

ELSEVIER | MC STRATEGIES SUBSCRIPTION AGREEMENT

This subscription agreement (“Agreement”) is entered into as of August 20, 2013 by and between the County of San Bernardino on behalf of **Arrowhead Regional Medical Center, 400 N Pepper Ave, Colton, CA 92324** (the “Subscriber”), and **Elsevier Inc., d/b/a Elsevier | MC Strategies, Marquis One Tower, 245 Peachtree Center Avenue NE, Suite 1900, Atlanta GA 30303-1226, USA** (“Elsevier”).

The parties hereto agree as follows:

SECTION 1. SUBSCRIPTION.

1.1 *Subscribed Products.*

Elsevier hereby grants to the Subscriber the non-exclusive, non-transferable right to access and use the products and services identified in Schedule 1 (“Subscribed Products”) and provide the Subscribed Products to its Authorized Users (as defined herein) subject to the terms and conditions of this Agreement.

1.2 *Authorized Users/Sites.*

Authorized Users are, as applicable, the full-time and part-time students, faculty, fellows, staff, researchers, administrators, residents, employees and independent contractors of the Subscriber affiliated with the Subscriber’s locations listed on Schedule 1 (the “Sites”) and permitted by the Subscriber to access the Subscribed Products.

1.3 *Authorized Uses.*

Each Authorized User may:

- access, search, browse and view the Subscribed Products;
- print, make electronic copies of and store for the exclusive use of such Authorized User individual items from the Subscribed Products; and
- incorporate links to the Subscribed Products on the Subscriber’s intranet and internet sites, and, as applicable, in electronic course-packs, reserves and course management systems and instructor sites, provided that the appearance of such links and/or statements accompanying such links shall be changed as reasonably requested by Elsevier.

If and to the extent the Subscribed Products include e-learning courses, training administrators designated by the Subscriber (the “Administrators”) may access and use the e-learning courses of the Subscribed Products identified on Schedule 1 for the sole purpose of administering and delivering training.

If and to the extent the Subscribed Products include Mosby’s Nursing Skills modules, Authorized Users may customize the text corresponding with the Mosby’s Nursing Skills modules for the sole purpose of complying with the Subscriber’s institution-specific protocols and procedures.

If and to the extent the Subscribed Products include Mosby’s Nursing Consult, Authorized Users may print out copies of patient education handouts from the Subscribed Products for the exclusive use of reactively supplying to the Subscriber’s patients and/or customers appropriate medical information regarding the patients and/or customers’ prescription or over-the-counter drug purchases. The patient education handouts may be customized by Authorized Users to provide additional information.

1.4 *Restrictions on Use of Subscribed Products.*

Except as expressly permitted herein or in writing by Elsevier, the Subscriber and its Authorized Users may not:

- abridge, modify, translate or create any derivative work based on the Subscribed Products, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;
- remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the Subscribed Products;
- use any robots, spiders, crawlers or other automated downloading programs, algorithms or devices to continuously and automatically search, scrape, extract, deep link, index or disrupt the working of the Subscribed Products; or
- substantially or systematically reproduce, retain or redistribute the Subscribed Products.

Authorized Users who are independent contractors may use the Subscribed Products only for the purposes of the contracted work for the Subscriber.

1.5 *Intellectual Property Ownership.*

The Subscriber acknowledges that all right, title and interest in and to the Subscribed Products remain with Elsevier and its suppliers, except as expressly set forth in this Agreement, and that the unauthorized redistribution of the Subscribed Products could materially harm Elsevier and its suppliers.

SECTION 2. ELSEVIER PERFORMANCE OBLIGATIONS.

2.1 *Access to Subscribed Products.*

Elsevier will make the Subscribed Products accessible to the Subscriber and its Authorized Users from the internet address set forth on Schedule 1 or as may be otherwise determined by Elsevier.

2.2 *Quality of Service.*

Elsevier shall use reasonable efforts to provide the Subscribed Products with a quality of service consistent with industry standards. Elsevier shall use commercially reasonable efforts to keep data supplied during course of use of the Subscribed Products and materials customized by Authorized Users protected against unauthorized access, loss, misuse, alteration or disclosure through the use of appropriate security measures.

2.3 *Withdrawal of Content.*

Elsevier reserves the right to withdraw from the Subscribed Products content that it no longer retains the right to provide or that it has reasonable grounds to believe is unlawful, harmful, false or infringing.

2.4 *System Support.*

Elsevier shall provide, where applicable, technical support and training to the Subscriber's designated technical contact, implementation assistance to the Administrators, and system set up, maintenance, updates and backups for the Subscribed Products. Elsevier shall use commercially reasonable efforts to make the Subscribed Products generally accessible and functional twenty-four (24) hours per day, seven (7) days per week, subject to service interruptions for scheduled maintenance that shall be conducted at off-peak hours or for emergency maintenance and causes beyond Elsevier control.

