



ELSEVIER MASTER AGREEMENT

This Elsevier Master Agreement is entered into as of December 12, 2014 (“Effective Date”) by and between **University of California – San Diego** with its principle offices at, 9500 Gilman Dr., La Jolla, CA 92093, USA (“Client”), and **Elsevier Inc.**, [Text deleted] (“Elsevier”).

The general terms and conditions are set forth herein, with specific Products (as defined herein) licensed under this Elsevier Master Agreement which may be added via schedules from time to time by execution of subsequent schedules (each a “Schedule”) subject to the terms and conditions set forth therein (“Product Specific Terms”). All Schedules signed in conjunction with this Elsevier Master Agreement or subsequently added will be incorporated by reference into this Elsevier Master Agreement. Each such Schedule, together with the terms and conditions of this Elsevier Master Agreement, are referred to collectively herein as the “Agreement”. In the event of any conflict between the terms of this Elsevier Master Agreement and any Product Specific Terms, the Product Specific Terms will govern with respect to the applicable Product(s).

SECTION I. SCOPE.

1.1 *Authorized Uses of the Products.*

Elsevier hereby grants to the Client the non-exclusive, non-transferable, right to access and use the products and any related services identified in the attached Schedules (“Products”) and provide the Products to its Authorized Users (as defined herein) subject to the terms and conditions of this Agreement and the Product Specific Terms set forth in the applicable Schedule(s).

1.2 *Authorized Users/Sites.*

“Authorized Users” and “Sites” are the users and sites identified in the Product Specific Terms applicable to each Product.

1.3 *Restrictions on Use of Products.*

Except as expressly stated in this Agreement or otherwise permitted in the applicable Product Specific Terms or in writing by Elsevier, Client and its Authorized Users shall not:

- deliver or otherwise make the Products directly or indirectly available to anyone other than Authorized Users;
- abridge, modify, translate, examine, test, subject to simulated input, reverse engineer, duplicate, or create any derivative work based on the Products, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;
- remove, obscure or modify in any way any copyright notices, trademarks, or other proprietary notices or disclaimers as they appear in the Products;
- use any robots, spiders, crawlers or other automated downloading programs, algorithms or devices, or any similar or equivalent manual process, to continuously and automatically search, scrape, extract, deep link, index or disrupt the working of the Products;
- reproduce, transfer, sublicense or redistribute the Products (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof.

Authorized Users who are individuals who are independent contractors (or are employed by independent contractors) may use the Products only for the purposes of the contracted work for the Client.

1.4 *Intellectual Property Ownership.*

Client acknowledges that all right, title and interest in and to the Products and documentation, all copies thereof, and all modifications, changes, conversions, upgrades, additions and enhancements thereto, including all applicable rights to confidential information and methodologies, patents, copyrights, trademarks, trade names, service marks, inventions, know-how, mask work rights, trade secrets and all other intellectual property rights inherent therein and appurtenant thereto, including all ideas, concepts, know-how, or techniques relating thereto developed during the course of this Agreement by Elsevier, belongs to and remains exclusively with Elsevier or its suppliers, subject only to the limited rights and license expressly granted to Client herein. Client acknowledges further that the unauthorized redistribution of the Products could materially and irreparably harm Elsevier and its suppliers.

Except as otherwise provided in the Product Specific Terms, any modification or enhancement to the Products developed by Client with or without advice or support by Elsevier or by Elsevier for Client, whether or not reimbursed by Client and whether or not developed in conjunction with Client's employees, agents, or contractors, are the exclusive property of Elsevier.

SECTION 2. ELSEVIER PERFORMANCE OBLIGATIONS.

2.1 *Access to Products.*

Elsevier will make the Products accessible to the Client and its Authorized Users as set forth in the applicable Product Specific Terms, or as may be otherwise set forth herein.

2.2 *Withdrawal of Content.*

Elsevier reserves the right to withdraw from the Products content that it no longer retains the right to provide or that it has reasonable grounds to believe is unlawful, harmful, false or infringing. In addition, for Products for which content is routinely updated, Elsevier may withdraw certain content for editorial, usage, currency, or other commercially reasonable reasons.

