

American National Corpus Second Release- Restricted Portion End User License

This End User License Agreement (the "Agreement") is made on the _____ day of _____ in the year _____ (the "Effective Date") by and between the American National Corpus Consortium (the "ANCC") and _____ (the "Licensee").

WHEREAS, the ANCC has obtained permission from a number of text providers (the "Text Providers") to include, in the Restricted Portion of the American National Corpus, samples of their texts listed in Appendix I to this Agreement (the "R-ANC Texts") and the copyright to each of the compilations and annotations in the R-ANC Processed Material (as defined below) is owned by the party specified in copies of the R-ANC Processed Material; and

WHEREAS, the Licensee is the end user in the manner detailed herein of the R-ANC Texts where end user(s) may be academic researchers, researchers in commercial institutions, or researchers in government agencies, and

WHEREAS, the Text Providers have empowered the ANCC under separate agreements to grant a non-exclusive license to the Licensee as detailed herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions

- a. The "R-ANC Texts" are written texts and transcripts of speech held on computer and selected for use in language based education, research and development.
- b. The "R-ANC Processed Material" is the collection of R-ANC Texts assembled into consistent electronic format and enhanced with various annotations, which constitutes the Second Release of the American National Corpus.
- c. The "Licensee's Results" are the results of work performed by the Licensee on or with the R-ANC Processed Material in the course of research and development as permitted by this Agreement.

2. Terms of the License Granted to the Licensee

- a. The ANCC hereby grants to the Licensee, according to the terms and conditions set out herein and in consideration of the payments specified herein, a non-exclusive, non-transferable, perpetual, worldwide license to use the R-ANC Processed Material, for internal use only, for the purposes of linguistic education and research and/or the development of non-commercial language products.
- b. The Licensee shall not, except as provided herein, copy, publish, distribute or otherwise give access to any third party to the whole or any part of the R-ANC Processed Material. The Licensee shall ensure that its employees understand and abide by this restriction and shall supervise their activities with respect to the R-ANC Processed Material. The Licensee agrees to keep the R-ANC Processed Material in confidence and treat such Materials with at least the same degree of care that it treats its own most confidential information. The Licensee may not assign, transfer, lease, sell, rent, charge or otherwise encumber the R-ANC Processed Material.
- c. The R-ANC Processed Material may be installed on the Licensee's computing systems that are normally used to conduct research activities, including both work and home computers.
- d. Copies of the R-ANC Processed Material may be made for backup purposes, or for the purposes of making data available to the Licensee's employees to be used for the purposes of this Agreement, but Licensee shall ensure that the ANCC's copyright notice is reproduced on all copies or parts thereof of the R-ANC Processed Material. Any such copies will be deemed to be part of the R-ANC Processed Material.
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- f. Licensee shall give appropriate reference to the American National Corpus in scholarly publications benefiting from use of the R-ANC Processed Material whenever data resources are mentioned.

3. Requirement to Exercise Professional Care

The Licensee shall at all times exercise professional care and judgment to avoid violation of this Agreement and shall inter alia:

- a. maintain an up-to-date written record of all copies of the versions of the R-ANC Processed Material created and/or reproduced and distributed under this Agreement, and their location, and upon request promptly provide such record to the ANCC,
- b. check on the status and use of the R-ANC Processed Material by Licensee's employees on a monthly basis,
- c. make use of file protection and other data security measures to prevent insofar as possible all and any unauthorized access to the R-ANC Processed Material,
- d. without prejudice to the foregoing, take all such other steps necessary to protect the intellectual property rights of the ANCC and/or the Text Providers, and
- e. maintain ongoing interest and involvement in the use and distribution of the R-ANC Processed Material as provided for herein.
- f. if the research project becomes inactive (for example, if a researcher changes employment or takes a sabbatical leave) erase or delete the R-ANC Processed Material from active computer files, or otherwise to protect the R-ANC Processed Material until such time as the project becomes active again.

