

Consortia/Multi-Site Contract

BMJ Publishing Group Online Journal License Agreement
United States and Canada Consortia/Multiple Site

This Agreement is made the _____ day of _____ 2003

BETWEEN

THE BRITISH MEDICAL ASSOCIATION, a company limited by guarantee, whose registered office is situated at BMA House, Tavistock Square, London, England WC1H 9JR trading as BMJ Publishing Group (“**Licensor**”);

AND

REGENTS OF THE UNIVERSITY OF CALIFORNIA (“**Licensee**”)

1. Key Definitions

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

- 1.1 “**Authorized Users**” means full and part-time Employees, staff, independent contractors and students officially affiliated with Licensee at the authorized site(s), persons with legal access to the library using valid Internet Protocol (“IP”) address(es) provided by Licensee to Licensor, and Walk-ins.
- 1.2 “**Commercial Use**” means use of the Licensed Material for the purposes of monetary reward (whether by or for Licensee or Authorized User) by the means of sale, resale, loan, transfer, hire or other form of exploitation.
- 1.3 “**Fee**” means the subscription fee payable by Licensee as set out in Schedule 2 to this Agreement.
- 1.4 “**License**” means the license set out in Clause 2 below.
- 1.5 “**Licensed Material**” means the electronic version of the Licensor journal which Licensee subscribes to, as set out in Schedule 1 to this Agreement.
- 1.6 “**Location**” means the location(s) set out in Schedule 4 to this Agreement.

- 1.7 **“Site”** means the electronic site on which the Licensed Material will be displayed.
- 1.8 **“Start Date”** means the start of the subscription as set out in Schedule 3 to this Agreement.
- 1.9 **“Term”** means one year from the Start Date, unless terminated earlier under Clause 6.
- 1.10 **“Walk-ins”** means patrons not affiliated with Licensee who are legally present at the Location.

2. The License

- 2.1 In consideration of receipt of the Fee, Licensor grants Licensee a non-exclusive, non-transferable license to access the Licensed Material at the Location (or remotely, as long as such use is via Licensee’s server) for the duration of the Term.
- 2.2 Licensor does not undertake to ensure future access to archives in the same online format as provided under this Agreement, once the Term has expired. Licensor intends to:
- 2.2.1 retain full-text versions of all articles for all past issues posted online and to continue to make this database available to all currently active Licensees; and
- 2.2.2 provide a copy of the Licensed Material for indexing at the US National Library of Medicine at Bethesda, Maryland, USA. However, because Licensor cannot be certain of future technology, storage, or maintenance costs, this access cannot be guaranteed in perpetuity. Licensor reserves the right to remove all or portions of the archive of past issues of the Licensed Material. Only current Licensees may access materials under access control.
- 2.3 Notwithstanding anything else in this License, Licensor hereby grants to Licensee a non-exclusive, royalty-free, perpetual license to use any Licensed Materials that were accessible during the term of this Agreement, with the exception of any portion of Licensed Materials that has been expunged from the archive by Licensor due to circumstances beyond Licensor’s control. Such use shall be in accordance with the provision of this Agreement, which provisions shall survive any termination of this Agreement.

Licensee will be permitted to create one (1) copy of the Licensed Material to be maintained as a back-up or archive copy during the term of this Agreement, or as required to exercise Licensee's perpetual license under

this Clause 2.3.

- 2.4 Licensor maintains the Licensed Material as a service to its members and the scientific / technical / medical community. Licensor holds the copyright for all works published in the Licensed Material, as a compilation and as to the individual articles, collectively and individually, unless otherwise expressly noted.
- 2.5 Neither Licensee nor any Authorized User shall claim ownership of the Licensed Material, or any intellectual property rights in the Licensed Material, by reason of their use of or access to the Licensed Material.

3. Permitted Uses

3.1 All use of the Licensed Material is subject to all applicable copyright laws and fair use conventions, and reproduction of any portion of the Licensed Material is permitted as follows:

- 3.1.1 Downloading: Downloading, printing, or saving of the Licensed Material for personal use is permissible. No Commercial Use of any part of the Licensed Material is permitted without the prior, express written permission of Licensor. Systematic downloading is forbidden.
- 3.1.2 Braille Transcription: Licensee may transcribe any portion of the Licensed Material 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.
- 3.1.4 Inter-library Loan: Licensee may fulfill occasional request from other institutions, a practice commonly known as Inter-library Loan.

