

LIBRARY LICENSE AGREEMENT - JOURNAL

This License is hereby agreed to on this _____ day of _____, 20___ between MyJoVE Corporation of 1 Alewife Center, Suite 200, Cambridge, Massachusetts 02140 ("the Publisher") and _____ of _____ ("the Licensee").

WHEREAS the Publisher holds the rights granted under this License; and

WHEREAS the Licensee desires to use the rights and the Publisher desires to grant to the Licensee the License to use the rights for the Fee, subject to the terms and conditions of this License.

IT IS AGREED AS FOLLOWS:

- 1. <u>DEFINITIONS</u>
- 1.1 In this License, the following terms shall have the following meanings:

"Authorized Users"	current members of the faculty, full-time and part-time students, researchers and other staff of the Licensee (whether on a permanent, temporary, contract or visiting basis), and individuals who are using computer terminals within the Library Premises		
"Commercial Use"	Use for the purposes of monetary reward (whether by or for the Licensee or an Authorized User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials.		
"Course Packs"	A collection or compilation of materials (e.g. book chapters, journal articles) assembled by members of staff of the Licensee for use by students in a class for the purposes of instruction.		
"Electronic Reserve"	Electronic copies of materials (e.g. book chapters, journal articles) made by members of staff of the Licensee for use by students in connection with specific courses of instruction offered by the Licensee to its students.		
"Fee"	The Fee set out in Schedule 1 or in new Schedules to this License which may be agreed by the parties from time to time.		
"Library Premises"	The physical premises of the library or libraries operated by the Licensee, as specified in Schedule 2.		
"Licensed Materials"	The electronic material as set out in Schedule 1 or in new Schedules to this License that may be agreed by the parties from time to time.		

"Subscription Period" The period covered by this agreement as given in Schedule 1.

2. <u>AGREEMENT</u>

- 2.1 The Publisher agrees to grant to the Licensee, for the term specified herein, the nonexclusive and non-transferable right, throughout the world, to give Authorized Users access to the Licensed Materials, subject to the terms and conditions of this License, and the Licensee agrees to pay the Fee.
- 2.2 This License shall commence at the beginning of the Subscription Period, for each of the Licensed Materials as set out in Schedule 1 or in new Schedules to this License that may be added subsequently. At the end of the Subscription Period, the License will be automatically renewed for additional Subscription Periods under the same terms and conditions, unless either party gives notice to the other in writing, at least 60 days prior to the end of the current Subscription Period that it does not intend to renew.
- 2.3 On termination of this License, the Publisher shall provide continuing access for Authorized Users to that part of the Licensed Materials which was paid for and first published within the Subscription Period, either from the Server, or from the Licensee's server, except where such termination is due to a breach of the License by the Licensee which the Licensee has failed to remedy as provided in 9.1.1 and 9.1.3 of this License, in which case such continuing access shall be provided in respect of Licensed Materials published up to the date of such breach.

3. USAGE RIGHTS

- 3.1 The Licensee and its Authorized Users, subject to clause 5 below, may:
 - 3.1.1 access, search, browse and view the Licensed Materials;

3.1.2 print and download a reasonable portion of the text articles in Licensed Materials;

- 3.1.3 incorporate links to the Licensed Materials on the Licensee's websites, provided that the appearance of such links and/or statements accompanying such links shall be changed as reasonably requested by the Publisher;
- 3.1.4. incorporate links to the Licensed Materials in Course Packs, Electronic Reserves and course management systems.
- 3.1.5. transmit single text articles from the Licensed Materials to other Authorized Users or third-party colleagues for their educational or research use.
- 3.2 Using secure electronic, paper, or intermediated means such as Ariel, Licensee may fulfil occasional requests for text articles in the Licensed Materials from other institutions, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and the Guidelines for the Proviso of Subsection 108(2g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

Nothing in this License shall in any way exclude, modify or affect any of the Licensee's statutory rights under the copyright laws of the United States of America

or the Commonwealth of Massachusetts. The Licensee acknowledges that all right, title and interest in and to the Licensed Materials and any and all copyrights regarding the Licensed Materials remain with the Publisher and that the unauthorized redistribution of the Licensed Materials could materially harm the Publisher. It is understood and agreed that, excepts as stated elsewhere in this Section 3.2, neither the Licensee nor any Authorized Users may provide, by electronic means, to a user at another library or institution or otherwise a copy of any part of the Licensed Materials for research or private study or otherwise.

