Commercial License Agreement for the COMLEX Databases

This AGREEMENT is made and entered into as of this _____ day of _____, _____ ("Effective Date"), by and between the Linguistic Data Consortium, LDC, ("LICENSOR") and _____ ("LICENSEE"),

RECITALS

This Agreement is entered into with reference to the following facts:

1. LICENSOR is developing a set of lexical databases. LICENSOR desires to make the lexical databases available to LDC's members, and to receive members' comments in order to improve the databases.
2. The parties intend, by entering into this Agreement, to grant LICENSEE rights of commercial use in one or more Lexical Database(s) as specified in EXHIBIT A, and in the accompanying text corpus as described in Exhibit B (User Agreement for the COMLEX Syntax 2.0 Corpus) if the Exhibit B user agreement is executed.

AGREEMENT

A. Definitions.

As used herein, the following terms have the following defined meanings:

1. "Database". (1) Each of the specific COMLEX lexical databases listed or described in EXHIBIT A, and (2) any accompanying software, documentation, corrections, upgrades, and related materials, in whatever forms, formats, and Media that are supplied by LICENSOR under this Agreement, except the COMLEX Syntax 2.0 text corpus, which is covered by the terms of the Exhibit B User Agreement.
2. "Version". Any edition, modification, or re-issue of the database or part of the database which is designated by LDC as a new Version.
3. "Dictionary Use". The reproduction of all or any part of a dictionary database for resale or distribution as part of a product that permits the End User to (i) look up any word and obtain information about that word if that word is in the database of the product; and (ii) review alternative words and their associated information (which alternative words may be alphabetically surrounding the unknown word) if the word input by the End-User is not in the database of the product.
4. "End User". An ultimate user (i.e., not a reseller) of a Licensed Product.
5. "including". Whenever examples are used with the word "including" (or any derivation thereof), such examples are illustrative only and do not limit the generality of the words accompanying the word "including" (or any derivation thereof).
6. "in perpetuity". The most extensive period of time permitted, including renewal and extension periods, if any, by any applicable copyright or other law.
7. "Licensed Product(s)". Any existing or future electronic or software product created by or for LICENSEE which utilizes and/or incorporates the Database, or any portion or derivative work thereof, and any third party products which utilize and/or incorporate the Database pursuant to a permitted sublicense, including any and all documentation and software, in any Media.
8. "Media". Any device or means by which a Licensed Product is distributed, including optical disc, CD-ROM or floppy disk.

B. License

1. LICENSOR grants to LICENSEE a non-exclusive, royalty-free, worldwide license to:
1.1 modify, create derivative works based upon, and rearrange the Database(s) ordered, or any component thereof, as necessary or desirable to utilize and/or incorporate the Database(s) ordered or derivative works thereof in Licensed Products; and
1.2 reproduce, manufacture, license, and distribute, and sell, rent, or lease copies of, the Licensed Products to End-Users (except the text corpus), directly or indirectly; and
1.3 grant sublicenses to third parties to do either or both of the foregoing, only with prior written approval of LICENSOR.
1.4 use the COMLEX Syntax 2.0 corpus in accordance with the terms specified in Exhibt B, provided that Licensee executes Exhibit B.

2. LICENSEE and/or its permitted sublicensees shall have the right to secure copyright protection for Licensed Products as derivative works in LICENSEE's or its permitted sublicensee's own name in all countries and territories where such protection is available and to exploit the copyright in Licensed Products, provided, however, that nothing herein shall be deemed to transfer any ownership rights held by LICENSOR in the Database to LICENSEE.

3. The following restrictions apply to LICENSEE'S rights in the Database:
3.1 LICENSEE and its sublicensees shall distribute or license the Database and/or derivative works thereof only as a part of, or incorporated into, Licensed Products. Neither LICENSEE nor its sublicensees shall market the Database as a ``standalone'' product or as a component of a product in a form identical or substantially similar to the Database.
3.2 Licensed Products shall not be marketed primarily for Dictionary Use and shall not have Dictionary Use as a principal content element, provided, however, that a Licensed Product may have Dictionary Use as a principal element if the primary dictionary data for such product is based wholly on material other than the Database.
3.3 If Licensee received the COMLEX Syntax 2.0 corpus, it shall observe all additional restrictions specifed in Exhibit B.

