



LICENSE AGREEMENT - INSTITUTIONAL ACCESS TO DXPLAIN

This Agreement is made as of the _____ day of _____, 201__ (The "Effective Date") between The General Hospital Corporation, through its Laboratory of Computer Science ("the General"), and _____ ("Licensee")

Whereas, the General is the owner of certain rights, title and interest in certain medical education computer programs and databases, and related documentation known as the WWW version of DXplain ("the Software"); and

Whereas, the General owns the copyright and has the right to grant licenses to use the Software and wishes to have the Software used in the public interest; and

Whereas, Licensee wishes to obtain a nonexclusive license to use the Software via the Internet upon the terms and conditions hereinafter set forth;

Now, therefore, in consideration of the foregoing and of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

1) Software

The Software licensed pursuant to this Agreement is a computer-based medical education and clinical decision support system. Using the Software, the user can 1) enter a list of signs, symptoms, and laboratory findings to generate a list of diseases that are suggested by one or more of the findings, 2) request information on a disease in the database and 3) request a discussion about a particular finding in the database.

2) License and Use of Software

The General hereby grants to Licensee nontransferable, nonexclusive rights to use the Software for medical education and clinical decision support for 12 months from the Effective Date (hereinafter referred to as Rights Granted). The Software shall be accessed over the Internet by the Licensee from a computer located at Massachusetts General Hospital over the Internet. This license is limited to the institution or organization that signs this agreement and may not be assigned. The institution or organization affirms that it is an organization the primary mission of which is either to provide medical care or medical education or is an organization approved by the General. In the context of this Agreement, "use" shall be limited to access to the Software over the Internet. Except as herein provided, Licensee agrees not to provide the General's URL to access DXplain or the Licensee's assigned username and password to any other individual, institution or organization. Licensee's obligations under this paragraph shall survive the termination of this Agreement.

THE SOFTWARE IS NOT INTENDED TO PROVIDE THE "RIGHT ANSWER" OR TO GIVE DEFINITIVE MEDICAL CONSULTATION. THE KNOWLEDGE BASE CONTAINED IN THE SOFTWARE INCLUDES A SIGNIFICANT NUMBER OF COMMON AND RARE DISEASES, BUT SHOULD NOT BE CONSIDERED COMPLETE DUE TO A NUMBER OF POSSIBLE CAUSES, INCLUDING BUT NOT LIMITED TO A LACK OF COMPLETE COVERAGE OF ALL SIGNS, SYMPTOMS AND LABORATORY TESTS AND ALL DISEASE ENTITIES, THE INABILITY OF THE SOFTWARE TO ACCEPT THE USER'S DESCRIPTION OF CLINICAL FINDINGS, THE FAILURE OF THE SOFTWARE TO CONSIDER THE RELATION BETWEEN THE CLINICAL MANIFESTATIONS AND THE DISEASE ENTITIES, OR BECAUSE OF COMPUTER OR HUMAN ERROR. BECAUSE OF THESE FACTORS, IT IS IMPORTANT THAT THE SOFTWARE BE USED ONLY AS A REFERENCE TOOL, SIMILAR TO THE USE OF A TEXTBOOK OR A JOURNAL ARTICLE AND THAT THE SOFTWARE NOT BE USED AS A SUBSTITUTE FOR HEALTH PROFESSIONAL DIAGNOSTIC DECISION MAKING.

Licensee agrees not to, decompile, disassemble or reverse engineer the Software (including both programs and database). Licensee agrees that the Software (including programs, algorithms and database) shall not be used, downloaded, or copied or used for any purpose other than as specified by this Agreement. Licensee's obligations under this paragraph shall survive the termination of this Agreement.

3) Rights in Program

The Licensee acknowledges that title to the Software shall remain with the General and that the General retains all copyright, trade secrets, and other intellectual property rights in the Software. The Licensee agrees not to remove or obscure the General's copyright notices from the Software. Licensee shall at all times hereafter protect the Software and all related technical information, data and materials supplied by the General from unauthorized use, transfer, and modification using the same measures as those used by Licensee in protecting its own confidential and/or proprietary information.

