



- 1.8. "Members" means the party or parties set out in Schedule 4 of this Agreement.
- 1.9. "Parties" means BMJ and each of University of Calgary and University of Alberta;
- 1.10. "Secure Network" means a network (whether a standalone network or a virtual network within the Internet) which is operated and approved by the Member(s) and which is only accessible by Authorized Users whose identity is authenticated at the time of login and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Member(s)
- 1.11. "Site" means the electronic site on which the Licensed Materials will be displayed.
- 1.12. "Term" means the period specified in Schedule 3 unless terminated earlier under Clause 6.
- 1.13. "Website" means the website or websites on which the Licensed Material is displayed
- 1.14. "Website Terms and Privacy Policy" means the Website terms and conditions and privacy policies accessible from the Website.

## 2. The Licence

- 2.1. In consideration of receipt of the Fee, BMJ grants the Member(s) for the Term, a non-exclusive, non-transferable Licence to allow Authorized Users to access the Licensed Materials at the Locations, via the Member(s) Secure Network by way of the IP addresses provided in Schedule 4 or remotely. Remote access to the Licensed Materials, however may only be either via a Member(s) Secure Network (and only if fully in accordance with Clauses 4.1.1, 4.1.2, and 4.1.3), or to Authorized Users who have been issued with a password or other necessary authentication to access the Licensed Materials.
- 2.2. Subject to Clause 6.2, except with respect to, Best Health, Best Practice, BMJ Learning, BMJ Quality products, BMJ Case Reports, Clinical Evidence and DTB, BMJ also hereby grants to Members, a non-exclusive, royalty-free, perpetual licence to use the Licensed Materials that were subscribed to via this Licence and published during the Term of this Agreement, and with the exception of any portion of Licensed Materials that has been expunged from the archive, damaged or sold. For the avoidance of doubt should any back issues of any Licensed Materials be available to the Member(s) and Authorized Users during the Term, these shall not be part of the Members' perpetual access rights granted herein. Such use by Members of any Licensed Materials, for which perpetual access is granted, shall be in accordance with the provision of this Agreement, which provisions shall survive expiry of this Agreement. The means by which Member(s) shall have access to such Licensed Materials shall be in a manner as determined by BMJ, but shall be in electronic form. Where any Licensed Materials is sold, BMJ shall use all reasonable endeavors to ensure that the purchaser can provide ongoing access to the Member(s) for the relevant portion of the Licensed Materials.
- 2.3. BMJ holds the intellectual property (including copyright) or all necessary licenses or rights of use, 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 Licensees shall not and shall use all reasonable endeavours to ensure that neither the Member(s) nor any Authorized User shall claim ownership of the Licensed Materials, or any intellectual property rights in the Licensed Materials, by reason of their use of or access to the Licensed Materials nor make any Commercial Use of the Licensed Materials. Neither of the Licensees nor the Member(s) shall acquire other rights in and to the Licensed Materials other than the licence granted under Clause 2.1 and nothing in this Agreement shall operate to transfer or assign any copyright or other rights in the Licensed Materials to the Licensees or to the Member(s) or Authorized Users.
- 2.5. In addition to all other rights in this Clause 2, BMJ confirms to the Licensees that usage statistics covering the online usage of the journals and databases included in this Licence will be provided with the exception of BMJ Learning (where included) and BMJ Quality products. BMJ further confirms that such usage statistics will adhere to the specifications of the COUNTER Code of Practice, including data elements collected and their definitions; data processing guidelines; usage report content, format, frequency and delivery method.
- 2.6. BMJ (and via its licensors), reserves the right at any time to delete, amend, update or withdraw from the Licensed Materials, any item or part of an item as it sees fit for legal or other reasons including reasons relating to defamation, copyright infringement, patient safety issues.
- 2.7. The Licensees should consult the Matrix in Schedule 5 for ease of reference regarding certain rights in this Clause 2.
- 2.8. Licensees acknowledge that access to and use of the Licensed Materials by Authorized Users is subject to BMJ's Website Terms and Privacy Policy and shall use all reasonable efforts to ensure that Authorized Users are notified of this and will make all reasonable efforts to ensure that those Authorized Users comply with such terms and policy.
- 2.9. Licensees acknowledge that if an Authorized User fails to abide by the Website Terms and Privacy Policy, BMJ reserves the right in its sole discretion to suspend or terminate such Authorized User's access to the Licensed

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### 3. Permitted Uses

- 3.1. All use of the Licensed Materials is subject to all applicable copyright laws and fair use conventions, and reproduction of any portion of the Licensed Materials (other than certain journal articles which have noted on them "Open Access Article" which have more liberal uses as set out in Clause 3.3 herein) is permitted/prohibited as set out in this Clause 3.
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  - 3.3.4 copy, download or post any of the Licensed Materials or link to other websites the Licensed Materials for further redistribution sale or licensing;
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#### **4 Licensee's Obligations**

