

## MASTER CUSTOMER LICENSE AGREEMENT

1. **Parties.** The parties to this Master Customer License Agreement (the “License”) are **Disclosure Incorporated (“DI”)**, a Delaware corporation, with offices at 5161 River Road, Bethesda, MD 20816, acting for itself and/or as agent for **DI affiliates**, and **Massachusetts Institute of Technology**, 77 Massachusetts Avenue, Cambridge, MA 02139-4307 (“**Customer**”).

**Definitions.** As used here: (a) “**Content**” means a database described in a Subscription, including without limitation all documentation, indices, data, and electronic images and searchable text files of documents, and proprietary tagging and navigational aids; (b) “**DI**” means DI and/or a DI Affiliate, as the context requires; (c) “**DI Affiliate**” means an entity controlled by, controlling, or under common control with DI; (d) “**Licensed Materials**” means Content, Software, and tangible delivery media, if any, provided by DI hereunder; (e) “**Licensors**” means third parties who provide Third Party Data or Third Party Software to DI for inclusion in Content or delivery to Customer hereunder; (f) “**Software**” means all computer application programs delivered or available to Customer in connection with a Subscription; (g) “**Subscription**” means a “Customer Subscription Agreement” incorporating this License by reference, executed by Customer and DI during the Term hereof, specifying which Content and Software is licensed hereunder; (h) “**Third Party Data**” means Content licensed by a **Licensor** to DI for Customer; and (i) “**Third Party Software**” means computer programs proprietary to **Licensors**.

2. **Grant of License; Proprietary Rights.** The License defines each party’s rights and obligations with respect to the Subscription. DI hereby grants to Customer, and Customer accepts, a limited, non-exclusive, non-transferable license to use Licensed Materials for the term of a Subscription, for educational, research, personal and internal business purposes, and not for re-sale or re-distribution, subject to all the terms herein. Customer may allow access to and use of Licensed Materials only in accordance with limitations specified in the Subscription. Software may be used only to retrieve and manipulate Content. Customer acknowledges that all intellectual property rights, copyrights, and trade secret rights, tangible and intellectual, in and to Licensed Materials, other than data in the public domain, belong to DI and **Licensors**. All tangible delivery media shall remain the property of DI, except as otherwise agreed in writing.

**Additional Terms for Third Party Data and Software:** Certain **Licensors** require that Customer either have a license directly from the **Licensor**, or agree to be bound by separate terms and conditions. If Customer should order Third Party data and Software, to which separate terms and conditions apply, DI will notify customer in writing. Customer may decline such terms, but DI may not deliver Third Party Data or Third Party Software to any Customer who either declines or does not comply with such terms. Customer’s use of such Third Party Data and Third Party Software is governed by the **Licensor’s** terms and conditions.

3. **Limitations on Use and Permitted Use:** At no charge, Customer and Authorized Users may:

- access, search, view and browse through the Licensed Materials on computer terminals meeting the minimum system configuration specified in the Subscription.
- print or download electronic file copies of documents included in the Licensed Materials for research, scholarly and academic use.
- print an Insubstantial Portion of Content to make available to students in connection with course materials.
- provide incidental and occasional copies of an Insubstantial Portion of Content to non-authorized individuals for collaborative research and scholarly purposes.
- obtain remote access to the Licensed Materials through secure access procedures established by Customer.

In addition, Customer may provide access to and permit copying of Insubstantial Portions of Content by members of the public (that is, not otherwise Authorized Users) for their personal and educational use and scholarly research, only on workstations located at the Customer's library facilities, and not from remote terminals, and at no charge other than a nominal fee for printing pages if a fee is customarily imposed by the Customer for all similar use of its materials in general.

Customer may not copy, transfer, reproduce, or create derivative works from, any part of the Content for re-distribution, lease or license to any third party for a fee. Customer may not reverse-engineer or de-compile Software or otherwise attempt to reveal its proprietary programming techniques and structures.

"Insubstantial Portion of Content" means a quantity of data, or number of records or documents, which would not reasonably substitute for a copy of the Content, or a separately marketed subset thereof, and would not prejudice or diminish DI's or Licensor's advantage in exploiting the Content (or any separately marketed subset thereof) for commercial gain.

4. **Fees and Payment; Remedies for Nonpayment.** Customer agrees to pay the fees listed in each executed Subscription, plus applicable sales taxes and governmental fees, if any, within sixty (60) days of receipt of a correct invoice. The appearance of Customer's Identification Code (defined next) on an electronic order shall serve as Customer's signature and authorization for such order, unless Customer notifies DI that Customer's Identification Code has gotten into the hands of an unauthorized third party. "Identification Code" means the password or other electronic signature assigned to Customer for the purpose of accessing Licensed Materials and/or authorizing charges to Customer's account.

Questions regarding invoices shall be raised with DI (or its agent) within Thirty (30) days of receipt. If Customer repeatedly and willfully fails to pay any undisputed invoice within sixty (60) days of receipt, DI may, without prejudice to other remedies, (a) impose a finance charge at the rate of the lesser of one and one-half percent (1 1/2%) per month or the maximum allowable by law on overdue amounts, and/or (b) suspend Customer's access to Licensed Materials until paid in full. Breach of this provision is a material breach of the License.

**5. LIMITED WARRANTIES; DISCLAIMERS; LIMITATION OF DAMAGES.\***

(A) **LIMITED WARRANTY:** DI REPRESENTS AND WARRANTS THAT IT HAS THE RIGHT TO LICENSE AND/OR DELIVER LICENSED MATERIALS TO CUSTOMER AS PROVIDED HEREIN. DI WARRANTS THAT ANY TANGIBLE DELIVERY MEDIA SUPPLIED BY DI WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF DELIVERY, AND CUSTOMER AGREES THAT ITS EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY IS TO RECEIVE A REPLACEMENT OF THE DEFECTIVE DELIVERY MEDIUM.

(B) **DISCLAIMERS:** THE ABOVE ARE THE ONLY WARRANTIES OF ANY KIND MADE BY DI. EXCEPT AS WARRANTED IN (A), ABOVE, LICENSED MATERIALS ARE PROVIDED TO CUSTOMER "AS IS," AND DI AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. IN PARTICULAR, DI AND LICENSORS DISCLAIM IMPLIED WARRANTIES OF **MERCHANTIABILITY** OR FITNESS FOR A PARTICULAR PURPOSE, AND MAKE NO WARRANTY OF ACCURACY, COMPLETENESS, CURRENTNESS, FUNCTIONALITY, RELIABILITY, SPEED OF DELIVERY. DI AND LICENSORS DISCLAIM LIABILITY FOR ANY LOSS OR INJURY CAUSED IN WHOLE OR IN PART BY NEGLIGENCE IN PRODUCING, COMPILING, OR DELIVERING LICENSED MATERIALS. DI AND LICENSORS DO NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATION REGARDING, THE USE OF LICENSED MATERIALS, OR THE RESULTS CUSTOMER MAY GET FROM THEIR USE. CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE SUITABILITY AND RESULTS OF USE AND THE PERFORMANCE OF LICENSED MATERIALS. CUSTOMER AGREES THAT LICENSED MATERIALS ARE NOT INVESTMENT ADVICE.

(C) **Limitation of Damages:** DI and **Licensors** shall have no liability, in contract or in tort or otherwise, for any indirect, special, consequential or incidental damages (including lost profits), business interruption, loss of business information and the like, or, except as provided in (A) above, direct damages, arising out of any inaccuracy or defect in, or the use of or inability to use, Licensed Materials, even if DI has been advised of the possibility of such damages.

EXCEPT FOR CASES INVOLVING INTELLECTUAL PROPERTY INFRINGEMENT, IN NO EVENT SHALL DI AND LICENSORS BE LIABLE FOR AN AMOUNT IN EXCESS OF THE AMOUNT PAID BY CUSTOMER TO DI FOR THE SUBSCRIPTION DURING ITS THEN-CURRENT TERM FOR ANY AND ALL CLAIMS ARISING OUT OF THE LICENSE OR ANY SUBSCRIPTION.

(D) **Period for Bringing Actions.** CUSTOMER MAY NOT BRING AN ACTION UNDER A SUBSCRIPTION OR THE LICENSE MORE THAN ONE YEAR AFTER CUSTOMER KNEW OR SHOULD HAVE KNOWN OF SUCH CAUSE OF ACTION.

**6. Changes to Licensed Materials.** DI reserves the right to change the structure, format, and content of Licensed Materials, provided that Customer shall continue to receive substantially the same Content and essential functionality in the Subscription provided at the start of the current term of any Subscription. DI's obligation to deliver Third Party Data or Third Party Software is conditioned upon the continuation of DI's license from its **Licensors**. DI may offer Customer enhancements and additions to

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\* The laws of some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so these limitations may not apply

Licensed Materials for additional fees, which Customer may accept or decline. This License shall apply to Licensed Materials as modified.

**7. Default and Waiver.** If Customer fails to perform or observe any material term or condition of a Subscription, DI may, without prejudice to any other remedies it may have, on ten (10) days' notice for breach of Section 2 or 3, or thirty (30) days' prior written notice to Customer for breach of any other Section, if Customer has not cured the breach, (a) require Customer to return the Licensed Materials to DI at Customer's expense; (b) if Customer has tangible delivery media, enter peacefully upon Customer's premises during normal business hours and remove the Licensed Materials; and/or (c) terminate the affected Subscription. Customer shall remain liable for all payments and other costs specified on the Subscription. No specific remedy shall be exclusive of any other remedy. If DI fails to perform or observe any material term or condition of a Subscription, then Customer may, on thirty (30) days' prior written notice to DI, if DI has not cured the breach, terminate the Subscription and receive a pro-rata refund of Subscription fees paid for the remaining term of the Subscription. No course of conduct or delay in exercising any rights shall waive any rights or modify this License or the Subscription.

**8. Term; Automatic Renewal.** The term of the License (the "Term") shall begin on the effective date of the first Subscription incorporating this License by reference, and shall continue so long as any such Subscription shall be in effect, unless otherwise terminated as provided above. A Subscription shall be in effect for the period indicated on the Subscription, unless terminated as provided above, and may renew as provided below.

DI may revise fees and the terms of this License effective for the next renewal term of a Subscription following written notice. However, the Subscription shall not renew unless Customer consents to such revised fees and terms in writing. Unless Customer declines automatic renewal in writing in a Subscription, the Subscription shall automatically renew for successive one year renewal terms until one party provides written notice of termination to the other in a timely fashion. Customer must give notice of termination sixty (60) days prior to expiration of the current term. DI must give notice of termination no later than sixty (60) days prior to expiration of the current term.

**9. Termination and Return or Destruction of Licensed Materials.** Upon termination of a Subscription, Customer shall immediately cease using and promptly return to DI, or, at DI's option, destroy, any copies of Licensed Materials, excluding Insubstantial Portions of Content copied and used in the manner permitted in Section 3, above. Each party's liability for breach and post-termination duties and obligations, and Sections 5, 7, 9, 10, and 12 hereof shall survive termination of the Subscription.

**10. Governing Law and Attorneys Fees and Costs.** This License shall be construed and enforced in accordance with the laws of the State of Maryland, without reference to its conflict of laws provisions. Customer irrevocably consents to the exercise of personal jurisdiction of the courts in Maryland for the adjudication of any dispute hereunder. In any action to enforce the License or a Subscription, the prevailing party shall be entitled to recover expenses, including reasonable attorneys' fees and court costs.

**11. No Assignment; Material Change in Users.** Neither party may assign a Subscription or this License without prior written consent of the other, except to an affiliate of such party. In the event of a merger, consolidation, acquisition or other corporate transaction by Customer which causes a material change in the fundamental nature of the Customer's business, or the number, location or functions of users of Licensed Materials, Customer may not grant access to Licensed Materials to new types or groups of users without DI's prior written consent.

**12. Entire Agreement.** The entire agreement between DI and Customer in connection with the subject matter hereof is embodied in executed copies of the License, the Master Customer Equipment Agreement (if applicable), Subscription(s) and attachments, all of which constitute the "Agreement", and are the final expression of the parties' agreement on this subject. In the event of a conflict, the terms of any Subscription and its attachments shall control over the terms of this License. The Agreement supersedes any prior or contemporaneous agreements, statements or representations, oral or written. No waiver or modification shall be binding without the written consent of both parties. All terms of any Customer purchase order or other document are rejected unless accepted in writing. The terms and conditions governing Third Party Data do not amend the terms herein as between Customer and DI.

**13. Force Majeure and Severability.** Neither party shall be liable or deemed to be in default for any delay or failure in performance or interruption of service resulting from causes beyond the reasonable control of such party, such as acts of God, war, natural disasters, unforeseeable electronic transmission or equipment failure, and the like. In the event any provision of this License is found by a court of competent jurisdiction to be invalid or unenforceable, such provision shall continue to apply subject to those reductions or modifications necessary to make such provision valid and enforceable. All other provisions shall remain in full force and effect.

**14. Developed at Private Expense.** For agencies of the U.S. Department of Defense, use is subject to DI's commercial terms. All other Government users are subject to Restricted Rights in FAR 52.227-19(c)( 1) and (2).

**In witness whereof**, the parties or their authorized representatives sign this License, intending to be legally bound.

DISCLOSURE INCORPORATED

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY  
(Customer)

By: \_\_\_\_\_  
Date

By: \_\_\_\_\_  
Date

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

