

**BMJ Group Online License Agreement
United States and Canada Consortia License**

This Agreement is made the 1st day of January 2010

BETWEEN

BMJ PUBLISHING GROUP LIMITED, a limited liability company, whose registered office is situated at BMA House, Tavistock Square, London, England WC1H 9JR (“**Licensor**”);

AND

Regents of the University of California a non-profit academic institution, with its principal offices at the **CALIFORNIA DIGITAL LIBRARY**, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, California 94612, USA (“**Licensee**”)

1. Key Definitions

In this Agreement, the following terms shall have the following meanings:

- | | | |
|-----|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.1 | “Agreement” | means this document including any schedules and any properly executed variations or addenda. |
| 1.2 | “Authorized Users” | means full and part-time Employees, staff, independent contractors and students who are officially affiliated with Licensee at the Location (s) using valid Internet Protocol (“IP”) address(es) provided by Licensee to Licensor or via remote access if in accordance with Clause 2.1. |
| 1.3 | “Commercial Use” | includes i) copying or downloading any of the Licensed Materials or linking to the Licensed Materials for further redistribution, sale or licensing, for a fee; ii) copying, downloading or posting of any of the Licensed Materials on a site or service that incorporates advertising with such content; iii) the inclusion or incorporation of any of the Licensed Materials in other works or services (other than legally permitted quotations with an appropriate citation) that is then available for sale or licensing, for a fee; iv) use of any of the |

Licensed materials howsoever (other than legally permitted quotations with an appropriate citation) by organisations for promotional purposes, whether for a fee or otherwise; and v) use of the Licensed Materials for the purposes of monetary reward by means of sale, resale, license, loan, hire, transfer or other form of commercial exploitation.

- | | | |
|------|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.4 | “Fee” | means the annual subscription fee payable by Licensee as set out in Schedule 2 to this Agreement. |
| 1.5 | “License” | means the license set out in Clause 2 below. |
| 1.6 | “Licensed Materials” | means the electronic version of the Licensors’ journal(s), databases and publications which Licensee subscribes to, as set out in Schedule 1 of this Agreement which includes content owned or licensed by Licensors. |
| 1.7 | “Location” | means the geographical location(s) of the Campuses and their form of access, as set out in Schedule 4 to this Agreement. |
| 1.8 | “Parties” | means the Licensors or Licensee; |
| 1.9 | “Secure Network” | means a network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorized Users approved by the Licensee whose identity is authenticated at the time of login and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by Licensee. |
| 1.10 | “Site” | means the electronic site on which the Licensed Materials will be displayed. |
| 1.11 | “Term” | means the period specified in Schedule 3 unless terminated earlier under Clause 6. |
| 1.13 | “Walk-in Users” | Means patrons who are authorized to be present on the Licensee’s premises at the Location. |

2. The License

- 2.1 In consideration of receipt of the Fee, Licensors grants Licensee for the Term, a non-exclusive, worldwide, non-transferable License to allow Authorized Users and Walk-in Users to access the Licensed Materials at the Location and for Authorized Users to access the Licensed Materials remotely. Remote access to the Licensed Materials, however may only be either via the Licensee's Secure Network (and only if fully in accordance with clauses 4.1.1 and 4.1.2), or to Authorized Users who have been issued by Licensee, a password or other necessary authentication to access the Licensed Materials. For the avoidance of doubt remote access may not be granted to Walk-In Users
- 2.2 Subject to clause 6.3, except with respect to, Best Health, BMJ Point of Care, BMJ Learning, BMJ Point of Care and DTB, Licensors also hereby grants to Licensee, a non-exclusive, royalty-free, perpetual license to use the Licensed Materials that were subscribed to via this License and published during the Term of this Agreement, and with the exception of any portion of Licensed Materials that has been expunged from the archive, damaged or sold. For the avoidance of doubt should any back issues of any Licensed Materials be available to the Licensee and Authorized Users during the Term, these shall not be part of the Licensee's perpetual access rights granted herein. Such use by Licensee of any Licensed Materials for which perpetual access is granted, shall be in accordance with the provision of this Agreement, which provisions shall survive expiry of this Agreement. This means by which Licensee shall have access to such Licensed Materials shall be in a manner as determined by Licensors, but shall be in electronic form. Where any Licensed Materials is sold, Licensors shall use all reasonable endeavours to ensure that the purchaser can provide ongoing access to Licensee for the relevant portion of the Licensed Materials.
- 2.3 Licensors holds the copyright (or all necessary licenses or rights of use), for all works published in the Licensed Materials, as a compilation and as to the individual articles, collectively and individually, unless otherwise expressly noted.
- 2.4 Neither Licensee nor any Authorized User shall claim ownership of the Licensed Materials, or any intellectual property rights in the Licensed Materials, by reason of their use of or access to the Licensed Materials nor make any Commercial Use of the Licensed Materials.
- 2.5 In addition to all other rights in this clause 2, Licensors confirms to the Licensee that usage statistics covering the online usage of the journals and databases included in this License will be provided by Campus breakdown on a monthly basis with the exception of BMJ Learning (where included) and BMJ Point of Care. Licensors further confirms that such usage statistics will adhere to the specifications of the COUNTER Code of Practice, including data elements collected and their definitions; data processing guidelines; usage report content,

