Informit – Media Subscriber Terms

SUBSCRIBER TERMS
(Educational Institutions)

To: ........................................................................................................ (Licensee)

RMIT Training Pty Ltd (ACN 006 067 349) of Kay House, Level 3, 449 Swanston Street, Melbourne, Victoria, trading as RMIT Publishing (the Publisher) grants you, the Licensee, access to the database described in the Schedule A (the Service) on the following terms (the Subscriber Terms), subject to payment by you of a Subscription Fee and an Access Fee for using the Service and for downloading any digital files of Broadcasts.

In order to use the Service to access and download Broadcasts, you are required at all times throughout the term of this Agreement to:

(a) be an “educational institution” within the meaning of the Copyright Act (Cth) 1968;
(b) have and maintain a current remuneration notice in force with Audio–Visual Copyright Society Limited trading as Screenrights (Screenrights) under which you have nominated the sampling system as the method of accounting to Screenrights; and
(c) account to, and pay Screenrights for, all copies and communications of Broadcasts made by you using the Service in accordance with your existing relevant remuneration notice, and any other relevant existing agreements between you and Screenrights,

(the Prerequisites).

The Service does not include the supply of hard–copy digital video disks (DVDs) containing the relevant Broadcast. If you wish to purchase DVD copies then the Publisher is able to put you into direct contact with an independent organisation that may be able to supply those DVDs. You are responsible for negotiating the terms of supply of the DVDs directly with that independent organisation. The Publisher does not warrant the performance of the independent company, or any aspect of the DVDs, and disclaims all liability and warranties whatsoever in connection with those DVDs (including as to the ownership of rights in, or quality of, the DVDs, or the supply or non-supply of the DVDs).

1 Definitions

Access Fee means the charge to the Licensee calculated in accordance with Schedule A. This charge is intended to cover the costs to the Publisher of making the Digital Copies available for download from the Service including costs such as off–air recording costs, storage of digital files costs and communication of digital files costs. The Access Fee is charged on a cost–recovery and not for profit basis only and is included in the Subscription Price charged.

Authorised User means current employees and current enrolled students of the Licensee, who have been issued by the Licensee with a password or other authentication, and who are...
Permited by the Licensee to access the Secure Network by means of that password and/or IP addressing;

Broadcasts means the individual television broadcast items that are indexed in the Informit – Media database in the categories for which you have paid the relevant Subscription Fee as outlined in schedule A;

Coursepack means a collection or compilation of copyright works assembled by or on behalf of the Licensee for use by students for the purposes of instruction, and includes a collection or compilation of works in digital form and may include Broadcasts;

Digital File/s means any copies of the Broadcasts accessible or capable of download using the Service.

Digital Reserve means digital or other electronic copies of copyright works stored on the Secure Network by the Licensee for use by students in connection with specific courses of instruction offered by the Licensee;

Library Premises means the physical premises of the library or libraries operated by the Licensee, as specified in the schedule;

Secure Network means a network (whether a stand–alone network or a virtual network within the Internet) which is only accessible to Authorised Users approved by the Licensee whose identity is authenticated at the time of log–in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Licensee;

Subscription Fee means the annual fee set out in schedule A chargeable to the Licencee for ongoing access to the Informit – Media database and the Service.

Walk–in User means an individual other than an Authorised User who a Licensee has permitted to have occasional access to the Service via the Secure Network only at a computer workstation physically located on the Library Premises and only for educational purposes and otherwise only as permitted under any relevant remuneration notice and other agreements between you and Screenrights.

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Permitted Uses – Licensee

On payment of the Annual Subscription and Access Fee (see Schedule A) and subject to the restrictions and obligations imposed by clauses 4 and 5 below, you are granted a non–exclusive non–transferable licence to:

(a) use and have access to the Service, and allow Authorised Users and Walk–in Users to use and have access to the Service, by means of the Secure Network;

(b) include in a Digital Reserve a link to the Service via the Publisher’s Service interface only; and

(c) download copies of the Digital Files for educational purposes as set out in s135E of the Copyright Act (1968) only as permitted under any relevant remuneration notice and other agreement between yourself and Screenrights.
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You must make your own arrangements for Internet access in order to use the Service.

3.1 Permitted Uses – Authorised Users
On payment of the Subscription and Access Fee, and subject to the restrictions in clause 4 below, you may permit an Authorised User to, for the purposes of the Authorised User’s individual and private research or study, and at all times for your educational purposes and only as permitted by any remuneration notice and agreement with Screenrights, search, retrieve, download and view any Digital Files in the Service.

