

**TIBETAN BUDDHIST RESOURCE CENTER  
AND**

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

This License Agreement (this "Agreement") is made effective as of April 1st 2007 (the "Effective Date") between Tibetan Buddhist Resource Center at the Rubin Museum of Art, 150 W 17th St., New York, NY 10011 ("Licensor") and The Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, University of California Office of the President, 415 20<sup>th</sup> Street, 4<sup>th</sup> floor, Oakland, CA 94612, 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 or otherwise made available by Licensor (hereinafter referred to as the "Licensed Materials"), as described in Appendix A.

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 and/or its suppliers. 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, non-transferable, worldwide, perpetual use of the Licensed Materials and the right 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:

Licensee elects to subscribe to Web Access.

Online Access. If the Licensee elects to subscribe to online access, as described in Appendix B, the Licensee may use the Licensed Materials in accordance with the terms and conditions of this License.

**III. Fees**

Licensee shall pay Licensor for use of the Licensed Materials pursuant to the terms set forth in Appendix A, attached hereto.

#### **IV. Authorized Use of Licensed Materials**

**Authorized Users.** "Authorized Users" are:

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

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

**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 law (Copyright Act of 1976, 17 U.S.C. § 107.). Nothing in this Agreement is intended to limit in any way whatsoever Licensee's or any Authorized User's rights under the Fair Use provisions of United States or international law to use the Licensed Materials.

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 fee to cover costs of copying or printing portions of Licensed Materials for Authorized Users.

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.

Electronic Reserve. Licensee and Authorized Users may use a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by Licensee and/or its parent institution.

Collections of Information. If the Licensed Materials are a database, compilation, or collection of information, Authorized Users shall be permitted to extract or use information contained in the database for educational, scientific, or research purposes,





including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.

Electronic Links. Licensee may provide electronic links to the Licensed Materials from Licensee's web page(s) and course management systems, and is encouraged to do so in ways that will increase the usefulness of the Licensed Materials to Authorized Users. Licensor staff will assist Licensee upon request in creating such links effectively.

Caching. Licensee and Authorized Users may make such local digital copies of the Licensed Materials as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.

Indices. Licensee may use the Licensed Materials in connection with the preparation of or access to integrated indices to the Licensed Materials, including author, article, abstract and keyword indices.

Scholarly Sharing. Authorized Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for re-sale. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorized User's own scientific, scholarly and educational works.

Archival/Backup Copy. Upon request of Licensee, Licensee may receive from Licensor 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 X, 'Perpetual License', of this Agreement.

Licensor acknowledges that Licensee may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to exercise Licensee's rights under section X, 'Perpetual License', of this Agreement. Licensee agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Licensed Materials available for archiving purposes. Licensee may perpetually use the third-party trusted system to access or store the Licensed Materials, so long as Licensee's use is otherwise consistent with this Agreement. Licensor further acknowledges and agrees that, in using the third-party archival system, Licensed Materials may be made available to other system participants who indicate a right to those Licensed Materials.

## **V. 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 maintained by Licensee. Remote access is permitted only for Authorized Users.

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

## **VI. Specific Restrictions on Use of Licensed Materials**

Unauthorized Use. Except as specifically provided elsewhere in this agreement, Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

Modification of Licensed Materials. Licensee shall not modify 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. Other than as specifically permitted in this Agreement, Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

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

## **VII. Licensor Performance Obligations**

Availability of Licensed Materials. Licensor shall make every effort to make the Licensed Materials available to Licensee within 60 (sixty) days from the date the order.

Performance. To the best of Licensor's ability, the Licensed Materials will be accurate and complete, and delivery of the Licensed Materials will be performed in a timely and professional manner by qualified personnel.

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



Completeness of Content. Where applicable, Licensor will inform Licensee of instances where online content differs from the print versions of the Licensed Materials.

Where applicable, Licensor shall use reasonable efforts to ensure that the online content is at least as complete as print versions of the Licensed Materials and/or represents complete, accurate and timely replications of the corresponding content contained within the print versions of such Materials, and will cooperate with Licensee to identify and correct errors or omissions.

Persistent Links. Where applicable, Licensor will provide and maintain persistent links to individual items within the Licensed Materials and make these available to Licensee.

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

Usage Data. Licensor may on request provide to Licensee statistics regarding the usage of the Licensed Materials by Licensee and/or its Authorized Users.

Compliance with Americans with Disabilities Act. Licensor shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA) requirements and Section 508 of the Rehabilitation Act Amendments.