C. Term

This Agreement shall begin on the Effective Date and shall continue in perpetuity, subject only to termination for cause pursuant to Section I.

D. Delivery and Acceptance

1. Upon LICENSEE's execution of this Agreement, LICENSOR shall deliver the Database to LICENSEE.
2. LICENSOR shall continue to deliver succeeding Versions of the Database to LICENSEE, provided LICENSEE is a paid-up member of the LDC for the Membership Year in which such Version is released.
3. LICENSEE acknowledges and agrees that the Database is licensed on an ``as is with all defects'' basis and, subject only to subsection 2 of this Section D, is provided without maintenance, support or improvements. Accordingly, LICENSOR shall not be required to make any corrections, or provide maintenance, or provide updates to LICENSEE, or assist LICENSEE in the understanding or use of the Database. No guarantee is made that the dictionary is adequately or completely described in the documentation.
4. Notwithstanding subsection 3 of this Section D if LICENSOR makes corrections or provides maintenance or updates to the Database to any other member of LDC, LICENSOR shall offer such corrections, maintenance and/or updates to LICENSEE, if LICENSEE is a member of LDC.

E. Licensed Product Marketing And Manufacture

1. Except as otherwise agreed in writing by LICENSOR, LICENSEE and its permitted sublicensees shall not use or publish, in connection with the marketing or promotion of Licensed Products, any trade name or trademark now or hereafter used by LICENSOR that is associated with LICENSOR or the Database. Where LICENSOR does authorize such a use, LICENSEE and its sublicensees shall display the appropriate trademark symbol and a notice of LICENSOR's ownership of the trade name or trademark whenever such name or mark is first used in any advertisement, brochure or product packaging.
2. LICENSEE shall have the sole discretion to set and determine all terms and conditions of manufacture, sale and/or licensing of Licensed Products, including price, position, distribution channels, and name. LICENSEE and its permitted sublicensees shall be entitled to subcontract the manufacture or reproduction of all or any portion of Licensed Products.
3. Subject only to subsection 1 of this Section 5, LICENSEE shall have the sole discretion to develop and approve all Licensed Product packaging, marketing materials and activities.

F. Licensor Disclaimer of Warranties, Indemnities and Limitation of Liability

1. LICENSEE AKNOWLEDGES AND AGREES THAT LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY WITH WHATEVER DOCUMENTATION IS PROVIDED.
2. In no event shall LICENSOR be liable for special, direct, indirect, consequential, punitive, incidental, or other damages, losses, costs, charges, claims, demands, fees or expenses of any nature or kind arising in any way from LICENSOR's furnishing or LICENSEE's use of the Database.

G. Licensee Representations, Warranties and Indemnities

1. LICENSEE represents and warrants as follows:
1.1 Any copy of a Licensed Product distributed by LICENSEE shall contain a valid copyright notice, and LICENSEE's permitted sublicense agreements shall require the same; and
1.2 LICENSEE shall not distribute or license Licensed Products except pursuant to the terms of this Agreement.

2. LICENSEE agrees to indemnify, defend and hold harmless LICENSOR from and against any and all claims, demands, losses, or damages (including attorneys' fees, costs, and expert witnesses' fees) arising out of or resulting from LICENSEE's use of any Database or breach of any representation or warranty contained in subsection 1 of this Section 7. LICENSOR shall give LICENSEE prompt notice of any claim in respect of which LICENSOR requests indemnification. LICENSEE's indemnity obligations as set forth in this subsection shall survive any termination of this Agreement.

H. Confidentiality

LICENSEE shall at all times hereafter protect the confidentiality of the Databases using measures at least as strong as those used by LICENSEE in protecting its own proprietary software and documentation. LICENSEE further agrees not to disclose the Databases, in whole or in part, to any third party or entity.

