

Palgrave Macmillan Reference Online

Site License Agreement

The Schedule

Please complete in fields with asterisk*

AGREEMENT DATE: April 26, 2010	AGREEMENT REF NO:
PARTIES:	
Licensor: Palgrave Macmillan, a division of St. Martin's Press, LLC, [REDACTED]	
*Licensee: University of California, San Diego	
*Department: Electronic Resources, Acquisitions Dept, Library	
*Address 1: [REDACTED]	
*Address 2:	
*City: [REDACTED]	
*Country: USA	
*Zip/Postcode: [REDACTED]	
LICENSED MATERIAL:	
Section A	
<input checked="" type="checkbox"/> The New Palgrave Dictionary of Economics Online	
The version of The New Palgrave Dictionary of Economics (the "Dictionary") made available for access on the Internet at the URL http://www.dictionaryofeconomics.com from time to time together with any additional material that may be agreed between the Licensor and the Licensee. (For the avoidance of doubt this will include the 1987 edition of the Dictionary.	
OR	
Section B	
<input checked="" type="checkbox"/> The New Palgrave Dictionary of Economics Online: Connect Perpetual Access (available only after expiration of the Initial Term or any Renewal Term for Section A Licensed Material)	
The version of the Dictionary made available for access on the Internet at the URL http://www.palgraveconnect.com/pc/archives/doe_archive.html from time to time together with any additional material that may be agreed between the Licensor and the Licensee. (For the avoidance of doubt, this version will not include (a) the 1987 edition of the Dictionary; or (b) material first published after the end of the calendar year immediately preceding the end of the Term (even if the Term continued beyond the end of the calendar year); or (c) any updates to the Dictionary published after expiration of the Term) (the "Dictionary")	
expiration	
LICENSE DETAILS:	
IP Address of Licensee Network: see attached	

Commencement Date:

Supply Period for Section A Licensed Material: 12 months from the Commencement Date.

Supply Period for Section B Licensed Material: From expiration or termination of the Supply Period for Section A Licensed Material (unless license to Section A Material is renewed), in perpetuity, subject to payment of the Palgrave Connect Access Fee and other terms and conditions of this Agreement.

Section A License Fee: (+ Sales Tax or VAT)

Purchase price: \$ [REDACTED]

Section A Renewal Fee (applicable upon expiration of Supply period listed above) : \$ [REDACTED]

Palgrave Connect Access Fee (required for access after the Initial Term when Section A Renewal Fee is not paid) : \$ [REDACTED]

Please note: Remittance will be payable to Nature Publishing Group, a division of Macmillan Publishers Ltd

TOTAL FEE: \$ [REDACTED]

*VAT ID (where applicable):

HELPDESK: [REDACTED]

Licensor Contacts:
HELPDESK:

[REDACTED]

Manager:
Name: [REDACTED]
Tel: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

Licensee Contact:

Name: [REDACTED]
Tel: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

The parties each agree to the terms of this Agreement (which includes this Schedule and the attached Terms).

Signed by: [REDACTED]

For and on behalf of
Palgrave Macmillan

Date: 4/28/10

Signed by: [REDACTED]

For and on behalf of Licensee

Date: 4/27/10

TERMS

1. INTERPRETATION

1.1 In this Agreement (as defined below), unless the context requires otherwise, the following expressions have the following meanings:

"Agreement": as defined in the Schedule;

"

"Authorized User": (a) every member of staff employed by or otherwise accredited by the Licensee; (b) every student accredited to the Licensee for the purposes of full-time or part-time attendance; and (c) individual members of the public registered as users of the Licensee's library or information service or individual members of the public permitted to use the Licensee's library or information services (walk-in users); in each case who are permitted access to the Network by the Licensee.

"Customer Support": the Helpdesk (as set out in the Schedule) providing reasonable e-mail and telephone support;

"Commencement Date": as set forth in the Schedule;

"Electronic Version": means a copy of all or a portion of the Licensed Material on CD ROM (or in such other electronic form as the Licensor shall decide) subject to the applicable Electronic Version License, as defined in Clause 4;

"License Fee": as set forth in the Schedule;

"Licensed Material": As set forth in the Schedule;

"Network": the Licensee's local area network system of connected computers at the relevant Site(s), the IP address(es) for which is set out in the Schedule;

"Palgrave Connect Access Fee": as set forth in the Schedule;

"Section A Renewal Fee": as set forth in the Schedule;

"Section B Licensed Material": means the archived material, being part of the Licensed Material, referred to in Section B of the Schedule;

"Schedule": the attached schedule preceding the Terms to this Agreement;

"Site": the premises or network set out in the Schedule; and

"Supply Period": as set out in the Schedule or as otherwise extended pursuant to Clause 4.1.

1.2 The Agreement contains the entire agreement and undertaking between the parties relating to the Licensed Material and supersedes any prior agreement.

1.3 The termination of this Agreement shall not prejudice the rights and remedies of either party against the other in respect of any prior breach of covenant, terms, warranty or condition.

1.4 The failure of any party to enforce any provision of this Agreement on any one occasion shall not affect its right to enforce another provision or the same provision on another occasion.

1.5 Nothing contained in this Agreement shall constitute or shall be construed as constituting a partnership, joint venture, or contract of employment between the parties.

2. DELIVERY AND GRANT OF RIGHTS

2.1 In consideration of the payments made by the Licensee, and subject to the Licensee observing its obligations under this Agreement, the Licensor grants to the Licensee the following non-exclusive rights ("the Rights"), subject to the agreed Authorized Users, for the Supply Period to:

(a) access via the Network at any time (subject to Clause 7) the Licensor's server, or as the case may be any service provided by an agent on its behalf, for the purpose of accessing the Licensed Material for research, teaching, and private study purposes by means of workstations located at the Site connected to the Network;

(b) make the Licensed Material accessible directly or remotely via the Network to the Authorized Users for their research, teaching, and private study purposes in accordance with the Licensee's customary policies and practices acceptable to the Licensor;

(c) permit Authorized Users to print and/or download individual articles and other individual items from searches of the Licensed Material, but no more than one percent, in aggregate, of the Licensed

Material, per Authorized User, for research, teaching, and private study purposes by means of workstations located at the Site connected to the Network or remote-access via proxy servers, subject to clause 3;

(d) use only secure electronic, paper, or intermediated means such as Artel to fulfill occasional requests from other individual libraries of not-for-profit, non-commercial organizations, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and the Guidelines for the Proviso of Subsection 108(2g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works

(e) create a hypertext link to any part of the Licensed Material provided that no person other than an Authorized User may use such hypertext link; and

(f) permit teaching staff accredited to the Licensee to reproduce individual articles from the Licensed Material for distribution during the term of this Agreement to students accredited to the Licensee for the purpose of including such individual articles in course study packs.

(g) Scholarly Sharing. Authorized Users may transmit to a third party in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for resale or commercial purposes.

2.2 The Rights are personal to the Licensee and do not extend to its subsidiary or parent organizations, or to any other related or affiliated organizations. The Licensee may not assign, sub-license, transfer, grant any security interest in or otherwise dispose of or encumber its rights under this Agreement without the prior written consent of the Licensor.

2.3 Title to, and ownership of, the Licensed Material (including any copies made by or on behalf of the Licensee including by the Authorized Users) is not transferred to the Licensee and remains vested in the Licensor, subject to the Rights granted in Clause 2.1 and Clause 4.11. The Licensee acknowledges that any rights not expressly granted in this License are reserved to the Licensor.

2.4 The Licensee is responsible for the provision of and payment for the computer equipment and telecommunication services necessary for access to and use of the Licensed Material. The Licensor shall not issue credits or refunds against charges incurred by the Licensee in relation to such telecommunication services or those incurred contacting Customer Support. The Licensee accepts that the Licensor has no control over such telecommunication services and that the Licensor shall have no liability to the Licensee for the acts or omissions of providers of telecommunication services or for faults in or failures of their apparatus or of the Licensee's computer equipment.

