

McGraw Hill Professional Institutional Subscription Agreement

This Subscription Agreement ("Agreement") entered into as of the 10th day of September, 2020 (the "Effective Date") is made by and between the **Professional division of McGraw Hill LLC ("MH")** whose principal office is located at 1325 Avenue of the Americas, New York, NY 10019 and the **University of California San Diego** whose principal office is located at 9500 Gilman Drive, La Jolla, CA 92093 ("Subscriber").

WHEREAS, Subscribed Materials are made available by MH via electronic media;

WHEREAS, Subscriber desires an Agreement to access and use the Subscribed Materials in the manner described below in accordance with this Agreement;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **Definitions:** As used in this Agreement, the following terms have the designated meanings:

"**Subscribed Materials**" refers to MH Online Owned Content (as defined below) incorporated into the online sites, as specified in Exhibit A and any addenda to Exhibit A.

"**Authorized User(s)**" are (1) current members of the staff and/or faculty of the Subscriber (whether on a permanent, temporary, contract or visiting basis) and, for academic institutions, individuals who are currently enrolled students at the Subscriber's institution, who are permitted to access the Secure Network from within the Subscriber's premises or from such other places where such Authorized Users are permitted to access the Secure Network for work or study (including, but not limited to, Authorized Users' offices and homes, halls of residence and student dormitories, as applicable) and who have been provided by the Subscriber with a password or other authentication, and/or (2) such other persons who are permitted to utilize the Subscriber's library or other facilities to access the Secure Network but only from computer terminals within the Subscriber's premises.

"**MH Online Owned Content**" means information and content entered into the Subscribed Materials by MH's employees, representatives and/or its licensors, including, without limitation, those authorized representatives who are editors or who are otherwise designated by MH.

"**Other Content**" means any other information or content entered into the Subscribed Materials by Authorized Users or persons other than MH, MH's employees, representatives or its licensors.

2. **Authorized Use of Subscribed Materials and Restrictions.**

a. All of the MH Online Owned Content is either the property of MH or is licensed to MH and is protected by copyright and other intellectual property laws. During the Term of this Agreement as defined herein and subject to Subscriber's payment of the fees set out in Exhibit A, MH hereby grants to Subscriber a non-exclusive, non-transferable license to allow only its Authorized Users to access and use the Subscribed Materials under the terms described in this Agreement. Subscriber agrees and acknowledges that Subscriber and its Authorized Users are bound by the terms and conditions in this Agreement. In the event of an inconsistency between this Agreement and the Terms of Use and End User Agreement located on the Subscribed Materials site, this Agreement shall control. Subscriber will consider and may honor reasonable requests by MH to protect MH's proprietary interests in the Subscribed Materials. Except for the limited rights granted Subscriber herein, all rights in the Subscribed Materials are reserved by MH and Subscriber acquires no right, title or interest in any material in the Subscribed Materials.

b. Subscriber and its Authorized Users shall only be permitted to access and utilize Subscribed

Materials for research or educational purposes. Neither Subscriber nor its Authorized Users may copy, transmit, rent, lend, sell or modify any of the Subscribed Materials or create derivative works based on materials therefrom. Neither Subscriber nor its Authorized Users may modify, remove or obscure any copyright or other proprietary notices included in the Subscribed Materials. With the exception of transmission of minimal, insubstantial amounts for personal and non-commercial scholarly, educational or scientific research use, neither Subscriber nor its Authorized Users may forward or disseminate any portion of the Subscribed Materials through electronic or other means, including through the use of mail lists or electronic bulletin boards.

c. Subscriber shall not knowingly permit anyone other than the Authorized Users to use or access the Subscribed Materials. Neither Subscriber nor Authorized Users may share passwords provided for accessing the Subscribed Materials with third parties or among the Authorized Users.

d. If requested by MH, Subscriber shall cooperate with MH in the investigation of any unauthorized use of the Subscribed Materials of which Subscriber is made aware and use best efforts to remedy such unauthorized use and prevent its recurrence. In the event of any unauthorized use of the Subscribed Materials by an Authorized User, in addition to any remedies available herein, MH may suspend such Authorized User's access to the Subscribed Materials (for example, by blocking an individual user's IP address).

