Iter Institutional Site License Agreement

1.0 DEFINITIONS

a) "Customer" is the institution that orders and will pay the fee for access to one or more Databases.

b) "ITER Inc.", hereafter "Iter", is a not-for-profit entity created by a partnership between the Renaissance Society of America (RSA), the Centre for Reformation and Renaissance Studies of the University of Toronto (CRRS), the Arizona Center for Medieval and Renaissance Studies of Arizona State University in Tempe (ACMRS), the Faculty of Information Studies at the University of Toronto (FIS), and the University of Toronto Library.

c) "Databases" are those searchable electronic databases published by Iter for which the Customer has paid the appropriate fee or during an authorized trial period.

d) "Authorized Users" refers to the staff, faculty, and students of the Customer, the membership of the Customer, the employees of the Customer, or library users at public terminals.

2.0 USER LICENSE

a) Iter grants to the Customer a non-exclusive, non-transferable license allowing Authorized Users to access the Databases.

b) The Customer may not transfer, assign or sublicense this license.

c) The Databases and associated materials are the property of Iter and are protected by copyright laws and by international treaties.

d) No title is transferred by this license or by the payment of any fee.

e) The Customer's rights do not extend to other related or affiliated institutions.

f) Any rights not expressly granted in this license are reserved to Iter.

2.1 WHAT AUTHORIZED USERS MAY DO

Authorized Users MAY:

a) make searches of the Databases.

b) make a limited number of hard copies of any search output that does not contain a significant segment of a database. These copies may be used by Authorized Users for personal or classroom use only and may not be sold.

c) make one copy of any search output in electronic form for personal use.

2.2 WHAT AUTHORIZED USERS MAY NOT DO

Authorized Users MAY NOT:

a) sell, distribute or commercially exploit the Databases or associated material.

b) transfer the Databases to hard disk.

3. CONTROL OF AUTHORIZED USERS

The Customer will take reasonable action to restrict and control all use of the Databases, to permit access only to Authorized Users, and to ensure compliance by Authorized Users with the restrictions contained in Paragraph 2.

4. AUTHENTICATION

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

5. TERM

This license applies to any use of Databases during authorized trial periods and during the period for which a fee has been paid. Iter reserves the right to cease offering the Customer the opportunity to renew a subscription.

6. LIMITATION OF WARRANTIES AND LIABILITY

a) Iter warrants and represents that they have the right to enter into this Agreement and to provide access "as is" to the Databases.

b) THIS WARRANTY ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES AND CONDITIONS, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ITER DISCLAIM.

c) IF THE DATABASE INCLUDES SUMMARIES, THE SUMMARIES WERE DEVELOPED TO ASSIST USERS IN FINDING APPROPRIATE SCHOLARLY LITERATURE FROM THE BIBLIOGRAPHICAL DATA THAT HAVE BEEN INCLUDED IN THE DATABASE. FOR SUCH DATABASES, USERS SHOULD CONSULT THE FULL TEXT MATERIALS BEFORE REACHING OR SUGGESTING CONCLUSIONS AS TO THE SUBJECT MATTER OF THE DATABASE.

d) THE PRESENCE IN OR ABSENCE FROM THE DATABASE OF ANY REFERENCE TO INFORMATION, DATA, EVENTS, RESEARCH OR DEVELOPMENTS DOES NOT IMPLY THE SPECIFIC EXISTENCE OR THE NON-EXISTENCE THEREOF, NOR DOES ITER CLAIM COMPREHENSIVENESS OR THE ABSENCE OF ERRORS.

e) IN VIEW OF THE ABOVE, ALL LIABILITY IS DISCLAIMED FOR THE ACCURACY, COMPLETENESS OR FUNCTIONING OF THE DATABASES.

f) ITER ASSUMES NO RESPONSIBILITY FOR THE CUSTOMER'S USE THEREOF AND SHALL NOT BE LIABLE FOR LOSS OF PROFITS, LOSS OF USE, OR INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES AS A RESULT OF SUCH USE, EVEN IF EXPRESSLY MADE AWARE OF THE POSSIBILITY THEREOF.

g) IN NO EVENT MAY A CUSTOMER BRING ANY ACTION AGAINST ITER ARISING OUT OF THIS AGREEMENT MORE THAN ONE YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES, DETERMINED WITHOUT REGARD TO WHEN THE CUSTOMER SHALL HAVE LEARNED OF THE ALLEGED DEFECT, INJURY, OR LOSS.

h) ITER SHALL IN NO EVENT BE LIABLE FOR MORE THAN THE LICENSE FEE PAID (WHETHER SUCH LIABILITY ARISES FROM BREACH OF WARRANTY, BREACH OF THIS CONTRACT OR OTHERWISE, AND WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY).

i) SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO EACH CUSTOMER.

