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PROMINENT TERMS OF A DATABASE LICENSING AGREEMENT FOR THE PROTECTION OF DATABASE PRODUCER

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ABSTRACT

It has been an accepted practice of producers of refurbished databases that in the absence of copyright protection, they rely upon the contractual terms of the original database licensing agreement. The producers, known as licensors, normally invoke these to protect their interests. The agreement incorporates terms that confer on the producers the right to exercise legal remedies should there be any breach of said agreement by the licensees. Thus it is pertinent for the producers to be aware of the terms of the licensing agreement in order to ensure that they are cautiously constructed in order to protect the interests of these producers. A cogent licensing agreement normally provides the protection by restricting the manner in which the database is being used. For example, databases accessed through the internet may contain restrictions for downloading and redistributing its content. This article will highlight the rationale behind the provisions incorporated in a database licensing agreement meant to safeguard the content of the database. It is not, however, the intention of this paper to elaborate on each and every term in a database licensing agreement; the clauses discussed are limited to those related to the protection of the interests of database producers.

Keywords: Databases, WESTLAW, Licensing, Agreement

1. INTRODUCTION

None of the major online database services relies exclusively on copyright (Paul T Sheils, Robert P, 1992). Instead, owners of commercial databases generally seek to protect their rights through an end-user license agreement. This agreement sets up a contractual relationship, the breach of which could subject the breaching party to a substantial damage reward. A database license agreement usually grants licensees a limited license to access or download the database

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content. This permission is explicitly or implicitly stated in the express terms and conditions of the license agreement. West Publishing Company, for example, delineates such restrictions in the cover page licensing agreement printed from WESTLAW. This agreement sets limitations on the use of WESTLAW's database beyond the limitations mandated by existing laws.

2. DEFINITION

Legally, the word "license" is defined in a dictionary as *"…necessary, generally revocable, authority to act granted by a competent authority…"* (LB Curzon, 2003). While, in the context of copyright, section 3 of the Copyright Act 1987 provides that a license means *"… a lawfully granted license in writing, permitting the doing of an act controlled by copyright…"*.

Thus, a license can be construed as an agreement granting or restricting a licensee's contractual right to use information in a database. The agreement focuses on the extent of the rights, privileges or uses, which are either given or withheld in reference to the subject matter, namely, database content or information.

A database is always referred to as a collection or compilation of data or information. *Datum,* a singular for "data", is the origin of the term database. It is defined as "a thing known or granted, assumption or premises from which inferences may be drawn or also defined as facts or information, especially as basis of inference, quantities or characters operated on by computers etc, and stored or transmitted on punch card etc" (J.B. Sykes, 1982). A database, on the other hand, is described as "a quantity of data available for use, which is stored in a computer in a way that enables people to get information out of it very quickly" (John Sinclair, 1987). It is also described as collection of data produced and retrieved by computer. The data is usually stored on magnetic disk or tape. A database program enables the computer to generate files or data and later search for and retrieve specific items or groups of items. For example, a library database system can list on screen, all the books on a particular subject and then display further details of any selected book (Christian Humphries, 2002). The above definitions seem to confine the meaning of database to electronic or computer database. However, it is an acceptable fact that a database can include a physical database which is non electronic in nature.

A database licensing agreement can exist either as an intellectual property right-based agreement such as copyright licensing agreement or a mere contractual licensing agreement. Traditionally, most licensing dealt with intellectual property right. However, these days, intellectual property right such as copyright is no longer the only basis of licensing, a considerable ingredient of database licensing deals with database content or information contained in it and access to or use of it regardless of the existence of intellectual property right in the database content (Raymond T. Nimmer, 2004).

In an intellectual property right-based licensing, such as copyright licensing, the restrictions contained in the license protect the right of licensor against any prohibited conduct by the licensee. The owner of a database simply grants permission to the licensee to do certain acts in relation to the protected subject matter which constitute an infringement of the copyright in the work in case no license had been granted. The contravention of the terms and conditions in the agreement may amount to infringement of copyright.

In this circumstance, a license functions as a contract-based defence to an infringement action as abiding by the license agreement will discharge the licensee from liability for a claim of property rights infringement.

3. CATEGORY OF DATABASE LICENSING AGREEMENT

There are no standard categories of database licensing as it depends very much on the nature of the license itself. For the purpose of this article, the database licensing agreement may be categorised into the following:

i. Exclusive or Non Exclusive;
ii. Access Purpose of Database;
iii. Standard Form of Contract.