I. Termination

1. Without limiting any other rights either party may have, it is specifically understood and agreed that if either party breaches this Agreement, by failing to perform or comply with any material term or provision hereof, and fails to remedy or cure such breach withing thirty (30) days after receiving notice from the other party of such breach, the other party shall have the right, at its sole option and upon notice to the defaulting party, to terminate this Agreement. If the party receiving notice of breach is unable to cure such breach due to the nature of such breach, such party shall be deemed to have cured such breach if, within thirty (30) days after receipt of such notice, such party has taken reasonable steps to prevent a recurrence of such breach, provided, however, that if the same breach occurs twice in any 18-month period, the foregoing shall not apply to the second occurrence of any such breach. The rights and remedies provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

2. If the Agreement is terminated for cause by either party pursuant to subsection 1 of this Section 9, the following shall apply:
2.1 LICENSEE shall cease the reproduction or manufacture of the Licensed Products, except in such quantities as are sufficient or necessary to fill orders received by LICENSEE prior to such expiration or termination.
2.2 LICENSEE shall cease the execution of any further permitted sublicense agreements authorizing the reproduction and distribution of Licensed Products (i.e., products containing the Database or any derivative work thereof), but sublicense agreements executed prior to termination shall remain in effect for their respective terms.
2.3 Each party shall forthwith return to the other all papers, materials and other property of the other held by each pursuant to this Agreement, and each party shall assist the other in effecting an orderly termination of the business affairs contemplated hereunder. However, LICENSEE shall be entitled to retain copies of the Database for support of its LICENSEES and End-Users and for internal use.

J. Notices

1. This Agreement shall be construed and controlled by the laws of the Commonwealth of Pennsylvania. Process may be served on either party by U.S. Mail, postage prepaid, certified or registered, return receipt requested, or by such other method as is authorized by law.

2. All notices and requests in connection with this Agreement shall be deemed given as of the day they are (i) deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by overnight courier, charges prepaid, with a confirming fax; and addressed as follows:

In the case of LICENSOR: In the case of LICENSEE:

Linguistic Data Consortium
University of Pennsylvania
3600 Market Street, Suite 810
Philadelphia, PA 19104

K. Miscellaneous

1. Neither party may assign this Agreement, or any portion thereof, to any third party unless the other party expressly consents to such assignment in writing. Any attempted assignment without that consent shall give the other party the right to terminate this Agreement.

2. This Agreement is intended solely as a license agreement, and no partnership, joint venture, agency or other form of agreement of relationship is intended.

3. The captions of various paragraphs of this Agreement are solely for the purpose of convenience and shall not be relied upon in construing any provision hereof.

4. Subject to the limitations contained herein expressed, this Agreement will inure to the benefit of and be binding upon the parties, their successors, administrators and permitted assigns.

5. LICENSEE shall acknowledge LICENSORin appropriate citations in scholarly literature when reference is made to any Database. LICENSEE shall not use the name of LICENSOR in any publication in any manner that would imply an endorsement of LICENSEE or any product or service offered by LICENSEE.

6. If one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

7. No waiver by either party of any rights hereunder shall be valid unless it shall be in writing signed by that party. The failure of either party to insist upon strict performance of any provision of the Agreement shall not be construed as a waiver of such provision.

8. LICENSOR and LICENSEE represent that the individuals signing below are duly authorized to sign this Agreement on behalf of LICENSOR and LICENSEE, respectively.

L. Entire Agreement

This Agreement, together with Exhibit A hereto, which is incorporated herein by this reference, constitutes the full and complete understanding between the parties and supersedes all prior and contemporaneous understandings, whether written or oral, with respect to the subject matter hereof. This Agreement shall not be modified except by a written instrument signed on behalf of LICENSOR and LICENSEE by their duly authorized representatives.

IN WITNESS WHEREOF, intending to be bound, the parties hereto have hereunto set their hands and seals and duly executed this Agreement.