format, frequency and delivery method.

- 2.6 The Licensor (and via its licensors), reserves the right at any time to withdraw from the Licensed Materials, any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.
- 2.7 The Licensee should consult the Matrix in Schedule 5 for ease of reference regarding certain rights in this Clause 2.
- 2.8 Licensor acknowledges that Licensee may engage the services of third-party trusted archive(s) and/or participate in collaborative archiving endeavors to exercise Licensee's rights under Clause 2.2 of this Agreement subject to those rights in Clause 2.2 (and strictly for uses as permitted under this Agreement), being consistent with the terms of the archiving rights under the requirements of the archiving entity(ies) and the archiving entity(ies) being such which the Licensor has signed up to (such as currently used by the Licensor namely LOCKSS and which may change from time to time at the Licensors discretion).

3. Permitted Uses

- 3.1 All use of the Licensed Materials is subject to all applicable copyright laws and fair use conventions. Nothing in this Agreement shall limit users' rights under U.S. Copyright Law (17 USC § 107). Reproduction of any portion of the Licensed Materials (other than certain journal articles which have noted on them "Open Access Article" which have more liberal uses as set out in Clause 3.2 herein) is permitted as follows:-
 - 3.1.1 Downloading: Downloading, printing, or saving of small proportions of the Licensed Materials for personal use is permissible. No Commercial Use of any part of the Licensed Materials is permitted without the prior, express written permission of Licensor. Systematic downloading is prohibited as is the creation of derivative works from the Licensed Materials.
 - 3.1.2 Braille Transcription: Licensee may transcribe any portion of the Licensed Materials into Braille script or enlarged type for Authorized Users who are visually impaired.
 - 3.1.3 Course Packs: Licensee and Authorized Users may use a reasonable portion of Licensed Materials in the preparation of course packs or other educational materials for Authorized Users. Each article must carry acknowledgement of the source, title, author and publisher. Copies of such items shall be deleted by the Licensee when they are no longer required for such purposes.
 - 3.1.4 Inter-library Loan: Using electronic, paper, or intermediated

means, Licensee at its discretion may fulfill occasional requests from other non commercial libraries for a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and the Guidelines for the Proviso of Subsection 108(2g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

- 3.1.5 Neither Licensee nor Authorized Users may remove or alter the author's names or affiliations or Licensors or their licensors copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials.
 - 3.1.6 Neither Licensee nor Authorized Users may systematically make print or electronic copies of multiple extracts of the Licensed Material for any purpose other than as explicitly permitted under this Clause 3.1.
 - 3.1.7 Neither Licensee nor Authorized Users may provide or make available the Licensed Materials (in any media) to any third party who is not an Authorized User.
 - 3.1.8 Neither Licensee nor Authorized Users may mount or distribute any part of the Licensed Materials on any electronic network other than that specified in the License.
- 3.2 Notwithstanding any other provision in this Clause 3, and only for any Licensors journal articles (and not for other Licensed Materials) which expressly have stated on them "Open Access Article", Licensee will make reasonable efforts to inform and educate Authorized Users regarding:
- 3.2.1 such use being non Commercial Use;
 - 3.2.2 attributing such use of the article as follows:

"This article has been published in the [*insert journal name*] [give full reference] and can also be viewed on the journal's website at [insert link]"
 - 3.2.3 such use otherwise being fully governed and in accordance with the Creative Commons Attribution Non Commercial 2.0 license as set out in Schedule 6;
 - 3.2.4 subject to ensuring all third party rights within all images, diagrams, photographs or other illustrative material, not owned by the authors or Licensors are cleared independently and appropriately and all the Licensors or third party trademarks are

removed from any derivative works; and

- 3.2.5 ensuring any translations, (other than for which a prior translation agreement with BMJ Group has been established), have prominently displayed on them the statement:

“This is an unofficial translation of an article that appeared in a BMJ Group publication. Neither BMJ Group or its licensors have endorsed this translation”.

