

**Federation of American Societies for Experimental Biology**  
***The FASEB Journal—FJ Online***  
Institutional License Agreement for 2008 Subscriptions

WHEREAS the Publisher, the Federation of American Societies for Experimental Biology (FASEB), holds the rights granted under this License.

AND WHEREAS the Licensee, the subscribing institution, desires to use the rights and the Publisher desires to grant to the Licensee the license to use the rights in the pursuance of its research mission for the Fee, subject to the terms and conditions of this License.

It is agreed as follows:

## 1. KEY DEFINITIONS

1.1 In this License, the following terms shall have the following meanings: -

### 1.1.1 Authorized Users

The term "Authorized Users" is limited to: (1) Current employees of the Licensee acting within the scope of such employment and individuals who are currently registered and enrolled in a course of study at the Licensee's institution, who are permitted to access the Secure Network and the Licensed Material and who have been issued by the Licensee with a personal, non-transferable password or other authentication; or (2) persons who are permitted to physically enter the Library Premises and access the Secure Network but only from computer terminals located within the Library Premises.

### 1.1.2 Commercial Use

Use for the any purpose of direct or indirect monetary reward (whether by or for the Licensee or an Authorized User) by means of sale, resale, loan, transfer, hire or other form of use of the Licensed Materials. Use by an Authorized User of the Licensed Materials in the course of research funded by a commercial organization is not deemed to be Commercial Use.

### 1.1.3 Fee

The Fee for this license is computed irrespective of when during the Subscription period this agreement is executed.

### 1.1.4 Library Premises

The physical premises of the library or libraries operated by the Licensee at a single geographic location. For the avoidance of doubt and by way of illustration, the University of Maryland at College Park and the University of Maryland Baltimore County are not a "single geographic location."

### 1.1.5 Licensed Material

*The FASEB Journal Online.*

### 1.1.6 Secure Network

A network (whether a standalone network or a virtual private network within the Internet) which is only accessible to Authorized Users approved by the Licensee whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose

access to the Licensed Material or conduct on such network is subject to regulation by the Licensee.

#### 1.1.7 Server

The server, either the Publisher's server or a third party server designated by the Publisher, on which the Licensed Materials are mounted and may be accessed.

#### 1.1.8 Subscription Period.

The calendar year in which this agreement is executed, except that Licensee may buy a renewal subscription for the following year.

## 2. GRANT OF LICENSE

2.1 The Publisher agrees to grant to the Licensee the limited, non-exclusive and non-transferable right, throughout the world, to give Authorized Users access to the Licensed Materials via a Secure Network for the purposes of research, teaching and private study, subject to the terms and conditions of this License, and the Licensee agrees to pay the Fee.

2.2 The terms and conditions in this limited License are effective if the Licensee manifests assent to them after January 1, 2008 or if the Licensee renews a subscription to *The FASEB Journal Online* for the 2008 calendar year by paying the Fee for such year.

## 3. USAGE PRIVILEGES

3.1 The Licensee, subject to clause 4 below, may:

#### 3.1.1

Make the Licensed Materials available to Authorized Users on the Licensee's Secure Network.

#### 3.1.2

Make such temporary local electronic copies by means of caching all or part of the Licensed Materials as are necessary solely to ensure efficient use by Authorized Users and not to make available to anyone other than Authorized Users copies of the Licensed Material.

#### 3.1.3

Allow Authorized Users to have access to the Licensed Materials from the Server via the Secure Network.

#### 3.1.4

Provide printed or electronic copies of the Licensed Materials via the Secure Network to Authorized Users as defined in clause 1.1.1(1), or single printed articles at the oral request of an individual Authorized User as defined in clause 1.1.1(2).

#### 3.1.5

Provide print or electronic copies of the Licensed Materials to national or international regulatory authorities for the sole purposes of either obtaining FDA regulatory approval or pursuing patent and/or trademark applications with respect to the Licensee's products or services.

3.2 Subject to clause 4 below, Authorized Users may:

### 3.2.1

Search and view the Licensed Materials.

### 3.2.2

Electronically save individual articles or items of the Licensed Materials for personal use, but only if an Authorized User as defined in clause 1.1.1(1).

### 3.2.3

Request and receive single printed articles solely for their own personal use in the course of research or private study, consistent with clause 3.1.4.

