

TERMS AND CONDITIONS

1.00 DEFINITIONS

As used throughout this Agreement the following terms have the following meanings:

1.01 "Effective Date" means the date of this Agreement.

1.02 "Licensed Data" means the data elements in electronic database form which are more particularly set forth on Schedule 1.02 attached hereto and made a part hereof.

1.03 "License Fee" means the annual license fee set forth on the Order Form.

1.04 "Order Form" means the first page hereof.

2.00 LICENSE

2.01 Subject to the terms and conditions of this Agreement, B&T hereby grants to Licensee, and Licensee hereby accepts from B&T, a nonexclusive, nontransferable and revocable license (i) for no more than one user at any given time with respect to each user identification code which shall have been issued pursuant to Section 4.02 hereof, to display all or a portion of the Licensed Data in the United States of America, for viewing by end-users who are employees, patrons or customers of Licensee, in "read only" access; and (ii) to use all or a portion of the Licensed Data for Licensee's internal use only. Licensee will not make all or any portion of the Licensed Data accessible to any person or for any purposes other than as specifically authorized herein. Licensee will use its best efforts to prevent or restrict the downloading, transmission, display or copying of all or any portion of the Licensed Data except to the extent necessary for the purpose of ordering the products listed therein and such other purposes as are expressly permitted herein. The prior sentence will not prohibit any Licensee which is a library from downloading or copying, from time to time, such elements of the Licensed Data as shall be reasonably required to supplement or update any existing catalogue system maintained by such Licensee, to be used for library purposes only.

2.02 The license granted hereby is personal to Licensee. Licensee may use the license solely for the purposes specified above. Nothing contained in this Agreement will, or will be deemed to, convey to Licensee or any end-users any title or ownership interest in all or any portion of the Licensed Data.

2.03 Neither the Licensed Data, nor any portion thereof, may be used or displayed on the Internet by Licensee without B&T's prior written consent.

2.04 B&T reserves all rights not expressly granted to Licensee hereby or expressly contemplated herein with respect to the Licensed Data and any portion thereof. This reservation specifically applies, but is not limited, to any media, mode or method of distribution or transmission or other technology that may now exist or be commercialized or developed in the future.

3.00 TERM

3.01 Subject to the terms and conditions hereof, this Agreement will be effective for a period beginning on the Effective Date and ending at 11:59 P.M. (Eastern U.S. Time) on the day preceding the first anniversary of the Effective Date or such sooner date on which this Agreement may terminate pursuant to the terms hereof (the "Initial Period")

and, unless an Event of Default (as hereinafter defined) shall have occurred and not been cured at the time of such renewal, automatically will renew for successive one (1) year periods thereafter (each, a "Renewal Period").

3.02 (a) Either party may terminate this Agreement at any time during the Initial Period or a Renewal Period on not less than 30 days' prior written notice to the other party. If either party terminates this Agreement at any time during the first 180 days of the Initial Period, fifty percent (50%) of the amount of the License Fee paid by Licensee will be refunded to Licensee, except in the case of a termination by B&T in connection with the occurrence of an Event of Default. No credit will be allowed in connection with terminations after such 180 day period.

(b) B&T may terminate this Agreement immediately at its own option by giving Licensee written notice upon an Event of Default.

3.03 Immediately upon the expiration or sooner termination of this Agreement for any reason whatsoever:

(a) all rights and licenses granted to Licensee hereunder will automatically terminate;

(b) Licensee will permanently delete all of the Licensed Data and any copies thereof (other than such data elements which may have been copied or downloaded by a Licensee which is a library pursuant to the terms of Section 2.01 hereof), which exist thereon from all computers, database and other systems and/or any other storage medium of Licensee (or any persons or entities within Licensee's direct control) in any location, whether backup or otherwise; and

(c) Licensee will not use, or permit any user having access by, through or under Licensee to use, all or any portion of the Licensed Data in any way.

