

## SITE LICENSE AGREEMENT

### Non-Profit

### *The Getty Thesaurus of Geographic Names®*

This Site License Agreement (the "Agreement") is made and entered into as of this 9<sup>th</sup> day of May, 2005, by and between The J. Paul Getty Trust, a California charitable trust, with a place of business at 1200 Getty Center Drive, Los Angeles, CA 90049 ("Getty"), and the Regents of the University of California on behalf of the California Digital Library, University of California Office of the President with its principal place of business at 415 20<sup>th</sup> Street, 4<sup>th</sup> Floor, Oakland, California 94612-2901 ("User"), with reference to the following facts and circumstances:

- A. An operating program of Getty, the Getty Research Institute (GRI), has developed a computer database called the Getty Thesaurus of Geographic Names® (the "Database"). User desires to license such Database.
- B. Therefore, Getty desires to grant certain site license rights to User for the Database on the terms and conditions contained in this Agreement.

NOW THEREFORE, based on the above premises and in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

#### 1. Grant of License.

- 1.1. License to User. Getty grants to User for the term of this Agreement a non-exclusive, non-transferable, license to its "IP Rights" (defined below) to (a) reproduce and install the Database on computer(s) at User's Site (defined below), (b) modify the Database, (c) provide access to the Database at User's Site for Authorized Persons (as defined below), and (d) to make a backup and archival copy of the Database as necessary, all in accordance with the terms and conditions set forth herein. "IP Rights" means all intellectual property rights, including copyrights, patents, trade secrets, trademarks, and other proprietary rights owned by Getty that are embodied in the Database. "User's Site" means the single, physical site where User's computer(s)/server are located and where User provides access to the Database for Authorized Persons. "Authorized Persons" are: User's employees, agents, and consultants; and, students and scholars engaged in *bona fide* research under User's direction at User's Site. User shall provide Getty with the name of its Web site and the locations of its server where the Database is located.
- 1.2. Limitations on License and Reservation of Rights. User may not reproduce copies of the Database for distribution to any third party. User may not use the Database for any purpose that includes Internet or Web site access, regardless of whether such Web site access is restricted or unrestricted. Any rights not granted herein are reserved to Getty.
- 1.3. Updates. User has the right to purchase an Update, which means any version of the Database subsequently released by Getty, upon payment of Getty's Update license fees ("Update Fees") then in effect. Getty, in its sole discretion, will decide whether to release an Update and the price of the Update Fees. Upon the payment of such Update Fees, the Updates will be deemed the Database for all purposes of this Agreement.



1.4 User Suggested Changes. User agrees that it will inform Getty of any inaccurate or incomplete information that User identifies in the Database, as well as any ideas that User develops for modifications or enhancements to the Database. Any corrections, modifications or enhancements to the Database shall only be implemented by Getty, in its sole and absolute discretion, and all such corrections and enhancements, and the IP Rights therein, shall be owned solely by Getty, and User shall make no claim to the contrary. User suggested changes shall be directed to the Managing Editor of the Vocabularies Program, Getty Research Institute, in accordance with Section 9.7, below.

2. License Fee. For the Initial Term (defined below), User will pay Getty an initial license fee of [REDACTED] (the "Initial License Fee") upon the execution of this Agreement. For each Renewal Term, User shall be required to pay an additional license fee ("Renewal License Fee"). The amount of the Renewal License Fee shall be provided to User at least six (6) months prior to the end of the Initial Term or any Renewal Term.

3. Deliverable Items. Upon execution of this Agreement, Getty will deliver to User one (1) copy of the Database in a medium determined by Getty.

4. Proprietary Rights, Notices and Use of Names.

4.1. Title. All right, title, and interest to the IP Rights remain with Getty and User obtains only a license to reproduce, modify, and use the Database at User's Site, as provided in Section 1, above, and subject to all of the terms and conditions of this Agreement.

4.2. IP Rights Notices. Since use of the Database will be machine-to-machine, there will be no user observation upon accessing Database. In the event that the Database is formally displayed to user, the following Notice ("Notice") will be displayed:

The Getty Thesaurus of Geographic Names® was developed by the Getty Research Institute (GRI), an operating program of The J. Paul Getty Trust. This database is used under license from The J. Paul Getty Trust.

The accuracy of the information contained in the database is not Warranted in any way by Getty and Getty assumes no responsibility or liability for the results of any use of the information.

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The Getty Thesaurus of Geographic Names is a registered trademark of The J. Paul Getty Trust.

4.3. Use of Names. Other than as set forth above, User shall have no right to use the Getty name, either alone or in conjunction with any other word or phrase, without the prior written consent of Getty which may be withheld in its sole and absolute discretion. Getty shall be entitled to include User's name in its list of licensees of the Database. Neither party shall be entitled to issue any public announcements or press statements concerning this Agreement without the prior approval of the other party. This is a material condition of this Agreement.



