

ELECTRONIC JOURNAL LICENSING AGREEMENT
for the period 1st January 2007 to 31st December 2007

This Licence Agreement is agreed the 20th December 2006,

between

1 Royal Society of Medicine Press Limited, [REDACTED]
"Publisher")

and

2 University of California San Diego, [REDACTED]

AND WHEREAS the Licensee desires to use the rights and the Publisher desires to grant to the Licensee the licence to use the rights for the Fee.

IT IS AGREED AS FOLLOWS

1. Key definitions

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

1.1 Authorised Users Current members of the faculty and other staff of the Licensee (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently studying at the Licensee's institution, who are permitted to access the Secure Network from within the Licensee's Premises and from such other places where Authorised Users work or study (including but not limited to Authorised Users' offices and homes, halls of residence and student dormitories) and who have been issued by the Licensee with a password or other authentication, together with other persons who are permitted to use the Licensee's library or information service and access the Secure Network but only from computer terminals located within the Licensee's Premises. For the avoidance of doubt, and excepting when separate arrangements have been made with the Publisher, individual members of membership organisations are not regarded as Authorised Users unless they are accessing the Licensed Material from computer terminals located within the Licensee's Premises.

1.2 Fee The fee set out in Schedule 1, as amended by mutual agreement of the parties from time to time.

1.3 Licensed Material The electronic material listed in Schedule 1, as amended by mutual agreement of the parties from time to time, and which is delivered in the format and according to the time schedule specified in Schedule 1.

1.4 Licensee. This term includes the Licensee as first named above, and those affiliates of the Licensee and other associated companies indicated above as Authorised Users, the IP addresses of which are specified in Schedule 2.

1.5 Secure Network A network operated or controlled by the Licensee (whether a stand-alone network or a virtual network within the Internet) which is accessible only to Authorised Users.

2. Grant of Licence

2.1 The Publisher hereby grants to the Licensee the non-exclusive and non-transferable right to give Authorised Users access to the Licensed Material via the Secure Network, subject to payment of the Fee by the Licensee and to the other terms and conditions of this Licence Agreement

2.2 In consideration of the rights granted under this Licence Agreement, the Licensee shall pay the Fee to the Publisher in accordance with the provisions of Schedule 1. 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.

2.3 This Licence Agreement shall commence on immediately and, unless earlier terminated pursuant to Clause 8 below, shall remain in effect until 31st December 2007, when the Licence Agreement shall automatically terminate unless the parties have previously agreed to renew it.

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5.2.4 Use reasonable endeavours to ensure that the Server has adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Licence.

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6.2 The Licensee shall:

6.2.1 Ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Material

6.2.2 Use all commercially reasonable efforts to ensure that all Authorised Users are made aware of and abide by the terms and conditions of this Licence Agreement

6.2.3 Use commercially reasonable efforts to monitor compliance and immediately on becoming aware of any unauthorised use or other breach, take all reasonable steps both to ensure that such activity ceases immediately and to prevent any recurrence, and shall inform the Publisher thereof

6.2.4 Issue passwords (or other information to enable access to the Secure Network) only to Authorised Users and shall not divulge, and shall use commercially reasonable efforts to ensure that Authorised Users do not divulge, their passwords or other access information to any third party.

6.25 Use commercially reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Material

7 Mutual undertakings

7.1 Each party shall use commercially reasonable efforts to safeguard the intellectual property, confidential information and proprietary rights of the other party. In particular, but without limitation, all commercial and financial terms and conditions of this Licence Agreement which are specific to the agreement between the parties, including without limitation the content of all the Schedules hereto, shall be kept strictly confidential

8 Term and Termination

8.1 In addition to automatic termination (unless renewed) under clause 2.3, this Licence shall be terminated if:

8.1.1 The Licensee defaults in making payment of the Fee and fails to remedy such default within thirty (30) days of notification in writing by the Publisher.