4.00 THE PARTIES' OBLIGATIONS

4.01 Licensee will:

(a) not directly or indirectly duplicate, copy, transmit, publish, provide access to (by electronic or any other means), exchange, throw away, or incorporate with, or as part of another database, package, program, record or system, all or any portion of the Licensed Data for any purpose except as expressly permitted in this Agreement;

(b) use its best efforts to ensure compliance with Licensee's obligations under this Agreement by end users who have access to the Licensed Data by, through or under Licensee;.

(c) except to display and use the Licensed Data as expressly provided herein, not sell, offer for re-sale, distribute, rent, sublicense or lease all or any portion of the Licensed Data, either for consideration or without cost, nor use all or any portion of the Licensed Data in a network (including the Internet), timesharing, multiple central processor unit or multi-user arrangement;

(d) not combine or incorporate all or any portion of the Licensed Data with any other program, database, record or system which will be sold, offered for re-sale, distributed (other than with respect to such data elements as may have been copied or downloaded by a Licensee which is a library pursuant to the terms of Section 2.01 hereof), rented, sublicensed or leased;

(e) not use all or any portion of the Licensed Data in connection with any sales by Licensee, by any partner, affiliate or agent of Licensee, or by any enterprise or entity in which Licensee has any interest;

(f) pay all sales, use, value-added, excise or similar taxes associated with Licensee's or its users' use of all or any portion of the Licensed Data; and

(g) not permit any third party, including, without limitation, any customer or patron of Licensee, to use any licensed data in connection with any Internet-based or other electronic online commerce.

4.02 At the beginning of the Initial Period and throughout the term of this Agreement B&T will make the Licensed Data accessible to Licensee and all permitted end-users gaining access through Licensee by means of a web site maintained by B&T on the World Wide. Licensee shall, as of the Effective Date, be assigned separate user identification codes and passwords for the number of users specified on the Order Form, which user identification codes shall be activated upon receipt by B&T of the amount of the License Fee due hereunder. Each such user identification code and password will permit access to the Licensed Data by only one user at any given time, subject to all of the terms and conditions hereof.

5.00 CONSIDERATION

The license granted herein is made in consideration of the payments made to B&T in connection herewith, including Licensee's obligation to pay B&T the License Fee. The License Fee must be paid to B&T prior to the commencement of the Initial Period and, thereafter, prior to each Renewal Period.

6.00 DEFAULT AND REMEDIES

The following will be an Event of Default: Licensee's failure to perform any of its obligations, or failure to comply with any of its agreements, hereunder, which failure is not cured within 60 days after notice from B&T. B&T will have all rights and remedies available to it under applicable law or in equity if an Event of Default occurs. Without limiting the generality of the foregoing, B&T's rights and remedies will include, without limitation, the right to: (a) sue Licensee for the fulfillment of its obligations under this Agreement; and/or (b) seek an injunction against Licensee to compel Licensee to comply with the terms of this Agreement and/or to cease activities which constitute a default of Licensee's obligations hereunder. In addition to B&T's other rights and remedies set forth herein, B&T will have the right to require that Licensee cease use and/or display of all or any portion of the Licensed Data within 36 hours after receipt of B&T's notice that an Event of Default has occurred.

7.00 NO WARRANTY; LIMITATION OF LIABILITY; INDEMNITY

7.01 THE LICENSED DATA AND ANY PORTIONS THEREOF ARE PROVIDED "AS IS" WITHOUT WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXPRESSLY EXCLUDED HEREBY ARE ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY B&T, ITS AGENTS OR EMPLOYEES WILL CREATE A WARRANTY AND LICENSEE MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. B&T does not warrant, guarantee, or make any representations regarding the Licensed Data or the use, or results of the use, of all or any portion thereof, including, without limitation, any representation that the Licensed Data are correct, accurate, reliable, current or otherwise. The entire risk as to the results and performance of the Licensed Data is assumed by Licensee.

7.02 Neither B&T nor anyone else who has been involved in the creation, production or delivery of all or any portion of the Licensed Data will be liable for direct, indirect, special, incidental, punitive, exemplary or consequential damages (including, without limitation, damages for claims by third parties, loss of business profits, business interruption, loss of business information and the like) arising out of the use or inability to use all or any portion of the Licensed Data, even if B&T or such other party shall have been advised or otherwise have known of the possibility of such damages. In no case will the liability of B&T or any such other party hereunder exceed the amount of the License Fee actually paid.