4. COURSE PACKS AND ELECTRONIC RESERVE

For the avoidance of doubt, the Licensee may incorporate a reasonable portion of the text articles in the Licensed Materials in Course Packs or Electronic Reserve collections for use in connection with specific courses of instruction offered by the Licensee to the Authorized Users.

5. **PROHIBITED USES**

- 5.1 Neither the Licensee nor any Authorized Users may:
 - 5.1.1 remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;
 - 5.1.2 systematically make print or electronic copies of multiple extracts of the Licensed Materials
 - 5.1.3 mount or distribute any part of the Licensed Material on any electronic network, including without limitation on the Internet
- 5.2 The Publisher's explicit written permission must be obtained in order to:
 - 5.2.1 use all or any part of the Licensed Materials for any Commercial Use;
 - 5.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorized Users;
 - 5.2.3 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;
 - 5.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen or as otherwise permitted in this License, to Authorized Users. For the avoidance of doubt, no alteration of the text or video or other content is permitted.

6. PUBLISHER'S UNDERTAKINGS

6.1 The Publisher represents to the Licensee that the Licensed Materials used as contemplated by this License do not infringe the copyright or any other proprietary or

intellectual property rights of any person. The Publisher shall indemnify and hold the Licensee harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Licensee claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this License for any reason. This indemnity shall not apply if the Licensee has amended or altered the Licensed Materials in any way not permitted by this License.

- 6.2 The Publisher shall:
 - 6.2.1 make the Licensed Materials available to the Licensee from the Publisher's website in the media, format and time schedule specified in Schedule 1. The Publisher will notify the Licensee at least sixty (60) days in advance of any anticipated change applicable to the Licensed Materials.

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

- 6.2.3 use reasonable endeavours to ensure an adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this License.
- 6.2.4 use reasonable endeavours to make the Licensed Materials available to the Licensee and to Authorized Users at all times and on a twenty-four hour basis, save for routine maintenance, and to restore access to the Licensed Materials as soon as reasonably possible in the event of an interruption or suspension of the service.
- 6.3. The Publisher 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, in error or otherwise objectionable. The Publisher shall give written notice to the Licensee of such withdrawal.
- 6.4 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 and the Publisher by the Licensee of such usage data on the number of texts and videos downloaded, by title, on a yearly basis for the Publisher's and the Licensee's private internal use only. Such usage data shall be compiled in a manner consistent with applicable privacy laws and as may be agreed between the parties from time to time, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.
- 6.5 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, ACCURACY OF THE INFORMATION CONTAINED IN THE LICENSED MATERIALS, OR MERCHANTABILITY OR FITNESS OF USE FOR

A PARTICULAR PURPOSE. THE LICENSED MATERIALS ARE SUPPLIED "AS IS".

6.6 EXCEPT AS PROVIDED IN CLAUSE 6.1, 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, COMPENSATORY, EQUITABLE, PUNITIVE, 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 UNDER 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.

7. LICENSEE'S UNDERTAKINGS

- 7.1 The Licensee shall:
 - 7.1.1 use reasonable 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;
 - 7.1.2 use reasonable efforts to notify Authorized Users of the terms and conditions of this License and take steps to protect the Licensed Materials from unauthorized use or other breach of this License;
 - 7.1.3 use reasonable efforts to monitor compliance and immediately upon becoming aware of any unauthorized use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
 - 7.1.4 issue passwords or other access information only to Authorized Users and use all reasonable efforts to ensure that Authorized Users do not divulge their passwords or other access information to any third party;
 - 7.1.5 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. Should the Licensee make any significant change to such information, it will notify the Publisher not less than sixty (60) days before the change takes effect.
 - 7.1.6 keep full and up-to-date records of all Authorized Users and their access details 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 the Licensed Materials as contemplated by this License;

- 7.1.7 use reasonable endeavours to ensure that only Authorized Users are permitted access to the Licensed Materials.
- 7.2 THE LICENSEE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, COSTS, LIABILITY AND EXPENSES (INCLUDING ATTORNEY'S 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 BY ANY FAILURE OF THE LICENSEE TO PERFORM ITS OBLIGATIONS IN RELATION TO THIS LICENSE.
- 7.3 The Licensee shall, in consideration for the rights granted under this License, pay the Fee upon receipt of an invoice. Licensee shall be solely liable for any taxes related to the Fee.

