

MYPACS CONTENT LICENSING AGREEMENT FOR RESEARCH PURPOSES

This Multimedia Licensing Agreement ("Agreement") is made and entered by and between: (a) Vivalog LLC, with offices at 6729 46th Ave SW, Seattle, WA 98136 ("Licensor"); and (b) _____ ("Licensee") with offices at _____ . Licensor and Licensee are collectively referred to as the "parties".

WHEREAS, Licensor has obtained licensing rights to multimedia works; and

WHEREAS, Licensee desires to license all or part of Licensor's multimedia works for use in a Research Project.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties, intending to be legally bound, agree as follows:

1. Definitions

- a. Content. The term "Content" means Licensor's multimedia works as specifically identified at Exhibit A, including, without limitation, data, information, images, illustrations, graphics, multimedia files and/or text and any other written or machine readable expressions of such information fixed in any tangible media.
- b. Derivative Work. The term "Derivative Work" means a work created by Licensee which uses, is based on or incorporates the Content or any part thereof, including, without limitation, translations, adaptations, condensations, improvements, updates, enhancements, or any other form in which the Content or any part thereof may be recast, transformed, adapted or revised.
- c. Research Project. The term "Research Project" means the project described in Exhibit B.

2. License

In consideration of Licensee's satisfactory performance of all obligations of this Agreement throughout the term of this Agreement, Licensor grants to Licensee, and Licensee accepts from Licensor, a non-exclusive license, solely in connection with the Research Project and only for Licensee's specific purposes as defined in Exhibit B, to use the Content in the Research Project.

3. Proprietary Rights and Limitations

- a. Content. Exclusive of the license granted at Section 2 herein, all right, title and interest in and to the Content shall remain vested in Licensor.

- b. Notices. Licensee shall display the following notice in connection with all publications, documents, and websites that result from the research and/or mention the use of the Content:

“Images and text were used from the online medical image repository www.MyPACS.net with permission from Vivalog Technologies.”

- c. Restrictions. Licensee shall not republish any part of the Content or make it available in any Derivative Work without written permission from Licensor. Licensee agrees not to distribute or share Content or any Derivative Work with any third parties. Licensee agrees not to reveal the password to the FTP server containing the Content to any third parties.

4. Delivery

On the Effective Date of this Agreement, Licensor shall provide to Licensee a password to access an FTP server and download (1) copy of the Content as identified in Exhibit A, and in such format and media specified therein.

5. Term and Termination

- a. Term. The Term of this Agreement shall commence on the effective date of this agreement and shall continue indefinitely unless terminated under conditions below.
- b. Termination. This Agreement may be terminated: (i) by either party in the event a party commits or permits any other breach of this Agreement; (ii) by Licensor for any reason with sixty (60) days notice to Licensee. Each party agrees to give the other party prompt notice in accordance with Section 10(e) hereof if any of the conditions or events above occur.
- c. Rights and Obligations Upon Termination. Upon termination or expiration of the Agreement, Licensee shall cease all use of the Content, Derivative Works and trademarks, and shall thereafter destroy or deliver to Licensor at Licensor's option, any and all copies of magnetic tapes or other machine-readable material containing the Content as delivered by Licensor.

6. Royalties

None.

7. Warranties and Disclaimer

- a. Licensor Warranty. Licensor represents and warrants to Licensee that: (i) Licensor has the power and authority to enter into and perform its obligations under this Agreement; (ii) Licensor owns the Content and all intellectual property rights therein, or has the right to grant the license herein.

b. Licensee Representation. Licensee represents to Licensor that: (i) Licensee has the power and authority to enter into and perform its obligations under this Agreement.

c. Disclaimer. EXCEPT AS EXPRESSLY STATED AT SECTION 7(a), AND 7(b), THE PARTIES MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT. CONTENT IS NOT INTENDED FOR MEDICAL CARE.

8. Limitation of Liability

EXCLUSIVE OF LIABILITY UNDER SECTION 9 (INDEMNIFICATION), IN NO EVENT SHALL LICENSOR BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Indemnification

Licensee agrees to indemnify, hold harmless and defend Licensor and its directors, officers, employees and agents from and against any action, claim, demand or liability, including reasonable attorney's fees, if such action is based upon: (i) any allegation that a Derivative Work, exclusive of Content, infringes a third person's copyright or trademark right, or misappropriates a third person's trade secret; (ii) any allegation that Licensee's use of any Derivative Work is libelous, defamatory, violates any publicity or privacy right of a third person, or places a third person in a false light; and/or (iii) any alleged breach of the provisions of Sections 2, 3 or 4 of this Agreement. Licensee agrees that Licensor shall have the right to participate in the defense of any such claim through counsel of its own choosing at Licensor's expense.

10. General

a. Independent Contractors. The parties and their respective personnel, are and shall be independent contractors and neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

b. Assignment. Licensee may not assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, and any attempt to do so shall be deemed a material breach of this Agreement.

c. Waiver. No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.

d. Severability. If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

e. Notice. All notices shall be in writing and shall be deemed to be delivered when received by certified mail, postage prepaid, return receipt requested, or when sent by facsimile or e-mail confirmed by call back. All notices shall be directed to the parties at the respective addresses given above or to such other address as either party may, from time to time, designate by notice to the other party.

f. Amendment. No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by both parties.

g. Law. This Agreement shall be governed in all respects by the laws of the State of Washington without regard to its conflict of laws provisions.

h. Survival. The respective rights and obligations of the parties under Sections 3, 4, 6, 7, 8, 9, and 10 shall survive any termination or expiration of this Agreement. The definitions of Section 1 shall survive any termination or expiration of this Agreement.

i. Force Majeure. If the performance of any part of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

j. Entire Agreement. This Agreement, together with Exhibits A and B, which are incorporated by reference, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications and understandings, oral or written.

BY ACCESSING THE CONTENT, Licensee agrees to and has executed this Agreement.

Authorised Binding Signature of Licensee:

Signature

Date

EXHIBIT A: Content

Images from www.MyPACS.net, and XML records containing text and structured attributes from cases in www.MyPACS.net.

XML and images will be wrapped in a zip file and accessible via FTP from a secure, password-controlled site.

EXHIBIT B: Research Project

ImageCLEF is the cross-language image retrieval track which is run as part of the [Cross Language Evaluation Forum](#) (CLEF) campaign. The ImageCLEF retrieval benchmark was established in 2003 with the aim of evaluating image retrieval from multilingual document collections. Images by their very nature are language independent, but often they are accompanied by texts semantically related to the image (e.g. textual captions or metadata). Images can then be retrieved using primitive features based on pixels with form the contents of an image (e.g. using a visual exemplar), abstracted features expressed through text or a combination of both. ImageCLEF provides tasks for both system-centered and user-centered retrieval evaluation within two main areas: retrieval of images from photographic collections and retrieval of images from medical collections. These domains offer realistic scenarios in which to test the performance of image retrieval systems, offering different challenges and problems to participating research groups. A major goal of ImageCLEF is to investigate the effectiveness of combining text and image for retrieval and promote the exchange of ideas which may help improve the performance of future image retrieval systems.