### 3.2.4

Distribute a copy of individual articles or items, but only if an Authorized User as defined in clause 1.1.1(1), of the Licensed Materials in print or electronic form to other Authorized Users as defined in 1.1.1(1);

## 4. PROHIBITED USES

### 4.1 Neither the Licensee nor Authorized Users may:

#### 4.1.1

remove or alter the authors' names or the Publisher's copyright notices or other copyright management information, identification or disclaimers as they appear in the Licensed Materials;

#### 4.1.2

mount or distribute any part of the Licensed Material on any electronic network, including without limitation the internet and the World Wide Web, other than the Secure Network

### 4.2 The Publisher's explicit written permission must be obtained in order to:

#### 4.2.1

Use all or any part of the Licensed Materials for any Commercial Use;

#### 4.2.2

Distribute the whole or any part of the Licensed Materials to anyone other than Authorized Users;

#### 4.2.3

Publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this License;

#### 4.2.4

Alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen to Authorized Users. For the avoidance of doubt, no

alteration of the words or their order is permitted, nor shall the licensee remove or alter any advertising that may appear in the Licensed Material from time to time.

#### 4.2.5

Circumvent or attempt to circumvent any technical measure that controls access to the Licensed Materials, even in the event of malfunction or similar occurrence.

### 5. PUBLISHER OBLIGATIONS AND DISCLAIMER OF WARRANTIES

#### 5.1 The Publisher shall:

##### 5.1.1

Make the Licensed Materials available to the Licensee from the Server within a reasonable time following the creation or acquisition of such material by the Publisher.

##### 5.1.3

Provide the Licensee within 30 days of the date of this License, with information sufficient to enable the Licensee to access the Licensed Material.

##### 5.1.4

Make a reasonable effort to ensure that the Server has adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with access requests or traffic from a licensee of similar size.

#### 5.2

The Publisher at its sole discretion reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.

#### 5.3

Collection and analysis of data on the usage of the Licensed Materials will assist both the Publisher and the Licensee to understand the impact of this License. The Publisher shall provide to the Licensee or facilitate the collection and provision to the Licensee of such usage data on the number of articles downloaded under this License, by journal title, on a monthly basis for the Licensee's private internal use only. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws.

5.4 EXCEPT AS EXPRESSLY PROVIDED IN THIS LICENSE, THE PUBLISHER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF DESIGN, COMPLETENESS, ACCURACY OF THE INFORMATION CONTAINED IN THE LICENSED MATERIALS, AND MERCHANTABILITY OR FITNESS OF USE FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY PROVIDED, THE LICENSED MATERIALS ARE PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH LICENSEE. THE LICENSED MATERIALS ARE SUPPLIED 'AS IS', AND THERE IS NO WARRANTY AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OR AGAINST INFRINGEMENT OF A THIRD PARTY'S INFORMATIONAL RIGHTS.

5.5 UNDER NO CIRCUMSTANCES SHALL THE PUBLISHER BE LIABLE TO THE LICENSEE OR ANY OTHER PERSON, INCLUDING BUT NOT LIMITED TO AUTHORIZED USERS, FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER ARISING OUT OF THE INABILITY TO USE, OR THE USE OF, THE LICENSED MATERIALS. IRRESPECTIVE OF THE CAUSE OR FORM OF ACTION, THE PUBLISHER'S AGGREGATE LIABILITY FOR ANY CLAIMS, LOSSES, OR DAMAGES ARISING OUT OF ANY BREACH OF THIS LICENSE SHALL IN NO CIRCUMSTANCES EXCEED THE FEE PAID BY LICENSEE TO THE PUBLISHER UNDER THIS LICENSE IN RESPECT OF THE SUBSCRIPTION PERIOD DURING WHICH SUCH CLAIM, LOSS OR DAMAGE OCCURRED. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

## 6. LICENSEE'S UNDERTAKINGS

### 6.1 The Licensee shall:

#### 6.1.1

Use its best efforts to ensure that all Authorized Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and of the sanctions which the Licensee imposes for failing to do so;

#### 6.1.2

Use its best efforts to notify Authorized Users of the terms and conditions of this License and take all reasonable steps to protect the Licensed Materials from unauthorized use or other breach of this License;

#### 6.1.3

Use its best efforts to monitor compliance with the terms of this agreement and immediately upon becoming aware of any unauthorized use or other breach, inform the Publisher of such noncompliance, and if possible, the identity of the noncomplying person, and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;

