

## OXFORD UNIVERSITY PRESS/SUBSCRIBER TERMS OF USE AGREEMENT

This OUP/Subscriber Terms and Conditions of Use of OUP Licensed Works (or “OUP/Subscriber Agreement”) is made by and between Oxford University Press, Inc. (hereinafter “OUP”), with its principal place of business at 198 Madison Avenue, New York, New York, and the Subscriber as identified in the annexed Subscriber Agreement.

Subscriber acknowledges that it has simultaneously entered into the Regional Network/Subscriber Agreement with \_\_\_\_\_ (hereinafter, the “Regional Network”) whereby the Regional Network has agreed to include the Subscriber in its agreement with OUP regarding access by means of the World Wide Web to certain reference works (the “Licensed Works” as more fully defined below) published by OUP.

Subscriber also acknowledges that acceptance by the Subscriber of the **OUP/Subscriber Terms Of Use Agreement** set forth herein, and continued adherence thereto, is a condition of obtaining such access to the works;

Subscriber hereby agrees to be bound by the following terms and conditions.

### 1. DEFINITIONS

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

“Activation Date” shall mean the date when the Subscriber shall first be permitted to access the Licensed Works in accordance with the terms of this Agreement and the Regional Network/Subscriber Agreement.

“Anniversary Date” shall mean the anniversary of the Activation Date in each year throughout the Term.

“Authorized Users” shall mean (a) individuals who are authorized by the Subscriber to access the Subscriber’s information services available through a Secure Network and who are (i) affiliated with the Subscriber as current students, faculty, library patrons, employees, or in some other capacity whereby they are permitted to access such services in the Subscriber’s ordinary course of business, or (ii) are physically present on the Subscriber’s premises.

“Authentication” shall mean the process whereby an individual establishes to the Subscriber that he or she is an Authorized User.

“Commercial Use” shall mean use of the Licensed Works for the purposes of monetary reward (whether by or for the Subscriber, an Authorized User, or any other person or entity) by means of sale, resale, loan, transfer, hire, or other form of exploitation; provided, however, that neither recovery of direct costs by the Subscriber from its Authorized Users, nor use by the Subscriber or by an Authorized User in the course of research that incidentally uses Licensed Works and that is funded by a commercial organization shall be deemed to be Commercial Use.

“Course Packs” shall mean collections or compilations of printed materials (e.g., entries, articles) assembled by faculty or staff of the Subscriber, if the Subscriber is an educational institution, for use by students in connection with a specific course of instruction offered by the Subscriber to its students.

“Electronic Reserves” shall mean electronic copies of materials (e.g., entries, articles from the Licensed Works) made and stored on the Secure Network by the Subscriber, if the Subscriber is an educational

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institution, for use by students in connection with a specific course of instruction offered by the Subscriber to its students.

“Fair Use” shall mean use by the Subscriber or an Authorized User (a) conforming to Sections 107 and 108 of the Copyright Revision Act 1976 as those provisions have been amended and may be amended from time to time, or (b) conforming to the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (“CONTU Guidelines”).

“Licensed Works” shall mean the licensed databases as set out in the Regional Network/Subscriber Agreement.

“OUP Trademarks” shall mean the designations OXFORD ENGLISH DICTIONARY, OED, AMERICAN NATIONAL BIOGRAPHY, ANB, OXFORD, and OXFORD UNIVERSITY PRESS, and such other designations as OUP may specify from time to time in written notifications to the Regional Network.

“Regional Network” shall mean the Regional Network identified hereinabove through which the Subscriber paid for the license to access the Licensed Works.

“Secure Network” shall mean a network (whether a stand alone network or a virtual network within the Internet) which is only accessible to Authorized Users whose identities are authenticated at the time of log-in and periodically thereafter, consistent with current best practices, and whose conduct is subject to regulation by the Subscriber.

“Server” shall mean either OUP’s server or a third party server designated by OUP on which the Licensed Works are mounted and through which the Subscriber may gain access to the Licensed Works by means of the World Wide Web.

“Term” shall mean the period of time set forth in Section 7.1 below.

## **2. GRANT OF LICENSES**

2.1. OUP grants to the Subscriber the non-exclusive and non-transferable rights to:

2.1.1. Access and use the Licensed Works throughout the Term by means of a Secure Network for the purposes of research, teaching, and private study; and

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- 2.1.2. Allow Authorized Users to access and use the Licensed Works throughout the Term by means of a Secure Network for the purposes of research, teaching, and private study.