8.1.2 The Licensee commits a wilful material and persistent breach of the terms of this Licence, and particularly of 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, and fails to remedy the breach within thirty (30) days of notification in writing by the Publisher.

8.1.3 The Publisher commits a material or persistent breach of its undertakings and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the Licensee.

8.1.4 Either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

8.2 On termination, all rights and obligations of the parties automatically terminate except for obligations in respect of Licensed Material to which access continues to be permitted as provided in clause 8.3 below.

8.3 On expiry or termination of this License Agreement in respect of one or more journals included in the Licensed Material for any cause other than breach by the Licensee, the Publisher shall use its reasonable endeavours to provide the Licensee with continuing access from the Server to that part of the Licensed Material which was published and paid for within the Subscription Period. Where such termination is due to breach of the Licence by the Licensee, which the Licensee has failed to remedy as provided in clause 8.1.2 of this Licence, no such continuing access shall be provided.

8.4 On termination of this Licence by the Publisher for cause, as specified in clause 8.1.2 above, access from the Server to all of the Licensed Material by the Licensee and Authorised Users shall be terminated.

8.5 On termination of this Licence by the Licensee for cause, as specified in clause 8.4 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but unexpired part of the Subscription Period.

9. General

9.1 This Licence Agreement contains the full and complete understanding between the parties and supersedes all prior arrangements and understandings whether written or oral appertaining to the subject matter of this Licence Agreement. All Schedules hereto are incorporated as if set forth in this Licence Agreement in full.

9.2 Alterations to this Licence Agreement shall be valid only if they are in writing and signed by both parties.

9.3 Except as otherwise provided in Clause 9.4, this Licence Agreement may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, without the prior written consent of the other party, which consent shall not unreasonably be withheld. Either party may make its consent conditional on the agreement of the assignee to maintain the confidentiality of (or, at that party's election, destroy) all usage information collected by the other party pursuant to Clause 5.4. If rights in all or any part of the Licensed Material are assigned to another publisher, the Publisher shall use its best efforts to ensure that the terms and conditions of this Licence Agreement are maintained and observed.

9.4 Notwithstanding anything to the contrary contained herein, should the Licensee (or any company which controls the Licensee by virtue of stock ownership or power to direct or cause the direction of its management and policies) merge with, acquire or be acquired by or enter into a business combination with another company involving all or substantially all of the Licensee's assets, the surviving or resulting entity (or such of its subsidiaries or affiliates as it may designate) shall assume all rights and obligations of the Licensee under this Licence Agreement, and this Licence Agreement shall continue in full force and effect. In such case, however, the parties shall reserve the right to negotiate adjustments, effective as of the date of such transaction, to the pricing and payment terms hereunder.

9.5 All notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this Licence Agreement or to such other address as notified by either party to the other as its address for the service of notices and all such notices shall be deemed to have been received within 14 days of posting.

9.6 Neither party shall be liable in any way for failure or delay in performing its obligations under this Licence Agreement if the failure or delay is due to causes outside the reasonable control of the party in default.

9.7 The failure of any party to enforce any provision on any one occasion shall not affect its right to enforce another provision or the same provision on another occasion.

9.8 Neither party shall be liable to the other for any special, incidental or consequential damages (including, without limitation, lost profits and loss of goodwill) arising from any breach of this licence agreement, even if advised of the possibility of such damages.

9.9 In the event that any provision of this Licence Agreement is held to be invalid, the remainder of the provisions shall continue in full force and effect.

9.10 This Licence Agreement shall be governed by and construed according to the law of California.

As witness the hands of the parties the day and year below first written



Date: 09/03/07

For the Publisher, Royal Society of Medicine Press Limited

Name: Kristen Boyton

Title: Journal Sales Manager



Date: 12/20/06

For the Licensee, University of California, San Diego

Name: Tony Harvell

Title: Head of Acquisitions, UCSD Libraries

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