3.1. Exclusivity of License

The first category is a license can be either exclusive or non-exclusive. The content of the licensing agreement very much depend on these characteristics. An exclusive license is a permission to do something to the exclusion of all which include the owner of the database. The right of action for infringement can be taken by the exclusive licensee as he is entitled to the same remedies as the owner of database.

A non exclusive license or also known as mere license, grants rights or permissions to the licensee, but does not preclude the licensor from granting similar or even greater rights to another person (Khaw Lake Tee, 2001). It is not a property transfer, but is more likely to be regarded as a narrow covenant not involving a transfer of any property rights (Raymond T. Nimmer, 2004).

A non-exclusive licence consists of permission to use or a waiver of the right to take legal action. This is because a non exclusive license does not render the licensee the ownership of the property right; the licensee cannot assert claims for infringement against third parties except with the owner's involvement (Khaw Lake Tee, 2001).

3.2. Downloading or Access Purposes

The second category indicates that licensing can also be categorised based on the purpose of the database either for downloading or access. The terms and warranties in the agreement are drafted according to the purpose involved. This type of licensing generally concerns online database which involves making digital information available for downloading and license use by end users.

Another type of online license involves licensed access to information contained in its online system. The content of the license depends on the type of online database involved. This license deals with access to information and the system itself. The license grants the right to have access to the information which is regularly and continuously updated and susceptible to effective searches. This type of license is not only based on property rights such as copyright licensing but most often it is associated with rights to control the site and the system.

3.3. Standard Form of Contract

The way a licensing is presented is another type of database licensing agreement. This agreement is put in a clear physical documented agreement, which are read, understood and signed by both parties. On the other hand it can also be in the form of unclear adhesion agreement either in the form of shrink wrap, click wrap or browse wrap license where the signature of the contracting parties are not required.

The database product is licensed either through physical licensing agreement and signed by the parties to the contract or through an unsigned "adhesion contract". The former type of licensing require potential licensees to sign and return the license agreement before password or other means of accessing the database were given to them. On the other hand, the latter only necessitates the user to click on the "Agree" or "Accept" button or by breaking open the package to indicate that the user agrees to the terms and conditions stipulated in the contract. These licensing agreements are known as shrink wrap" license, "click-wrap /web-wrap" (Arlene Bielefield, Lawrence Cheeseman, 1999) or "browse-wrap" licenses (Gregory J.Segal, 1998).

As time goes by, the format of database licenses has changed. Initially contracts were signed by both parties, but as the market expanded the adhesion contracts became popular, starting with "shrink wrap" license, and followed by "click-wrap" and recently "browse wrap" license. (Beatson, 1998). A shrink wrap license takes in many forms. First, it is in the form of "envelope license", where the license is printed on the exterior of the sealed envelope, in the "box top" license, which can be read before opening the box, and second, the "referral license", where there is a sticker indicating that the CD ROM should not be opened prior to reading the license (Johnson. P, 2003). However, the general criterion of all shrink wrap licenses is that they cannot normally be read prior to purchase. Click wrap license, on the other hand, can be separated into two. The first is where a database is downloaded from the Internet and before downloading, a scroll-box appears and the user is asked to read a license and click "I Agree". The second one is where the license is an intrinsic part of the purchased database, and during the installation process a similar box will open asking the user to click "I Agree". The difference between these two is the latter is very much similar to shrink wrap "referral" license where the terms and conditions cannot be read before the formation of contract. Finally, a "browse-wrap' license which is in fact a variation of "click-wrap " license, that gives an option to the users to click on the hyperlink to read the content of the agreement on a separate screen.

These agreements operate as "contracts of adhesion" which are non-negotiable and pre-printed forms offered on a "take it or leave it" basis. The party who accepts the contract does not negotiate, but merely adheres (Beatson, 1998). Most of the consumer-oriented database licensing agreements are not signed (Sheils and Penchina, 1992).These unsigned licensing agreements purport to bind licensees by action, not signature. These databases provide notices which warn potential licensees that accessing the database indicates acceptance by the licensee of the terms and conditions in the license agreement. Thus, the conduct of the potential licensee who clicks on the notice or unwrap the package before entering the database binds the licensee to the contract.

4. PROVISIONS OF A DATABASE LICENSING AGREEMENT

A database license agreement grants licensees a limited license to access the information contained in the database. A typical license agreement contain provisions which enable the licensor to retain title to the database and restrict the use of the information, including prohibitions on the copying, redistributing and republishing of the information. It also contains disclaimers warranties, limitation of liabilities resulting from errors and omissions in the information or from delays or interruptions in its delivery. The important provisions for licensing agreement are discussed below.

