THIS LICENSE IS AGREED the Twenty-Second day of November 2010

BETWEEN

1. BioOne, a non-profit corporation with offices at 21 Dupont Circle, Suite 800, Washington, DC, USA 20036 ("BioOne")

and

2. The Regents of the University of California with its principal offices at The California Digital Library, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, California 94612 ("Licensee").

WHEREAS both parties share the mutual goals of maximizing dissemination of scholarly information for the purposes of education and research while ensuring the sustainability of scholarly communication, and agree to cooperate in good faith to achieve those goals

AND WHEREAS BioOne holds the rights granted under this License

AND WHEREAS Licensee desires to use the rights and BioOne desires to grant to Licensee the license to use the rights for the Fee, subject to the terms and conditions of this License

IT IS AGREED AS FOLLOWS:

1. **KEY DEFINITIONS**

1.1 In this License, the following terms shall have the following meanings:

Authorized Users	Current members of the faculty and other staff of Licensee (whether on permanent, temporary, contract, or visiting basis) and individuals who are currently studying at Licensee's institution, who are permitted to access the Secure Network from within the Library Premises or from such other places where Authorized Users work or study (including but not limited to offices and homes, halls of residence, and student dormitories) and who have been issued a password or other authentication by Licensee, together with other persons who are permitted to use Licensee's library or information service and permitted to access the Secure Network but only from library workstations within Licensee's Library Premises.
Commercial Use	Use for the purpose of monetary reward (whether by or for Licensee or an Authorized User) by means of sale, resale, loan, transfer, hire, or other form of exploitation of the Licensed Materials. Neither recovery of direct costs by Licensee from Authorized Users, nor use by Licensee or by an Authorized User of the Licensed Materials in the course of research funded by a commercial organization, is deemed to be Commercial Use.
Course Packs	A collection or compilation of printed materials (e.g., book chapters, journal articles) assembled by staff members of Licensee for use only by students enrolled in a class for the purposes of instruction.

Electronic Reserve	Electronic copies of materials (e.g., book chapters, journal articles) stored on a Secure Network by Licensee only by students enrolled in specific courses of instruction offered by Licensee to its students.
Fee	The fee(s) set out in Appendix B or in new Appendices to this License that may be agreed by the parties from time to time.
Learning Object	A self-contained digital unit of learning, education, or training comprising information content, learning activities, and metadata designed to explain a standalone learning objective.
Library Premises	The physical premises of the library or libraries operated by Licensee, as specified in Appendix A and which may change from time to time by mutual agreement of the parties.
Licensed Materials	The electronic material as set out in Appendix B or in new Appendices to this License that may be agreed by the parties from time to time, as well as such ancillary materials that are owned or controlled by BioOne and produced specifically to complement, supplement, and support the said electronic material or any part of the same (e.g., datasets, images, videos).
Secure Network	A network (whether a standalone network or a virtual network within the Internet) that is only accessible to Authorized Users approved by Licensee whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by Licensee.
Server	The computer system, either BioOne's computer system or a third-party computer system, on which the Licensed Materials are mounted and may be accessed.
Subscription Period	That period of time during which access to the Licensed Materials is provided to Licensee, as specified in Appendix B.
Text Mining	A machine process by which information may be derived by identifying patterns and trends within natural language through text categorization, statistical pattern recognition, concept or sentiment extraction, and the association of natural language with indexing terms.
Virtual Learning Environment	A software system designed to manage and support teaching and learning in education, including systems variously referred to as Course Management Systems, Learning Management Systems, Learning Support Systems, Managed Learning Environments, and similar names.

2. AGREEMENT

- 2.1 BioOne agrees to grant to Licensee the non-exclusive and non-transferable right to give Authorized Users access to the Licensed Materials via a Secure Network for the purposes of research, teaching, and private study, subject to the terms and conditions of this License, and Licensee agrees to pay the Fee.
- 2.2 This Agreement shall commence on the date first set forth above and continue for one (1) year. Unless terminated sooner in accordance with its terms or allowed to expire (upon tender of sixty (60) days notice by either party), this Agreement will be automatically renewed for successive one (1) year terms, subject to applicable adjustment of the Fee.



