MULTI-USER ONLINE SUBSCRIPTION AGREEMENT – eMJA

Holman Webb
Lawyers
Level 17, 123 Pitt Street
SYDNEY NSW 2000
DX 233 Sydney
T: 61 2 9390 8000
F: 61 2 9390 8390
www.holmanwebb.com.au

Ref:TGW:AMP391/1
E:Tal.Williams@holmanwebb.com.au
# TABLE OF CONTENTS

1. DEFINITIONS ..................................................................................................................1  
2. APPLICATION..................................................................................................................3  
3. DURATION........................................................................................................................3  
4. SUBSCRIPTION SERVICES ...............................................................................................3  
5. ACCESS AND USE............................................................................................................3  
6. OWNERSHIP AND INTELLECTUAL PROPERTY .............................................................6  
7. REPRODUCTION AND COMMUNICATION FOR OTHER PURPOSES .........................6  
8. PROVIDING FEEDBACK ON WEBSITE ........................................................................6  
9. ACKNOWLEDGEMENT, WARRANTY AND LIABILITY ....................................................7  
10. YOUR WARRANTIES ........................................................................................................8  
11. INDEMNITY ...................................................................................................................8  
12. PRIVACY ......................................................................................................................8  
13. TERMINATION ...............................................................................................................9  
14. GENERAL ......................................................................................................................10
MULTI-USER ONLINE SUBSCRIPTION AGREEMENT

This Agreement is dated

PARTIES

Australasian Medical Publishing Co Proprietary Ltd (ABN 20 000 005 854)
of 277 Clarence Street, Sydney NSW 2010 (AMPCo)

[add name and details of other party] ("you" or “your”)

RECITALS

A. AMPCo makes online services available to various institutions and organisations for the purpose of allowing those institutions access to papers, research, information and other materials contained in various online publications and directories of AMPCo.

B. AMPCo has agreed to provide access to the institutions and its authorised users with online access on a subscription basis, on the terms and conditions that are set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS

1.1 In these Terms:

(a) Agreement means this Multi-user Online Subscription Agreement;

(b) Authorised User has the meaning given to that expression in clause 1.3;

(c) Intellectual Property Rights means any intellectual property and industrial property rights throughout the world including but not limited to rights in respect of or in connection with any copyright (including future copyright and rights in the nature of or analogous to copyright), inventions (including patents), designs, and circuit layouts whether or not now existing and whether or not registered or registrable, and any right to apply for the registration of such rights, and all renewals and extensions and any other intellectual property rights as defined in Article 2 of the World Intellectual Property Organisation Convention of 1967;

(d) Online access means accessible by means of an internet portal or link;

(e) Subscription Fee means [add amount];

(f) Subscription Service includes the product known as eMJA, and also extends to any other service that may be offered by AMPCo from time to time and for which a Subscription Fee is payable by the user. For the sake of clarity, in respect of any particular subscription, the Subscription Service only includes to that part of AMPCo’s Subscription Services that you have paid for.

(g) Subscription Period means [add period];

(h) Terms means the terms and conditions contained in this Agreement;
(i) **Website** means [add particular website relevant to this party];

(j) **Works** means any and all publications, content, graphs, charts, data, information, software, documents, directory listings, or any other materials whatsoever contained on any Website owned by AMPCo; and

(k) **www** means the World Wide Web.

1.2 Words importing the singular include the plural and vice versa and words importing one gender shall include the other gender. Headings are for ease of reference only and shall not affect the interpretation of these Terms. A reference to a clause is a reference to a clause of these Terms.

1.3 In these Terms:

(a) in the event that you are a corporation, an **“Authorised User”** means your:

   (i) employee;

   (ii) officer; or

   (iii) director;

(b) in the event that you are a university or educational institution established by an Act of the Parliament of a State or Territory or by the Commonwealth of Australia, an **“Authorised User”** means an:

   (i) employee of;

   (ii) staff member of;

   (iii) officer of;

   (iv) director of;

   (v) person holding an academic position with;

   (vi) student duly enrolled with; or

   (vii) person who has been duly granted access to academic resources including, without limitation, library resources by you; and

(c) in the event that you are a body or department of a State or Territory or the Commonwealth of Australia, an **“Authorised User”** means an:

   (i) employee;

   (ii) officer, or office holder;

   (iii) director; or
2. **APPLICATION**

The following terms and conditions (**Terms**) are a legally binding agreement between AMPCo, and you, in respect of any Online access, products or information (**Subscription Service**) made available by AMPCo to you on the Website either free of charge or for a subscription fee.

