

ACADEMIC INSTITUTION

SITE LICENSE

LICENSE AGREEMENT FOR ONLINE ACCESS TO SELECTED PUBLICATIONS

This license between the American Medical Association(AMA) and **University of California – San Diego Libraries** located at [address removed] (Licensee) covers the full online text only database of the contents of the following AMA Journals from January 1998 to the present (hereinafter referred to as the "Licensed Materials"):

JAMA	Archives of Neurology
Archives of Dermatology	Archives of Ophthalmology
Archives of Facial Plastic Surgery	Archives of Surgery
Archives of General Psychiatry	Archives of Internal Medicine
Archives of Pediatrics and Adolescent Medicine	
Archives of Otolaryngology – Head & Neck Surgery	

This license is based on Licensee's representation that its full time medical school teaching faculty is comprised of **681 persons**. The cost for this license is [text removed], payable in advance.

The AMA grants Licensee a non-exclusive license to use the Licensed Materials copyrighted by the AMA, subject to the following conditions:

1. Type of License:

Licensed Materials shall be made available to Licensee (after payment of the applicable royalty in U.S. dollars) on-line to the IP addresses that you provide to the AMA for the purposes of research, teaching and private study. The SITE license as indicated above allows for the use of all staff of the corporation or institution at all of their locations worldwide unless otherwise specified.

2. License:

Licensee may use the Licensed Materials online within the authorized range of IP addresses in accordance with the specified limitation of your SITE License, including workstations of authenticated users connecting remotely through secure access procedures established by the Licensee. The Licensee may incorporate parts of the Licensed Materials in printed course packs and electronic reserve, but copies retained in electronic reserve must be deleted when no longer used for such purpose and in no event retained for longer than one academic year. Licensee may not use the Licensed Materials on a public computer based information system, including any electronic bulletin board available to the public, including the Internet or World Wide Web, other than for gaining access to the Licensed Materials from the AMA. Licensee agrees that access to the Licensed Materials shall be limited solely to employees,

registered students, and patrons wishing to access the Licensed Materials on library premises. Licensee may not make derivative works, transfer, sublicense, release, sell or license any of the Licensed Materials information or otherwise authorize use of or use the Licensed Materials information in any database or to create a database or allow any use or access to the Licensed Materials by any other party, entity, organization or government agency for any purpose. Notwithstanding the foregoing, Licensee may supply single copies of articles included in the Licensed Materials to another library solely for the noncommercial use of such library's patron for the purposes of research or private study, provided that Licensee complies with Section 108 of the United States Copyright Law ("Limitations on exclusive rights, Reproduction by libraries and archives") and clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by National Commission on New Technological Uses of Copyrighted Works. Licensee agrees that uses not authorized by this license are expressly prohibited.

Licensee agrees that it shall not make the Licensed Materials available in such countries as advised in writing by AMA where such availability may be prohibited by U.S. law or where, in AMA's reasonable judgment, copyright may not be preserved and protected. Licensee agrees to promptly notify AMA of any infringements of copyright in the Licensed Materials that Licensee becomes aware of and to cooperate with any enforcement actions in response thereto.

3. Licensee Obligations:

Licensee shall exercise reasonable care to insure that only authorized users are permitted access to the Licensed Materials, and that all authorized users are made aware of the importance of respecting the intellectual property rights in the Licensed Materials and undertake to abide by the terms and conditions of this License. Licensee agrees to inform the AMA immediately upon becoming aware of any unauthorized use or other breach, and take all reasonable and appropriate steps, both to ensure that such activity ceases and to prevent any recurrence, issue password or other access information only to authorized users and use reasonable efforts to ensure that same are not divulged to any third party.

4. Mutual Performance Obligations

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.

5. Licensor Performance Obligations

A. Availability of Licensed Materials.

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

B. Notice of Terms of "Click-Through" License Terms.

In the event that Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall the terms of such "click-through" licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "click-through" licenses and this Agreement, the terms of this Agreement shall prevail.

6. Licensee Performance Obligations

A. 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.

B. Provision of Notice of Intellectual Property Right to Authorized Users.

Licensee shall make reasonable efforts to provide Authorized Users with notice of any applicable Intellectual Property or other rights applicable to the Licensed Materials. Licensee shall make reasonable efforts to prevent the infringement of any Intellectual Property or other rights of the Licensor in the Licensed Materials. Licensee shall promptly notify Licensor of any infringement that comes to Licensee's attention, and take appropriate steps to avoid its recurrence.

