

## **HKN ACCESS AGREEMENT**

This Agreement made between Health Knowledge Network, a joint undertaking of The Governors of the University of Alberta and The Governors of the University of Calgary ("HKN"), and «Account» (the "Licensee").

In consideration of the respective covenants contained in this Agreement HKN and the Licensee agree as follows:

### **ARTICLE 1: ACCESS AND USE**

- 1.1 HKN grants to the Licensee a non-exclusive, non-transferable, limited license to access the data contained in the databases and e-resources (herein referred to as the "Databases") referred to in Schedule A as such schedule may be amended pursuant to this Agreement on the terms and conditions contained in this Agreement.
- 1.2 The rights granted to the Licensee may be exercised only through its Authorized User Base. Authorized User Base means individuals identified in Schedule B.
- 1.3 Access to the Databases is controlled by the Vendor(s) through various authentication methods including, for example, ID number or IP authentication. Vendor means the vendor from whom HKN purchases the Databases. Where required, HKN shall arrange, through the Vendor, to provide the Licensee with individual ID numbers. In all other cases, to generate individual ID numbers, the Licensee will contact the Vendor directly. Unless otherwise specified, Licensee shall be responsible for the distribution and security of all ID numbers generated by Vendor for use by Licensee.
- 1.4 Unauthorized sharing by Licensee or its Authorized User Base of authentication credentials (e.g., ID Numbers, Passwords etc.) constitutes default on the part of the Licensee under the terms of this Agreement.
- 1.5 Attempts to circumvent the protective mechanisms of any HKN licensed databases and attempts to degrade the database system performance or capability by the Licensee or any member of its Authorized User Base shall be considered cause for immediate termination of this Agreement at the option of HKN.
- 1.6 Licensee shall use all reasonable efforts to cooperate with HKN and vendor to prevent and mitigate unauthorized use of the databases. HKN and Vendor have the right to terminate the entire Access agreement or access to individual databases if unauthorized use persists.
- 1.7 No rights to use the Databases(s) are conveyed to the Licensee or its Authorized User Base except as permitted by the Vendor Agreement(s) that HKN has established with its Vendors. Usage rights within the agreements established between HKN and the Vendor will be conveyed to Licensee. Licensee will use reasonable efforts to convey these rights to its Authorized User Base. In the case of Perpetual Access, in the event that a Database is cancelled it is the responsibility of the Licensee to negotiate directly with the Vendor the means by which the Licensee will access the content of the cancelled database.
- 1.8 The Agreement does not confer upon the Licensee any title or ownership right in any software licenses or vendor documentation related to or used in connection with HKN, or to any of the contents of the Databases.
- 1.9 The Databases are the property of third parties and no right to use the Databases is conveyed to the Licensee except the right to use it for performing research, or other related uses, including training. Some material in the databases is from copyrighted publications of the respective copyright claimants. Licensees of these databases are referred to the publication data appearing in the bibliographic citations as well as to the copyright notices appearing in the original publication, all of which are applicable to the rights granted to the Licensee by HKN.

### **ARTICLE 2: OPERATIONS**

- 2.1 When the Licensee is an institution, the Licensee shall designate in writing the name of the person to be System Administrator as set out in Schedule B who shall be available to HKN on a routine and expedited basis when necessary, for the purpose of resolving access issues related to technology.
- 2.2 Scheduled maintenance, including database updates, software upgrades, hardware repairs and other operations may be performed by the Vendor and may require that the system be unavailable to the Licensee.
- 2.3 The Databases are subject to update and change without notice.
- 2.4 HKN may, without prior notice to the Licensee, add additional databases to Schedule A without cost to Licensee. HKN may also, without prior notice to the Licensee, delete databases from Schedule A by posting notice of the same on the HKN website or through email notification to System Administrators. In such cases, Licensee shall be eligible for a pro-rated refund subject to Vendor refund. In the case of agreements in which Perpetual Access has been granted, Licensee shall arrange such access directly with Vendor.

### **ARTICLE 3: PAYMENT**

- 3.1 The Licensee shall pay the amount specified on their HKN quote for the initial contract period specified in Schedule B. Such payment shall be made concurrently with the execution and delivery of this Agreement by the Licensee unless otherwise noted on Schedule B. Thereafter the Licensee shall pay for each subsequent contract year, an annual charge specified in their Renewal Notice. HKN may adjust the annual charge for a contract year or the time fixed for payment of that charge by giving notice thereof to the Licensee at least sixty (60) days prior to the commencement of that contract year.
- 3.2 Either HKN or the Licensee may terminate the Agreement as at the end of the initial contract period or any contract year by giving notice to the other to that effect at least thirty (30) days prior to the end of that initial contract period or that contract year.

