

NEJM GROUP SUBSCRIPTION AGREEMENT
Academic/Clinical Institutions

This Agreement between the Massachusetts Medical Society (“Society”) and the subscribing institution identified below (“Subscriber”) sets forth the terms of use and other provisions for use of the products and services identified in Schedule 1 (“Subscribed Products”).

1. Definitions. For the purposes of this Agreement, the following terms shall have the meaning set forth herein:

Authorized Users are (a) the employees, students, residents, faculty, and staff of Subscriber affiliated with the Subscriber location(s) listed on Schedule 2 (“Subscriber Sites”) who are approved by Subscriber to use a Secure Network (as defined below) and (b) walk-in users and other individuals approved by Subscriber to use a Secure Network while at the Subscriber Sites.

Fee means the annual fee for subscription access to the Subscribed Products set out in the price quote approved by Subscriber and the Society and/or the subscription invoice inclusive of any annual maintenance fees or taxes, as applicable.

Secure Network means a computer network controlled and operated by Subscriber that is accessible only to Authorized Users who are (a) at the Subscriber Sites or (b) whose identity is authenticated by Subscriber at the time of login.

2. Activation of Access. Access to the Subscribed Products for use in accordance with this Agreement shall be activated for Subscriber and its Authorized Users upon acceptance by the Society of this Agreement and Subscriber’s completed order form and receipt of the Fee.

3. Subscription Term & Renewal. Subject to prior termination in accordance with this Agreement, the initial Subscription Term shall be a period of one year. Thereafter, the Society shall invoice Subscriber for the Fee and Subscriber **may elect to renew** the Subscription Term for additional one-year periods by paying the Fee when due. If Subscriber’s payment is not received by the Society within sixty (60) days after expiration of the applicable Subscription Term, the Society will discontinue Subscriber’s access to the Subscribed Products. The Society reserves the right to modify the Fee and the terms of this Agreement for any renewal period. The subscription start and end dates will be listed on Subscriber’s invoice for each Subscription Term.

4. Authorized Access to the Subscribed Products. Access to the Subscribed Products is controlled by valid IP address(es), a secure proxy server, OpenAthens, and/or Shibboleth and is granted to Subscriber and its Authorized Users via a Secure Network while this Agreement, or any successor or amended version, is in effect. Subscriber is responsible for providing valid IP addresses for its Secure Network. Cache servers are not permitted. All information submitted by Subscriber to activate access to the Subscribed Products, including but not limited to IP address information, shall be complete and accurate. Subscriber represents and

warrants that all IP addresses provided to the Society shall correspond to and be limited to the Secure Network.

5. Authorized Use. Subscriber and its Authorized Users may:

- a. Use content from the Subscribed Products in accordance with copyright and other applicable laws for personal noncommercial purposes.
- b. Access, browse, view and search the Subscribed Products; print, download, and store a reasonable number of items from the Subscribed Products and provide copies of individual items to other Authorized Users and to third party colleagues for scholarly and research use.
- c. On occasion supply single copies of articles from the subscribed Products to a noncommercial library by post, facsimile or digital transmission to fulfill requests for InterLibrary Loan (“ILL”), provided such use is in accordance with Section 108 of the U.S. Copyright Law (17 U.S.C. §108) and the Guidelines for the Proviso of Subsection 108(g)(2) from the National Commission on New Technological Uses of Copyrighted Works.
- d. Link to or display discrete items of content from the Subscribed Products in course management systems via a Secure Network in connection with course instruction.

6. Intellectual Property Ownership. Unless otherwise indicated, the content available through the Subscribed Products is the property of the Society and is protected under United States and international copyright laws and conventions. *The New England Journal of Medicine*, *The New England Journal of Medicine* logo mark, *NEJM Group*, *NEJM Catalyst*, and *NEJM* are registered trademarks of the Society in the United States and other countries. Notwithstanding anything to the contrary set forth in this Agreement, additional usage terms may be permitted for open access content that may be included in the Subscribed Products.

7. Subscriber Obligations. Subscriber agrees to reasonably cooperate in preventing violations of this Agreement by Authorized Users and to notify the Society promptly upon discovering any such violation. Subscriber also agrees to take such reasonable steps as the Society may require to ensure that such activity ceases. In addition to any other applicable remedies, access to the Subscribed Products may be limited or revoked in the event of a violation of this Agreement by an Authorized User. Subscriber agrees not to frame, modify, obscure, or otherwise alter the appearance or display of any materials at the Subscribed Products. Subscriber agrees to use the Subscribed Products in accordance with applicable laws, rules and regulations.

8. Terms of Use. By using the Subscribed Products, Subscriber and its Authorized Users agree to the applicable online Terms of Use for the Subscribed Products; provided, however, that in the event of any conflict between the terms of this Agreement and the applicable online Terms of Use, the terms of this Agreement shall prevail.

