

**LICENSE TERMS AND CONDITIONS
THE NEW YORK REVIEW OF BOOKS ELECTRONIC EDITION**

THIS AGREEMENT is made and entered into on this 8 day of May, 2007 by and between The New York Review of Books (hereinafter "The Review"), with principal place of business at [REDACTED], and University of California San Diego Libraries ("Subscriber"), with principal place of business or main address at [REDACTED]

- A. WHEREAS, The Review is the operator of an online information service available on a subscription basis which provides book reviews and articles of interest to faculty, administrators and students, and is willing to grant a license to Subscriber on the terms and conditions set forth below;
- B. WHEREAS, Subscriber is an institution that desires to obtain from The Review a campus-wide subscription license to the Licensed Content available through The Review Site;

NOW, THEREFORE, in consideration of the recitals, covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions. For purposes of this Agreement, the following definitions apply:

"Authorized Site" means the commonly networked single campus of an institution which is in the same geographic location, under a single administrative management unit, as more specifically described in Addendum A. For purposes of clarification, for an organization with multiple campuses or locations within one city, or in more than one city, only those locations under the same immediate administrative unit are part of the Authorized Site, and all other campuses require separate licenses.

"Authorized User(s)" means: (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 at the Authorized Site as current students (whether full or part time), 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 at the Authorized Site.

"Effective Date" means the date upon which the last party to sign this Agreement signs it and writes the date of its execution in the space provided at the top of this page of this Agreement.

"Fair Use" means the 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 Content" means the electronic version of certain articles, data, and commentary from the most recent printed edition of the publication known as The New

York Review of Books, certain archival content from such publication, as well as supplemental information, content and features made available by The Review from time to time through The Review Site.

"Renewal Date" means each yearly anniversary of the Service Commencement Date.

"Secure Network" means a network (whether stand alone 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.

"Service Commencement Date" means the first date on which The Review has activated service to Subscriber at the Authorized Site under this Agreement after Subscriber has provided to The Review, in the manner indicated in this Agreement, its authorized IP addresses for access to the Licensed Content. The Service Commencement Date generally occurs, but is not required to occur, within two business days of receipt by The Review of the required IP addresses.

"Subscription Administrator" means the individual designated by the Subscriber (and any replacements designated by Subscriber with prior written notice to The Review) to handle matters relating to this Agreement, complete the activation process for the Licensed Content, update authorized IP addresses for access to the Licensed Content, ensure the confidentiality of passwords and data exchanged in connection with this Agreement, and to be The Review's contact person, all as more specifically set forth below.

"Term" means the period of time set forth in Section 9 below.

"The Review Site" means the Internet site with the URL <http://www.nybooks.com>.

2. Grant of License. Subject to the terms and conditions of this Agreement, The Review hereby grants to Subscriber, and Subscriber accepts, a non-exclusive, non-transferable license (with no sublicense rights):
 - (a) to allow Authorized Users, during the Term of this Agreement, to access, retrieve, view, electronically download and save, or reproduce a reasonable number of copies of the Licensed Content solely for the purposes of research, teaching, scholarship, private study, or other Fair Use; and
 - (b) to allow library personnel within the scope of their employment at the libraries located at the Authorized Site periodically to make and lend an electronic or print copy of individual items of the Licensed Content in order to fulfill requests for such item by a third party library or other institution under the Subscriber's then-current inter-library loan agreements applicable to the Authorized Site, provided that: (i) such copies are not routinely or systematically provided (whether in one occasion or over a period of time) in such a manner or in such quantities as to substitute for a subscription by the receiving library or the end user, (ii) all copies reproduce any proprietary legends included on the material by The Review, (iii) the reproduction and lending is made without any purpose of direct or indirect commercial advantage, and (iv) the Subscriber and its personnel have no notice or

reason to believe that the copy or copies would be used for any purpose other than research, teaching, scholarship, private study or other Fair Use.

- (c) to incorporate articles, reviews, and other material from the Licensed Content into electronic 'coursepacks' for use in connection with courses offered by the Subscriber for academic credit, provided that such excerpts are deleted by the Subscriber by the end of the semester in which they are used (with such deletion confirmed in writing to The Review upon request).