4. Licensee's Obligations

4.1 Licensee agrees that it:

- 4.1.1 will undertake all necessary authentication and verification processes to ensure that only Authorized Users can access the Licensed Materials;
- 4.1.2 is responsible for creating and maintaining reasonable security measures, and posting policies consistent with the rights and restrictions described in this Agreement to ensure that only Authorized Users can access the Licensed Materials;
- 4.1.3 is prohibited from making agreements for access to the Licensed Materials with individuals, organizations, vendors, affiliates, or partners, which are not Authorized Users of Licensee. Licensee affirms that all IP addresses in the range listed for authorization are specifically controlled by Licensee for workstations under its administrative control and for the use of Authorized Users. Licensee is responsible for maintaining the list of IP addresses of all Authorized Users;
- 4.1.4 will not knowingly permit anyone other than Authorized Users to use the Licensed Materials;
- 4.1.5 will, if it becomes aware of unauthorized access to the Licensed Materials, notify Licensor immediately and co-operate in locating and attempting to stop the specific individuals who are abusing the service. If the specific abuser(s) cannot be identified or stopped, Licensor has the right to withhold, suspend, or terminate access to all or any portion of the Licensed Materials, without liability;
- 4.1.6 will not remove, cover, overlay, obscure, block, or change any copyright notices, legends, or terms of use which Licensor or its licensors may post on the Site in order to inform users about system features, terms of use, or copyright notices;
- 4.1.7 will not in anyway frame or use framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of Licensor or its licensor's without Licensor's express written consent. Licensee may not use any meta tags or any other "hidden text" utilizing Licensor's or its Licensors names or trade marks, without the express written consent of the Licensor;
- 4.1.8 The Licensee will not make any Commercial Use of the Licensed

Materials.

5. Technical Access

5.1 Licensors intend for the Site to be available 24 hours per day, 7 days per week. However, **other than as expressly stated herein**, neither Licensor nor any of its licensors will be liable for damages or refunds should the Site become unavailable or access to the Site becomes slow or incomplete due to system back-up procedures, internet traffic volume, upgrades, overload of requests to the servers, general network failures or delays, or any other cause which may from time to time make the Site inaccessible to Licensee or Authorized Users.

5.2 Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

5.3 If the availability of Licensed Materials fails to meet the required standards set out in Clause 5.2 herein, Licensee shall notify Licensor within 14 days. In the event that Licensor had failed to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount pro rata to the period of time the relevant Licensed Materials were unavailable, and proportional to the total Fees owed by Licensee under this Agreement.

6. Termination

6.1 Either party may terminate this License:

6.1.1 where the other party commits a material or persistent breach of any term of this Agreement and fails to remedy such breach (if capable of remedy) within 40 days of notification in writing from the other party; or

6.1.2 immediately upon the other party becoming insolvent, subject to receivership, liquidation or similar external administration.

6.2 Licensor may terminate this Agreement if Licensee defaults in making payment of the Fee or any part of the Fee.

6.3 On termination of this Agreement for just cause, access to the Licensed Materials by Licensee and Authorized Users shall be terminated.

7. Warranty and Liability

- 7.1 While Licensor seeks to provide updated and accurate content as part of the Licensed Materials, the Licensed Materials are supplied on an "as is" basis. Any statements made to the contrary are void. Licensor and its licensors do not warrant or guarantee its accuracy, completeness, merchantability, non-infringement or fitness for a particular purpose of the Licensed Materials or the Site and to the fullest extent permitted by law, Licensor and its licensors expressly disclaim the foregoing and all others, (other than where expressly agreed to herein) and in addition, any conditions, warranties and other terms howsoever, which might otherwise be implied by statute, common law or otherwise.
- 7.2 TO THE FULLEST EXTENT PERMITTED BY LAW AND OTHER THAN AS EXPRESSLY PROVIDED FOR HEREIN, IN NO CIRCUMSTANCES IS LICENSOR OR ITS LICENSORS LIABLE TO LICENSEE MEMBERS OR AUTHORIZED USERS, OTHER USERS ACTING UNDER LICENSEE OR MEMBERS, FOR ANY DIRECT OR INDIRECT OR CONSEQUENTIAL LOSSES OR EXPENSES, HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS OR SAVINGS, GOODWILL, REPUTATION, BUSINESS RECEIPTS OR CONTRACTS, OR LOSSES OR EXPENSES RESULTING FROM THIRD PARTY CLAIMS. NOTHING IN THIS AGREEMENT SEEKS TO EXCLUDE LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY LICENSOR'S NEGLIGENCE OR FRAUDULENT MIS-STATEMENT.
- 7.3 TO THE FULLEST EXTENT PERMITTED BY LAW, IN THE EVENT THE LICENSOR OR ITS LICENSOR'S HAVE ANY LIABILITY UNDER THIS AGREEMENT, LICENSOR'S AND THEIR LICENSORS AGGREGATE LIABILITY FOR ANY CONTENT, ACCESSIBILITY OR PROBLEMS WITH THE SITE OR LICENSED MATERIALS WILL NOT EXCEED THE AMOUNT OF SUBSCRIPTION FEES PAID FOR THE LICENSED MATERIALS DURING THE 12 MONTH PERIOD PRECEDING ANY CLAIM OR NOTICE OF DAMAGES.

