



PUBLISHING AGREEMENT

Microcirculation

THIS AGREEMENT is made on this 1st of January 2010 between **INFORMA HEALTHCARE, 69-77 Paul Street, London, EC2A 4LQ, UK** (hereinafter called 'the Publisher') and **The Microcirculatory Society, Inc.** (hereinafter called 'the Society').

WHEREAS the Society is the sole owner of all rights, including the official title and both the printed and online rights, to the English language journal and any subsequent translations, entitled *Microcirculation* (hereinafter 'the Journal') [Print ISSN 1073-9688, Electronic ISSN 1549-8719].

WHEREAS, the Society decides to establish a publishing agreement with the Publisher for the latter to act as publisher of the Journal starting with Volume 17, Issue 1, 2010, and the Publisher agrees to do so on the terms and conditions set forth in the agreement.

1. GRANT OF RIGHTS

For the term of this Agreement and any addenda hereto or revisions hereof, the Society hereby grants the right and responsibility to the Publisher to publish the Journal and its contents during the term of this Agreement and to sublicense others to use such rights, subject to the terms and conditions set out herein, starting with Volume 17, Issue 1, 2010.

- a. The Society grants to the Publisher exclusive publishing rights in the Journal and its contents by way of licence for the duration of this Agreement as provided in Clause 8 in printed volume form and in other media including microfiche, CD-ROM, on-line electronic networks, electronic or paper-based document delivery services and other suitable media for publication of information contained in the Journal, and including the exclusive right to license third party specialist publishers and organisations to exercise all or any of such rights. Additionally, the Society grants to the Publisher the right to sell archival content of the journal from Volume 1, Issue 1.
- b. The Society retains all rights not specifically given herein, including but not limited to Society subscriber lists and editorial rights. Any adaptations or translation opportunities may be explored by the Publisher and must be approved by the Society before any action is taken. The Publisher grants the Society nonexclusive rights to excerpts of scientific data published in the Journal for non-commercial purposes that do not materially interfere with or injure the Publisher's sale of the journal.

†Example calculation: If in one year the Society had 260 members, the Society would remunerate the Publisher (40 x \$70) = \$2800 for that year.

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- c. Subject to the extent that works within the Journal are reproduced under licence or other consent, copyright in the title and content of the Journal is vested in the Society. The Society shall use its best endeavours to assist the Publisher to obtain from the authors of all of the contributions a written assignment (which it shall supply to the Publisher together with the relevant typescript or illustration) of the entire copyright and all other rights in all languages for the full period of copyright throughout the world in respect of each such contribution. The copyright notice to be printed in each issue of the Journal shall read © Informa HealthCare, USA, Inc. (year of publication). Copyright in the typographical arrangement of the Journal and each issue and volume thereof shall vest in the Publisher.
- d. The Journal shall be entitled 'Microcirculation' as long as it shall be produced under the auspices of the Society and published by the Publisher. It is agreed that in the event of this Agreement expiring or being terminated for any reason whatsoever the Society shall be entitled to continue to publish the Journal under the same title; if it so continues, the Publisher shall not thereafter publish any other journal under the same title.

2. PUBLISHER RESPONSIBILITIES

The Publisher undertakes to bear all the costs involved in the printing, publication, promotion, advertising, subscription management, distribution, storage, and sale of the Journal. The date of publication of each issue will be determined by the Publisher, in consultation with the Society, subject to the following:

- a. The volume year shall contain 768 pages (including tables of contents, front matter, and back matter) in 8 issues of approximately 96 pages each; the trim size shall be 8.5 x 11 inches. The Publisher will conduct an annual review of the frequency of publication, namely the number of issues that comprise each volume, the number of pages to be published in each volume, and the trim size, in consultation with the Editor.
 - i. If a frequency change is implemented over the life of the contract, the Publisher agrees to discuss with the Society changes to subscription rates, any Society's payments to the Publisher, and any Publisher's payments to the Society.
- b. The Publisher shall be responsible for the typography, format, internal/external design, and quality of production of the Journal, which shall be subject to the approval of the Editor and the Society;
- c. The Publisher shall copyedit the text for articles for each issue as received in final hardcopy and electronic format from the Editor. The Publisher will also provide an electronic manuscript submission system to the Editor, to facilitate this submission and review process;
- d. The Publisher shall arrange for copyright registration in the name of the Society with the Library of Congress, including completion of all federal copyright applications and payment of all fees, and otherwise proceed with all steps necessary to publish each issue of the Journal;
- e. The Publisher may charge proof changes made by a contributor that exceed 15% of original composition costs directly to the contributor;