3. USAGE RESTRICTIONS

Except as expressly permitted in Clause 2.1, the Licensee warrants that it will not, nor will it license or permit others to, directly or indirectly, without the Licensor's prior written consent:

- (a) sell, distribute, license, rent or otherwise exploit the Licensed Material, or any element of it, for any commercial purpose;
- (b) make the Licensed Material, or any element of it, available by any means to persons other than Authorized Users;
- (c) make the Licensed Material, or any element of it, available on, or by, electronic bulletin boards, news groups, Web sites, FTP or any other means of posting or transmitting material on the Internet, an on-line service or wide area network;
- (d) remove or obscure the Licensor's copyright notice from the Licensed Material, including any downloaded material, whether in electronic format or hard-copy print-outs;
- (e) use the Licensed Material to create any derivative work, product or service, or merge the Licensed Material with any other product, database, or service;
- (f) alter, amend, modify, translate, or change the Licensed Material;
- (g) undertake any activity that may have a damaging effect on the Licensor's ability to achieve revenue through selling and marketing any part of the Licensed Material;
- (h) otherwise use the Licensed Material supplied in accordance with this Agreement in a manner that would infringe the copyright or other proprietary rights contained within it;

- (i) make the Licensed Material or any part of it available by remote access to any person other than Authorized Users; or
- (j) make mass, automated or systematic extractions from or hard copy storage of the Licensed Material.

Notwithstanding the above restrictions, nothing in this agreement shall restrict the use of the materials under the doctrine of "fair use" as defined under the laws of the United States.

4. TERM AND TERMINATION

Clauses 4.1 through 4.3 apply ONLY to Licensed Material in Section A of Schedule

4.1 The Supply Period shall begin on the Commencement Date and continue for the initial 12 month period of the Supply Period as defined in the Schedule. The Licensor may agree to extend the Supply Period for additional 12 month renewal periods, from the end of the initial period or any subsequent additional 12 month period, subject payment of appropriate fees, and acceptance thereof by the Licensor.

4.2 Licensor may terminate the Supply Period or the Supply Period for any part(s) of the Licensed Material at any time upon thirty days' written notice to the Licensee.

4.3 If termination of the Supply Period occurs as a result of notice being given by the Licensee under Clause 4.8, 4.9 or 10.2 or by the Licensor under Clause 10.2 the Licensor shall repay the Licensee a pro-ratable proportion of the License Fee as represents the paid for but unexpired Supply Period at the date of termination.

Clauses 4.4 through 4.6 apply ONLY to Licensed Material in Section B of the Schedule

4.4 The Supply Period shall begin upon expiration of the Initial Term (or any Renewal Term) for Section A Licensed Material ONLY IN THE EVENT that Licensee elects not to renew its current license of Section A Licensed Material and, subject to earlier termination in accordance with the terms of this Agreement, payment of the Palgrave Connect Access Fee, and/or any applicable Electronic Version License (including any one-time administrative charge for provision of an Electronic Version), shall continue in perpetuity.

4.5 Either party may terminate this Agreement at any time upon written notice to the other if the Licensee is unable to exercise the Rights due to the Section B Licensed Material being unavailable for a period in excess of 50 hours (in aggregate) in any continuous period of 1,000 hours as a result of any act or omission of the Licensor (including, without limitation, any temporary or permanent discontinuation of provision of access to the Section B Licensed Material by the Licensor). In the event that the Section B Licensed Material is unavailable in excess of the limits set forth in the preceding sentence and this Agreement is terminated, as the Licensee's sole and exclusive remedy the Licensor shall provide the Licensee with an Electronic Version of the Section B Licensed Material, SUBJECT ALWAYS to the terms of this Agreement, including without limitation Clause 4.11 below.

