

Terms and Conditions of Access

LICENSEE DETAILS:

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LICENSEE TERMS AND CONDITIONS

PLATFORMS: Anatomy.tv AND/OR Primalonlinelearning.com

INSTITUTIONAL LICENSE

Licensed Product(s) (If custom package, please list each title):

License Period (TERM OF LICENSE): Perpetual 2012 ; Perpetual 2016 Upgrade ; Perpetual 2020 Upgrade

Concurrent Users: unlimited simultaneous

License Start Date: 2012 ; 2016 ; 2020 **End Date:** Perpetual

AUTHORIZED USERS

(i) members of Licensee's faculty and Licensee's currently-enrolled students; (ii) Licensee's nurses, clinical staff, medical practitioners, allied health professional, students; (iii) Licensee's staff (whether on a permanent, temporary, contract or visiting basis); (iv) individuals who are currently working or studying at Licensee's campus, who are permitted to access Licensee's secure network from within Licensee's campus or from such other places where these users work or study (including but not limited to their office, home, halls of residence and student dormitories) and who have been issued by Licensee with a password or other currently valid authentication; and (v) other persons who are permitted to enter Licensee's library or information service and access the Licensee's secure network but only from computer terminals within the Licensee's campus.

PERMITTED USE

Licensee and its Authorized Users may, for the sole purpose of non-commercial research, teaching, private study and to support clinical practice such as patient evaluation, diagnosis and treatment: (i) access and use the Licensed Product(s) via Licensee's secure network (whether in hard copy, electronic data storage or other electronic form and regardless of the means of access or delivery; (ii) download, print and/or store one copy only of individual images or documents for their own use; (iii) print a limited and insubstantial portion (Extract) of the Licensed Product(s); (iv) download and make a digital copy of Extracts; (v) incorporate Extracts in printed or digital course packs and other educational materials; (vi) incorporate Extracts on the Licensor's internal learning management system or the Licensee's intranet; (vii) use Extracts in essays examinations, presentations, academic educational works and patient education works; and (viii) course packs in non-electronic non-print perceptible form, such as audio or braille, may also be offered to Authorized Users who, in the reasonable opinion of Licensee, are visually impaired. Licensee's and its Authorized Users' use of the Licensed Product(s) or Extracts shall at all times carry appropriate acknowledgement of the source of the Licensed Product(s) or Extract and contain Licensor's copyright notice.

ADDITIONAL TERMS

If Licensor goes into bankruptcy, liquidation or otherwise ceases to do business, Licensor shall use commercially reasonable efforts to provide Licensee with continuing access to an electronic copy of the Licensed Product(s) (not including any updates) via either Licensee's own platform, or that of a third party provider via a portal. Alternatively, at Licensor's sole discretion, Licensor can provide Licensee with an electronic or printed version of the Licensed Product(s) (in such format and storage media at Licensor's sole option determine).

Access via the following IP ranges and/or other Access Management System:

Sites Included: <https://ehlbc.ca/members> ; Spreadsheet of institutions subscribed to 2012, 2016 & 2020 perpetual offers attached

IP Ranges:

<https://ehlbc.ca/partner-libraries/ip>

UserID/Password Y/N: Y

EZProxy Y/N: Y

Athens/Shibboleth Y/N: Y

THIS ORDER CONFIRMATION FORM AND THE ATTACHED TERMS & CONDITIONS, WHICH ARE INCORPORATED INTO THIS ORDER FORM, TOGETHER CONSTITUTE THE AGREEMENT BETWEEN PRIMAL PICTURES ("LICENSOR") AND THE LICENSEE. BY SIGNING THIS ORDER CONFIRMATION FORM THE LICENSEE CONFIRMS THAT IT HAS READ AND UNDERSTOOD BOTH THIS ORDER CONFIRMATION FORM AND THE TERMS & CONDITIONS AND ACKNOWLEDGES AND AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

SIGNED ON BEHALF OF LICENSEE

Signature:

Position & Company Name:

TOTAL:

TERMS & CONDITIONS

Grant of License

Licensor grants to Customer a non-exclusive, non-transferable license to access and use the Licensed Product(s) solely as provided in the Order Confirmation Form. Customer will not acquire any ownership rights or intellectual property rights in the Licensed Product(s) by virtue of this Agreement, all of which belong to Licensor.

Limitation on Access

Access to the Licensed Product(s) shall only be available to Authorised User(s) and may not be shared with other persons, either internally or externally, except as expressly provided in the Order Confirmation Form. Customer shall comply with all laws, regulations and sanctions applicable to its access to and use of the Licensed Product(s). Licensor reserves the right to monitor Customer's use of the Licensed Product(s) to ensure compliance with the foregoing.

Passwords

Customer agrees to assume sole responsibility for the security of any passwords issued by Licensor to Authorised User(s) for accessing the Licensed Product(s). Such passwords are subject to cancellation or suspension by Licensor with notice at any time Licensor reasonably believes Customer has breached this Agreement.

Payment

Subscription Fees are payable in full not later than ninety (90) days after the Order Date set forth on the Order Confirmation Form.

Except as expressly provided herein, the Subscription Fees are non-refundable.

Disclaimers

Although Licensor will endeavour to keep the underlying information made available from the Licensed Product(s) (the "**Content**") updated and accurate, the Content is voluminous and often changes. Accordingly, (i) Licensor cannot and does not warrant the accuracy or completeness of the Content, and (ii) Customer agrees that Licensor will not be liable to Customer or any third party for any adverse consequences arising as a result of the inaccuracy or incompleteness of the Content. Customer further agrees that Licensor will not be liable to Customer or any third party to whom Customer furnishes the Content for any trading, investment, commercial or other decisions based on or made in reliance on the Content.

Term

This Agreement shall continue in full force and effect for the term specified in the Order Confirmation Form unless earlier terminated as provided herein. The term of this Agreement shall automatically renew for additional periods of one (1) year each unless either party provides to the other written notice of its intention not to renew at least thirty (30) days prior to the expiration of the original, or any extended, term. Such renewal shall be on the same terms and conditions contained herein, except that the Subscription Fees payable for the renewal period shall be the Licensor's standard published rates then in effect for the Licensed Product(s).

If Licensor reasonably believes at any time that Customer has breached this Agreement, Licensor may deliver written notice to Customer specifying such breach in reasonable detail. If, within fifteen days after delivery of such notice, Customer has not cured such breach to the reasonable satisfaction of Licensor, or the parties have not otherwise agreed to amend this Agreement to address such breach, Licensor shall be permitted to immediately terminate this Agreement upon written notice to Customer, in which event Licensor shall not be required to refund any portion of the Subscription Fees to Customer on account of such termination.

If Customer reasonably believes that (i) Licensor has materially failed to provide Customer with access to the Licensed Product(s) or (ii) the scope or quality of the information made available through the Licensed Product(s) has materially diminished due to changes made by Licensor in the Licensed Product(s), Customer may deliver written notice thereof to Licensor specifying such failure and/or deficiency in reasonable detail. If, within fifteen days after delivery of such notice, Licensor has not cured such failure and/or deficiency to the reasonable satisfaction of Customer, or the parties have not otherwise agreed to amend this Agreement to address such purported failure and/or deficiency, Customer shall be permitted to terminate this Agreement, in which event Licensor shall refund a pro rata portion of the Subscription Fees to Customer (which Customer acknowledges shall be the sole liability of Licensor on account of such purported failure and/or deficiency).

Upon expiration or termination of this Agreement for any reason whatsoever, Customer shall, within ten (10) days thereafter, take such commercially reasonable action as shall be required to permanently delete the Licensed Product(s) from its information technology systems; provided that Customer may retain backup copies of Licensed Products solely to the extent necessary to comply with applicable laws, regulations and/or any bona fide information technology policy of Customer then in effect.

