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# XVI. Assignment and Transfer

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# 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.

# XVIII. Dispute Resolution & Venue

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

If the dispute is not resolved within thirty (30) calendar days of the meeting among the parties’ executives, either party may pursue a legal action in court. The exclusive jurisdiction and venue for any and all actions arising out of or brought under the Agreement is in a state court of competent jurisdiction, situated in Alameda County, California (or, if applicable, the federal court located in the Northern District of California). Licensor agrees to submit to the personal jurisdiction of the state courts in the State of California (or, if applicable, the federal courts in California) with respect to any legal proceedings that may arise in connection with this Agreement or from a dispute as to the interpretation or breach of this Agreement. During such court action, the parties shall continue to perform their respective obligations under this Agreement that are not affected by the dispute.

# XIX. Force Majeure

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, labor strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected.

# XX. Entire Agreement

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. For the avoidance of doubt, online terms and conditions as defined in Section VII shall not modify the terms of this Agreement.

# XXI. Amendment

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

# XXII. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

# XXIII. Waiver of Contractual Right

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

# XXIV. Notices

All notices given pursuant to this Agreement shall be 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 or electronic mail, confirmation copies must be sent by mail or by hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party. Any legal notices or other legal documents provided to either party as described in this Agreement shall constitute valid legal service, and Licensor expressly waives any further service of process requirements provided under the Hague Service Convention or similar service of process standards or agreements.

**If to Licensor:**

Publisher

Address of Publisher

City of Publisher

State of Publisher

Country of Publisher

Postal Code of Publisher

**If to Licensee:**

Licensing contact:

Assistant Director for Systemwide Licensing

California Digital Library

University of California, Office of the President

415 20th Street, 4th Floor

Oakland, California 94612 USA

Phone:

Email:

Invoicing contact:

CDL Acquisitions Coordinator

University of California

Geisel Library

9500 Gilman drive 0175K

La Jolla, California 92093-0175 USA

Phone:

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

Technical contact: CDL Support

California Digital Library

University of California, Office of the President

415 20th Street, 4th Floor

Oakland, California 94612 USA

Phone: 510.987.0555

Email: [cdlsupport-l@ucop.edu](mailto:cdlsupport-l@ucop.edu)

# XXV. Shared Print Archive

At Licensee’s request, Licensor will provide to Licensee a single print archival copy of the titles selected from the Licensed Materials, on a mutually agreed upon schedule, shipped to a single ship-to address of Licensee or third party agent, at no additional cost. This term does not apply if Licensor ceases to produce paper editions of such titles.

# XXVI. Execution

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

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

**LICENSOR:**

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

Signature of Authorized Signatory of Publisher

Print Name:

Title:

Address:

Telephone No.:

E-mail:

**LICENSEE:**

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

Signature of Authorized Signatory of Licensee

Associate Executive Director

Director, Collection Development and Management Program

California Digital Library

Office of the President

University of California

415 20th Street, 4th Floor

Oakland, CA 94612, USA

# Appendix A: Business Terms

**Licensed Materials:**

* Name
* Number of titles, if applicable
* Dates covered, if applicable
* Description

**Contract Term:**

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

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

**Fees and Negotiated Discounts:**

* Total Fee
* License Fee / year
* Ongoing Fees, e.g. access fee, if any; indicate any waived fees
* One-time Fees; indicated any waived fees

**Price Caps:**

**Payment Terms:** The Licensee will pay a single invoice for the annual subscription fee.

**Add-on Products and Negotiated Discounts:**

**Deeply Discounted Print (DDP) Titles**: Print subscriptions shall be optionally available to UC campuses at the following rates:

* Subscribed Titles:
* Unsubscribed Titles:

**APC Discounts:** University of California authors shall be eligible for the following discounts on open access Article Processing Charges (APC) during the term of the Agreement:

* Eligibility: APC discounts shall be available in cases where a UC author is the lead or corresponding author.
* Process:
* Discounts:
* Reporting: Licensor will report both OA authorship data, APC payments and discounts annually to Licensee.

# Appendix B: Authorized Sites

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 C: IP Addresses

1. http://www.niso.org/workrooms/transfer/ [↑](#footnote-ref-1)
2. http://www.niso.org/workrooms/kbart [↑](#footnote-ref-2)
3. http://www.projectcounter.org/code\_practice.html [↑](#footnote-ref-3)
4. <http://www.w3.org/WAI/guid-tech.html> [↑](#footnote-ref-4)