



Factiva Academic subscription agreement

THIS AGREEMENT, which includes the terms and conditions and any schedules attached (the "Agreement"), is between **Factiva**, whose principal place of business is at Route 1 at Ridge Road, South Brunswick, NJ 08852, and the **Subscriber**, the details of which are set out below.

Description of the Agreement

This Agreement governs the terms and conditions under which the Services, as set out below, are to be supplied to the Subscriber and the Subscriber is to pay for the Services.

Details of the Parties

Party	Subscriber	Factiva
Legal Name	University of California	Dow Jones Reuters Business Interactive LLC
Principal contact	[REDACTED]	[REDACTED]
Contact Address	University of California Office of the President, 415 20 th Street, 4 th Floor, Oakland, CA 94612-5440	333 South Hope Street, Suite 1000 Los Angeles, CA 90071 USA
Telephone	[REDACTED]	[REDACTED]
Facsimile	[REDACTED]	[REDACTED]
E-mail	[REDACTED]	[REDACTED]

Fees and Services

Service	Simultaneous Users	Permitted Users (FTE)	Fees per Year		
			information fee	service fee	Total
Factiva.com	49	157.505	[REDACTED]	[REDACTED]	[REDACTED]

Billing Start Date	November 1, 2005
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Account number	
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We hereby agree to be bound by and comply with the terms and conditions of this Agreement

Signed for and on behalf of the Subscriber:

Signed for and on behalf of Factiva:

By (name) [REDACTED]
 Title : [REDACTED]
 Date : [REDACTED]

By (name) [REDACTED]
 Title : [REDACTED]
 Date : [REDACTED]

AGREED TERMS

1. Definitions

In this Agreement:

"Billing Start Date" means the date as set out on the first page of this Agreement, or if undated, the date of first availability of the Services for use by the Subscriber.

"Factiva Group" means Factiva and its affiliates.

"Fees" means the fees as set out on the first page of this Agreement, being the aggregate of the fees for the Information and fees for the Services, payable by the Subscriber to Factiva;

"Information" means information, in whatever form, contained in a Service but excluding the Web Content;

"Password" means an individual password provided by Factiva to the Subscriber pursuant to which Permitted Users are enabled to access Factiva.com;

"Permitted User" means:

(a) if the Subscriber is an academic institution, any individual who is authorized by the Subscriber to access Factiva.com and use the Information and who is either an employee of the Subscriber (including faculty, administrative staff, librarians and visiting scholars) or an individual currently enrolled as a student of the Subscriber regardless of the physical location of such person for so long as:

- (1) such user remains an employee/staff member or student authorized to access the Information; and
- (2) the Subscriber assumes responsibility for any acts or omissions by such user which would constitute a breach or default under this Agreement;
- (3) the administrative staff are only using the Service on an occasional and infrequent basis as a consequence of them having access to the Subscriber's intranet, unless the Subscriber is licensed for regular use by such administrative staff. The Subscriber shall notify Factiva if it knows or suspects that its administrative staff are using the Services or the Information contained therein on a regular basis and the parties shall agree terms for an enhanced license to cover such usage by the administrative users.

"Service" means the Factiva global news and business information service known as Factiva.com;

"User Statement" means a statement to be provided by the Subscriber to Factiva setting out the FTE count for the Subscriber and confirming that neither the Services nor the Information have been used by any party other than the Permitted Users. Current University copyright policy documents or technical information on how the University verifies user's access, with numbers, to the Services is acceptable, and

"Web Content" means publicly available content which may be accessed through the Service via links to third party sites on the internet, and which is identified within Factiva.com as being from the internet.

2. Services

2.1 Factiva grants a non-exclusive, non-transferable, non-sublicensable, non-assignable license to the Subscriber, as an academic institution, and its Permitted Users the right to access and use the Service pursuant to the terms and conditions of the Agreement.

2.2 Factiva will grant access to the Subscriber and Permitted Users via IP authentication. Permitted Users shall be identified and authenticated by the use of Internet Protocol ("IP") address provided by Subscriber to Factiva. The Subscriber may provide simultaneous access to the Service using IP authentication on a single user name and password. The Subscriber will notify Factiva and, where possible deny access, if it learns or suspects that the password is being used by any person not authorized by the Subscriber.