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- f. The Publisher shall publish each issue of the Journal within twelve weeks of receiving from the Editor sufficient manuscripts for that issue, according to the schedule provided by the Production Editor;
- g. The Publisher shall supply free of charge two (2) copies of each issue of the Journal to the Editor;
- h. The Publisher shall supply one (1) electronic copy of each issue of the Journal to each member of the editorial board. The Publisher shall supply these copies on the strict condition that they are not used in any way to replace or substitute for an existing or potential full rate or personal rate or Society rate paid subscription;
- i. The Publisher shall provide one (1) complimentary subscription to each of the abstracting/indexing services and reference linking services that are receiving the Journal as of Volume 15, 2008. The Publisher will seek continued inclusion of the Journal into these services in future years and will endeavour to expand coverage in additional abstracting/indexing and reference linking services;
- j. The Publisher shall supply the corresponding contributor of each article in the Journal with one (1) copy of the issue in which their article appears. Contributors will also have the opportunity to purchase offprints or reprints of their article, as well as complete copies of the issue, at the page proof stage of production;
- k. In each year of this Agreement, the Publisher shall provide the Society with fifteen (15) complimentary print copies of each issue of the Journal at the same time issues are mailed to Society members;
- l. In each issue of the Journal and in all promotional materials for the Journal, the Publisher shall identify the Journal as a publication of Microcirculatory Society, Inc. The form and placement of such identification to be determined by the Publisher, in consultation with the Society. If the Society, the Publisher, and a third organization mutually determine to add that organization as another sponsoring organization, that organization's name shall be added. The form and placement of such identification to be determined by the Publisher, in consultation with the Society.
- m. The Publisher shall list the Editor, the Associate Editors, and the Editorial Board Members in each issue of the Journal for which the Editor performs services required of the Editor in Para. 3a. The form and placement of such credit to be determined by the Publisher and the Editor;
- n. The Publisher shall handle and administer copyright and permission requests for the Journal on behalf of the Society;
- o. The Publisher agrees to post accepted manuscripts online in electronic, citable format prior to the print publication of the Journal;
- p. The Publisher shall allow the Society sixteen (16) pages of complimentary advertising per volume, as space allows;
- q. For Volumes 1 onward, the Publisher shall set single-issue prices for individual/personal domestic and foreign sales of back issues and current issues in accordance with its commercial policy as follows: the price of each issue shall be set at approximately 1.5 times the Journal's prevailing full-rate

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subscription price divided by the number of issues published per volume year; the Publisher shall also set prices for article reprints for Volume 17 and subsequent volumes published under this Agreement;

