

# CUSTOMER LICENSE AGREEMENT



## 1. DEFINITIONS

- “COHERENT” means Coherent Digital, LLC, whose registered offices are situated at 623 S Fairfax St, Alexandria, VA, 22314-3833.
- “Customer” means the person(s) and/or organization(s) that have ordered one or more of the Product(s).
- “Site” means the location listed in Appendix A. Additional Sites may be added upon written notice to COHERENT and payment of additional fees, if applicable.
- “IP” means the owners of copyright in the original materials that form part of the Product(s).
- “Product(s)” are items invoiced and described in Appendix B. The Product(s) include(s) the data and any accompanying search and retrieval software.
- “Authorized Users” means:
  - At an academic or educational institution, the Customer’s currently enrolled full-time or part-time students; employees; faculty; staff; affiliated researchers; enrolled distance learners; visiting scholars; and walk-in library patrons who are physically present at the Site (including alumni); and excludes alumni via remote access unless specified in Appendix A.
  - At a public library, the Customer’s current full-time or part-time employees and staff; library cardholders who reside within the defined, local geographical region served by the library; and walk-in library patrons who are physically present at the Site.
  - At all other institutions, the Customer’s current full-time or part-time staff; interns; independent contractors while performing their work; walk-in library patrons who are physically present at the Site; and excludes Customer’s corporate affiliates.
  - For an individual, the Customer alone.

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## 2. GRANT OF LICENSE

COHERENT grants to Customer a non-exclusive, non-transferable license to use the Product(s) under the terms described herein. The Customer's rights are limited to itself alone and do not extend to subsidiary or parent corporations, or to any other related or affiliated organization(s) not listed in Appendix A. Any rights not expressly granted in this license are reserved to COHERENT. Nothing in this Agreement shall be interpreted to transfer ownership of any copyrights, trademarks, or service marks from COHERENT or the IPs to the Customer or Authorized Users.

## 3. AUTHORIZED USE

Subject to the restrictions contained in Article 4 below, the Customer and Authorized Users may use the Product(s) in a way that is consistent with U.S. Fair Use Provisions or any equivalent law in the country of the territory where the Customer is based, provided that in no circumstances may the Product be used for any commercial purpose. The following is permitted:

- a) electronically display, download, digitally copy, and print small portions of the Product(s);
- b) use the Product(s) for print and electronic reserve readings in connection with specific courses of instruction offered by Customer;
- c) extract and use brief excerpts from the Product(s) for research, scholarship, and other non-commercial educational purposes, including extraction and manipulation for the purpose of illustration, explanation, example, comment, criticism, teaching, research, and analysis;
- d) transfer individual items downloaded from the Product(s) in the context of an electronic interlibrary loan (ILL), provided that such loans are non-commercial, non-recurring, and are not done in a manner that would replace the receiving organization's own purchase of, subscription to, or membership in the Product(s);
- e) use, with appropriate credit, figures, tables, and brief excerpts from the Product(s) in the Authorized User's own scientific, scholarly, and educational works;
- f) use citation and abstract information in faculty or user profiling systems, in lists of publications on faculty, staff, and institutional web pages, and to create bibliographies;

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g) provided the Customer has purchased the content, use the Product(s) to perform and engage in text and/or data mining activities for research, scholarship, and other educational purposes, utilize and share the results of text and/or data mining in their scholarly or mission-based work, and make the results available for use by others, provided such results do not compete with or compromise the salability or value of Product(s), do not damage access to the Product(s), or do not in any other way violate the terms of this Agreement.

Under no circumstances may the Customer use the Directory information for marketing purposes or to create freely available public directories.

For more extended use, the Customer must obtain prior consent in writing from COHERENT or the relevant IP. Ongoing usage rights terminate when the Customer ceases to be an active member, except where the Customer has made a one-time purchase of portions of the Product(s).

### **4. RESTRICTIONS**

The Customer and its Authorized Users may not decompile or reverse engineer the Product(s); modify or create a derivative work; remove, obscure, or modify copyright notices; sell, distribute, or commercially exploit the Product(s); or transfer, assign, or sublicense this license. Access may be only via the Customer's network to Authorized Users; and Customer may not allow users to download the streaming videos or otherwise make copies.

### **5. DELIVERY / ACCESS**

COHERENT will provide or otherwise make the Product(s) available to the Customer through web-based connections between one or more of COHERENT's physical, online, or virtual locations, and one or more of Customer's authorized physical, online, or virtual locations, using industry standard authentication methods.

The portions of the Product(s) that the Customer has purchased (as a purchase of perpetual rights) will be provided to Customer upon request and when made available by COHERENT. The data will be delivered either on a digital storage medium, at a fee for each Product requested, which fee is subject to change from time to time; or through a third-party vendor of archiving services. The Customer may optionally load data onto a local server to be accessed by Authorized Users through the Customer's search and retrieval software. For clarity, digital content is not delivered in the case of annual memberships or subscriptions.