3. **DURATION**

These Terms commence on the date on which we receive payment in full of the Subscription Fee (if any) and continue in full force and effect for the duration of the Subscription Period unless terminated earlier in accordance with clause 13.

4. **SUBSCRIPTION SERVICES**

In consideration of payment of the Subscription Fee (if any) we grant you and any Authorised User a license to use the Subscription Service subject to and in accordance with these Terms.

5. **ACCESS AND USE**

5.1 Your access to and use of any Website is conditional on your acceptance of these Terms of Access and Use. If you do not accept these Terms of Access and Use then you must not access or use, or must immediately cease all access or use of, the Website.

5.2 You agree that:

(a) Any and all access and use of any Subscription Service by you or the Authorised Users shall be in accordance with:

   (i) these Terms;

   (ii) any notices displayed on the Website from time to time; and

   (iii) the general Terms of Access and Use that are available and displayed on the Website from time to time (**General Terms of Access and Use**).

(b) To the extent of any inconsistency between these Terms and the General Terms of Access and Use, these Terms prevail.

(c) We may revise, replace or amend these Terms from time to time, at our sole discretion;

(d) You will use your best endeavours to ensure that:
(i) only Authorised Users are able to access and use the Subscription Service by means of any computer system, network or internet portal that is owned, operated or controlled by you or on your behalf;

(ii) any and all access and use of the Subscription Service by the Authorised Users is in accordance with these Terms;

(iii) any unauthorised access or use of the Subscription Service is immediately notified to us;

(iv) all reasonably necessary or desirable security measures, procedures or systems are implemented and maintained by you to enable you to comply with your obligations under these Terms;

(v) you shall not knowingly allow any person other than an Authorised User to access or use the Subscription Service;

(vi) you shall provide AMPCo or AMPCo’s representative with any assistance reasonably necessary or desirable to enable to locate and stop any person accessing or using the Subscription Service, by means of any computer system, network or internet portal that is owned, operated or controlled by or on your behalf, in a manner that is in breach of or is inconsistent with these Terms;

(vii) you shall not enter into any agreement that allows any person to access or use the Subscription Service in breach of these Terms or in a manner that is inconsistent with these Terms; and

(viii) you shall not assign or sub-license any licence granted under these Terms.

5.3 You agree that you shall not, and shall use your best endeavours to ensure that any Authorised Users do not, make any commercial use of any or all of the Works accessed on the Website. In this clause 5.3, commercial use means use that is for monetary reward and includes, without limitation, use for sale, resale, loan, transfer, hire or any other form of commercial use.

5.4 If, for any reason whatsoever, payment is not received in full and in cleared funds by us before you access or use the Subscription Service; we shall be entitled to terminate, suspend, revoke or cancel the licence granted under clause 13.

5.5 In the event that you wish to access various areas or sections of a Website, AMPCo may issue to each Authorised User a unique username and password, or other method of access at the sole discretion of AMPCo (the Login).

5.6 You agree that:

(a) the Login IP Access is required to access the Subscription Service and other sections of the Website;

(b) you shall not access the Subscription Service without having first:
(i) been issued the Login IP Authorisation; and

(ii) paid, arranged to pay or having had paid on your behalf, the correct subscription fees and charges that we specify for your access to the Subscription Service;

(c) the Login is non-transferable to any unauthorised user/s;

(d) you shall not disclose the Login to any other person who is not an authorised user;

(e) you shall keep the details of the Login safe and confidential;

(f) you accept all liability for any activities whatsoever conducted using the Login that is issued to you under clause 5.5; and

(g) you shall not use a Login that has been issued by us to some other person where you are not an authorised user of that subscription as appointed by the administrator.

5.7 You agree that AMPCo may, from time to time and at our sole discretion:

(a) revoke, vary, suspend or cancel the Login IP Access;

(b) carry out maintenance or other work on the Website, that may limit or deny access to you; or

(c) limit or deny access to the Website, or part of the Website, for any reason.

5.8 You must not, and you must ensure that Authorised Users do not, use the Website, or post any material on the Website, that causes or is likely to cause the Website or access to be interrupted, damaged or impaired in any way. You understand that you are solely responsible for all electronic communications and contents sent from your computer to us. You must only use the Website for lawful purposes and must not use the Website for any of the following:

(a) Fraudulent purposes in connection with any criminal offence or any other unlawful activity;

(b) To send, post, use or reuse any material that is illegal, offensive, abusive, indecent, defamatory, obscene, menacing, discriminatory, pornographic, misleading or deceptive (as to its subject matter or the identity of its author or poster), or in breach of copyright, trademark, confidence, privacy or any other right or is otherwise injurious to third parties, or which consists of or contains software viruses, political campaigning, commercial solicitation, commercial or personal advertising, financial or personal advice or recommendation, or any form of spam.
6. OWNERSHIP AND INTELLECTUAL PROPERTY

6.1 You acknowledge and agree that any and all Intellectual Property Rights, title and interest arising in or in relation to the Works remains with or vests in AMPCo or third parties.