4.6 The Licensee may terminate its access to the Section B Licensed Material at any time by giving 30 days written notice of termination to the Licensor. On such termination, subject to payment of such reasonable supply fee as Licensor may charge to cover its handling costs, the Licensor shall provide the Licensee with an Electronic Version of the Section B Licensed Material, SUBJECT ALWAYS to all remaining applicable terms of this Agreement, including without limitation Clause 4.11 below.

Clauses 4.7 through 4.13 apply to Licensed Material in BOTH Section A and Section B of the Schedule.

4.7 Without prejudice to any other rights the Licensor may have, the Licensor may suspend the provision of the Licensed Material to the Licensee with immediate effect on written notice without liability if the Licensor believes any Licensed Material is being used in a manner that contravenes the

provisions of this Agreement or any applicable Electronic Version License, or in the event of delay or failure to pay in accordance with Clause 5 below.

4.8 Either party may terminate this Agreement (which shall include, for the purposes of this Clause 4.8, and Clause 4.9 below, any Electronic Version License) at any time upon written notice to the other if the other party commits a material breach of any term of this Agreement (for the avoidance of doubt non-payment of any fees as they fall due under this Agreement by the Licensee shall constitute a material breach). The termination will become effective thirty days after receipt of written notice unless, in the case of a remediable breach, during the relevant period of thirty days the defaulting party has remedied the breach.

4.9 Either party may terminate this Agreement immediately upon written notice in writing to the other if the other party is unable to pay its debts or ceases or threatens to cease to carry on business, goes into administration, receivership or administrative receivership, or any event analogous to any of the foregoing occurs in any jurisdiction.

4.10 In addition to Licensor's right to terminate access to Section A Licensed Material under Clause 4.2 above, and without prejudice to Clause 8.7 below, the Licensor reserves the right at any time to terminate access to any part of the Licensed Material (i) which the Licensor no longer retains the right to publish and/or grant the Licensee the rights granted in such Licensed Material under this Agreement, (ii) which the Licensor believes may infringe copyright or any other intellectual property or other right of any third party, or may be defamatory, obscene, unlawful or objectionable, (iii) which the Licensor otherwise believes may give rise to a legal claim, or (iv) if the Licensor considers it necessary, in its sole discretion, to replace such Licensed Material with an updated or modified version thereof. In the case of subclauses (i) through (iii) above, and in the case of termination of the Supply Period for Section A Licensed Material under Clause 4.2 above, if the Licensed Material as to which access is terminated represents more than ten percent (10%) of the Licensed Material, then the Licensor shall repay the Licensee what in the Licensor's good-faith estimate is a pro-ratable portion of the License Fee that represents the Licensed Material so terminated only; termination by Licensor with respect to less than 10% of the Licensed Material under this Clause 4.10, subclauses (i) through (iii), or Clause 4.2, above, shall not entitle the Licensee to repayment of any License Fees.

4.11 In the event of any unauthorized use of the Licensed Materials by an Authorized User, (a) Licensor may terminate such Authorized User's access to the Licensed Materials, (b) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee shall terminate such Authorized User's access to the Licensed Materials upon Licensor's request. Licensor shall take none of the steps described in this paragraph without first providing a thirty (30) day notice to Licensee and cooperation with the Licensee to avoid recurrence of any unauthorized use.

4.12 On expiration or termination of the Supply Period for Section A Licensed Material or Section B Licensed Material, Licensee shall have no rights of any kind to any Licensed Material published after the date of termination, except as expressly set forth below.

