

LICENSE AGREEMENT For Elsevier Online Services

This license agreement ("Agreement") is entered into by and between Elsevier Inc., [REDACTED] USA ("Elsevier"), and University of California at San Diego, [REDACTED] USA ("Customer").

Elsevier and Customer agree as follows:

- 1. License.** Elsevier grants to Customer a non-transferable, non-exclusive right and license to access and use the online medical information service(s) described on Attachment A (the "Service"), each through the respective website listed on Attachment A (the "Website") according to the terms and conditions set forth in this Agreement. Customer and its Authorized Users (as defined below) and shall have access to the Service for an annual license fee set forth on Attachment A (the "Fee"). "Authorized Users" shall mean faculty, full-time and part-time students, residents, researchers, employees and independent contractors of Customer affiliated with Customer's locations listed on Attachment A ("Sites") and authorized by Customer to access the Service through Customer's secure network by secure authentication and Walk in Users (defined as persons not affiliated with the Customer who are permitted to access the secure network from computer terminals within the library premises).
- 2. Term.** This Agreement starts as of the "Commencement Date" on Attachment A and continues for a period of three (3) years (the "Initial Term"). This Agreement will automatically renew for an additional one-year term (a "Renewal Term") unless Customer notifies Elsevier in writing of its desire not to renew thirty (30) days prior to the expiration date. Elsevier reserves the right to adjust prices upward or downward upon renewal of this Agreement for any Renewal Term. Customer will be notified of price adjustments sixty (60) days prior to a Renewal Term.
- 3. Payment.** The Fee shall be paid in U.S. dollars payable through an authorized branch of a U.S. bank or via wire service transfer. Customer will pay the Fee within thirty (30) days after the invoice date. Elsevier reserves the right to suspend access to the Service if a payment is not received by its due date. The Fee shall be exclusive of any sales, use, value added, withholding or similar tax, and Customer shall be liable for any such taxes in addition to the Fee.
- 4. Registration.** Customer 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. Authorized Users may also register individually for the Service online at the Website. In the event of an ambiguity or inconsistency between a term in the Registered User Agreement and in this Agreement, this Agreement shall control.

Restrictions. Except as expressly granted by the Agreement, Customer acquires no right, title or license in the content or data incorporated in the Service. This Agreement is specific to Customer and may not be assigned, transferred or sublicensed in whole or in part without the prior consent in writing of Elsevier. The use of all or any part of the Service by anyone other than the Authorized Users is expressly prohibited. Elsevier warrants that it has the authority to make available the Service, and that it has secured all rights and permissions necessary to enable the Authorized Users to utilize such materials in compliance with this Agreement. Elsevier will indemnify, defend and hold harmless Customer and its Authorized Users from and against any loss, damage, costs, liability and expenses incurred (including reasonable attorneys' fees) arising from any third-party action or claim that materials furnished hereunder and used within the scope of the Agreement (not including any materials that have been customized or otherwise altered by Customer) infringe any patent, copyright or other rights of third parties. If any such action or claim is made, the Subscriber will promptly notify and cooperate with Elsevier. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

Should the materials furnished under this Agreement become or in Elsevier's opinion be likely to become, the subject of a claim for infringement, Elsevier may authorize the continued use, replacement, removal, or modification of such data to make it non-infringing. Customer shall not be liable for breach of any of the terms of this Agreement by any Authorized User provided that Customer did not intentionally assist in or encourage such breach or permit such breach to continue after having actual notice thereof and provided Customer reasonably cooperates with Elsevier to prevent misuse.

5. **Access and Use.** Access to the Service shall be controlled through the use of Internet Protocol (IP) addresses, passwords/usernames, or both. Customer is responsible for providing valid Internet Protocol (IP) addresses to Elsevier, issuing and terminating access codes and/or passwords/usernames (if used), and verifying the status of Authorized Users. Customer is responsible for taking reasonable measures to ensure the security and integrity of the Service, ensure that access to and use of the Service is limited to Authorized Users and prevent access by unauthorized persons to the Service, ensure that passwords are issued only to Authorized Users, and immediately terminate any unauthorized access or use of which it becomes aware and prevent recurrence. Customer shall promptly notify Elsevier of any unauthorized access or use of which it becomes aware and cooperate with Elsevier in any investigation thereof.