7.03 Licensee agrees to indemnify, defend and hold harmless B&T and all of its officers, directors, employees, attorneys, accountants and agents against any and all demands, causes of action, claims, liabilities, losses, costs and expenses (including reasonable attorneys' fees) based upon a claim that (i) if true would constitute a breach of Licensee's representations, warranties or agreements hereunder or (ii) arises out of the negligence or willful misconduct of Licensee. The foregoing indemnity will survive the termination hereof.

8.00 INFRINGEMENT

8.01 The Licensed Data is copyrighted, which copyrights are held by B&T and, with respect to certain items contained therein, by third parties. Unauthorized copying, distribution or disclosure of all or any portion of the Licensed Data, including Licensed Data that has been modified, merged or included with other data, is expressly forbidden. Licensee will be held legally liable for any copyright infringement that is caused or encouraged by its failure to abide by the terms of this Agreement.

8.02 Licensee will promptly notify B&T in writing if anyone makes a claim against Licensee that all or any portion of the Licensed Data infringes their rights. If Licensee provides B&T with sufficient notice of any such infringement, B&T at its option will (i) make the Licensed Data non-infringing, (ii) obtain for Licensee the right to use the Licensed Data or (iii) terminate this Agreement and give Licensee a full refund of any License Fee paid for the Initial or Renewal Period in which such claim occurs. The foregoing is the ONLY remedy available to Licensee, and the ONLY liability of B&T, in the event of a claim of infringement.

9.00 MISCELLANEOUS

9.01 The waiver or failure of either party hereto to exercise in any respect any right provided for herein will not be deemed a waiver of any further right hereunder.

9.02 This Agreement and the transactions provided for herein will be governed, construed and enforced according to the laws of the State of North Carolina (excluding any conflict-of-law provisions thereof).

9.03 Licensee consents and agrees that all legal proceedings relating to the subject matter of this Agreement or the Order Form will be maintained in courts sitting within the State of North Carolina, and Licensee consent and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts.

9.04 Licensee will not assign this Agreement, by operation of law or otherwise, without B&T's prior written consent, not to be unreasonably withheld.

9.05 English will be the official text for this Agreement. No translation will be used to construe the meaning or intent hereof.

9.06 All notices required or permitted to be given by one party to the other under this Agreement will be sufficient if sent by certified mail, return receipt requested, to the other party at the respective address first set forth in the Order Form above or to such other address as the party to receive the notice has designated by notice to the other party pursuant to this paragraph.

9.07 If any of the terms or provisions of this Agreement are ruled to be invalid or unenforceable by a court or administrative tribunal of competent jurisdiction, the remainder of the Agreement will not be affected thereby. If a court or administrative tribunal does not replace a provision in this Agreement ruled to be invalid or unenforceable with a valid and enforceable one which accomplishes the same general purpose to the maximum extent possible, the parties will reasonably try to negotiate a replacement for the provision which accomplishes the same general purpose to the maximum extent possible.

9.08 This Agreement constitutes the complete and exclusive statement of the terms and conditions between the parties and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or altered

except by written instrument duly executed by both parties. This Agreement may be executed in counterparts, all of which, when taken together, will constitute a single instrument. This Agreement will be binding upon, and will inure to the benefit of, the parties hereto and their respective successors, permitted assigns and legal representatives.

SCHEDULE 1.02

LICENSED DATA

Bibliographic Data: Bibliographic records for books and spoken word audio products for each book title on B&T's complete title file database, which is presently called "THE TITLE SOURCE 3," as the same may from time to time be modified by B&T during the term of this Agreement.

Jacket Images: Scanned image of the front cover only of a book, in true color and in variable size.

Annotations: Non-evaluative description of the contents of a book.

Inventory Status: Data with respect to the inventory status of B&T for a book.