### **ARTICLE 4: DISCLAIMER OR WARRANTIES**

- 4.1 ACCESS TO THE DATABASES IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND EXPRESS OR IMPLIED. Without limiting the generality of the foregoing, HKN expressly disclaims any liability for the accuracy of the information contained within the Databases, or ownership of the intellectual property contained within Databases. The Licensee's exclusive remedy and HKN's entire liability hereunder, if any, for

any claim(s) for damages made against it whether based in contract or negligence, shall be limited to the amount of charges paid by the Licensee in the period of occurrence of the events (being the initial contract period or any subsequent contract year) which are the basis of the claim(s); provided, however, that HKN shall have no liability whatsoever to the Licensee for any claim(s) relating in any way to:

- (a) the Licensee's inability or failure to perform research or related work or to perform such research or work properly or completely, even if assisted by HKN;
- (b) any lost profits or other consequential, exemplary, incidental, indirect or special damages relating in whole or in part to the Licensee's rights hereunder or use of, or inability to use the Databases, even if HKN has been advised of the possibility or such damages.

4.2 Except for claims relating to charges payable by the Licensee or improper use of the Databases by the Licensee no claim, regardless of form, which in any way arises out of this Agreement of the use of, or inability to use the Databases may be made, nor action based upon such claim brought, by either party more than one year after the basis for the claim becomes known to the party desiring to assert it.

4.3 The Licensee shall indemnify HKN from any and all claims arising from use or misuse by the Licensee of any of the information accessed through HKN, including, but not limited to, claims for copyright infringement.

#### **ARTICLE 5: TERM AND TERMINATION**

5.1 This Agreement shall become effective upon the date as of which this Agreement is made and the term hereof shall continue in force until terminated in accordance with the provisions hereof.

5.2 This Agreement shall terminate:

- (a) in accordance with the exercise of a termination right by HKN or the Licensee as provided in Section 3.2;
- (b) forthwith, at the option of HKN, if any of the rights of HKN to provide the services contemplated herein are terminated, or by the Licensee as contemplated in Section 2.4, in which case the charge for the initial contract period or the contract year in which such termination occurs shall be prorated and adjusted to the date of such termination;
- (c) forthwith, at the option of HKN, if the Licensee is in default under this Agreement and fails to remedy such default within five (5) days of notice from HKN to that effect or as provided in Section 1.4, 1.5, and 1.6 such termination not to entitle the Licensee to any refund of the charge for the initial contract period or any contract year and to be without prejudice to any other right or remedies of HKN against the Licensee.

#### **ARTICLE 6: GENERAL**

6.1 This Agreement shall not be assigned, either in whole or in part, by the Licensee without the prior written consent of HKN, which consent may be arbitrarily withheld.

6.2 There shall be no waiver of any covenant, condition or breach of this Agreement except as made in writing and signed by the party entitled to waive the covenant, condition or breach of this Agreement.

6.3 This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the parties hereby adhere to the jurisdiction of the Courts of the Province of Alberta.

6.4 Any notice or communication must be given in writing and delivered by prepaid courier service or mail or alternatively, may be sent by electronic communication to HKN, Licensee or as the case may be, where shown on Schedule B.

Any such notice or communication so given shall be deemed conclusively to have been given and received when delivered or sent by electronic communication or on the fifth day following the sending thereof by private courier or mail. Any party hereto may from time to time change their address by written notice to the other party in accordance with this paragraph.

6.5 This Agreement and any amendments subsequently made in writing contain the entire agreement of the parties with respect to its subject matter, and supersede all prior agreements, understandings, representations, conditions, warranties and covenants, whether oral or written, between the parties.

6.6 HKN may share registration data with any distribution partners or any independent contractor providing assistance or services to HKN in its operations.

6.7 This Agreement will be binding on and ensure to the benefit of the parties hereto and their respective executors, legal representative, successors and assignees where permitted by this Agreement.

6.8 The headings used in this Agreement are for convenience of reference only and are not to be used in its interpretation.

6.9 Time shall remain of the essence in this Agreement.

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#### **AGREED TO AND ACCEPTED:**

##### **HEALTH KNOWLEDGE NETWORK**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: {{TODAY \@ "MMMM d, yyyy"}}

Signature: \_\_\_\_\_

##### **LICENSEE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_