

## LexisNexis Academic & Library Solutions Subscriber License Agreement

This Agreement ("Agreement") is entered into by and between LexisNexis Academic & Library Solutions, a division of Reed-Elsevier Inc. ("LNA&LS"), with offices at [REDACTED] and the institution listed below ("Subscribing Institution").

**University of California San Diego, La Jolla, CA**

Name of Subscribing Institution, City, State or Country

**EFFECTIVE DATE: 10/14/2009**

### DEFINITION OF TERMS

<b>Services:</b>	LNA&LS Web-based, subscription services for academic institutions, public library systems, and other libraries, including all such services currently offered under this Agreement and any which may be offered under this Agreement in the future.
<b>Subscription:</b>	Access to and use of the Services by a single Subscribing Institution under the terms of this Agreement.
<b>Materials:</b>	All documents, bibliographic records, images, computer files, and other materials accessed through the Services.
<b>Authorized Users:</b>	<p>The following types of users are considered Authorized Users, permitted to use the Service in accordance with the terms and conditions of this Agreement</p> <p><b>Higher Education Institutions:</b> Enrolled students, active instructors, active faculty, and administrative staff. In addition, unaffiliated, walk-in library patrons may be Authorized Users provided that they are using the Services on-site at the Subscribing Institution's library and all use of the Services is occasional and insubstantial, initiated by the patron, consistent with their use of other library resources and is not deemed by LNA&amp;LS to be detrimental to the interests of LNA&amp;LS or its content providers ("Authorized Walk-In Users"). Any person, other than an Authorized Walk-In User, who does not possess an authorized and valid college or university identification, is not an Authorized User.</p> <p><b>Primary and Secondary Education Institutions:</b> Enrolled students, and current teaching and administrative staff.</p> <p><b>Public Library Systems:</b> Staff of the library system, registered patrons of the library, library patrons using the Services on-site at the library.</p> <p><b>State Libraries:</b> Staff of the library system, registered patrons of the library, library patrons using the Services on-site at the library.</p> <p><b>Additional Authorized Users for All Types of Subscribers:</b> Other researchers designated by the Subscribing Institution and approved by LNA&amp;LS.</p>
<b>Subscription Period:</b>	The period of time, usually twelve months, for which the Subscribing Institution, or an entity acting on its behalf, has ordered a Service from LNA&LS.

### 1. SCOPE, TERM, AND TERMINATION

This Agreement governs all Services currently or in the future licensed to the Subscribing Institution by LNA&LS under this Agreement.

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The Service(s) to be provided under this Agreement shall be set forth in a purchase order (the "Purchase Order"). For each Subscription Period, the Subscribing Institution or an authorized entity acting on its behalf (an "Authorized Agent") must submit a completed and signed Purchase Order to LNA&LS not less than thirty (30) days prior to the first day of the Subscription Period. The Purchase Order shall specify: (a) the Service(s) to be provided, (b) the start and end dates of the Subscription Period, (c) pricing information required by LNA&LS, such as full-time equivalent (FTE) enrollment or other institution characteristics, and (d) the agreed cost of the Service(s). To renew a subscription, not less than sixty (60) days prior to the end of each Subscription Period, LNA&LS shall provide the Subscribing Institution or, if applicable, its Authorized Agent, with a renewal Purchase Order. The Subscribing Institution or its Authorized Agent must submit a completed and signed renewal Purchase Order not less than 10 days prior to the first day of the next Subscription Period in order for the renewal to be effective. Pricing of the Services is set forth in the initial Purchase Order and each renewal Purchase Order.

This Agreement shall commence on the Effective Date and will continue until terminated by either party (a) immediately upon written notice to the breaching party if any materials breach remains uncured for more than 60 days after the breaching party received written notice identifying the specific breach, or (b) for convenience on the last day of a Subscription Period upon 60 days prior written notice to the other party.

## 2. CONDITIONS OF USE OF THE SERVICES

By accepting the Agreement, the Subscribing Institution agrees to abide by the terms and conditions contained herein for access to and use of the Services to which it currently subscribes and any Services it may subscribe to in the future regardless of whether the Subscription is licensed directly by the Subscribing Institution or by another entity, such as a consortium, acting on its behalf.

The Agreement must be signed by the Subscribing Institution, or its authorized representative, before gaining access to or use of the Services. Access to the Services will not be granted until the Agreement is signed.