C. Protection from Unauthorized Use.

Licensee shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. In the event of any unauthorized use of the Licensed Materials by an Authorized User, (a) Licensor may terminate such Authorized User's access to the Licensed Materials, (b) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee shall terminate such Authorized User's access to the Licensed Materials

upon Licensor's request. Licensor shall take none of the steps described in this paragraph without first providing a sixty (60) day notice to Licensee and cooperation with the Licensee to avoid recurrence of any unauthorized use.

7. **Property Rights:**

A. Copyright.

Licensee acknowledges that the Licensed Materials are copyrighted and contain proprietary information of the AMA and third parties. Licensee agrees not to remove any copyright or proprietary legends from the Licensed Materials. Licensee agrees to take all reasonable steps by instruction, agreements or otherwise to ensure compliance with the terms of this Agreement by Licensee's employees and others who have access to the Licensed Materials. AMA reserves the right to delete any articles or other materials from the Licensed Materials.

Licensor warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

B. Government Rights.

The Licensed Materials include AMA journal materials which are commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable which were developed exclusively at private expense by the American Medical Association, [text removed]. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

8. **Term:** The term of this license is for a **12** month period beginning when you gain initial access to the Licensed Materials. It may be renewed for subsequent **12** month periods as long as AMA is making the Licensed Materials available and upon Licensee's payment of the then current subscription price.

9. **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.

In the event, other than because of Licensee's breach, 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.

10. **Limitation of Liability:** NEITHER AMA NOR ANY OF ITS AGENTS OR SUPPLIERS "REPRESENTS OR WARRANTS THAT THE INFORMATION IN THE LICENSED MATERIALS IS COMPLETE OR IS ACCURATE, OR THAT ACCESS TO THE LICENSED MATERIALS WILL OPERATE UNINTERRUPTEDLY AND AMA AND EACH SUCH AGENT OR SUPPLIER EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATIONS OR WARRANTIES AND ANY LIABILITY TO ANY PERSON. Licensee acknowledges that the Licensed Materials have not been developed according to Licensee's specifications or otherwise custom made. Licensee specifically acknowledges that temporary interruptions in providing the Licensed Materials may occur from time to time. AMA agrees to exercise reasonable care to prevent such occurrences. NEITHER AMA, NOR ANY OF ITS SUPPLIERS OR AGENTS, MAKE ANY REPRESENTATIONS OR WARRANTIES EXPRESSED OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

AMA, ITS AGENTS AND SUPPLIERS DISCLAIM ANY LIABILITY FOR ANY DAMAGES ARISING OUT OF THE USE OF ANY INFORMATION CONTAINED IN THE LICENSED MATERIALS, FROM ANY INTERRUPTION IN THE AVAILABILITY OF THE LICENSED MATERIALS, FROM ANY LOSS OF DATA OR FROM ANY EQUIPMENT FAILURE. IN NO EVENT WILL AMA OR ANY OF ITS SUPPLIERS OR AGENTS BE LIABLE FOR ANY DAMAGES INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS OR OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.

11. **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 or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User, provided however, that Licensor shall not be obliged to indemnify Licensee or any Authorized User against any claim arising from any use not authorized by this License. **NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.**

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.

12. **General:** This agreement: (i) is the only agreement between the parties with regard to the Licensed Materials, (ii) may not be assigned by Licensee without the prior written consent of AMA which will not be unreasonably withheld. Licensee agrees to accept reasonable modifications to this Agreement if notified in writing by AMA in order solely to comply with any court holding or law which would protect AMA's property rights, including copyright, in the Licensed Materials. All modifications to this agreement are subject to acknowledgement by both parties, in writing, before they will become effective.

13. **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.

14. **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. In the event that the parties can not by exercise of their best efforts resolve the dispute, they shall submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within thirty (30) calendar days after such meeting, the dispute shall be submitted to binding arbitration in accordance with the Arbitration provision of this Agreement.

Arbitration. Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties.

All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than sixty (60) days after the notice of arbitration is served.

The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

15. In the case of public institutions, nothing herein shall be construed to alter or waive the

application of state statutes that may impose requirements or limitations contrary to the terms stated herein. If any provision hereof is held to be unenforceable or contrary to public policy the parties agree that the remaining portions are enforceable.

16. Your signature below acknowledges that the information you provided to complete this license is accurate and that you have authority to enter into this license on behalf of your organization.

AGREED:

**UNIVERSITY OF CALIFORNIA
SAN DIEGO LIBRARIES**

AMERICAN MEDICAL ASSOCIATION

By: ____ [signature removed] _____

By: ____ [signature removed] _____

Print Name: __ Tony A. Harvell _____

Print Name: __ Bill Fox _____

Title: __ Head of Acquisitions _____

Title: __ Dir., CSM _____

Date: __ 1/27/05 _____

Date: __ 25 July 2005 _____