

## Licensing Agreement

This Licensing Agreement (“Agreement”) is made and entered into as of this 29th day of July 2021 (the “Effective Date”) by and between The Board of Trustees of the Leland Stanford Junior University, an institution of higher education and a trust having corporate powers under the laws of the State of California, acting herein and hereunder (“Licensor”), and University of California San Diego (“UCSD”) (each, a “party” and, collectively, the “parties”). Licensee and Licensor hereby agree as follows:

**1. Scope.** This Agreement is entered with regard to a license for Licensor’s streaming archive of *Philosophy Talk* radio show episodes (the “Content”). UCSD’s library system (the “Licensee”) wishes to be given access to the Content for use by UCSD’s faculty and students (“Users”); Licensee shall be responsible for ensuring that all Users are properly authenticated and are in fact current faculty, staff and students of UCSD. Licensor wishes to provide access to this Content to Licensee in accordance with the terms hereunder. This Agreement represents the parties’ entire understanding regarding the license of the Content.

### **2. Right to Use the Content.**

2.1 During the Term (as defined in Section 6.1), Licensor grants to Licensee a nontransferable, nonexclusive, worldwide right to permit Users to access and use Licensee’s online archive of the Content subject to the terms of the Agreement.

2.2 Licensee will provide Licensor a range of mutually agreeable IP addresses (“IP Range”) for which Licensor will provide IP access that permits Licensee’s Users to access the Content. Licensee will ensure that User access stays within the IP Range. Licensee acknowledges that the Content is a part of an archive that is a streaming resource; Licensee agrees that neither it nor its Users will download, reproduce, distribute or otherwise make the Content available to an audience or user that is not within the IP Range.

2.3 Licensee shall be solely responsible for obtaining and maintaining appropriate equipment and ancillary services needed to connect to, access or otherwise use the Content, including, without limitation, computers, computer operating system and web browser.

### **3. Usage Restrictions and Representations.**

3.1 In addition to the restrictions set forth in Section 2.2, Licensee and Users shall not, directly or indirectly: (i) modify, translate, or create derivative works based on the Content; (ii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Content; (iii) remove any proprietary notices or labels from the Content; or (iv) challenge or undermine Licensor’s ownership and copyrights in the Content.

3.2 Licensee agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Content. Licensee shall be liable for all acts and omissions of its Users.

3.3 Licensor may immediately suspend Licensee’s account, and access to the Content if (i) Licensee violates Section 2.2, or 3 of this Agreement.

### **4. Ownership.**

4.1 As between the parties, Licensor owns or has right, title and interest in and to the Content (including all derivatives and associated intellectual property).

### **5. Billing and Payment.**

5.1 Licensee shall pay Licensors<sup>[Text Deleted]</sup> ("the Fee") for the license provided; the Fee shall not increase during the Term. The Fees are non-cancelable and nonrefundable, except as set forth in Section 6.2. The Fees are exclusive of taxes, levies, or duties imposed by taxing authorities, and Licensee shall be responsible for payment of all such taxes, levies, or duties (excluding taxes based on Licensor's income), even if such amounts are not listed on an Order. Licensee shall pay all fees in U.S. Dollars or in such other currency as agreed to in writing by the parties.

5.2 Licensor shall invoice Licensee the Fee upon execution of this Agreement. Licensee will pay the invoice within 30 days of receipt.

## **6. Term and Termination.**

6.1 The Agreement shall commence as of August 15, 2021 and continue for 1 year (the "Term"). All sections of the Agreement which by their nature should survive termination will survive, including without limitation, accrued rights to payment, use restrictions and indemnity obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.

6.2 In the event of a material breach by either party, the non-breaching party shall have the right to terminate the Agreement for cause if such breach has not been cured within 30 days of written notice from the non-breaching party specifying the breach in detail. If Licensor ceases to exist or no longer is able to license the Content, Licensor will refund to Licensee a pro-rata portion of the Fee based on the date of termination.

6.3 Upon any termination or expiration of this Agreement, Licensee's right to access and use the Content shall terminate.

## **7. Representations, Disclaimer of Warranties, Indemnities.**

7.1 Each party represents and warrants to the other party that it has the power and authority to enter into the Agreement. Licensee acknowledges that the Content may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance of Licensor's servers and other equipment.

7.2 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, LICENSOR AND ITS THIRD PARTY PROVIDERS HEREBY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE CONTENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, COMPLETENESS AND QUALITY. THE CONTENT IS PROVIDED TO LICENSEE ON AN "AS IS" BASIS.

**8. Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (B) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (C) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED \$100.00.

**9. Confidential Information.** Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business (hereinafter referred to as "Confidential Information" of the Disclosing Party). Licensor's Confidential Information shall include this Agreement. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information; and (ii) not to use or divulge to any third person any such Confidential Information. The Disclosing Party agrees that the foregoing shall not apply with respect to Confidential Information after five years following the termination of the Agreement or any Confidential Information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it by a third party; or (d) was independently developed without use of any Confidential Information of the Disclosing Party; or (e) is required by law.

**10. Force Majeure.** Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

**11. General provisions.**

11.1 Any action, Claim, or dispute related to the Agreement will be governed by California law, excluding its conflicts of law provisions, and controlling U.S. federal law. The failure of either party to enforce any right or provision in the Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. Except for actions for nonpayment or breach of either party's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than two years after the cause of action has accrued.

11.2 The Agreement and all Order(s), represent the parties' entire understanding relating to the Licensee's access to and use of the Content, and supersede any prior or contemporaneous, conflicting or additional communications. The exchange of a fully executed Order by fax or electronic signature shall be sufficient to bind the parties to the Terms and Conditions of the Agreement and such Order. The Agreement may be amended only by written agreement signed by the parties. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

11.3 No joint venture, partnership, employment, or agency relationship exists between Licensor and Licensee as a result of the Agreement or use of the Content. Licensee may not assign the Agreement without the prior written approval of Licensor. Any purported assignment in violation of this Section shall be void.

**The Board of Trustees  
of the Leland Stanford Junior University:**

[Text Deleted]

Signature

[Text Deleted]

Name

[Text Deleted]

Title

\_\_\_\_\_  
Date

**University of California San Diego:**

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Signature

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\_\_\_\_\_  
Name

AUL Scholarly Resources and Services

\_\_\_\_\_  
Title

8/2/2021

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Date