- r. The Publisher agrees not to sell or otherwise make available to third parties that are not directly involved in the Publisher's publication of the Journal the mailing addresses, email addresses, or telephone numbers of Society subscribers without prior consent of the Society;
- s. The Publisher shall set the annual institutional (full rate) subscription rate for the online version of the Journal, for domestic and international subscribers, at \$1440 in 2009 with an optional free print version, and will increase no more than 12% per year thereafter for the duration of this Agreement. The corporate rate subscription for the online version of the Journal, for domestic and institutional subscribers, shall be \$2880 in 2009 with an optional free print version, and will increase no more than 12% per year thereafter for the duration of this Agreement. These subscription rates may be renegotiated in the event of a mutual agreement between the Society and the Publisher to increase the frequency or pagination of publication of the Journal from its current schedule;
- t. As long as the Society's membership remains at 300 members or above, the Publisher shall set the annual subscription rate of the Journal for Society members at \$70/year for the combined print and electronic version, and at \$60/year for the online-only version; (see Para. 3d herein for procedures if membership falls below 300). The above member subscription rates will remain in effect for the term of this agreement, but may be renegotiated in the event of a mutual agreement between the Publisher and the Society to increase the frequency or pagination of publication of the Journal from its current schedule.
- u. On an annual basis, the Publisher shall provide reports to the Society as follows: (1) a full publishing report including marketing activities for that year, and (2) a complete list, including names and addresses, of all institutional and non-member individual subscribers;
- v. The Publisher shall work with Editor to arrange sponsorship for supplements. The sponsor is responsible for paying the Publisher for all supplement costs including, but not limited to, production and distribution costs;
- w. The Publisher shall, at its own expense, and over the term of the contract, create electronic files of the Journal's back issues from Volume 1, Issue 1 (subject to the availability of original issues) and shall mount them on the Journal's online website. The files thus created (the 'historic archive') will be the property of the Publisher, although copyright in the content will remain with the Society.

In the event of the termination of this agreement under Paragraph 8 hereof or otherwise, the following conditions shall apply to the historic archive:

- a) should the Society take on the publication of the Journal themselves after the termination of this Agreement, a copy of the historic archive shall be transferred to the Society free of charge within twelve months provided that they do not enter into a partnership with another commercial publisher or university press within two years of termination and that the Publisher has the royalty free transferable right to continue to supply the historic archive to those customers who have purchased continuing rights of access;

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- b) should the Society enter into a partnership with another commercial publisher or university press within two years of termination, the Publisher shall offer for sale the historic archive to the new publisher or other party at a price to be set by the Publisher and from which the Society shall receive [20%] of the proceeds in recognition of their copyright, and the Publisher shall have the royalty free transferable right to continue to supply the historic archive to those customers who have purchased continuing rights of access. And for the avoidance of doubt the provisions of paragraph 8.b. below shall apply to the historic archive.
- x. The Publisher shall levy no page charges for publication in the Journal.
- y. The Publisher shall levy no charges for online publication of color figures (see Para. 5g herein for the cost of color figure reproduction in the printed edition of the Journal).

3. SOCIETY RESPONSIBILITIES

- a. The Society shall appoint and maintain an Editor for the Journal. The Editor shall take all reasonable steps to ensure that the following services are performed to meet the publication schedule of the Journal:
 - i. Establish and maintain an Editorial Board, including up to two Associate Editors. The Editor shall make his best endeavours to ensure that all members of the Editorial Board of the Journal comply with the Journal's publishing policies;
 - ii. Solicit, receive, peer-review, select, and edit contributions for the Journal;
 - iii. Ensure that all editors, editorial board members, peer reviewers, and referees respect the confidentiality of the review process, and that material under review shall be held as the contributing author's intellectual property unless and until otherwise assigned;
 - iv. Provide the Publisher with all final text and order of makeup ready for copyediting for each issue of the Journal according to the production schedule established collaboratively by the Publisher and the Editor; the number of contributions for each issue shall be acceptable to the Publisher on the basis of the length of each issue determined by the Publisher and the Editor;
 - a. Communicate with the Publisher, should the Editor find himself unable to deliver contributions in accordance with a publication schedule agreed upon by the Editor and Publisher, at least one month before such a deadline falls due. The Editor shall thereafter and in such cases make best endeavours to procure, process, and deliver contributions in complete and final form, and in good order, as soon as possible after such a deadline falls due. The content and extent of each issue (including any illustrative material) shall in all respects be as agreed between the Publisher and the Editor prior to the delivery of the Journal from the Editor to the Publisher;
 - v. Review proofs for each issue of the Journal;
 - vi. Forward to the Publisher an annual reporting of the total number of submissions and

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rejections, as well as the average time from submission to Editor acceptance;