3. **License Limitations.** Products and services offered by or through The Review now or hereafter, other than the Licensed Content, are not included in this Agreement. The Review reserves the right to determine the scope and selection of content that is made available as part of the Licensed Content at any time while this Agreement is in effect. The Subscriber is hereby notified that Licensed Content and the printed New York Review of Books are available for subscription by end users and other libraries at a reasonable price, and the Subscriber may notify end users and other libraries of this. The Subscriber expressly acknowledges that all copyrights, patent rights, trademarks, services marks, trade secrets and other intellectual property rights relating to the Licensed Content and The Review Site (collectively the "The Review Intellectual Property"), are the sole and exclusive property of The Review and that this Agreement does not convey to any right, title, or interest therein except for the right to use the Licensed Content and The Review Site in accordance with the terms and conditions of this Agreement
4. **Prohibited Uses.** Subscriber expressly acknowledges and agrees that The Review Site and the Licensed Content will be for the personal, non-commercial use of Authorized Users only, and that neither Subscriber nor Authorized Users have the right to:
 - (a) modify, adapt, retransmit, resell, redistribute or compile the Licensed Content, in whole or in part, including for purposes of creating course books or educational materials, or for any commercial endeavors, except as approved in advance in writing by The Review. The Review and its suppliers reserve all rights and licenses to the Licensed Content not expressly granted to Subscriber hereunder;
 - (b) remove or alter the authors' names or The Review's copyright notices or other means of identification or disclaimers as they appear in the Licensed Content or Review Site. All copies of any Licensed Content made by or on behalf of Subscriber under this Agreement shall bear all proprietary rights and other legends of The Review and its suppliers as reflected on the electronic copy; or
 - (c) systematically make printed or electronic copies other than as provided in Section 2 above.
5. **Access to Licensed Content.** In order for Authorized Users to access The Review Site and the Licensed Content, Subscriber will provide to The Review (through password protected access by the Subscription Administrator of The Review's designated server or in such other manner as requested by The Review from time to time) a list of valid IP addresses through which access shall be allowed to the Licensed Content. Subscriber is responsible for updating the list of IP addresses it provides to The Review. Subscriber will make all reasonable efforts to ensure that access to The Review Site will be limited

to only Authorized Users and to give notice to Authorized Users of the license use limitations under this Agreement. Subscriber agrees to notify The Review promptly of any instances in which Subscriber becomes aware that non-authorized Users may have obtained access to The Review Site, or whereby Authorized Users may have exceeded or intend to exceed the scope of the license granted above in Section 2, and further agrees to make reasonable efforts to assist The Review in identifying the source of the unauthorized use and addressing the matter. The Review reserves the right to suspend access through any Subscriber IP address in order to address likely or actual unauthorized or illegal conduct, to protect its systems, or as otherwise required by legal authority or process of law.

6. Management of Review Site. The Review Site will be located on The Review's server or the server of a third party, as determined by The Review. The Review reserves the right, at its sole discretion, to block or remove from The Review Site any content which The Review believes may be illegal or harmful to The Review in any way or which conflicts with The Review's obligations to third parties. The Review also reserves the right, in its sole discretion, to edit, refuse to post or remove any material submitted to or posted on the chat rooms, bulletin boards or on any other user generated pages, and to terminate or suspend access by Authorized Users who make unauthorized or illegal use of The Review Site. Although The Review may from time to time monitor or review discussions, chats, postings, transmissions, bulletin boards and other user generated pages on The Review Site, The Review is not under any obligation to do so. Subscriber acknowledges that The Review does not control the information available on bulletin boards, chat rooms and other user generated pages and that any opinions, advice, statements, services, offers or other information or content presented or disseminated on any bulletin board, chat room or on any other user generated pages are those of their respective authors who are solely liable for their content.
7. Quality of Service. The Review will make reasonable efforts to ensure uninterrupted online access to and continuous availability of The Review Site to authorized users in accordance with this license, and to restore access as promptly as possible in the event of an interruption or suspension of the service which is not attributable to any third-party service provider over which The Review has no control (e.g., an Internet or telecommunications service provider).
8. Terms of Payment. Subscriber agrees to pay The Review a nonrefundable subscription fee (except as set forth in Section 9(a)), to be paid annually based on the tier pricing set forth in **Addendum B** (the "Annual Subscription Fee"). The amount of the first year's Annual Subscription Fee shall be based on the number of FTEs (as defined in **Addendum B**) as of the Effective Date of this Agreement, and will be due within forty-five (45) days of such Effective Date. Renewal fees shall be paid in accordance with Section 9(a). Subscriber will be responsible for the payment of all taxes and duties assessed it in connection with the license granted herein.
9. Ownership, Confidentiality, and Reporting.
 - (a) Licensed Content and Trademarks. Subscriber acknowledges that The Review and its suppliers own all worldwide rights, title, and interest in and to the Licensed

Content, and all related information, software, data, layouts and formats made available by The Review or through The Review Site, including, but not limited to, all copyrights (including without limitation audiovisual works and oral rights), patents, and other worldwide intellectual property rights therein. The Review and its licensors own all right, title, and interest in and to their respective trademarks, service marks, and logos ("Marks") worldwide and such Marks cannot be used by Subscriber without the prior written approval of The Review.