4.1. Important Clauses for Protection of Database

4.1.1. Title or License Grant

The most important provision in a database licensing agreement is the license grant. It has to be drafted carefully as it conveys the parameters of the permissible or non-permissible actions. In the event of a breach, the licensor must assess the licensee's actions against the grant of rights provided in the agreement (Arlene Bielefield, Lawrence Cheeseman, 1999).

a. Exclusivity

The type of license, whether exclusive or non exclusive, is a major consideration in a licensing agreement. For an exclusive license, the licensor (database producer) gains a greater degree of control and can charge a higher price for the privilege (Helen H.Richardson, 2004).

The licensee may gain a competitive advantage by being the only party using the licensed database. However, for the purpose of licensing database product, it is advisable that the agreement should state that the license is non exclusive and non-transferable. Non exclusive would mean that the rights in the license are not only given to the licensee but also available for other potential licensees (Goldscheider, 1996). This is important as the main purpose of compiling information is to commercialise it through licensing to as many licensees as posible. In this situation, the database producer is able to make a maximum profit which in a way safeguards the database producer's interest.

b. Territorial Scope

The territorial region in which the licensee may exercise its right should also be specified, i.e., whether it is applicable worldwide or limited to certain territories. In case of any uncured breach committed by the licensee, the grant should assert that whether the license is irrevocable or revocable. This term would be beneficial to database producer as the territorial limited licence may allow the database producer to license his right to other parties in other jurisdiction.

c. Intellectual Property Rights License

If the license is an intellectual property license, it should be stated in the grant whether it is licensed under copyright or other rights in the intellectual property regime. Therefore, the language used afterwards should be constructed accordingly, for example, the right in copyright includes the right to reproduce and create derivative works. In addition to that, it is important to state from the rights available in the copyright, which rights are permitted to the licensee or is it desired for the licensee to have all these rights. (Goldscheider, 1996).

d. Sublicensing

Another issue involves here is whether sublicensing is permitted. In the case of a licence to an intermediate licensee, provision should be made permitting sub-licensing. This has to be made clear in an express term in the grant of license as there is authority to the effect that silence implies that sublicensing is permitted. (Goldscheider, 1996). If such a licensee is only permitted to make or to distribute copies, this should be stated. In the absence of so doing, no such limitation will be inferred. If the license permits sublicensing, licensee is required to pay at a higher price, which is according to the number of sub licensees. This would in a way benefit the database producer.

e. Grant Back

Some licenses should include a grant back provision stating that any derivative works created by the licensee are licensed back to the licensor, or, all rights, titles and interests to the modifications created are assigned back to the licensor. This could occur in a situation where the licensee makes compilations from the data derived from a proprietary database. This term ensures that other party including the licensee would not be able to take advantage from the hard work of database producer other than what have been permitted to them.

f. Reservation of Rights

In order to secure protection from manipulation, the licensor should reserve all rights not expressly granted by expressly stating in the grant clause that no other license other than that stated in the license agreement is granted or implied. For instance, a permission to reproduce data from the database for reporting in the daily news paper does not mean that the licensee is allowed to gather all information and come out with their own compilation. This would protect the database from being copied by the licensee.

As the nature of grant clause is simple and short, it is important that the terms and conditions be spelled out elsewhere in the contract to avoid misunderstanding and disagreement (Arlene Bielefield, Lawrence Cheeseman, 1999). This is crucial as certain terms could conceivably mean different things to the parties to the contract. The example of the clause of grant of database licensing agreement can be spelled out as:

> "…1.1 Supplier (database producer) hereby grants to subscriber (the licensee) a non-exclusive, non transferable, limited license to access the service.
> 1.2 Subscriber is licensed to use the Data made available on the Service in Accordance with the terms and conditions of this Agreement.
> 1.3 Except otherwise provided with respect to certain Data, the license includes the right to download and temporarily store insubstanstial portions of data ("Downloaded Data") to a storage device under Subscriber's exclusive control
> (i) to display internally such Downloaded Data and
> (ii) to quote and excerpt from such Downloaded Data (appropriately cited and credited) by electronic cutting and pasting or other means in subscriber's own Work Products.
> (iii) to create printouts of insubstantial portions of data for internal use and for distribution to third parties if such third parties agree not to further distribute the printouts…."

