

CONCURRENT USER LICENSE AGREEMENT For Elsevier Consult™ Online Services

This license agreement ("Agreement") is entered into by and between Elsevier Inc., 11830 Westline Industrial Drive, St. Louis, MO 63146, USA ("Elsevier"), and The University of California Medical Schools & Medical Centers: UCSF, UCLA, UCI, UCD & UCSD ("Customer").

Elsevier and Customer agree as follows:

- 1. License.** Elsevier grants to Customer a non-transferable, non-exclusive right and license to access and use the MD Consult® online medical information service(s) described on Attachment A (the "Service") through the website <http://www.mdconsult.com> (the "Website") according to the terms and conditions set forth in this Agreement. Customer and its Authorized Users (as defined below) shall have access to the Service for an annual license fee set forth on Attachment A (the "Fee"). "Authorized Users" shall mean faculty, full-time and part-time students, residents, researchers, employees and independent contractors of Customer affiliated with Customer's locations listed on Attachment A ("Sites") and authorized by Customer to access the Service through Customer's secure network by secure authentication and under the terms of this Agreement, including patrons not affiliated with Licensee who are physically present at Licensee's site(s) ("walk-ins"). Subject to the terms of the Agreement, Customer and its Authorized Users shall have unlimited access to the Licensed Materials.
- 2. Term.** This Agreement starts as of the "Commencement Date" on Attachment A and continues for a period of one (1) year (the "Initial Term"). This Agreement will automatically renew for an additional one-year term (a "Renewal Term") unless Customer notifies Elsevier in writing of its desire not to renew thirty (30) days prior to the expiration date. Elsevier reserves the right to adjust prices upward or downward upon renewal of this Agreement for any Renewal Term. Customer will be notified of price adjustments sixty (60) days prior to a Renewal Term.
- 3. Payment.** The Fee shall be paid in U.S. dollars payable through an authorized branch of a U.S. bank or via wire service transfer. Customer will pay the Fee within thirty (30) days after the invoice date. Elsevier reserves the right to suspend access to the Service if a payment is not received by its due date. The Fee shall be exclusive of any sales, use, value added, withholding or similar tax, and Customer shall be liable for any such taxes in addition to the Fee.
- 4. Registration.** Customer acknowledges and agrees that Customer agrees to and are bound by all of the terms and conditions of this Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior and contemporaneous agreements, communications, understandings, and agreements relating to the subject matter hereof, whether oral or written, including any agreements associated with the order or trial request process. Should there be a conflict between this agreement and any other vendor-generated, web accessible terms and conditions, whether now known or hereinafter generated, then this Agreement controls.
- 5. Restrictions.** Except as expressly granted by the Agreement, Customer acquires no right, title or license in the content or data incorporated in the Service. This Agreement is specific to Customer and may not be assigned, transferred or sublicensed in whole or in part without the prior consent in writing of Elsevier. The use of all or any part of the Service by anyone other than the Authorized Users is expressly prohibited. Elsevier warrants that it has the authority to make available the Service, and that it has secured all rights and permissions necessary to enable the Authorized Users to utilize such materials in compliance with this Agreement. Elsevier will indemnify Customer against any claim that materials furnished hereunder and used within the scope of the Agreement (not including any materials that have been customized or otherwise altered by Customer) infringe any patent, copyright or other rights of third

parties. Should the materials furnished under this Agreement become or in Elsevier's opinion be likely to become, the subject of a claim for infringement, Elsevier may authorize the continued use, replacement, removal, or modification of such data to make it non-infringing. Customer will indemnify Elsevier against any claim relating to any customization or alteration of the materials.

6. Access and Use. Access to the Service shall be controlled through the use of Internet Protocol (IP) addresses, passwords/username, or both. Customer is responsible for providing valid Internet Protocol (IP) addresses to Elsevier, issuing and terminating access codes and/or passwords/username (if used), and verifying the status of Authorized Users. Customer is responsible for taking reasonable measures to ensure the security and integrity of the Service, ensure that access to and use of the Service is limited to Authorized Users and use reasonable efforts to prevent access by unauthorized persons to the Service, ensure that passwords are issued only to Authorized Users and that neither Customer nor its Authorized Users divulge any passwords to any third party, and immediately terminate any unauthorized access or use of which it becomes aware and prevent recurrence. Customer shall promptly notify Elsevier of any unauthorized access or use of which it becomes aware and cooperate with Elsevier in any investigation thereof.

