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# STANDARD LICENSE AGREEMENT

All China Marketing Research Co., Ltd.
AND
THE UNIVERSITY OF CALIFORNIA, BERKELEY

This License Agreement (this "Agreement") is made effective as of *January 1, 2019* (the "Effective Date") between All China Marketing Research LLC, PO Box 3069, Ann Arbor, MI 48106-3069 USA ("Licensor") and The Regents of the University of California for the University of California, Berkeley, with its principal offices at 250 Moffitt Library, #6000 Berkeley California 94720 USA ("Licensee").

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## I. CONTENT OF LICENSED MATERIALS; GRANT OF LICENSE

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**Access by and Authentication of Authorized Users.** Licensee and its Authorized Users shall be granted access to the Licensed Materials pursuant to the following:

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Licensor-Administered Authentication. Where Licensor provides alternative methods of access and authentication beyond the Licensee-administered methods described herein, e.g. by allowing users to establish a personal login from an on-campus IP address (thereby enabling access via username and password when logging in to a vendor website) or device authentication, which affiliates the device or application by use of a token, cookie, or vendor-managed proxy prefix, Licensee will not be responsible nor liable for claims of breach or validity of such use.

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**Amount of Authorized Use.**

Unlimited Access. Subject to the terms of this Agreement, Licensee and its Authorized Users shall have unlimited simultaneous user access to the Licensed Materials.

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Commercial Purposes. Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials, fee-for-service use of the Licensed Materials; nor may Licensee impose special charges on Authorized Users for use of the Licensed Materials beyond reasonable printing or administrative costs. For the avoidance of doubt, research conducted by Licensee and Authorized Users that is supported by a commercial entity shall not be considered use for commercial purposes.

## VI. Mutual Performance Obligations

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Notification and Cure of Unauthorized Use. In the event the Licensee has notice of an unauthorized use of the Licensed Materials and cannot promptly remedy it, the Licensee shall promptly notify the Licensor. In the event the Licensor has notice of unauthorized use of the Licensed Materials, the Licensor will promptly notify Licensee.

In the case of unauthorized use which is causing serious and immediate material harm to the Licensor, Licensor may temporarily suspend such offending individual Authorized User's access to the Licensed Materials (e.g. by blocking an individual user's IP address), provided that Licensor immediately notifies the Licensee of any such suspension, including the reason for the block and any supporting details. Such temporary suspensions will be of the shortest duration possible sufficient to terminate the alleged unauthorized activity and prevent its resumption. Any unauthorized use that is considered a breach of obligations under this Agreement shall be subject to Section XI, below, including the cure period.

## VII. LICENSOR PERFORMANCE OBLIGATIONS

The Licensor will use reasonable efforts to ensure that its performance will meet or exceed industry standards and practices. Additionally, the Licensor agrees to the following performance standards.

Availability of License Materials. Upon the Effective Date of this Agreement, Licensor will make the Licensed Materials available to the Licensee and Authorized Users.

Persistent Linking. Licensor will comply with the most current version of the OpenURL standard (ANSI/NISA Z39.88), and will provide a mechanism for persistent links to content.

Online Terms and Conditions. In the event that Licensor requires Authorized Users to agree to additional terms relating to the use of the Licensed Materials (commonly referred to as "click-through" or "clickwrap" licenses), or otherwise attempts to impose terms on Authorized Users through online terms and conditions invoked by the mere use or viewing of the Licensed Materials, such terms shall not materially differ from the provisions of this Agreement. In the event of any conflict between the click-through terms or online terms and conditions and this Agreement, the terms of this Agreement shall prevail. For the avoidance of doubt, Authorized Users are not a party to this Agreement.

Documentation. Licensor will provide complete and up-to-date help and operational documentation for Licensee and Authorized Users in an electronic format.

Support. Licensor will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Materials. Licensor will make its personnel available by email and/or phone during Licensee's regular business hours, Monday through Friday, for feedback, problem-solving, or general questions and will respond in a timely manner.

Training. Licensor will provide to Licensee and Authorized Users appropriate training relating to the use of the Licensed Materials and any Licensor software. Licensor also will provide additional training to Licensee staff if made necessary by any updates or modifications to the Licensed Materials or any Licensor software.

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Updates. Licensor will provide regular system and project updates to Licensee as they become available.

Quality of Service. Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee's locale. Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to server maintenance; software installation or testing; loading or making available additional Licensed Materials as they become available; and unavailability because of service or equipment failure outside the control of Licensor (including problems with public or private telecommunications services, or Internet nodes or facilities). Licensor may schedule brief unavailability periods, but will do so only where (1) it has given at least forty-eight (48) hour notice to Licensee, and (2) in ways and at times that minimize inconvenience to Licensee and its Authorized Users, regardless of when notice has been given.

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[1] http://www.niso.org/workrooms/transfer/

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## IX. TERM

This Agreement shall be in effect from the Effective Date through the expiration date as set out in Appendix A unless terminated earlier in accordance with the provisions in Section XI.

## X. RENEWAL

This agreement shall be renewable at the end of the current term for a successive one (1) year term unless either party gives written notice of its intention to cancel thirty (30) days before expiration of the current term. In the event of a price increase for a subsequent term as provided for in Section III, Licensee shall have no less than sixty (60) days from the date of notification of the price increase to notify Licensor of Licensee's intent to cancel or renegotiate.

