

**DELIBERAZIONE n. 2**

allegata al VERBALE n. 28 della seduta del CONSIGLIO DI AMMINISTRAZIONE del 14.11.2018

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**OGGETTO:** Sottoscrizione accordo “Licence agreement” tra ISS e BMJ.

Sono presenti i Signori:

<i>Il Presidente</i>	Prof. Gualtiero RICCIARDI
<i>I Componenti</i>	Avv. Enrico LUBRANO
	Dott. Alessandro COSIMI
	Prof. Giuseppe REMUZZI

Partecipa, altresì, del Collegio dei Revisori dei Conti:

Dr.ssa Angela SALVINI

*Partecipano, inoltre:*

- la Dott.ssa Rosa M. MARTOCCIA, Direttore Centrale delle Risorse Umane ed Economiche dell'ISS;
- il Consigliere della Corte dei Conti Dott. Alberto RIGONI, Delegato titolare ex art.12 L. 21.3.1958 n. 259.

Svolge le funzioni di Segretario il dott. Francesco BARNATO, Dirigente amministrativo dell'ISS.

Relatore: il PRESIDENTE.

Il Relatore fa presente che la proposta di stipula di un contratto di licenza (non esclusiva/non trasferibile) tra ISS e *British Medical Journal* è stato già esaminato – in termini generali - nella riunione del Consiglio di Amministrazione del 22/06/2018. Detto contratto riguarda l'accesso al website e alle *Apps* per telefoni cellulari di proprietà del *British Medical Journal*, per ciò che attiene le *BMJ Best Practice*. Tale accordo consentirà di utilizzare i contenuti del portale sulle buone pratiche in sanità al fine di colmare il vuoto relativo ad argomenti per cui non sono ancora disponibili linee guida nazionali. Il contratto prevede di garantire un accesso al servizio per un numero massimo di 444.000 professionisti sanitari italiani.

La durata del servizio richiesto è di 12 mesi, rinnovabile per ulteriori 12 mesi.

Per tale servizio, l'Istituto si impegna a versare una *fee* complessiva di £ 1,421 ,000 suddivisa in due annualità pari, rispettivamente, a £ 700,000 per il primo anno e a £ 721 ,000 per il secondo anno, come anche indicato nell'Allegato n.1.

La spesa graverà sul bilancio dell'Istituto nell'esercizio finanziario anno 2019 (e di ciò sarà data evidenza nel bilancio di previsione di prossimo esame) e, per il 2020, la stessa sarà subordinata alla verifica delle risorse disponibili.

Tanto premesso

### **IL CONSIGLIO**

- Vista la documentazione, in particolare l'Allegato n.1;
- Udito il Relatore;
- Dopo ampia ed approfondita discussione ;
- All'unanimità

### **DELIBERA**

di approvare, come indicato in premessa e più dettagliatamente nell'Allegato n.1 che costituisce parte integrante della presente delibera, il contratto di licenza (non esclusiva/non trasferibile) tra ISS e *British Medical Journal* per l'accesso al website e alle *Apps* per telefoni cellulari di proprietà del *British Medical Journal*, per ciò che riguarda le *BMJ Best Practice*. La durata del contratto è di 12 mesi, rinnovabile per ulteriori 12 mesi.

Dà mandato al Direttore Generale di procedere ai necessari adempimenti.

Letto, confermato e sottoscritto.

**IL SEGRETARIO**

**IL PRESIDENTE**

Part A (Order Schedule) and Part B (License Terms) below comprise one agreement (Agreement) between: (1) BMJ Publishing Group Limited, company number 03102371 and whose registered office is at BMA House, Tavistock Square, London WC1H 9JR, United Kingdom (BMJ); and (2) the Licensee named below.

**Background**

BMJ is a publisher of medical and allied science journals, digital medical education and clinical support publications. Licensee wishes to procure access on behalf of the Authorised Users defined below to certain of those publications. BMJ has agreed to provide such access on the terms set out in this Agreement.

