

Terms of Agreement

1. Definitions

(a) **Data.** "Data" means the business information and data licensed by Mergent hereunder, whether in the form of Internet access services, CD ROM, books, reports, manuals, updates, other publications and/or services, or through any other medium now known or hereafter invented

(b) **Software.** "Software" means any computer software, programs and other source codes licensed by Mergent to Customer and used solely to access the Data.

2. Grant of License to Data and Software

(a) **Grant of License.** For the period set forth on the reverse side hereof (the "Term"), Mergent hereby grants to Customer (as defined on the reverse side hereof) for the Term, a non-exclusive, non-transferable license to Use the Data and the Software but limited to the location and number of users identified on the reverse side for non-Internet sales. If this Agreement is an Internet or wide area network based sale, then Customer's use is limited to the number of concurrent users set forth on the reverse side.

(b) **Use.** Customer may use, access, copy, store, display and create derivative works of (collectively "Use") the Data for its internal business purposes and may use minor portions of the Data as part of reports, or separately, given to clients of Customer, whether in electronic or other present or future media. Customer may only use the Software to access the Data. Except as set forth herein, Customer may not Use, sell, modify, publish, distribute, or allow any third party access to, the Data, any portion thereof or the Software. Customer may not directly or indirectly, decompile, disassemble or otherwise reverse engineer the Software.

(c) **Delivery of Data.** Mergent will deliver the Data to Customer in accordance with the specifications described on the reverse side hereof. No obsolete or superseded Data may be utilized for current Use. Customer, at its own expense, will provide the hardware and software to permit it to access the Data and use the Software as delivered by Mergent.

(d) **Non-Exclusivity.** Customer acknowledges and agrees that Mergent may and will license and distribute the Data and the Software to third parties, including competitors of Customer.

3. Ownership of Data and Software

(a) **Property of Mergent.** All Data and Software are and will remain the property of Mergent. Except as provided for herein, this Agreement will not convey or transfer, or be deemed to convey or transfer, to Customer any rights in the Data or the Software.

(b) **Valuable Asset.** Customer acknowledges that the Data is a valuable asset of Mergent developed by the expenditure of considerable work, time and money, and is the result of Mergent's original and creative selection, coordination and arrangement. The Software is owned by and proprietary to Mergent and is protected as a trade secret and under U.S. copyright laws. The Use or disclosure of the Data or the Software in violation of the terms of this Agreement, without Mergent's express written permission is prohibited. Customer will not contest the validity of any right, title, or interest, including, without limitations, trade secrets and copyrights, asserted by Mergent in, to or in connection with any Data or Software. Customer will honor any reasonable requests by Mergent to perfect and protect, at Mergent's expense, any rights (including copyrights) asserted by Mergent in the Data or the Software.

4. Payments by Customer

(a) **Fees.** In consideration for the limited license granted herein, Customer will pay to Mergent the amounts set forth on the reverse side hereof. Mergent may modify the fees at the end of the Term or any renewal term upon prior written notice to Customer. If Customer has not paid any amount due hereunder within 30 days after the date when due, Mergent may, in its discretion, assess a late charge not exceeding 12% per annum on all such past due amounts, and may terminate any or all of Customer's rights hereunder, including the right to receive or use the Data.

(b) **Taxes.** Customer will be solely responsible for any and all federal, state and local taxes (excluding corporate franchise taxes and taxes based upon Mergent's net income or revenues) arising or accrued as a result of this Agreement.

5. Disclaimer; Limitation of Liability; Indemnities

(a) **Disclaimer.** MERGENT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE DATA OR THE SOFTWARE INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL DATA AND SOFTWARE IS PROVIDED "AS IS" AND WHEN AVAILABLE.

(b) **Limitations of Liability.** IN NO EVENT WILL MERGENT BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT OR FOR CUSTOMER'S LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL MERGENT BE LIABLE FOR ANY INACCURACY, OMISSIONS OR ERRORS IN THE DATA, OR FOR DELAYS IN PROVIDING THE DATA OR SOFTWARE. MERGENT WILL NOT BE LIABLE TO ANY THIRD PARTIES FOR ANY CLAIM OR DEMAND BASED ON OR RELATING TO THIS AGREEMENT OR TO THE DISTRIBUTION OR USE OF ALL OR ANY PORTION OF THE DATA OR THE SOFTWARE.

IN NO EVENT WILL MERGENT BE LIABLE OR OBLIGATED FOR ANY AMOUNT IN EXCESS OF THE PAYMENTS MADE BY CUSTOMER TO MERGENT HEREUNDER DURING THE TWELVE MONTHS PRECEDING THE DATE ON WHICH ANY CLAIM IS MADE AGAINST MERGENT.

