

# STANDARD LICENSE AGREEMENT

## AMERICAN METEOROLOGICAL SOCIETY AND CALIFORNIA DIGITAL LIBRARY

This License Agreement (this "Agreement") is made effective as of July 1, 2001 (the "Effective Date") between American Meteorological Society, of 45 Beacon Street, Boston, MA, 02108 ("*Licensor*") and The Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, 300 Lakeside Drive, 6<sup>th</sup> floor, Oakland, CA 94612-3550, USA ("*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. CONTENT OF LICENSED MATERIALS; GRANT OF LICENSE**

The materials that are the subject of this Agreement shall consist of electronic information published by Licensor and shown in Appendix A. (hereinafter referred to as the "Licensed Materials").

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

Licensor hereby grants to Licensee non-exclusive use of the Licensed Materials and to provide the Licensed Materials to Authorized Users in accordance with this Agreement.

### **II. DELIVERY/ACCESS OF LICENSED MATERIALS TO LICENSEE**

Licensor will provide the Licensed Materials to the Licensee in the following manner:

Network Access. The Licensed Materials will be stored at one or more Licensor locations in digital form accessible by telecommunications links between such locations and authorized locations of Licensee.

### **III. FEES**

Licensee shall make payment to Licensor for use of the Licensed Materials as follows:

As shown on Appendix A.

All fees are due and payable by Licensee sixty (60) days after the date of invoice from Licensor.

### **IV. AUTHORIZED USE OF LICENSED MATERIALS**

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 Licensee and the institution of which it is a part, regardless of the physical location of such persons. For campus locations see Appendix B.

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

**Access by and Authentication of Authorized Users.** Licensee and its Authorized Users shall be granted access to the Licensed Materials pursuant to the following:

**IP Addresses.** Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by Licensee to Licensors.

**Authorized Uses.** Licensee and Authorized Users may make all use of the Licensed Materials as is consistent with the Fair Use Provisions of United States and international copyright laws. In addition, the Licensed Materials may be used for purposes of research, education or other non-commercial use as follows:

**Display.** Licensee and Authorized Users shall have the right to electronically display the Licensed Materials.

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

**Print Copy.** Licensee and Authorized Users may print a reasonable portion of the Licensed Materials.

**Recover Copying Costs.** Licensee may charge a reasonable fee to cover costs of copying or printing portions of Licensed Materials for Authorized Users.

**Archival/Backup Copy.** Upon request of Licensee, Licensee may receive from Licensors and/or create one (1) copy of the entire set of Licensed Materials to be maintained as a backup or archival copy during the term of this Agreement, or as required to exercise Licensee's rights under section XI, 'Perpetual License', of this Agreement.

**Course Packs.** Licensee and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of Course Packs or other educational materials.

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**Interlibrary Loan.** Licensee may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan.

(1) Upon an adequate consideration from the Licensors, Licensee agrees to maintain records respecting Licensee's use of Materials in such Interlibrary Loans and to provide such records to Licensors upon request.

(2) 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.

#### **Amount of Authorized Use.**

**Unlimited Access.** Subject to the terms of this Agreement, Licensee and its Authorized Users shall have unlimited access to the Licensed Materials.

### **V. SPECIFIC RESTRICTIONS ON USE OF LICENSED MATERIALS**

**Unauthorized Use.** Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

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

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

Commercial Purposes. Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials, fee-for-service use of the Licensed Materials, or bulk reproduction or distribution of the Licensed Materials in any form; nor may Licensee impose special charges on Authorized Users for use of the Licensed Materials beyond reasonable printing or administrative costs.

## **VI. MUTUAL PERFORMANCE OBLIGATIONS**

User Surveys. Licensee and Licensor shall cooperate on the preparation and provision of user surveys to solicit feedback on the Licensed Materials from Authorized Users.

Confidentiality of User Data. Licensor and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized 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.

Implementation of Developing Security Protocols. Licensee and Licensor shall cooperate in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

## **VII. LICENSOR PERFORMANCE OBLIGATIONS**

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

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

Training and Support. 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, phone or fax during regular business hours, Monday through Friday for feedback, problem-solving, or general questions.

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 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. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, 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 Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.

Notification of Modifications of Licensed Materials. 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 a ninety (90) day notice of any such changes to Licensee. Failure by Licensor to provide such notice shall be grounds for immediate termination of the Agreement by Licensee.

Completeness of Content. Where applicable, Licensor shall use reasonable efforts to ensure that the online editorial content is 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 Licensee to identify and correct errors or omissions.

Compliance with Americans with Disabilities Act. Licensor will seek to comply with the Americans with Disabilities Act (ADA), by supporting assistive software or devices such as large print interfaces, voice-activated input, and alternate keyboard or pointer interfaces in a manner consistent with the Web Accessibility Initiative Accessibility Guidelines: Page Authoring, which may be found at <http://www.w3.org/wai/wd-wai-pageauth>.

### **VIII. LICENSEE PERFORMANCE OBLIGATIONS**

Provision of Notice of License Terms to Authorized Users. Licensee shall make reasonable efforts to provide Authorized 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.

Provision of Notice of Intellectual Property Right to Authorized Users. Licensee shall make reasonable efforts to provide Authorized Users with notice of any applicable Intellectual Property or other rights applicable to the Licensed Materials. Licensee shall make reasonable efforts to prevent the infringement of any Intellectual Property or other rights of the Licensor in the Licensed Materials. Licensee shall promptly notify Licensor of any infringement that comes to Licensee's attention, and take appropriate steps to avoid its recurrence.

Protection from Unauthorized Use. 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 unauthorized use of the Licensed Materials by an Authorized User, (a) Licensor may terminate such Authorized User's access to the Licensed Materials, (b) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee shall terminate such Authorized 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 a sixty (60) day notice to Licensee and cooperation with the Licensee to avoid recurrence of any unauthorized use.

### **IX. TERM**

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

### **X. 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.

### **XI. 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 Licensee 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 Licensee and Authorized  
CDL Model License  
Updated 1-12-2000



Users shall be terminated. Authorized copies of Licensed Materials may be retained by Licensee or Authorized Users and used subject to the terms of this Agreement.

In the event of early termination permitted by this Agreement, 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.

## **XII. PERPETUAL LICENSE**

Notwithstanding anything else in this Agreement, Licensor hereby grants to Licensee 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. In the event that AMS determines that it will no longer provide the journals over the World Wide Web, AMS will provide Subscribing Institution with access to said subscribed journals in another searchable media format selected by AMS at its sole option.

## **XIII. WARRANTIES**

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor 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.

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

## **XIV. 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 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. 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. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

## **XV. INDEMNITIES**

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.

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.

#### **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, which consent shall not be unreasonably withheld or delayed.

#### **XVII. 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.

#### **XVIII. DISPUTE RESOLUTION**

In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

Mediation. In the event that the parties can not by exercise of their best efforts resolve the dispute, they shall submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including 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. If the dispute is not resolved within thirty (30) calendar days after such meeting, the dispute shall be submitted to binding arbitration in accordance with the Arbitration provision of this Agreement.

Arbitration. Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties.

All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than sixty (60) days after the notice of arbitration is served.

The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this

Agreement.

#### **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, 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.

#### **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 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 Licensor:**

American Meteorological Society  
45 Beacon Street  
Boston, MA 02108  
USA

##### **If to Licensee:**

California Digital Library  
300 Lakeside Drive, 6<sup>th</sup> Floor  
Oakland, CA 94612-3550  
USA



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 Publisher

DATE: \_\_\_\_\_

7/14/01

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

E-mail: \_\_\_\_\_

AMERICAN METEOROLOGICAL SOCIETY

45 BEACON STREET, BOSTON, MA 02108

LICENSEE:

BY: \_\_\_\_\_

Signature of Authorized Signatory of Licensee

DATE: \_\_\_\_\_

6/15/01

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Director of Business Development

California Digital Library

300 Lakeside Drive, 6<sup>th</sup> Floor

Oakland, CA 94612-3550



## Appendix A

Bulletin of the American Meteorological Society (Free)

Journal of Applied Meteorology

Journal of Atmospheric and Oceanic Technology

Journal of Climate

Journal of Hydrometeorology (new in 2000)

Journal of Physical Oceanography

Journal of the Atmospheric Sciences

Monthly Weather Review

Weather and Forecasting

Earth Interactions

Back Files 2000 (9 titles)

Back Files 1997-1999 (8 titles)

Legacy Files

## 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

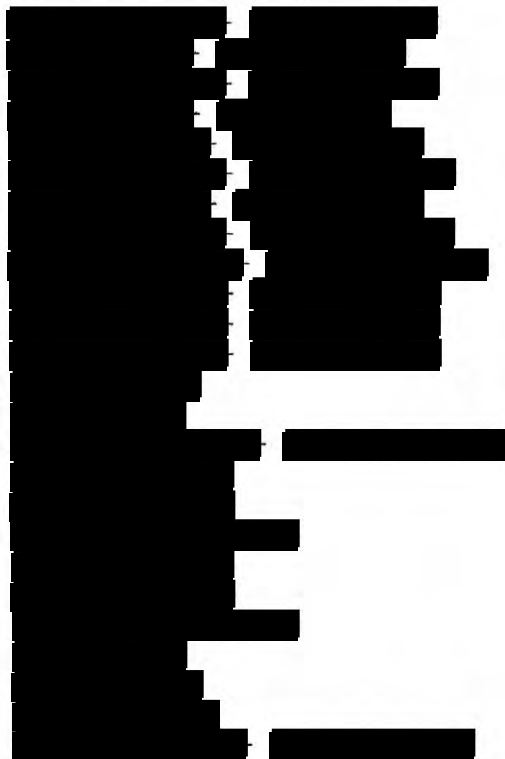
University of California Office of the President

Appendix B continued

APPENDIX B Continued

:University of California IP Addresses by Campus  
:rev. 6/25/01(mzt)

UC Berkeley

A table for UC Berkeley that has been almost entirely redacted with black boxes. Only a few fragments of text are visible, including what appears to be a list of IP addresses or ranges on the left and some corresponding data on the right.

UC Davis

A table for UC Davis that has been almost entirely redacted with black boxes. Only a few fragments of text are visible, including what appears to be a list of IP addresses or ranges on the left and some corresponding data on the right.

UC Irvine

A table for UC Irvine that has been almost entirely redacted with black boxes. Only a few fragments of text are visible, including what appears to be a list of IP addresses or ranges on the left and some corresponding data on the right.

UC Los Angeles

A table for UC Los Angeles that has been almost entirely redacted with black boxes. Only a few fragments of text are visible, including what appears to be a list of IP addresses or ranges on the left and some corresponding data on the right.



Appendix B continued

[REDACTED]

UC Merced

UC Riverside

[REDACTED]

UC San Francisco

[REDACTED]

UC Santa Barbara

[REDACTED]

UC Santa Cruz

[REDACTED]

UC San Diego

128.54.\*.\*

[REDACTED]

[REDACTED]

UC OP - California Digital Library

[REDACTED]

Appendix B continued

Technical Contact:

[REDACTED]  
California Digital Library  
University of California  
1111 Franklin Street  
Oakland, CA 94607-5200

[REDACTED]

[REDACTED]