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AND

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

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Licensee shall make payment to Licensor for use of the Licensed Materials as set forth in Appendix A.

All fees are due and payable by Licensee sixty (60) days after the date of invoice from Licensor.

It is understood that Licensee is responsible for payment of the specified license fees on behalf of all campuses identified on Appendix A according to the payment schedule set forth herein, and no failure of Licensee to receive any required payment or reimbursement from any campus shall limit Licensee's obligations hereunder to pay the foregoing license fee in full according to the schedule provided.

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Amount of Authorized Use.

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User Surveys. If either party elects to conduct any user surveys, Licensee and Licensor shall discuss the parties' possible cooperation on the preparation and provision of any such user surveys to solicit feedback on the Licensed Materials from Authorized Users.

Confidentiality of User Data. Licensor and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party, except as required by law or process.

Implementation of Developing Security Protocols. Licensee and Licensor shall cooperate in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

VII. LICENSOR PERFORMANCE OBLIGATIONS

Availability of Licensed Materials. Upon the Effective Date of this Agreement, Licensor shall make the Licensed Materials available to Licensee and Authorized Users.

Documentation. Licensor will provide and maintain such help files and/or other appropriate user documentation as it deems appropriate during the term of this Agreement.

Training and Support. Licensor's sales representative will provide Licensee with a general overview of how to access the Licensed Materials. Licensor will provide training materials, demos, online, and WebEx training, and onsite training, if required. Licensor will use commercially reasonable efforts to make its personnel available by email, phone or fax during regular business hours, Monday through Friday for feedback, problem-solving, or general questions.

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Completeness of Content. Where applicable, Licensor shall use reasonable efforts to ensure that the online content is comparable to print versions of the Licensed Materials.

Continued Training. [INTENTIONALLY DELETED]

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Compliance with Americans with Disabilities Act. [INTENTIONALLY DELETED]

VIII. LICENSEE PERFORMANCE OBLIGATIONS

Provision of Notice of License Terms to Authorized Users. Licensee shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement including, in particular, any limitations on access or use of the Licensed Materials as set forth in this Agreement.

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shall take none of the steps described in this paragraph without first providing a thirty (30) day notice to Licensee and cooperation with the Licensee to avoid recurrence of any unauthorized use; provided that any Authorized User's IP address may be temporarily suspended without notice if Licensor determines that such user has breached the terms of this Agreement or otherwise made improper use of the Licensed Materials.

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IX. TERM

This Agreement will commence upon the date of activation by Licensor of the applicable AccessMedicine site(s) for access by Licensee under the terms herein and will continue for an initial period of twelve (12) months after the date of activation.

X. RENEWAL

After the initial term, this Agreement will automatically renew on the same terms (subject to any increase in subscription price for any renewal period) for successive terms of one (1) year each upon Licensor's receipt of Licensee's payment in accordance with Article III above of each renewal invoice for each renewal term, unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the then-current term. Licensee will be notified by Licensor of the initial date of activation.

XI. EARLY TERMINATION

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

Upon Termination of this Agreement for cause, online access to the Licensed Materials by Licensee and Authorized Users shall be terminated. Authorized copies of Licensed Materials may be retained by Licensee or Authorized Users and used subject to the terms of this Agreement.

In the event of early termination permitted by this Agreement, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

XII. PERPETUAL LICENSE – INTENTIONALLY DELETED

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IN NO EVENT WILL LICENSOR OR THE MCGRAW-HILL DESIGNATED ONLINE PROVIDERS, BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST PROFITS OR GOOD WILL, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN WITH RESPECT TO ANY USE OF ANY OF THE ACCESS MEDICINE SITES. WITHOUT LIMITING THE FOREGOING, EXCEPT AS PROVIDED IN SECTION XV BELOW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF LICENSOR AND ITS MCGRAW-HILL DESIGNATED ONLINE PROVIDERS IN ANY AND ALL CATEGORIES, WHETHER ARISING FROM AGREEMENT, WARRANTY, NEGLIGENCE, OR OTHERWISE, EXCEED ONE-FIFTH (1/5) OF THE AVERAGE ANNUAL FEE PAID BY LICENSEE FOR THE LICENSED MATERIALS.

XV. INDEMNITIES

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. ~~Subject to the limitations of liability in Section XIV above, 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 any other intellectual property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User.

Subject to the limitations of liability in Section XIV above, each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, related to third party claims which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims.

The indemnifying party shall have the right to defend such claims at its own expense and shall have the sole right to approve settlement of any such indemnified claim. The other party shall provide assistance in investigating and defending such claims as the other party deems appropriate and have the right to participate in the defense at its own expense with counsel of its own selection.

XVI. ASSIGNMENT AND TRANSFER

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

XVII. GOVERNING LAW

This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in California shall have jurisdiction to hear any dispute under this Agreement.

XVIII. DISPUTE RESOLUTION

In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

Mediation. INTENTIONALLY DELETED

Arbitration. INTENTIONALLY DELETED

XIX. FORCE MAJEURE

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected.

XX. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

XXI. AMENDMENT

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

XXII. SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

XXIII. WAIVER OF CONTRACTUAL RIGHT

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

XXIV. NOTICES

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by U.S. Mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

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IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

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Appendix A

Business Terms - Fee

Licensee shall pay Licensor [REDACTED] total for the complete 2004 – 2005 subscription year for up to 62 seats. In addition, Licensee shall pay Licensor for each additional seat in excess of 62 seats for ACM at [REDACTED] per seat and each additional HOL seat in excess of 62 seats at [REDACTED] per seat.

During the term hereof, Licensee may add campuses to Appendix B for an additional fee at any time during the subscription year for a fee of [REDACTED] per campus. For each added campus fee payment, 2 concurrent users will be added to the total number of shared concurrent users eligible to access both ACM and HOL. At the same time, Licensee may choose to add further concurrent users to the shared total for either ACM or HOL at the rates specified in the paragraph immediately above.

Appendix B

Campuses of the University of California

University of California, Berkeley

University of California, Davis

University of California, Irvine

University of California, Los Angeles

University of California, Riverside

University of California, San Diego

University of California, San Francisco

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