## XI. EARLY TERMINATION

Early Termination for Financial Hardship. The Licensee may terminate this Agreement without penalty if sufficient content acquisitions funds are not allocated to enable the Licensee, in the exercise of its reasonable administrative discretion, to continue this Agreement. In the event of such financial circumstances, Licensee will notify Licensor of the intent to terminate the Agreement as soon as is reasonably possible, but in any case, no less than 30 days prior to next payment date, and this transaction shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the Licensee of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination the Licensee shall maintain its perpetual right to materials licensed under the subscription periods for which it has fully paid, subject to Section XII.

Termination for Breach. If either party believes that the other has materially breached any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to use all reasonable means 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 (60) day period, the non-breaching party shall have the right to terminate the

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Agreement without further notice. Once this Agreement ends, by early termination or otherwise, the Licensor may terminate access to the Licensed Materials by Licensee and Authorized users, subject to Section XII, below. In addition, authorized copies of Licensed Materials made by Authorized Users may be retained for educational purposes and used subject to the terms of this Agreement.

Refunds. In the event of early termination permitted by this Agreement, except for termination for a material breach by the Licensee, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

## XII. [RESERVED]

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[2] http://www.w3.org/WAI/guid-tech.html

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quality, performance, merchantability, or fitness for a particular purpose.

## XV. Indemnities

The Licensor shall indemnify and hold harmless the Licensee and Authorized Users for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, that arise from any third party claim that alleges copyright infringement or other intellectual property infringement arising from the use of the Licensed Materials by the Licensee or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. This Section XV shall survive the termination of this Agreement.

## XVI. Assignment and Transfer

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, except as otherwise provided in Section VII. Neither party to this Agreement may unreasonably withhold or delay such written consent.

## XVII. Governing Law

This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction.

## XVIII. Dispute Resolution & Venue

In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise good faith efforts to resolve the dispute as soon as possible. In the event that the parties cannot, by exercise of their good faith efforts, resolve the dispute, they shall submit the dispute to informal mediation, as further described below in this paragraph. The parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute. The party invoking mediation shall give to the other party written notice of its decision to seek informal mediation, and the notice must include a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute.

If the dispute is not resolved within thirty (30) calendar days of the meeting among the parties' executives, either party may pursue a legal action in court. The exclusive jurisdiction and venue for any and all actions arising out of or brought under the Agreement is in a state court of competent jurisdiction,

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situated in Alameda County, California (or, if applicable, the federal court located in the Northern District of California). Licensor agrees to submit to the personal jurisdiction of the state courts in the State of California (or, if applicable, the federal courts in California) with respect to any legal proceedings that may arise in connection with this Agreement or from a dispute as to the interpretation or breach of this Agreement. During such court action, the parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute.

## XIX. Force Majeure

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, labor strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected.

## XX. Entire Agreement

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. For the avoidance of doubt, online terms and conditions as defined in Section VII shall not modify the terms of this Agreement.

## XXI. Amendment

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

## XXII. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

## XXIII. Waiver of Contractual Right

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

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## XXIV. NOTICES

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile or electronic mail, confirmation copies must be sent by mail or by hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party. Any legal notices or other legal documents provided to either party as described in this Agreement shall constitute valid legal service, and Licensor expressly waives any further service of process requirements provided under the Hague Service Convention or similar service of process standards or agreements.

## XXV. EXECUTION

The parties agree that scanned and/or electronically signed versions of this originally executed Agreement are acceptable in lieu of printed signed copies and are to be given full force and effect under law.

**IN WITNESS WHEREOF,** the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

**LICENSOR:** [redacted]

BY: [redacted] DATE: _____

Signature of Authorized Signatory of Publisher

Print Name: [redacted]
Title: General Manager
Address: Building 2, 188 Nansihuan Rd West, Fengtai District, Beijing 100070, PR China
Telephone No.: [redacted]
E-mail: [redacted]

**LICENSEE:** [redacted]

BY: [redacted] DATE: 12/10/2018

Signature of Authorized Signatory of Licensee

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## APPENDIX A: BUSINESS TERMS

**Licensed Materials:**

- China Statistical Data Service
- China Population Census Data Service
- China Geo-Explorer II

**Contract Term:** January 1, 2019 – December 31, 2019; renewalable for subsequent one year terms unless cancelled

**Access Conditions:** Unlimited multiple simultaneous users systemwide

**Authentication**: IP authentication (See Appendix C for IP addresses)

**Fees and Negotiated Discounts:**

- [redacted]

| | China Statistical Data | China Census Data | China Geo-Explorer II | Total per campus |
|---|---|---|---|---|
| UC Berkeley (including LBL) | [redacted] | [redacted] | [redacted] | [redacted] |
| UC Davis | | | | |
| UC San Diego | | | | |
| UC Irvine | | | | |

**Payment Terms:**

The Licensee will pay a single invoice for the annual subscription fee.

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## APPENDIX B: AUTHORIZED SITES

Each campus listed below has access to all three Licensed Materials outlined in Appendix A

University of California, Berkeley (including users at Lawrence Berkeley National Lab)

University of California, Davis

University of California, San Diego

University of California, Irvine

University of California Office of the President (UCOP) – Access needed for administration and set up

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## APPENDIX C: IP ADDRESSES

The University of California Office of the President (UCOP)'s California Digital Library technical support team will supply IP addresses for each campus.