License Agreement

This License Agreement ("Agreement") is made effective as of January 1, 2005 (the "Effective Date") between The Regents of the University of California on behalf of the University of California Press ("UCPress") and [text removed], and University of California, San Diego Libraries ("Licensee")

1. Definitions. As used herein, the following terms shall have the meanings designated below:
   a. "AnthroSource" is an online service available from UCPress for the American Anthropological Association on the Worldwide Web including all products, services and features offered through the service.
   b. "Authorized Users" are:
      (i) 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
      (ii) Patrons not affiliated with Licensee who are physically present at Licensee's site(s)
   c. "Licensed Material" means the electronic edition of the scholarly journal(s) and content listed in Appendix A, attached hereto and incorporated herein
   d. "Subscription Term" means the length of usage time bought by the subscriber, usually one year.

2. Grant of License.
   a. Licensee and its Authorized Users acknowledge and agree that UCPress and/or its suppliers own all right, title, and interest, including copyright and copyright rights, in the Licensed Materials and any trademarks or service marks relating thereto. Neither Licensee nor its Authorized Users shall have any right, title, or interest in the Licensed Materials except as expressly set forth in this Agreement.
   b. UCPress hereby grants to Licensee a non-exclusive, revocable, non-transferable license to view, print, display, and email to oneself the Licensed Materials and the right to provide the Licensed Materials to Authorized Users for the same use in accordance with paragraph 4 of this Agreement, below.
   c. Licensee shall not permit anyone other than Authorized Users to use the Licensed Materials, except as set forth in this Agreement, and shall use its best efforts to enforce such prohibition.
d. Licensee shall not alter, delete, make additions to, or in any way modify the Licensed Material or create derivative works based upon Licensed Material without the prior written permission of UCPress, and shall prohibit Authorized Users from doing the same use its best efforts to enforce such prohibition.

e. Licensee may not remove, obscure, or modify any copyright or other notice(s) included in the Licensed Material or allow Authorized Users to do so. Licensee shall use its best efforts to enforce such prohibition.

f. Licensee may not use the Licensed Material for commercial purposes, including, but not limited to, the sale of Licensed Materials or bulk or partial reproduction or distribution of the Licensed Material in any form, and shall prohibit the Authorized Users from doing the same. Licensee shall use its best efforts to enforce such prohibition.

3. Delivery of/Access to Licensed Materials

Upon payment by Licensee to UCPress UCPress will provide the Licensed Materials to the Licensee in digital form by telecommunications links between UC Press locations and authorized networks of Licensee.

4. Authorized Use of Licensed Materials

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

a. Scholarly Sharing. Authorized Users may transmit to a third party 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 resale, broad distribution, or on a routine or systematic basis.

b. Permanent Access/Backup Copy. Upon prior written approval by UCPress, Licensee may 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. Following termination of subscription, Licensee may use this copy for permanent access to content and may host it internally, subject to the terms and conditions of this Agreement.

c. Electronic Links. Licensee may provide electronic links to the Licensed Materials from Licensee’s web page(s), and is encouraged to do so in ways that will increase the usefulness of the Licensed Materials to Authorized Users. Licensee may make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by UCPress. This clause is not applicable to linking in E-Reserves, which is provided for in subsection 4.1, below.
d. Caching. Licensee and Authorized Users may make such local digital copies of the Licensed Materials as necessary to ensure efficient use by Authorized Users by appropriate browser or other software.

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

e. Interlibrary Loan. Licensee may fulfill 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 Act (17 U.S.C. sec.108, "Limitations on exclusive rights: Reproduction by libraries and archives") and clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works. All Interlibrary Loans shall be made by post, fax or secure electronic transmission, using Arid or its equivalent, whereby the electronic file is deleted after printing.

f. Fair use. Nothing in this Agreement is intended to limit any rights Licensee or Authorized Users might have under the fair use provisions of the federal Copyright Act.

g. Multiple copying and coursepack use. Authorized Users may create multiple copies of a discrete excerpt from the Licensed Material for classroom instruction use, consistent with existing "fair use" law and regulation. Each such copy shall carry appropriate acknowledgement of the source, copyright, and publisher. Additional multiple copying rights may be granted by the UC Press in its sole discretion.

h. Electronic reserve. Authorized Users may link to and incorporate Licensed Material in an electronic reserve for the use of Authorized Users in the course of instruction. Each item should carry an appropriate acknowledgment of the source, copyright, and publisher. The electronic copies of such items shall be deleted by the Licensee when they are no longer required for such purpose.

