

AMERICAN SOCIETY FOR NUTRITION

INSTITUTIONAL ONLINE SUBSCRIPTION LICENSE AGREEMENT

AGREEMENT NUMBER: 000

BETWEEN

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Represented by [REDACTED] University of California, Davis _____

Hereinafter called "REGENTS OF THE UNIVERSITY OF CALIFORNIA" or "THE
LICENSEE"

FOR THE FIRST PART,

AND

American Society for Nutrition (ASN)
9650 Rockville Pike
Bethesda MD MD 20814-3998
United States

Represented by [REDACTED] _____ **Publisher and Vice President for Publications**

Hereinafter called "**THE PUBLISHER**"

FOR THE SECOND PART.

WHEREAS the Publisher, American Society for Nutrition, holds the rights granted hereunder,

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AND WHEREAS the Licensee, the subscribing institution, desires to use the rights and the Publisher desires to grant to the Licensee the license to use the rights in the pursuance of its research mission for the Fee, subject to the terms and conditions of this License.

It is hereby agreed as follows:

1. KEY DEFINITIONS

1.1 In this License, the following terms shall have the following meanings: -

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In this agreement Regents of the University of California is recognized by **THE PUBLISHER** as the "LICENSEE".

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In this agreement, the term "Authorized Users" shall mean (1) the laboratories, researchers, employees, faculty, administrative staff and students officially accredited by Licensee, or affiliated to Licensee, and acting within the scope of such employment and individuals who are currently registered and enrolled in a course of study and/or research; (2) any walk-in user in an institution (for example, persons who are authorized to physically enter the Library premises of structures accredited by Licensee or affiliated to Licensee, and access the Secure Network but only from computer terminals located within the Library premises); (3) persons affiliated with Licensee's remote sites.

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1.1.4 FEE

The License Fee is determined irrespective of the date during the subscription period that this agreement is executed.

1.1.5 LIBRARY PREMISES

The physical premises of the library or libraries operated by the Regents of the University of California.

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As listed in Schedule 2

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1.1.8 SERVER

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1.1.9 SUBSCRIPTION PERIOD

One calendar year as of 1 January 2016.

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3.1.2

Make such temporary local electronic copies by means of caching all or part of the Licensed Materials as are necessary solely to ensure efficient use by Authorized Users and not to make available to anyone other than Authorized Users copies of the Licensed Material.

3.1.3

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4.1.2

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5.1.2

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5.1.3

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5.1.4

Make reasonable efforts to comply with the Americans with Disabilities Act (ADA) requirements, Section 508 of the Rehabilitation Act Amendments, and provide Licensee current completed Voluntary Product Accessibility Template (VPAT).

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6. LICENSEE'S UNDERTAKINGS

6.1 The Licensee shall:

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Use its best efforts to ensure that all Authorized Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and of

the sanctions which the Licensee imposes for failing to do so;

6.1.2

Use its best efforts to notify Authorized Users of the terms and conditions of this License and take all reasonable steps to protect the Licensed Materials from unauthorized use or other breach of this License;

6.1.3

Use its best efforts to technically ensure compliance with the terms of this agreement by its Authorized Users and immediately upon becoming aware of any unauthorized use or other breach, inform the Publisher of such non-compliance, and if possible, the identity of the non-complying person, and take all reasonable and appropriate steps or have such steps taken, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;

6.1.4

Where access to the Licensed Materials is to be controlled by use of passwords, issue passwords or other access information only to Authorized Users and use its best efforts to ensure that Authorized Users do not divulge their passwords or other access information to any third party;

6.1.5

Provide the Publisher, within 30 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Material in accordance with its obligation under clause 5.1. Should the Licensee make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect;

6.1.6

Ensure that only Authorized Users are permitted access to the Licensed Materials.

6.2 The Licensee shall, in consideration for the rights granted under this License, pay the Fee prior to each subsequent Subscription Period and receipt of such payment shall be a condition of this License coming into effect. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

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- 7.3 Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, 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. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

8. TERM AND TERMINATION

- 8.1 This License agreement is executed for a duration of one year beginning on 1 January 2016 and ending on 31 December 2016.

Thereafter, the agreement can be renewed for an additional one (1)-year term upon request in writing from the representative of Licensee unless terminated at the end of the first term by written notice of one (1) month, notified by certified letter. If this agreement is so renewed, it will expire on 31st December 2016. Should one or more campuses decide not to renew, the terms of this Agreement shall remain in effect for the remaining participants, notwithstanding continuing rights.

- 8.2 In addition to automatic termination (unless renewed) under clause 2.2, this License shall be terminated:

8.2.1

if the Licensee defaults in making payment of the Fee as provided in this License

8.2.2

if the Publisher commits a material breach of any term of this License and fails to remedy the breach (if capable of remedy) within a reasonable time but no less than thirty (30) days of notification in writing by the other party

8.2.3

if Licensee commits a material or persistent breach of this agreement or infringes the Publisher's copyright or other intellectual property rights or of the provision of clause 3 in respect of usage rights or of clause 4 in respect of prohibited uses

8.2.4 if the Licensee becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

8.3 On termination all rights and obligations of the parties automatically terminate, except for the obligations in clause 7.1 which shall survive for five years following termination or expiration of this agreement.