SECTION 3. SUBSCRIBER PERFORMANCE OBLIGATIONS.

3.1 *Authentication.*

Access to the Subscribed Products shall be authenticated by the use of Internet Protocol (“IP”) address(es) indicated by the Subscriber on Schedule 1 and/or usernames and passwords and/or a delegated authentication mechanism, identified on Schedule 1, requiring at least two different credentials. The Subscriber shall remain responsible for all information technology systems required to access the Subscribed Products, including making these available to its Authorized Users in accordance with the terms hereof.

3.2 *Website Registration.*

If and to the extent the Subscribed Products include Mosby’s Nursing Skills modules and/or Mosby’s Nursing Consult, Subscriber acknowledges and agrees that all Authorized Users shall register on the Mosby’s Nursing Skills website and/or the Mosby’s Nursing Consult website (collectively the “Website(s)”) prior to customization of the materials. Subscriber and its Authorized Users agree to and are bound by all of the terms and conditions of the applicable Registered User Agreement at <http://www.mosbysnursingskills.com/agreement.html> and http://www.mosbysnursingconsult.com/about/footer_agreement.html, which are incorporated herein by reference. In the event of any ambiguity or inconsistency between terms in the Registered User Agreement and in this Agreement, the terms in this Agreement shall control.

3.3 *Learning Management System.*

If and to the extent the Subscribed Products include e-learning courses, the Subscriber and its Administrators shall integrate access to the e-learning courses through the Elsevier | MC Strategies online portal and/or learning management system (“LMS”) identified on Schedule 1 and shall use the LMS to manage, track, report and review the use of, progress in and scores from the e-learning courses assigned to and taken by the Authorized Users. Authorized Users shall be bound by all of the terms and conditions of the LMS Registered User Agreement at <http://www.webinservice.com/legal/UserAgreement.htm>, which are incorporated herein by reference. In the event of any ambiguity or inconsistency between terms in the LMS Registered User Agreement and in this Agreement, the terms in this Agreement shall control.

3.4 *Protection from Unauthorized Access and Use.*

The Subscriber shall use reasonable efforts to:

- ensure that access to and use of the Subscribed Products is limited to Authorized Users, including providing prompt notice to Elsevier of any users no longer authorized to have access to Subscribed Products;
- ensure that access to and use of the Subscribed Products is pursuant to any applicable registered user agreement specified by Elsevier;
- ensure the security and integrity of the use of Subscribed Products and that all Authorized Users are notified of and comply with the usage restrictions set forth in this Agreement;
- ensure that any passwords or credentials used to access the Subscribed Products is issued only to Authorized Users, and that neither the Subscriber nor its Authorized Users divulge any passwords or credentials to any third party; and
- promptly, upon becoming aware of any unauthorized use of the Subscribed Products, inform Elsevier and take appropriate steps to ensure that such activity ceases and to prevent any recurrence.

In the event of any unauthorized use of the Subscribed Products, Elsevier may suspend the access and/or require that the Subscriber suspend the access from where the unauthorized use occurred upon notice to the Subscriber. The Subscriber shall not be liable for unauthorized use of the Subscribed Products by any Authorized Users provided that the unauthorized use did not result from the

Subscriber's own negligence or willful misconduct and that the Subscriber did not permit such unauthorized use to continue after having actual notice thereof.

3.5 Support; Functionality.

Subscriber acknowledges and agrees that it shall bear sole responsibility and liability for installation of all system components required to access the Subscribed Products, and all charges it incurs to access the Subscribed Products (e.g., its own ISP fees). Subscriber shall nominate one (1) member of its staff, at each site, to act as System Administrator for technical support and service configuration, as specified on Schedule 2. Subscriber shall also nominate one (1) member of its staff, at each site, to act as administrative contact for non-technical support, as specified on Schedule 2.

SECTION 4. FEES AND PAYMENT TERMS.

The Subscriber shall pay to Elsevier the Fee(s), as set forth in Schedule 1, within thirty (30) days after the invoice date by check or wire transfer, using the account information which shall be provided by Elsevier to Subscriber. Subscriber must notify Elsevier in writing of any dispute prior to the related invoice due date or the charges shall be final and binding. Elsevier reserves the right to suspend access to the Subscribed Products if payment is not received within thirty (30) days after the invoice date. The Fee(s) shall be exclusive of any sales, use, value added, withholding or similar tax and Subscriber shall be liable for any such taxes in addition to the Fee(s). If Subscriber is a tax-exempt organization, Subscriber shall provide a copy of any applicable government-issued exemption certificate(s) to Elsevier upon execution of this Agreement.

SECTION 5. TERM.

5.1 Term.

The term of this Agreement shall commence on August 20, 2013 and continue for the term set forth on Schedule 1 for each Subscribed Product.

5.3 Early Termination Due to Insufficient Budgetary Allotment from Government.

The Subscriber may terminate this Agreement upon thirty (30) days notice given by the Subscriber to Elsevier if sufficient funds are not provided, allocated or allotted in future government-approved budgets of the Subscriber or reasonably available or expected to become available from other sources at the time the Subscriber's payment obligation attaches to permit the Subscriber, in the exercise of its reasonable administrative discretion, to continue this Agreement. Notwithstanding the foregoing, if access to the Subscribed Products was provided but not yet paid for prior to termination, Elsevier shall be entitled to receive a pro-rata portion of the Fees attributable to the period of time that access was provided.

SECTION 6. ELSEVIER WARRANTIES AND INDEMNITIES.

6.1 Warranties.

Elsevier warrants that use of the Subscribed Products in accordance with the terms and conditions herein will not infringe the intellectual property rights of any third party.

6.2 Indemnification.

6.2.1. Indemnification by Elsevier. Elsevier shall indemnify, defend and hold harmless the Subscriber and its Authorized Users from and against any loss, damage, costs, liability and expenses (including reasonable attorneys' fees) arising from or out of any third-party action or claim that use of the Subscribed Products in accordance with the terms and conditions herein infringes the intellectual property rights of such third party. If any such action or claim is made, the Subscriber will promptly notify and reasonably cooperate with Elsevier. This indemnity obligation shall survive the termination of this Agreement.

6.2.2. Indemnification by Subscriber. Subscriber will indemnify Elsevier against any claim relating to Subscriber's (i) customization or alteration by Subscriber of any portion of the subscribed Elsevier

e-learning courses, Mosby's Nursing Skills modules, Mosby's Nursing Consult Handouts or to any materials furnished by Subscriber and incorporated into the subscribed Elsevier e-learning courses by Elsevier at Subscriber's request, or (ii) acts or omissions that are based on any information in the Subscribed Products or obtained through the Subscribed Products or Website(s). This indemnity obligation shall survive the termination of this Agreement.

6.3 *Disclaimer.*

EXCEPT FOR THE EXPRESS WARRANTIES AND INDEMNITIES STATED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SUBSCRIBED PRODUCTS ARE PROVIDED "AS IS". ELSEVIER AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE SUBSCRIBED PRODUCTS AND ANY OTHER DATA, DOCUMENTATION OR MATERIALS PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ERRORS, INACCURACIES, OMISSIONS, OR DEFECTS CONTAINED THEREIN, AND ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.4 *Limitation of Liability.*

Except for the express warranties and indemnities stated herein and to the extent permitted by applicable law, in no event shall Elsevier or its suppliers be liable for any indirect, incidental, special, consequential or punitive damages including, but not limited to, loss of data, business interruption or loss of profits, arising out of or in connection with this Agreement, or shall the liability of Elsevier and its suppliers to the Subscriber exceed a sum equal to the Fees paid by the Subscriber hereunder, even if Elsevier or any supplier has been advised of the possibility of such liability or damages.

SECTION 7. GENERAL.

7.1 *Force Majeure.*

Neither party's delay or failure to perform any provision of this Agreement as a result of circumstances beyond its control (including, but not limited to, war, strikes, fires, floods, power failures, telecommunications or Internet failures or damage to or destruction of any network facilities or servers) shall be deemed a breach of this Agreement.

7.2 *Severability.*

The invalidity or unenforceability of any provision of this Agreement shall not affect any other provisions of this Agreement.

7.3 *Entire Agreement.*

This Agreement contains the entire understanding and agreement of the parties and merges and supersedes any and all prior and contemporaneous agreements, communications, proposals and purchase orders, written or oral, between the parties with respect to the subject matter contained herein.

7.4 *Modification.*

No modification, amendment or waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties.

7.5 *Assignment.*

The Subscriber shall not assign, transfer or license any of its rights or obligations under this Agreement unless it obtains the prior written consent of Elsevier, which consent shall not unreasonably be withheld.

7.6 *Privacy.*

Elsevier shall not, without the prior written consent of the Subscriber, transfer any personal information of any Authorized Users to any non-affiliated third party or use it for any purpose other than as described in this Agreement and in the online privacy policy for the relevant online service.

7.7 Notices.

All notices given pursuant to this Agreement shall be in writing and delivered to the party to whom such notice is directed at the address specified below or the facsimile number or electronic mail address as such party shall have designated by notice hereunder.