9. Modifications and Availability. The Society will make reasonable efforts to keep the Subscribed Products available twenty-four hours per day, seven days a week. However, owing to technical failures, routine maintenance, or other unforeseen circumstances, availability may be limited and the Society will not be responsible for the non-availability of the Subscribed Products.

10. Warranty. The Society warrants that use of the Subscribed Products in accordance with this Agreement will not infringe the intellectual property rights of any third party.

11. Disclaimer. Content available through the Subscribed Products is the result of research and/or contribution by independent individuals or organizations. The Society is not responsible for the accuracy of any data or conclusions reported in such content. The Subscribed Products are intended for educational, research, and reference purposes only and should not be substituted for the advice of a qualified health care professional.

EXCEPT FOR THE EXPRESS WARRANTY STATED IN THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SUBSCRIBED PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED AND THE SOCIETY EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH RESPECT TO THE SUBSCRIBED PRODUCTS, INCLUDING BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. Limitation of Liability. In no event will the Society, its employees, officers, members, agents, or licensors be liable for any special, incidental, indirect, or consequential damages of any kind, or any damages resulting from the inability to use, or the use of, the Subscribed Products, whether or not advised of the possibility of such damages, or on any theory of liability arising out of or in connection with the use or performance of the Subscribed Products.

13. Termination. Either party may terminate this Agreement at any time by providing the other party with thirty (30) days written notice. In the event of such termination, Subscriber shall receive a pro-rated refund of the Fee for the un-expired portion of the subscription term. The foregoing shall be Subscriber's sole and exclusive remedy with respect to any such termination. However, in the event of a breach of this Agreement by either party that is likely to cause substantial or irreparable harm to the other party, the thirty (30) day notice period shall be waived. On termination, or expiration, all rights and obligations of the parties shall automatically terminate unless otherwise provided herein.

14. Miscellaneous.

14a. This Agreement represents the entire understanding of the parties in relation to the subject matter hereof and supersedes all prior agreements, negotiations, understandings, representations, statements and writings between the parties relating thereto. Subscriber may not assign or transfer, directly or indirectly, all or part of its

rights and obligations under this Agreement without the prior written consent of the Society. The Society reserves the right to modify, suspend, or discontinue all or any part of the Subscribed Products at any time. Either party's failure to perform any obligation under this Agreement as a result of conditions beyond its control, such as, but not limited to, war, strikes, floods or other natural disasters, embargos, governmental restrictions, power failures, terrorism, or damage or destruction of network facilities or services, shall not be deemed a breach of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods will not govern this Agreement.

- 14b. Any purchase order or other instrument that Subscriber may use for the Subscribed Products is for its internal purposes only and shall not amend any provision of this Agreement.
- 14c. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, United States of America, without regard to its conflict of laws rules. Any controversy arising out of or relating to this Agreement shall be brought in the federal or state courts located in Massachusetts and the parties hereby consent to the jurisdiction of such courts. The foregoing choice of law and forum designation will not apply if compliance would violate applicable law in Subscriber's state. Where required by the laws of Subscriber's state, any controversy arising out of or relating to this Agreement shall be resolved in accordance with such laws.

AGREED TO AND ACCEPTED:

SUBSCRIBER - Name of Institution

Authorized Signature / Date

MASSACHUSETTS MEDICAL SOCIETY

Authorized Signature / Date

SCHEDULE 1

NEJM Group Subscription

Subscribed Products:

Post-Cancellation Access to Subscribed Content

Upon termination of Subscriber's subscription (except if termination is due to a breach of this Agreement by Subscriber), Subscriber may, upon written request to the Society, continue online access to the content from the Subscribed Products published by the Society from the Effective Date through the date of termination ("Subscribed Content") in accordance with the usage provisions of this Agreement, for a reasonable annual access fee, which fee may be adjusted annually for inflation and/or cost increases. For the avoidance of doubt, the Subscribed Content shall not include content published before the initial Subscription Term.

Safeguarding Access

The Society has entrusted Portico to preserve access to the Subscribed Products (excluding NEJM Journal Watch titles) if a natural disaster or other catastrophic scenario occurs. Following the unlikely occurrence of a triggering event, such content will remain protected and available in the Portico archive.

Usage Data Reports

The Society will make COUNTER compliant usage data reports available to Subscriber on a monthly basis for Subscriber's internal use only.

SCHEDULE 2

ACADEMIC/CLINICAL SUBSCRIPTION AGREEMENT

Subscriber: _____

Subscriber Sites Permitted under this Agreement

Institution Name
Location

Institution Name
Location

Institution Name
Location

Administrative Contact Information:

Name
Address
Address
Address

Subscriber shall promptly notify the Society of any changes to the contact information above.

Return Completed Agreement to

*Massachusetts Medical Society
Attn: NEJM Group Licensing
860 Winter Street
Waltham, MA 02451*

Or scan and email to: Institutionsales@NEJM.org