- (a) Rights After Supply Period for Section A Licensed Material. On expiration or termination of the Supply Period for Section A Licensed Material (subject to payment for and completion of not less than the full initial Supply Period indicated in the Schedule), other than as a result of notice being given by the Licensor under Clause 4.2, 4.8, 4.9 or 4.10, Licensee, at its option, may: (i) renew its current license of Section A Licensed Material for the Renewal Fee set forth in the Schedule, (ii) continue its access to the 2008 edition of the Dictionary, including all updates through the end of the calendar year immediately preceding the end of the Supply Period for Section A Licensed Material, but excluding (A) any materials first published after the end of the calendar year immediately preceding the end of such Supply Period (even if such Supply Period continued beyond the end of the calendar year), (B) any updates to the Dictionary published after expiration of the Supply Period for Section A Licensed Material, and (C) the 1987 Edition of the Dictionary, through Palgrave Connect, upon payment of the Palgrave Connect Access Fee set forth in the Schedule, or (iii) discontinue all online access to the Dictionary and receive an Electronic Version of the 2008 edition of the Dictionary, including updates through the end of the calendar year immediately preceding the end of the Supply Period for Section A Licensed Material, subject to compliance with the Electronic

Version License and payment of the Electronic Version handling charge referred to in Clause 4.11(c) below. Licensee acknowledges that access to Section B Licensed Material through Palgrave Connect will not include all features and functionality available for Section A Licensed Material. For clarity, in the event that, and for so long as, Licensee pays a Palgrave Connect Access Fee with respect to any other publication collection available through Palgrave Connect, the Palgrave Connect Access fee payable by Licensee for access to Schedule B Licensed Material under this Agreement shall be waived.

- (b) Rights After Supply Period for Section B Licensed Material. Upon expiration or termination of the Supply Period for Section B Licensed Material (in the absence of a current license for Section A Licensed Material), other than as a result of notice being given by the Licensor under Clause 4.2, 4.8, 4.9 or 4.10, Licensee may, at its option, continue its access to Section B Licensed Material in accordance with Clause 4.11 (a), subclause (ii) above, or discontinue all online access to the Dictionary and receive an Electronic Version of the 2008 edition of the Dictionary in accordance with Clause 4.11(a), subclause (iii) above.
- (c) The continued rights in the Licensed Material set forth above are conditioned upon the Licensee's continued compliance with the terms of this Agreement, the Electronic Version License, if applicable, and payment of all applicable fees set forth in the Schedule; PROVIDED THAT due to rights restrictions or other business considerations access to any part of the Licensed Material via the Network after the Initial Term and any Renewal Term for Section A Licensed Material may only be granted for a limited period or not at all. In the event that access is not granted to the Licensed Material via the Network for any reason, as Licensee's sole and exclusive remedy, the Licensor shall deliver the Licensed Material as an Electronic Version to the Licensee, SUBJECT ALWAYS to the Licensee's compliance with the Electronic Version License and payment of such reasonable supply fee as Licensor may charge to cover its handling costs. (For the avoidance of doubt, in respect of the use of the Electronic Version and the Licensed Material by the Licensee the terms of the applicable Electronic Version License shall prevail over the terms of this Agreement in the event of any conflict or inconsistency. The Electronic Version license will be a separate addendum that requests for mutual agreement between the Licensee and the Licensor. Licensee has the right to decline to exercise its option to the Electronic Version License).

4.13 On termination of the Supply Period, any Electronic Version License, or this Agreement as a result of notice being given by the Licensor under Clause 4.2, 4.8, 4.9 or (with respect to that portion of the Licensed Material terminated) 4.10, the Licensee shall have no further rights of any kind in the Licensed Material and the Licensee agrees to destroy and use its best efforts to ensure that all Authorized Users destroy, all Licensed Material stored on its Network or in CD-Rom or other hard copy form both on paper and in any digital information storage media or other physical media storage, including, but not limited to, system servers, hard disks, diskettes, and back up tapes.

5. LICENSE FEE/ACCESS FEE

5.1 The Licensee agrees to pay to the Licensor the fees and any other payments under this Agreement within 30 days of the date of invoice.

5.2 All amounts specified as payable by the Licensee under this Agreement shall be exclusive of any sales, use, value added or similar taxes.