6. **Support.** Customer accepts sole responsibility and liability for Internet access and installation of all system components required to access the Service. Customer is also responsible for any charges it incurs to access Elsevier, such as telephone and other equipment charges, and fees charged by an Internet access provider or other third party service. Customer shall nominate one (1) member of its staff to act as a contact for technical support, specified on Attachment A. In the event of problems operating the Service, this person may contact Elsevier for technical support. Such support shall be provided only for the Service as supplied by Elsevier under this Agreement. Elsevier shall not supply support for any retrieval or other software or hardware obtained by Customer from any third party and shall not supply any technical support direct to any Authorized User. Customer shall nominate one (1) member of its staff to act as administrative contact for non-technical support, specified on Attachment A. Authorized Users may contact the Website's online customer support center for assistance in the use of the Service.

7. **Unauthorized Use.** In the event of any unauthorized use of the Service, Elsevier may suspend access of the IP address(es) from which the unauthorized use occurred upon notice to Customer. Customer 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) Elsevier may terminate such Authorized User's access to the Licensed Materials, (b) Customer may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Customer shall terminate such Authorized User's access to the Licensed Materials upon Elsevier's request. Elsevier shall take none of the steps described in this paragraph without first providing a sixty (60) day notice to Customer and cooperation with the Customer to avoid recurrence of any unauthorized use.

8. **Notices.** All notices given pursuant to this Agreement shall be in writing and delivered to the party to whom such notice is directed at the address specified above or the facsimile number or electronic mail address as such party shall have designated by notice hereunder.

9. **Privacy.** Elsevier shall not, without the prior written consent of Customer, transfer any personal information of any Authorized Users to any non-affiliated third party or use it for any purpose other than as described in this Agreement.

10. **Funding Contingency.** The University of California reasonably believes that funds can be obtained sufficient to pay all monies due during the term of this Agreement and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which payments for this transaction may be made, including making provisions for such payments to the

extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative review and appeals in the event such portion of the budget is not approved. It is the University of California – San Diego’s intent to make payments for the full term of this transaction. The University of California – San Diego represents that the use of the materials under this transaction are essential to its proper, efficient and economic operation.

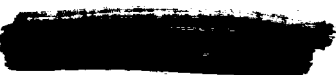
In the event no funds or insufficient funds are appropriated and budgeted and are not otherwise legally available by any means whatsoever in any fiscal period for payments due under this transaction, the University of California – San Diego will immediately notify Licensor of such occurrence and this transaction shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the University of California – San Diego of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination the University of California – San Diego shall maintain its perpetual right to materials licensed under the subscription periods for which it has fully paid as documented in this agreement


11. **Miscellaneous.** This Agreement may only be amended or modified in a written document signed by both parties. This Agreement contains the entire understanding and agreement of the parties and merges and supersedes any and all previous and contemporaneous agreements, communications, confirmations, proposals and purchase orders, written or oral, between the parties with respect to the subject matter contained herein. Customer will maintain the confidentiality of the pricing terms of this Agreement except as subject to the laws of the jurisdiction in which the customer is located.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the last date set forth below.

University of California at San Diego

ELSEVIER INC.

By: 
 Name: Tony A. Harrell
 Title: Head of Acquisitions
 Date: 8/25/08

By: 
 Name: Scott Wilson
 Title: V.P. Sales
 Date: 9.28.08

**LICENSE AGREEMENT
For Elsevier Consult™ Online Services
Attachment A**

Customer Name: University of California at San Diego

Sites: University of California, San Diego

[REDACTED]
UCSD Medical Center - Hillcrest

[REDACTED]
Thornton Hospital

[REDACTED]
Ambulatory Care Center - ACC

[REDACTED]
Cambridge Physicians Medical Center
UCSD Pediatrics & Adolescent Medicine

[REDACTED]
Child & Adolescent Psychiatry (CAPS)

[REDACTED]
Chancellor Park (Plastic Surgery)

