

M041A
1009 28955-OWA

ACADEMIC/CLINICAL SITE LICENSE AGREEMENT

This Agreement between the Massachusetts Medical Society ("Society"), owner and publisher of *The New England Journal of Medicine* ("NEJM"), and the institution identified below sets forth the terms of usage and other provisions for online access to the NEJM website, www.nejm.org ("NEJM Online").

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the meaning set forth herein:

Authorized User means (a) any employee, student, faculty, or staff member of Licensee (either at Licensee's premises or remote from Licensee's premises) who is approved by Licensee to use a Secure Network (as defined below) and (b) other individuals (while at Licensee's premises) who are approved by Licensee to use the Secure Network.

Licensee means the institution identified below and the wholly owned affiliate companies of Licensee identified on Licensee's order form.

Secure Network means a computer network controlled and operated by Licensee that is accessible only to Authorized Users who are (a) at Licensee's premises or (b) whose identity is authenticated by Licensee at the time of login

2. **Activation of Access.** Access to NEJM Online for use in accordance with this Agreement shall be activated for Licensee and its Authorized Users based upon the following: (1) acceptance by the Society of a completed order form; (2) acceptance of this Agreement by Licensee and the Society; and (3) full payment of the applicable NEJM Online access fee (collectively referred to as "Activation Steps"). Upon completion of the Activation Steps, the Society shall promptly confirm Licensee's order in writing and enable access to NEJM Online for Licensee and its Authorized Users. The Society's written confirmation shall indicate the subscription start date and such date shall be the "Effective Date" of this Agreement.

3. **Term of Agreement & Renewal.** Subject to prior termination in accordance with this Agreement, the initial term of this Agreement shall commence on the Effective Date and shall remain in effect for one (1) year. Thereafter, the Society shall invoice Licensee for the annual access fee and Licensee may elect to renew the Agreement for additional one-year periods by paying the annual access fee when due. If Licensee's payment is not received by the Society within sixty (60) days after expiration of the applicable subscription term, the Society will discontinue Licensee's access to NEJM Online. The Society reserves the right to modify the NEJM Online access fee and the terms of this Agreement for any renewal period.

4. **Authorized Access to NEJM Online.** Access to NEJM Online is controlled by valid IP address(es) and is granted to Licensee and its Authorized Users via a Secure Network while this Agreement, or any successor or amended version, is in effect. Licensee is responsible for providing valid IP addresses for its Secure Network. Cache servers are not permitted. All information submitted by Licensee to activate access to NEJM Online shall be complete and accurate.

5. Use of NEJM Online.

- 5a. Licensee, by its Authorized Users, may view, print, and display material from NEJM Online, and store such material for individual archival purposes only, for the personal, research, study, and reference purposes of Authorized Users. Authorized Users may also distribute a single copy of materials from NEJM Online in print or electronic form to other Authorized Users for use in accordance with this Agreement.
- 5b. Licensee may, on occasion, supply single copies of materials from NEJM Online to a noncommercial library located in the same country as Licensee in accordance with Licensee's interlibrary loan procedures, whether by post, facsimile, or digital transmission, provided the file is deleted immediately after printing and the end user only receives a single paper copy.
- 5c. Except for the uses specified above, no part of the materials available at NEJM Online may be copied, displayed, downloaded, stored in a retrieval system, further transmitted or otherwise reproduced or used without the written permission of the Society, except as permitted by United States fair use law. Distribution or transmission for commercial purposes is prohibited.

6. Copyright & Trademark Ownership. Unless otherwise stated, the materials available at NEJM Online are the property of the Society and are protected under United States and international copyright laws and conventions. *The New England Journal of Medicine* and *The New England Journal of Medicine* logo mark are registered trademarks of the Society in the United States and other countries.

7. Licensee Obligations. Licensee agrees to reasonably cooperate in preventing violations of this Agreement by Authorized Users and to notify the Society promptly upon discovering any such violation. Licensee also agrees to take such reasonable steps as the Society may require to ensure that such activity ceases. In addition to any other applicable remedies, access to NEJM Online may be limited or revoked in the event of a violation of this Agreement by an Authorized User. Licensee agrees not to frame, modify, obscure, or otherwise alter the appearance or display of any materials at NEJM Online.

8. NEJM Online Terms and Conditions. By using NEJM Online, Licensee and its Authorized Users agree to the NEJM Online Terms and Conditions for site use; provided, however, that in the event of any conflict between the terms of this Agreement and the NEJM Online Terms and Conditions, the terms of this Agreement shall prevail.

9. Website Modifications and Availability. The Society will make reasonable efforts to keep NEJM Online available twenty-four hours per day, seven days a week. However, owing to technical failures, routine maintenance, or other unforeseen circumstances, availability may be limited and the Society will not be responsible for the non-availability of NEJM Online.