5.3 The Licensor reserves the right to make increases to any of the fees set forth in the Schedule effective as of any anniversary of the applicable payment date. Any increase in fees will be notified to the Licensee in writing.

6. LICENSEE'S UNDERTAKINGS

6.1 The Licensee will take all reasonable steps to ensure that the Licensed Material is used only in accordance with the terms and conditions of this Agreement and shall make reasonable efforts to

inform Authorized Users of the permitted use restrictions and other provisions set out in this Agreement.

6.2 The Licensee shall put into place reasonable procedures to monitor compliance with the terms and conditions of this Agreement by the Authorized Users.

6.3 The Licensee will notify the Licensor immediately of infringements that come to the Licensee's notice and the Licensee agrees to cooperate with the Licensor to stop further abuse should it occur.

6.4 Subject to Clause 4.12, nothing in this Agreement shall make the Licensee liable for breach of the restrictions set out in the terms and conditions of this Agreement by any Authorized User as long as the Licensee complied with the terms of Clauses 6, 7.1, 7.2 and 7.3 and did not cause, intentionally assist in or encourage such breach nor allowed it to continue after having received notice of such breach whether from the Licensor or otherwise. However, in the event of continuing abuse the Licensor shall be entitled to terminate this Agreement.

6.5 The Licensor shall be entitled to monitor the use of the Licensed Material through the Licensor's servers, or, as the case may be, any service provided by an agent on its behalf, so as to monitor compliance with this Agreement.

7. WARRANTIES, UNDERTAKINGS AND INDEMNITIES

7.1 The Licensor warrants to the Licensee that it has full right and authority to grant the Rights to the Licensee and that the use by the Licensee of the Licensed Material in accordance with this Agreement will not infringe the rights of any third party.

7.2 The Licensor shall indemnify the Licensee for the amount of any award of damages against the Licensee by a court of competent jurisdiction as a result of any claim arising from a breach of the warranty in Clause 7.1, provided that the Licensee must inform the Licensor immediately upon becoming aware of any claim, not attempt to compromise or settle the claim and give reasonable assistance to the Licensor who shall be entitled to assume sole conduct of any defense and shall have the right at its option:

- (a) to procure the right for the Licensee to continue using the Licensed Material;
- (b) to make such alterations, modifications or adjustments to the Licensed Material to make it non-infringing without a material reduction in performance or function; or
- (c) to replace the Licensed Material with non-infringing substitutes provided that such substitutes do not entail a material reduction in performance or function.

7.3 The Licensor shall not be liable to the Licensee for any loss or damage whatsoever resulting from omissions or inaccuracies in the Licensed Material regardless of how caused. The Licensor does not warrant that access to the Licensed Material will be free from errors or faults. In the event of a fault, the Licensee shall notify Customer Support of the same by telephone, electronic mail or in writing.

7.4 Without prejudice to the generality of the foregoing, the Licensor shall not be liable for any claim arising from:

- (a) any failure or malfunction resulting wholly or to any material extent from the Licensee's negligence, operator error, use other than in accordance with the User Documentation or any other misuse or abuse of the Licensed Material;
- (b) the failure by the Licensee to implement recommendations previously advised by the Licensor in respect of, or solutions for, faults in the Licensed Material; or
- (c) the decompilation or modification of the Licensed Material or its merger with any other program or any maintenance, repair, adjustment, alteration, or enhancement of the Licensed Material by any person other than the Licensor or its authorized agent; or
- (d) the Licensee or any Authorized User being unable to exercise the Rights due to the Licensed Material being unavailable as a result of any act or omission of the Licensor; provided that the period for which the Licensed Material is not available shall not exceed a period of 50 hours (in aggregate) in any continuous period of 1000 hours (but the Licensee's sole remedy for unavailability of Section B Licensed Material in excess of such limits shall be as set forth in Clause 4.5 above); or

(e) any difference in form or functionality of the Licensed Material when access is granted through Palgrave Connect or by means of an Electronic Version.

