

**BioMed Central Limited
Academic License Agreement**

AGREEMENT DATE: May 15, 2006	
<p>PARTIES:</p> <p>Licensor: BioMed Central Limited whose registered office is situated at [text removed]</p> <p>Licensee: University of California, San Diego Libraries of [text removed]</p>	
<p>LICENSED MATERIAL: All the material that is available for access on the Internet at the URL's listed below from time to time together with any additional material that the Licensor makes available to the Licensee.</p> <p>Critical Care Current opinion in investigational drugs Current opinion in molecular therapeutics Genome biology</p>	
<p>LICENCE FEE: Critical Care: [text removed]; Current Opinion in Investigational Drugs: [text removed]; Current Opinion in Molecular Therapeutics: [text removed]; Genome Biology: [text removed]</p>	
<p>THE TERM: 12 months from the start Date</p>	
<p>Start Date: May 9, 2006</p>	
<p>Licensee IP Address or Referring URL of Network: See attached</p>	
<p>Special Terms: 15% discount off list (CDL Biomed Central membership) applies</p>	
<p>The parties agree to the terms of this License Agreement which incorporates the Terms and Conditions attached.</p> <p>...[signature removed].....</p> <p>Licensor</p> <p>...[signature removed].....</p> <p>Licensee</p>	

INTERPRETATION

1.1 In these Terms, unless the context requires otherwise, the following expressions have the following meanings:

"Authorized User": (a) individuals registered as users of the Licensee's library or information service; and (b) individual members of the public (including walk-in users) permitted to use the Licensee's library or information services; in each case who are permitted general access to the Network by the Licensee.

"Network": the Licensee's local area network system of connected computers, (a) the range of IP addresses or (b) the referring URL, for which is set out in the Schedule.

"Roaming Rights": the right to access the Licensed Material otherwise than via the Network in accordance with Clause 3.2

1.2 The Agreement contains the entire agreement and undertaking between the parties relating to the Licensed Material and supersedes any prior agreement.

1.3 The termination of this Agreement shall not prejudice the rights and remedies of either party against the other in respect of any prior breach of covenant, terms, warranty or condition.

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

1.5 Nothing contained in this Agreement shall constitute or shall be construed as constituting a partnership, joint venture, or contract of employment between the parties.

2. DELIVERY AND GRANT OF RIGHTS

2.1 In consideration of the payments made by the Licensee, and subject to the Licensee observing its obligations under this Agreement, the Licensor grants to the Licensee for the Term the following non-exclusive rights ("the Rights"), to:

(a) access via the Network at any time the Licensor's server, or as the case may be any service provided by an agent on its behalf, for the purpose of accessing the Licensed Material, for research, teaching, and private study purposes by means of workstations connected to the Network;

(b) make the Licensed Material accessible via the Network to the Authorized Users for their research, teaching, and private study purposes;

(c) permit Authorised Users to print and/or download individual articles and other individual items from searches of the Licensed Material for research, teaching and private study purposes;

(d) permit Authorised Users who have Roaming Rights to access at any time the Licensor's server, or as the case may be any service provided by an agent on its behalf, for the purpose of accessing the Licensed Material, for research, teaching, and private study purposes

2.2 The Rights are personal to the Licensee and do not extend to its subsidiary or parent organizations, or to any other related or affiliated organizations. The Licensee may not assign, sub-license, transfer, charge or otherwise dispose of its rights under this Agreement without the prior written consent of the Licensor.

2.3 Title to, and ownership of, the Licensed Material (including any copies made by the Licensee) is not transferred to the Licensee and remains vested in the Licensor, subject to the Rights granted in Clause 2.1. The Licensee acknowledges that any rights not expressly granted in this Licence are reserved to the Licensor.

2.4 The Licensee is responsible for the provision of and payment for the computer equipment and telecommunication services necessary for access to the Licensed Material. The Licensor shall not issue credits or refunds against charges incurred by the Licensee in relation to such telecommunication services or those incurred contacting Customer Support. The Licensee accepts that the Licensor has no control over such telecommunication services and that the Licensor shall have no liability to the

Licensee for the acts or omissions of providers of telecommunication services or for faults in or failures of their apparatus.

