

# STANDARD LICENSE AGREEMENT

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Licensor-Administered Authentication. Where Licensor provides alternative methods of access and authentication beyond the Licensee-administered methods described herein, e.g. by allowing users to establish a personal login from an on-campus IP address (thereby enabling access via username and password when logging in to a vendor website) or device authentication, which affiliates the device or application by use of a token, cookie, or vendor-managed proxy prefix, Licensee will not be responsible or liable for claims of breach of Section VIII (“Protection from Unauthorized Use”) for unauthorized use of the Licensed Materials by persons other than Authorized Users who have gained access to the Licensed Materials through such alternative methods of access and authentication.

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Without limitation of the provisions of Section IV or VIII:

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## **VI. MUTUAL PERFORMANCE OBLIGATIONS**

Notification and Cure of Unauthorized Use. In the event the Licensee has notice of an unauthorized use of the Licensed Materials and cannot promptly remedy it, the Licensee shall promptly notify the Licensor. In the event the Licensor has notice of unauthorized use of the Licensed Materials, the Licensor will promptly notify Licensee.

In the case of unauthorized use which is causing serious and immediate material harm to the Licensor, Licensor may temporarily suspend such offending individual Authorized User's access to the Licensed Materials (e.g. by blocking an individual user's IP address), provided that Licensor immediately notifies the Licensee of any such suspension, including the reason for the block and any supporting details. Such temporary suspensions will be of the shortest duration possible sufficient to terminate the alleged unauthorized activity and prevent its resumption. Any unauthorized use that is considered a breach of obligations under this Agreement shall be subject to Section XI, below, including the cure period.

## **VII. LICENSOR PERFORMANCE OBLIGATIONS**

The Licensor will use reasonable efforts to ensure that its performance will meet or exceed industry standards and practices. Additionally, the Licensor agrees to the following performance standards.

Availability of License Materials. Upon the Effective Date of this Agreement, Licensor will make the Licensed Materials available to the Licensee and Authorized Users.

Discovery of Licensed Materials. Licensee shall have access to such Licensed Materials as are from time to time available through any Discovery Service System(s) used by Licensor for indexing and discovery purposes. Discovery Service Systems are defined as user interface and search systems for discovering content from local, database and web-based sources.

Persistent Linking. Licensor will comply with the current version of the OpenURL standard(ANSI/NISA Z39.88-2004 (R2010), and will provide a mechanism for persistent links to content.

Online Terms and Conditions. In the event that Licensor requires Authorized Users to agree to additional terms relating to the use of the Licensed Materials (commonly referred to as "click-through"

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Support. Licensor will provide activation and installation support, including assisting Licensee and Authorized Users with the implementation of any Licensor software. Licensor will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Materials. Licensor will make its personnel available by email and/or phone during Licensor’s regular business hours, Monday through Friday, for feedback, problem-solving, or general questions and will respond in a timely manner.

Training. Licensor will provide to Licensee and Authorized Users appropriate training relating to the use of the Licensed Materials and any Licensor software. Licensor also will provide additional training to Licensee staff if made necessary by any updates or modifications to the Licensed Materials or any Licensor software.

Updates. Licensor will provide regular system and project updates to Licensee as they become available.

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 Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee’s locale. Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to server maintenance; software installation or testing; loading or making available additional Licensed Materials as they become available; and unavailability because of service or equipment failure outside the control of Licensor (including problems with public or private telecommunications services, or Internet nodes or facilities). Licensor may schedule brief unavailability periods, but will do so only where (1) except in the event of an emergency, it has given at least forty-eight (48) hour notice to Licensee, and (2) in ways and at times that minimize inconvenience to Licensee and its Authorized Users, regardless of when notice has been given.

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<sup>1</sup> <http://www.niso.org/workrooms/kbart>

Usage Statistics. Licensor must provide access to both composite systemwide use data and itemized data for individual campuses and labs. The data will be updated on a monthly basis. Statistics shall meet or exceed the most recent project Counting Online Usage of NeTworked Electronic Resources (COUNTER) Code of Practice Release,<sup>2</sup> including but not limited to its provisions on customer confidentiality. When a release of a new COUNTER Codes of Practice is issued, Licensor shall endeavor to comply with the implementation time frame specified by COUNTER to provide use statistics in the new standard format.