##### **4.1 Each Licensee agrees that it shall:**

- 4.1.1 Use all reasonable efforts to ensure that all necessary authentication and verification processes are in place at Member(s) sites to ensure that only Authorized Users can access the Licensed Materials;
- 4.1.2 use all reasonable efforts to ensure that the Member(s) have reasonable security measures, and posting policies consistent with the rights and restrictions described in this Agreement to ensure that only Authorized Users can access the Licensed Materials;
- 4.1.3 use its best endeavours to ensure that Members and its Authorised Users are notified of, and comply with, the Website Terms and Privacy Policy and any disclaimers which appear on an applicable Website;
- 4.1.4 with the exception of the Member(s), be prohibited from making agreements for access to the Licensed Materials with third parties. Each Licensee affirms that all IP addresses in the range listed for authorization are specifically assigned to Members for workstations under Member(s)' administrative control and for the use of Authorized Users. Each Licensee is responsible for maintaining the list of IP addresses for access by all Authorized Users;
- 4.1.5 use all reasonable efforts to ensure that Member(s) shall not knowingly permit anyone other than Member(s) and their Authorized Users to use the Licensed Materials;
- 4.1.6 if it, and shall use all reasonable efforts to ensure that if its Member(s) become(s) aware of unauthorized access to the Licensed Materials that it shall, notify BMJ 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, BMJ has the right to withhold, suspend, or terminate access to all or any portion of the Licensed Materials, without liability;
- 4.1.7 communicate to Member(s) to not remove, cover, overlay, obscure, block, or change any copyright notices, legends, or terms of use which BMJ or its licensors may post on the Site in order to inform users about system features, terms of use, or copyright notices;
- 4.1.8 not, and use all reasonable efforts to ensure its Member(s) and their Authorized Users shall not, use any trademark, logo or other proprietary information (including images, text, page layout or frames) of BMJ (or any third party's trademark's appearing in the Licensed Materials) or its licensor's without BMJ's express written consent. Licensees shall use all reasonable efforts to ensure its Member(s) do not use any meta tags or any other "hidden text" utilizing BMJ's or its licensors' names or trade marks, without the express written consent of the BMJ;
- 4.1.9 warrant that it has the express written consent the Member(s) to enter into this Agreement and will bring the terms of this Agreement to the attention of Member(s). The Licensees shall procure that the Member(s) brings the terms of this Agreement to the attention of Authorised Users; and
- 4.1.10 Use all reasonable efforts to ensure that neither the Member(s) nor Authorised Users will make any Commercial Use of the Licensed Materials.

#### **5 Technical Access**

BMJ intends for the Site to be available 24 hours per day, 7 days per week subject to any reasonable periods of planned downtime or maintenance. However, neither BMJ nor any of its licensors will 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 Member(s) or its Authorized Users.

#### **6 Termination**

##### **6.1 A Party may terminate this Agreement in whole or in part:**

##### **6.1.1 Where BMJ is the terminating party:**

- (a) where an act or omission by a Licensee, the Member(s) or an Authorised User gives rise to a material or persistent breach of any term of this Agreement or any term of the Website Terms and Privacy Policy which (if capable of remedy) such Licensee fails to remedy (or with respect to such Licensee failing to procure a remedy) within 30 days of notification in writing from the BMJ; or
- (b) immediately upon a Licensee becoming insolvent, subject to receivership, liquidation or similar external administration; or
- (c) in the event a Licensee defaults on making payment of the Fee or any part of the Fee.

**6.1.2 Where a Licensee is the terminating Party:**

- (a) Where BMJ 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 BMJ; or
- (b) Immediately upon the BMJ becoming insolvent, subject to receivership, liquidation or similar external administration.

**6.2 On termination of this Agreement:**

**6.2.1** Access by Licensees, Members and Authorized Users to the Licensed Materials shall be withdrawn and the Authorized Users shall not be entitled to make any further use of the Licensed Materials; and

**6.2.2** Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

**7 Warranty and Liability**

**7.1** While BMJ seeks to provide updated and accurate content as part of the Licensed Materials, the Licensed Materials are supplied on an "as is" basis. Any statements made to the contrary are void.

**7.2** Licensees, through the Health Knowledge Network, shall be responsible for notifying all Member(s) and ensuring that all Member(s) notify Authorized Users acting under the rights granted to the Licensees under this agreement that such users must always read the full disclaimers on the relevant website for each of the Licensed Materials and that their use of the Licensed Materials shall be deemed acceptance of those terms.