### **3. USAGE RIGHTS OF THE SUBSCRIBER AND AUTHORIZED USERS**

- 3.1. Throughout the Term, the Subscriber and the Subscriber's Authorized Users may:
  - 3.1.1. Access the Server by means of a Secure Network in order to search the Licensed Works and to view, retrieve, and display portions thereof;
  - 3.1.2. Electronically download and save portions of the Licensed Works;
  - 3.1.3. Print out single copies of portions of the Licensed Works; and
  - 3.1.4. Distribute single copies of portions of the Licensed Works to other Authorized Users.
- 3.2. If the Subscriber is an educational institution, it may incorporate portions of the Licensed Works into printed Course Packs and Electronic Reserve Collections for use by Authorized Users in a course of instruction at the Subscriber's educational institution, but not for Commercial Use. Each portion of the Licensed Works used in this manner shall be identified with an appropriate acknowledgment of the source, listing the title and author of the extract, title and author of the work, and "Oxford University Press" as the publisher. Copies of such extracts shall be deleted by the Subscriber or Authorized User when the extracts are no longer being used in the course of instruction. Course Packs in non-print forms, such as audio or Braille, may also be offered to Authorized Users who, in the reasonable belief of the Subscriber, are visually impaired.

### **4. LIMITATIONS ON USE OF THE LICENSED WORKS**

- 4.1. The Subscriber and Authorized Users may not:
  - 4.1.1. Remove or alter the authors' names or OUP's copyright notices or other means of identification or disclaimers as they appear in the Licensed Works;
  - 4.1.2. Systematically make printed or electronic copies of multiple extracts of the Licensed Works for any purpose, except to the limited extent expressly permitted by Section 3.2;
  - 4.1.3. Display or distribute any part of the Licensed Works on any electronic network, including, without limitation, the Internet and the World Wide Web, other than a Secure Network.
  - 4.1.4. Permit anyone other than Authorized Users to access or use the Licensed Works.
- 4.2. The written permission of OUP must be obtained in order for the Subscriber or any Authorized User to:
  - 4.2.1. Use all or any part of the Licensed Works for any Commercial Use;
  - 4.2.2. Intentionally distribute the whole or any part of the Licensed Works to anyone other than Authorized Users;
  - 4.2.3. Publish, distribute, or make available works based upon the Licensed Works, or works which combine the Licensed Works with any other material, except to the limited extent expressly permitted by Section 3.2 of this Agreement; or
  - 4.2.4. Alter, abridge, adapt, or modify the Licensed Works, except to the extent necessary to make them perceptible on a computer screen to Authorized Users.

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- 4.3. Nothing in this Agreement shall limit the rights of the Subscriber or an Authorized User to make a Fair Use of the Licensed Works.
- 4.4. The Subscriber shall use reasonable efforts to protect the Licensed Works from any use that is not permitted under this Agreement, and shall notify OUP of any such use of which it becomes aware. The Subscriber shall ensure its Authorized Users' compliance with the terms of this Agreement. In the event of any unauthorized use of the Licensed Works, OUP shall have the right to (a) terminate access to the Licensed Works from the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (b) require that Subscriber terminate access of the persons making such unauthorized use of the Licensed Works. Any failure by Subscriber to fulfill its obligations under this Section shall be considered a material breach of this Agreement.

### **5. ACKNOWLEDGMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

- 5.1. The Subscriber acknowledges that all copyrights, patent rights, OUP Trademarks, services marks, trade secrets and other intellectual property rights relating to the Licensed Works (collectively the "OUP Intellectual Property"), are the sole and exclusive property of OUP and that this Agreement does not convey to the Subscriber any right, title, or interest therein except for the right to use the Licensed Works in accordance with the terms and conditions of this Agreement. The Subscriber further acknowledges that the Regional Network has no ownership right or title in the OUP Intellectual Property.
- 5.2. The provisions of this Section shall survive the termination of this Agreement for any reason.