(c) **Indemnity.** Customer shall indemnify and defend Mergent and hold Mergent harmless from any and all losses alleged to be as a result of, relating to, or arising from or in connection with (i) any claim by any client, affiliate or customer

of Customer and any third party receiving Data or Software through Customer in connection with the goods/services provided by Mergent under this Agreement; or (ii) any unauthorized use or misuse of the Data, the Software or any of Mergent, Inc.'s trademarks.

6. Term and Termination

(a) **Term.** Upon the expiration of the initial term and each renewal term (if any), this Agreement will renew thereafter automatically for additional successive periods of one (1) year, at the then current rate(s) payable at the start of the anniversary date, unless either party gives the other written notice of its intention not to renew at least sixty (60) days before the end of the then applicable term in which case the Agreement will terminate with the expiration of the then applicable term. All cancellations must be in writing and either faxed or overnight mailed to Mergent.

(b) **Termination by Mergent.** Mergent may terminate this Agreement upon 10 days written notice to Customer if Customer fails to make the payments required by it. Mergent may terminate this Agreement without notice or warning in the event Customer commits any material breach hereof. Mergent may terminate this Agreement upon at least 90 days' notice to Customer, or less notice if 90 days is not practical, in the event Mergent discontinues generally offering the Data to the public.

(c) **Obligations Upon Termination.** Upon termination of this Agreement, Customer will immediately cease Use of the Data and the Software. Customer will, as Mergent shall direct, either return to Mergent or destroy all Data that cannot feasibly be returned and will furnish to Mergent a certificate, satisfactory in form and substance to Mergent, of such destruction. Termination of this Agreement for any reason will not relieve Customer of its obligation to pay to Mergent all fees due and payable prior to the date of such termination. Termination by Mergent for nonpayment or material breach will not relieve Customer of its obligation to pay the fees due for the balance of the Term.

7. Trademarks

Mergent® is a registered trademark of Mergent, Inc. Mergent may notify Customer of additional trademarks, registered and not registered, from time to time (the "Trademarks"). Customer may only use such trademarks to identify the source of the Data in accordance with the terms hereof, and will not seek to register or use all of any part of such Trademarks as a corporate name or designation. All use of the Trademarks by Customer inures to the benefit of Mergent.

8. Miscellaneous

(a) **Survival.** Mergent's and Customer's rights and obligations under paragraphs 2, 3, 5, 6 and 7 will survive the expiration or termination of this Agreement.

(b) **Assignment/Entire Agreement/Waiver.** Customer may not assign any of its rights or obligations, in whole or in part, under this Agreement without the written consent of Mergent. This Agreement sets forth the entire agreement and understanding of the parties on the subject matter of the Agreement and supersedes all previous agreements and understandings about that subject matter. Except as set forth herein, this Agreement may be amended, modified, superseded, or canceled, and any of the terms thereof may be waived, only by a written document signed by both parties to this Agreement or, in the case of waiver, by the party waiving any right under this Agreement.

(c) **Governing Law/Jurisdiction.** This Agreement will be governed by, and construed in accordance with, the laws of the State of New York without reference to principles of conflicts of laws thereof. Each party hereby irrevocably and unconditionally consents, accepts, and agrees to submit to the exclusive jurisdiction of any state or federal court in the County and State of New York in respect of any dispute action, suit or proceeding arising out of, based upon, or relating to, this Agreement.

(d) **Remedies.** Customer expressly acknowledges and agrees that in the event of any breach or threatened breach by it of paragraphs 2(b), 3 or 7 hereof, Mergent will suffer irreparable harm or injury and the remedies available at law will be inadequate to redress such harm or injury. Accordingly, Mergent will, in addition to any and all other remedies available to it, be entitled to temporary or permanent injunctive relief to prevent or discontinue such breach or threatened breach without the necessity of proving damages. The rights and remedies provided by this Agreement will be cumulative and not exclusive.

(e) **Force Majeure.** Mergent shall not be responsible or liable to Customer for any loss or damage arising out of any delay in, or interruption of, the performance of Mergent's obligations pursuant to this Agreement resulting from Force Majeure, which shall include any act of God, act of governmental authority, act of the public enemy or due to war, the outbreak or escalation of hostilities, riot, fire, flood, civil commotion, insurrection, labor difficulty (including strike, work stoppage or slow down), severe or adverse weather conditions, communications line failure or other similar cause beyond the reasonable control of Mergent.