SECTION 3. CLIENT PERFORMANCE OBLIGATIONS.

3.1 *Authentication.*

Access to each Product will be authenticated as provided for in the applicable Product Specific Terms.

3.2 *Protection from Unauthorized Access and Use.*

Client shall:

- limit access to and use of the Products to Authorized Users;
- use reasonable efforts to notify all Authorized Users of the usage restrictions set forth in this Agreement and that they must comply with such restrictions;
- issue any passwords or credentials used to access the Products only to Authorized Users, not divulge any passwords or credentials to any third party, notify all Authorized Users not to divulge any passwords or credentials to any third party, and promptly request that Elsevier revoke any passwords or credentials to those who are no longer Authorized Users; and
- upon becoming aware of any unauthorized use of the Products, immediately notify Elsevier in writing of such unauthorized use, identify the origination of such unauthorized use, and take immediate steps to end unauthorized use and to prevent any recurrence.

In the event of any unauthorized use of the Products, Elsevier may suspend the access and/or require that Client suspend the access from the IP addresses where the unauthorized use occurred upon notice to Client and will promptly restore any suspended access once the

unauthorized use has ceased and Client has taken corrective actions to ensure that such unauthorized use does not recur. Client will not be liable for unauthorized use of the Products by any Authorized Users provided that the unauthorized use did not result from Client's own negligence or willful misconduct and that Client did not permit such unauthorized use to continue after having actual notice thereof.

SECTION 4. FEES AND PAYMENT TERMS.

Client shall pay fees to Elsevier in accordance with the fee schedules for each Product as set forth in the Product Specific Terms in the applicable Schedules (the "Fees"). Unless otherwise stated therein, Fees are due within thirty (30) days of invoice. Late payments will be subject to interest charges of 1% per month on any balance remaining unpaid. The Fees will be exclusive of any sales, use, value added, withholding or similar tax, and the Client shall be liable for any such applicable taxes in addition to the Fees. In addition to other remedies provided in this Agreement, Elsevier reserves the right upon thirty (30) days written notice to suspend access to the Products without incurring liability if Client fails to make any payment required hereunder when due.

During the term of this Agreement, and for up to one (1) year after all Fees due hereunder for use of the Products cease to be incurred by Client, upon reasonable notice to Client, Elsevier and/or its agents or representatives may audit Client's compliance with this Agreement, including any Schedules attached hereto. During this time, Client shall keep and maintain clear, accurate, and complete books and records, including, without limitation, all records relating to Client's compliance with this Agreement and relating to the Fees payable hereunder.

SECTION 5. TERM AND TERMINATION.

5.1 *Term.*

The term of this Agreement will commence on the Effective Date and continue in perpetuity until terminated as provided for herein. The term for each Product will be as set forth in the applicable Schedule(s). Either party may terminate this Agreement upon sixty (60) days written notice if at any time there are no active Product Specific Term Schedules.

5.2 *Termination for cause.*

Either party may terminate any Schedule upon written notice to the other party if any of the following events of default occurs with respect to the applicable Schedule:

- the other party fails to perform or comply with any material provision of this Agreement or such Schedule which failure continues uncorrected for sixty (60) days after written notice from the other party notifying the defaulting party of such failure; or
- the other party provides written acknowledgement of insolvency, applies for a judicial proceeding in bankruptcy or the appointment of a receiver for any of its properties, or an involuntary bankruptcy or dissolution action is commenced against the other party for such default(s).

The non-defaulting party may elect to leave any defaulted Schedule in full force and effect and to institute legal action against the defaulting party for specific performance or any other available remedies.

5.3 *Effect of Expiration or Termination.*

Except as may be otherwise provided for in the Product Specific Terms for any particular Product, if this Agreement or any Schedule(s) is terminated or expires:

- all licensing rights granted herein or therein will immediately cease;

- Client shall immediately return, delete or destroy, at Elsevier's discretion, all applicable Elsevier property including but not limited to any and all copies of the applicable Products and any related Elsevier intellectual property, files, data in its possession, custody or control.
- Client shall certify to Elsevier in writing within thirty (30) days that it has complied with the foregoing; and
- Client shall pay to Elsevier all amounts due and owing under this Agreement and/or the applicable Schedule as of the date of expiration or termination.