3. **Updates and Revisions; Adding Subscribed Materials to the Agreement**

a. MH has the right to revise or update the Subscribed Materials at any time during the term of the Agreement.

b. The parties may agree to add additional Subscribed Materials to the Agreement by executing an Addendum to Exhibit A in the form set out in Exhibit A-1 hereto, and in such event all such addenda will be added to the Agreement and use of such additional Subscribed Materials will be governed by the terms of this Agreement.

4. **Term**

This Agreement will commence as of the Effective Date and will continue for the Subscription Term set out in Exhibit A for each of the Subscribed Materials subscribed to, unless terminated earlier by MH as provided herein, and is non-cancellable by Subscriber for the term subscribed to by Subscriber.

If either party believes that the other has materially breached any obligations under this Agreement, such party shall notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to use all reasonable means to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice. Once this Agreement ends, by early termination or otherwise, MH may terminate access to the Licensed Materials by Subscriber and Authorized Users. In addition, authorized copies of Licensed Materials made by Authorized Users may be retained for educational purposes and used subject to the terms of this Agreement.

In the event of early termination permitted by this Agreement, Subscriber shall be entitled to a refund of any fees or pro-rata portion thereof paid by Subscriber for any remaining period of the Agreement from the date of termination.

5. **Fees and Payment Terms**

Subscriber agrees to pay the applicable subscription fee as set out in Exhibit A. Subscriber shall be solely responsible for any charges it incurs in order to access the Subscribed Materials, such as telephone, Internet access or similar charges. In addition to all other rights and remedies available to MH in law or in equity, MH also may suspend delivery of the Subscribed Materials or terminate this Agreement if it has not received payment of the applicable fee for such Subscribed Materials.

6. **Other Content**

onsibility for Other Content, including the content of any messages or information posted by Subscriber, its Authorized Users or others or for the content or information accessible via direct or indirect hyperlinks from the Subscribed Materials. However, MH retains the right, which it may or may not exercise in its sole discretion, to review, edit or delete Other Content that MH deems to be illegal, offensive, or otherwise inappropriate.

7. Notices

Notices shall be given in writing and shall be effective when either served by personal delivery upon receipt via United States mail, return receipt requested postage prepaid, or by national overnight delivery service or by facsimile with receipt of confirmation, to the address set out in Exhibit A for Subscriber and to the following for MH:

McGraw Hill LLC

[Text deleted]

Fax: [Text deleted]

Attn: [Text deleted]

Email: [Text deleted]

8. Accessibility

MH warrants that, to the extent applicable to MH as an online provider and subject to MH's capabilities, the Licensed Materials comply with California and federal disabilities laws and regulations, and conform to the accessibility requirements of Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) 2.0 at level AA. MH agrees to promptly respond to and resolve any complaint regarding accessibility of Licensed Materials.

9. Usage Data and Confidentiality of Personally Identifiable Information

MH must provide composite use data. MH shall not provide Subscriber's usage statistics in any form to any third party without the Subscriber's written authorization, unless the third party owns rights in the Licensed Materials. In all cases, the disclosure of such data shall fully protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy laws. MH shall not disclose or sell to other parties usage data or information about the Subscriber or its Authorized Users.

MH agrees that no personally identifiable information, including but not limited to log-ins recorded in system logs, IP addresses of patrons accessing the system, saved searches, usernames and passwords, will be shared with third parties, except in response to a subpoena, court order, or other legal requirement. If MH is compelled by law or court order to disclose personally identifiable information of Authorized Users or patterns of use, MH shall provide the Subscriber with adequate prior written notice as soon as is practicable, so that Subscriber or Authorized Users may seek protective orders or other remedies. MH will notify Subscriber and Authorized Users as soon as is practicable if MH's systems are breached and the confidentiality of personally identifiable information is compromised.

