

EMPIRE ONLINE LICENCE AGREEMENT

This Licence Agreement (this "Agreement") is made effective as of May 1, 2007 (the "Effective Date") between Adam Matthew Digital Ltd, Pelham House, London Road, Marlborough, Wiltshire, SN8 2AA, England (the "Licensor") and The Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, University of California Office of the President, 415 20th Street, 4th floor, Oakland, CA 94612, USA (the "Licensee").

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Grant of Licence for Licensed Materials

The materials that are the subject of this Agreement are described as **Empire Online** [electronic information published or otherwise made available by Licensor] (hereinafter referred to as the "Licensed Materials").

The Licensee and its Authorised Users acknowledge that the copyright and title to the Licensed Materials and any trademarks or service marks relating thereto remain with Licensor and/or its suppliers. Neither the Licensee nor its Authorised Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement.

Licensor hereby grants to the Licensee nonexclusive, royalty-free, worldwide, perpetual rights to the use of the Licensed Materials and the right to provide the Licensed Materials to Authorised Users in accordance with this Agreement.

II. Authorised Use of Licensed Materials

Authorised Users. "Authorised Users" are:

Persons Affiliated with the Licensee. Full and part-time students and employees (including faculty, staff, affiliated researchers and independent contractors) of the Licensee and its immediately affiliated institutions, regardless of the physical location of such persons. Any off-campus access shall be provided only for individuals authenticated as affiliated with the Licensee as defined herein.

Walkins. Patrons not affiliated with the Licensee who are physically present on the Licensee's premises ("walkins").

Authorised Uses. The Licensee and Authorised Users may make all use of the Licensed Materials as is consistent with the Fair Use Provisions. In addition, the Licensed Materials may be used for purposes of research, education or other noncommercial use as follows:

Digitally Copy. The Licensee and Authorised Users may download and digitally copy a reasonable portion of the Licensed Materials.



Print Copy. The Licensee and Authorised Users may print a reasonable portion of the Licensed Materials.

Archival/Backup Copy. Upon request of the Licensee, the Licensee may receive from Licensor and/or create one (1) copy of the entire set of PDF images from the Licensed Materials and one (1) copy of text from the Licensed Materials in XML format to be maintained as a backup or archival copy during the term of this Agreement or as required to exercise The Licensee's rights under Section IX, "Licence Period", of this Agreement. The Licensee may use the XML metadata to develop its own software on the condition that the use of that software continues to comply with this Agreement.

Course Packs. Authorised Users who are members of the Licensee's faculty or staff may download and print out multiple copies of a reasonable portion of the Licensed Materials for the purpose of making a multisource collection of information for classroom use (coursepack) to be distributed to students at the Licensee's institution free of charge.

Electronic Reserve. The Licensee and Authorised Users may store in electronic format in secure electronic data files a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by the Licensee and/or its parent institution.

Distance Education. The Licensee may provide access to students enrolled in distance education programs offered or sponsored by the Licensee.

Scholarly Sharing. Authorised Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for resale.

Interlibrary Loan. Using secure electronic, paper, or intermediated means such as Ariel, Licensee may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and the Guidelines for the Proviso of Subsection 108(2g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

In addition, Authorised Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorised User's own scientific, scholarly and educational works.

Nothing in this Agreement is intended to limit in any way whatsoever the Licensee's or any Authorised User's rights under the Fair Use provisions of the United States or international law to use the Licensed Materials.

III. Specific Restrictions on Use of Licensed Materials

Unauthorised Use. The Licensee shall not knowingly permit anyone other than Authorised Users to use the Licensed Materials.

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Modification of Licensed Materials. The Licensee shall not modify or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

Removal of Copyright Notice. The Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

Commercial Purposes. The Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

IV. Licensor Performance Obligations

Availability of Licensed Materials. Upon the Effective Date of this Agreement, Licensor shall make the Licensed Materials available to the Licensee and Authorised Users at least until 31 December 2014.

The Licensee is committed to purchasing all five sections of the Licensed Materials. The total fee payable by the Licensee for the period up to 31 December 2014 shall be set out at the beginning of this term and is payable by lump sum or by annual instalments on the publication of each section.

Documentation. Licensor will provide and maintain help files and other appropriate user documentation.

Support. Licensor will offer activation or installation support, including assisting with the implementation of any Licensor software. Licensor will offer reasonable levels of continuing support to assist the Licensee and Authorised Users in use of the Licensed Materials. Licensor will make its personnel available by email, phone or fax during time period for feedback, problemsolving, or general questions.