[REDACTED]
Eating Disorders Clinic

[REDACTED]
Family & Sports Medicine, La Jolla

[REDACTED]
Fourth & Lewis Medical Office

[REDACTED]
Internal Medicine Group - La Jolla

[REDACTED]
UCSD Medical Center - Hillcrest

[REDACTED]
Moores Cancer Center

[REDACTED]
Orthopedic Surgery Practice | La Jolla
Perlman Ambulatory Care Center

[REDACTED]
Outpatient Center (OPC)

[REDACTED]
Perlman Ambulatory Care Center

[REDACTED]
Scripps Ranch Medical Office

[REDACTED]
Shiley Eye Center

[REDACTED]
Thornton Hospital

**LICENSE AGREEMENT
For Elsevier Consult™ Online Services
Attachment A (continued)**

Number of Estimated Users: Unlimited Site-License

Administrative Contact

Name: Craig Haynes

Title: Head/Med Ctr Lib

Address (if different from address for notices):

E-mail: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

Customer will promptly notify Elsevier of any changes to any of the information above.

Services: Clinical Pharmacology which includes Clinical Calculators

Year One 2008-2009 Fee \$ [REDACTED]

Year Two 2009-2010 Fee \$ [REDACTED]

Year Three 2010-2011 Fee \$ [REDACTED]

Commencement Date: May 1, 2008

Initial Term Expiration Date: May 1, 2011

ADDENDUM

WHEREAS, the parties hereto have previously entered into an agreement signed 25 August 2008 (the "Master Agreement") and wish to amend the Prior Agreement as set forth in this amendment ("Amendment").

MODIFICATIONS TO MASTER AGREEMENT

Modify: For each instance of "Attachment A" in the Master Agreement modify to "the Attachments"

Add: Attachment B (attached)

ENTIRE AGREEMENT

This **Addendum**, together with the **Master Agreement**, constitutes the entire agreement of the parties and supersedes all prior and contemporaneous agreements, communications, understandings, and agreements relating to the subject matter hereof, whether oral or written, including any agreements associated with the order or trial request process.

This **Agreement** shall be renewable at the end of the current term for one year unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the current term.

CONFLICT CLAUSE

Should there be a conflict between this agreement and any other vendor-generated, web accessible terms and conditions, whether now known or hereinafter generated, then this Addendum controls.

MODIFICATIONS OR AMENDMENTS

This Agreement may only be modified in a writing signed by both parties.

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


LICENSOR: Elsevier Inc.

BY: 
Signature of Authorized Signatory of Licensor

DATE: 9.29.08

Print Name:
Title:
Address:
Telephone No.:
E-mail:

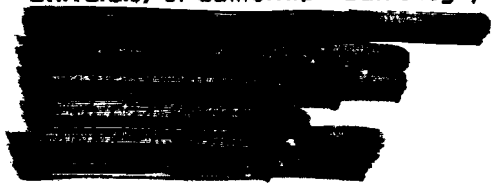
LICENSEE: University of California – San Diego Libraries

BY: 
Signature of Authorized Signatory of Licensee

DATE: 9/19/08

Print Name: Tony Harvell
Title: Head of Acquisitions, UCSD Libraries
Address: University of California - San Diego, Geisel Library

Telephone No.:
Fax No.:
E-mail:



LICENSE AGREEMENT
For Elsevier Consult™ Online Services
Attachment B

Customer Name: University of California San Diego

Seat Licenses: UCSD will be granted 10 MDC Concurrent User Licenses at [REDACTED] for the duration of the contract. UCSD users will access FIRSTConsult via this bank of licenses.

IP Range(s): (on record)

Administrative Contact

Name: Craig Haynes
Title: Associate Director, Library
Address (if different from address for notices):
E-mail: [REDACTED]
Phone: [REDACTED]
Fax: [REDACTED]

Customer will promptly notify Elsevier of any changes to any of the information above.

Services: FIRSTConsult

Location:	UCSD Campus (incl. MedSchool)	MedCenter	Total
1 Year List Price:	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
3 Year Term:	2008	2009	2010
MDCustomer Discount:	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Early-Adopter Discount (valid through 9/30/08)	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Total 2008 FEE:	\$ [REDACTED]		

Commencement Date: September 23, 2008

Initial Term Expiration Date: September 23, 2011

All pricing, terms and conditions valid through September 30, 2008