Serials Site License Agreement

America: History and Life and Historical Abstracts

Licensee: The Regents of the University of California

Contract Date: 7-28-99

Database: America: History and Life / Historical Abstracts

License Description: 2-6 Users per database per campus

Format: Web version

Any Special License Terms (e.g. consortium pricing, remote access license, etc.):

CDL Consortium access

Licensee's Notice Address:

____________________________________________________
California Digital Library
University of California Office of the President
300 Lakeside Drive, 6th Floor
Oakland, CA 94612-3550

e-mail: ________________________________________________
fax number: ____________________________________________

The parties agree to be bound by the terms and conditions set forth in this agreement as evidenced by the signatures below:

ABC-CLIO
By: ______________________________
Name: ____________________________
Title: Editorial Director, Serials

LICENSEE
By: ______________________________
Name: ____________________________
Title: Associate Director for Shared Content

THIS LICENSE AGREEMENT is entered into by and between ABC-CLIO, a California corporation ("ABC-CLIO"), and the Licensee specified above (the "Licensee") as of the Contract Date specified above (the "Effective Date").
1. THE LICENSE

1.1 As used in this Agreement, the following terms shall have the meaning indicated: "Licensed Materials" means the materials specified on the cover page, including all updates to these materials published or otherwise made commercially available during the term of this Agreement.

1.2 The Licensee has a nonexclusive and nontransferable license to use the Licensed Materials. The limits to the Licensee's license are set out on the cover page. The Licensee may modify the limits at any time by notice to ABC-CLIO and payment of appropriate fees.

2. COPYRIGHT

The Licensed Materials and any related documentation are copyrighted by ABC-CLIO unless otherwise noted, and no transfer of copyright is made by this license.

3. TERM AND FEES

3.1 This Agreement shall have an initial term of one year commencing on the Effective Date, unless specified otherwise.

3.2 This Agreement shall automatically renew for successive additional terms unless either party gives the other notice of termination, renegotiation, or revision of terms and fees at least four months prior to the expiration of the then-current term.

3.3 The Licensee's subscription to the Licensed Materials provides its users, for a fixed annual fee, unlimited searching of the Licensed Materials for the term of this Agreement, beginning with the first full month following the date on which the Licensee executes this Agreement or makes such election, whichever is later.

3.4 ABC-CLIO reserves the right to change pricing for the Licensed Materials upon renewal of this Agreement. Any change in fees, including subscription fees, may become effective only upon notice, at least forty-five (45) days prior to the end of any terms or annual extensions, from ABC-CLIO to the Licensee, which shall set forth the new fees and effective date(s) thereof. Increases in the subscription fees shall be effective only upon renewal of this Agreement for the applicable Licensed Materials.

3.5 The Licensee is allowed to copy data from the electronic journal/volumes for the purpose of preservation and/or the creation of a useable archive.

3.6 Upon termination of this agreement ABC-CLIO shall provide Licensee with one (1) complete set of CD-ROMs (or their equivalent at ABC-CLIO's option) containing the content previously licensed by and accessible to Licensee as of the date of such termination. ABC-CLIO hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use such content in accordance with the terms of this Agreement, which terms shall survive any termination of this Agreement.
4. CONFIDENTIALITY

The Licensee may not sell, transfer, publish, disclose, display or otherwise make available the Licensed Materials beyond the limits of the license set out above. Licensee shall use reasonable care to protect the copyrights of ABC-CLIO. Violation of this provision shall be the basis for termination of this Agreement. Termination of this Agreement shall be in addition to and not in lieu of any other legal or equitable remedies available to ABC-CLIO.

5. LIMITED WARRANTY

5.1 Neither ABC-CLIO nor anyone else who has been involved in the creation, production, or delivery of the Licensed Materials shall be liable for any direct, indirect, consequential or incidental damages arising out of the use or the inability to use such Licensed Materials even if ABC-CLIO has been advised of the possibility of such damages or for any claim by any other party. ABC-CLIO does not represent or warrant that all errors in the Licensed Materials will be corrected. The warranties set forth in this License Agreement are the sole and exclusive warranties respecting the Licensed Materials or services provided under this License Agreement, either express or implied, including but not limited to any warranty of design, merchantability, or fitness for a particular purpose. No agent of ABC-CLIO is authorized to alter or exceed the warranty obligations of ABC-CLIO as set forth in this Agreement.

5.2 Neither party shall be liable to the other for any loss or damage attributable to, and neither party shall be deemed to be in default hereunder as a result of, any failure or delay in performance caused by force majeure. For purposes of this Agreement, the term "force majeure" shall include strike, lockout, earthquake, hurricane, flood, fire, or other acts of God or nature, war, rebellion, civil disorders, laws, regulations, acts of civil or military authorities (including the denial or cancellation of any export or other necessary license), unavailability of materials, carriers, or communications facilities, and any other causes beyond the reasonable control of the party whose performance is affected. Both parties shall use all reasonable efforts to minimize the consequences of force majeure. Where force majeure remains in effect for more than three (3) months, or if at the beginning of a force majeure condition it is clear that it will last longer than three (3) months, either party may terminate this Agreement by giving notice to the other at least three months prior to such termination.