7. INDEMNIFICATION

Iter shall defend, indemnify, and hold harmless Customer, their officers, agents and employees from all damages, liabilities, costs, fees, including, but not limited to, attorney's fees, resulting from any judgement or settlement agreement arising out of the claim of a third party that Iter's sale of products to Customer or Customer'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. Customer shall give prompt notice of an infringement claim to Iter, provide such cooperation and assistance to Iter as is reasonably necessary to defend the claim, and shall allow Iter to have sole control of the defense, provided, however, that Customer retains the right to participate in the defense at its own expense.

8. TERMINATION

If the Customer breaches any term of this Agreement, Iter may, in addition to its other legal rights and remedies, terminate the license granted hereunder on 30 days notice to Customer. Upon any termination for breach, the Customer will, unless otherwise agreed to in writing by Iter, forthwith erase all electronic storage of search outputs or other electronic storage. Any termination, whether or not for breach, will not affect any obligation or liability of a party arising prior to termination, and the provisions of Paragraphs 5 and 6 will survive any termination. In the event of termination, whether or not for breach, the remainder of the annual subscription fee paid by the Customer will not be refunded.

9. FORCE MAJEURE

Iter will not be responsible for any delay or failure in performance resulting from any cause beyond their control.

10. APPLICABLE LAW

This Agreement will be governed by and construed in accordance with the laws of the state of California without giving effect to the principles of conflict of laws thereof, and to the extent permitted by applicable law, the Customer consents to the jurisdiction of courts situated in the state of California in any action arising under this Agreement.

11. SERVER AVAILABILITY

Iter 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.

12. Y2K

Iter 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.

13. ENTIRE UNDERSTANDING

This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof. Any representation, promise, warranty, covenant or undertaking not expressly set forth in this license shall not be deemed a part of the Agreement or otherwise legally effective. 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.

13. SEVERABILITY

If a term or condition of this license is invalid or unenforceable, the remaining terms and conditions will remain in full force and effect.

14. SIGNATURE

I ACCEPT the terms and conditions of this agreement as stated above and I certify that I am authorized to sign this agreement on behalf of the "customer":

Name: ___ [Text deleted] _____

Title: _____ Director, Library Planning _____

Name of "Customer": [Text deleted] California Digital Library _____

Signature: _____

Date: _____ 10/7/99 _____

[Text deleted]

Name: _ _____

Title: ___ Director, Iter Inc. _____
[Text deleted]

Signature: _____

Date: _____ October 2l, 1999 _____

Summary of Agreed-Upon Terms
between ITER and the University of California Digital Library

9/7/99

1. The University of California users will enjoy unlimited access to the ITER database.

2. The University of California Digital Library will pay a single license fee of [Text deleted] for consortial access to the ITER database.

3. For 1999, the cost for ITER access will be [Text deleted] which represents credits of [Text deleted] each to UC Davis and UC Santa Barbara for existing subscriptions to ITER.

4. Access for the University of California, San Francisco, shall be [Text deleted]

5. ITER will submit to the University of California one invoice for payment for the UC consortium.

6. For 1999, the cost for ITER access will be [Text deleted] which represents credits o[Text deleted] each to UC Davis and UC Santa Barbara.

7. Access to ITER and the license period will begin July 1, 1999. The initial license shall cover the period of July 1, 1999 through June 30, 2000.

8. ITER will use IP address filtering as the primary means of authenticating users of the University of California. UC will share information with ITER regarding UC's development of digital certificate authentication when it is deployed at UC.

9. When it officially opens as a 10th campus of the University of California, UC Merced will be offered the same access to the ITER database as the rest of the UC campuses enjoy. ITER will not charge a back fee to account for the fact that Merced began to receive access 5-6 years after the other campuses.

10. The University of California may access the ITER database using ITER's Z39.50 service.

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