#### 6.1.4

Issue passwords or other access information only to Authorized Users and use its best efforts to ensure that Authorized Users do not divulge their passwords or other access information to any third party;

#### 6.1.5

Provide the Publisher, within 30 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Material in accordance with its obligation under clause 5.2.3. Should the Licensee make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect;

#### 6.1.6

Keep full and up-to-date records of all Authorized Users and their access details and IP addresses, and provide the Publisher with details of such additions, deletions or other alterations to such records as are necessary to enable the Publisher to provide Authorized Users with Access to Licensed Materials as contemplated by this License;

#### 6.1.7

Ensure that only Authorized Users are permitted access to the Licensed Materials.

6.2 The Licensee agrees to indemnify, defend and hold the Publisher 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 the Publisher related to or in any way connected with any use of the Licensed Materials by the Licensee or Authorized Users or any failure by the Licensee to perform its obligations in relation to this License, provided that nothing in this License shall make the Licensee liable for breach of the terms of the License by any Authorized User as described in clause 1.1.1(2), provided that the Licensee did not cause, knowingly assist, ratify or condone such breach or allow it to continue after becoming aware of an actual breach having occurred.

6.3 The Licensee shall, in consideration for the rights granted under this License, pay the Fee prior to each subsequent Subscription Period and receipt of such payment shall be a condition of this License coming into effect. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

### 7. UNDERTAKINGS BY BOTH PARTIES

7.1 Each party shall use its best efforts to safeguard the confidential information and proprietary rights of the other party.

### 8. TERM AND TERMINATION

8.1 In addition to automatic termination (unless renewed) under clause 2.2, this License shall be terminated:

#### 8.1.1

if the Licensee defaults in making payment of the Fee as provided in this License;

#### 8.1.2

if the Publisher commits a material breach of any term of this License and fails to remedy the breach (if capable of remedy) within a reasonable time but no less than thirty (30) days of notification in writing by the other party;

#### 8.1.3

if the Licensee commits a material or persistent breach of this agreement or infringes the Publisher's copyright or other intellectual property rights or of the provision of clause 3 in respect of usage rights or of clause 4 in respect of prohibited uses;

#### 8.1.4

if the Licensee becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

8.2 On termination all rights and obligations of the parties automatically terminate, except for the obligations in clause 7.1.

8.3 On termination of this License, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorized Users and shall return to the Publisher or destroy all Licensed Materials locally mounted pursuant to clause 3.1.1.

8.4 On termination of this License by the Licensee for cause, as specified in clause 8.1.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

## 9. GENERAL

9.1 This License constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this License, whether oral or written.

9.2 Alterations to this License and to the subscription period of this License are only valid if they are in writing and signed by both parties.

9.3 The Licensee may not be assign its rights or obligations to any other person or organization, nor may the Licensee sub-contract any of its obligations without the prior written consent of the Publisher, which may withhold such consent at its sole discretion.

9.4 Any notices to be served on the Publisher by the Licensee shall be sent by prepaid recorded delivery, registered post, or facsimile to the following address:

Office of Publications  
9650 Rockville Pike  
Bethesda MD 20814-3998  
Fax: 301-634-7153

### 9.5

The Publisher's delay or failure to perform any provision of this License, as result of circumstances beyond its control (including, without limitation, war, strikes, electricity shortages, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall not constitute, or give rise to, a breach of this License.

### 9.6

The invalidity or un-enforceability of any provision of this License shall not affect the continuation or enforceability of the remainder of this License.

### 9.7

The Publisher's failure to require performance by the Licensee, of any provision of this License will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

9.8

Publisher expressly reserves all rights, including but not limited to rights under copyright, not granted in this license. **Publisher also reserves the right to change these terms and conditions from time to time without notice, but will not raise the subscription rate for a particular calendar year if that subscription rate has been paid. Licensee shall have the option of terminating this License if these changes are material and unacceptable, and will receive a refund in compliance with clause 8.1.4.**

9.9

The parties expressly intend that neither an Authorized User nor any other third party has any rights under this agreement.

## 10. HEADINGS

The parties intend that the words in the Headings that appear entirely in capital letters are for purposes of identification only and are not to be given any meaning in interpreting the terms of this license.