- b. The Society shall determine the Editor's initial term of appointment and renewal terms. The Editor and the Publisher shall make a concerted effort to resolve editorial or production disagreements or differences between themselves. If reasonable efforts to resolve disagreements or differences between the Editor and the Publisher fail to reach resolution, then either party shall notify the Society in writing seeking additional assistance to resolve the issue. Should the Editor fail to or be unable to perform for any issue of the Journal, in consideration that the Publisher has made all reasonable efforts to provide the support services, including adherence to agreed-upon timelines, the services specified in the Agreement, the Publisher may give written notice to the Society of the Editor's failure to perform and thereafter the Society may make such arrangements as the Publisher and the Society deem appropriate with any other party to serve as Editor of the Journal within 90 days of written notification. In the event a new Editor is thus appointed, the Publisher shall have no further obligation to the former Editor;
- c. During every quarter throughout this Agreement, the Society shall deliver to the Publisher and/or a person designated by the Publisher a list of current Society members who are to receive the Journal;
- d. The Society guarantees the Publisher a minimum Society membership of 300 members per year; if the membership falls below this certain number, the Society agrees either to permit an increase in the per-member subscription rate or to pay the Publisher annually at the rate of \$70 for each missing member under 300, each year[†];
- e. The Society will be solely responsible for establishing the editorial policies of the Journal, as well as its aims and scope. The Editor or Publisher may, in consideration of changes in research, marketing considerations, or other reasons, propose modifications in the scope of the Journal;

4. EDITOR'S RESTRICTIONS

- a. The Editor shall not, during the lifetime of the Agreement act as Editor for an existing journal nor prepare for publication a new journal which would be likely to affect prejudicially, in the opinion of the Publisher, the prosperity of the Journal. In the event that this Agreement expires or is terminated, nothing in this Agreement shall prevent the Editor from carrying on as editor of any other journal, whether published by the Publisher or by a third party;
- b. During the lifetime of the Agreement, the Editor is free to accept appointments on Editorial Boards of other journals in the field;
- c. The Editor shall not send manuscripts submitted to the Journal to any other journal or any other publisher, without the written consent of the Publisher;
- d. The Editor is not and shall not be deemed to be an employee of the Publisher. The Editor undertakes to indemnify the Publisher against any assessment or claim for taxation whatsoever and any other tax relating to employment of the Editor and any associated costs, penalties, fines and interest payable in connection with any such assessment or claim.

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5. PUBLISHER'S PAYMENTS TO THE SOCIETY

- a. For Volume 17 onwards throughout the life of this Agreement, the Publisher agrees to pay royalties to the Society a royalty equal to 12% of the net institutional and non-member individual subscription revenue of the journal, beginning with the 101st institutional subscription;
- b. For Volume 17 onwards throughout the life of this Agreement, the Publisher agrees to pay the Society a royalty of 15% of net revenue realized from all paid advertising, sales of reprints and back issues, document delivery fees, electronic licensing fees, and permissions fees associated with all issues of the Journal, including supplements;
- c. In consideration of the services provided by the Society and Editor hereunder, the Publisher shall make a contribution annually towards the expenses involved in the collection and editing of manuscripts, and in the general editorial procedure and business of the Journal. The Publisher shall review and set their contribution at their own discretion, in the context of the revenues generated by and costs incurred by the Journal. The Publisher shall pay to the Society the sum of \$8,000 per annum. This sum will be paid to the Editor in quarterly installments of \$2,000 each January, April, July and October provided the Editor has submitted the complete issue of that quarter.
- d. Beginning in 2010, the Publisher will provide the Society \$1500 for publication-based awards yearly;
- e. Beginning in 2010, the Publisher will help defray the cost of the annual meeting of the Society by donating \$1000 yearly to help sponsor a reception, coffee break or similar function during the annual meeting;
- f. The publisher shall render financial statements to the Society by the end of March for each year in which the contract is in effect, and shall make payments due at that time. Each March's statement will reflect earned subscription revenue from January 1 through December 31. The Publisher reserves the right to adjust the amount of guaranteed payment and/or royalty rate specified in clauses 5. a, b, and c above by a pro rata amount in the event of a breach of this warranty;
- g. The publisher will provide up to twenty-four (24) complimentary color figures per annum to be distributed at the Society's discretion amongst papers authored by Society members. Subsequent color figures will be charged at \$350.00 per figure for Society members. In addition to this all authors, including Society and non-Society members, may publish an unlimited amount of color figures online, as well as supplementary materials such as photographs, graphs and links on the Journal website. The cost of all color figures in the printed edition of the Journal by non-Society member contributors will be charged directly to the contributors at standard rates established by the Publisher;
- h. The parties hereto agree that the Society shall have the right, at its expense, to have an independent certified public accountant or attorney of its selection, who is not then currently engaged in an outstanding audit of the Publisher, examine and copy the Publisher's books and records as the same pertain to royalty reports, submitted by the Publisher to the Society; that the Publisher shall make available to said accountant any and all records essential to the verification of the report being audited; and that said accountant shall maintain confidential all information he/she learns in the course of examining the Publisher's records, with the exception that he/she may disclose to the Society such information as directly relates to the Publisher's obligation to make royalty reports and payments.