5. Indemnification. Getty will not have any liability to User for, and User will defend and hold Getty harmless against, any expense, judgment, or loss arising from any claim based on any User modifications to the Database or any statement, warranty, or representation, other than as required by Section 4.2, above, made by User to any third party concerning the Database.

6. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES WILL GETTY BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE DATABASE, EVEN IF USER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Warranties and Representations.

7.1 NO WARRANTIES BY GETTY. THE DATABASE IS PROVIDED "AS IS." GETTY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE DATABASE.

7.2 Warranties by User. User represents and warrants that it is a not-for-profit entity exempt from income tax and such other similar taxes as may be applicable by the laws of jurisdiction in which it operates and that its use of the Database shall be solely for research, education and scholarly purposes. This is a material condition of this Agreement.

8. Termination.

8.1. Initial Term; Renewal Terms. The initial term of this Agreement (the "Initial Term") shall be for a period of five (5) years from the Effective Date. After the Initial Term, this Agreement shall automatically renew for a successive twelve (1) year term (each, a "Renewal Term"), unless User or Getty delivers written notice of termination to the other party prior to the commencement of any Renewal Term.

8.2. Termination for Default. The non-defaulting party will be entitled to terminate this Agreement upon written notice to the defaulting party if the defaulting party or any of

its agents breach any material obligation hereunder, which breach continues or remains uncured for a period of thirty (30) days after receipt of written notice from the non-defaulting party, unless such breach cannot by its nature be cured, in which event the defaulting party will be deemed in default hereof upon the occurrence of such breach.

8.3. Effect of Termination. Upon termination of this Agreement, all of User's rights granted hereunder will terminate including, without limitation, User's right to possession or use of the Database. User shall immediately delete and destroy all copies of the Database, whether in electronic or non-electronic form and shall provide written confirmation of such action to Getty. User shall no longer be entitled to purchase Updates.



## 9. General Provisions.

- 9.1. No Joint Venture. It is understood and agreed that no joint venture relationship is created between the parties and that neither party is an affiliate of the other. Other than as required by Sections 4.2 and 4.3, above, neither party has any authority to make any representations, commitments, or statements on behalf of the other party.
- 9.2. Assignment. User will neither assign any of its rights under this Agreement nor delegate its duties hereunder to another person or legal entity without the prior written consent of Getty, which consent may be withheld for any or no reason.
- 9.3. Survival. Upon the termination of this Agreement for any reason, the following Sections will remain in full force and effect: 4, 5, 6, 7, 8.3 and 9.
- 9.4. Governing Law; Jurisdiction. The parties agree that the laws of the State of California will govern the interpretation and enforcement of this Agreement, without giving effect to that State's choice of law rules. Any and all disputes between the parties that may arise pursuant to this Agreement will be heard and determined before an appropriate federal or state court located in Los Angeles, California.
- 9.5. Injunctive Relief. User acknowledges that its obligations hereunder are of a special and unique character, and that money damages would not adequately compensate Getty for a breach thereof. Getty shall therefore be entitled to seek injunctive relief in the event of any actual or threatened breach of this Agreement.
- 9.6. Confidentiality. As a public institution, the User is obligated to make its records available through the California Public Records Act.
- 9.7. Notices. All notices or other communications that must or may be given pursuant to this Agreement, must be in writing, sent by certified or registered mail with postage prepaid, return receipt requested, by facsimile, telex, or cable communication, or by hand delivery. Such communications will be deemed given and received upon dispatch, if sent by facsimile, telex, or cable communication; or upon delivery if hand delivered; or within five (5) days of mailing, if sent by certified or registered mail, and must be addressed to the parties as set forth above on the first page of this Agreement,
- or to such other addresses as the parties may designate in writing from time to time.
- 9.8. Entire Agreement. This Agreement contains the full understanding of the parties and supersedes all prior agreements and understandings between the parties with respect to the Database and related matters; there are no representations, warranties, agreements or understandings other than those expressly contained herein. No alteration, modification, variation, or waiver of this Agreement, or any of the provisions hereof will be effective unless executed by both parties in writing.

N WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the dates indicated below.

The J. Paul Getty Trust "Gott"

By: [REDACTED]

Head, Stds. & Vocabulary Programs

Getty Research Institute

Dated: \_\_\_\_\_, 2005

Regents of the University of California on behalf of  
the California Digital Library ("User")

By: [REDACTED]

Its: Director of Business Development & Admin.

Dated: 8/8, 2005

Contact person:

Name: [REDACTED]

Title: [REDACTED]

Address: University of California Office of the President

415 20<sup>th</sup> Street, 4<sup>th</sup> Floor, Oakland, CA 94612-2901

Phone: [REDACTED] Fax: [REDACTED]

E-mail: [REDACTED]