8.4 On termination of this License, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorized Users and shall return to the Publisher, or destroy, or have destroyed, all Licensed Materials locally mounted pursuant to clause 3.1.1.

8.5 On termination of this License by the Licensee for cause, as specified in clause 8.2.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but unexpired part of the Subscription Period.

8.6 Either party reserves the right to terminate this Agreement for any reason following thirty (30) days written notice to the other party. Should one or more campuses exercise the right of early termination, the terms of this Agreement shall remain in effect for the remaining participants.

9 FEE – INVOICING AND PAYMENT

9.1 PRICING

The currency unit is the dollar US (\$).

The amount of the fee for 2016 is indicated by campus in Schedule 4.

9.2 Terms of invoicing and payment:

An annual invoice shall be issued upon execution of this agreement by both parties. 2 (two) copies of the invoice shall be send to the following address:

██████████ Acquisitions Coordinator
CDL Acquisitions, Geisel Library
University of California, San Diego
9500 Gilman Dr. #0175A
La Jolla, CA 92093-0175
Phone: ██████████
Fax: 534-858-1256
Email: cdl-acquisitions@ucop.edu

The amounts due must be paid within sixty (60) days following receipt of the invoice by bank transfer into the account opened in the name of the Publisher.

10 GENERAL

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

10.2 Alterations to this License and to the subscription period of this License are only valid if they are in writing and signed by both parties.

10.3 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

10.4 Any notices to be served on the Publisher by the Licensee shall be sent by prepaid recorded delivery, registered post, or facsimile to the following address:

American Society for Nutrition (ASN)

9650 Rockville Pike
Bethesda MD MD 20814-3998
United States

10.5 The Publisher's delay or failure to perform any provision of this License, as result of circumstances beyond its control (including, without limitation, war, strikes, electricity shortages, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall not constitute, or give rise to, a breach of this License.

10.6 The invalidity or un-enforceability of any provision of this License shall not affect the continuation or enforceability of the remainder of this License.

10.7 Failure by either party to require performance by the other party, of any provision of this License will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

10.8 Publisher expressly reserves all rights, including but not limited to rights under copyright, not granted in this license. Licensee shall have the option of terminating this License if these changes are material and unacceptable, and will receive a refund in compliance with clause 8.2.4.

10.9 The parties expressly intend that no third party has any rights under this agreement.

11. ARCHIVING AND CONTINUING RIGHTS

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by which access is provided under this Agreement.

12. APPLICABLE JURISDICTION

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.

13. HEADINGS

The parties intend that the words in the Headings that appear entirely in capital letters are for purposes of identification only and are not to be given any meaning in interpreting the terms of this license.

USA

Date: 2/1/16

For the Licensee
(Regents of the University of California)



USA

Date: 2/2/16

For the Publisher
(American Society for Nutrition)



SCHEDULE 1

LICENSED MATERIALS, ACCESS METHOD AND SUBSCRIPTION PERIOD

A schedule dated ____ January 1, 2016 to the License dated ____ December between

THE PUBLISHER (American Society for Nutrition)
and

THE LICENSEE

Name of Institution _ The Regents of the University of California _

Contact for the Institution: Licensing Contact

Name
Phone
Fax
Email



Contact for the Publisher (American Society For Nutrition)

Name
Tel/Fax:
email



DURATION AND TYPE OF LICENSE:

FEES & PAYMENT:

Payment date: 30 days from receipt of invoice

Invoice to:

Licensee's Billing Contact

 Acquisitions Coordinator
CDL Acquisitions, Geisel Library
University of California, San Diego
9500 Gilman Dr. #0175A
La Jolla, CA 92093-0175
Phone: 
Fax: 534-858-1256
Email: cdl-acquisitions@ucop.edu

SCHEDULE 2

LICENSED MATERIALS

American Journal of Clinical Nutrition
Journal of Nutrition
Advances in Nutrition
Nutrition Science Collection

AS WITNESS the hands of the parties the day and year below first written

FOR (PUBLISHER NAME)

Initials:  _____

Date: 2/2/16

FOR THE LICENSEE:

Initials:  _____

Date: 2/1/16

SCHEDULE 3

LICENSEE'S IP ADDRESSES/Ranges

A schedule dated _____ to the License dated _____ between _____

THE PUBLISHER (American Society for Nutrition) and THE LICENSEE (Regents of the University of California)

[illegible]

AS WITNESS the hands of the parties the day and year below first written

FOR (PUBLISHER NAME)

Initials: _____


Date: 2/2/14

FOR THE LICENSEE:

Initials: _____

Date: 2/1/16

SCHEDULE 4

2016	TIER	2016 RATE	UCS RATE*
UC Berkeley (CU-0002397)	4		
UC Davis (CU-0032562)	4		
UC Irvine (CU-0000391)	3		
UCLA (CU-0705622)	4		
UC Riverside (CU-0866255)	3		
UC San Diego (CU-0866254)	4		
UC San Francisco (CU-0733059)	4		
TOTAL			