### **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 to Authorized Users under this Agreement including, in particular, as it relates to any limitations on access or use of the Licensed Materials as set forth in this Agreement.

Protection from Unauthorized Use. Licensee shall implement reasonable procedures to restrict access to the Licensed Materials to Authorized Users.

Maintaining Confidentiality of Access Passwords. Licensee shall maintain the confidentiality of any institutional passwords provided by Licensor.

### **IX. MUTUAL PERFORMANCE OBLIGATIONS**

Cure Activities. In the event of any unauthorized use of the Licensed Materials by an Authorized User, Licensee shall cooperate with Licensor in the investigation of any unauthorized use of the



Licensed Materials of which it is made aware if requested to do so by Licensor and shall use reasonable efforts to remedy such unauthorized use and prevent its recurrence. Licensor may terminate such Authorized User's access to the Licensed Materials after first providing reasonable notice to Licensee (in no event less than two (2) weeks) and cooperating with the Licensee to avoid recurrence of any unauthorized use. In the case of unauthorized use which in the Licensor's judgment is causing serious material harm, Licensor may temporarily suspend an individual Authorized User's access to the Licensed Materials (e.g. by blocking an individual user's IP address), provided that Licensor immediately notifies 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.

Confidentiality of User Data. Licensor agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Licensee agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by individual Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials.

#### **X. Perpetual License**

Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use the Licensed Materials. Such use shall be in accordance with the provisions of this Agreement.

#### **XI. Warranties**

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor warrants that it has the right to license the Licensed Materials granted under this Agreement, 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. 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 in accordance with the terms of this Agreement. This indemnity shall survive the termination of this agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

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 1 (one) year 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.

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.

## **XIII. 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.

## **XIV. Governing Law**

This License shall be governed by and construed in accordance with California law; the parties irrevocably agree that any dispute arising out of or in connection with this License will be subject to and within the jurisdiction of the State of California.

## **XV. 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 and/or any other cause beyond the reasonable control of the party whose performance is affected.

#### **XVI. 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.

#### **XVII. 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.

#### **XVIII. 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.

#### **XIX. 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.

#### **XX. Notices**

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within three (3) 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 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:**

Tibetan Buddhist Resource Center  
Rubin Museum of Art  
150 W 17th St.  
New York, NY 10011



**If to Licensee:**

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

**XXI. Non-Discrimination**

Neither party will discriminate on the basis of race, color, national origin, religion, sex, age, disability, or veteran/Reserve/National Guard status in performing its obligations under this License.

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

[Text Deleted]

LI

BY

DATE: 4/23/10

Signature of Authorized Signatory of Licensors

Print Name: [Text Deleted]

Title: Executive Director

Address: 17 W 17<sup>th</sup> ST, 9<sup>th</sup> FLOOR, NY NY 10011

**LICENSEE:**

[Text Deleted]

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

DATE: 4-20-10

Signature of Authorized Signatory of Licensee

Print Name: [Text Deleted]

Title Executive Director

Address: University of California Office of the President  
California Digital Library  
415 20th St, 4th Floor  
Oakland, CA 94612

*all*

## Appendix A Licensed Material

### **Content:**

The Licensed Materials subject to this agreement are a series of Core Text Collections of Tibetan and Himalayan literature issued from TBRC's Digital Library: TBRC Core Text Collection 1 (Issue Date January 2004), TBRC Core Text Collection 2 (Issue Date January 2005), TBRC Core Text Collection 3 (Issue Date January 2006), TBRC Core Text Collection 4 (Issue Date January 2007), and subsequent issues, hereinafter referred to as "Collections".

Each Collection includes TIFF images and Adobe Acrobat PDF documents arranged in a hierarchical directory structure and a bibliographic catalog, describing the contents.

Licensee elects to subscribe to Web Access to Licensed Materials.

### **Fees:**

Archive Capital Fee (ACF): The ACF is a required one-time-only fee, charged per Collection, designed to ensure that the Licensor has the necessary resources to meet its archival obligation as technology evolves.

The current cost of each Collection that the Licensee elects to purchase is [Text Deleted] (US). This includes the cost of the physical media and insured shipping. If the Licensor elects to subscribe to online access, the ACF still applies. Currently, there is no fee for online access.