For: _____
Signature: _____ _____ _____
Date: _____
Name: _____ _____
Title: _____

EXHIBIT A

DATABASE DESCRIPTION
The COMLEX Database(s) and version(s) covered by this license is (are) as follows:

COMLEX English Syntax Lexicon, Version 3.1

EXHIBIT B

Organization User Agreement for the COMLEX 2.0 Corpus Distributed by the Linguistic Data Consortium

The understandings, terms, and conditions listed below apply equally to all or part of the text designated as the COMLEX Syntax 2.0 corpus.

A. Permitted Uses.

1. The information contained in the COMLEX Syntax 2.0 corpus ("Information") may only be used for research and development of natural-language- processing, information-retrieval or document-understanding systems.

2. Summaries, analyses and interpretations of the linguistic properties of the Information may be derived and published in a scientific or technical context, solely for the purpose of describing the research and development and related issues. Any such use shall not infringe the rights of any third party including, but not limited to, the authors and publishers of the excerpts.

B. Access to the Information by individuals.

1. Access to the Information by an individual person is to be controlled by that person's organization. The organization may only grant access to people working under its control, i.e. its own members, consultants to the organization, or individuals providing service to the organization.

2. Individuals may be allowed access to the Information only after completing a copy of the Individual User Agreement for the COMLEX Syntax 2.0 corpus, as provided with this application. The access is to be terminated when the conditions of the application no longer apply. The organization will retain the applications of all persons ever granted access to the Information and make them available upon request to any of the copyright holders and to the institution or agency holding this completed application.
3. The organization will maintain a list of people with current and recently- terminated access to the information, which will be made available to the LDC on request.
4. An individual with access may only display the information to or share the information with persons whom his organization lists as having access to the information.

C. Copyright

1. The copyright holders retain ownership and reserve all rights pertaining to the use and distribution of the Information.
2. Except as specifically permitted above and as necessary to use and maintain the integrity of the Information on computers used by the organization, the display, reproduction, transmission, distribution or publication of the Information is prohibited.
3. Violations of the copyright restrictions on the Information may result in legal liability.
4. Copyright holders of the Information contained in the COMLEX Syntax 2.0 Text Corpus include:
Wall Street Journal Material, Copyright 1989 Dow Jones, Inc.
Associated Press, Copyright 1988
Federal Register materials courtesy of IBM; formatted version copyright 1992, University of Pennsylvania
Computer Library materials copyright owned by Ziff Communications Company and other parties as their respective interests may appear.
San Jose Mercury News, Copyright 1991 San Jose Mercury News
Francis, W. Nelson, 1964 Brown University, Providence

For: _____
Signature: _____ _____ _____
Date: _____
Name: _____ _____
Title: _____

Individual User Agreement for the COMLEX 2.0 Corpus Distributed by the Linguistic Data Consortium

The understandings, terms, and conditions listed below apply equally to all or part of the text designated as the COMLEX Syntax 2.0 corpus.

A. Permitted Uses.

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2. Summaries, analyses and interpretations of the linguistic properties of the Information may be derived and published in a scientific or technical context, solely for the purpose of describing the research and development and related issues. Any such use shall not infringe the rights of any third party including, but not limited to, the authors and publishers of the excerpts.

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3. Violations of the copyright restrictions on the Information may result in legal liability.
4. Copyright holders of the Information contained in the COMLEX Syntax 2.0 Text Corpus include:
Wall Street Journal Material, Copyright 1989 Dow Jones, Inc.
Associated Press, Copyright 1988
Federal Register materials courtesy of IBM; formatted version copyright 1992, University of Pennsylvania
Computer Library materials copyright owned by Ziff Communications Company and other parties as their respective interests may appear.
San Jose Mercury News, Copyright 1991 San Jose Mercury News
Francis, W. Nelson, 1964 Brown University, Providence

Licensee shall send a signed copy of this agreement by facsimile to LDC, fax number (+1) 215 573-2175. Alternately, Licensee shall email an electronic version of the signed agreement to LDC at ldc@ldc.upenn.edu

By the applicant:
Signature: _____
Date: _____
Name: _____
Title: _____

Accepted for the organization:
Signature: _____
Date: _____
Name: _____
Title: _____
Institution/Agency: _____