5. Access by and Authentication of Authorized Users

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

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

b. Authorized Users shall be identified and authenticated by the use of usernames and passwords assigned by Licensee. Licensee shall be responsible for issuing and
terminating passwords, verifying the status of Authorized Users, providing lists of valid passwords to UCPress, and updating such lists on a regular basis.

c. Developing Protocols. In the event Licensee develops alternate processes of identifying and authenticated Authorized Users during the term of this Agreement, Licensee may use such protocols only upon prior written approval by UCPress.

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 UCPress.

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.

6. UCPress Performance

a. Availability of Licensed Materials. UCPress shall use reasonable efforts to make the Licensed Materials available to Licensee within a reasonable amount of time following payment by Licensee.

b. Documentation. UCPress will use reasonable effort to provide and maintain help files and other appropriate user documentation.

c. Support. UCPress will offer activation or installation support. UCPress will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Materials.

d. Service. UCPress shall use reasonable efforts to provide service twenty-four (24) hours a day, seven (7) days a week; however, during said time, periods of downtime will occur. Down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of UCPress, including, but not limited to, public or private telecommunications services or internet nodes or facilities. Scheduled downtime necessary for upgrades and maintenance among other reasons, will be performed at a time intended to minimize inconvenience to Licensee.
e. Notification of Modifications of Licensed Materials. UCPress may, from time to time, add to, modify, or delete and/or migrate portions or all of the Licensed Materials to other formats.

f. Completeness of Content Where applicable, UCPress shall use reasonable efforts to ensure that the online content is at least as complete as print versions of the Licensed Materials, 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.

g. Withdrawal of Licensed Materials. UCPress 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. UCPress shall inform Licensee of such withdrawal within a reasonable amount of time following the removal of any item pursuant to this section.

h. Usage Data. UCPress shall provide to Licensee statistics regarding the usage of the Licensed Materials by Licensee and/or its Authorized Users in conformance with the COUNTER Code of Practice.

7. Licensee Performance

a. Provision of Notice of License Terms to Authorized Users. Licensee must use its best efforts to Authorized Users of the license terms granted hereunder, including, but not limited to, the allowed and prohibited uses and access of the Licensed Material.

b. Protection from Unauthorized Use. In the event of any unauthorized use of the Licensed Materials by an Authorized User, (a) UCPress may terminate such Authorized User's access to the Licensed Materials, (b) UCPress may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee must terminate such Authorized User's access to the Licensed Materials upon UCPress's request.

c. 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 use its best efforts to maintain the confidentiality of any institutional passwords provided by UCPress.
8. Mutual Performance

a. Confidentiality of User Data. UCPress and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users, unless said information must be disclosed pursuant to applicable state or federal law. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in an 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.

b. Implementation of Developing Security Protocols. Licensee and UCPress shall cooperate in the implementation of security and control protocols and procedures as they are developed by either party during the term of this Agreement.

9. Term

This Agreement shall continue in effect for the duration of any Subscription Term.

10. Warranty

Subject to the limitations set forth elsewhere in this Agreement UCPress represents that it has the right to enter into this Agreement and to grant the rights granted herein.

11. Disclaimer of Warranties

EXCEPT FOR THE REPRESENTATION STATED HEREIN, THE LICENSED MATERIALS ARE PROVIDED ON AN "AS IS" BASIS, AND UCPRESS DISCLAIMS ANY AND ALL 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. UCPRESS 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. UCPRESS FURTHER DISCLAIMS ANY STATUTORY WARRANTY OF NON-INFRINGEMENT. UCPRESS FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO AUTHORIZED USERS, OR TO ANY THIRD PARTY.

12. Limitation of Liability

UCPRESS SHALL NOT 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 OR INABILITY TO USE THE LICENSED MATERIALS, WHETHER IN CONTRACT OR IN TORT. THE LIABILITY OF UCRESS FOR ANY DIRECT DAMAGES, OTHER THAN THOSE THAT ARE EXPRESSLY DISCLAIMED BELOW, IS LIMITED TO AN AGGREGATE OF THE LICENSE FEE PAID FOR THE LICENSED MATERIAL.

UCPRESS MAKES NO REPRESENTATION OR WARRANTY EXCEPT AS SET FORTH HEREIN, 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 OR PRIVACY; INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING, BUT NOT LIMITED TO, COPYRIGHT, PATENT, TRADE SECRET, TRADEMARK, OR MORAL RIGHTS; OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION.

13. Indemnification

Each party shall defend, indemnify, and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries asserted 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.

14. Assignment and Transfer

Licensee may not transfer or assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of UCPress.