- 2.3 Factiva retains control and ownership of the form and content of the Service. Neither the Subscriber nor the Permitted Users will acquire any ownership rights in the Service or the Information, and the Subscriber shall not alter the form or content of the Service without the written permission of Factiva.
- 2.4 Factiva may alter the form and content of the Service from time to time. The Information is either licensed from third party information providers or is proprietary to Factiva. Should any license agreement with an information provider be terminated or suspended for any reason then the Information supplied by that information provider may be withdrawn from the Service. The Subscriber acknowledges that rights to use the Information in this Agreement are contractual and exist independently of copyright law, accordingly these rights cannot be affected by any license from a copyright holder or a reproduction agent acting on their behalf, such as the Copyright Clearing Center.
- 2.5 The Subscriber acknowledges that the indexing codes (including Factiva indexing codes, RICs and DJ tickers) used for retrieving Information from the Service are owned by either Factiva or a third party, and that such indexing codes are protected by copyrights, database rights, trade marks and/or patents owned by the relevant party. The Subscriber may use the indexing codes solely to access Information from the Services and may not otherwise copy, reproduce or disseminate the Information.

3. Use of the Service

3.1 The Permitted Users may:

- (a) review and download Information from a Service for their own use; Subscriber and Permitted Users may make all use of the Information in the Services as is consistent with the Fair Use Provisions of United States and international copyright laws. In addition, the Information may be used for purposes of research, education or other non-commercial use as follows
- (b) on an occasional and infrequent basis, forward individual articles from the Information, provided that such articles (or portions of articles) are attributed to the relevant author or provider of such article;
- (c) incorporate occasional articles of the Information in printed course packs and secure authenticated electronic reserve collections for instructional use only at Subscriber's academic institution. Each such item of Information shall carry the appropriate acknowledgement of the source, branded as being from Factiva and will be deleted by Subscriber when no longer used for such purpose; and
- (d) if the Permitted User is a librarian of the Subscriber, they may search on behalf of and distribute Information only to Permitted Users within the Subscriber's academic institution in response to a specific ad hoc search request.
- (e) Fulfill a reasonable number of requests for interlibrary loans of the Information contained in the Service, subject to the same limitations that apply to paper copies for that purpose made from print journals. There will be no sharing of passwords in order to fulfill a request.

3.2 The Subscriber, and each Permitted User shall not:

- (a) reproduce, distribute, display, sell, publish, broadcast or circulate the Information to any unauthorized third party, including (other than as authorized in Sections 3.1(b), 3.1(c), 3.1(d) and 3.1(e)) other non-permitted users, nor make the Information available for any such use;
- (b) remove, conceal or alter any copyright notices contained in the Service or the Information, or change the meaning of any article of Information;
- (c) create or store in electronic form any shared library or archive of Information which could be used as a research application;
- (d) Use the Information or the attached codes to feed any data mining software or other automated trend analysis application or

- (e) use the authority granted in Sections 3.1(b), 3.1(c) or 3.1(d) as a substitute for authorizing additional users to use the Service, and for the avoidance of doubt, Permitted Users may not on a regular basis, or an irregular but frequent basis, distribute more than a few articles to any individuals (employees of the Subscriber, other students or otherwise) who are not Permitted Users.

3.3 The Subscriber shall:

- (a) use its reasonable efforts to inform Permitted User through information made available from Factiva of the conditions of use of the Service and/or the Information contained in this Agreement;
- (b) Subscriber shall not knowingly permit anyone other than Permitted Users to use the Service on 30 days' prior written notice from Factiva, provide a User Statement to Factiva, save that Factiva may not make such request more frequently than twice annually;
- (c) provide Factiva with reasonable assistance in complying with Factiva's obligations under privacy laws relating to information in respect of individual Permitted Users.

4. Fees

4.1 The Subscriber agrees to pay the Fees, annually in advance, to Factiva within 60 days of receipt of the corresponding invoice from Factiva, or its billing agent, ProQuest Information and Learning ("ProQuest"). In addition to the relevant Fees, the Subscriber shall be responsible for all applicable sales, value-added and other such taxes or duties payable in respect of this Agreement. Should the Subscriber fail to make any of the payments under this Section by the relevant due date then Factiva may require the Subscriber to pay interest to Factiva at a rate of 1.5% per month, accruing daily, on the amount due. It is understood that if Subscriber is a public institution, it may be exempt from federal, state and local taxation.