2.3 On termination of this License, BioOne shall provide continuing access for Authorized Users to that part of the Licensed Materials that was published and paid for within the Subscription Period, either from the Server or from the archive described in section 5.5, or by supplying electronic files to Licensee subject to payment of such fees as the parties may agree, except where such termination is due to a breach of the License by Licensee that Licensee has failed to remedy as provided in sections 8.1.1 and 8.1.3 of this License, in which case such continuing access shall be provided in respect of Licensed Materials published up to the date of such breach.

3. USAGE RIGHTS

- 3.1 Licensee, subject to section 4 below, may:
 - 3.1.1 Make such back-up copies of the Licensed Materials as are reasonably necessary for backup or archival purposes, or as required to exercise Licensee's rights under section 2.3 of this License.
 - 3.1.2 Make such temporary electronic copies by means of caching of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Authorized Users, such copies to be deleted at the conclusion of the Subscription Period, and not to make available to Authorized Users duplicate copies of the Licensed Materials.
 - 3.1.3 Allow Authorized Users to have access to the Licensed Materials from the Server via the Secure Network.
 - 3.1.4 Allow Walk-in Users to have access to the Licensed Material, from BioOne's server or from another server designated by BioOne at computer terminals within the Library Premises only.
 - 3.1.5 Provide Authorized Users with integrated access and integrated author, article title, abstract, and keyword index to the Licensed Materials and all other similar material licensed from other publishers.
 - 3.1.6 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.
- 3.2 Licensee may, subject to section 4 below, may:
 - 3.2.1 Supply to an Authorized User or another library a copy of an individual document being part of the Licensed Materials by post, fax, or electronic transmission via the Internet or otherwise, for the purposes of research or private study but not for Commercial Use.
 - 3.2.2 Incorporate parts of the Licensed Materials in printed Course Packs and Electronic Reserve collections and in Virtual Learning Environments for the use of Authorized Users in the course of instruction at Licensee's institution, but not for Commercial Use. Each item will carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher. Copies of such items shall be deleted by Licensee when they are no longer used for such purpose. Course Packs in nonelectronic, non-print perceptible form, such as audio or Braille, may also be offered to Authorized Users who, in the reasonable opinion of Licensee, are visually impaired.
- 3.3 Authorized Users, subject to section 4 below, may:
 - 3.3.1 Search, view, retrieve, and display the Licensed Materials.
 - 3.3.2 Print a copy or download and save individual articles or items of the Licensed Materials for personal use.



- 3.3.3 Use individual parts of the Licensed Materials within Learning Objects for Licensee's teaching, learning, or training purposes.
- 3.3.4 Use Text Mining technologies to derive information from the Licensed Materials.
- 3.3.5 Distribute a copy of individual articles or items of the Licensed Materials in print or electronic form to other Authorized Users or to other individual scholars collaborating with Authorized Users but only for the purposes of research and private study. For the avoidance of doubt, this sub-section will include the distribution of a copy for teaching purposes to each individual student Authorized User in a class at Licensee's institution.
- 3.3.6 Download a copy of individual articles or items of the Licensed Materials and share the same with other Authorized Users or other individual scholars collaborating in a specific research project with such Authorized Users, provided that it is held and accessed with a network that is not accessible to any person not directly involved in such collaboration and provided that it is deleted from such network immediately upon completion of the collaboration.
- 3.4 Nothing in this License shall in any way exclude, modify, or affect any of Licensee's rights under the Copyright Revision Act of 1976 as amended subsequently.

4. **PROHIBITED USES**

- 4.1 Neither the Licensee nor Authorized Users may:
 - 4.1.1 Remove or alter the authors' names or copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials.
 - 4.1.2 Systematically make print or electronic copies of multiple extracts, or make multiple copies of any part of the Licensed Materials for any purpose other than expressly permitted by this License.
 - 4.1.3 Prepare derivative works or download, mount, or distribute any part of the Licensed Materials on any electronic system or network, including without limitation the Internet and World Wide Web, other than the Secure Network, except where expressly permitted by this License under sections 3.3.5 and 3.3.6.
- 4.2 BioOne's explicit written permission must be obtained in order to:
 - 4.2.1 Use all or any part of the Licensed Materials for any Commercial Use.
 - 4.2.2 Systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorized Users, other than as permitted in this License.
 - 4.2.3 Publish, distribute, or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this License.
 - 4.2.4 Alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible to Authorized Users or as otherwise permitted in this License. For the avoidance of doubt, no alteration of the words or their order is permitted.