- (b) Usage Data. All data collected by or on behalf of The Review relating any use of The Review Site or the Licensed Content by any users is and shall remain at all times the sole property of The Review.
- (c) Confidentiality. Subscriber hereby agrees that the user name and password provided or made accessible by The Review to Subscriber shall be and remain at all times the confidential property of The Review and shall not be disclosed by Subscriber to any persons other than the Subscriber Administrator and those of its personnel involved with the implementation of this Agreement. Subscriber agrees to exercise reasonable commercial efforts to safeguard user names and passwords and keep them confidential
- (d) Usage Reports. The Review agrees to provide to Subscriber usage reports regarding access to the licensed Content by Authorized Users, which report shall only include non-personally identifiable information. This report shall be accessible to the Subscriber electronically by using an assigned user name and password or in such other means reasonably determined by The Review from time to time. The reports shall not be distributed outside of the Subscriber's organization and, while believed accurate by The Review, are provided without warranty.

10. Term and Termination.

- (a) Term of Renewal. The initial term of this Agreement shall commence on the Effective Date and be for twelve (12) months following the Service Commencement Date. Subscriber may renew this Agreement after the initial term by sending prior to the Renewal Date payment for an additional twelve months period (each a "renewal period"). The Review will make a reasonable effort at least 60 days prior to the expiration of the then current term, to send to Subscriber at the last known address for billing as set forth on the Cover Page a "renewal notice" stating the price applicable to the renewal period. The licensed rights granted hereunder will not renew for any renewal period unless The Review has received, within thirty (30) days following the expiration date, payment in full of the applicable renewal fee. The amount of each subsequent year's Annual Subscription Fee shall be based on the number of FTEs as of 60 days prior to the Renewal Date based on the then current renewal prices charged by The Review, and shall be due not later than thirty (30) days following the expiration date. Any renewal is subject to the then current form of these Terms and Conditions as then prescribed by The Review and to be provided to Subscriber prior to renewal for signature in the event the term have changed from these Terms. In the event that The Review reasonably determines that the Licensed Content can no longer be

made available, it shall have the right to terminate or not renew this Agreement by notice to Subscriber, provided that it refunds the Annual Subscription Fee for the unexpired portion of any then-current term.

- (b) Termination. Either party may terminate this Agreement if the other party materially breaches any of its obligations hereunder and such breach remains uncured for thirty (30) days following written notice of the breach to the breaching party. In the event Subscriber terminates pursuant to this section as a result of an uncured breach by The Review, Subscriber shall be entitled to a refund of any fees paid by Subscriber for any unused portion of the then-current term, as Subscriber's sole and exclusive remedy for such breach. Upon any termination or expiration of this Agreement: (i) the license rights granted under this Agreement immediately terminate; (ii) Subscriber shall promptly discontinue any use of the Licensed Content, the Marks and The Review Intellectual Property; and (iii) the provisions of Sections 9(a), 9(b) and 9(c) will survive any termination or expiration of this Agreement.

11. Limited Warranty and Disclaimers.

- (a) Warranties. The Review warrants that it has the right and authority to enter into this Agreement and to grant to Subscriber the rights granted hereunder. The Subscriber warrants that it has the right and authority to enter into this Agreement.
- (b) Disclaimer. EXCEPT AS SET FORTH IN SECTION 10(a) ABOVE, THE REVIEW AND ITS SUPPLIERS TAKE NO WARRANTY OF ANY KIND IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, WITH RESPECT TO THE LICENSED CONTENT AND ANY OTHER INFORMATION, SERVICES OR MATERIALS PROVIDED OR MADE AVAILABLE BY THE REVIEW HEREUNDER. THE REVIEW AND ITS SUPPLIERS HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, SYSTEM INTEGRATION, TITLE, NON-INFRINGEMENT AND NONINTERFERENCE. THE REVIEW DOES NOT MAKE ANY WARRANTY THAT THE LICENSED CONTENT WILL BE AVAILABLE TOTALLY WITHOUT INTERRUPTION OR ERROR-FREE.

12. Limitation of Liability.

- (a) Exclusion of Damages. IN NO EVENT WILL THE REVIEW OR ITS SUPPLIERS BE LIABLE TO SUBSCRIBER, SUBSCRIBERS' AUTHORIZED USERS OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE LICENSED CONTENT, OR THE REVIEW SITE, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT THE REVIEW OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SUBSCRIBER AGREES THAT THE REVIEW WILL NOT BE LIABLE FOR ANY CREDITS OR REFUNDS FOR SERVICE INTERRUPTIONS, LATENCY, INCOMPLETE CONTENT TRANSMISSION, GENERAL NETWORK FAILURES OR OTHER FAILURES REGARDING CONTENT ACCESS OR TRANSMISSION WHICH MAY FROM TIME TO TIME MAKE THE LICENSED CONTENT OR THE REVIEW SITE UNAVAILABLE TO AUTHORIZED USERS. THE SUBSCRIBER FURTHER AGREES THAT NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THE LICENSED CONTENT MAY BE BROUGHT BY THE SUBSCRIBER MORE THAN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO SUCH ACTION HAS OCCURRED.
- (b) Total Liability. IN NO EVENT WILL THE REVIEW'S AND ITS SUPPLIERS' TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, EXCEED THE ANNUAL SUBSCRIPTION FEE OF THE YEAR IN WHICH THE CAUSE OF ACTION OCCURS.
- (c) Breach. Subscriber shall not be responsible for any damages in the event of its Authorized Users' breach of an obligation under the Agreement, provided the Subscriber did not intentionally assist in or encourage such breach or permit such breach to continue after having actual notice thereof and provided Subscriber reasonably cooperates with The Review to prevent misuse..

