

BMJ Publishing Group Limited

Individual Online Licence Agreement

This individual online agreement ("the Agreement") is made between the BMJ Publishing Group Limited ("Licensor") and the individual purchasing the online subscription ("Licensee").

1. Key Definitions

In this Agreement, the following terms shall have the following meanings:

- 1.1 "**Commercial Use**" means use of the Licensed Material for the purposes of monetary reward by the means of sale, resale, loan, transfer, hire or other form of exploitation.
- 1.2 "**Fee**" means the subscription fee payable by the Licensee for the Licensed Material as set out on the Website.
- 1.3 "**Licence**" means the Licence set out in Clause 2 below.
- 1.4 "**Licensed**" means the electronic version of the Licensor's publication(s) which the Licensee subscribes to.
- 1.5 "**Site**" means the electronic site on which the Licensed Materials will be displayed.
- 1.6 "**Start Date**" means the date upon which the contract between the Licensor and Licensee comes into effect.
- 1.7 "**Location**" means one year from the Start Date, unless terminated earlier under Clause 6.
- 1.8 "**Website**" means <http://www.bmj.com> and its relevant sub domains.

2. The Licence

- 2.1 In consideration of receipt of the Fee, Licensor grants the Licensee a non-exclusive, non-transferable Licence to access the Licensed Materials with a password or other necessary authentication to access the Licensed Materials.
- 2.2 Subject to clause 6.3, Licensor also hereby grants to Licensee, a non exclusive, royalty free, perpetual licence to use any of the Licensed Materials that were accessible during the Term of this Agreement, (with the exception of BMJ Clinical Evidence, BMJ Best Treatments, BMJ Learning, BMJ Health Intelligence and DTB where included) and with the exception of any portion of the Licensed Materials that has been expunged from the archive, damaged or sold. Such use by Licensee, shall be in accordance with the provisions of this Agreement, which shall survive expiry of this Agreement. The means by which Licensee shall have access to such Licensed Materials shall be in a manner as determined by Licensor, but shall be in electronic form. Where any Licensed Materials is sold, Licensor shall use all reasonable endeavours to ensure that the purchaser can provide ongoing access to Licensee for the relevant portion of the Licensed Materials.
- 2.3 Licensor holds the copyright (or all necessary licences), for all works published in the Licensed Materials, as a compilation and as to the individual articles, collectively and individually, unless otherwise expressly noted.

- 2.4 The Licensee shall not claim ownership of the Licensed Material, or any intellectual property rights in the Licensed Material, by reason of its use of or access to the Licensed Material.
- 2.5 The Licensor reserves the right at any time to withdraw from the Licensed Materials, any item or part of an item for which it no longer retains the rights to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.

3. Permitted Uses

- All use of the Licensed Material is subject to all applicable copyright laws and fair use conventions, and reproduction of any portion of the Licensed Material is permitted for personal, non commercial use as follows:
 - 3.1.1 Access the Site in order to search the Licensed Materials, and to view and retrieve small proportions thereof;
 - 3.1.2 Electronically save small portions of the Licensed Materials; and
 - 3.1.3 Print out single copies of portions of the Licensed Materials.

4. Licensee's Obligations

- 4.1 Licensee agrees that the Licence is personal to the Licensee and:
 - 4.1.1 it will not knowingly permit anyone else to use designated passwords so to access the Licensed Materials;
 - 4.1.2 it will, if it becomes aware of unauthorised access to the Licenced Materials, notify Licensor immediately and co-operate in locating and attempting to stop the specific individuals who are abusing the service. If the specific abuser(s) cannot be identified or stopped, Licensor has the right to withhold, suspend, or terminate access to all or any portion of the Licensed Materials, without liability; and
 - 4.1.3 will not remove, cover, overlay, obscure, block, or change any copyright notices, legends, or terms of use which Licensor may post on the Site in order to inform users about system features, terms of use, or copyright notices;
 - 4.1.4 it will not systematically make printed or electronic copies of multiple portions of the Licensed Materials for any purpose or created any derivative works from the Licensed Material;
 - 4.1.5 display or distribute any part of the Licensed Materials on any electronic network, including without limitation, the internet and the Worldwide Web; or
 - 4.1.6 make any Commercial Use of the Licensed Materials.