15. Governing Law

This Agreement shall be interpreted and construed according to, and governed by, the laws of the State of California, excluding any such laws that might direct the application of the laws of another jurisdiction, and applicable laws of the United States of America. The federal courts located in Alameda or San Francisco Counties, California, or the state courts in Alameda County, California, shall have jurisdiction to hear any dispute, as applicable, under this Agreement.
16. Dispute Resolution

In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement that are not affected by the dispute.

17. General

a. 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, terrorism, insurrections, labor disputes and/or any other cause beyond the reasonable control of the party whose performance is affected.

b. 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. The parties shall negotiate in good faith on a replacement provision designed to express the original intent of the parties in a lawful manner.

c. Waiver

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.

d. Notices

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within three business 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.
18. Renewal

This agreement shall be renewable at the end of the current term for a successive length of time term unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the current term.

19. 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 sixty (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 sixty (60) day period, 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 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.

If to UCPress:
[clause deleted]

If to Licensee:

[Licensee
Address of Licensee
City of Licensee
State of Licensee
Country of Licensee
Postal Code of Licensee]
e. Survival

Notwithstanding any termination or expiration of this Agreement, paragraphs 8, 11, 12, 13 and 15 shall survive.

f. Headings

The section headings in this Agreement are used for convenience only, are not substantive, and shall not be interpreted to define, describe, or otherwise limit the interpretation of the provision under the section headings or of the Agreement as a whole.

g. Entire Agreement

This Agreement constitutes the entire agreement of the parties and supersedes all prior and contemporaneous communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. No amendment to this Agreement shall be effective unless it is in a writing signed by authorized representatives of both parties.

AGREEED TO AND ACCEPTED:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

BY: [signature removed] DATE: 10/19/05

Authorized Signature

Print Name: R. Lee

Title: [text removed]

Address: [text removed]

Telephone No.: [text removed]

E-mail: [text removed]

LICENSEE:

BY: [signature removed] DATE: 10/20/05
Appendix A
2005 AnthroSource Content

1. Current Electronic Content
Current issues of 11 peer-reviewed journals bulletins published by the American Anthropological Association from 2004 on.

American Anthropologist
American Ethnologist
Anthropology & Education Quarterly
Anthropology & Humanism
Archaeological Publications of the American Anthropological Association (AP3A)
Cultural Anthropology
Ethos
Journal of Linguistic Anthropology
Medical Anthropology Quarterly
National Association for the Practice of Anthropology (NAPA) Bulletin
PoLAR: The Political and Legal Anthropology Review

2. Archival Content
A complete full-text archive of all peer-reviewed journals, newsletters and bulletins published by the American Anthropological Association through 2003.

Peer-Reviewer Journals
American Anthropologist (JSTOR archive)
American Ethnologist (JSTOR archive)
Anthropology & Education Quarterly
Anthropology & Humanism
Anthropology of Consciousness
Archaeological Publications of the American Anthropological Association (AP3A)
City & Society
Cultural Anthropology (JSTOR archive)
Culture & Agriculture
Ethos (JSTOR archive)
Journal of Latin American Anthropology
Journal of Linguistic Anthropology
Journal for the Society for the Anthropology of Europe
Medical Anthropology Quarterly
Museum Anthropology (JSTOR archive)
National Association for the Practice of Anthropology (NAPA) Bulletin
Nutritional Anthropology
PoLAR: The Political and Legal Anthropology Review
Transforming Anthropology
Visual Anthropology Review
Bulletins and Newsletters
Anthropology News (prior to 1996)
Anthropology of Work Review
Central States Anthropology Bulletin
General Anthropology Bulletin
North American Dialogue
Teaching Anthropology
Voices
Addendum to AnthroSource Agreement

Notice of Terms of "Click-Through" License Terms.

In the event that Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall the terms of such "click-through" licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "click-through" licenses and this Agreement, the terms of this Agreement shall prevail.

Signed

[signature removed]

Rachel Lee, University of California Press
11.08.2005

Signed

[signature removed]

Tony Harvell
University of California, San Diego
11/14/05
ADDENDUM

This Addendum applies the License Agreement, dated 10/6/2005 between the Regents of the University of California and Gideon Informatics, excluding sections III, VIII, IX, X, and XI for the duration of the University of California - San Diego’s trial period of the GIDEON service.

ENTIRE AGREEMENT

This Addendum, together with the License Agreement, Constitutes the entire agreement of the parties and supersedes all prior and contemporaneous agreements, communications, understandings, and agreements relating to the subject matter hereof, whether oral or written, including any agreements associated with the order or trial request process.

CONFLICT CLAUSE

Should there be a conflict between this Addendum and any other vendor-generated, web accessible terms and conditions, whether now known or hereinafter generated, then this Addendum controls.

MODIFICATION OR AMENDMENTS

This Addendum may only be modified in a writing signed by both parties.