

The NEW ENGLAND JOURNAL of MEDICINE
ARCHIVE ACCESS AGREEMENT

This Agreement between the Massachusetts Medical Society (“Society”), owner and publisher of *The New England Journal of Medicine* (“NEJM”), and the institution identified below sets forth the terms of usage and other provisions for online access to the **NEJM Archive 1812-1944 and NEJM Archive 1945-1989** archive collections (hereinafter referred to collectively as “NEJM Archive”).

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 Licensee affiliated with the Licensee location(s) listed on Attachment C (“Licensee Sites”) who are approved by Licensee to use a Secure Network (as defined below) and (b) walk-in users and other individuals who are approved by Licensee to use a Secure Network while at the Licensee Site.

Licensee means the institution identified below.

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

2. **Activation of Access.** Access to the collection(s) selected in Attachment A for use in accordance with this Agreement shall be activated for Licensee and its Authorized Users based upon the following: (1) acceptance by the Society of a completed order form; (2) acceptance of this Agreement by Licensee and the Society; and (3) full payment of the one-time access and annual maintenance fees specified in Attachment B (collectively referred to as “Activation Steps”). All fees paid to the Society under this Agreement shall be nonrefundable. Upon completion of the Activation Steps, the Society shall promptly confirm Licensee’s order in writing and enable access to the applicable collection(s) for Licensee and its Authorized Users.

3. **Annual Maintenance Fee.** Following the initial activation of access, the Society shall invoice Licensee at the start of each calendar year for the annual maintenance fee for the selected NEJM Archive collection(s). If the maintenance fee is not received within sixty (60) days after the start of the calendar year, access will be suspended. The Society reserves the right to modify the maintenance fee annually, provided that any increase to the maintenance fee shall not exceed five percent (5%) of the maintenance fee charged in the previous year. The Society will waive the annual maintenance fee for licensees that maintain an active license to nejm.org.

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 Licensee and its Authorized Users via a Secure Network while this Agreement, or any successor or amended version, is in effect. Licensee is responsible for

providing valid IP addresses for its Secure Network. Cache servers are not permitted. All information submitted by Licensee to activate access to the NEJM Archive, including but not limited to IP address information, shall be complete and accurate. Licensee represents and warrants that all IP addresses provided to the Society shall correspond to and be limited to the Secure Network.

The Society will endeavor to maintain the ongoing availability of the contents of the NEJM Archive. In the event that it proves commercially infeasible for the Society to continue the availability of such content, the Society intends to make the contents of the NEJM Archive available to licensees through a third party. In addition, the Society has engaged Portico to preserve access to the NEJM Archive if a natural disaster or other catastrophic scenario occurs. Following the unlikely occurrence of a triggering event, the NEJM Archive will remain protected and available in the Portico Archive.

5. Copyright & Trademark Ownership. Unless otherwise indicated, the NEJM Archive, as a compilation and as individual articles, is the property of the Society and is protected by copyright. *The New England Journal of Medicine*, *The New England Journal of Medicine* logo mark, and *NEJM* are registered trademarks of the Society in the United States and other countries.

6. Use of NEJM Archive. Licensee and its Authorized users may:

- a. Use content from the NEJM Archive in accordance with copyright and other applicable laws for personal noncommercial purposes.
- b. Access, browse, view and search the NEJM Archive; print, download, and store a reasonable number of items from the NEJM Archive 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 NEJM Archive in course management systems via a Secure Network in connection with course instruction.

7. Licensee Obligations. Licensee agrees to reasonably cooperate in preventing violations of this Agreement by Authorized Users and to notify the Society promptly upon discovering any such violation. Licensee also agrees to take such reasonable steps as the Society may require to ensure that such activity ceases. Licensee agrees not to frame, modify, obscure, or otherwise alter the appearance or display of the NEJM Archive.

8. NEJM.ORG Terms of Use. By accessing and using the NEJM Archive, Licensee and its Authorized Users agree to the nejm.org Terms of Use; provided, however, that in the event of any conflict between the terms of this Agreement and the nejm.org Terms of Use, the terms of this Agreement shall prevail.

9. Website Modifications and Availability. The Society will use commercially reasonable efforts to provide continuous availability of the NEJM Archive. However, owing to technical failures, routine maintenance, testing or installation of software, loading of new information files, downtime related to equipment or services outside of the Society's control, or unforeseen circumstances, availability may be limited and the Society will not be responsible for the non-availability of the NEJM Archive.

10. Disclaimer of Warranties and Liability. The contents of the NEJM Archive are the result of research and/or contribution by independent individuals or organizations. The Society is not responsible for the accuracy or reliability of any data or conclusions reported in such materials. The NEJM Archive is intended for educational, research, and reference purposes only. The contents of the NEJM Archive should not be substituted for the advice of a qualified health care professional.

THE NEJM ARCHIVE IS PROVIDED "AS IS" ON AN "AS AVAILABLE BASIS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. 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 NEJM ARCHIVE, 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 NEJM ARCHIVE.

11. 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 NEJM Archive, 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 NEJM Archive.

12. Miscellaneous.

12a. 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. Licensee may not assign or transfer, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the Society. The Society reserves the right to remove or replace material

in the NEJM Archive that the Society deems to violate the personal or proprietary rights of any third party and to modify or change the contents of the NEJM Archive without notice, provided that any such change, removal or replacement shall not materially reduce the quantity of material in the NEJM Archive. 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 restriction, or 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.

- 11b. Any purchase order or other instrument that Licensee may use for the NEJM Archive is for its internal purposes only and shall not amend any provision of this Agreement.
- 11c. 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 Licensee's state. Where required by the laws of Licensee's state, any controversy arising out of or relating to this Agreement shall be resolved in accordance with such laws.

AGREED TO AND ACCEPTED:

Licensee (Institution Name)

Massachusetts Medical Society

Authorized Signature / Date

Authorized Signature / Date

The NEW ENGLAND JOURNAL of MEDICINE

NEJM ARCHIVE

Available Online Collections:

- [] *The NEW ENGLAND JOURNAL of MEDICINE* 1945-1989
Full text printed content from January 1945 through December 1989 available in HTML and PDF

- [] *The NEW ENGLAND JOURNAL of MEDICINE* 1812-1944
Full text printed content from January 1812 through December 1944; includes The New England Journal of Medicine and Collateral Branches of Science, The New England Medical Review and Journal; The Boston Medical and Surgical Journal and The New England Journal of Medicine available in PDF

SAMPLE

Schedule of Fees

(1) One-Time Payment:

Licensee will remit a one-time cumulative payment in the amount of \$ _____ for electronic access to the NEJM collection(s) selected in Attachment A.

(2) Annual Maintenance Fee: \$ _____

All fees are in US dollars and are subject to sales tax (as applicable)

SAMPLE

ATTACHMENT C

ACADEMIC/CLINICAL SITE LICENSE AGREEMENT
The NEW ENGLAND JOURNAL of MEDICINE ARCHIVE

Licensee: _____

Licensee Sites Permitted under This Agreement

Institution Name
Location

Institution Name
Location

Institution Name
Location

Administrative Contact Information:

Name
Address
Address
Address

Licensee 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

SAMPLE