4.1.2. Ownership

The license should make clear that title to the database and all rights therein is vested in the licensor (database producer). The example clause is as below.

> "…The Licensor is the owner of the copyright and all other intellectual property rights which subsists in the database and any copies thereof…"

This term is very important as it protects the right of database producer on the database.

4.1.3. "Authorized Users"

This clause is imperative in protecting the interest of database owner as it will ensure that only certain groups of people are allowed to have access to the database. This requirement will ensure a new subscription to database from a person other than the authorized user. The numbers of authorized users in the agreement have some impact on the fees of the subscription. The more authorized user means higher price had to be paid by the licensee to the licensor (Arlene Bielefield, Lawrence Cheeseman, 1999).

This kind of clause can take a number of formats. The example of database subscribed by university can be seen below:

> "…Licensor shall provide access to and use of the service by enrolled students, active instructors, active faculty and administrative staffs, all as designated by licensee, and other licensee's personnel as designated by licensee and approved by licensor, in accordance with the terms and conditions of this agreement. Any person who does not possess an authorized and valid college or university identification is unauthorized. Licensor will not promote the use of the service to unauthorized users.…"

The act of authorised users, however, is subject to express restrictions and limitations, as discussed below.

4.1.4. Restrictions or Limitations of Use

This clause is a general statement about the uses to which the licensee is entitled. In other words, the restrictions pertain to the license. Users are generally limited to personal and non commercial activities. This is particularly important if the content of the database originates from other person's copyright work. The restrictions stated in the licensing are normally designed as such to protect the interest of database owner.

In the United States case of *Hogan Systems, Inc v. Cybresource International, Inc (1998)* the court interpreted the limitation clause as sheltering third party from infringement action. The restriction was that the licensee would not make the software available to anyone, except employees of the licensor or licensee and other persons during the period such other persons were on the premises for purposes specifically relating to an authorized use of the licensed

program. This clause indirectly allows third party contractors to use the software at the licensee's premises which prevent him from any infringement action.

The restriction clause is based on available law such as, trade secret. As decided in *Trandes Corp. v. Guy F. Atkinson* (1999), as the license of construction design software restrict the licensee to use only for the licensee's own projects, in allowing the independent contractor to obtain and use a copy of the software, this amounted to an infringement.

However, in certain circumstances, the limitation clause has seemed to exclude certain users' rights under copyright law, for example the clause states that:

> "…Except as expressly permitted by this agreement, or with the licensor's prior written permission, licensee may not themselves; (a) copy, download, store, publish, transmit, transfer, sell or otherwise use the Data or any part of the Data in any form or by any means; or (b) modify or make any alterations, additions or amendments to the Data; (c) combine the whole or any part of the data with any other software, data or material; or (d) create derivative works from the whole or any part of the data, nor shall licensee allow any third party to do the same…"

The clause seems to restrict the right of lawful users under the copyright law even in fair dealings.

Such term gives an impression that the licensing contract can supersede the written provision in the statutory law. Therefore, a good licensing agreement should function as a contractual mechanism to protect the interest of database owner as well as the interest of the users. It is advisable for a license in its restrictions clause to state for example:

> "…The licensee is granted a limited license to access and use for research purposes the data available from time to time. All research shall be directly connected to educational activities of the licensee. Any other use of the data is prohibited. This license includes: (a) the right to electronically display is retrieved from the service to no more than one person at a time (no dissemination or redistribution via electronic bulletin boards, e mail, intranets, the Internet or similar electronic medium). However displaying the results to multiple parties for purposes of classroom instruction is allowable. (b) The right to download an insubstantial number of documents retrieved from the service and stores them in machine-readable form, primarily for one person's exclusive use, and (c) the right to print documents retrieved from the service…"

This example states clearly that the licensee is allowed to undertake certain activities for fair dealing purposes only such as for educational research activities. Nevertheless, such exemptions should not go beyond the proprietary rights, i.e., intellectual property rights embedded in the database.

4.1.5. Rights in Data

This clause basically makes clear the existing intellectual property and other proprietary interests belong to database owner for the purpose of protecting their interests. To that effect the licensee is not allowed to do or permit other person to do any act which is inconsistent with any intellectual property of the licensor or moral rights of the author of the data.