Upon an adequate consideration from Licensor, Licensee agrees to maintain records respecting Licensee's use of Materials in such Inter-library Loans and to provide such records to Licensor upon request.

Licensee agrees to fulfill such requests in compliance with Section ~~109~~ ^{(MAR) 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 (CONTU).

- 3.1.5 Electronic Right: Licensee may provide electronic links to the Licensed Material from Licensee's web page(s). Upon request, Licensor will provide reasonable assistance to Licensee in creating such links effectively. Licensee agrees to make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by Licensor.

Licensor will also provide means for Licensee to link directly from records in Licensee's bibliographic computing systems to the content in the Licensed Material at the title, issue, and article levels, using standard Internet communications and applications protocols, and any such other methods as may be agreed to by Licensor and Licensee.

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 Material;
- 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 Material;
- 4.1.3 is prohibited from making agreements for access to the Licensed Material with individuals, organizations, vendors, affiliates, or partners, which are not subsidiaries or departments 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 Material; and
- 4.1.5 will not remove, cover, overlay, obscure, block, or change any copyright notices, legends, or terms of use which Licensor may post on the Site in order to inform users about system features, terms of use, or copyright notices.

5. Technical Access

5.1 Licensor intends for the Site to be available 24 hours per day, 7 days per week. However, Licensor will not 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 Licensees.

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 Material as it becomes 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.

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 30 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 Material by Licensee and Authorized Users shall be terminated.

7. Warranty

7.1 While Licensor seeks to ensure the accuracy of content posted online, Licensor does not warrant or guarantee its accuracy, completeness, merchantability, or fitness for a particular purpose.

7.2 In no circumstances is Licensor liable to Licensee for any 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.

7.3 Licensor's aggregate liability for any content, accessibility or problems with the Site will not exceed the amount of subscription fees paid for the Licensed Material during the 12 month period preceding any claim or notice of damages.

8. Indemnities

8.1 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 Material by Licensee or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

8.2 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.

9. General

9.1 Neither party shall be liable for failure or delay in performing its obligations under this License.

9.2 Licensor may assign or transfer any of its rights and obligations under this License, upon written notice to Licensee.

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 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, provided, however, that institutional Licensee shall not be bound by this paragraph if compliance would violate any existing law, regulations, bylaws, articles of incorporation or other governing instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed:

For the]

By: _____

[Name] , [Title]

[Redacted Signature]

SALES & MKTG DIRECTOR

Dated: _____

24/3/03

For [

]:

By: _____

[Name] , [Title]

[Redacted Signature]

The Regents of the University of California

Manager, Procurement Services
Material Management

Dated: _____

3/6/03

SCHEDULE 1

Journals

Archives of Disease in Childhood (includes Fetal and Neonatal Edition)

Annals of the Rheumatic Diseases

British Journal of Ophthalmology

Gut

Heart

Journal of Clinical Pathology (includes Molecular Pathology)

Journal of Neurology, Neurosurgery and Psychiatry

Thorax

British Journal of Sports Medicine

Emergency Medicine Journal

Evidence-Based Medicine

Evidence-Based Mental Health

Evidence-Based Nursing

Journal of Epidemiology & Community Health

Journal of Medical Ethics (includes Medical Humanities)

Journal of Medical Genetics

Occupational & Environmental Medicine

Postgraduate Medical Journal

Quality and Safety in Healthcare

Sexually Transmitted Infections

Tobacco Control

Pediatric Asthma, a virtual Journal

SCHEDULE 2

Fee

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

 for full year electronic subscription to journals detailed in Schedule 1

SCHEDULE 3

Start Date

April 1, 2003

(Or first day of first full month following the month contract is signed)

SCHEDULE 4

Locations

University of California at Davis

University of California at Los Angeles

University of California at San Francisco

University of California at Berkeley

University of California at Irvine

University of California at San Diego