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7. OTHER PROVISIONS

- a. **Marketing and Promotions.** The Publisher and Society will work together to implement a co-designed marketing plan. The targeted mailing lists for all promotions will be selected by the Journal's Marketing Manager, in consultation with the Society. The Publisher agrees to exhibit the Journal at the Publisher's exhibitor's booth at the Society's annual conference and at any other mutually agreed upon conferences;
- b. **Electronic Online Version.** The Publisher shall make the Journal available, at no additional charge, in electronic online format to Society subscribers. The online version is to be fully searchable and will include active reference links.
- c. **Extra Pages.** Should the Publisher and the Society agree on the advisability of publishing extra pages of the Journal beyond the parameters in Para. 2a herein, the Society agrees to pay the Publisher's costs of manufacturing this extra material (typesetting, copyediting, proofreading, corrections to the proofs, printing, paper, and binding) for the Journal's regular print run and for distributing it (freight and mail) to the Journal's regular subscribers;
- d. **Back Issues.** All back-issue (hard copy and electronic copy) storage costs are to be assumed by the Publisher. The Publisher shall make available and shall administer the sale of back issues according to its pricing policy in Para. 2q herein. All copies of back issues of Volumes 1 through 15 shall revert to the Society at the expiration or termination of this Agreement, at which point the Publisher will allow the Society to arrange for shipping and paying for their relocation. Para. 8 herein provides for the Society's purchase of back issues of Volumes 16 onward at the expiration or termination of this Agreement;
- e. **Editorial Board Meeting.** The Publisher agrees to host an Editorial board meeting at one (1) mutually agreed upon annual conference; The Board meeting will include food and beverage services for the meeting which the Society will bill to the Publisher.
- f. **Exhibitor Fees.** The Society agrees to waive the Publisher's exhibitor booth fees at the Society's annual meeting for the duration of this Agreement;
- g. **Orientation Meeting.** The Publisher agrees to underwrite the travel and accommodation costs for the Editor and one (1) other Society representative to attend an orientation meeting in the Publisher's offices. The orientation meeting will be repeated whenever a new Editor is appointed.
- h. **Supplementary Materials.** The Publisher will publish in online form only and as approved by the Editor, appropriate supplementary materials to accepted articles.

8. TERM OF AGREEMENT, TERMINATION PROVISIONS, REVERSION OF RIGHTS

- a. **Term of Agreement:** This Agreement shall remain in effect until December 31, 2014 and shall apply to the five volume years covering Volumes 17 through 21 of the Journal scheduled for publication in the years 2010 through 2014; thereafter, this Agreement shall automatically renew for additional five-

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year terms, each term commencing on the date of expiration of the preceding term unless either party gives the other written notice of its intention not to renew by December 1 of the year prior to the renewal date.

- b. **Termination Provisions:** Either party may seek early termination of the initial term or of any subsequent terms of this Agreement on the basis of material breach of the terms of this Agreement. The party alleging the breach must notify the other party in writing and allow the other party two months to rectify the situation to both parties' satisfaction before any changes take effect with the next year's volume. Notwithstanding the foregoing, any breach involving late payment or non-payment of royalties and other fees shall be cured within five (5) business days of receipt of notice from the non-breaching party.