3. USAGE AND RESTRICTIONS

3.1 Except as expressly permitted in Clause 2.1, the Licensee warrants that it will not, nor will it license or permit others to, directly or indirectly, without the Licensor's prior written consent:

- (a) sell, distribute, license, rent or otherwise exploit the Licensed Material, or any element of it, for any commercial purpose;
- (b) make the Licensed Material, or any element of it, available by any means to persons other than Authorized Users, except for scholarly sharing purposes and to fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 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, including the right to supply interlibrary loan copies using secure electronic transmission.;
- (c) make the Licensed Material, or any element of it, available on, or by, electronic bulletin boards, news groups, Web sites, FTP or any other means of posting or transmitting material on the Internet, an on-line service or wide area network except for educational and research use, in reasonable amounts, as governed by Fair Use laws;
- (d) remove or obscure the Licensor's copyright notice from the Licensed Material including hard-copy print-outs;
- (e) use the Licensed Material to create any derivative work, product or service, or merge the Licensed Material with any other product, database, or service;
- (f) alter, amend, modify, translate, or change the Licensed Material; or
- (g) otherwise use the Licensed Material supplied in accordance with this Agreement in a manner that would infringe the copyright or other proprietary rights contained within it.
- (h) Nothing in this License shall in any way exclude, modify or affect any of Licensee's statutory or common law rights under the copy right laws of the United States.

3.2 The Licensor may in its absolute discretion permit Licensee to grant Authorised Users Roaming Rights, such right shall permit Authorised Users to access the Licensed Material otherwise than via the Network using either (a) the Authorised Users e-mail login, provided that such Authorised User has accessed the Licensed Material via the Network within the previous 30 days of accessing the Licensed Material otherwise than via the Network or (b) username and password issued by the Licensor. The Licensor may withdraw Roaming Rights from an Authorised User at any time without prior notice.

4. TERM AND TERMINATION

4.1 This Agreement shall begin on the Start Date and continue for an initial period of the Term as defined in the Schedule. The Term may be renewed for additional one year periods, subject to payment of appropriate fees and acceptance thereof by the Licensor, in accordance with Clause 5.1.

4.2 Either party may terminate this Agreement at any time upon written notice to the other if the other party defaults by failing to perform any obligation on its part. The termination will become effective thirty days after receipt of written notice unless, in the case of a remediable default, during the relevant period of thirty days the defaulting party has remedied the default.

4.3 Licensor may terminate this Agreement at any time upon thirty days' written notice to the Licensee.

4.4 If termination of this Agreement occurs as a result of notice being given by the Licensee under Clause 4.2, 4.6 or 8.2 or by the Licensor under Clause 4.3 or 8.2, the Licensor shall repay the Licensee a rateable proportion of the Licence Fee as represents the paid but unexpired Term at the date of termination.

4.5 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 notifying the breaching party in writing. The Licensor may suspend the provision of the Licensed Material to the Licensee with immediate effect on written notice without liability if the Licensor believes the Licensed Material is being used in a manner which contravenes the provisions of this Agreement.

4.6 Either party may terminate the Agreement forthwith on notice in writing to the other if the other party is unable to pay its debts or ceases or threatens to cease to carry on business, goes into administration, receivership or administrative receivership, or any event analogous to any of the foregoing occurs in any jurisdiction.

5. LICENCE FEE

5.1 The Licensee agrees to pay to the Licensor the Licence Fee within 30 days of the Start Date. Provided that the Licensor is satisfied with the manner in which the Licensee has performed its obligations under this Agreement the Licensee will receive before the end of the Term an invoice for fees for renewal of the Agreement for a further period of one year. If the Licensee does not pay the renewal fees by the end of the Term, the Licensor will assume that the Licensee does not wish to renew the Agreement and the Agreement will terminate.

5.2 All amounts payable by the Licensee under this Agreement shall be exclusive of any sales, use, value added or similar taxes.

6. LICENSEE'S UNDERTAKINGS

6.1 The Licensee will take all reasonable steps to ensure that the Licensed Material is used only in accordance with the terms and conditions of this Agreement and shall inform Authorized Users of the permitted use restrictions and other provisions set out in this Agreement.

6.2 The Licensee will notify the Licensor immediately of infringements that come to the Licensee's notice and the Licensee agrees to co-operate with the Licensor as appropriate to stop further abuse should it occur.

6.3 Nothing in this Agreement shall make the Licensee liable for breach of the terms and conditions of this Agreement by any Authorized User as long as the Licensee complied with the terms of Clauses 6.1 and 6.2 and did not cause, intentionally assist in or encourage such breach nor allowed it to continue after having received notice of such breach whether from the Licensor or otherwise. However, in the event of continuing abuse the Licensor shall be entitled to terminate this Agreement.

7. LICENSOR WARRANTIES, UNDERTAKINGS AND INDEMNITIES

7.1 The Licensor warrants to the Licensee that it has full rights and authority to grant the Rights to the Licensee and that the use by the Licensee of the Licensed Material in accordance with this Agreement will not infringe the rights of any third party.