8. Indemnity

- 8.1 The Licensor shall indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.
- 8.2 Should Licensee wish to invoke the indemnity in clause 8.1 this is conditional on the following. The Licensee must promptly notify Licensor of all details known of any such claims and must not make any admission of liability and

shall limit its own costs as is reasonably possible. Licensor shall have the right to defend such claims at its own expense and Licensee shall provide Licensor with all necessary assistance in investigating and defending such claims as Licensor may reasonably request and have the right to participate in the defence at its own expense, subject to following all reasonable instructions of Licensor.

9. General

- 9.1 Neither party shall be liable for failure, default or delay in performing its obligations under this License, caused by a Force Majeure event which shall include any act of God, war, or threatened war, act or threatened act of terrorism, riot, strike, lockout, individual action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.
- 9.2 Licensor may assign or transfer any of its rights and obligations under this License, upon written notice to Licensee. Licensee may not assign its rights or transfer its obligations herein without the prior written consent of Licensor.
- 9.3 Alterations to this Agreement are only valid if they are recorded in writing and signed by both parties.
- 9.4 In the event that any provision of this Agreement is held to be invalid, the remainder of the provisions shall continue in full force and effect.
- 9.5 There shall be no right whatsoever for any third party to enforce the terms and conditions of this Agreement. The Parties hereby otherwise exclude any such rights for any third party enforcement.
- 9.6 No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver, to be effective, must be in writing and signed by a duly authorised representative of each party.
- 9.7 Any notice under this Agreement must be hand written and may be delivered or sent by fax or first class post to the offices of the relevant party set out on the first page of Agreement (or as otherwise notified from time to time) and such notice shall be deemed to have been received upon successful transmission of faxing or 7 (seven) days from the date of posting.
- 9.8 To the fullest extent permitted by law, this Agreement constitutes the entire Agreement between Licensor and Licensee with respect to the Licensed Materials.
- 9.9 This Agreement will be governed by the laws of the state of California applicable to agreements entered into and fully performed in the state of California. Any action arising out of or relating to this Agreement may be brought in courts situated in the state of California, and the parties consent to the jurisdiction of such courts.

10. In the event that Licensor utilizes any type of digital rights management technology to control the access or the usage of Licensed Product during the Term, Licensor agrees to advise the Licensee should it request this in writing from the Licensor of the name, contact information for any owner of the digital rights management technology utilized, however in no circumstances may this be overridden or altered by the Licensee or Authorized Users.

11. If Licensor utilizes any type of digital watermarking technology for any element of the Licensed Product during the Term, Licensor agrees that watermarks will not materially degrade the image quality. These watermarks shall not contain user-related information such as account number or IP address. If digital watermarking technology is used, Licensor agrees to advise Licensee, should it request in writing from the Licensor, of the name and contact information of any owner for the technology used however in no circumstances may this be overridden or altered by the Licensee or Authorized Users.

IN WITNESS WHEREOF, the undersigned, who has caused this Agreement to be signed:

For BM

By: _____

Commercial Director

Dated: 12/1/2011

For California Digital Library:

By: _____

Executive Director

Dated: 12-17-10

SCHEDULE 1

Licensed Materials

Journals

Archives of Disease in Childhood
Annals of the Rheumatic Disease
BMJ.com
British Journal of Ophthalmology
British Journal of Sports Medicine
Emergency Medicine Journal
Gut
Heart
Injury Prevention
Journal of American Medical Informatics Association
Journal of Clinical Pathology
Journal of Epidemiology and Community Health
Journal of Medical Ethics
Journal of Medical Genetics
Journal of Neurology, Neurosurgery, and Psychiatry
Occupational and Environmental Medicine
Postgraduate Medical Journal
Quality and Safety in Health Care
Sexually Transmitted Infections
Thorax
Tobacco Control
Evidence Based Medicine
Evidence Based Mental Health
Evidence Based Nursing

SCHEDULE 2

Fee

Price based on 2 small FTE sites, 2 medium FTE sites and 3 large FTE sites.