Licensor shall not provide Licensee's usage statistics in any form to any third party without the Licensee's written authorization, unless the third party owns rights in the Licensed Materials or unless such data is aggregated with other customers' data in such manner that Licensee's usage cannot reasonably be identified. In all cases, the disclosure of such data shall fully protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy laws. The Licensor shall not disclose or sell to other parties usage data or information about the Licensee or its Authorized Users without the Licensee's written permission or as required by law.

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<sup>2</sup> [http://www.projectcounter.org/code\\_practice.html](http://www.projectcounter.org/code_practice.html)



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Interoperability with Prevailing Web Browsers. Licensor will use reasonable efforts to ensure that the Licensed Materials are accessible and interoperable with prevailing web browsers and internet access tools, including, at a minimum, the most recent two major versions (current version and one version prior) and all the associated releases for those versions.

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#### **IX. TERM**

This Agreement shall be in effect from the Effective Date through the expiration date as set out in Appendix A unless terminated earlier in accordance with the provisions in Section XI.

#### **X. RENEWAL**

This Agreement shall be renewable at the end of the current term for a successive one (1) year term unless either party gives written notice of its intention to cancel thirty (30) days before expiration of the current term. In the event of a price increase for a subsequent term as provided for in Section III, Licensee shall have no less than sixty (60) days from the date of notification of the price increase to notify Licensor of Licensee's intent to cancel or renegotiate.

## **XI. EARLY TERMINATION**

Early Termination for Financial Hardship. The Licensee may terminate this Agreement without penalty if sufficient content acquisitions funds are not allocated to enable the Licensee, in the exercise of its reasonable administrative discretion, to continue this Agreement. In the event of such financial circumstances, Licensee will notify Licensor of the intent to terminate the Agreement as soon as is reasonably possible, but in any case, no less than 30 days prior to next payment date, and this Agreement shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to Licensee of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination Licensee shall maintain its perpetual right to materials licensed under the subscription periods for which it has fully paid, subject to Section XII.

Termination for Breach. If either party believes that the other has materially breached any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to use all reasonable means to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice. Once this Agreement ends, by early termination or otherwise, the Licensor may terminate access to the Licensed Materials by Licensee and Authorized users, subject to Section XII, below. In addition, authorized copies of Licensed Materials made by Authorized Users may be retained for educational purposes and used subject to the terms of this Agreement.

Refunds. In the event of early termination permitted by this Agreement, except for termination for a material breach by the Licensee, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

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In the event the Licensor discontinues or changes the terms of its participation in a third-party archiving service, the Licensor shall notify the Licensee, and shall in good faith seek to establish alternative arrangements for trusted archiving and perpetual access to the Licensed Materials.

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### **XV. INDEMNITIES**

Licensor shall indemnify and hold harmless Licensee and Authorized Users for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, that arise from any

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#### **XVI. ASSIGNMENT AND TRANSFER**

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, except as otherwise provided in Section VII. Neither party to this Agreement may unreasonably withhold or delay such written consent.

#### **XVII.**

Reserved.

#### **XVIII. DISPUTE RESOLUTION & VENUE**

In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise good faith efforts to resolve the dispute as soon as possible. In the event that the parties cannot, by exercise of their good faith efforts, resolve the dispute, they shall submit the dispute to informal mediation, as further described below in this paragraph. The parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute. The party invoking mediation shall give to the other party written notice of its decision to seek informal mediation, and the notice must include a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute.

During any court action arising out of or relating to this Agreement, the parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute.

#### **XIX. 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 license), wars, insurrections, labor strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected.

#### **XX. 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. For the avoidance of doubt, online terms and conditions as defined in Section VII shall not modify the terms of this Agreement.

#### XXI. AMENDMENT

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

#### XXII. 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.

#### XXIII. 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.

#### XXIV. NOTICES

All notices given pursuant to this Agreement shall be by any means requiring receipt signature, or by facsimile or electronic mail with a confirmation copy sent by mail, in either case to the contact information set forth below (the "Notice Address"). Either party may from time to time change its Notice Address by written notice to the other party. The parties' Notice Addresses are:

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Email: [cdl-acquisitions@ucop.edu](mailto:cdl-acquisitions@ucop.edu)

Technical contact: CDL Support

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University of California, Office of the President  
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Oakland, California 94612 USA  
Phone: 510.987.0555  
Email: [cdlsupport-1@ucop.edu](mailto:cdlsupport-1@ucop.edu)

#### **XXVI. EXECUTION**

The parties agree that scanned and/or electronically signed versions of this originally executed Agreement are acceptable in lieu of printed signed copies and are to be given full force and effect under law.