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COHERENT will offer reasonable levels of continuing support via email during normal business hours, for feedback, problem solving, general questions, and such technical assistance is provided at the sole risk of the Customer. COHERENT will use reasonable efforts to provide service quality comparable to current online information standards with an average of 99% of up-time per month and will attempt to perform scheduled maintenance downtime at low-usage times.

### **6. PRICING AND TERM**

The price of the Product(s), payment terms, and term of use are as invoiced. COHERENT will provide web access for each term for which the Customer has paid the subscription, membership, or service fee; the charges may change periodically. COHERENT reserves the right to cease offering the Customer the opportunity to renew a subscription or membership.

On occasion, small portions of the Product(s) may be withdrawn due to changes in COHERENT'S agreement with third-party licensors. If the deleted content represents more than 10% of the Product(s), COHERENT will replace such deletions with content of comparable value during Customer's subscription or membership term.

### **7. DARK ARCHIVE**

COHERENT maintains Archival Copies (defined below) of the licensed Products with a third-party provider (the "Dark Archive"), and has entrusted a third-party Escrow Agent with access to the Dark Archive to access and deliver archival copies of licensed Products to Customers who have purchased perpetual licenses upon the occurrence of a "Triggering Event", as follows:

- 1) COHERENT is no longer in business or no longer in the business of publishing or providing access to the Products;
- 2) A Product is no longer available from COHERENT because COHERENT has stopped publishing it and will no longer provide access to such Product online; or
- 3) COHERENT has stopped publishing or providing access to a Product for a period longer than ninety (90) days due to a catastrophic failure, including without limitation, technical issues, business interruption, bankruptcy, insolvency, receivership or other business failure.

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Upon the occurrence of any Triggering Event and with notice to the Escrow Agent, if Customer has purchased a perpetual license to the Products, Customer will be supplied with a full Archive Copy of such licensed Products.

“Archival Copies” of licensed Products means versions of the Products that have been normalized, supplemented with metadata, and otherwise prepared for archiving. Archival Copies of Products that are still open and being supplemented, shall have been updated at least annually, and Archival Copies of Products that are “closed” and no longer being supplemented, will be complete copies.

“Escrow Agent” shall be Thomas K. Westort, Esquire, 34 Hayden Rowe Ste 124, Hopkinton, MA 01748-1955

For the elimination of doubt, the terms of this License and Customer’s use of the licensed Products and/or Archival Copies shall continue to apply following any Triggering Event, and access and use of Archival Copies will be limited to Customer and Authorized Users listed in Appendix A.

### **8. ACCESSIBILITY**

COHERENT shall provide to Customer a current, accurate completed Voluntary Product Accessibility Template (VPAT). COHERENT commits to provide the most accessible version of the content on par with AA compliance; and where level AA compliance is not achieved, the VPAT will list the exceptions.

### **9. LIMITATION OF WARRANTIES AND LIABILITY**

COHERENT warrants and represents that it has the right to enter into this Agreement and to deliver the Product(s) "as is." This warranty is in lieu of any and all other warranties, written or oral, express or implied, including without limitation, warranties of merchantability of fitness for a particular purpose, all of which COHERENT disclaims. In no event will COHERENT be liable for more than the license fee paid, whether such liability arises from breach of warranty, breach of this contract, or otherwise, and whether in contract or in tort, including negligence and strict liability.

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### **10. TERMINATION**

If the Customer breaches any term of this Agreement, COHERENT may, in addition to its other legal rights and remedies, terminate this license seven (7) days after written notice to Customer, if Customer has not remedied the breach within the seven (7) days. Upon any termination, the Customer will erase all electronic storage of copies of the Product(s). Any termination, whether or not pursuant to this Article 10, will not affect any obligation or liability of a party arising prior to termination, and the provisions of Article 10 will survive any termination.

### **11. FORCE MAJEURE**

Neither COHERENT nor the IP will be responsible for any delay or failure in performance resulting from any cause beyond their control.

### **12. DISPUTE RESOLUTION**

If any differences arise between the Customer and COHERENT relating to the meaning of this Agreement, the parties agree to resolve such differences through Arbitration or by any other means to which the two parties may agree.

### **13. INDEMNIFICATION**

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. This indemnity shall survive the termination of this Agreement.

### **14. ENTIRE UNDERSTANDING**

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

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### **15. AMENDMENT**

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of the Customer and COHERENT.

### **16. ENFORCEABILITY BY IP**

The IP retains its rights to enforce its trademarks, copyrights, patents, trade secrets and other rights against any violation thereof.

### **17. SEVERABILITY**

If a term or condition of this Agreement is invalid or unenforceable, the remaining terms and conditions hereof shall remain in full force and effect and shall be enforceable to the maximum extent permitted by law.

### **18. TERRITORIAL DISCLAIMER**

Information contained in the Product(s) does not imply the expression of any opinion on the part of COHERENT concerning the legal status of any country or of its authorities. Content, including data and maps displayed, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries, and to the name of any territory, city, or area.