

The NEW ENGLAND JOURNAL of MEDICINE ARCHIVE
ACADEMIC/CLINICAL ACCESS AGREEMENT

This Agreement between the Massachusetts Medical Society ("Society"), owner and publisher of *The New England Journal of Medicine* ("NEJM"), and the institution identified below sets forth the terms of usage and other provisions for online access to the **NEJM Archive 1812-1944 and NEJM Archive 1945-1989** archive collections (hereinafter referred to collectively as "NEJM Archive").

1. Definitions. For the purposes of this Agreement, the following terms shall have the meaning set forth herein:

Authorized User means (a) any employee, student, faculty, or staff member of Licensee (either at Licensee's premises or remote from Licensee's premises) who is approved by Licensee to use a Secure Network (as defined below) and (b) other individuals (while at Licensee's premises) who are approved by Licensee to use the Secure Network.

Licensee means the institution identified below and the wholly owned affiliate companies of Licensee identified on Licensee's order form.

Secure Network means a computer network controlled and operated by Licensee that is accessible only to Authorized Users who are (a) at Licensee's premises or (b) whose identity is authenticated by Licensee at the time of login

2. Activation of Access. Access to the collection(s) selected in Attachment A for use in accordance with this Agreement shall be activated for Licensee and its Authorized Users based upon the following: (1) acceptance by the Society of a completed order form; (2) acceptance of this Agreement by Licensee and the Society; and (3) full payment of the one-time access and annual maintenance fees specified in Attachment B (collectively referred to as "Activation Steps"). All fees paid to the Society under this Agreement shall be nonrefundable. Upon completion of the Activation Steps, the Society shall promptly confirm Licensee's order in writing and enable access to the applicable collection(s) for Licensee and its Authorized Users.

3. Annual Maintenance Fee. Following the initial activation of access, the Society shall invoice Licensee at the start of each calendar year for the annual maintenance fee for the selected NEJM Archive collection(s). If the maintenance fee is not received within sixty (60) days after the start of the calendar year, access will be suspended. The Society reserves the right to modify the maintenance fee annually, provided that any increase to the maintenance fee shall not exceed five percent (5%) of the maintenance fee charged in the previous year. The Society will waive the annual maintenance fee for licensees that maintain an active license to nejm.org.

4. Authorized Access & Access Rights. Access to the NEJM Archive is controlled by valid IP address(es), EduserV Athens, and/or Shibboleth and is granted to Licensee and its Authorized Users via a Secure Network while this Agreement, or any successor or

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The Society will endeavor to maintain the ongoing availability of the contents of the NEJM Archive. In the event that it proves commercially infeasible for the Society to continue maintaining the ongoing availability of such content, the Society intends to make the contents of the NEJM Archive available to licensees through a third party.

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6a. Licensee, by its Authorized Users, may use material from the NEJM Archive in accordance with copyright and other applicable laws. The NEJM Archive is for the personal noncommercial purposes of Authorized Users.

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7. Licensee Obligations. Licensee agrees to reasonably cooperate in preventing violations of this Agreement by Authorized Users and to notify the Society promptly upon discovering any such violation. Licensee also agrees to take such reasonable steps as the Society may require to ensure that such activity ceases. Licensee agrees not to frame, modify, obscure, or otherwise alter the appearance or display of the NEJM Archive.

8. NEJM.ORG Terms of Use. By accessing and using the NEJM Archive, Licensee and its Authorized Users agree to the nejm.org Terms of Use; provided, however, that in the event of any conflict between the terms of this Agreement and the nejm.org Terms of Use, the terms of this Agreement shall prevail.

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11. Miscellaneous.

11a. This Agreement represents the entire understanding of the parties in relation to the subject matter hereof and supersedes all prior agreements, negotiations, understandings, representations, statements and writings between the parties relating thereto. Licensee may not assign or transfer, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the Society. The Society reserves the right to remove or replace material in the NEJM Archive that the Society deems to violate the personal or proprietary rights of any third party and to modify or change the contents of the NEJM Archive without notice, provided that any such change, removal or replacement shall not materially reduce the quantity of material in the NEJM Archive. Either party's failure to perform any obligation under this Agreement as a result of conditions beyond its control, such as, but not limited to, war, strikes, floods or other natural disasters, embargos, governmental restriction, or power failures, terrorism, or damage or destruction of network facilities or services, shall not be deemed a breach of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods will not govern this Agreement.

11b. Any purchase order or other instrument that Licensee may use for the NEJM Archive is for its internal purposes only and shall not amend any provision of this Agreement.

11c. [DELETED]

11d. [DELETED]

* See Attachment C, which is hereby incorporated as if fully set forth herein.

AGREED TO AND ACCEPTED:

**The Regents of
the University of California**
(covered University of California campuses
are listed in Attachment C)

Massachusetts Medical Society

[Text deleted]

[Text deleted]

Authorized Signature / Date 10-27-10

Nov 9, 2010
/ Date

Rev. 7/2010

The NEW ENGLAND JOURNAL of MEDICINE

NEJM ARCHIVE

Available Collections:

- The NEW ENGLAND JOURNAL of MEDICINE* 1945-1989
Full text printed content from January 1945 through December 1989 available in HTML and PDF

- The NEW ENGLAND JOURNAL of MEDICINE* 1812-1944
Full text printed content from January 1812 through December 1944; includes The New England Journal of Medicine and Collateral Branches of Science, The New England Medical Review and Journal; The Boston Medical and Surgical Journal and The New England Journal of Medicine available in PDF

Schedule of Fees

(1) One-Time Payment:

Licensee will remit a one-time cumulative payment in the amount of [Text deleted] for electronic access to the NEJM collection(s) selected in Attachment A.

(2) Annual Maintenance Fee: [Text deleted]

ATTACHMENT C

AMENDMENT TO
The NEW ENGLAND JOURNAL of MEDICINE ARCHIVE
ACADEMIC/CLINICAL ACCESS AGREEMENT

The Regents of the University of California

The foregoing agreement is hereby amended as follows:

1. The following language is added to the Agreement:

Intellectual Property Indemnification. The Society shall indemnify, defend, and hold harmless Licensee from any cost, claim, expense, or liability, including reasonable attorneys' fees, arising from or related to a claim by a third party against Licensee that any of the materials at the NEJM Archive or Licensee's access and/or use of such materials, as authorized by the Society, infringes the third party's copyright, patent, trade secret, trademark, or other intellectual property rights ("Intellectual Property Claims"). In the event of such a claim, Licensee shall cooperate with Society and undertake commercially reasonable efforts to mitigate any damages or potential damages. Licensee shall give Society prompt written notice of such claim, and Society shall have sole control of the defense; provided, however, that Licensee shall have the option of participating in the defense at its own cost. The limitation of liability set forth in Section 10, (Disclaimer of Warranties and Liability), shall not be applicable to any amount due to any third party with respect to such Intellectual Property Claims. Such limitation shall, however, be applicable to any breach of contract or other claim Licensee may have resulting from its inability to use or access the NEJM Archive as a result of any Intellectual Property Claim.

2. The University of California campus locations covered by the foregoing agreement shall be as follows: Berkeley (including Lawrence Berkeley Lab), Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Barbara, Santa Cruz, and the University of California Office of the President.

[Text deleted]

[Text deleted]

Regents of the University
of California

Society

10-27-10

Date

Nov 9, 2010

Date