**Part A. Order Schedule**

<b>Currency</b>	Sterling														
<b>Fee and payment terms</b>	<table border="1" style="margin: auto;"> <thead> <tr> <th style="width: 30%;">Subscription Year</th> <th style="width: 30%;">Fee instalment</th> <th style="width: 40%;"></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">£700,000.00</td> <td></td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">£721,000.00</td> <td></td> </tr> <tr> <td style="text-align: center;">Fee</td> <td style="text-align: center;">£1,421,000.00</td> <td></td> </tr> </tbody> </table>			Subscription Year	Fee instalment		1	£700,000.00		2	£721,000.00		Fee	£1,421,000.00	
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i. Payment terms shall be 30 days after the date of invoice unless otherwise stated on the invoice. ii. BMJ shall be entitled to issue an invoice for the first Subscription Year at any point following your signature to this Agreement. iii. BMJ shall be entitled to issue the invoice for the second Subscription no earlier than 30 days prior to the commencement of the second Subscription Year.															
<b>Licensed Material</b>	<b>BMJ Product/publication</b>	<b>Type of access</b>	<b>Method of access</b>												
	BMJ Best Practice (English language version)	Website  Mobile application	Referral URL from within Licensee's Website and subsequent account creation  Download App from App store and sign in using account details created on the Website												
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<b>Referrer URL:</b>	The URL on the Licensee's Website from which Authorised Users will gain access to BMJ's website and therefore to the Licensed Material.														
<b>Subscription Commencement Date:</b>	[x]														
<b>Subscription Term</b>	24 months from the Subscription Commencement Date														
<b>BMJ signature:</b>	..... Patrick Spencer, Chief Operating Officer for and on behalf of BMJ Publishing Group Limited ..... Signature <span style="float: right;">Date</span>														
<b>Licensee signature:</b>	..... [name], [title] for and on behalf of the Licensee ..... Signature <span style="float: right;">Date</span>														

**Part B: License Terms**

**1. Key Definitions**

- 1.1. In this Agreement, the following terms shall have the following meanings:

**Agreement:** this document including any schedules and any properly executed variations or addenda.

**App:** the mobile application controlled by BMJ from which the Licensed Material may be accessed in accordance with this Agreement.

**Authorised Users:** up to 444,000 healthcare professionals in Italy, each of whom shall be registered with the applicable General Medical Council (Ordine dei Medici).

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**Licensed Materials:** the electronic version of BMJ's databases and publications to which the Licensee subscribes, as set out in Part A (Order Schedule) to this Agreement which includes content owned or licensed by BMJ.

**Malpractice:** includes giving or receiving any financial or other advantage that may be construed as a bribe, for the purpose of any applicable law.

**Parties:** BMJ and Licensee. Party shall mean either of them.

**Subscription Year:** from the Subscription Commencement Date each 12 month period of the Subscription Term

**Term:** the period specified in Part A Order Schedule, unless terminated earlier under clause 7.

**Website:** the BMJ website from which the Licensed Material may be accessed.

**Website Terms and Privacy Notices:** the Website and App terms and conditions and privacy policies applicable to a user's use of, and access to the Licensed Material.

- 1.2. Any words following the terms *including, include, such as, in particular, for example* or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

## 2. The Licence

- 2.1. In consideration of receipt of the Fee, BMJ grants Licensee a non-exclusive, non-transferable licence for the Subscription Term to access, and permit Authorised Users to access, the Licensed Material on the Website:

2.1.1. access to the Licensed Material on the Website shall be provided from the Referrer URL to the Website once the Authorised User creates a BMJ account; and

2.1.2. access to the Licensed Material via the App shall require registration by the Authorised Users on the Website. The Authorised Users will subsequently be able to download the App from the relevant country App store, sign into the App and view the Licensed Material.

2.2. BMJ holds all the intellectual property rights in the Licensed Material.

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3.1. The Licensee shall ensure that each Authorised User is aware that each Authorised Users is permitted to download and use the Licensed Material only for that Authorised User's personal use.

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#### 4. Licensee's obligations

##### 4.1. Licensee agrees that it shall:

- 4.1.1 use its best endeavours to procure that Authorised Users are notified of, and comply with, the Website Terms and Privacy Notices and any disclaimers which appear on an applicable Website or App;
- 4.1.2 undertake and maintain all reasonable security measures, necessary authentication and verification processes to ensure that only Authorised Users can access the Referrer URL (and therefore the Licensed Materials) and shall terminate any unauthorised access of which it becomes aware;
- 4.1.3 comply with all applicable laws and regulations relating to the performance of this Agreement including those which pertain to Modern Slavery;
- 4.1.4 pay the Fee in accordance with the payment terms set out in this Agreement; and
- 4.1.5 if it becomes aware of intellectual property infringement or unauthorised access to the Licensed Materials, notify BMJ immediately and cooperate fully with BMJ in its investigation of such infringement or unauthorised access. If the specific abuser(s) cannot be identified or stopped, BMJ has the right to withhold, suspend, or terminate access to all or any portion of the Licensed Material, without liability.

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- 5.1. The Fee is due and payable by Licensee (or its authorised representative) in accordance with the payment terms stated in the Part A. Order Schedule. If no such terms are stated, the payment terms included on each BMJ invoice shall apply. In the event the payment terms on an invoice contradict those stated in Part A, the terms stated on the invoice shall prevail. The Fee (including each instalment thereof) shall be exclusive of VAT or other sales tax which, if applicable, shall be added at the prevailing rate at the time.
- 5.2. Submission of an order by the Licensee for the subscription referred to in this Agreement may be taken on BMJ's behalf by a third party agent authorised by BMJ. Where applicable, payment of the Fee may also be made to such BMJ agents.
- 5.3. Licensee is responsible for ensuring any third party authorised to make payments on its behalf shall promptly pay BMJ (or BMJ's authorised agent where applicable) the full amounts due under this Agreement.