8. UNDERTAKINGS BY BOTH PARTIES

8.1 Each party shall use its best efforts to safeguard the intellectual property, confidential information and proprietary rights of the other party.

9. TERM AND TERMINATION

- 9.1 This License shall be terminated:
 - 9.1.1 if the Licensee defaults in making payment of the Fee as provided in this License and fails to remedy such default within thirty (30) days of notification in writing by the Publisher;
 - 9.1.2 if the Publisher commits a material or persistent breach of any term of this License and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the Licensee;
 - 9.1.3 if the Licensee commits a material breach of the Publisher's copyright or other intellectual property rights or of the provisions of Section 3 in respect of usage rights or of Section 5 in respect of prohibited uses;
 - 9.1.4 if either party becomes insolvent, files for bankruptcy protection, or becomes subject to receivership, liquidation or similar external administration.
- 9.2 At the expiration of the Subscription Period, or earlier termination of this License as provided herein, all rights and obligations of the parties automatically terminate except for obligations in respect of Licensed Materials to which access continues to be permitted as provided in clause 2.3, and all obligations specified in Sections 5, 7, 8, 10 and 11.
- 9.3 On termination of this License for cause, as specified in clauses 9.1.1 and 9.1.3, 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 downloaded.

9.4 On termination of this License by the Licensee for cause, as specified in clause 9.1.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

10. GENERAL

- 10.1 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.
- 10.2 Alterations to this License and to the Schedules to this License are only valid if they are in writing and signed by both parties.
- 10.3 This License may not be assigned by either party to any other person or organization, nor may either party sub-contract any of its obligations, without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 10.4 If rights in all or any part of the Licensed Materials are assigned to another publisher, the Publisher shall use its best endeavours to ensure that the terms and conditions of this License are maintained.
- 10.5 Any notices to be served on either of the parties by the other shall be delivered by certified mail, postage pre-paid, by overnight carrier with proof of receipt, or by hand to the addresses set out in this License or to such other address as notified in writing by either party to the other.
- 10.6 Neither party's delay or failure to perform any provision of this License, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this License.
- 10.7 The invalidity or un-enforceability of any provision of this License shall not affect the continuation or enforceability of the remainder of this License.
- 10.8 Either party's waiver, or failure to require performance by the other, 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.
- 10.9 This License shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, unless otherwise stated herein. The parties agree that any dispute arising out of or in connection with this License will be subject to and within the jurisdiction of the courts of the Commonwealth of Massachusetts.

11. ARBITRATION

11.1 If any difference arises between the parties on the meaning of this License or their rights and obligations thereunder, it shall first be referred to an arbitrator appointed by agreement of the parties, or, if there is no such agreement, then each party shall select and arbitrator and those two arbitrators shall choose a third arbitrator, who shall be the binding arbitrator hereunder. The decision of any arbitrator so appointed shall be final and binding on the parties. The arbitration shall take place in accordance with

the rules of the American Arbitration Association. The costs of the arbitrator shall be borne by the parties in equal proportions.

AGREED and ACCEPTED:

FOR THE PUBLISHER:

Name:	Signature:
Title:	Date:
FOR THE LICENSEE:	
Name:	Signature:
Title:	Date:

SCHEDULE 1

LICENSED MATERIALS, SUBSCRIPTION PERIOD AND ACCESS METHOD

THE LICENSED MATERIALS

Licensed Materials	Access	Subscription Period	Fee
Journal of Visualized Experiments (JoVE)	www.jove.com	1 year	

ACCESS METHOD

Authentication via User ID/password and IP Address Authentication via IP address

SCHEDULE 2

LIBRARY PREMISES

Address	Domain Name	IP Addresses/Ranges

Primary contact

Name: Telephone: Fax: E-mail address:

Billing contact

Name: Telephone: Fax: E-mail address: