

## McGraw-Hill Professional Institutional License Agreement

This License Agreement ("Agreement") entered into as of the 1<sup>st</sup> day of January, 2014 (the "Effective Date") is made by and between McGraw-Hill Education, with offices at 2 Penn Plaza, New York NY 10121 ("MH") and California Digital Library whose principal office is located at 415 20<sup>th</sup> Street, 4<sup>th</sup> Floor, Oakland, CA 94612 ("Licensee").

**WHEREAS**, Subscribed Materials are made available by MH via electronic media;

**WHEREAS**, Licensee desires an Agreement to access and use the Subscribed Materials in the manner described below in accordance with this Agreement;

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

1. **Definitions:** As used in this Agreement, the following terms have the designated meanings:

**"Subscribed Materials"** refers to MH Online Owned Content (as defined below) incorporated into the online sites, as specified in Exhibit A and any addenda to Exhibit A.

**"Authorized User(s)"** are (1) current members of the staff and/or faculty of the Licensee (whether on a permanent, temporary, contract or visiting basis) and, for academic institutions, individuals who are currently enrolled students at the Licensee's institution, who are permitted to access the Secure Network regardless of the physical location of such persons, and/or (2) such other persons who are permitted to utilize the Licensee's library or other facilities to access the Secure Network but only from computer terminals within the Licensee's premises."

**"MH Online Owned Content"** means information and content entered into the Subscribed Materials by MH's employees, representatives and/or its licensors, including, without limitation, those authorized representatives who are editors or who are otherwise designated by MH.

**"Other Content"** means any other information entered into the Subscribed Materials by Authorized Users or other persons.

2. **Authorized Use of Subscribed Materials, Restrictions and Indemnity.**

- a. All of the MH Online Owned Content is either the property of MH or is licensed to MH and is protected by copyright and other intellectual property laws. During the Term of this Agreement as defined herein and subject to Licensee's payment of the fees set out in Exhibit A, MH hereby grants to Licensee a non-exclusive, non-transferable license to allow only its Authorized Users to access and use the Subscribed Materials under the terms described in this Agreement. In the event that MH requires Authorized Users to agree to terms relating to the use of the Subscribed Materials before permitting Authorized Users to gain access to the Subscribed Materials (commonly referred to as "click-through" licenses), MH 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. Licensee shall honor all reasonable requests by MH to protect MH's proprietary interests in the Subscribed Materials. Except for the limited rights granted Licensee herein, all rights in the Subscribed Materials are reserved by MH and Licensee acquires no right, title or interest in any material in the Subscribed Materials.

- b. MH 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. 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.
- c. Licensee and its Authorized Users shall only be permitted to access and utilize Subscribed Materials for research, education, and study purposes. Neither Licensee nor its Authorized Users may copy, rent, lend, sell or modify any of the Subscribed Materials or create derivative works based on materials therefrom. Neither Licensee nor its Authorized Users may modify, remove or obscure any copyright or other proprietary notices included in the Subscribed Materials. Neither Licensee nor its Authorized Users may forward or disseminate any portion of the Subscribed Materials through electronic or other means, including through the use of mail lists or electronic bulletin boards. The Access products have the functionality built-in allowing an Authorized User to email chapter sections. Recipients will get an email with a link (good for seven days) to the chosen content. Recipients do not need to have an Access account to access the content. Licensee may provide electronic links to the Subscribed Materials from Licensee's webpage(s) for access solely by Authorized Users, and is encouraged to do so in ways that will increase the usefulness of the Licensed Materials to Authorized Users.
- d. Licensee shall not knowingly permit anyone other than the Authorized Users to use or access the Subscribed Materials. Neither Licensee nor Authorized Users may share passwords provided for accessing the Subscribed Materials with third parties or among the Authorized Users.
- e. If requested by MH, Licensee shall cooperate with MH in the investigation of any unauthorized use of the Subscribed Materials of which Licensee is made aware and use reasonable efforts to remedy such unauthorized use and prevent its recurrence. In the event of any unauthorized use of the Subscribed Materials by an Authorized User, in addition to any remedies available herein, MH may suspend or terminate such Authorized User's access to the Subscribed Materials (for example, by blocking an individual user's IP address or other means).

### **3. Mutual Performance Obligations**

Confidentiality of User Data. MH and Licensee agree to maintain the confidentiality of any data relating to the usage of the Subscribed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Subscribed 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.

### **4. Licensor Performance Obligations**

- a. **Quality of Service.** MH shall use reasonable efforts to ensure that the MH's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee's locale.
- b. MH shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to

maintenance of the server(s), the installation or testing of software, the loading of additional Subscribed Materials as they become available, and downtime related to the failure of equipment or services outside the control of MH, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users. If the Subscribed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify MH, and MH shall promptly use reasonable efforts to restore access to the Subscribed Materials as soon as possible. In the event that MH fails to repair the nonconformity in a reasonable time, MH shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.

- c. Usage Statistics. MH must provide both composite use data for the system-wide CDL and itemized data for individual campuses, on a monthly basis. Use data should be at the level of detail required for objective evaluation of both product performance and satisfaction of user needs, including title-by-title use of e-resources. Providers should follow the International Coalition of Library Consortia (ICOLC) "Guidelines for Statistical Measures of Usage of Web-Based Information Resources" or provide information in compliance with COUNTER or other recognized international standard.
- d. Compliance with Americans with Disabilities Act. Licensor shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA) requirements, Section 508 of the Rehabilitation Act Amendments, and provide Licensee current completed Voluntary Product Accessibility Template (VPAT).