6.2 If AMPCo, or any person, makes available or introduces to you or any Authorised User any of AMPCo’s intellectual property then all Intellectual Property Rights relating to or associated with that intellectual property will remain the sole property of AMPCo.

6.3 You agree to take all actions and do all things reasonably necessary or desirable to protect our Intellectual Property Rights, title and interest in the Works.

7. REPRODUCTION AND COMMUNICATION FOR OTHER PURPOSES

7.1 No further reproduction or distribution of the Works in whole or in part is permitted without the express written agreement of AMPCo.

7.2 To seek permission to use the Works (or part of them) send an email to ampco@ampco.com.au.

7.3 Your email must tell us:

   (a) The selection or type of information you require;

   (b) The purpose for which you wish to use the Works; and

   (c) Verification as to whether use of the Works is or is not for monetary reward. Monetary reward includes, without limitation, use for sale, resale, loan, transfer, hire or other form of commercial use.

7.4 The Australian Copyright Act 1968 (the Act) allows a maximum of 10% of the words in a digital work to be reproduced and/or communicated by any educational institution for its educational purposes provided that that educational institution (or the body that administers it) has given remuneration notices to Copyright Agency Limited (CAL) under the Act. For details of the CAL licence for educational institutions contact: Copyright Agency Limited, Level 15, 233 Castlereagh Street Sydney NSW 2000 Australia Tel: +61 2 9394 7600 Fax: +61 2 9394 7601 Email: info@copyright.com.au.

8. PROVIDING FEEDBACK ON WEBSITE

8.1 If you are invited to post comments on the Website you may do so. If you think that a comment that has been posted is illegal, offensive, abusive, indecent, defamatory, obscene, menacing, discriminatory, pornographic, misleading or deceptive (as to its subject matter or the identity of its author or poster), or in breach of copyright, trademark, confidence, privacy or any other right or is otherwise injurious to third parties, or consists of or contains software viruses, political campaigning, commercial solicitation, commercial or personal advertising, financial or personal advice or recommendation, or any form of spam, please email us with a link to the comment or a copy of it and your reason for objecting to it. We will consider whether there are
grounds for editing or removing the comment and take appropriate action, but will not necessarily contact or consult you about our decision. Our decision is final.

9. **ACKNOWLEDGEMENT, WARRANTY AND LIABILITY**

9.1 You acknowledge and agree that:

(a) The Works are protected by copyright, and you do not acquire or hold any ownership rights or intellectual property rights by downloading or copying the Works, or part thereof, from the Website;

(b) You will not rely on any of the Works without first making independent enquiries to verify facts.

(c) The Website is provided on an “as available” basis. You agree that the Website may be interrupted for maintenance and repairs, or for any other reason and that access to any Works cannot be guaranteed.

9.2 To the fullest extent permitted by law, AMPCo disclaims any and all express or implied warranties, guarantees or representations regarding:

(a) the accuracy, reliability, timeliness or otherwise of any information contained or referred to on the Website or the Works or on any external websites that may be referred to on the Website; and

(b) the merchantability, reliability or fitness for any particular purpose for any service or product contained or referred to on the Website or the Works or on any external websites that may be referred to on the Website.

9.3 You acknowledge and agree that AMPCo does not warrant, guarantee or make any representation that:

(a) the Website, the Works or the server that makes the Website available on the www are free of software viruses;

(b) the functions contained in any software contained on the Website or the Works will operate uninterrupted or are error-free; or that

(c) errors and defects in the Website or the Works will be corrected.