(f) **Authority/Counterparts.** Each of the parties hereto represents and warrants to the other that (i) it has full power and authority to enter into this Agreement and perform its obligations hereunder, and (ii) all necessary action has been duly taken to authorize the individual signing below to sign this Agreement. This Agreement may be signed in two or more counterparts, each of which will be deemed an original, with the same effect as if all signatures were on the same document.

(g) **Rights Retained.** All rights to the Data and Software not expressly granted to Customer are retained by Mergent.

ADDENDUM

This is an addendum to the Terms and Conditions document, attached as Exhibit A ("Master Agreement").

MODIFICATIONS TO MASTER AGREEMENT

Modify 5: Strike paragraph 5 and replace with the following text:

5. WARRANTIES, LIMITATIONS ON WARRANTIES and INDEMNITIES

(a) WARRANTIES. Subject to the Limitations set forth elsewhere in this Agreement:

Mergent 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.

Mergent warrants that the physical medium, if any, on which the Licensed Materials is provided to Customer will be free from defects for a period of ninety (90) days from delivery.

(b) 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.

Mergent 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 Mergent 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. Mergent 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. Mergent further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

(c) INDEMNITIES. The Mergent shall indemnify and hold Customer 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 Customer or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, 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.

Modify: 6b. Termination by Mergent. Mergent may terminate this Agreement upon 10 days written notice to Customer if Customer fails to make the payments required by it. ~~Mergent may terminate this Agreement without notice or warning in the event Customer commits any material breach hereof.~~ Mergent may terminate this Agreement upon at least 90 days' notice to Customer, or less notice if 90 days is not practical, in the event Mergent discontinues generally offering the Data to the public.

Add: 6c. Customer 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) Mergent may terminate such Authorized User's access to the Licensed Materials, (b) Mergent may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Customer shall terminate such Authorized User's access to the Licensed Materials upon Mergent's request. Mergent shall take none of the steps described in this paragraph without first providing a sixty (60) day notice to Customer and cooperation with the Customer to avoid recurrence of any unauthorized use.

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Mergent believes that Customer has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) 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 sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

Modify: 6de. Obligations Upon Termination. Upon termination of this Agreement, Customer will immediately cease Use of the Data and the Software. Customer will, as Mergent shall direct, either return to Mergent or destroy all Data that cannot feasibly be returned and will furnish to Mergent a certificate, satisfactory in form and substance to Mergent, of such destruction. Termination of this Agreement for any reason will not relieve Customer of its obligation to pay to Mergent all fees due and payable prior to the date of such termination. Termination by Mergent for nonpayment or material breach will not relieve Customer of its obligation to pay the fees due for the balance of the Term. In the event of early termination permitted by this Agreement, Customer shall be entitled to a refund of any fees or pro-rata portion thereof paid by Customer for any remaining period of the Agreement from the date of termination.

Modify: 8c. Governing Law/Jurisdiction. This Agreement will be governed by, and construed in accordance with, the laws of the State of ~~New York~~California without reference to principles of conflicts of laws thereof. Each party hereby irrevocably and unconditionally consents, accepts, and agrees to submit to the exclusive jurisdiction of any state or federal court in the County of San Diego and State of ~~New York~~California in respect of any dispute action, suit or proceeding arising out of, based upon, or relating to, this Agreement.

ENTIRE AGREEMENT

This **Addendum**, together with the **Master Agreement**, constitutes the entire agreement of the parties and supersedes all prior and contemporaneous agreements, communications,

understandings, and agreements relating to the subject matter hereof, whether oral or written, including any agreements associated with the order or trial request process.

This **Agreement** shall be renewable at the end of the current term for one year unless either party gives written notice of its intention not to renew sixty (60) days before expiration of the current term.

CONFLICT CLAUSE

Should there be a conflict between this agreement and any other vendor-generated, web accessible terms and conditions, whether now known or hereinafter generated, then this Addendum controls.

MODIFICATIONS OR AMENDMENTS


This Agreement may only be modified in a writing signed by both parties.

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


Mergent, Inc.

BY: 
Signature of Authorized Signatory for Mergent, Inc.

DATE: 7/20/07

Print Name: 
Title: 
Address: 
Telephone No.: 
E-mail: 

CUSTOMER: University of California – San Diego Libraries

BY: 
Signature of Authorized Signatory of Customer

DATE: 7/26/07

Print Name: 
Title: 
Address: 

Telephone No.: 
Fax No.: 
E-mail: 