The specific agreement with California Digital Library is that it agrees to pay TBRC [Text Deleted]. This is the normal price for one full subscription to the seven "tranches" (totally around 7,000 volumes) already out (the seventh is actually just about to be published). This will provide full access to the seven collections across the entire UC system. Also rolled into the bargain is an agreement that this payment will additionally cover the next two tranches (to be published in winter 2010-11 and winter 2011-2012). After those (i.e. after the ninth tranche), the licensee will be required to pay the usual [Text Deleted] tranche in order to stay up-to-date.

Fees due within [Text Deleted] days of invoice date, and made payable to the Licensor.



## Contacts:

Licensing Contact: [Text Deleted] Licensing Manager  
415 20<sup>th</sup> Street, 4<sup>th</sup> Floor  
Oakland, CA 94612  
Phone number: [Text Deleted]  
Fax: [Text Deleted]  
E-mail: [Text Deleted]

Accounting Contact:  
[Text Deleted] CDL Acquisitions Specialist  
Geisel Library  
University of California  
9500 Gilman Drive #0175A  
La Jolla, CA 92093-0175  
Phone number: [Text Deleted]  
E-mail: [Text Deleted]  
Fax: [Text Deleted]

Technical Contact:  
[Text Deleted], Senior Development Analyst  
415 20th Street, 4th Floor  
Oakland, CA 94612  
Phone number: [Text Deleted]  
E-mail: [Text Deleted]

## **Appendix B**

### **Web Access**

#### **Content:**

The Licensed Materials available for Web Access are equivalent to the contents of each Collection which has been procured and supplied on an external hard drive.

#### **Access and Authentication:**

Name and Type of Site: Web Access will be managed through the Licensor's public website at <http://tbrc.org>.

In addition to access to the Licensed Materials online, all of the Licensor's public website services will be available from within the Licensed Materials online interface.

Title-level access: Web Access includes title level access to the Licensed Materials. Title level access allows the Licensee's own web-based information system to contact the resource directly rather than through the Licensor's home page.

Authentication and Authorization: The Licensee needs to supply Licensor with an IP range of servers that will access the system. The Licensor will manage access to the subscription service through IP authentication. Session management will not be used as an authentication method.

Scope of Licensed Access: Licensed Materials accessed via the web are made available to the entire (current) community serviced by the institution, including locations in campus buildings, dorms, offices, libraries, as well as to off-campus locations such as faculty offices and housing, providing such access is validated through the institution's authentication/authorization system. The Licensor will not keep individual accounts for off-site access but will rely on the institution's own policies and access system.

#### **Privacy:**

Personal IDs/Passwords: The Licensor will not maintain authentication via individual, personal id/password accounts.

Cookie Policy: Persistent cookies' are not used as a means of authorization or profiling. Session cookies are used by the Licensor solely for session management.

Privacy: The Licensor does not gather user data for marketing purposes. The Licensor



will gather user data in sessions to monitor download use but this information is used only by the Licensor and is not distributed to any third party.

### **Service and Support:**

Browser support: The Licensor supports the following browsers and platforms for online access: (1) Apple Macintosh OSX: Safari, FireFox and Opera. (2) Windows OS: Internet Explorer 6.0+, FireFox/Mozilla and Opera.

The Licensor also supports the display of native Tibetan script for bibliographic records of the Licensed Materials. Instructions for installing necessary fonts are on the site. The Licensed Materials themselves do not require special fonts.

Browser plug-ins: Online access to the Licensed Materials requires the following standard browser plug-ins: (1) Adobe Acrobat Reader. (2) Java Applets

Hardware Environment: The Licensor's data center is managed by the Licensor's technical staff. The data center is connected directly to the Internet via a multi-homed 100Mbps connection at a leased facility providing 24X7 access. The server is a high performance dual Intel 3.6GHz (64-bit) processor machine with 4 GB RAM, dual power supply and six 300 GB 10K SCSI hard drives (1.8 TB), running RedHat Linux (Fedora Core 5).

Service and Communication Policy: The Licensor will notify the Licensee of any downtime or maintenance in advance. The Licensor will communicate any changes to the interface, technology or required plug-ins the resource uses.

Contacts: For bibliographic and cataloging queries: [librarian@tbrc.org](mailto:librarian@tbrc.org) or 646 839 5915 x-2. For technical support queries: [support@tbrc.org](mailto:support@tbrc.org) or 646 839 5915 x-3 or x-7. For ordering and payment queries: [\[Text Deleted\]](#)

## Appendix C

### 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 D  
University of California IP Addresses by Campus

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  
[\[Text Deleted\]](#)

[Text Deleted]