BIOONE'S UNDERTAKINGS

5.1 BioOne warrants to Licensee that the Licensed Materials used as contemplated by this License do not infringe the copyright or any other proprietary or intellectual property rights of any person. BioOne shall indemnify and hold Licensee harmless from and against any loss, damage, costs,



liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against Licensee claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this License for any reason. This indemnity shall not apply if Licensee has amended or used the Licensed Materials in any way not permitted by this License.

- 5.2 BioOne shall:
 - 5.2.1 Make the Licensed Materials available to Licensee from the Server via the Internet, access to which is authenticated as specified in Appendix B. BioOne will notify Licensee at least sixty (60) days in advance of any anticipated specification change applicable to the Licensed Materials. If the changes render the Licensed Materials less useful in a material respect to Licensee, Licensee may within thirty (30) days of such notice treat such changes as a breach of this License under sections 8.1.2 and 8.1.4.
 - 5.2.2 Use reasonable efforts to make available the electronic version of each title in the Licensed Materials promptly after it is available.
 - 5.2.3 Provide Licensee, within thirty (30) days of the date of this License, with information sufficient to enable Licensee to access the Licensed Materials.
 - 5.2.4 Use reasonable efforts to ensure that the Server has adequate capacity and bandwidth to support the usage of Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this License.
- 5.2.5 Use all reasonable efforts to make the Licensed Materials available to the Licensee and to Authorized Users at all times and on a twenty-four hour basis; with an average of 98% up-time per month, save for routine maintenance and down-time; such down-time not to exceed 2%, and to restore access to the Licensed Material as soon as reasonably possible in the event of an interruption or suspension of the service. BioOne will make all reasonable efforts to notify Licensee of scheduled downtime at least 24 hours in advance. Scheduled down-time will be performed at a time to minimize inconvenience to customers. In the event of an interruption or suspension of service lasting more than 24 consecutive hours, the Licensee's contract will be extended by an equal number of hours.
- 5.3 Where the Licensed Materials will not be available to Licensee for more than thirty (30) consecutive days, BioOne shall refund to Licensee a proportion of the Fee prorated to the period of such unavailability within in the Subscription Period to which the Fee relates.
- 5.4 BioOne reserves the right at any time 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 or is defamatory, obscene, unlawful, or otherwise objectionable. BioOne shall give written notice to Licensee of such withdrawal. If the withdrawal results in the Licensed Materials being no longer useful to Licensee, Licensee may within thirty (30) days of such notice treat such changes as a breach of this License under sections 8.1.2 and 8.1.4.
- 5.5 BioOne undertakes to provide or make arrangements for a third party to provide an archive of the Licensed Materials, and to permit Authorized Users to access such archive after termination of this License.
- 5.6 Collection and analysis of data on the usage of the Licensed Materials will assist BioOne and Licensee to understand the impact of this License. BioOne shall provide to Licensee, or facilitate the collection of and provision to Licensee, usage data in form and format(s) conforming to the current standards established by COUNTER (Counting Online Usage of Networked Electronic Resources), such standards being subject to change from time to time over the term of this



License. Such usage data will be compiled in a manner consistent with applicable privacy laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.

- 5.7 BioOne will provide appropriate training and training materials to Licensee staff relating to the use of the Licensed Materials and Server functionality.
- 5.8 EXCEPT AS EXPRESSLY PROVIDED IN THIS LICENSE, BIOONE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF DESIGN, ACCURACY OF THE INFORMATION CONTAINED IN THE LICENSED MATERIALS, MERCHANTABILITY, OR FITNESS OF USE FOR A PARTICULAR PURPOSE. THE LICENSED MATERIALS ARE SUPPLIED "AS IS."
- 5.9 EXCEPT AS PROVIDED IN SECTION 5.1, UNDER NO CIRCUMSTANCES SHALL BIOONE BE LIABLE TO LICENSEE OR ANY OTHER PERSON, INCLUDING BUT NOT LIMITED TO AUTHORIZED USERS, FOR ANY SPECIAL, EXEMPLARY, INCIDENTIAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER ARISING OUT OF THE INABILITY TO USE, OR THE USE OF, THE LICENSED MATERIALS. IRRESPECTIVE OF THE CAUSE OR FORM OF ACTION, BIOONE'S AGGREGATE LIABILITY FOR ANY CLAIMS, LOSSES, OR DAMAGES ARISING OUT OF ANY BREACH OF THIS LICENSE SHALL IN NO CIRCUMSTANCES EXCEED THE FEE PAID BY THE CONSORTIUM TO BIOONE UNDER THIS LICENSE IN RESPECT OF THE SUBSCRIPTION PERIOD DURING WHICH SUCH CLAIM, LOSS, OR DAMAGE OCCURRED. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

6. LICENSEE'S UNDERTAKINGS

- 6.1 Licensee shall:
 - 6.1.1 Use reasonable efforts to ensure that all Authorized Users are aware of the importance of respecting the intellectual property rights in the Licensed Materials and of the terms and conditions of this License, and use reasonable efforts to notify Authorized Users of the terms and conditions of this License and take steps to protect the Licensed Materials from unauthorized use or other breach of this License.
 - 6.1.2 Use reasonable efforts to monitor compliance and immediately upon becoming aware of any unauthorized use or other breach, inform BioOne and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence.
 - 6.1.3 Provide BioOne, within thirty (30) days of the date of this License, with information sufficient to enable BioOne to provide access to the Licensed Materials in accordance with its obligation under section 5.2.3. Should Licensee make any significant change to such information, it will notify BioOne not less than ten (10) days before the change takes effect.
 - 6.1.4 Keep full and up-to-date records of all IP addresses and provide BioOne with details of such additions, deletions, or other alterations to such records as are necessary to enable BioOne to provide Authorized Users with access to the Licensed Materials as contemplated by this License.
- 6.2 NOTHING IN THIS LICENSE SHALL MAKE LICENSEE LIABLE FOR BREACH OF THE TERMS OF THE LICENSE BY ANY AUTHORIZED USER PROVIDED THAT LICENSEE

DID NOT KNOWINGLY CAUSE, ASSIST, OR CONDONE THE CONTINUATION OF SUCH BREACH AFTER BECOMING AWARE OF AN ACTUAL BREACH HAVING OCCURRED.

6.3 Licensee shall, in consideration for the rights granted under this License, pay the Fee within [thirty (30)] days of receipt of invoice and, if applicable, within sixty (60) days of receipt of invoice relating to each subsequent Subscription Period. For the exclusion of doubt, the Fee shall be exclusive of any sales, use, value added, or similar taxes, and Licensee shall be liable for any such taxes in addition to the Fee.

7. UNDERTAKINGS BY BOTH PARTIES

7.1 Each party shall use its best efforts to safeguard the intellectual property and proprietary rights of the other party.

8. TERM AND TERMINATION

- 8.1 This License shall be terminated:
 - 8.1.1 If Licensee defaults in making payment of the Fee as provided in this License and fails to remedy such default within thirty (30) days of notification in writing by BioOne.
 - 8.1.2 If BioOne commits a material or persistent breach of any term of this License and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by Licensee.
 - 8.1.3 If Licensee commits a willful, material, and persistent breach of BioOne's copyright or any other intellectual property rights or of the provisions of section 3 in respect of usage and section 4 in respect of prohibited uses
 - 8.1.4 If either party becomes insolvent or becomes subject to receivership, liquidation, or similar external administration.
- 8.2 On termination of this License all rights and obligations of both parties automatically terminate except for obligations in respect of Licensed Materials to which access continues to be permitted as provided in section 2.3.
- 8.3 On termination of this License by BioOne for cause, as specified in sections 8.1.1 and 8.1.3, Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorized Users and shall return to BioOne or destroy all Licensed Materials locally mounted pursuant to sections 3.1.1 and 3.1.2 except as provided in section 2.3.
- 8.4 On termination of this License by Licensee for cause, as specified in section 8.1.2 above, BioOne shall forthwith refund the proportion of the Fee that represents the paid but unexpired part of the Subscription Period.

9. GENERAL

- 9.1 This License constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter of this License, whether oral or written.
- 9.2 Alterations to this License and to the Appendices to this License are only valid if they are recorded in writing and signed by both parties.
- 9.3 This License may not be assigned by either party or any other person or organization, nor may either party sub-contract any of its obligations, except as provided in this License in respect of the



management and operation of the Server, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

- 9.4 If rights in all or any part of the Licensed Materials are assigned to another publisher, BioOne shall use its best efforts to ensure that the terms and conditions of this license are maintained.
- 9.5 Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this License or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within fourteen (14) days of posting.

If to BioOne: BioOne 21 Dupont Circle, Suite 800 Washington, DC 20036 USA

If to Licensee: Contract Notices to: Licensing Manager California Digital Library 415 20th Street, 4th Floor Oakland, CA 94612 USA

Subscription maintenance, pricing, invoicing and renewal to: CDL Acquisitions Specialist

Geisel Library University of California 9500 Gilman Drive, Dept. 0175A LaJolla, CA 92093-1075 USA

Technical Contact:

California Digital Library 415 20thStreet, 4thFloor Oakland, CA 94612 USA

- 9.6 Neither party's delay or failure to perform any provision of this License, as a result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications, or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this License.
- 9.7 The invalidity or unenforceability of any provisions of this License shall not affect the continuation or enforceability of the remainder of this License.
- 9.8 Either party's waiver, or failure to require performance by the other, of any provision of this License will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.
- 9.9 This License shall be governed and construed in accordance with the laws of the state of California.9.10 Notice of the Use of Digital Rights Management Technology In the event that BioOne utilizes any type of digital rights management technology to control the access or the



usage of Licensed Product, BioOne agrees to notify Licensee of the name, contact information and any technical specifications for the digital rights management technology utilized.

9.11 Notice of the Use of Digital Watermarking Technology If BioOne utilizes any type of digital watermarking technology for any element of the Licensed Product, BioOne 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, BioOne agrees to notify Licensee, in advance, of the name, contact information, and any technical specifications for the technology used.

AS WITNESS the hands of the duly authorized representatives of the parties the day and year below first written

FOR BIOONE By its agent PCG			Date: December 1, 2010
Name:			
Position/Title:			
Signature:			
FOR LICENSEE		Date:	12-6-10
Name:			
Position/Title:	Executive Director		
Signature:			





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

,



APPENDIX B

LICENSED MATERIALS AND FEE, SUBSCRIPTION PERIOD, AND ACCESS METHOD

THE LICENSED MATERIALS AND FEE

A list of titles available as part of the BioOne service may be found on the BioOne Web site (<u>www.bioone.org</u>) and is subject to change from time to time. For the purposes of this License, the Licensed Materials shall include (*check one and indicate Fee*):

Database	List Price	Fee
The BioOne database identified as "BioOne.1" and "BioOne.2"		
The BioOne database identified as "BioOne.1"	[\$]	[\$]
The BioOne database identified as "BioOne.2"	[\$]	[\$]

SUBSCRIPTION PERIOD

This License shall commence on August 1, 2010 and shall remain in effect until July 31, 2011.

ACCESS METHOD

_X__ Authentication via IP Address

____ Authentication via Shibboleth

____ Authentication via Athens



APPENDIX C

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

UC Berkeley (including Lawrence Berkeley Laboratory)





<u>UC Davis</u>

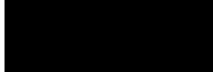




UC Los Angeles



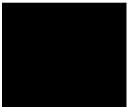
UC Merced



UC Riverside



UC San Francisco



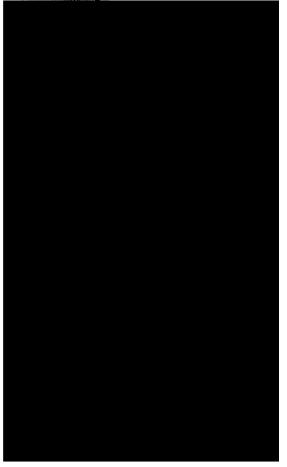
UC Santa Barbara







<u>UC San Diego</u>



UC Office of the President - California Digital Library





.







,