This clause protects the interest of the database producer by imposing an obligation on the licensee to inform any unauthorized use of the data or any act of infringement committed or likely to be committed which will affect the intellectual property of the database owner. The licensee is also required to assist the database owner in taking or resisting any proceedings in relation to infringement of intellectual property. This is vital as to maintain the validity and enforceability of the intellectual property of the database owner. The exact provision of this clause is indicated as:

> "…(1) Except for the license granted in this Agreement, all rights, title and interest in data, in all languages, format and media throughout the world, including all copyrights, are and will continue to be the property of the licensor and the contributors.
>
> (2) Crown Copyright Material is reproduced with the permission of the Controller of The Majesty's Stationary Office.
>
> (3) Licensee shall not do or omit to do or authorized any other person to do or omit to do an act which (a) would or might invalidate or be inconsistent with any intellectual property of Licensor and/or Contributors or (b)would be in breach of or otherwise inconsistent with the moral rights of the authors of the Data.
>
> (4) Licensee shall not delete, erase, remove, deface or cover any trademark, trade names, numbers, copyright or other proprietary notices, guarantee, designation of origin, means of identification, disclaimer or other statement used in connection with any data, nor shall licensee authorized another person to do so.
>
> (5) Licensee shall promptly inform the licensor if the licensee becomes aware of: (any unauthorized use of the data (b) any actual, threatened, or suspected infringement of any intellectual property of licensor and/or Contributors in the data which comes to licensee's notice and (c) any claim by any third party coming to its notice that the Data infringes the intellectual property rights of any other person.
>
> (6) Licensee shall at the request and expense of licensor do all such things as may be reasonably required to assist the licensor in taking or resisting proceedings in relation to any infringement or claim referred to in this Clause and in maintaining the validity and enforceability of the intellectual property of licensor in the Data…"

4.1.6. Responsibility for Access

Basically this clause is meant for the licensee to be responsible to any act relating to the use of database. This indirectly protects the interest of database producers as it ensures that only those who obtain the database password through a valid channel are permitted to get access to the database. The responsibility includes safeguarding the database passwords and to ensure no unauthorized access occurs in the database system.

The example of this clause is:

> "…(1) Licensee is responsible for notifying Licensor of such persons to whom the service passwords are to be issued or from whom passwords are to be revoked.
>
> (2) Licensee is solely responsible for maintaining security of the service password.
>
> (3) Licensee is also responsible for all access to and use of the service including software by Licensee's personnel or by means of Licensee's equipment of the service password, whether or not Licensee has knowledge of or authorizes such access and use..."

Beside the above clauses, the clause in limitation is equally important in protecting the interest of database owner.

4.1.7. Disclaimer of Warranties and Limitation of Liabilities

This clause is a place where the licensor will deny any responsibility for errors or defects in the database product being licensed (Arlene Bielefield, Lawrence Cheeseman, 1999). Warranties and disclaimers need to be tailored to the individual database. If the database is "off the shelf" database, then the warranties should be limited to "as is" and warranties of merchantability and fitness for particular purpose disclaimed to be the fullest extent of the law. The clause normally states:

> "…Except as specifically provided in this Agreement, the Data are provided "as is" without warranty of any kind, express or implied, including but not limited to warranty of performance, merchantability, fitness for a particular purpose, accuracy, omissions, completeness and delays…"

If instead the database is customized or specially created for the licensee, then the licensor (database owner) would normally discuss with the licensee as regards to terms and conditions in the contract. This is necessary as the licensee should not absolutely agree to a disclaimer or warranty of merchantability and fitness for a particular purpose because the database should be fit for the purpose for which it is customized.

In either case generally, both parties should strive to limit their damage liability to the fullest extent of the law including indirect, incidental, consequential, special or exemplary damages. Liability for loss of business profits or information, or interruption of business should also be limited. The only exclusion to this limitation of damage liability should be for the exclusion of

licensee's breach of an obligation of confidentiality. If such an obligation exists in the contract, consequential and other special damages may be the only relief available for the licensor.