Training. No training will be required, as the Licensed Materials will make use of standard Windows/internet interfaces and functions.

Privacy. Licensor recognizes the importance of protecting the information it collects in the operation of Licensed Materials and will take all reasonable steps to maintain the security, and privacy of this information. Licensor will ensure that any information it collects will be relevant and not excessive for purposes of operating Licensed Materials and will be deleted when no longer needed.

Licensor will only disclose to third parties navigational and transactional information in the form of anonymous, aggregate usage statistics and demographics in forms that do not reveal an Authorised User's or the Licensee's identity or confidential information.

Quality of Service. Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorised Users with a quality of service comparable to current standards in the online information provision industry in the Licensee's locale.

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Licensor shall use reasonable efforts to ensure that their server(s) have sufficient capacity and rate of connectivity to provide the Licensee and its Authorised Users with a quality of service comparable to current standards in the online information provision industry.

Licensor shall use reasonable efforts to provide continuous seven (7) days a week with an average of at least 98% uptime per month. The allowable downtime includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities.

Appropriate advance notice shall be supplied in the event of scheduled maintenance. Scheduled downtime will be performed at a time to minimize inconvenience to the Licensee and its Authorised Users, determined after appropriate consultation. Appropriate notification in the event of unscheduled downtime is also expected. Licensor shall use reasonable efforts to have in place appropriate backup and/or mirror sites for their production servers, and shall automatically redirect traffic to alternate mirror sites in times of production outage at one site.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, the Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse the Licensee in an amount that the nonconformity is proportional to the total Fees owed by the Licensee under this Agreement.

Notification of Modifications of Licensed Materials. The Licensee understands that from time to time the Licensed Materials may be added to, modified, or deleted from by Licensor and/or that portions of the Licensed Materials may migrate to other formats. Licensor shall give prompt notice of any such changes to the Licensee. Failure by Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by the Licensee. If any modifications render the Licensed Materials less useful to the Licensee or its Authorised Users, the Licensee may treat such modifications as a material breach subject to the Early Termination provisions of this Agreement below.

Continued Training. Licensor will provide regular system and project updates to the Licensee as they become available.

Notice of Terms of "ClickThrough" Licence Terms. In the event that Licensor requires Authorised Users to agree to terms relating to the use of the Licensed Materials before permitting Authorised Users to gain access to the Licensed Materials (commonly referred to as "clickthrough" licences), Licensor shall provide the Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall the terms of such "clickthrough" licences materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "clickthrough" licences and this Agreement, the terms of this Agreement shall prevail.

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Withdrawal of Licensed Materials. Licensor reserves the right to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright. Licensor shall give written notice to the Licensee of such withdrawal no later than 30 days following the removal of any item pursuant to this section. If any such withdrawal renders the Licensed Materials less useful to the Licensee or its Authorised Users, Licensor shall reimburse the Licensee in an amount that the withdrawal is proportional to the total Fees owed by the Licensee under this Agreement.

Technological Change. If any technological change should cause the Licensor to withdraw the Licensed Materials during the period guaranteed by this Agreement, the Licensor will reimburse the Licensee in an amount that the reimbursement is proportional to the total Fees owed by the Licensee under this Agreement.

V. The Licensee Performance Obligations

Provision of Notice of Licence Terms to Authorised Users. The Licensee shall make reasonable efforts to provide Authorised Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement including, in particular, any limitations on access or use of the Licensed Materials as set forth in this Agreement.

Protection from unauthorised use. The Licensee shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. In the event of any unauthorised use of the Licensed Materials by an Authorised User, (a) Licensor may terminate such Authorised User's access to the Licensed Materials, (b) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorised use occurred, and/or (c) The Licensee shall terminate such Authorised User's access to the Licensed Materials upon Licensor's request. Licensor shall take none of the steps described in this paragraph without first providing reasonable notice to the Licensee in no event less than two (2) weeks and cooperating with the Licensee to avoid recurrence of any unauthorised use.

VI. Mutual Performance Obligations

Confidentiality of User Data. Licensor and the Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by the Licensee and its Authorised Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

VII. Renewal

This agreement shall be renewable at the end of the current term for a successive Five-year term unless either party gives written notice of its intention not to renew Forty-five (45) days before expiration of the current term. Each renewal shall be subject to the payment by Licensee of _____ to cover the Licensor's cost of providing ongoing access to the Licensed Materials.