13. General Provisions

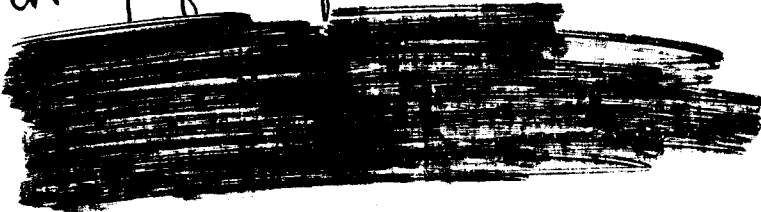
- (a) Assignment. Subscriber may not assign this Agreement, in whole or in part, without The Review's prior written consent, which shall not be unreasonably withheld. Any attempt to assign this Agreement other than as permitted herein will be null and of no effect. Without limiting the foregoing, this Agreement will inure to the benefit of and bind the parties' respective successors and permitted assigns.
- (b) Dispute Resolution. The parties agree to make good faith, diligent and reasonable commercial efforts to resolve any disputes under this Agreement by designating one senior executive of each party to negotiate for a mutually agreeable period of

at least ten business days once a party has provided written notice of a dispute and its desire that the parties negotiate a resolution to it. In the event such efforts are not successful, within 30 days after notice of the dispute, the parties hereby agree to submit their dispute to binding arbitration. Such arbitration shall be conducted in the location of the party in the position of plaintiff in the dispute, unless another location is agreed to by the parties, and it shall be governed by the then current rules for commercial arbitration of the AAA. The parties shall select one arbitrator knowledgeable in matters relating to databases and computer law. In the event the parties cannot agree on the arbitrator, the AAA shall be allowed to appoint such arbitrator. Discovery shall be allowed in the arbitration, but the arbitrator may not award punitive damages and may not amend or modify the terms of this Agreement. Any award rendered by the arbitrator will be final and binding and judgment may be entered therein in any court of competent jurisdiction. Nothing herein shall affect the right of either party to seek interim or emergency injunctive relief before a court of competent jurisdiction. The Review reserves the right to suspend service hereunder pending resolution of a dispute unless Subscriber escrows any amounts in dispute (in the case of a payment dispute) or otherwise provides written assurance that continuation of service hereunder will not give rise to any claim or remedies or damages by Subscriber for the period service is provided while the dispute is pending.

- (c) Notice. Any notice under this Agreement shall be in writing and may be delivered by personal delivery, express courier, confirmed facsimile, confirmed e-mail, or certified or registered mail, postage prepaid and return receipt requested. Notices will be deemed to be effective upon receipt. Notices shall be sent to a party at its address set forth above or at such other address as that party may specify in writing pursuant to this section.
- (d) No Agency. The Review is only a licensor and an independent contractor of Subscriber. The parties will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture. The arrangements contemplated by this Agreement are non-exclusive and nothing in this Agreement shall be construed as limiting the ability of the other party to enter into similar arrangements with other parties.
- (e) Entire Agreement. This Agreement, together with its exhibits, is the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, negotiations and communications regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.
- (f) Severability. If any portion of this Agreement shall be declared invalid or unenforceable by any competent arbitrator or court of competent jurisdiction, the remaining portions thereof shall nonetheless remain in full force and effect.
- (g) Counterparts. This Agreement may be executed in multiple counterparts (and by facsimile), and each of which, when executed, shall be deemed to be an original

Addendum A
(Description of Authorized Site)

University of California San Diego




copy hereof, and all such counterparts together shall constitute one single agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first written above.

<p>Agreed and Accepted:</p> <p>The New York Review of Books</p> <p>By: _____ Signature of Authorized Representative</p> <p>_____ Printed Name of and Title of Representative</p>	<p>Agreed and Accepted:</p> <p>_____ Name of Subscriber</p> <p>By: _____ Signature of Authorized Representative</p> <p>_____ Printed Name and Title of Representative</p>
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Addendum B
(Annual Subscription Fee)

FTEs =  (Full Time Equivalent student enrollment).

Annual Subscription Fee = \$ 