4.2 Factiva's standard rate of Fees may increase from time to time. Other than pursuant to Section 4.3 below, no change in the Fees payable by the Subscriber shall be effective unless agreed in writing between the parties.

4.3 Factiva may, following not less than 60 days' prior written notice to the Subscriber, increase the rate of the Fees, save that no such increase may be made during the 12 month period following the Billing Start Date, and only once in any consecutive 12 month period thereafter. If the rate of such increase is greater than the consumer price index (CPI-U) in the United States (as quoted by the Bureau of Labor Statistics) over the latest 12 month period ending prior to the date of Factiva's notice or 5% (whichever is the greater), then the Subscriber may, within 30 days of receipt of such notice, terminate this Agreement by written notice to Factiva. If the Subscriber gives notice pursuant to this Section 4.3 then such termination shall be effective on the date on which the Fees and/or any applicable Ancillary Fees would have increased.

4.4 Factiva may on reasonable notice (which shall not be less than 2 business days) and during reasonable business hours conduct an audit to verify any User Statement. If such audit reveals that the number of Permitted Users is understated the Fees shall be recalculated accordingly. In the event that any audit shows a User Statement to be understated by 5% or more, the Subscriber shall pay to Factiva the Fees due in relation to such understatement in respect of the previous 6 month period and Factiva may suspend the Service or terminate this Agreement immediately. The audit will consist of a written statement from one of the officers of the Institution, setting out, to the best of their knowledge, the actual number of Permitted Users.

5. Warranty, liability and indemnity

5.1 Factiva shall make reasonable efforts to ensure: the accuracy and reliability of the Services; the timeliness of the Information; and that the Services do not contain any computer virus. Except as specified in this Agreement, all express or implied representations, warranties, conditions and undertakings are excluded. This Agreement gives neither the Subscriber nor the Permitted Users any rights against third party information providers with respect to use of Information by the Subscriber and/or any Permitted User.

5.2 Factiva accepts liability only for: death or personal injury caused by its negligence; direct physical loss or damage to the Subscriber's site caused by its negligence; or any other direct loss or damage caused by its negligence or willful misconduct. Neither Factiva, nor any other member of the Factiva Group, will be held liable in relation to

the accuracy or timeliness of the Information or for any loss or damage of any type in connection with the provision of or failure to provide the Services, except as set out in this Section 5. The total liability of Factiva under this Agreement shall, to the extent permitted by law, under no circumstances exceed the Fees paid by the Subscriber in the twelve months preceding such claim.

- 5.3 Factiva shall indemnify the Subscriber against any direct loss or damage suffered by the Subscriber arising out of any third party claim or action that the Information infringes the copyright of such third party, except for any claim or action arising out of a breach of this Agreement by the Subscriber or the Permitted Users. The Subscriber agrees that if any such claim is made by a third party then the Subscriber will promptly notify and co-operate with Factiva, and Factiva shall at its request be given control of such action. Other than in respect of information proprietary to Factiva, the indemnity in this Section 5.3 shall be limited to the extent that Factiva may recover from its information providers.
- 5.4 Factiva shall indemnify and hold the Subscriber and Permitted 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 Subscriber or any Permitted 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 Sections 3.3 of this agreement or of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims.

The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

6. Term and termination

- 6.1 The term of this Agreement shall commence on the date of first availability of the Services for use by the Subscriber and shall continue for 13 months from the Billing Start Date. Thereafter the term shall renew for successive 12 month periods. Either party may cancel any or all of the Services on written notice to the other no less than 1 month before the end of the then-current 12 month period. To be valid, any cancellation notice from the Subscriber to Factiva must comply with Section 8.2.
- 6.2 Without prejudice to any rights of either party, this Agreement may be terminated:
- (a) in the event of a party committing any breach of this Agreement which is remediable and not remedied within 30 days of written notice from the other party requiring such remedy;
 - (b) immediately on written notice being given by a party if the other party commits any irremediable breach of this Agreement or repeats any breach as has previously been the subject of a notice under paragraph (a) above;
 - (c) immediately on a party giving written notice to the other party if:
 - (i) an order is made or an effective resolution is passed for the liquidation or winding up of the other party;
 - (ii) the other party enters into any composition with its creditors;
 - (iii) the other party has a receiver, manager, administrative receiver or administrator appointed in respect of it or substantially all of its assets;