The Publisher may, on a non-exclusive basis, for a period of six months after the termination of this Agreement for any reason continue to sell any copies of the Journal that are in stock as at the date of expiry or termination hereof, subject to the payment of royalties in respect of such sales. Where electronic copies of the Journal have been sold or sub-licensed, the purchasers and/or licensees and their authorised end-users shall be entitled to retain the electronic use of such issues, and to maintain an archive of them, unless other arrangements for access are made between the Publisher and the Society. The Publisher shall also be entitled to retain an archive of electronic issues of the Journal.

- c. **Reversion of Rights:** All rights, title, and interest in the Journal shall revert to the Society at the expiration or termination of this Agreement, at which point the Society shall also have the option of buying from the Publisher, for the Publisher's per unit manufacturing costs (including copyediting, typesetting, proofreading, corrections to proofs, online preparation, printing, paper, and binding), which is not to exceed the actual production costs, all copies of issues of Volume 16 and beyond published under this Agreement, including the online version in PDF format. If such a purchase is made, the Society agrees to pay all shipping costs.

9. WHOLE AGREEMENT

- a. Each party (the 'Receiving Party') undertakes:
- i. To maintain as secret and confidential all know-how and other technical or commercial information obtained directly or indirectly from the other party ('Disclosing Party') in the course of or in anticipation of this Agreement and to respect the Disclosing Party's rights therein;
 - ii. To use the same exclusively for the purposes of this Agreement;
 - iii. To disclose the same only to those of its employees, contractors and sub-licensees pursuant to this Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement.
- b. The provisions of the above shall not apply to know-how and other information which the Receiving Party can demonstrate by reasonable, written evidence:

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- i. was, prior to its receipt by the Receiving Party from the Disclosing Party, in the possession of the Receiving Party and at its free disposal; or
- ii. is subsequently disclosed to the Receiving Party without any obligations of confidence by a third party who has not derived it directly or indirectly from the Disclosing Party; or;
- iii. is or becomes generally available to the public through no act or default of the Receiving Party or its agents, employees, Affiliates or sub-licensees; or
- iv. the Receiving Party is required to disclose to the courts of any competent jurisdiction, or to any government regulatory agency or financial authority, provided that the Receiving Party shall (i) inform the Disclosing Party as soon as is reasonably practicable, and (ii) at the Disclosing Party's request seek to persuade the court, agency or authority to have the information treated in a confidential manner, where this is possible under the court, agency or authority's procedures.

The Receiving Party shall procure that all of its employees, contractors and sub-licensees pursuant to this Agreement (if any) who have access to any of the Disclosing Party's information to which paragraph 9.a. applies, shall be made aware of and subject to these obligations and shall have entered into written undertakings of confidentiality at least as restrictive as paragraphs 9.a. and 9.b. and which apply to the Disclosing Party's information

This Agreement shall be governed by the laws England applicable to agreements entirely made and performed therein. If any clause in this Agreement is found to be unenforceable, illegal or contrary to public policy, the parties agree that this Agreement shall remain in full force and effect except for such clause which shall be modified, if possible, to the extent required to make it enforceable, and if such modification is not possible, such clause shall be deemed deleted. The Publisher shall not bear any responsibility or liability for any losses arising out of any delay or interruption of its performance of obligations under this Agreement due to any act of God or governmental authority, or due to war, flood, civil commotion, labor difficulty, severe or adverse weather conditions, lack or shortage of electrical power, malfunctions of equipment or any other cause beyond the control of Publisher.

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This Agreement contains the entire understanding between the parties and supersedes and terminates all prior agreements between the parties related to the subject matter hereof. This Agreement may not be changed orally, but only by agreement in writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties have signed this Agreement.

Microcirculatory Society, Inc.

Steven Segal, President

Date

Microcirculatory Society, Inc.

Terrence E. Sweeney, Treasurer

Date

Informa Healthcare

Jessica Bibb, Senior Publishing Editor

Date

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