7.5 The Licensee shall use its best efforts to safeguard the intellectual property, confidential information including without limitation the terms of this Agreement, and proprietary rights of the Licensor.

7.6 THE LICENSED MATERIAL IS PROVIDED "AS IS." NEITHER THE LICENSOR NOR ANYONE ELSE MAKES ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS CLAUSE 8 AND CLAUSE 12, ALL CONDITIONS, WARRANTIES, TERMS, REPRESENTATIONS, AND UNDERTAKINGS EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RESPECT OF THE LICENSED MATERIAL ARE TO THE FULLEST EXTENT PERMITTED BY LAW EXPRESSLY EXCLUDED.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY REPRESENTATIVE OF THE LICENSOR OR BY ANYONE ELSE SHALL CREATE ANY WARRANTIES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY BY JURISDICTION.

7.7 The content of the Licensed Material is subject to change without notice. Licensee understands that from time to time the Licensed Materials may be added to, modified, or deleted from by Licensor and/or that portions of the Licensed Materials may migrate to other formats. If any such withdrawal renders the Licensed Materials materially less useful to Licensee or its Authorized Users, the Licensee has the right to terminate this agreement and receive a prorated refund of the license fee.

8. USAGE STATISTICS

The Licensor confirms to the Licensee that usage statistics covering the online usage of the Dictionary will be provided. The Licensor further confirms that it shall use all reasonable efforts to ensure that such usage statistics will adhere to the specifications of the COUNTER Code of Practice, including data elements collected and their definitions; data processing guidelines, usage report content, frequency and delivery method PROVIDED THAT these statistics are strictly for the Licensee's private internal use and the Licensor shall not be required to disclose any information to the Licensee which it is prohibited from disclosing to the Licensee due to any legal or regulatory constraint imposed upon it including without limitation any applicable privacy or data protection legislation or regulations or contractual obligations.

9. FORCE MAJEURE

9.1 Either party's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, floods, governmental restrictions, power failures, or damage or destruction of any network facilities or services, excluding, however, any failure by Licensee to pay any fee due hereunder, shall not be deemed a breach of this Agreement.

9.2 If any event set out in Clause 10.1 shall continue for a period in excess of 30 days either party shall be entitled to terminate this Agreement immediately upon written notice to the other.

10. NOTICE

Any notice to be served on either party by the other made under this Agreement shall be in writing sent by certified or registered mail, return receipt requested, by internationally-recognized next-business-day courier, or by fax (with printed electronic confirmation of transmission and hard copy sent by regular mail) to the address of the addressee as set out in the Schedule or to such other address as notified by either party to the other as its address for service of notices. Notices shall be deemed to have been received as follows: if sent by certified or registered mail, 5 days after posting, if sent by next-business-day courier, 48 hours after receipt by the courier, and if by fax, the next business day after confirmed transmission.

11. LIABILITY

11.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its own negligence or any other liability the exclusion or limitation of which is prohibited by law.

11.2 Except as provided for in Clause 12.1 above, the liability of the Licensor in respect of any and all claims (whether in contract or in tort) arising out of or in connection with this Agreement is limited in respect of each event or series of connected events to the greater of US\$10,000 or an amount equal to the fees paid under this Agreement.

11.3 Except as provided for in Clause 12.1, notwithstanding anything else contained in this Agreement, in no event shall the Licensor be liable to the Licensee for:

- (a) loss of profits, business, revenue, goodwill, anticipated savings; and/or
- (b) indirect, special, incidental or consequential loss or damage; and
- (c) any inaccuracy in the Licensed Material.

12. GOVERNING LAW; JURISDICTION; VENUE

This Agreement, and the rights and liabilities of the parties with respect to this Agreement and its subject matter, shall be governed by the laws of the State of California, without reference to the principles of conflicts of laws thereof.

13. SEVERABILITY

In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

14. WAIVERS

No provision of this Agreement or breach thereof may be waived except in a writing signed by the party against whom the waiver is sought to be enforced.