4) Royalty

In consideration of the rights granted herein, Licensee shall pay to the General nonrefundable _____ dollars (\$ _____ USD) ("the Royalty") upon execution of this Agreement. The Royalty must be paid in US dollars.

5) Access to DXplain

Upon execution of this Agreement, and payment of the Royalty, the General shall provide an Internet URL, group username/password and instructions so that the Licensee can access the Software via the Internet from a computer system located at Massachusetts General Hospital. The Licensee is responsible for providing the appropriate Internet browser software to use the Software--see <http://dxplain.net>). The Licensee will be solely responsible for all telecommunication problems up to the connection to the General's computer system.

The General agrees to use reasonable efforts to make the Software available via Internet twenty four (24) hours per day, seven (7) days per week except for routine maintenance usually scheduled for off-peak hours, HOWEVER, the General cannot guarantee such access in the event of problems due to hardware, software or communications difficulties.

6) Warranties

The General represents that, to the best of its knowledge and belief, it has the right to make the grants made hereunder and that neither such grants nor the Licensee's use of the Software in accordance with such grants will infringe the rights of any third parties. LICENSEE AGREES THAT THE RIGHTS GRANTED HEREUNDER ARE MADE AVAILABLE WITHOUT WARRANTY OF ANY KIND EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER INCLUDING NO WARRANTY AS TO CONFORMITY WITH USER DOCUMENTATION OR OTHER LITERATURE WHICH MAY BE ISSUED FROM TIME TO TIME.

7) Release

Licensee shall release the General and its trustees, officers, employees, staff members, agents or contractors from and against any claim, charge, demand, action or suit, whether in contract, tort or otherwise, for any and all losses, costs, charges, claims, demands, fees, expenses or damages of any nature or kind arising out of, connected with or resulting from the use of the Software by Licensee, its affiliates, employees, faculty, students, agents or any other individual obtaining access to the Software by Licensee, or relating in any way to this Agreement. IN NO EVENT SHALL THE GENERAL BE LIABLE TO LICENSEE, ITS AFFILIATES, EMPLOYEES, FACULTY, STUDENTS, AGENTS OR ANY OTHER INDIVIDUAL OBTAINING ACCESS TO THE SOFTWARE BY LICENSEE FOR SPECIAL, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSSES, COSTS, CHARGES, CLAIMS, DEMANDS, FEES OR EXPENSES OF ANY NATURE OR KIND.

8) Termination

This Agreement shall terminate 12 months from the Effective Date. Upon any material breach of this Agreement by Licensee, the General shall have the right to terminate this Agreement.

9) Entire Agreement

This Agreement sets forth all of the covenants, provisions, agreements, conditions, and understandings between the parties and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between them other than those set forth herein.

IN WITNESS WHEREOF, the parties have caused this License Agreement to be signed on their behalf by their duly authorized representatives, to take effect as a sealed instrument.

THE GENERAL HOSPITAL CORPORATION

DXplain Institutional License Agreement Read, Accepted and Agreed to:

For: _____
(Name of Institution/Company)

Institutional Contact Name (type or print clearly): _____

Institutional Contact Signature: _____

Title: _____ email: (print clearly or type) _____

Telephone: _____ Date: _____

Address: _____

By: _____ Title: _____
(Name / Title of **Institutional Officer**-type or print clearly)

Signature of **Institutional Officer**: _____

IP Address(es) to be used for institutional access: _____

Type of Institution: Medical School Hospital Hospital Consortium Health Network

Other: _____

If Hospital: Number of beds _____ # Residents _____ # MDs _____
Other Health Professionals _____ Number of Medical Students _____

If Medical School: # students enrolled _____

Please return the entire signed agreement with royalty to:
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Massachusetts General Hospital
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