4. Indemnity

Licensee shall defend at its expense, indemnify and hold the ANCC, its members and/or Text Providers and each of its and their trustees, officers, directors, agents, employees, successors and assigns harmless from and against any and all claims, lawsuits, losses, costs, damages, expenses and liability, including attorneys' fees and costs, relating to or arising out of any use of the R-ANC Processed Material by Licensee, or any breach by the Licensee of this Agreement. ANCC has the right to review any counsel selected by Licensee to defend ANCC and the terms and conditions of any settlement affecting ANCC. In addition, ANCC may participate in the defense by counsel of its own choosing, at ANCC's expense, without affecting Licensee's obligations under this paragraph. At Licensee's sole expense and when reasonably requested by Licensee, ANCC shall furnish Licensee with relevant evidence in ANCC's control and shall otherwise cooperate in the defense of the claim.

5. Limitation of Liability

- a. THE R-ANC PROCESSED MATERIAL IS LICENSED AND PROVIDED "AS IS". THE ANCC EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND THAT ANY SOFTWARE SUPPLIED WITH THE R-ANC PROCESSED MATERIAL IS UNINTERRUPTED OR ERROR-FREE.
- b. IN NO EVENT SHALL THE ANCC, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY OR SIMILAR DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOOD WILL, LOSS OF DATA OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, WHETHER DIRECTLY OR INDIRECTLY CAUSED, WHETHER IN TORT, CONTRACT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, ANCC HEREBY DISCLAIMS ALL LIABILITY FOR CLAIMS ARISING FROM NEGLIGENCE, INCLUDING SUCH CLAIMS RESULTING FROM THE ACTIONS OF THE ANCC'S MEMBERS AND ANY OF THEIR EMPLOYEES, AGENTS, CONSULTANTS, DISTRIBUTORS OR SUB-CONTRACTORS.

If the ANCC is held responsible or liable for damages, for any reason whatsoever, the ANCC's maximum aggregate liability shall be limited to \$300 USD. The foregoing shall be ANCC's sole liability and Licensee's sole remedy.

6. Rights Reserved

All rights in and to the R-ANC Processed Material, including copyright, which are not granted to the Licensee in this Agreement, are retained by ANCC, its members and the Text Providers.

7. Term; Termination

- a. This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with this Section.
- b. The ANCC may terminate the Agreement if the Licensee fails to pay the fee specified in Section 3 within thirty (30) days of the due date or if the Licensee commits any material breach of this Agreement.
- c. This Agreement shall automatically terminate if and when a supervisor, receiver, administrative receiver or other encumbrancer takes possession of, or is appointed over the whole or any substantial part of, the Licensee's assets.
- d. Upon termination the Licensee shall erase, or otherwise destroy, all full and partial copies of the R-ANC Processed Material. A duly authorized officer of the Licensee shall promptly verify in writing to the ANCC that the Licensee has complied with this obligation.

8. Additional Provisions

- a. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to conflict of law provisions. Licensee hereby submits to the exclusive jurisdiction of and venue in any state or federal courts located within the Eastern District of Pennsylvania with respect to any and all disputes concerning the subject of this Agreement.
- b. Severability. If any provision of this Agreement is found to be void, invalid or unenforceable in any jurisdiction, for any reason, then the remaining provisions hereof shall not be affected thereby.
- c. Entire Agreement. This Agreement and the appendices attached hereto embody the entire understanding between the parties relating to the subject matter hereof, and there are no terms or conditions hereof express or implied written or oral. This Agreement supersedes all prior oral or written representations, agreements, promises or other communications, concerning or relating to the subject matter of this Agreement.
- d. Amendment; Waiver. This Agreement may be amended, modified, superseded, canceled, renewed or extended, and the terms and conditions hereof may be waived, only by a written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.
- e. Assignment. Licensee may not assign this Agreement, or any of its obligations or duties hereunder, in whole or in part, without the ANCC's prior written consent. For purposes of this Agreement an assignment shall include, but not be limited to, any change of ownership or control of Licensee, by merger, consolidation or the sale of all, or substantially all, of Licensee's assets.

IN WITNESS WHEREOF, the parties hereto have duly executed this End User License Agreement as of the day and year first above written.

LINGUISTIC DATA CONSORTIUM ACTING ON BEHALF OF THE AMERICAN NATIONAL CORPUS CONSORTIUM

LICENSEE

By: _____
Name: _____
Title: _____

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

Appendix I

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