5.3 ABC-CLIO makes no warranties respecting any harm that may be caused by the inadvertent transmission of any computer virus, worm, time bomb, logic bomb, or other such computer program transmitted with the Licensed Materials unless such transmission was caused by the negligent or intentional acts or omissions of ABC-CLIO, its officers, agents, or employees.
6. NOTICES
All notices given pursuant to this Agreement shall be in writing and sent to Licensee at the Licensee Notice Address specified above, or to ABC-CLIO at the following address:

If by U.S. Mail, addressed to:
ABC-CLIO
P.O. Box 1911
Santa Barbara, CA 93116-1911
or by facsimile to the above address at facsimile number . with confirmation copies sent by U.S. Mail as specified above.

7. GOVERNING LAW

This agreement shall be interpreted and construed according to, and governed by, the laws of the State of California, United States of America.

8. ASSIGNABILITY OF AGREEMENT

Neither this Agreement or any interest herein may be assigned by either party without the prior written approval of the other party, which approval shall not be unreasonably withheld, except that either party may assign this Agreement in its entirety to any purchaser of all or any substantial portion of its business or assets or to any subsidiary or other affiliate without the other party’s approval.

9. AUTHORIZED USERS

Authorized Users” are defined as faculty, staff, students, and users at terminals located in the library facilities of the following University of California campuses: Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Barbara, Santa Cruz and the Office of the President.

10. AUTHENTICATION

The parties shall cooperate in the implementation of additional security procedures as they are developed.

11. LINKING

Licensee may provide electronic links to the Service from Licensee’s web page(s), and is encouraged to do so in ways that will increase the usefulness of the Service to Authorized Users. ABC-CLIO staff will provide assistance to Licensee upon request in creating such links effectively. Licensee agrees to make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by ABC-CLIO. ABC-CLIO will also provide means for Licensee to link directly from records in Licensee’s bibliographic computing systems to the content records in the Service using standard Internet communications and applications protocols, and such other methods as may be agreed to by ABC-CLIO and the Licensee. Other than the creation of such links, Licensee shall not modify, manipulate, or create a Derivative Work of the Service without the prior written permission of ABC-CLIO.
12. INDEMNIFICATION

ABC-CLIO shall defend, indemnify, and hold harmless Licensee, their officers, agents and employees from all damages, liabilities, costs, fees, including, but not limited to, attorney’s fees, resulting from any judgment or settlement agreement arising out of the claim of a third party that ABC-CLIO’s sale of products to Licensee or Licensee’s use of said products constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. Licensee shall give prompt notice of an infringement claim to ABC-CLIO, provide such cooperation and assistance to ABC-CLIO as is reasonably necessary to defend the claim, and shall allow ABC-CLIO to have sole control of the defense, provided, however, that Licensee retains the right to participate in the defense at its own expense.

13. CLASSROOM/COURSE WORK

Licensee may include printed or electronic copies of items from the electronic form of the Publications:

in anthologies or course-packs for sale and/or distribution to Authorised Users for use in connection with courses or classroom instruction provided by a Licensee; and

in reserves set up by the Licensees’ libraries for access by Authorised Users in connection with courses provided by a Licensee

provided that any electronic copies included in such anthologies, course-packs or reserves are removed or deleted by the Licensees at the end of the semester or term in which the relevant course concludes.

14. SERVER AVAILABILITY

ABC-CLIO shall use reasonable efforts to provide continuous service 7 days a week with an average of 98% up-time per month. The 2% down-time includes scheduled maintenance and repair. Scheduled down-time will be performed at a time to minimize inconvenience to customers world-wide.

15. ADA COMPLIANCE

ABC-CLIO shall comply with the American 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 WAI [Web Accessibility Initiative] Accessibility Guidelines: Page Authoring, which may be found on the Web at http://www.w3.org/wai/gl/wd-wai-pageauth

16. DUAL LICENSES

No notice, statement or disclaimer displayed to Authorized Users through the publisher’s web site or by other means shall supercede, limit, or otherwise modify the provisions of this Agreement.
17. Y2K

ABC-CLIO certifies that the product being provided to the University of California is year 2000 compliant; that is, it will operate properly in the Year 2000 and beyond and in situations where dates of the year 2000 are used.

18. ENTIRE AGREEMENT

18.1 This Agreement constitutes the entire agreement of the parties relating to the Licensed Materials as defined above. This Agreement supersedes all prior communications, understandings, and agreements, oral or written.

18.2 This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

19. NO AGENCY IMPLIED

Nothing in this Agreement shall be construed to constitute or appoint either party as the agent or representative of the other party for any purpose whatsoever, or to grant to either party any right or authority to assume or create any obligation or responsibility, express or implied, for or on behalf of or in the name of the other, or to bind the other in any way or manner whatsoever.