5. Technical Access

- 5.1 Licensor intends for the Site to be available 24 hours per day, 7 days per week. However, to the fullest extent permitted by law, Licensor will not be liable for damages or refunds should the Site become unavailable or access to the Site becomes slow or incomplete due to system back-up procedures, internet traffic volume, upgrades, overload of requests to the servers, general network failures or delays, or any other cause which may from time to time make the Site inaccessible to Licensee.

6. Termination

- 6.1 Either party may terminate this Agreement:

- 6.1.1 where the other party commits a material or persistent breach of any term of this Agreement and fails to remedy such breach (if capable of remedy) within 30 days of notification in writing from the other party; or
 - 6.1.2 immediately upon the other party becoming insolvent, subject to receivership, liquidation or similar external administration.
- 6.2 On termination of this Licence for just cause, access to the Licensed Materials by Licensee and Authorised Users shall be terminated.

7. **Warranty and Liability**

- 7.1 While Licensor seeks to ensure the accuracy of content posted online, Licensor does not warrant or guarantee its accuracy, completeness, merchantability, or fitness for a particular purpose.
- 7.2 TO THE FULLEST EXTENT PERMITTED BY LAW AND OTHER THAN EXPRESSLY PROVIDED FOR HEREIN, IN NO CIRCUMSTANCES IS LICENSOR LIABLE TO THE LICENSEE FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES OR EXPENSES, HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS OR SAVINGS, GOODWILL, REPUTATION, BUSINESS RECEIPTS OR CONTRACTS, OR LOSSES OR EXPENSES RESULTING FROM THIRD PARTY CLAIMS. NOTHING IN THIS AGREEMENT SEEKS TO EXCLUDE LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY LICENSOR'S NEGLIGENCE OR FRAUDULENT MISSTATEMENT AND THIS DOES NOT EFFECT THE LICENSEE'S STATUTORY RIGHTS.
- 7.3 LICENSOR'S AGGREGATE LIABILITY FOR ANY CONTENT, ACCESSIBILITY OR PROBLEMS WITH THE SITE WILL NOT EXCEED THE AMOUNT OF SUBSCRIPTION FEES PAID FOR THE LICENSED MATERIALS DURING THE 12 MONTH PERIOD PRECEDING ANY CLAIM OR NOTICE OF DAMAGES.

8. **Indemnities**

8.1 Licensor shall indemnify and hold Licensee 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 arising out of the use of the Licensed Materials by Licensee or any Authorised User. No limitation of liability set forth elsewhere in this Agreement is applicable to this indemnification.

8.2 Should Licensee wish to invoke the indemnity in clause 8.1, Licensee must promptly notify Licensor of any such claims at its own expense and not make any admission of liability. The Licensee shall provide assistance in investigating and defending such claims as Licensor may reasonably request and have the right to participate in the defence at its own expense, subject to following all reasonable instructions of Licensor.

9. **General**

- 9.1 Neither party shall be liable for failure, default or delay in performing its obligations under this Licence, caused by a Force Majeure event which shall include any act of God, war, or threatened war, act or threatened act of terrorism, riot, strike, lockout, individual action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.
- 9.2 Licensor may assign or transfer any of its rights and obligations under this Agreement, upon written notice to Licensee.

- 9.3 Alterations to this Agreement are only valid if they are recorded in writing and signed by both parties.
- 9.4 In the event that any provision of this Agreement is held to be invalid, the remainder of the provisions shall continue in full force and effect.
- 9.5 There shall be no right whatsoever for any third party to enforce the terms and conditions of this Agreement. The Parties hereby expressly wish to exclude the operation of the Contracts (Rights of Third Parties) Act 1999.
- 9.6 This Licence will be governed by the laws of England and shall be governed and construed in accordance with the laws of England. Any action arising out of or relating to this agreement shall be brought in courts situated in England save where it is necessary for Licensor for enforcement to bring proceedings to bring an action in an alternative jurisdiction.

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