

# License Agreement

This License Agreement (this "Agreement") is made effective as of December 18, 2013 (the "Effective Date") between DIGITALIA with address in [Text deleted] ("Licensor") and The University of California, San Diego, a non-profit academic institution, with its principal offices at [Text deleted] 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 Books and Journals as described in Schedule 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 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 use of the Licensed Materials and the right to provide the Licensed Materials to Authorized Users in accordance with this Agreement.

This license will apply only to the Authorized Users of the University of California, San Diego.

## **II. Fees**

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

Licensor shall notify Licensee within ninety (90) days of any increase in fee for any licensed material covered by this Agreement. The notification shall include when fee payments are due.

Maintenance fee: Licensee shall pay a yearly maintenance fee of [Text deleted] for database maintenance and customer support. This fee would only apply when a subscription is not renewed or no single purchase made within a twelve (12) month period. If the Licensee pays fees for a subscription and/or a perpetual purchase, then the maintenance fee would not apply until at least one (1) year has passed.

### **III. 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. Such use shall be on the terms and conditions set forth in this agreement. Access to the database shall be controlled by Licensor through the use of agreed IP addresses.

**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. Nothing in this Agreement shall limit in any way whatsoever Licensee's or any Authorized User's rights under the Fair Use provisions of United States or international law.

The Licensed Materials may be used for purposes of research, educational or other non-commercial use as follows:

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

**Print Copy.** Licensee and Authorized Users may print a reasonable portion of the Licensed Materials for the purposes of study and research, inclusion in essays and papers, and inclusion in materials for course work.

**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.

**Electronic Links.** The University of California is committed to the use of the emerging OpenURL standard to allow linking to related materials in other locations. If Licensor does not use the OpenURL standard, Licensor staff will provide information to Licensee upon request to assist the Licensee in creating links directly from UC's library catalogs and licensed resources to the content at the journal, issue and article levels.

**Databases.** 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. Nevertheless, this use cannot modify the content of the Licensed material, and cannot modify the copyright and trademark of the Licensed materials.

**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.

**Text Mining.** Authorized Users may use the licensed material to perform and engage in text mining /data mining activities for legitimate academic research and other educational purposes.

**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 XIII, "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 XII, 'Perpetual License', of this Agreement. Licensor 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.

**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.

#### **IV. Access by and Authentication of Authorized Users**

Licensee and its Authorized Users shall be granted access to the Licensed Materials pursuant to the some of the following:

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

#### **V. 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.

#### **VI. Licensor Performance Obligations**

**Availability of Licensed Materials.** Within two (2) months 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.

**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.

**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 prompt notice of any such changes to Licensee. Failure by Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by Licensee. If any modifications render the Licensed Materials less useful to the Licensee or its Authorized Users, the Licensee may treat such modifications as a material breach subject to the Early Termination provisions of this Agreement below.

**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 one (1) month 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 Statistics.** Licensor must provide use data on a monthly basis. Licensor shall make reasonable efforts to 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.

**Compliance with Americans with Disabilities Act.** Licensor 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 Product Accessibility Template (VPAT).

## **VII. 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.

**Protection from Unauthorized Use.** Licensee shall use reasonable efforts to inform Authorized Users of the restrictions on use of the Licensed Materials. In the event of any unauthorized use of the Licensed Materials by an Authorized User, (a) Licensor may suspend 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 may 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 reasonable notice to Licensee (in no event less than sixty (60) days) and cooperating with the Licensee to avoid recurrence of any unauthorized use.

**Maintaining Confidentiality of Access Passwords.** Where access to the Licensed Materials is to be controlled by use of passwords, Licensee shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third

party. Licensee shall also maintain the confidentiality of any institutional passwords provided by Licensor.

### **VIII. Mutual Performance Obligations**

**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.

### **IX. Term**

This Agreement shall continue in effect until September 1, 2014.

### **X. Renewal**

This agreement to access the Social and Humanities collection shall end September 1, 2014. If a UC campus would like to continue in a subscription format, they may renew this agreement under the terms outlined in Schedule A.

Campuses may also use this agreement to continue purchasing (perpetual access) per Appendix A and these purchases shall be considered part of the Licensed Materials.

### **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 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 60 days, 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 Users shall be terminated. Authorized copies of the e-books or e-journals sold in individual basis as 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. 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. 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 90 days from delivery.

## **XIII. Permanent License**

Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials purchased 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 Licensee 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.

## **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**

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, 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 sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement.

#### **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. 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.



### **XIX. 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.

### **XX. 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.

### **XXI. 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.

### **XXII. 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.

### **XXIII. Notices**

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within 7 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:**

*Digitalia Inc*

[Text deleted]

[Text deleted]

*USA*

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

[Text deleted] Geisel Library  
University of California, San Diego  
9500 Gilman Dr [Text deleted]

La Jolla, CA 92093. [Text deleted]  
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: [Text deleted] DATE: 12/18/2013

Print Name: [Text deleted]  
Title: Director  
Address: [Text deleted]  
Telephone No.: [Text deleted]  
Fax: [Text deleted]  
E-mail: [Text deleted]



**LICENSEE:**

BY: [Text deleted] DATE: 12/18/13

Signature of Authorized Signatory of Licensee

Print Name: [Text deleted]

Title: Associate University Librarian, Collection Services

Email: [Text deleted]

## **Appendix A**

This agreement is to allow each UC campus access to Digitalia's Social and Humanities collection until September 1, 2014. Access is made possible through the committed funds from UC Davis, UCLA, UC Riverside, and UC Berkeley of [Text deleted].

During the course of this agreement, Licensee may purchase (perpetual access) titles from Digitalia for [Text deleted]. These titles would include a permanent license, as agreed in article XIII "Permanent License".

The special price of [Text deleted] is offered only during the course of the agreement but Licensee may continue to purchase titles at standard pricing [Text deleted] at the end of the access term.

If a UC campus would like to continue in a subscription format after September 1, 2014, they may do so at the annual subscription rate of [Text deleted] per year or a mutually agreed upon rate. The intent of this agreement is to give each UC campus access for one year so that they may "discover" or identify which titles they would like to purchase (perpetual access).