#### **5. Updates and Revisions; Adding Subscribed Materials to the Agreement**

- a. MH has the right to revise or update the Subscribed Materials at any time during the term of the Agreement.
- b. The parties may agree to add additional Subscribed Materials to the Agreement by executing an Addendum to Exhibit A in the form set out in Exhibit A-1 hereto, and in such event all such addenda will be added to the Agreement and use of such additional Subscribed Materials will be governed by the terms of this Agreement.

#### **6. Term and Termination**

- a. This Agreement will commence as of the Effective Date and will continue for the Subscription Term set out in Exhibit A for each of the Subscribed Materials subscribed to, unless terminated earlier by MH as provided herein, and is non-cancellable by Licensee for the term subscribed to by Licensee. In the event that either party believes that the other materially has breached any obligations under this Agreement, or if MH 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 sixty (60) 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 sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.
- b. In the event 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.

#### **7. Fees and Payment Terms**

Licensee agrees to pay the applicable subscription fee as set out in Exhibit A. All fees are due and payable by Licensee thirty (30) days. Licensee shall be solely responsible for any charges it incurs in order to access the Subscribed Materials, such as telephone, Internet access or similar charges. MH

may suspend delivery of the Subscribed Materials or terminate this Agreement if it has not received payment of the applicable fee for such Subscribed Materials.

**8. Other Content**

Neither MH nor its licensors have any responsibility for Other Content, including the content of any messages or information posted by Licensee, its Authorized Users or others or for the content or information accessible via direct or indirect hyperlinks from the Subscribed Materials. However, MH retains the right, which it may or may not exercise in its sole discretion, to review, edit or delete Other Content that MH deems to be illegal, offensive, or otherwise inappropriate.

**9. Notices**

Notices shall be given in writing and shall be effective when either served by personal delivery upon receipt via United States mail, return receipt requested postage prepaid, or by national overnight delivery service or by facsimile with receipt of confirmation, to the address set out in Exhibit A for Licensee and to the following for MH:

McGraw-Hill Education.  
2 Penn Plaza, 9<sup>th</sup> Floor  
New York, New York 10121  
Attn: [Text deleted]  
Fax: (646) 766-2977  
Phone: [Text deleted]  
Email: [Text deleted]

**10. General.**

- a. The fee payable for the Subscribed Materials shall be exclusive of any sales, use, value added, withholding or similar tax and Licensee is responsible for all such valid taxes relating to the license under this Agreement.
- b. This Agreement constitutes the entire agreement between Licensee and MH relating to the applicable Subscribed Materials subscribed to herein and supersedes any and all other agreements, oral or in writing, with respect to such materials. This Agreement may be modified only by a written instrument signed by both parties. The failure of MH to insist upon strict compliance with any term of this Agreement shall not be construed as a waiver with regard to any subsequent failure to comply with such term or provision. Licensee may not assign any rights or obligations of this Agreement without MH's prior written consent, and any assignment without MH's prior written consent, including any assignment by operation of law, shall be null and void. If any provision in this Agreement is invalid or unenforceable under applicable law, the remaining provisions will continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

McG [Text deleted]

Licensee: UCSF, on behalf of California Digital Library

By:

[Text deleted]

Name: [Text deleted] \_\_\_\_\_

Name: [Text deleted]

Title: Vice-President of Sales

Title: University Librarian

Date: April 4, 2014

Date: March 6, 2014

**EXHIBIT A**  
**to Institutional License Agreement**

**SUBSCRIBED MATERIALS, TERM, USER NUMBERS AND PRICING**

The following are the Subscribed Materials, Subscription Term, number of Authorized Users, Fees for the Subscribed Materials subscribed to by Licensee under the Agreement and the Licensee contact information.

**1. Subscribed Materials**

The Subscribed Materials and fees are as follows:

**Subscribed Materials:**

**Initial Term Fee**

[Insert Product Name]

[Insert fee amount for the Initial Term]

AccessMedicine

[Text deleted]

OMMBID

[Text deleted]

**2. Subscription Term**

The Subscription Term for the Subscribed Materials shall be for an initial term of one (1) year from initial activation of the subscription ("Initial Term"), and thereafter the Subscription Term shall renew for additional one (1) year terms (each a "Renewal Term"), provided MH has chosen to renew the subscription and has sent an invoice for such Renewal Term to Licensee. If Licensee chooses not to renew the subscription, it shall notify MH at least thirty (30) days' prior to commencement of the applicable Renewal Term. The Initial Term and any Renewal Term are referred to collectively as the "Subscription Term".

**3. Subscription Fee:**

The fee(s) for the Subscription Term set out in herein cover only the number of Authorized Users and the accessing sites specified in Section 4 below. The payment terms shall be as set out in the MH invoice:

Unless otherwise specified herein, the foregoing fee(s) in Section 1 above shall be for the Initial Term. The fee for any Renewal Term shall be as set out in the MH invoice for the subscription.

**4. Number of Authorized Users, Accessing Sites and Access Validation Method(s):**

Number of concurrent Authorized Users:

AccessMedicine	Unlimited
OMMBID	5

Address(es) of accessing sites:

\_\_\_\_\_  
\_\_\_\_\_

List of IP addresses:

\_\_\_\_\_  
\_\_\_\_\_

**5. Licensee Contact:** Pursuant to Section 7 of the Agreement, the address where notices to Licensee shall be sent is the following, which may be revised on written prior notice to MH:

**Name:** [Text deleted]  
**Address:** University of California, San Francisco Library  
530 Parnassus Avenue  
San Francisco, CA 94143-0840  
**Fax:** (415) 476-1653  
**Phone:** [Text deleted]  
**Email:**

**Billing Contact:**  
[Text deleted]  
Geisel Library  
University of California, San Diego  
9500 Gilman Drive #0175K  
La Jolla, CA 92093-0175  
[Text deleted]