Indemnification

Licensor shall indemnify Customer and hold it harmless against all claims, causes of action, judgements, damages, fines or expenses (including reasonable attorneys' fees) arising from a third-party claim that Customer's use of the Licensed Product(s) strictly in accordance with this Agreement infringes upon or otherwise violates such third party's intellectual property rights.

Customer shall indemnify Licensor and hold it harmless against all claims, causes of actions, judgements, damages, fines or expenses (including reasonable attorneys' fees) arising from a third-party claim relating to Customer's use of the Licensed Product(s) other than in strict compliance with the terms of this Agreement and/or applicable law.

The indemnification obligations herein are contingent on a party giving notice to the indemnifying party promptly upon becoming aware of any claim for which it seeks indemnification (an "**Indemnity Claim**"). An indemnified party shall provide the indemnifying party with reasonable non-monetary assistance in the defence of an Indemnity Claim. The indemnifying party shall have the right to assume the defence of an Indemnity Claim with counsel of its choice, subject to the approval of such counsel by the indemnified party (which approval shall not be unreasonably withheld, conditioned or delayed). No indemnity obligation shall exist with respect to an Indemnity Claim that arises from a non-indemnifying party's gross negligence, wilful misconduct or breach of this Agreement.

Limitation of Liability

Except (i) in the case of fraud or intentional breach and (ii) with respect to a party's indemnification obligations herein, in no event shall either party be liable for any special, indirect, incidental, consequential or punitive damages (including, without limitation, losses or damages for any loss of data, profit, goodwill, anticipated savings, revenue or business), whether based on contract, tort or other legal theory, in connection with, arising out of or relating to this Agreement, the Licensed Product(s) and/or Customer's use of or inability to use the Licensed Product(s).

Data Protection

The Customer and Licensor agree that the following data protection clause outlines the parties' respective rights and obligations

Miscellaneous

Any delay in performance of any obligation herein caused by conditions beyond the reasonable control of either party will not constitute a breach of this Agreement, provided that the delaying party has taken reasonable measures to notify the affected party in writing of the delay and uses commercially reasonable efforts to perform in accordance with this Agreement notwithstanding such conditions.

Any amendments of or waivers relating to this Agreement must be in writing signed by both parties.

This Agreement shall not be assignable by either party without the prior written consent of the other party, except that Licensor shall be permitted, without Customer's consent, to assign this Agreement to any of its affiliates or in connection with a merger or consolidation involving Licensor or a sale of all or substantially all of Licensor's assets.

If the Customer or any other company or entity that benefits from this Agreement (together the "**Licensees**") merges with or acquires any interest or shares of a third party or any third party merges with or acquires such an interest in any Licensee ("**Transfer**"), the Customer shall promptly notify Licensor in writing of such Transfer and:

(a) this Agreement shall remain in full force and effect;

(b) Licensor may offer the Customer a revised License Fee for all Licensed Products Materials based on, amongst other things, the increased benefit the Customer receives from the Licensed Products due to the enlarged size and nature of the Customer's business following the Transfer ("**Extension Fee**"); and

(c) unless and until the Customer pays the Extension Fee, the Customer agrees (and shall ensure as a primary obligation) that no employee, contractor or other personnel of the relevant third party shall access, use or benefit in any way from the Licensed Products Materials or shall be deemed to be Authorised User(s) under this Agreement.

It is the intent of the parties that Licensor will receive the Fees net of all applicable taxes including sales, VAT, service or withholding taxes ("**Taxes**"), all of which shall be paid solely by Customer. If, and to the extent that, any Taxes are levied upon, or found to be applicable to the whole or any portion of the Fees, the amount of the Fees shall be increased by an amount necessary to compensate for the Taxes (including any amount necessary to "gross up" for Taxes levied on the increase itself).

This Agreement is governed by and construed in accordance with English law, without regard to choice of law provisions. Any disputes arising out of this Agreement that cannot be resolved by the parties will be brought in the courts of England and Wales.

In the event of any conflict between the terms of the Order Confirmation Form and these Terms & Conditions, the terms of the Order Confirmation Form shall govern to the extent of such conflict.