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VIII. Early Termination

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that the Licensee has exceeded the scope of the Licence, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the nonbreaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the nonbreaching party shall have the right to terminate the Agreement without further notice.

Upon termination of this Agreement for cause online access to the Licensed Materials by the Licensee and Authorised Users shall be terminated.

In the event of early termination permitted by this Agreement where the Licensee is the nonbreaching party, the Licensee shall be entitled to a refund of any fees or prorata portion thereof paid by the Licensee for any remaining period of the Agreement from the date of termination. No refunds shall be issued where the Licensee has committed a breach of this Agreement.

IX. Licence Period

Except for termination for cause, the Licensor hereby grants to the Licensee a nonexclusive, royaltyfree, worldwide, perpetual licence to use the Licensed Materials until 31 December 2014, subject to payment of such fees as the parties may agree. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement.

If for some reason, the Licensor is no longer able to provide permanent online access, the Licensor shall provide the Licensee with an archival copy of the Licensed Materials, as outlined in Section II of this Agreement, as of the date of discontinuance of online service, a complete set media of a commercially acceptable nature at the time. The means by which the Licensee shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

X. Warranties

Subject to the Limitations set forth elsewhere in this Agreement:

The Licensor warrants that it has the right to licence the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to licence the Licensed Materials, and that use of the Licensed Materials by Authorised Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

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XI. Limitations on Warranties

Notwithstanding anything else in this Agreement:

Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials.

Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information. Except for the express warranties stated herein, the Licensed Materials are provided on an "as is" basis, and the Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. The Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. The Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

XII. Legal Disputes

The Licensor shall indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

The Licensee and Licensor will endeavour to resolve all disputes without recourse to legal action. In the event of any legal dispute, each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims.

The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

XIII. Force Majeure

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary licence), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

XIV. Entire Agreement

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

XV. Amendment

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by Authorised representatives of the Licensor and the Licensee.

XVI. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

XVII. Waiver of Contractual Right

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

XVIII. Notices

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by post or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

If to Licensor:
Adam Matthew Digital Ltd
Pelham House,
London Road,
Marlborough
Wiltshire,
SN8 2AA,
United Kingdom

If to Licensee:
California Digital Library
415 20th Street, 4th Floor
Oakland, California
94612 USA

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IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly Authorised representatives as of the date first above written.

LICENSOR:

BY: _____
Signature of Authorised Signatory of Publisher

DATE: 5 th April 2007

Name:
Title: Sales and Marketing Director
Address: Adam Matthew Digital Ltd., Pelham House,
London Road, Marlborough, Wiltshire, SN8 2AA, UK
Telephone No.:
Facsimile:
Email:

THE LICENSEE:

BY: _____ DATE: 5/14/07

Name:
Title: Director, Business Services
Address: 415 20th Street, 4th Floor
Telephone No.:
Facsimile:
Email:

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Appendix A

Business Terms

Licensed Materials:

Empire Online

Pricing:

- * Simultaneous Use: unlimited
- * Includes access for nine (9) UC campuses plus free access for UC San Francisco
- * A credit note of _____ will be available to CDL to cover combined UCLA, UC Berkeley and UC Irvine purchase total of Empire Online
- * MARC records are available for _____ download
- * Archival back-up on DVD available on request
- * _____ fee will be charged
- * Payment in the amount of _____ will be paid by Licensor due on January 1, 2015 and every five (5) years thereafter to cover hosting costs

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Appendix B

Campuses of the University of California

University of California, Berkeley

University of California, Davis

University of California, Irvine

University of California, Los Angeles

University of California, Merced

University of California, Riverside

University of California, San Diego

University of California, San Francisco

University of California, Santa Barbara

University of California, Santa Cruz

University of California Office of the President

Primary Contact Name:

[Text deleted]

Billing Contact Name:

[Text deleted]

Technical Contact Name:

[Text deleted]

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Appendix C

University of California IP Addresses

UC Berkeley

[Text deleted]

UC Davis

[Text deleted]

UC Irvine

[Text deleted]

UC Los Angeles

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UC Merced

[Text deleted]

UC Riverside

[Text deleted]

UC San Francisco

[Text deleted]

UC Santa Barbara

[Text deleted]

UC Santa Cruz

[Text deleted]

UC San Diego

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UC Office of the President - California Digital Library

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