- (iv) the other party is affected in any jurisdiction other than the United States by any matter of substantially similar effect to any of the matters referred to in paragraphs (i) to (iii) above; or
- (v) if this is a public institution, this Agreement is valid and enforceable only if sufficient funds are made available to the Subscriber by state legislatures for the purposes of this program. It is agreed that if the state legislature does not appropriate funds for the program, this Agreement shall be terminated or amended and the Service varied to reflect any reduction in funds

6.3 On termination of this Agreement for any reason the Subscriber shall pay to Factiva any Fees payable until the effective date of such termination and Factiva shall, other than for termination under 6.2(v), refund to Subscriber any pro-rata portion thereof paid by Subscriber for any remaining period of the Agreement from the date of termination.

6.4 In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Factiva believes that Subscriber has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have fifteen (15) 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 (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

7. Confidentiality of User Data

7.1 Confidentiality of User Data. Factiva and Subscriber agree to maintain the confidentiality of any data relating to the usage of the Service by Subscriber and its Permitted Users. Such data may be used solely for purposes directly related to the Services and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

8. Notices

8.1 General. Other than as set out below, all notices shall be in writing, and delivered by courier or registered mail, or by either facsimile or electronic mail with confirmation, to the addresses specified on the signature page of this document, or other address stipulated in writing by one party to the other. Notice shall be deemed received on the date 3 business days after being sent, if by courier or registered mail, or on the date actually received, if by fax or electronic mail.

8.2 Cancellation notices. Any notice from the Subscriber to Factiva in relation to either termination of this Agreement or cancellation of a Service (or part of Service) must be sent to Factiva either using the web form located at <http://www.factiva.com/customerservice/account/> or by electronic mail (including the Subscriber's account number and contract details) to saccount.americas@factiva.com. If such notice is sent by any other means it will not be valid notice under the terms of this Agreement.

9. Web Content

9.1 Factiva chooses the internet sites through which the Web Content is made available and uses reasonable care in doing so. However, the Web Content is not made available through any licensing agreement with any third party, and accordingly, Factiva does not and cannot license the use of such Web Content. The Subscriber and Permitted Users are solely responsible for determining the extent to which the Web Content is used.

9.2 The Web Content is not included as Information for purposes of this Agreement and Factiva does not accept any liability in relation to the Web Content.

10. **General**

- 10.1 The terms and conditions set out in this Agreement represent the entire agreement between both parties relating to the Services and supersede all prior agreements and representations. It is however acknowledged that separate divisions or departments of the Subscriber, may independently subscribe for Services from Factiva. Such independent subscriptions under separate contracts do not supersede and are not superseded by this Agreement.
- 10.2 No failure or delay by any party in exercising any right, power or remedy under this Agreement shall operate as a waiver of any such right, power and/or remedy. Neither party will be liable for any loss or failure to perform an obligation due to circumstances beyond its reasonable control.
- 10.3 The Services subscribed for under this Agreement, the level of the Fees and Ancillary Fees, the number of Permitted Users, and other relevant details of such Services may be amended by written notice signed by both parties confirming the relevant amendment and the inclusion of any additional schedule.
- 10.4 In the event of conflict between these agreed terms and any schedule, the terms in the relevant schedule shall prevail in relation to the provision of that Service.
- 10.5 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
- 10.6 Neither party may assign this Agreement without the prior written consent of the other party, provided however that Factiva may transfer any of its rights and obligations to any member of the Factiva Group.
- 10.7 The official language of this Agreement shall be the English language and no translation into any other language may be used in its interpretation.
- 10.8 This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.
- 10.9 This Agreement shall be governed by, construed and take effect in accordance with the laws of the State of California
- 10.10 Notice of Terms of "Click-Through" License Terms. In the event that Factiva requires Permitted Users to agree to terms relating to the use of the Service before permitting Permitted Users to gain access to the Service (commonly referred to as "click-through" licenses), Factiva shall provide Subscriber with notice. In no event shall the terms of such "click-through" licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "click-through" licenses and this Agreement, the terms of this Agreement shall prevail.