### **6. REPRESENTATIONS, WARRANTIES, INDEMNIFICATION, AND FORCE MAJEURE**

- 6.1. OUP represents and warrants as follows: (a) OUP has the power to enter into this Agreement and to grant the rights conferred herein to the Subscriber, (b) OUP is the owner of the Licensed Works, and has the right to license the Licensed Works as contemplated hereunder, (c) the Licensed Works do not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary right or contract right of any third party, and (d) the Licensed Works have been designed and fully tested in such a manner that they will not generate any invalid or incorrect date-related results or cause any of the problems commonly referred to as "Year 2000 problems" and will, without interruption or manual intervention, continue to operate consistently, predictably, and accurately and in accordance with all of the requirements of this Agreement when used during any year prior to, during or after the calendar year 2000. EXCEPT AS EXPRESSLY SET FORTH ABOVE, OUP MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, WITH RESPECT TO ANY ASPECT OF THE LICENSED WORKS OR THE AVAILABILITY OF THE LICENSED WORKS. OUP DOES NOT WARRANT THAT THE LICENSED WORKS WILL BE ACCURATE OR COMPLETE, NOR DOES IT MAKE ANY WARRANTIES AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE LICENSED WORKS. THE SUBSCRIBER EXPRESSLY AGREES THAT USE OF THE LICENSED WORKS IS AT SUBSCRIBER'S AND THE AUTHORIZED USERS' SOLE RISK. ACCORDINGLY, OUP WILL NOT IN ANY WAY BE LIABLE TO THE SUBSCRIBER, TO ANY AUTHORIZED USER, OR TO ANY OTHER ENTITY FOR ANY INACCURACIES, ERRORS, OMISSIONS OR DELAYS IN THE LICENSED WORKS, REGARDLESS OF CAUSE, OR FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT, OR CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS) RESULTING THEREFROM, REGARDLESS OF CAUSE AND REGARDLESS OF WHETHER OR NOT OUP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, IN

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THE EVENT THAT OUP IS DEEMED LIABLE IN ANY MANNER, THEN SUCH LIABILITY, WHETHER ARISING FROM CONTRACT, WARRANTY, NEGLIGENCE OR OTHERWISE SHALL, IN NO EVENT, EXCEED THE AMOUNT THE SUBSCRIBER HAS PAID FOR OR THAT IS ATTRIBUTABLE TO USE OF THE LICENSED WORKS DURING THE PRECEDING THREE (3) MONTH PERIOD. THE SUBSCRIBER FURTHER AGREES THAT NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THE LICENSED WORKS MAY BE BROUGHT BY THE SUBSCRIBER AGAINST OUP MORE THAN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO SUCH ACTION HAS OCCURRED.

- 6.1.1. OUP shall defend, indemnify, and hold the Subscriber harmless against all claims, suits, proceedings, losses, liabilities, and damages (including costs, expenses, and reasonable attorneys' fees) asserted by third parties against the Subscriber (collectively "Claims") which arise out of any act or omission by OUP that constitutes a breach of any of the foregoing warranties.
  - 6.1.2. OUP shall have the right to select counsel to conduct the defense in any actions involving Claims to which the indemnification in Section 6.1.1 applies; provided, however, that the Subscriber may, at its own expense, retain separate counsel to participate in the defense and represent its interests.
  - 6.1.3. The Subscriber shall promptly notify OUP of any Claims for which a defense or indemnification will be sought and shall fully cooperate in any defense conducted by OUP.
- 6.2. The Subscriber represents and warrants as follows: (a) the Subscriber is a library, museum, or an educational institution, and has the power to enter into this Agreement, and (b) any materials prepared or contributed by the Subscriber in connection with carrying out its duties under this Agreement do not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary right or contract right of any third party.
  - 6.2.1. Except to the extent, if any, that such an obligation may be limited or prohibited by the laws or regulations governing contracts with relevant government agencies (including but not limited to public libraries or state or local government supported educational institutions), the Subscriber shall defend, indemnify, and hold OUP harmless against all Claims which arise out of any act or omission by the Subscriber that constitutes a breach any of the foregoing warranties, and all claims by Authorized Users in the event that access to the Licensed Works is terminated for any reason.
  - 6.2.2. The Subscriber shall have the right to select counsel to conduct the defense in any actions involving Claims to which the indemnification in Section 6.2.1 applies; provided, however, that OUP may, at its own expense, retain separate counsel to participate in the defense and represent its interests.
  - 6.2.3. OUP shall promptly notify the Subscriber of any Claims for which a defense or indemnification will be sought and shall fully cooperate in any defense conducted by the Subscriber.
- 6.3. Neither the Subscriber nor OUP shall be responsible to one another for any failure to perform any obligation under this Agreement due to Acts of God, war, riot, embargoes, acts of civil or military authorities, fire, flood, typhoon, wind storm, snow storm, blizzard, hurricane, or other cause that is outside the control of the party and could not be avoided by the exercise of due care. Should any delay in performance occur arising out of any of the foregoing events, a party's obligations that are dependent upon performance of the delayed event by the other party shall be extended correspondingly. Notwithstanding the occurrence of any of the events set forth in this Section, the parties shall at all times use reasonable efforts to perform all obligations under this Agreement in a timely manner, taking account of the existing circumstances.