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**7.5** To the fullest extent permitted by law, in the event BMJ or its licensors have any liability under this agreement, BMJ's and its licensors' aggregate liability for any content, accessibility or problems with the Site or Licensed Materials will not exceed the amount of the Fee paid for the Licensed Materials during the 12 month period preceding any claim or notice of damages.

**8 Indemnity**

**8.1** Subject to Clause 8.2, BMJ shall indemnify and hold the Licensees and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable legal fees, which arise from any claim by any third party of an alleged infringement of copyright arising out of the authorized use of the relevant Licensed Materials (subject to that component being owned by BMJ) by the Licensees or any Authorized User. No limitation of liability set forth elsewhere in this Agreement is applicable to this indemnification.

**8.2** Should either Licensee wish to invoke the Indemnity in Clause 8.1 this is conditional on the following: a) that Licensee must promptly notify BMJ of any such claims, b) the Licensee must not make any admission of liability and shall limit its own costs as is reasonably possible, c) BMJ shall have the right to defend such claims at its own expense and d) the Licensees

**8.3** shall provide BMJ with all necessary assistance in investigating and defending such claims as BMJ may reasonably request and have the right to participate in the defense at its own expense, subject to following all reasonable instructions of BMJ.

**9 Data protection**

Each of the Parties shall comply fully with all applicable laws relating to data protection with regard to the collection, processing and use of any personal information about Authorized Users which a Party may obtain by reason of this Agreement.

**10 Fraud, bribery and corruption**

**10.1** A Licensee shall notify BMJ immediately if it becomes aware of or has ground for suspecting any fraud or Malpractice relating to this Agreement or its use of the Licensed Materials. For the purposes of this Clause 10 'Malpractice' shall have the following meaning: includes giving or receiving any financial or other advantage that may be construed as a bribe, whether for the purpose of the Bribery Act 2010 or any other applicable law.


**10.2** Without prejudice to any other remedy it may have, if BMJ has grounds for believing that a Licensee, a Member, or any of the Authorized Users has committed a fraud or Malpractice relating to this Agreement or the Licensed Materials, BMJ may, in its absolute discretion suspend the Agreement and access to the Licensed Materials until it has fully investigated and determined whether or not there has been any fraud or Malpractice.

11 **General**

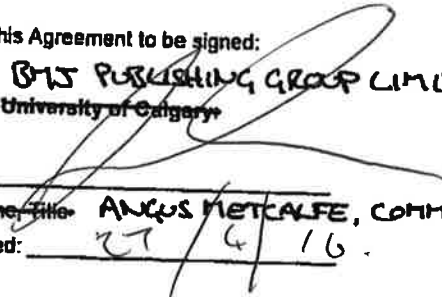
- 11.1 No Party shall be liable for failure, default or delay in performing its obligations under this Agreement, caused by a Force Majeure event which shall include any act of God, war, or threatened war, act or threatened act of terrorism, riot, strike, lockout, individual action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.
- 11.2 BMJ may assign or transfer any of its rights and obligations under this Agreement, upon written notice to the Licensees. Neither Licensee nor Member(s) may assign its rights or transfer its obligations herein without the prior written consent of BMJ.
- 11.3 Alterations to this Agreement are only valid if they are recorded in writing and signed by all parties.
- 11.4 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.
- 11.5 There shall be no right whatsoever for any third party to enforce the terms and conditions of this Agreement. The Parties hereby otherwise exclude the operation of the Contracts (Rights of Third Parties) Act 1999.
- 11.6 No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver, to be effective, must be in writing and signed by a duly authorized representative of each party.
- 11.7 Any notice under this Agreement must be hand written and may be delivered or sent by fax or first class post to each party required to receive the notice or communication at its address as set out below:
- 11.7.1 BMJ: Tim Brooks BMJ, BMA House Tavistock Square, London WC1H 9JR;
- 11.7.1 Licensees: Health Knowledge Network of 1494 Health Sciences Centre, 3330 Hospital Dr NW, Calgary, AB T2K 1N1, CANADA
- or as otherwise specified by the relevant Party by notice in writing to each other party and such notice shall be deemed to have been received upon successful transmission of faxing or 7 (seven) days from the date of posting.
- 11.8 To the fullest extent permitted by law, this Agreement constitutes the entire Agreement between BMJ and the Licensees with respect to the Licensed Materials.
- 11.9 The Licensees shall be jointly and severally liable for their obligations under this agreement. BMJ may take action against, or release or compromise the liability of, either Licensee, without affecting the liability of any other Licensee.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed:

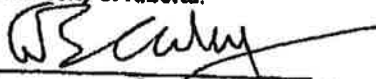
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For BMJ Publishing Group Limited:

By:   
Angus Metcalfe, Commercial Director  
Dated: April 13, 2016

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Dated: April 12, 2016