9.4 You and AMPCo further agree that, to the fullest extent permitted by law:

(a) the Works and any other materials whatsoever appearing on the Website are provided on an “as is” basis without warranty of any kind, express or implied;

(b) So far as permitted by law, we exclude all conditions and warranties relating to the Subscription Services, the Works or the Website; and

(c) AMPCo does not warrant or guarantee the accuracy, completeness, merchantability, or fitness for purpose of the Subscription Service, the Works, or the Website
9.5 To the extent that our liability for breach of any implied warranty or conditions cannot be excluded by law our liability will be limited, at our sole discretion, to resupply those services or the payment of the costs of having those services resupplied;

9.6 In no circumstances will we be liable to you for any indirect, incidental, special or consequential losses or damages including, without limitation, loss of profits, loss of goodwill, loss of data or loss of opportunity. To the fullest extent permitted by law our liability to you for goods or services supplied by us to you shall be the lesser of the amount determined under clause 9.5 or the aggregate amounts paid by you in respect of those goods or services to us.

10. YOUR WARRANTIES

10.1 You warrant that the Subscription Fee paid or to be paid by you to AMPCo is the correct Subscription Fee that applies to you. For the sake of clarity, the correct Subscription Fee is the aggregate value of the subscription to the Subscription Service and is based on the following:

(a) the most recent subscription price that we have advised you of within the relevant year;

(b) the correct nature of your enterprise;

(c) the correct and up-to-date number of fulltime equivalent employees engaged by you; and

(d) the duration of the licence sought by you.

11. INDEMNITY

11.1 You agree to release and indemnify, defend and hold AMPCo, its directors, officers, employees and agents, harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any claim or legal action taken against you or AMPCo related to or in any way connected with any use of the Subscription Service by you or Authorised Users or any failure by you to perform your obligations in relation to these Terms provided that nothing in these Terms shall make you liable for breach of these Terms by any Authorised User provided that you did not cause, knowingly assist or condone the continuation of such breach to continue after becoming aware of an actual breach having occurred. This indemnity shall survive the termination of these Terms.

12. PRIVACY

12.1 You agree that we may collect and disclose personal information that you provide to us to:

(a) the Australian Medical Association Limited (“AMA”); and

(b) our business associates.
12.2 You agree that we may collect, use and disclose the personal information that you provide to us for the following purposes:

(a) to enable us to perform our obligations under these Terms;
(b) to recover any money owing to us; and
(c) to provide, or arrange for a third party to provide you with information regarding goods or services that we believe may be of interest to you.

12.3 Any personal information, including personal financial information, that relates to you and is collected, used or disclosed by us will be only be collected, used or disclosed in accordance with:

(a) these Terms or the General Terms and Conditions of Access and Use; and
(b) our Privacy Policy, if any, as varied by us at our sole discretion from time to time,

in compliance with the requirements of the Privacy Act 1988 (Cth).

13. **TERMINATION**

13.1 We may immediately terminate these Terms if:

(a) you fail or refuse to make, or AMPCo does not receive in full and in cleared funds, any payment of the Subscription Fee or any part of the Subscription Fee; or

(b) you or an Authorised User breaches any term or condition of these Terms and fails to remedy such breach to our satisfaction within seven (7) days of notification from us.

13.2 On termination of these Terms:

(a) you must not access or attempt to access the Subscription Service of the Website;

(b) you must use your best endeavours to ensure that the Authorised Users do not access or attempt to access the Subscription Service of the Website; and

(c) we may immediately deny any or all of the Authorised Users access to the Subscription Service of the Website, or any other part of the Website, at our sole discretion.

13.3 Any termination of the licence granted under these Terms shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of these Terms, which is expressly or by implication intended to continue in force after such termination.
14. **GENERAL**

14.1 These Terms and the documents referred to in the Terms, supersede all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the Service.

14.2 You must not assign, whether in whole or part, the benefit of these Terms or any rights or obligations hereunder, without the prior written consent of AMPCo.

14.3 These Terms shall be governed by and construed in accordance with the laws for the time being in force in the State of New South Wales, Australia, and the parties agree to submit to the non-exclusive jurisdiction of the courts and tribunals of that State.

14.4 No forbearance, delay or indulgence by a party in enforcing the provisions of these Terms shall prejudice or restrict the rights of that party, nor shall any waiver or those rights operate as a waiver of any subsequent breach.

14.5 Should any part of these Terms be or become invalid or unenforceable, that part shall be severed from these Terms. Such invalidity or unenforceability shall not affect the validity of the remaining provisions of the Agreement.

EXECUTED as an Agreement

Signed by the authorised representative of
Australasian Medical Publishing Co Proprietary Ltd in the presence of:

Witness signature
Name of witness:

Signature
Name of Authorised Representative

Executed by
Party Name ABN
in accordance with section 127 of the Corporations Act 2001:

Signature
Name
Office held:
Signed by the authorised representative of Party name in the presence of:  

Witness signature  Signature  

Name of witness:  Name of Authorised Representative  

DATED: