

Project MUSE® Subscriber Licensing Agreement

This Subscriber Licensing Agreement to Project MUSE is by and between The Johns Hopkins University Press ("JHUP"), a division of the Johns Hopkins University and the creator, owner, and distributor of Project MUSE®, and The Regents of the University of California on behalf of the California Digital Library, 415 20th Street, 4th Floor, Oakland, CA 94612("Subscriber").

I. CONTENT OF LICENSED MATERIALS; GRANT OF LICENSE

The materials that are the subject of this Agreement shall consist of Project MUSE Database (hereinafter referred to as the "Licensed Materials").

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

JHUP hereby grants to Subscriber non-exclusive, worldwide, perpetual use of the Licensed Materials and to provide the Licensed Materials to Authorized Users in accordance with this Agreement.

II. RIGHTS AND RESPONSIBILITIES

A. Authorized Users

"Authorized Users" are:

Persons Affiliated with the University of California. Full and part time employees (including faculty, staff, and independent contractors) and students of Subscriber and the institution of which it is a part, regardless of the physical location of such persons. For campus locations see Appendix A.

Walk-ins. Patrons not affiliated with Subscriber who are physically present at Subscriber's site(s) ("walk-ins").

A subscription to a Project MUSE Collection grants unlimited access to the full text of the Journal titles in that collection for educational, research, and personal use by the faculty, staff, students, alumni, library patrons, and other Authorized Users of the Subscriber's campus/institutional network. Distance learners, alumni, and other off-campus affiliates may access Project MUSE if their internet access is through the campus network or via a secure proxy server.

Subscribers are expected to make their best feasible efforts to enable access to the Project MUSE Database only to faculty, students, staff, alumni, and walk-in library patrons using the campus' physical library facilities. There are no contractual limits on the number of Authorized Users from one campus at any given time.

B. Permitted

Provided that the copyright header attached to the article is retained, Authorized Users at the Subscriber's institution may

1. download and print one copy of each article for personal use and archive contents on their own personal computers
2. use an "offline browser" that allows downloading content from the site to be read later. The browser must be configured to request no more than one article per minute. Non-compliance with this rule will result in access to Project MUSE® being blocked until the problem is resolved. If the problem is repeated, the offending IP may be permanently blocked from accessing the Project MUSE® site.
3. send one copy by email, hard copy, or fax to one person in the subscriber's campus/institutional network at another location for that individual's personal use
4. distribute a copy of individual articles or items of the licensed materials in print or electronic form to Authorized Users, including the distribution of a copy for noncommercial educational purposes, to each individual student (Authorized User) in a class at a Subscriber's institution
5. use a persistent URL, or durable URL, to the licensed materials, including full-text articles, for courses of instruction offered by the Subscribing Institution, where access is restricted to students enrolled in the course, to instructors, and to library staff maintaining the link, and such access is limited to the duration of the course. Each item should carry an appropriate acknowledgment of the source, copyright, and publisher, and the links to such items shall be deleted by the Subscriber when they are no longer required for such purpose.
6. Interlibrary Loan. Using electronic, paper, or intermediated means, Subscriber at its discretion may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Subscriber 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.
7. display, download or print the Licensed materials for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users

C. Not Permitted

Authorized Users at the Subscriber's institution may not

1. disseminate content from Project MUSE® outside the campus or institution by any means, except as noted above.

2. transmit the digital source code, whether plain ASCII or tagged, and use contents and articles from Project MUSE® in course packs
3. systematically download content by robots or other automatic processes without explicit approval from JHUP
4. burden server(s) with activities, such as computer programs, that automatically download content, commonly known as web robots, spiders, crawlers, wanderers, or accelerators. If there is evidence that such unauthorized activities have taken place, the Subscriber will be contacted, and access to the offending IP address(es) may be shut down if a prompt resolution is not achieved. No refunds or credits will be given for time without access as a result of such activities.
5. remove, cover, overlay, obscure, block, or change any copyright notices, legends, or terms of use; or modify or create a derivative work of any Journal content without the prior written permission of the copyright holder
6. re-use content for commercial use without prior written permission of the copyright holder
7. make agreements for access to Project MUSE® Journal content with individuals, organizations, vendors, affiliates, or partners, who are not Authorized Users.

Regarding section B.2 above, if the Subscriber becomes aware of unauthorized access to the Project MUSE® Database, it will notify JHUP immediately and cooperate in locating and attempting to stop the specific individuals who are abusing the service. If the specific abuser(s) cannot be identified or stopped, JHUP has the right to withhold, suspend, or terminate access to any or all licensed content, without liability.

III. JHUP PERFORMANCE OBLIGATIONS

Availability of Licensed Materials. Upon the Effective Date of this Agreement, JHUP shall make the Licensed Materials available to Subscriber and Authorized Users.

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

Training and Support. JHUP will offer installation support, including assisting with the implementation of any JHUP software. JHUP will provide appropriate training to Subscriber staff relating to the use of the Licensed Materials and any JHUP software. JHUP will offer reasonable levels of continuing support to assist Subscriber and Authorized Users in use of the Licensed Materials. JHUP will make its personnel available by email, phone or fax during regular business hours, Monday through Friday for feedback, problem-solving, or general questions.

Quality of Service. JHUP shall use reasonable efforts to ensure that the JHUP's server or servers have sufficient capacity and rate of connectivity to provide the Subscriber and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Subscriber's locale.

JHUP 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 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 JHUP, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Subscriber and its Authorized.

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

Notification of Modifications of Licensed Materials. Subscriber understands that from time to time the Licensed Materials may be added to, modified, or deleted from by JHUP and/or that portions of the Licensed Materials may migrate to other formats. JHUP shall give a ninety (90) day notice of any such changes to Subscriber. Failure by JHUP to provide such notice shall be grounds for immediate termination of the Agreement by Subscriber.

Completeness of Content. JHUP shall use reasonable efforts to ensure that the online content is at least equivalent to print versions of the Licensed Materials, represents complete, faithful and timely replications of the print versions of such Materials, and will cooperate with Subscriber to identify and correct errors or omissions.

Continued Training. JHUP will provide regular system and project updates to Subscriber as they become available. JHUP will provide additional training to Subscriber staff made necessary by any updates or modifications to the Licensed Materials or any JHUP software.

Notice of Terms of "Click-Through" License Terms. In the event that JHUP requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), JHUP shall provide Subscriber with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall the terms of such "click-through" licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "click-through" licenses and this Agreement, the terms of this Agreement shall prevail.

Compliance with Americans with Disabilities Act. JHUP shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA) requirements, Section 508 of the Rehabilitation Act Amendments, and provide Licensee current completed Voluntary

IV. COPYRIGHT AND PERMISSIONS

Unless otherwise noted, Publishers hold the copyright, both as a compilation and as individual articles, on all materials published in Journals in the Project MUSE® Database, whether the material is in print or electronic form. All Journal content is subject to "fair use" provisions of U.S. or applicable international copyright laws [<http://www.copyright.gov/title17/92chap1.html>]. A list of the Publishers participating in Project Muse can be found at <http://muse.jhu.edu/about/muse/publishers.html>.

In the event of a dispute between a Publisher and any contributor with respect to the electronic distribution of any article in the Database, JHUP shall have the right to remove such article from the Database, and will do so upon the Publisher's request.

Requests for authorization to distribute copies of articles in this database for use outside of the provisions listed above should be sent to the Copyright Clearance Center (CCC). In preparing your request, please note the name of the copyright holder of the article and follow the CCC instructions for that copyright holder. No permission requests should be sent to Project MUSE®.

Copyright Clearance Center (CCC)
27 Congress, 222 Rosewood Drive
Danvers, MA 01923
Phone: 978-750-8400
Fax: 978-646-8600

Or make your request online: <http://www.copyright.com/>

V. ACCESS AND AUTHENTICATION

The Project MUSE® file server permits entry by recognizing the authorized IP addresses. Distance learners and alumni who access the internet via campus IP accounts or a secure proxy server may use Project MUSE®, but access is not available through independent service providers. Referring URL is also offered as an alternative method for remote access, so long as a secure system is in place, to allow only Authorized Users, as described above, access to Project MUSE® via the referring URL.

At the time the order is placed, the Subscriber provides IP addresses for the computers that require access to the electronic database. No credit is given for the submission of incorrect or incomplete IP ranges, or for IP information submitted late.

The Subscriber will make reasonable efforts to create and maintain appropriate security measures to ensure that only Authorized Users can access subscribed content online. The Subscriber also affirms that all IP addresses provided for use of online Journals are controlled by its institution exclusively for internet access by Authorized Users. Valid IP addresses must not include those of publicly accessible proxy or cache servers.

VI. USAGE STATISTICS

JHUP must provide both composite use data for the system-wide CDL and itemized data for individual campuses, on a monthly basis. Use data should be at the level of detail required for objective evaluation of both product performance and satisfaction of user needs, including title-by-title use of journals. Providers should follow the International Coalition of Library Consortia (ICOLC) "Guidelines for Statistical Measures of Usage of Web-Based Information Resources" or provide information in compliance with COUNTER or other recognized international standard.

VII. ARCHIVING

Approximately 90 days after the expiration of an annual subscription term, Project MUSE® will provide the Subscriber, upon request, an archival (non-searchable) file on DVD-ROM or other appropriate media as determined by Project MUSE®, containing the content of all issues published online during the 12-month subscription term.

Subscribing Members may participate in the LOCKSS (Lots of Copies Keeps Stuff Safe) system for archiving digitized publications. To benefit from this support, Subscribing Members must install a LOCKSS cache at their institution. (See <http://www.lockss.org> for further information.) The Subscribing Member may perpetually use the LOCKSS system to archive and restore Journal content, so long as use is otherwise consistent with this Agreement. Journal content may be made available to other LOCKSS system Subscribing Members who indicate a right to the subscribed Journal content.

VIII. SUBSCRIPTION TERMS

A. This agreement is effective as of January 1, 2006.

B. This Agreement shall continue in effect for one year commencing on the Effective Date.

Subscription Activation For access to be enabled, the Subscriber must provide technical and administrative data about its campus or institution via the Project MUSE® online subscription form located at http://muse.jhu.edu/cgi-bin/institutional_subscription.cgi. Upon receipt of a fully completed order form, JHUP will permit the Subscriber access to the selected Project MUSE® contents.

C. Renewal

This agreement shall be renewable at the end of the current term for a successive one-year term unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the current term.

At renewal time, usually around September 1, Project MUSE® will provide the Subscriber with pricing information for the following year. No later than December 1, JHUP will invoice the Subscriber for renewal. Renewal orders must be paid in full within 60 days of receipt of invoice, but no earlier than 30 days before renewal, to ensure the Subscriber's continued access to online content

IX. EARLY TERMINATION

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if JHUP believes that Subscriber has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice 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.

Upon Termination of this Agreement for cause online access to the Licensed Materials by Subscriber and Authorized Users shall be terminated. Authorized copies of Licensed Materials may be retained by Subscriber or Authorized Users and used subject to the terms of this Agreement.

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

X. PERPETUAL LICENSE

Notwithstanding anything else in this Agreement, JHUP hereby grants to Subscriber a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were accessible during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Subscriber 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.

XI. WARRANTIES

Subject to the Limitations set forth elsewhere in this Agreement:

JHUP warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the

copyright of any third party.

JHUP warrants that the physical medium, if any, on which the Licensed Materials is provided to Subscriber will be free from defects for a period of ninety (90) days from delivery.

XII. 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.

JHUP 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 JHUP 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. JHUP 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. JHUP further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

XIII. INDEMNITIES

The JHUP shall indemnify and hold Subscriber 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 Subscriber or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

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.

XIV. GOVERNING LAW

This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in California shall have jurisdiction to hear any dispute under this Agreement

XXV. 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) business 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 U.S. Mail 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 JHUP:

Project MUSE
The Johns Hopkins University Press
2715 North Charles Street
Baltimore, MD 21218-4319
USA
Attn: Project MUSE Director

If to Subscriber:

University of California Office of the President
California Digital Library
415 20th Street, 4th Floor
Oakland, CA 94612
USA
Attn: Licensing Dept.

XXVI. NOTICE OF THE USE OF DIGITAL RIGHTS MANAGEMENT TECHNOLOGY

In the event that JHUP utilizes any type of digital rights management technology to

control the access or the usage of Licensed Product, JHUP agrees to notify Subscriber of the name, contact information and any technical specifications for the digital rights management technology utilized.

XXVII. NOTICE OF THE USE OF DIGITAL WATERMARKING TECHNOLOGY

If JHUP utilizes any type of digital watermarking technology for any element of the Licensed Product, JHUP agrees that watermarks will not be visible to the human eye and will not degrade image quality. These watermarks shall not contain user-related information such as account number or IP address. If digital watermarking technology is used, JHUP agrees to notify Subscriber, in advance, of the name, contact information, and any technical specifications for the technology used.

XVIII. ADDITIONAL TERMS

If any provision or provisions of this License 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 be in any way affected or impaired thereby.

JHUP will not be held liable for any delays, inaccuracies, errors or omissions in Project MUSE®, in the transmission or delivery of all or any part thereof, or for any damages arising from any of the foregoing. JHUP does not represent or endorse the accuracy or reliability of any content.

Please direct any questions regarding the Agreement to our Subscriber Services Department to muse@press.jhu.edu.

If the Subscriber becomes aware of infractions upon this Agreement, it shall report these to Project MUSE® immediately. This Agreement may not be assigned and represents the complete understanding as to the subject matter therein.

IN WITNESS WHEREOF, the parties have caused this Licensing Agreement to be duly executed as of the date and year below.

On behalf of the Subscriber,

[Text deleted]

Authorized Signatory

2 8-11

Date

[Text deleted]

Executive Director
California Digital Library, University of California Office of the President
415 20th Street, 4th floor
Oakland, CA 94612

On behalf of JHUP,
[Text deleted]

Authorized Signatory

[Text deleted]

Director, Project MUSE
The Johns Hopkins University Press
2715 N. Charles Street
Baltimore, MD 21218

1/19/11
Date

Appendix A

Campuses of the University of California

University of California, Berkeley (including Lawrence Berkeley Lab)

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

University of California IP Addresses by Campus (8/5/10)

UC Berkeley (including Lawrence Berkeley Laboratory)

[\[Text deleted\]](#)

UC Davis
[Text deleted]

UC Irvine
[Text deleted]

UC Los Angeles
[Text deleted]

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

[\[Text deleted\]](#)

UC Office of the President - California Digital Library

[\[Text deleted\]](#)

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