Bab

10. Disclaimer of Warranties and Liability. Materials published in NEJM and at NEJM Online are the result of research and/or contribution by independent individuals or organizations. The Society is not responsible for the accuracy of any data or conclusions reported in such materials. NEJM Online is intended for educational, research, and reference purposes only. The content of this publication should not be substituted for the advice of a qualified health care professional.

NEJM ONLINE IS PROVIDED "AS IS" ON AN "AS AVAILABLE BASIS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

IN NO EVENT WILL THE SOCIETY, ITS EMPLOYEES, OFFICERS, MEMBERS, AGENTS, OR LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES RESULTING FROM THE INABILITY TO USE, OR THE USE OF, NEJM ONLINE, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ON ANY THEORY OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF NEJM ONLINE.

11. Termination. Either party may terminate this Agreement at any time by providing the other party with thirty (30) days written notice. In the event of such termination, Licensee shall receive a pro-rated refund of the access fee for the un-expired portion of the subscription term. The foregoing shall be Licensee's sole and exclusive remedy with respect to any such termination. However, in the event of a breach of this Agreement by either party that is likely to cause substantial or irreparable harm to the other party, the thirty (30) day notice period shall be waived. On termination, or expiration, all rights and obligations of the parties shall automatically terminate unless otherwise provided herein.

12. Miscellaneous.

12a. This Agreement represents the entire understanding of the parties in relation to the subject matter hereof and supersedes all prior agreements, negotiations, understandings, representations, statements and writings between the parties relating thereto. The Society reserves the right to modify, suspend, or discontinue all or any part of NEJM Online at any time. Licensee may not assign or transfer, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the Society. The United Nations Convention on Contracts for the International Sale of Goods will not govern this Agreement.

12b. Any purchase order or other instrument that Licensee may use for NEJM Online is for its internal purposes only and shall not amend any provision of this Agreement.

12c. This Agreement shall be deemed by the parties to be wholly entered into and wholly performed in the Commonwealth of Massachusetts, U.S.A.

Baf

12d. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, United States of America, without regard to its conflict of laws rules. Any controversy arising out of or relating to this Agreement shall be brought in the federal or state courts located in Massachusetts and the parties hereby consent to the jurisdiction of such courts. The foregoing choice of law and forum designation will not apply if compliance would violate (1) any law, regulation, or official governmental policy or (2) any bylaw or equivalent governing instrument of Licensee.

*** Note: See Addendum A, which is hereby incorporated as if fully set forth herein.


AGREED TO AND ACCEPTED:

Regents of the University of California
Licensee

Address: Calif. Digital Library
415 20th St., 4th Floor
Oakland, CA 94612

Email address: 

Telephone: 


Authorized Signature


Printed Name of Authorizing Person

Deputy Univ. Librarian
Title of Authorizing Person

6/2/04
Date


Massachusetts Medical Society

6 15-04
Date

Bab

ADDENDUM A

AMENDMENT TO
NEJM ONLINE ACADEMIC/CLINICAL SITE LICENSE AGREEMENT
BETWEEN MASSACHUSETTS MEDICAL SOCIETY AND

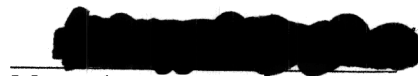
Regents of the University of California

The foregoing Agreement is hereby amended as follows:

- 1 Paragraphs 12c. and 12d. are deleted in their entirety.
2. The following language is added to the Agreement:

Intellectual Property Indemnification. The Society shall indemnify, defend, and hold harmless Licensee from any cost, claim, expense, or liability, including reasonable attorneys' fees, arising from or related to a claim by a third party against Licensee that any of the materials at NEJM Online or Licensee's access and/or use of such materials, as authorized by the Society, infringes the third party's copyright, patent, trade secret, trademark, or other intellectual property rights ("Intellectual Property Claims"). In the event of such a claim, Licensee shall cooperate with Society and undertake commercially reasonable efforts to mitigate any damages or potential damages. Licensee shall give Society prompt written notice of such claim, and Society shall have sole control of the defense; provided, however, that Licensee shall have the option of participating in the defense at its own cost. The limitation of liability set forth in Section 10, Disclaimer of Warranties and Liability, shall not be applicable to any amount due to any third party with respect to such Intellectual Property Claims. Such limitation shall, however, be applicable to any breach of contract or other claim Licensee may have resulting from its inability to use or access NEMJ Online as a result of any Intellectual Property Claim.


University of California


Massachusetts Medical Society

6/2/04
Date

6-15-04
Date

BAH