



FRONTIERS IN BIOSCIENCE

Cited by: MEDLINE, Index Medicus, BIOSIS, Current Contents, Chemical Abstracts and Current Web Contents

LICENSE AGREEMENT

TERMS AND INTERPRETATION

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

"Authorized User": (a) every member of staff employed by or otherwise accredited by the Licensee; (b) every student accredited to the Licensee for the purposes of full-time or part-time attendance; (c) individual members of the public registered as users of the Licensee's library or information service; and (d) individual members of the public permitted to use the Licensee's library or information services: in each case who are permitted general access to the Network by the Licensee.

"Customer Support": customer support provide reasonable E-mail support. **"Staff and Students"**: the students enrolled or accredited to the Licensee and the teaching and research staff employed by or otherwise accredited to the Licensee. **"Network"**: the Licensee's local area network system of connected computers at the Licensee's premises, the IP address for which is set out in the Schedule.

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; or

(c) permit Authorized 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 by means of workstations connected to the Network;

(d) permit teaching staff accredited to the Licensee to reproduce individual articles from the Licensed Material for distribution during the term of this Agreement to students accredited to the Licensee for the purpose of including such individual articles in course study packs.

(e) Authorized Users may transmit to a third party in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for resale or commercial purposes.

(f) Using secure electronic, paper, or intermediated means such as Ariel, Licensee may 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.

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 RESTRICTIONS

Except as expressly permitted in Clause 2.1, the Licensee warrants that it will not, nor will it directly license or authorize others to, 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;

(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;

(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;

(g) undertake any activity which may have a damaging effect on the Licensor's ability to achieve revenue through selling and marketing the Licensed Material; provided that this provision in no way limits Licensee from terminating or not renewing this license in accordance with this license;

(h) 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; or

(i) make the Licensed Material or any part of it available by remote access to any person other than Authorized Users.

4. TERMS AND TERMINATION

4.1 This Agreement shall begin on the Commencement Date and continue for an initial period 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. License/subscription fee is non-refundable.

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 or 4.7 or by the Licensor under Clause 4.3, 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 On termination of this Agreement, the Licensee agrees to destroy, and will use its reasonable endeavours to procure that all Authorized Users destroy, all Licensed Material stored on any digital information storage media, including, but not limited to, system servers, hard disks, diskettes, and back up tapes.

4.6 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.

4.7 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. Access to licensed documents will cease upon termination of this agreement.

5. LICENCE FEES

5.1 The Licensee agrees to pay to the Licensor the Licence Fee within 30 days of the Commencement 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 no later than 30 days 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.

5.3 The License Fee is assessed on the number of the Licensee's Staff and Students during the 12 month period prior to the Commencement Date for the initial term and for subsequent 12 month periods for subsequent one year terms. In response to the

annual renewal reminder provided by the Licensor, the Licensee shall notify the Licensor if the number of Licensee Staff and Students exceeds the number of Licensee Staff and Students stated in the Schedule and the Licensee Fee will be increased in accordance with the Licensee's then applicable charges for the subsequent 12 month subscription period.

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 Licensee shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement including, in particular, any limitations on access or use of the Licensed Materials as set forth in this Agreement. Licensee shall make reasonable efforts to provide Authorized Users with notice of any applicable Intellectual Property or other rights applicable to the Licensed Materials. Licensee shall make reasonable efforts to prevent the infringement of any Intellectual Property or other rights of the Licensor in the Licensed Materials. Licensee shall promptly notify Licensor of any infringement that comes to Licensee's attention, and take appropriate steps to avoid its recurrence. Licensee shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement.

6.3 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.

6.4 Subject to Clause 4.5, 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, 6.2 and 6.3 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.

6.5 The Licensor shall be entitled to monitor the use of the Licensed Material through the Licensor's servers so as to monitor compliance with this Agreement.

7. 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 Licensee shall use its best efforts to safeguard the intellectual property, confidential information, and proprietary rights of the Licensor.

7.6 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.

7.7 The content of the Licensed Material is subject to change without notice.

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 The Licensor's liability is limited to providing information to licensee and does not hold any liability for death or personal injury caused by putting in practice the information provided to the licensee or 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 to and will not exceed the 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; (2) any inaccuracy in the licensed materials; or (3) the unavailability at any time or times of customer support, in each case even if the licensor has been advised of the possibility of such damages in advance.

11. VARIATION

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

12. GOVERNING LAW

In the event any dispute or controversy arising out of or relating to this Agreement, the parties

agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

Mediation. In the event that the parties cannot by exercise of their best efforts resolve the dispute, they shall submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within thirty (30) calendar days after such meeting, the dispute shall be submitted to binding arbitration in accordance with the Arbitration provision of this Agreement.

Arbitration. Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties.

All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than sixty (60) days after the notice of arbitration is served.

The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages.

The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

13. 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.

14. WAIVERS

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

Agreement Date: Date

Agreement Ref No: UCSD06

Parties:

Licensor: Frontiers in Bioscience [text removed]

Licensee: Licensee
Electronic Acq Dept Library (c/o Stacy Nelson), Univ of Calif San Diego,
[text removed]

Licensed Material: HTML /PDF type II. 1996-2006

- The electronic versions of the articles published in the Frontiers in Bioscience for the duration shown below will be available to the licensee at [<http://www.bioscience.org/current/currissu.htm>] as well as any additional material that the Licensor makes available to the Licensee.

Commencement Date: January 1, 06

THE TERM: 12 months from the Commencement Date and continuing until cancelled

Licence Details:

- Licensee average number of Staff and Students (FTE) during the 12 month period prior to the Commencement Date: not more than [text removed]

Range of IP Addresses of Licensee Network:

Campus IP ranges: IP

Licence Fee: [text removed]

Special Terms: Valid until Sept 10, 2006

Contract:

Customer Service: Tel: [text removed], Fax: [text removed]. E-mail: [text removed]

Licensor: Frontiers in Bioscience, [text removed] Licensee: Electronic Acq Dept Library, Univ of Calif San Diego
[text removed]

Tel: [text removed]

Tel: [text removed]

Fax: [text removed]

Fax: [text removed]

Email: [text removed]

Email: [text removed]

The parties each agree to the terms of this Agreement (which expression includes this Schedule and the attached Terms).

Signed by: S Tabibzadeh. President..
[signature removed]

Signed by: ...[signature removed]...
Tony A. Harvell

For and on behalf of
Frontiers in Bioeience, Inc.

For and on behalf of
Licensee