3.2 Permitted Uses – Walk-in Users
On payment of the Subscription and Access Fees by the Licensee and subject to the restrictions in clause 4 below, a Walk-in User may, for the purposes of the Walk-in User’s individual and private research or study, and at all times for your educational purposes and only as permitted by any remuneration notice and agreement with Screenrights, search, retrieve, download and view any Digital Files in the Service, but only from a computer supplied by the Licensee and physically located in the Library Premises.

4 Restrictions
In consideration of the grant of this licence, you agree and acknowledge that:

(a) you will not make or permit further reproductions or communications, or make copyright material you have obtained under the Service available for viewing, reproduction or communication, or loan or communication any such material, other than as permitted by your remuneration notice and any other agreement between yourself and Screenrights;

(b) you will not remove any copyright notices that the Publisher has applied to copyright material to meet its obligations under section 135K(1), 135KA and 135F of the Act or otherwise, or other rights management information, nor use any device or service to circumvent any technological protection measure incorporated in the Service;

(c) you will not use any copyright material you have obtained from the Service as a component of or basis for a film, book, directory, bibliography, database, or any other compilation except as permitted by these Subscriber Terms or under your remuneration notice or other agreements with Screenrights;

(d) you will ensure that access to the Service is password protected or otherwise secured and, if you permit access to the Service through IP addressing, you must ensure that the provided IP range will only permit access,
   (i) by Walk-in Users, from a computer supplied by the Licensee and physically located in the Library Premises, and
   (ii) by Authorised Users, via the Secure Network by password and/or IP addressing;

(e) except as authorised by these Subscriber Terms or under your remuneration notice and any other agreements between you and Screenrights, you are expressly prohibited from electronically reproducing and storing, emailing or otherwise communicating any copyright works or digital reproduction of copyright works which you have obtained under the Service; and

(f) you will not exercise any of the rights comprised in copyright in any works you have obtained under the Service except as permitted by these Subscriber Terms or with the prior written permission of the copyright owner or its exclusive licensee or, in the
5 Licensee’s Obligations
You further agree and undertake that:
(a) you will take all reasonable steps to ensure that Authorised Users and Walk-in Users are appropriately notified of the importance of respecting the intellectual property rights in the copyright works in the Service (including the Broadcasts and Digital Files);
(b) you will take all reasonable steps to notify Authorised Users and Walk-in Users of these Subscriber Terms and to protect the Service and works in the Service (including the Broadcasts and Digital Files) from unauthorised use or other breach of these Subscriber Terms;
(c) you will use reasonable endeavours to monitor compliance by Authorised Users and Walk-in Users and use of the Service and, immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
(d) if you permit access to the Service through IP addressing, you will ensure that the provided IP range is that of the Licensee institution only; and
(e) you will issue passwords or other access information only to Authorised Users and use all reasonable endeavours to ensure that Authorised Users do not divulge their passwords or other access information to any third party.

You warrant to the Publisher on each day of the term of this agreement that you meet each and every one of the Prerequisites. You must immediately notify the Publisher in writing if at any time you are, or you suspect you may be, in breach of this warranty. You must indemnify the Publisher against any liability to pay remuneration to Screenrights or a broadcaster as a consequence of you at any time failing to meet one or more of the Prerequisites.

6 Rights Ownership
The Publisher warrants that it holds all the relevant licences to the metadata and software contained in the Service and that the relevant copyright holders have authorised the Publisher to grant this licence.
Copyright in the Informit Search interface and the bibliographic data in the Service remains the property of the Publisher.
Copyright in the Broadcasts provided through the Service remains the property of the original broadcaster or other rightsholder and access is provided as part of the Service only under the terms of your remuneration notice and any other agreement your institution has with Screenrights.
Copyright in the converted metadata and conversion programs remains vested in the Publisher.
Copyright in the Service remains the property of the Publisher, or the licensors referred to in this clause. The licensee and its users will not derive any right, title or interest in the Service.
Nothing in this agreement affects any assignment of intellectual property rights in any metadata, software or content (including any Broadcasts or any Digital Files) or in the Service.

7 Use of Information
The Publisher may monitor and collect information on the use of the Service and may transfer that information to Screenrights upon request. This information will be provided to Screenrights in an aggregate form only and will not contain information traceable to individual users unless required by law (including where required by court order), but it may include information about your use of the Service, the number of Digital Files downloaded using the Service and the nature of each of those Digital Files.