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

**LICENSOR:**

BY: \_\_\_\_\_  
Signature of Authorized Signatory of Publisher

DATE: June 6, 2019

Print Name: \_\_\_\_\_  
Title: Director, the MIT Press  
Address: One Rogers Street Cambridge MA, 02124  
Telephone No.: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**LICENSEE:**

BY: \_\_\_\_\_  
Signature of Authorized Signatory of Licensee

DATE: May 31, 2019

\_\_\_\_\_  
Associate Executive Director  
Director, Collection Development and Management Program  
California Digital Library  
Office of the President  
University of California  
415 20<sup>th</sup> Street, 4<sup>th</sup> Floor  
Oakland, CA 94612, USA

## APPENDIX A: BUSINESS TERMS

### **Licensed Materials: MIT Press Direct**

- All content, approximately 2,900 titles from 1943 through 2019
- Perpetual access

**Access Conditions:** Unlimited simultaneous user systemwide perpetual access

**Authentication:** IP authentication (See Appendix C for IP addresses)

### **Fees:**

- Total Fee: [REDACTED] (one-time)
- No other fees

**Payment Terms:** The Licensee will pay a single invoice.

### **Discounts:**

[REDACTED]



**APPENDIX B: AUTHORIZED SITES**

University of California, Berkeley (including Lawrence Berkeley National Laboratory)

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

Lawrence Livermore National Laboratory

APPENDIX C: IP ADDRESSES

Berkeley (UCB)

Range Start

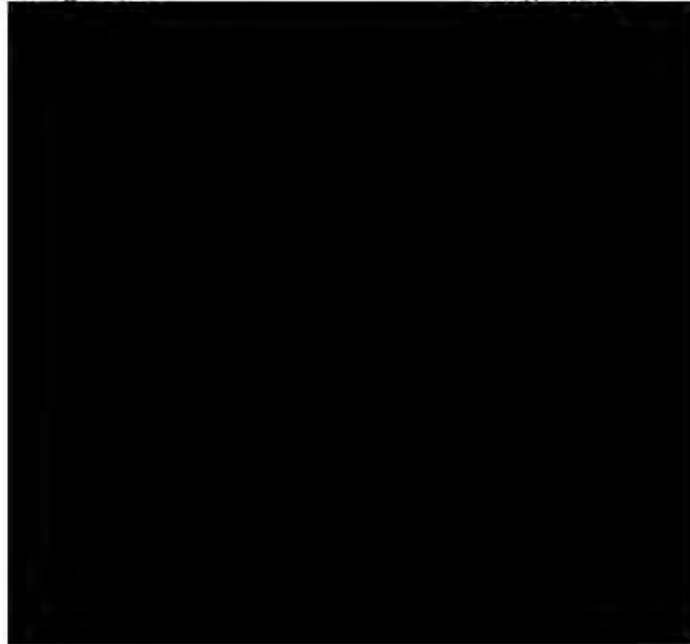
Range End



Lawrence Berkeley National Laboratory (LBL)

Range Start

Range End



Davis (UCD)

Range Start

Range End



Irvine (UCI)

Range Start

Range End





Los Angeles (UCLA)

Range Start

Range End



Merced (UCM)

Range Start

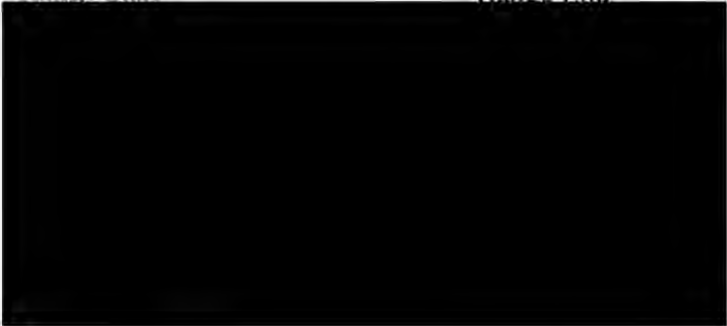
Range End



Office of the President (UCOP)

Range Start

Range End



Riverside (UCR)

Range Start

Range End



[Redacted]

San Diego (UCSD)

Range Start

Range End

[Redacted]

San Francisco (UCSF)

Range Start

Range End

[Redacted]



Santa Barbara (UCSB)

Range Start

Range End



Santa Cruz (UCSC)

Range Start

Range End



Lawrence Livermore National Laboratory (LLNL)

Range Start

Range End