## 3. GRANT

LNA&LS hereby grants to the Subscribing Institution and its Authorized Users a non-exclusive, nontransferable, limited license to access and use for research purposes the Services licensed to the Subscribing Institution by means of a Purchase Order, either submitted by the Subscribing Institution or by another entity acting on its behalf. All research shall be directly connected to the educational activities of the Subscribing Institution. Any other use of the Services is STRICTLY PROHIBITED. The Services and any portion thereof shall remain the property of LNA&LS. Neither the Subscribing Institution nor its Authorized Users shall, or allow others to, create derivative products for resale. This license includes for each Authorized User:

- a) The right to electronically display Materials to no more than one person at a time (no dissemination or redistribution via electronic bulletin boards, e-mail distribution lists, intranets, the Internet or similar electronic medium), subject to the Supplemental Terms for Specific Materials. This does not limit the number of simultaneous users who may access the Services at the same time. However, Authorized Users may display a portion of the Materials at any one time (i.e., cannot display all Materials contained in a Service at one time) to multiple parties for purposes of training and classroom instruction only;
- b) The right to download an insubstantial number of documents retrieved from the Services and store them in machine-readable form, primarily for one person's exclusive use (the Authorized User who downloaded the Materials), to the extent such storage is not further limited or prohibited by the Supplemental Terms for Specific Materials; and
- c) The right to print documents retrieved from the Services.
- d) Neither the Subscribing Institution nor its Authorized Users shall or permit others to access or use the Services in any manner whatsoever by any means other than the user interface provided by LNA&LS or an LNA&LS approved third-party supplier. Use of the Services is permitted only via manually conducted, discrete, individual search and retrieval activities. All access to and use of the Services via mechanical, programmatic, robotic, scripted or any other automated means is STRICTLY PROHIBITED.

To the extent permitted by applicable copyright law and not further limited or prohibited by the Supplemental Terms for Specific Materials, Authorized Users, may make copies of Materials retrieved from the Services and distribute such copies. Except as specifically provided in the above license, Authorized Users are prohibited from downloading, storing, reproducing, transmitting, displaying, copying, distributing, or using Materials retrieved from the Services. LNA&LS is responsible for displaying all copyright notices to Authorized Users before printing or downloading of the Materials can occur.

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#### 4. OWNERSHIP OF THE SERVICES

All right, title, and interest (including all copyrights and other intellectual property rights) in the Services (in both print and machine-readable forms) belong to LNA&LS or its third party suppliers of Materials. The Subscribing Institution acquires no proprietary interest in the Services, Materials, or copies thereof.

Neither the Subscribing Institution nor its Authorized Users may use, or permit others to use, the Services or Materials in any fashion that infringes the copyrights or proprietary interests therein. Authorized Users may not remove or obscure the copyright notice or other notices contained in the Materials.

#### 5. RESTRICTIONS

Authorized Users may not use the Materials to determine a consumer's eligibility for (a) credit or insurance for personal, family, or household purposes; (b) employment; or (c) a government license or benefit.

Use of the Services for commercial purposes is strictly prohibited. Access to the Services shall not be shared with unauthorized users under any circumstances whatsoever. Any unauthorized access permitted by the Subscribing Institution or its Authorized Users is prohibited. The Subscribing Institution will use reasonable efforts to prevent unauthorized users from accessing or using the Services.

All access to and use of the Online Services via mechanical, programmatic, robotic, scripted or any other automated means is strictly prohibited. Use of the Services is permitted only via manually conducted, discrete, individual search and retrieval activities.

Subscribing Institutions that are Higher Education Institutions shall not encourage or promote the use of the Services by walk-in users.

Other provisions that govern Authorized Users use of the Services are set forth in the Supplemental Terms for Specific Materials, online descriptions of files, online notices following file selection, and individual documents retrieved from the Services (collectively, the "Additional Terms"), all of which are incorporated by reference into this Agreement. The Supplemental Terms for Specific Materials may be retrieved, viewed or printed at <http://www.lexisnexis.com/terms/supplemental/> on the LexisNexis website.

#### 6. ACCESS TO THE SERVICES

LNA&LS shall provide access to and use of the Services for Authorized Users only. The Subscribing Institution will not actively promote the use of the Services to unauthorized users. Access to the Services must be strictly controlled and limited to Authorized Users by one or more of the following methods:

- Internet Protocol ("IP") domain address filtering, whereby the Subscribing Institution provides LNA&LS with IP addresses registered to the Subscribing Institution and vouchsafes that these IP addresses are associated only with sites controlled by the Subscribing Institution.
- Proxy Server IP address filtering, whereby the Subscribing Institution provides LNA&LS with IP addresses of a proxy server belonging to or operated on behalf of the Subscribing Institution and vouchsafes that proxy server access is granted only to Authorized Users located at the Subscribing Institution or to remote users that have been authenticated as Authorized Users by the Subscribing Institution, using a secure patron authentication system.
- LNA&LS Remote Access Script, used by the Subscribing Institution under the terms and conditions of the Remote Access Addendum which must be signed and attached to this Agreement if Subscribing Institution intends to grant such access.
- LNA&LS Barcode Authentication System for Library Express Only.

#### 7. COPYRIGHT/TERMS AND CONDITIONS

Subscribing Institution and its Authorized Users hereby acknowledge that all copyright and title to the Materials and organization are and remain the property of LNA&LS or its third party suppliers of Materials. Any exceptions are identified in this Agreement. Subscribing Institution agrees to communicate the substance of the following statement (which may be changed in whole or in part by LNA&LS from time to time), to its users periodically:

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"LexisNexis online services and the materials contained therein are under copyright by LexisNexis. All rights reserved. No part of these Services may be used except for research purposes, and the Services may not be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior written permission of the LexisNexis Academic Library Solutions. Materials retrieved from the Services may not be duplicated in hard copy or machine-readable form without the prior written authorization of LexisNexis Academic & Library Solutions, except that limited reproduction of output is permitted solely for individual use by the Authorized User or internal distribution within the Subscribing Institution in accordance with the terms of this Agreement unless further limited or prohibited by the Copyright Act of 1976. Under no circumstances may the Materials or any portion thereof be used to create derivative products or services."

## 8. WARRANTY

LNA&LS represents and warrants that it has the full right and authority to make the Services available to the Subscribing Institution and its Authorized Users pursuant to this Agreement.

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT THE SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND LNA&LS, AND EACH THIRD PARTY SUPPLIER OF MATERIALS EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 9. LIMITATION OF LIABILITY

A Covered Party (as defined below) shall not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any errors in or omissions from the Services or any Materials available or not included therein, (b) the unavailability or interruption of the Services or any features thereof, (c) the Subscribing Institution's or Authorized User's use of the Services (regardless of whether assistance was received from a Covered Party in using the Services), (d) the Subscribing Institution or Authorized User's use of any equipment in connection with the Services, (e) the content of the Services, or (f) any delay or failure in performance beyond the reasonable control of a Covered Party.

"Covered Party" means (a) LNA&LS, its affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign LNA&LS or its affiliates; and (b) each third party supplier of Materials, their affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign of any third party supplier of Materials or any of their affiliates.

THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY OTHER CLAIM ARISING OUT OF OR RELATING TO THE SERVICES OR MATERIALS SHALL NOT EXCEED THE AMOUNT OF FEES PAID DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. THE SUBSCRIBING INSTITUTION'S RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES, WHICH THE SUBSCRIBING INSTITUTION MAY HAVE AGAINST ANY COVERED PARTY.

THE COVERED PARTIES SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE SERVICES, MATERIALS, OR THE FAILURE OF ANY COVERED PARTY TO PERFORM ITS OBLIGATIONS, REGARDLESS OF ANY NEGLIGENCE OF ANY COVERED PARTY.

## 10. MISCELLANEOUS

10.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein and supersedes any and all prior agreements, understandings, representations, promises or warranties whether written, oral or otherwise.

10.2 These terms and conditions, including the Supplemental Terms for Specific Material, may be immediately changed by LNA&LS by providing the Subscribing Institution with written notice or, from time to time, by written agreement between the parties. The Subscribing Institution's license for access to the Services may be terminated immediately upon written notice to LNA&LS if any change is unacceptable. In the event of a material breach that remains uncured, LNA&LS or the Subscribing Institution may terminate the subscription for access to the Services. The effective date of termination will be 30 days from the date notice of the specific breach is provided in the event of a material breach pursuant to Sections 3, 5, or 6 by the Subscribing Institution or an Authorized User, LNA&LS reserves the right to immediately suspend Subscribing Institution's access to and use of the Services without prior notice and to pursue any legal remedies available to LNA&LS.

10.3 If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, the same shall not affect any of the other provisions of this Agreement and the parties will endeavor to replace the provision with a valid, lawful or enforceable one that most closely embodies the original intentions of the

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parties. Failure or delay by either party in exercising any right or power hereunder shall not operate as a waiver of such right or power.

10.4 Neither party shall bear any responsibility or liability for any losses arising out of any delay or interruption of their performance of obligations under this Agreement due to any act of God, act of governmental authority, act of the public enemy, or due to war, riot, flood, civil commotion, insurrection, labor difficulty, severe or adverse weather conditions, lack or shortage of electrical power, malfunctions of equipment or software programs or any other cause beyond the reasonable control of the party delayed.

10.5 Headings are for the convenience of the parties and have no legal effect.

10.6 If any state or local sales, use, or similar taxes are under this Agreement, such taxes shall be charged to Subscriber Institution's account or the network or consortium as applicable. If such party is exempt from any such taxes, the tax shall not be charged upon receipt of a certificate of exemption.

10.7 Subscribing Institution may not assign this Agreement without the prior written consent of LNA&LS, which consent will not be unreasonably withheld.

10.8 Neither party may bring an action against the other party beyond two (2) years after the cause of action has occurred.

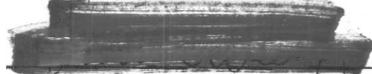
10.9 The following clauses shall survive the cancellation, expiration, or other termination of this Agreement: 4, 5, 7 and 9.

AGREED TO AND ACCEPTED BY:

University of California San Diego  
SUBSCRIBING INSTITUTION

BY:   
NAME: Tony A. Harvell  
TITLE: Head of Acquisitions  
DATE: 10/19/09

LexisNexis Academic & Library Solutions,  
a division of Reed Elsevier Inc.

BY:   
NAME: Louis G. Waldorf  
TITLE: Finance Manager  
DATE: 10/22/09