venues outside of Germany.

To expedite resolution and control the cost of any dispute, controversy or claim related to this Agreement ("Dispute") between you being a user outside Europe and us (ScienceOpen), you agree to first attempt to negotiate any Dispute. Except those Disputes as provided in this section, you and ScienceOpen shall negotiate informally for at least thirty (30) days before initiating any arbitration or court proceeding. Such informal negotiations commence upon written notice from one person to the other. ScienceOpen will send its notice to your billing address and email you a copy to the email address you have provided to us and you will use the address indicated in these terms above. You and ScienceOpen agree that any arbitration shall be limited to the Dispute between ScienceOpen and you individually. To the full extent permitted by law, (i) no arbitration shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

By agreeing to these terms and conditions, in the event of any claim you may have arising from or related to the Service or this Agreement you agree you hereby waive any right to participate in any type of law suit brought and/or maintained as a class action or similar in nature to a class action. Disputes shall not be subject to the prior negotiation clause when seeking to enforce the validity of, any of your or ScienceOpen's intellectual property rights; or any Dispute related to allegations of piracy, invasion of privacy or unauthorized use; or any claim for injunctive relief.