- ❖ If to Elsevier: Elsevier | MC Strategies, Marquis One Tower, 245 Peachtree Center Avenue NE, Suite 1900, Atlanta, GA 30303-1226, USA with a copy to Elsevier Inc., Legal Department, 360 Park Avenue South, New York, NY 10010 USA
- ❖ If to the Subscriber: **Arrowhead Regional Medical Center, 400 N Pepper Ave, Colton, CA 92324.**

7.8 Confidentiality.

The Subscriber and its employees, officers, directors and agents shall maintain as confidential information and not disclose to any non-affiliated third party without Elsevier's prior written consent or except as required by law the financial terms and commercial conditions of this Agreement. "Confidential Information" shall include all of the confidential or proprietary information, regardless of its form of delivery, each party receives from the other, including the terms and conditions of this Agreement, all of the computer software and programs, technologies, systems, processes, know-how and inventions developed, acquired, licensed or owned, at any time by such party or any affiliate thereof, all information and material relating to the business of Subscriber or Elsevier and their customers (including financial information relating thereto) or affiliates, and the pricing terms of this Agreement.

7.9 Execution.

This Agreement and any amendment thereto may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective to the same extent as original signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

**County of San Bernardino on behalf of Arrowhead Regional Medical Center
(Subscriber)**

Name: Janice Rutherford
Title: Chair, Board of Supervisors

**ELSEVIER INC.
(Elsevier)**

Name: John Schrefer
Title: Senior Vice President & General Manager, Performance Management

No. _____

ELSEVIER | MC STRATEGIES SUBSCRIPTION AGREEMENT**Schedule 1****Subscribed Products, Fees, Payment Schedule****A. Subscribed Products**

Please check or initial Option 1 or 2.

Option 2 is a savings of \$7,241 over the length of the agreement.

 X Option 1:

3 Year – 3.5% cap

Subscribed Products –	Access	8/20/13 - 8/19/14	8/20/14- 8/19/15	8/20/15- 8/19/16
Mosby's Nursing Skills	nursingskills.com	\$33,280	\$34,448	\$35,650
Mosby's Pediatric Skills		\$8,099	\$8,382	\$8,675
Mosby's Perioperative Skills		\$4,992	\$5,166	\$5,347
TOTAL FEES		\$46,371.00	\$47,996.00	\$49,672.00

 Option 2:

5 Year – 2.0% cap

Subscribed Products –	8/6/13 - 8/5/14	8/6/14- 8/5/15	8/6/15- 8/5/16	8/6/16- 8/5/17	8/6/17- 8/5/18
Mosby's Nursing Skills	\$33,280	\$33,945	\$34,623	\$35,316	\$36,022
Mosby's Pediatric Skills	\$8,099	\$8,260	\$8,426	\$8,594	\$8,766
Mosby's Perioperative Skills	\$4,992	\$5,091	\$5,193	\$5,297	\$5,403
TOTAL FEES	\$46,371	\$47,296	\$48,242	\$49,207	\$50,191

B. Usage

Some Subscription Fees are based on the following maximum number of hospital beds: 351

The Subscriber shall promptly notify Elsevier of any Material Increases (as defined below) in the number of hospital beds, which Material Increases shall be subject to a pro rata increase in the then applicable Subscription Fees, effective as of the date such Material Increase occurred and payable within thirty (30) days of Elsevier's invoice.

A "Material Increase" shall be defined as an increase of three percent (3%) or more, in the number of hospital beds.

C. Sites

Sites are as follows:

Arrowhead Regional Medical Center, 400 N Pepper Ave, Colton, CA 92324

Fontana Family Health Center	16854 Ivy Avenue, Fontana, CA 92335
McKee Family Health Center	2327 North Sterling, San Bernardino, CA 92404
Westside Family Health Center	1543 West 8 th Street, San Bernardino, CA 92404

D. Authentication Mechanism

List IP address(es):

170.164.0.0	to	170.164.255.255
209.193.093.170	to	209.193.093.170

ELSEVIER | MC STRATEGIES SUBSCRIPTION AGREEMENT

Schedule 2

Sites/Authentication/Contacts

Subscriber:

Arrowhead Regional Medical Center

Primary Contact

Name: Gloria Arredondo

Title: Health Sciences Librarian

Name/Address (if different from Section 7.7):

E-mail: arredondog@armc.sbcounty.gov

Phone: (909) 580-1385

Fax: (909) 580-1310

Billing Contact (same as Primary)

Name:

Title:

Name/Address (if different from Section 7.7):

E-mail:

Phone:

Fax:

Technical Contact

Name: Ron Ledbetter

Title: Systems Analyst

Name/Address (if different from Section 7.7):

E-mail: ledbetterr@armc.sbcounty.gov

Phone: (909) 580-2849

Fax:

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