7. Usage Statistics. Licensor will provide both composite use data for the system-wide CDL and itemized data for individual campuses on a regular basis. Use data should be at the level of detail required for objective evaluation of both product performance and satisfaction of user needs and be in compliance with recognized international standards.

8. Support. Customer accepts responsibility and liability for Internet access and installation of all system components required to access the Service and for use of the Service under the terms of this Agreement. Customer is also responsible for any charges it incurs to access Elsevier, such as telephone and other equipment charges, and fees charged by an Internet access provider or other third party service. Customer shall nominate one (1) member of its staff to act as a contact for technical support, specified on Attachment A. In the event of problems operating the Service, this person may contact Elsevier for technical support. Such support shall be provided only for the Service as supplied by Elsevier under this Agreement. Elsevier shall not supply support for any retrieval or other software or hardware obtained by Customer from any third party and shall not supply any technical support direct to any Authorized User. Customer shall nominate one (1) member of its staff to act as administrative contact for non-technical support, specified on Attachment A. Authorized Users may contact the Website's online customer support center for assistance in the use of the Service.

9. Unauthorized Use. Customer shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. In the event of any unauthorized use of the Licensed Materials by an Authorized User, (a) Elsevier may terminate such Authorized User's access to the Licensed Materials, (b) Elsevier may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Customer shall terminate such Authorized User's access to the Licensed Materials upon Elsevier's request. Elsevier shall take none of the steps described in this paragraph without first providing a sixty (60) day notice to Customer and cooperation with the Customer to avoid recurrence of any unauthorized use.

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Elsevier believes that Customer has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

10. Notices. All notices given pursuant to this Agreement shall be in writing and delivered to the party to whom such notice is directed at the address specified above or the facsimile number or electronic mail address as such party shall have designated by notice hereunder.

11. Governing Law. This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in California shall have jurisdiction to hear any dispute under this Agreement.

12. Privacy. Elsevier shall not, without the prior written consent of Customer, transfer any personal information of any Authorized Users to any non-affiliated third party or use it for any purpose other than as described in this Agreement and in the online privacy policy for the Service.

13. Indemnification. Licensor shall defend, indemnify, and hold harmless Customer, their officers, agents and employees from all damages, liabilities, costs, fees, including, but not limited to attorney's fees, resulting from any judgment or settlement agreement arising out of the claim of a third party that Licensor's sale of products to Customer Customer's use of said products constitutes an infringement of any patent, copyright, trademark, trade name, trade secret or other proprietary or contractual right of any third party. **NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.** Customer shall give prompt notice of an infringement claim to Licensor, provide such cooperation and assistance to Licensor as is reasonably necessary to defend the claim, and shall allow Licensor to have sole control of the defense, provided, however, that Customer retains the right to participate in the defense at its own expense.

14. Miscellaneous. This Agreement may only be amended or modified in a written document signed by both parties. This Agreement contains the entire understanding and agreement of the parties and merges and supersedes any and all previous and contemporaneous agreements, communications, confirmations, proposals and purchase orders, written or oral, between the parties with respect to the subject matter contained herein. Customer will maintain the confidentiality of the pricing terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the last date set forth below.

University of California

[Text deleted]

ELSEVIER INC.

[Text deleted]

By: _

Name

Title: Assoc. Univ. Librarian for Collections

Date: 2 February 2011

By: _

Name

Title: Vice President, Institutional Electronic Products

Date: Feb 9, 2011

CONCURRENT USER LICENSE AGREEMENT
For Elsevier Consult™ Online Services
Attachment A

Customer Name: University of California

CONCURRENT USERS: Access to the MDC SERVICE is limited to 30 Concurrent Users..

Technical Contact

Name:

Title:

Address (if different from address for notices):

E-mail: send all messages to electres@uci.edu

Phone:

Fax:

Administrative Contact – for all support, renewals, services, downtime, etc

E-mail: electres@uci.edu

Librarian Contact

Name: [Text deleted]

Title:

Address (if different from address for notices):

E-mail: [Text deleted]

Phone:

Fax:

Customer will promptly notify Elsevier of any changes to any of the information above.

Term **2011-2012 Fee**

MD Consult Editions: MDConsult Core

Total Annual Fees: [Text deleted]

Commencement Date: January 31, 2011

Initial Term Expiration Date: January 31, 2012