10. Indemnification

MH shall indemnify and hold Subscriber and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Subscriber or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

11. General

a. The fee payable for the Subscribed Materials shall be exclusive of any sales, use, value added, withholding or similar tax and Subscriber is responsible for all such taxes relating to the rights granted under this Agreement.

b. This Agreement constitutes the entire agreement between Subscriber and MH relating to the applicable Subscribed Materials subscribed to herein and supersedes any and all other agreements, oral or in writing, with respect to such materials. This Agreement may be modified only by a written instrument signed by both parties. The failure of MH to insist upon strict compliance with any term of this Agreement shall not be construed as a waiver with regard to any subsequent failure to comply with such term or provision. Subscriber may not assign any rights or obligations of this Agreement without MH's prior written consent, and any assignment without MH's prior written consent, including any assignment by operation of law, shall be null and void. If any provision in this Agreement is invalid or unenforceable under applicable law, the remaining provisions will continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

McGraw Hill LLC

University of California San Diego _____

Professional division

By: ^{DocuSigned by:} [Text deleted]

By (Signature): [Text deleted]

Name: [Text deleted]

Name (Print): [Text deleted]

Title: President

Title: Program Director, CARs

Date: September 4, 2020 | 8:38 AM EDT

Date: 9-3-20

EXHIBIT A
to Institutional Subscription Agreement

SUBSCRIBED MATERIALS, TERM, USER NUMBERS AND PRICING

The following are the Subscribed Materials, Subscription Term, number of Authorized Users, Fees for the Subscribed Materials subscribed to by Subscriber under the Agreement and the Subscriber contact information.

1. Subscribed Materials

The Subscribed Materials and fees are as follows:

<u>Subscribed Materials:</u>	<u>Initial Term Fee</u>	<u>Initial Term Dates</u>
<u>AccessEngineering Site License</u> 2020-2021= <u>[Text deleted]</u> 2021-2022= 2022-2023=	<u>[Text deleted]</u>	<u>9/10/20 to 9/9/23</u>
<u>AccessScience Site License</u>	<u>[Text deleted]</u>	<u>9/10/20 to 9/9/21</u>

2. Subscription Term

The Subscription Term for the Subscribed Materials shall be for an initial term of three (3) years and one (1) year from initial activation of the subscription as outlined in Exhibit A, Section 1 ("Initial Term"), and thereafter the Subscription Term shall renew for additional one (1) year terms (each a "Renewal Term"), provided MH has provided renewal information to the subscriber 60 days prior to the expiration of each term and has sent an invoice for such Renewal Term to Subscriber. If Subscriber chooses not to renew the subscription, it shall notify MH at least thirty (30) days prior to commencement of the applicable Renewal Term. The Initial Term and any Renewal Term are referred to collectively as the "Subscription Term".

3. Subscription Fee:

The fee(s) for the Subscription Term set out in herein cover only the number of Authorized Users and the accessing sites specified in Section 4 below. The payment terms shall be as set out in the MH invoice:

Unless otherwise specified herein, the foregoing fee(s) in Section 1 above shall be for the Initial Term. The fee for any Renewal Term shall be as set out in the MH invoice for the subscription.

4. Number of Authorized Users, Accessing Sites and Access Validation Method(s):

Number of concurrent Authorized Users: Unlimited

Address of accessing sites:

University of California, San Diego

List of IP addresses:

Provided separately

5. Subscriber Contact: Pursuant to Section 7 of the Agreement, the address where notices to Subscriber shall be sent is the following, which may be revised on written prior notice to MH:

Name: _____ [Text deleted]
Address: _____ CARS E-Resources_U
 9500 Gilman Dr. 0175A
 La Jolla, CA 92093-0175
Fax: ([Text deleted]
Phon
Email: