

**Standard License Agreement**

**Randall Derrick**  
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**Please fill out the items marked in blue:**

This Standard License Agreement is made effective as of date \_\_\_\_\_, for the effective period of time, (the licensing period) from \_\_\_\_\_ to \_\_\_\_\_, or number of published copies \_\_\_\_\_.

**from Publisher/Licensor:**

Publisher/Licensor Name \_\_\_\_\_

Address of Licensor \_\_\_\_\_

City of Licensor \_\_\_\_\_

State of Licensor \_\_\_\_\_

Country of Licensor \_\_\_\_\_

Postal Code of Licensor \_\_\_\_\_

**to Licensee:**

Licensee Name \_\_\_\_\_

Address of Licensee \_\_\_\_\_

City of Licensee \_\_\_\_\_

State of Licensee \_\_\_\_\_

Country of Licensee \_\_\_\_\_

Postal Code of Licensee \_\_\_\_\_

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**I. Content of Licensed Materials; Grant of License**

The materials that are the subject of this Agreement shall consist of [electronic information published or otherwise made available by Licensor] (hereinafter referred to as the "Licensed Materials").

Licensee and its Authorized Users acknowledge that the copyright and title to the Licensed Materials and any trademarks or service marks relating thereto remain with Licensor and/or its suppliers. Neither Licensee nor its Authorized Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement.

Licensor hereby grants to Licensee non-exclusive use of the Licensed Materials and the right to provide the Licensed Materials to Authorized Users in accordance with this Agreement.

**II. Delivery/Access of Licensed Materials to Licensee**

Licensor will provide the Licensed Materials to the Licensee in at least one of the following manners:

Network Access. The Licensed Materials will be stored at one or more Licensor locations in digital form accessible by Hypertext Transfer Protocol links between such locations and authorized networks of Licensee.

Physical Media. Copies of the Licensed Materials will be provided to the Licensee on physical media (e.g., Digital Video Disk, CD-ROM, DVD-R) for use on Licensee's network and workstations.

**III. Fees**

Licensee shall make payment to Licensor for use of the Licensed Materials pursuant to the price terms set forth in the License Fee Price List PDF available at [http://www.randallderrick.com/License\\_Fee\\_Prices.pdf](http://www.randallderrick.com/License_Fee_Prices.pdf).

**III.A. Payments**

Payment compensation is due prior to the transfer of availability of files or purchased matter to the Licensee from the Licensor.

**IV. Authorized Use of Licensed Materials**

Authorized Users. "Authorized Users" are:

Persons Affiliated with Licensee. Full and part time students and employees (including faculty, staff, affiliated researchers and independent contractors) of Licensee and the institution of which it is a part, regardless of the physical location of such persons.

Walk-ins. Patrons not affiliated with Licensee who are physically present at Licensee's site(s) ("walk-ins").

Authorized Uses. Licensee and Authorized Users may make all use of the Licensed Materials as is consistent with the Fair Use Provisions of United States and

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Interlibrary Loan. Licensee may fulfill requests from other institutions, 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 clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

#### **V. Access by and Authentication of Authorized Users**

Licensee and its Authorized Users shall be granted access to the Licensed Materials pursuant to the following:

IP Addresses, ie, HTTP. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by Licensee to Licensor.

#### **VI. Specific Restrictions on Use of Licensed Materials**

Unauthorized Use. Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

Modification of Licensed Materials. Licensee shall not modify or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

Removal of Copyright Notice. Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

Commercial Purposes. Other than as specifically permitted in this Agreement, Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

#### **VII. Licensor Performance Obligations**

Availability of Licensed Materials. Within [time period], Licensor shall make the Licensed Materials available to Licensee and Authorized Users.

Documentation. Licensor will provide and maintain help files and/or other appropriate user documentation.

Support. Licensor will offer activation or installation support, including assisting with the implementation of any Licensor software. Licensor will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Materials. Licensor will make its personnel available by email, phone or fax *during the licensing period* for feedback, problem-solving, or general questions.

Quality of Service. Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee's locale.

Licensor shall use reasonable efforts to provide continuous service *during the licensing period* with an average of 99% up-time *during the licensing period*. The 1% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.

Notification of Modifications of Licensed Materials. 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. Licensor shall give prompt notice of any such changes to Licensee. Failure by Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by Licensee. If any modifications render the Licensed Materials less useful to the Licensee or its Authorized Users, the Licensee may treat such modifications as a material breach subject to the Early Termination provisions of this Agreement below.

Completeness of Content. Where applicable, Licensor will inform Licensee of instances where online content differs from the print versions of the Licensed Materials.

Where applicable, Licensor shall use reasonable efforts to ensure that the online content is at least as complete as officially published versions of the Licensed Materials, represents complete, accurate and timely replications of the corresponding content contained within the print versions of such Materials, and will cooperate with Licensee to identify and correct errors or omissions.

Notice of "Click-Through" License Terms or Other Means of Passive Assent. In the event that Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), or otherwise attempts to impose such terms on Authorized Users through mere use or viewing of the Authorized Materials, Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall such terms materially differ from the provisions of this Agreement. In the event of any conflict between such terms and this Agreement, the terms of this Agreement shall prevail.

Withdrawal of Licensed Materials. Licensor reserves the right to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. Licensor shall give written notice to the Licensee of such withdrawal no later than [time period] following the removal of any item pursuant to this section. If any such withdrawal renders the Licensed Materials less useful to Licensee or its Authorized Users, Licensor shall reimburse Licensee in an amount that the withdrawal is proportional to the total Fees owed by Licensee under this Agreement.

#### **VIII. Licensee Performance Obligations**

Provision of Notice of License Terms to Authorized Users. Licensee shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement including, in particular, any limitations on access or use of the Licensed Materials as set forth in this Agreement.

Protection from Unauthorized Use. Licensee shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. 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 reasonable notice to Licensee (in no event less than [time period]) and cooperating with the Licensee to avoid recurrence of any unauthorized use.

Maintaining Confidentiality of Access Passwords. Where access to the Licensed Materials is to be controlled by use of passwords, Licensee shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party. Licensee shall also maintain the confidentiality of any institutional passwords provided by Licensor.

#### **IX. Mutual Performance Obligations**

Confidentiality of User Data. Licensor and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

Implementation of Developing Security Protocols. Licensee and Licensor shall cooperate in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

#### **X. Term**

This Agreement shall continue in effect *during the licensing period*, commencing on the Effective Date.

#### **XI. Renewal**

This agreement shall be renewable at the end of the current term for a successive, mutually specified term unless either party gives written notice of its intention not to renew, time period not specified, before expiration of the current term.

#### **XII. Early Termination**

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have seven working days from the receipt of notice 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 seven working days, the non-breaching party shall have the right to terminate the Agreement without further notice.

Upon Termination of this Agreement for cause online access to the Licensed Materials by Licensee and Authorized Users shall be terminated. Authorized copies of Licensed Materials may be retained by Licensee or Authorized Users and used subject to the terms of this Agreement.

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

#### **XIII. Perpetual License**

A nonexclusive, royalty-free, perpetual license to use any Licensed Materials is not applicable within this Agreement. New editions of publications, remastering of previous motion arts materials, require that all Licensing Agreements be reconsidered.

#### **XIV. Warranties**

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party. The Licensor shall indemnify and hold Licensee 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 Licensee or any Authorized User in accordance with the terms of this Agreement. This indemnity shall survive the termination of this agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

Licensor warrants that the physical medium, if any, on which the Licensed Materials is provided to Licensee will be free from defects for a period of [time period] from delivery.

#### **XV. Limitations on Warranties**

Notwithstanding anything else in this Agreement:

Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials.

Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.

Except for the express warranties stated herein, the Licensed Materials are provided on an "as is" basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

#### **XVI. Indemnities**

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, 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 sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement.

#### **XVII. Assignment and Transfer**

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

#### **XVIII. Governing Law**

This Agreement shall be interpreted and construed according to, and governed by, the laws of [Jurisdiction Convenient to All Parties], excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in [Jurisdiction Convenient to All Parties] shall have jurisdiction to hear any dispute under this Agreement.

#### **XIX. Dispute Resolution**

In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

**Mediation.** In the event that the parties can not by exercise of their best efforts resolve the dispute, they shall submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within [time period] after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within [time period] after such meeting, the dispute shall be submitted to binding arbitration in accordance with the Arbitration provision of this Agreement.

**Arbitration.** Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties.

All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than [time period] after the notice of arbitration is served.

The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

#### **XX. Force Majeure**

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

#### **XXI. Entire Agreement**

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

#### **XXII. Amendment**

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor

and Licensee.

**XXIII. Severability**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**XXIV. Waiver of Contractual Right**

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

**XXV. Notices**

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within 14 working days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

**If to Licensor:**

Licensor Name \_\_\_\_\_

Address of Licensor \_\_\_\_\_

City of Licensor \_\_\_\_\_

State of Licensor \_\_\_\_\_

Country of Licensor \_\_\_\_\_

Postal Code of Licensor \_\_\_\_\_

**If to Licensee:**

Licensee Name \_\_\_\_\_

Address of Licensee \_\_\_\_\_

City of Licensee \_\_\_\_\_

State of Licensee \_\_\_\_\_

Country of Licensee \_\_\_\_\_

Postal Code of Licensee \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

**LICENSOR:**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Signature of Authorized Signatory of Publisher

Print Name:

Title:

Address:

Telephone No.:

E-mail:

**LICENSEE:**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Signature of Authorized Signatory of Licensee

Print Name:

Title:

Address:

Telephone No.:

E-mail:

Purchased Items:

List item number and name, number of items and duration of license per item:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_
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