3 year contract, with fixed pricing.

2010 =

2011 =

2012 =

All Fees are due and payable by Licensee sixty (60) days after the date of invoice from Licensor and are exclusive of any sales tax or other taxation which the Licensor is required to add or the Licensee is required to pay. Should the Licensee be required to pay any such taxation this shall be met by the Licensee and not deducted from the Fee.

US Canada Consortia Contract

SCHEDULE 3

Term

From January 1, 2010 to December 31, 2012

SCHEDULE 4

Campuses of the University of California

University of California, Berkeley (including Lawrence Berkeley Lab)

University of California, Davis

University of California, Irvine

University of California, Los Angeles

University of California, Merced

University of California, Riverside

University of California, San Diego

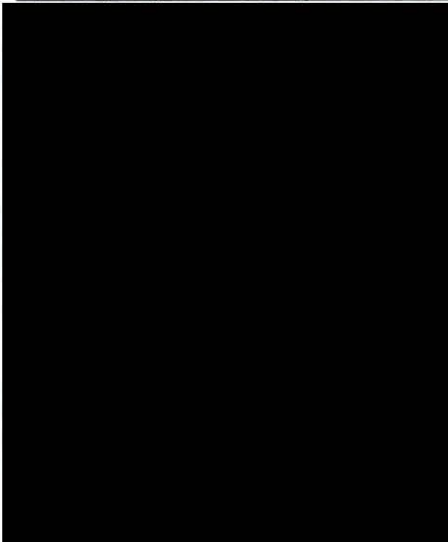
University of California, San Francisco

University of California, Santa Barbara

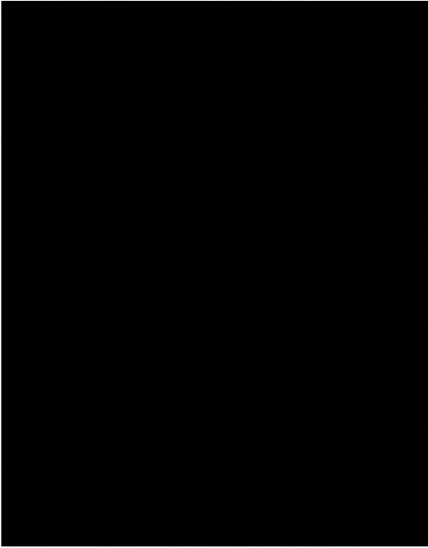
University of California, Santa Cruz

University of California Office of the President

UC Berkeley (including Lawrence Berkeley Laboratory)



US Canada Consortia Contract



UC Davis

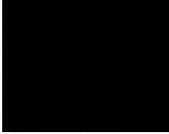


UC Irvine



US Canada Consortia Contract

UC Los Angeles



UC Merced



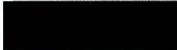
UC Riverside



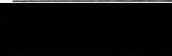
UC San Francisco



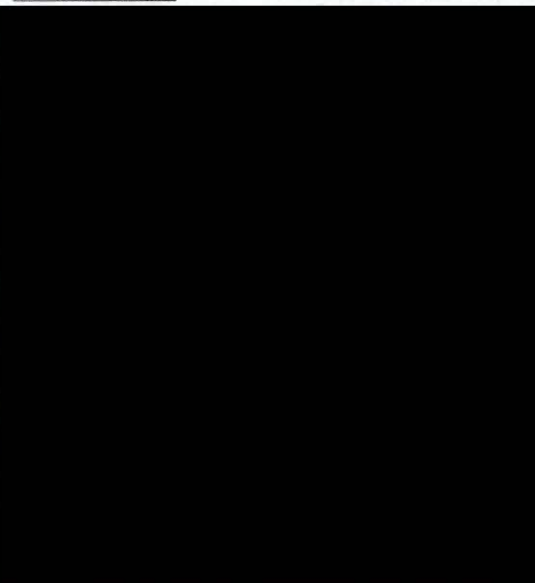
UC Santa Barbara



UC Santa Cruz

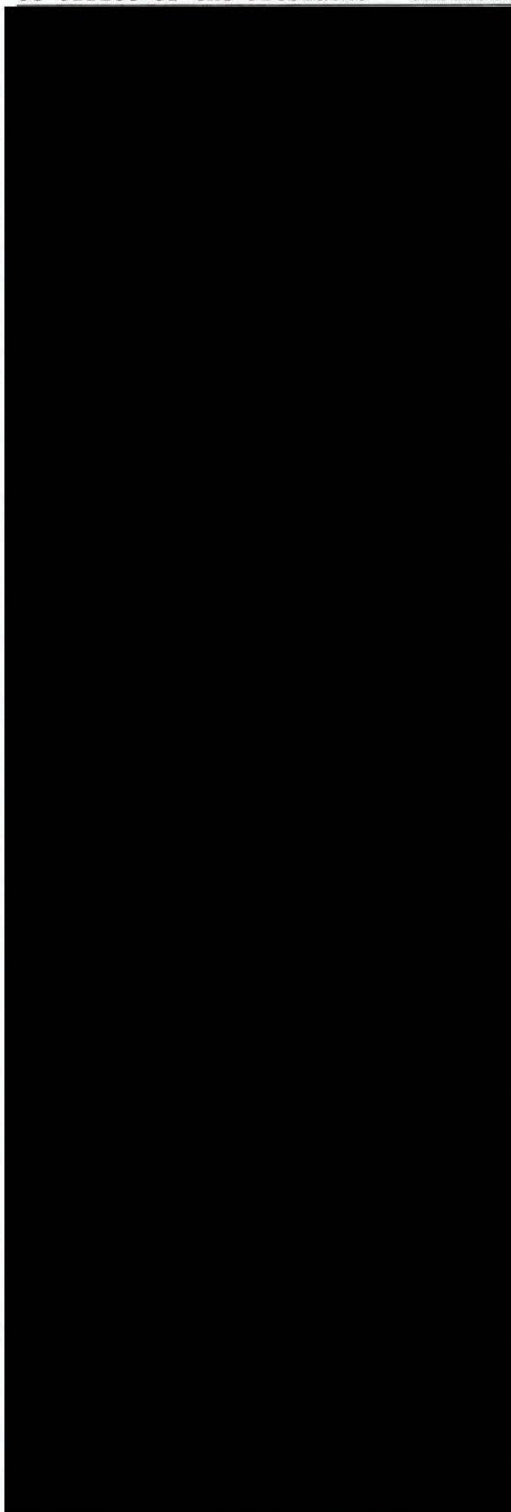


UC San Diego



US Canada Consortia Contract

UC Office of the President - California Digital Library



SCHEDULE 5
Matrix of Certain Rights

Publication	Perpetual Rights to Material Published between January 1 2010 and December 31 2012	Counter Statistics
BMJ and BMJ Journals (excluding DTB and BMJ Case Reports)	✓	✓
Drug and Therapeutics Bulletin ("DTB") and BMJ Case Reports	X	✓
BMJ Learning	X	X
Clinical Evidence	X	✓
Best Health	X	✓
BMJ Point of Care	X	X

SCHEDULE 6

Creative Commons



Attribution-NonCommercial 2.0

CREATIVE COMMONS CORPORATION IS NOT A LAW FIRM AND DOES NOT PROVIDE LEGAL SERVICES. DISTRIBUTION OF THIS LICENSE DOES NOT CREATE AN ATTORNEY-CLIENT RELATIONSHIP. CREATIVE COMMONS PROVIDES THIS INFORMATION ON AN "AS-IS" BASIS. CREATIVE COMMONS MAKES NO WARRANTIES REGARDING THE INFORMATION PROVIDED, AND DISCLAIMS LIABILITY FOR DAMAGES RESULTING FROM ITS USE.

License

THE WORK (AS DEFINED BELOW) IS PROVIDED UNDER THE TERMS OF THIS CREATIVE COMMONS PUBLIC LICENSE ("CCPL" OR "LICENSE"). THE WORK IS PROTECTED BY COPYRIGHT AND/OR OTHER APPLICABLE LAW. ANY USE OF THE WORK OTHER THAN AS AUTHORIZED UNDER THIS LICENSE OR COPYRIGHT LAW IS PROHIBITED.

BY EXERCISING ANY RIGHTS TO THE WORK PROVIDED HERE, YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS OF THIS LICENSE. THE LICENSOR GRANTS YOU THE RIGHTS CONTAINED HERE IN CONSIDERATION OF YOUR ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

1. Definitions

- a. **"Collective Work"** means a work, such as a periodical issue, anthology or encyclopedia, in which the Work in its entirety in unmodified form, along with a number of other contributions, constituting separate and independent works in themselves, are assembled into a collective whole. A work that constitutes a Collective Work will not be considered a Derivative Work (as defined below) for the purposes of this License.
- b. **"Derivative Work"** means a work based upon the Work or upon the Work and other pre-existing works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which the Work may be recast, transformed, or adapted, except that a work that constitutes a Collective Work will not be considered a Derivative Work for the purpose of this License. For the avoidance of doubt, where the Work is a musical composition or sound recording, the synchronization of the Work in timed-relation with a

A small, handwritten blue mark or signature in the bottom right corner of the page.