#### 6. Technical Access

BMJ will not have any liability should a Website or App become unavailable or access to a Website or App become slow or incomplete due to system back-up procedures, internet traffic volume, upgrades, overload of server requests, network failures or delays, or any other cause which may from time to time make a Website or App slow, incomplete or inaccessible to Authorised Users

#### 7. Termination

- 7.1. Unless otherwise terminated in accordance with this clause 7, access to Licensed Material under this Agreement shall be provided for the Subscription Term.
- 7.2. BMJ may terminate this Agreement:
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  - 7.2.2. in the event Licensee defaults on making payment of the Fee or any applicable instalment of the Fee.
- 7.3. Licensee may terminate this Agreement where BMJ commits a material or persistent breach of any term of this Agreement and fails to remedy such breach (if capable of remedy) within 30 days of notification in writing from Licensee.
- 7.4. Either Party may terminate this Agreement if the other Party becomes insolvent, subject to receivership, liquidation or similar external administration.
- 7.5. Upon termination or expiry of this Agreement: a) access by Authorised Users to the Licensed Material shall cease; and b) any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 7.6. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry.
- 7.7. Either Party's failure to perform any term of this Agreement as a result of circumstances beyond its control (including typical force majeure events set out in clause 11.1) shall not be deemed a breach of this Agreement.
- 7.8. For the avoidance of doubt, nothing in this Agreement shall permit either Party to terminate for convenience prior to the end of the Subscription Term.

#### 8. Warranty and Liability

- 8.1. BMJ may provide Authorised Users with links to third-party websites. Where such links exist, BMJ excludes all liability for the

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- 8.7. In the event BMJ has any liability under this Agreement, BMJ's (and its licensors') aggregate liability shall not exceed the Fee applicable for access to the Licensed Material during the 12-month period preceding any claim or notice of damages.

#### 9. Data protection

Each Party agrees that no personal data of any individual is being exchanged as a result of this Agreement. Notwithstanding the foregoing, each of BMJ and Licensee shall comply fully with all applicable laws relating to data protection with regard to the collection, processing and use of any personal information about Authorised Users which either Party may obtain by reason of this Agreement.

#### 10. Fraud, bribery and corruption

- 10.1. Licensee shall notify BMJ immediately if it becomes aware of, or has grounds for suspecting, any fraud or Malpractice relating to this Agreement or to the use of the Licensed Material.
- 10.2. Without prejudice to any other remedy it may have, if BMJ has grounds for believing that Licensee or any of the Authorised Users has committed a fraud or Malpractice relating to this Agreement or the Licensed Material, BMJ may, in its absolute discretion suspend access to the Licensed Material until it has fully investigated and determined whether or not there has been any fraud or Malpractice.

#### 11. General

- 11.1. Neither Party shall be liable for failure, default or delay in performing its obligations under this Licence, caused by a force majeure event which shall include any act of God, war, or threatened war, act or threatened act of terrorism, riot, strike, lockout, individual action, fire, flood, drought, tempest or other event beyond the reasonable control of either Party.
- 11.2. BMJ may assign or transfer any of its rights and obligations under this Agreement, upon written notice to Licensee. Licensee may not assign its rights or transfer its obligations herein without the prior written consent of BMJ.
- 11.3. Alterations to this Agreement are only valid if they are recorded in writing and signed by both Parties.
- 11.4. In the event that any provision of this Agreement is held to be invalid, the remainder of the provisions shall continue in full force and effect.
- 11.5. No third party shall be entitled to enforce the terms of this Agreement and the Parties hereby exclude any such rights for any third party enforcement.
- 11.6. No delay or failure by either Party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver, to be effective, must be in writing and signed by a duly authorised representative of each Party.
- 11.7. Any notice under this Agreement must be in writing and may be delivered or sent by first class post or by recorded mail service to the offices of the relevant Party set out in Part A Order Schedule (or as otherwise notified from time to time) and such notice shall be deemed to have been received 7 (seven) days from the date of posting or, in the case of recorded mail, on the date of the signature confirming successful receipt.
- 11.8. Where this Agreement is bilingual the English language version shall prevail.
- 11.9. To the fullest extent permitted by law, this Agreement constitutes the entire Agreement between BMJ and Licensee with respect to the Licensed Material.

#### 12. Governing law and jurisdiction

To the fullest extent permitted by law this Agreement shall be governed and construed in accordance with the laws of England and Wales. All claims, disputes and actions, relating to access to and use of the Licensed Material and the Website and App shall be determined exclusively by the English courts.