8 No Other Warranties
Other than as set out in this agreement, the Publisher does not provide any warranties express or implied in relation to the Service or the content on the Service. The Publisher does not warrant that:
   (a) the Service will meet your requirements;
   (b) operation of the Service will be uninterrupted or error free;
   (c) the copyright material accessible via the Service will not vary; or
   (d) the source data, content or methodology is accurate.

In the event of an interruption to the Service, the Publisher will take reasonable measures to restore access to the Service as soon as possible. The Publisher further does not warrant, and to the extent permissible by law accepts no liability for, the quality, accuracy or content or any of the Broadcasts or Digital Files.

9 Liability
To the maximum extent that the law allows neither the Publisher nor any of its related companies nor any of their officers, employees or agents shall be liable for any claim:
   (a) for breach of warranty or representation, express or implied, or arising out of any legal claim (including claims for negligence); or
   (b) arising out of the content of any copyright work included in the Service;
and in no event shall any of those persons be liable for any damages, including consequential loss or damages, arising directly or indirectly out of the use of the Service.

Where the Publisher is unable at law to limit its liability to the extent specified in this Agreement then, to the extent permitted by law, the Publisher’s liability will be limited:
   (a) in the case of goods, to the cost of the goods or the repair or replacement of those goods; or
   (b) in the case of services, to the cost of the services or the re-supply of those services.

The Publisher shall use its best efforts to maintain the site and the Service according to this Agreement. However, the Publisher does not accept any liability whatsoever (including in negligence or any other cause of action) for any direct or consequential loss (including, without limitation, any financial or economic loss) you or any other user in your organisation or any other user who accesses the site or Service or any data through you may suffer as a result of the loss of access to the site or the Service, the Publisher’s maintenance of, or
failure to maintain, the site or the Service, or in any way related to access to or use of the site or Service or any data.

10 Term
This licence is granted for a period of one year commencing __________ [insert date] and will, unless terminated earlier in accordance with clause 11 and at all times subject to confirmation of approval of renewal by the Publisher, renew on an annual basis. Either party may advise the other of non-renewal with at least one month’s notice before the next date of renewal. The Publisher reserves the right in its absolute discretion to decline any request for renewal, or to grant renewal on different terms.

11 Termination
The Publisher may terminate this Agreement immediately by notifying you in writing if:
(a) you are in unremedied breach of any obligation of these Subscriber Terms 10 days after receipt of notice from the Publisher requiring that breach to be remedied;
(b) you become an externally-administered body corporate within the meaning of the Corporations Act 2001;
(c) you stop payment of or are unable to pay your debts within the meaning of the Corporations Act 2001;
(d) the Publisher’s right to permit access to and download of any Broadcasts or Digital Files from the Service is terminated or revoked by either Screenrights or any of the relevant copyright holders; or
(e) you at any time cease to meet one or more of the Prerequisites.

On termination of this Licence:
(f) you must immediately cease to access the Service or make the Service available to others;
(g) you must remove from the Secure Network, Digital Reserve and Coursepacks all copies of copyright material obtained via the Service except where you are permitted to retain these under your remuneration notice and other agreements with Screenrights.

12 Variation
The Publisher may vary the terms of this Agreement by giving notice of such variation to you at your last address known to the Publisher. Any variation will come into effect on the later of the date specified in the notice or 30 days after the posting of that notice.

13 Governing Law, Severance, Waiver
This Agreement shall be construed in accordance with the laws of the State of Victoria and within the jurisdiction of the Victorian courts. Should any part of this Agreement be or become invalid, that part at the option of the Publisher shall be severed from this Agreement without affecting the validity of the remaining provisions. No delay or indulgence by the Publisher in enforcing this contract shall prejudice its rights.

14 Acceptance of Subscriber Terms by Use
Use of the Service indicates acceptance of the terms and conditions of these Subscriber Terms by you and your willingness to be bound by them.
15 Assignment
The Licensee is prohibited from assigning this agreement or any part thereof without prior
written consent of the Publisher, which may be given or refused at the absolute discretion of
the Publisher.

Library Premises:

Signed on behalf of __________________________________________________________

(Full name of Licensee and ABN if appropriate)
of ______________________________________________________________________

(Address)

_________________________________   _____________________________   ___________
Signature     Capacity – duly authorised officer of Licensee   Date

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Email
SCHEDULE A

The Service: ["cross out any that are inapplicable"]

- Informit TV News database;
- indexed copies of News and Current Affairs Broadcasts included on Informit TV News database;

The Fees:
["insert details of fees"]