US Canada Consortia Contract

moving image ("synching") will be considered a Derivative Work for the purpose of this License.

- c. **"Licensor"** means the individual or entity that offers the Work under the terms of this License.
- d. **"Original Author"** means the individual or entity who created the Work.
- e. **"Work"** means the copyrightable work of authorship offered under the terms of this License.
- f. **"You"** means an individual or entity exercising rights under this License who has not previously violated the terms of this License with respect to the Work, or who has received express permission from the Licensor to exercise rights under this License despite a previous violation.

2. Fair Use Rights. Nothing in this license is intended to reduce, limit, or restrict any rights arising from fair use, first sale or other limitations on the exclusive rights of the copyright owner under copyright law or other applicable laws.

3. License Grant. Subject to the terms and conditions of this License, Licensor hereby grants You a worldwide, royalty-free, non-exclusive, perpetual (for the duration of the applicable copyright) license to exercise the rights in the Work as stated below:

- a. to reproduce the Work, to incorporate the Work into one or more Collective Works, and to reproduce the Work as incorporated in the Collective Works;
- b. to create and reproduce Derivative Works;
- c. to distribute copies or phonorecords of, display publicly, perform publicly, and perform publicly by means of a digital audio transmission the Work including as incorporated in Collective Works;
- d. to distribute copies or phonorecords of, display publicly, perform publicly, and perform publicly by means of a digital audio transmission Derivative Works;

The above rights may be exercised in all media and formats whether now known or hereafter devised. The above rights include the right to make such modifications as are technically necessary to exercise the rights in other media and formats. All rights not expressly granted by Licensor are hereby reserved, including but not limited to the rights set forth in Sections 4(d) and 4(e).

4. Restrictions. The license granted in Section 3 above is expressly made subject to and limited by the following restrictions:

- a. You may distribute, publicly display, publicly perform, or publicly digitally perform the Work only under the terms of this License, and You must include a copy of, or the Uniform Resource Identifier for, this License



US Canada Consortia Contract

with every copy or phonorecord of the Work You distribute, publicly display, publicly perform, or publicly digitally perform. You may not offer or impose any terms on the Work that alter or restrict the terms of this License or the recipients' exercise of the rights granted hereunder. You may not sublicense the Work. You must keep intact all notices that refer to this License and to the disclaimer of warranties. You may not distribute, publicly display, publicly perform, or publicly digitally perform the Work with any technological measures that control access or use of the Work in a manner inconsistent with the terms of this License Agreement. The above applies to the Work as incorporated in a Collective Work, but this does not require the Collective Work apart from the Work itself to be made subject to the terms of this License. If You create a Collective Work, upon notice from any Licensor You must, to the extent practicable, remove from the Collective Work any reference to such Licensor or the Original Author, as requested. If You create a Derivative Work, upon notice from any Licensor You must, to the extent practicable, remove from the Derivative Work any reference to such Licensor or the Original Author, as requested.

- b. You may not exercise any of the rights granted to You in Section 3 above in any manner that is primarily intended for or directed toward commercial advantage or private monetary compensation. The exchange of the Work for other copyrighted works by means of digital file-sharing or otherwise shall not be considered to be intended for or directed toward commercial advantage or private monetary compensation, provided there is no payment of any monetary compensation in connection with the exchange of copyrighted works.
- c. If you distribute, publicly display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works, You must keep intact all copyright notices for the Work and give the Original Author credit reasonable to the medium or means You are utilizing by conveying the name (or pseudonym if applicable) of the Original Author if supplied; the title of the Work if supplied; to the extent reasonably practicable, the Uniform Resource Identifier, if any, that Licensor specifies to be associated with the Work, unless such URI does not refer to the copyright notice or licensing information for the Work; and in the case of a Derivative Work, a credit identifying the use of the Work in the Derivative Work (e.g., "French translation of the Work by Original Author," or "Screenplay based on original Work by Original Author"). Such credit may be implemented in any reasonable manner; provided, however, that in the case of a Derivative Work or Collective Work, at a minimum such credit will appear where any other comparable authorship credit appears and in a manner at least as prominent as such other comparable authorship credit.
- d. For the avoidance of doubt, where the Work is a musical composition:

- i. **Performance Royalties Under Blanket Licenses.** Licensors reserves the exclusive right to collect, whether individually or via a performance rights society (e.g. ASCAP, BMI, SESAC), royalties for the public performance or public digital performance (e.g. webcast) of the Work if that performance is primarily intended for or directed toward commercial advantage or private monetary compensation.
 - ii. **Mechanical Rights and Statutory Royalties.** Licensors reserves the exclusive right to collect, whether individually or via a music rights agency or designated agent (e.g. Harry Fox Agency), royalties for any phonorecord You create from the Work ("cover version") and distribute, subject to the compulsory license created by 17 USC Section 115 of the US Copyright Act (or the equivalent in other jurisdictions), if Your distribution of such cover version is primarily intended for or directed toward commercial advantage or private monetary compensation.
- e. **Webcasting Rights and Statutory Royalties.** For the avoidance of doubt, where the Work is a sound recording, Licensors reserves the exclusive right to collect, whether individually or via a performance-rights society (e.g. SoundExchange), royalties for the public digital performance (e.g. webcast) of the Work, subject to the compulsory license created by 17 USC Section 114 of the US Copyright Act (or the equivalent in other jurisdictions), if Your public digital performance is primarily intended for or directed toward commercial advantage or private monetary compensation.

5. Representations, Warranties and Disclaimer

UNLESS OTHERWISE MUTUALLY AGREED TO BY THE PARTIES IN WRITING, LICENSOR OFFERS THE WORK AS-IS AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE WORK, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THE ABSENCE OF LATENT OR OTHER DEFECTS, ACCURACY, OR THE PRESENCE OF ABSENCE OF ERRORS, WHETHER OR NOT DISCOVERABLE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SUCH EXCLUSION MAY NOT APPLY TO YOU.

6. Limitation on Liability. EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR BE LIABLE TO YOU ON ANY LEGAL THEORY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF THIS LICENSE OR THE USE OF THE WORK, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



7. Termination

- a. This License and the rights granted hereunder will terminate automatically upon any breach by You of the terms of this License. Individuals or entities who have received Derivative Works or Collective Works from You under this License, however, will not have their licenses terminated provided such individuals or entities remain in full compliance with those licenses. Sections 1, 2, 5, 6, 7, and 8 will survive any termination of this License.
- b. Subject to the above terms and conditions, the license granted here is perpetual (for the duration of the applicable copyright in the Work). Notwithstanding the above, Licensor reserves the right to release the Work under different license terms or to stop distributing the Work at any time; provided, however that any such election will not serve to withdraw this License (or any other license that has been, or is required to be, granted under the terms of this License), and this License will continue in full force and effect unless terminated as stated above.

8. Miscellaneous

- a. Each time You distribute or publicly digitally perform the Work or a Collective Work, the Licensor offers to the recipient a license to the Work on the same terms and conditions as the license granted to You under this License.
- b. Each time You distribute or publicly digitally perform a Derivative Work, Licensor offers to the recipient a license to the original Work on the same terms and conditions as the license granted to You under this License.
- c. If any provision of this License is invalid or unenforceable under applicable law, it shall not affect the validity or enforceability of the remainder of the terms of this License, and without further action by the parties to this agreement, such provision shall be reformed to the minimum extent necessary to make such provision valid and enforceable.
- d. No term or provision of this License shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party to be charged with such waiver or consent.
- e. This License constitutes the entire agreement between the parties with respect to the Work licensed here. There are no understandings, agreements or representations with respect to the Work not specified here. Licensor shall not be bound by any additional provisions that may appear in any communication from You. This License may not be modified without the mutual written agreement of the Licensor and You.

Creative Commons is not a party to this License, and makes no warranty whatsoever in connection with the Work. Creative Commons will not be liable to You or any party on any



US Canada Consortia Contract

legal theory for any damages whatsoever, including without limitation any general, special, incidental or consequential damages arising in connection to this license. Notwithstanding the foregoing two (2) sentences, if Creative Commons has expressly identified itself as the Licensor hereunder, it shall have all rights and obligations of Licensor.

Except for the limited purpose of indicating to the public that the Work is licensed under the CCPL, neither party will use the trademark "Creative Commons" or any related trademark or logo of Creative Commons without the prior written consent of Creative Commons. Any permitted use will be in compliance with Creative Commons' then-current trademark usage guidelines, as may be published on its website or otherwise made available upon request from time to time.

Creative Commons may be contacted at <http://creativecommons.org/>.