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### **7. TERM OF THE AGREEMENT, TERMINATION, AND OPPORTUNITY TO CURE**

- 7.1.** This Agreement shall commence on the Activation Date, and shall remain in full force and effect until the day before the next following Anniversary Date. Thereafter, this Agreement may be renewed for successive one (1) year periods, in accordance with the Regional Network/Subscriber Agreement and subject to the payment of all fees required thereby, beginning on the Anniversary Date of each year, and ending on the day before the Anniversary Date of the following year, unless earlier terminated as provided for in Sections 8.2 or 8.3. However, under any and all circumstances, this Agreement shall terminate on the day before the fifth anniversary of the Activation Date, unless expressly agreed otherwise in writing by the parties.
- 7.2.** In the event that a party commits a material breach of this Agreement and such material breach continues unremedied for 30 days after written notice thereof from the party that is not in breach, the party not in breach may, at its election, terminate this Agreement, and/or exercise all rights and remedies which may be available to it in law or equity.
- 7.3.** In the event that the Regional Network's agreement with OUP relating to the Licensed Works expires or terminates for any reason, this Agreement shall immediately terminate. The Regional Network's and/or OUP's failure to provide advance notice of such expiration or termination shall not prevent this Agreement from terminating immediately upon the termination of the Regional Network's agreement with OUP.
- 7.4.** Upon termination of this Agreement, the Subscriber agrees to continue to adhere to the provisions of this Agreement relating to any OUP Intellectual Property.

### **8. NOTICES**

- 8.1.** All matters that require notification of one party by the other shall be in writing and addressed as designated in Section 8.2 and 8.3 (or as the parties may hereafter designate from time to time in writing), and delivered by facsimile, recognized overnight delivery service, or United States Postal Service Express Mail-Certified with return receipt requested; provided, however, that any notification by facsimile shall also be sent by first-class mail. Notification shall be deemed to have occurred as of the date and time when such notification is sent.
- 8.2.** Notifications to the Subscriber shall be addressed to the contact person and address set forth hereinabove:
- 8.3.** Notifications to OUP shall be addressed to:

President  
Oxford University Press, Inc.  
198 Madison Avenue  
New York, New York 10016-4314  
Facsimile: 212-726-6442

With a copy to:

Satterlee Stephens Burke & Burke LLP  
230 Park Avenue  
New York, New York 10169  
Facsimile: 212-818-9606

### **9. LIMITATIONS ON ASSIGNMENT**

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9.1. This Agreement may not be assigned by either party without written consent of the other party. Unless such permission is expressly assigned, any such purported assignment shall be null and void.

**10. ENTIRE AGREEMENT, NO ORAL MODIFICATIONS, NO WAIVER**

10.1. This Agreement, together with the Regional Network/Subscriber Agreement, constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements (whether written or oral) relating to the subject matter of this Agreement.

10.2. This Agreement shall not be modified or amended except by a written instrument signed by both parties hereto. To the extent, if any, that applicable state laws or regulations require such a procedure, a proposed amendment, in order to be effective, shall be approved by (a) the Subscriber, (b) OUP, and, depending upon applicable law, (c) the Attorney General and/or Comptroller of a State or Commonwealth whose interests are affected thereby (“Attorney General Approval”).

10.3. Notwithstanding anything contained in Section 12.2 above and without either party seeking or obtaining Attorney General Approval, OUP may add additional database(s) to this Agreement at any time, provided that it or the Regional Network shall give the Subscriber thirty (30) days advance written notice thereof, together with a schedule of the Regional Network’s pricing for the added database(s). The Subscriber shall retain the right to offer or not offer the added database(s) to its Authorized Users in its sole judgment; provided, however, that if the Subscriber elects to offer the added database(s) to its Authorized Users, it shall do so subject to all of the terms and conditions of this Agreement.

10.4. Either party’s waiver, or failure to require performance by the other, of any provision of this Agreement will not affect its full right to require such performance at any subsequent time, or be construed to be a waiver of the provision itself.

**11. HEADINGS, SEVERABILITY**

11.1. Headings used in this Agreement are for convenience only and are deemed not to be part of the Agreement.

11.2. If any portion of this Agreement shall be declared invalid or unenforceable by any court of competent jurisdiction, the remaining portion thereof shall nonetheless remain in full force and effect.

**AGREED TO:**

\_\_\_\_\_  
Institution/Organization

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date