Except as may be otherwise provided for in the Product Specific Terms for any particular Product, as of the date of termination, Client will have no further right or authority to use the applicable Products in any manner and Elsevier will be relieved of any and all obligations to Client under this Agreement and/or the applicable Schedule(s).

Elsevier's termination of this Agreement and termination of access to the Products will be without prejudice to any other remedies Elsevier may lawfully have.

SECTION 6. REPRESENTATIONS, WARRANTIES, AND INDEMNITIES.

6.1 Elsevier Representations and Warranties.

Elsevier warrants that use of the Products in accordance with the terms and conditions herein will not infringe the intellectual property rights of any third party.

6.2 Intellectual Property Indemnities.

Elsevier will indemnify, defend and hold harmless Client and its Authorized Users from and against any loss, damage, costs, liability and expenses (including reasonable attorneys' fees) arising from or out of any third-party action or claim that use of the Products in accordance with the terms and conditions herein infringes the intellectual property rights of such third party. If any such action or claim is made, Client will promptly notify and reasonably cooperate with Elsevier. This indemnity obligation will survive the termination of this Agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

SECTION 7. DISCLAIMERS AND LIMITATIONS.

7.1 Disclaimer.

THE LICENSED PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, EXCEPT FOR THE EXPRESS WARRANTIES AND INDEMNITIES CONTAINED IN THIS AGREEMENT. THE ELSEVIER COVERED PARTIES EXPRESSLY DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE LICENSED PRODUCTS OR RESULTS DERIVED THEREFROM, AND ANY OTHER DATA, DOCUMENTATION OR MATERIALS PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ERRORS, INACCURACIES, OMISSIONS, OR DEFECTS CONTAINED THEREIN, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY ELSEVIER, ITS AGENTS OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OR CONDITION OF SATISFACTORY QUALITY, ACCURACY, UNINTERRUPTED USE, TIMELINESS, SEQUENCE, COMPLETENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE). CLIENT IS SOLELY RESPONSIBLE FOR ITS USE OF THIRD PARTY INFORMATION CONTAINED IN OR INFORMATION GENERATED THROUGH USE OF THE LICENSED PRODUCTS.

CLIENT ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY WARRANTY, CONDITION, GUARANTY OR REPRESENTATION MADE BY ELSEVIER OR ANY AGENT OR REPRESENTATIVE OF ELSEVIER EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

7.2 Client Responsibility; Professional Advice.

Client acknowledges and agrees that the Elsevier Covered Parties provide no medical advice in connection with the Products and that the professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing patient care. The information contained in the Products may include or incorporate third party information which is not subject to evaluation by the Elsevier Covered Parties and, in any event, is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, nurses, or other healthcare professionals in patient care. Elsevier is not engaged in rendering medical, pharmacologic or health care advice or services. The Elsevier Covered Parties do not assume any responsibility for the actions of Client or Authorized Users which may result in liability or damages due to malpractice, failure to warn, negligence, or any other basis,

Except for certain patient information materials and materials specifically licensed to Client for distribution to and use directly by patients, the Products are designed for and intended to be used by trained healthcare professionals as a reference resource and assume specialized knowledge by users and the exercise of that knowledge and discretion in application of the information contained in Products. The Elsevier Covered Parties do not assume any responsibility, duty, or obligation for any treatment, decision or advice made or given by Client to third parties as a result of the use or application of the Products, and for the content, accuracy, and review of such results