In protecting their interest the licensor (database owner) disclaims liability and at the same time noted a limitation of liability of no more than the fee paid. It also provides limitation to the time for which the action is taken. The clause, for instance states:

> "…1.1 Licensee's exclusive remedy and Licensor's entire liability under this Agreement if any, for any claim(s) for damages relating to the service or data made against them individually or jointly whether based in contract or negligence shall be limited to the aggregate amount of the Service Charges paid by Licensee relative to the specific database which is the basis of the claim(s) during 12 month period preceding the event giving rise to such claim.
>
> 1.2 Except for claims relating to the Service Charges or improper use of the service or data, no claim regardless of form which in any way arises out of the Agreement or the use of, or inability to use, the service or data, may be made, nor action based upon such claim brought, by either party to this Agreement more than one year after the basis for the claim becomes known to the party desiring to assert it…"

4.1.8. Exclusions of Liability

In contrast with the clause on limitation of liability, the exclusions of liability clause expressly states matters that are not under the database owner's liability. This clause indirectly prevents the database owner from being sued for such liabilities. This indirectly protects their interests. The exemptions include any loss suffered by the licensee in connection with the use of database and the loss of business revenue, profit and good will. Indirect or consequential loss is also excluded. In addition to that, the clause also excludes the inability to perform any duty due to the weaknesses of the database system. The clause is as demonstrated below:

> "…(1) Licensor shall not be liable in contract, tort, delict or otherwise for any loss of whatsoever kind, howsoever, arising in connection with the service (whether or not caused by the negligence of Licensor).
>
> (2) Licensor shall not be liable in contract, tort, delict or otherwise for any loss of revenue business, anticipated savings or profits, loss of goodwill or data or any for indirect or consequential loss whatsoever, howsoever arising suffered in connection with the service (whether or not caused by the negligence of Licensor).
>
> (3) In no event shall Licensor be liable to Licensee for any claim(s) relating in any way to (i) Licensee's inability or failure to perform legal or other research related work or to perform such legal or other research or related work properly or completely, even if assisted by Licensor or any decision made or action taken by Licensee in reliance on the data, (ii) Any lost profits (whether direct or indirect) or any consequential, exemplary incidental, indirect or special damages relating in

> whole or in part to Licensor's rights under this Agreement or use of or inability to use the service or data even if Licensor has been advised of the possibility of such damages, or (iii) the procuring, compiling, interpreting, editing, writing, reporting or delivering of the data.

4.1.9. Obligations of Licensor

This clause excludes the licensor from any accountability other than what have been highlighted in the provision. Normally, this type of clause gives some specifics regarding what the licensee can expect from the licensor. Some licensor obligation clauses also include a statement about performance, stating that a reasonable effort will be made to have the system function as well as other similar systems. This clause to that effect normally states for example:

> "…Licensor shall establish one or more locations at which the database will be available online for authorized users at Authorized Workstations. Except for those times when servers are down for maintenance or for loading data, Licensor will make a reasonable effort to make the database accessible online continuously during the term of the Agreement…"

4.2. Confidentiality

Basically, an obligation of confidentiality is fundamental to a know-how licensing agreement. Even though, database licensing agreements do not directly relate to the matters falling within "know-how" class, there is certain information relating to the use of database which is required to be kept in confidence. For example, the passwords and user names given to the authorized users should not be disclosed to other person without authorization.

The relevant clause for this purpose is normally stated as;

> "…The Licensee shall not, at any time during the term, disclose to any other person, or use for any purpose except as contemplated by this Agreement, any information which has been disclosed to the Licensee under or pursuant to this Agreement, and the Licensee shall use its best endeavors to keep all information confidential, whether it is marked as such or not…"

4.2.1. Law and Jurisdiction

Finally, it is desirable, particularly where companies of more than one nationality are concerned, to specify the law of the contract and which courts are to have jurisdiction over any dispute or whether such a dispute is to be arbitrated and if so who is to appoint the arbitrators. The example of the clause is:

> "…This Agreement shall be subject to the law of Malaysia and both parties hereby agree to submit to the exclusive jurisdiction of the High Court in the event of any dispute…"

5. CONCLUSION

The terms in a database licensing agreement must be constructed carefully in order to ensure both parties, database producers and the users, interest. It is advisable that both parties should come to a mutual agreement on the terms concerned. However, as it is a trend now that a standard form contract is used (which is prepared by the database producers), such as a shrink wrap and a click wrap license, the clauses incorporated in the agreement should be drafted to protect the interests of both parties. Thus, licenses of database should incorporate necessary provision such as restrictions on use to protect the legitimate interest of the database producer. The terms on non exclusion license, territorial limited license and grant back clause are amongst provisions that are there to maximize the database producer's interest. In addition to that, there are terms and conditions which protect the database from unauthorised copying. This includes the provisions on 'reservation of rights', 'restrictions or limitations', 'authorised users' and 'rights in data'. However, licensees should also be given sufficient freedom to use the database content to meet their legitimate needs and prohibited from using the information in ways that would diminish the value of the database producer's investment in the database.

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