7.2 The Licensor shall indemnify the Licensee for the amount of any award of damages against the Licensee by a court of competent jurisdiction as a result of any claim arising from a breach of the warranty in Clause 7.1 provided that the Licensor shall be entitled to assume sole conduct of any defence and shall have the right at its option:

- (a) to procure the right for the Licensee to continue using the Licensed Material;
- (b) to make such alterations, modifications or adjustments to the Licensed Material that it becomes non-infringing without incurring a material reduction in performance or function; or
- (c) to replace the Licensed Material with non-infringing substitutes provided that such substitutes do not entail a material reduction in performance or function.

7.3 The Licensor shall not be liable to the Licensee for any loss or damage whatsoever resulting from omissions or inaccuracies in the Licensed Material regardless of how caused. The Licensor does not warrant that access to the Licensed Material will be free from errors or faults. In the event of a fault, the Licensee shall notify Customer Support of the same by telephone, electronic mail or in writing.

7.4 Without prejudice to the generality of the foregoing, the Licensor shall not be liable for any claim arising from:

- (a) any failure or malfunction resulting wholly or to any material extent from the Licensee's negligence, operator error, use other than in accordance with the User Documentation or any other misuse or abuse of the Licensed Product;
- (b) the failure by the Licensee to implement recommendations previously advised by the Licensor in respect of, or solutions for, faults in the Licensed Material;
- (c) the decompilation or modification of the Licensed Material or its merger with any other program or any maintenance repair adjustment alteration or enhancement of the Licensed Material by any person other than the Licensor or its authorized agent; or
- (d) the Licensee or any Authorized User being unable to exercise the Rights due to the Licensed Material being unavailable as a result of any act or omission of the Licensor provided that the period for which the Licensed Material is not available shall not exceed a period of 50 hours (in aggregate) in any continuous period of 1000 hours.

7.5 THE LICENSED MATERIAL IS PROVIDED "AS IS." NEITHER THE LICENSOR NOR ANYONE ELSE MAKES ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, QUALITY, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS CLAUSE 7, ALL CONDITIONS, WARRANTIES, TERMS, REPRESENTATIONS, AND UNDERTAKINGS EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RESPECT OF THE LICENSED MATERIAL ARE TO THE FULLEST EXTENT PERMITTED BY LAW EXPRESSLY EXCLUDED.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY REPRESENTATIVE OF THE LICENSOR OR BY ANYONE ELSE SHALL CREATE ANY WARRANTIES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY BY JURISDICTION.

7.6 The Licensor shall provide to the Licensee usage data for the Licensed Material downloaded by the Licensee and its Authorised Users on a monthly basis Provided That the Licensor shall not be required to disclose any information to the Licensee which it is prohibited from disclosing to the Licensee due to any legal or regulatory constraint imposed upon it including without limitation any applicable privacy or data protection legislation or regulations or contractual obligations.

8. FORCE MAJEURE

8.1 Either party's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, floods, governmental restrictions, power failures, or damage or destruction of any network facilities or services, shall not be deemed a breach of this Agreement.

8.2 If any event set out in Clause 8.1 shall continue for a period in excess of 30 days either party shall be entitled to terminate this Agreement forthwith by written notice to the other.

9. NOTICE

Any notice to be served on either party by the other made under this Agreement shall be in writing sent by prepaid recorded delivery or registered post to the address of the addressee as set out in the

Schedule or to such other address as notified by either party to the other as its address for service of notices and all such notices shall be deemed to have been received within 48 hours after posting.

10. LIABILITY

10.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its own negligence or any other liability the exclusion or limitation of which is expressly prohibited by law.

10.2 Except as provided for in Clause 10.1 above, the liability of the Licensor in respect of any and all claims (whether in contract or in tort) arising out of or in connection with this Agreement is limited in respect of each event or series of connected events to the greater of US\$1,000 or an amount equal to the fees paid under this Agreement.

10.3 Except as provided for in Clause 10.1, notwithstanding anything else contained in this Agreement in no event shall the Licensor be liable to the Licensee for:

- (a) loss of profits, business, revenue, goodwill, anticipated savings; and/or
- (b) indirect, special or consequential loss or damage.

10.4 EXCEPT AS PROVIDED IN CLAUSE 10.1, IN NO EVENT WILL THE LICENSOR BE LIABLE TO THE LICENSEE OR ANYONE ELSE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF: (1) THE USE OR INABILITY TO USE THE LICENSED MATERIALS OR ANY INTERRUPTIONS IN THEIR USE; OR (2) ANY INACCURACY IN THE LICENSED MATERIALS, IN EACH CASE EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

11. GOVERNING LAW

The Agreement is governed by and construed in accordance with the Laws of the State of California~~English Law~~ and the parties agree to submit to the non-exclusive jurisdiction of the ~~English~~ California courts.

12. SEVERABILITY

In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

13. WAIVERS

No provision of this Agreement or breach thereof may be waived except in writing signed by the party against whom the waiver is sought to be enforced.