7.3 Limitation of Liability.

The Elsevier Covered Parties will not be liable for the failure by Client or its Authorized Users to use due care in the use and validation of the results produced by the Products or any medical treatment provided by Client or its Authorized Users to patients, whether or not the Products were used in connection with such treatment, nor for any damages suffered or incurred by Client associated with the use of the Products, including but not limited to those arising out of any faults, interruptions, or unreasonable delays in the delivery of the Products, or any inaccuracies, errors, or omissions in the Products. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT OR DAMAGES RESULTING FROM THE INDEMNIFICATION OBLIGATIONS HEREUNDER OR ELSEVIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE ELSEVIER COVERED PARTIES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, BUSINESS INTERRUPTION OR LOSS OF PROFITS, PERSONAL INJURY OR PROPERTY DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE USE OF OR INABILITY TO USE THE PRODUCTS, OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, EVEN IF ELSEVIER HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. Other than with respect to its indemnification obligations hereunder, the Elsevier Covered Parties' cumulative liability to Client, Client's customers, beneficiaries or Authorized Users is limited to those of Client's direct damages directly attributable to Elsevier as a result of a breach of this Agreement, and in no event will the liability of the Elsevier Covered Parties exceed a sum equal to the Fees paid by the Client to Elsevier for the applicable Product(s) in the twelve (12) months immediately preceding the event that is basis for the claim.

SECTION 8. CONFIDENTIALITY.

8.1 Non-Disclosure.

Client and its employees, officers, directors and agents shall maintain as confidential and not disclose to any non-affiliated third party without Elsevier's prior written consent or as required by law the financial terms and commercial conditions of this Agreement.

8.2 *Survival.*

All of the undertakings and obligations relating to confidentiality and non-disclosure, whether contained in this paragraph or elsewhere in this Agreement, and whether of Elsevier or Client, will survive the termination of this Agreement for whatever reason.

SECTION 9. GENERAL.

9.1 *Force Majeure.*

Neither party's delay or failure to perform any provision of this Agreement as a result of circumstances beyond its control (including, but not limited to, war, strikes, fires, floods, power failures, telecommunications or Internet failures or damage to or destruction of any network facilities or servers) will be deemed a breach of this Agreement.

9.2 *Severability.*

The invalidity or unenforceability of any provision of this Agreement will not affect any other provisions of this Agreement.

9.3 *Entire Agreement.*

This Agreement contains the entire understanding and agreement of the parties and replaces and supersedes any and all prior and contemporaneous agreements, communications, proposals and purchase orders, written or oral, between the parties with respect to the subject matter contained herein.

9.4 *Modification.*

No modification, amendment or waiver of any provision of this Agreement will be valid unless in writing and signed by the parties.

9.5 *Assignment.*

The Client shall not assign, transfer or license any of its rights or obligations under this Agreement unless it obtains the prior written consent of Elsevier, which consent will not unreasonably be withheld.

9.6 *Survival.*

Rights and obligations under this Agreement which by their nature should survive, including, but not limited to, any and all payment obligations incurred prior to the termination or expiration hereof, or which this Agreement expressly states will survive, will remain in full force and effect following termination or expiration hereof.

9.7 *Notices.*

All notices given pursuant to this Agreement must be in writing and delivered to the party to whom such notice is directed at the address specified below or the facsimile number or electronic mail address as such party may designate by notice hereunder.

If to Elsevier: Elsevier Inc. (Clinical Solutions), [Text deleted]

If to the Client: University of California – San Diego, [Text deleted]

9.8 *Independent Parties.*

Nothing in this Agreement makes Elsevier and Client partners, joint venturers, or otherwise associated in or with the business of the other. Elsevier is and will always remain an independent contractor. Neither party is liable for any debts, accounts, obligations, or other liabilities of the other party, its agents, or employees. Neither party is authorized to incur debts or other obligations of any kind on the part of or as agent for the other except as may specifically be authorized in writing. Elsevier has no authority to act in the name of, or incur any obligation binding on, Client.

9.10 *Execution.*

This Agreement and any amendment thereto may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective to the same extent as original signatures.

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

UNIVERSITY OF CALIFORNIA – SAN DIEGO

[Text deleted]

Name: [Text deleted]

Title: *All Collection Services*

1/21/2019

ELSEVIER INC.

[Text deleted]

Name:

Title: [Text deleted]

SVP & GM

Clinical Reference & Workflow