

LICENSE AGREEMENT

This License Agreement is agreed between

- 1) BiblioRossica e-book database, created and owned by Academic Studies Press, Boston, MA, USA (“**Publisher**”)
- 2) University of California, San Diego (“**Licensee**”)

whereas the Licensee desires to use the rights and the Publisher desires to grant to the Licensee the right to use the rights for the Fee.

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:

1. DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

Licensee

The University of California, San Diego

Authorized Users

Members of the public who are permitted to use the Licensee’s library and permitted to access the Secure Network and to have access to the Licensed Material within IP-address of Licensee regardless of the physical location of such persons and who have been issued by the Licensee with a password or other authentication.

Educational Purposes

for the purpose of education, teaching, distance learning, private study, retrieving information and/or research.

Commercial Use

Use for the purposes of monetary reward by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Material. For the avoidance of doubt, neither recovery of direct costs or costs required by law by the Licensee from Authorized or from the receiving library in the case of Inter Library Loan, nor use by the Licensee or by an Authorized User of the Licensed Material in fee based educational programs or in the course of research funded by a commercial organization, is deemed to constitute Commercial Use.

Academic Works

Assignments, portfolios, theses and dissertations.

Fee

The Fee is set out in Schedule 2 or in new Schedules to this Agreement which may be agreed by the parties from time to time.

Licensed Material

The material listed in Schedule 1, or in new Schedules to this Agreement which may be agreed by the parties from time to time.

Intellectual Property Rights

means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights.

Secure Network

A network, (whether a standalone network or a virtual network within the Internet), which is only accessible to Authorised Users whose identities are authenticated at the time of login and whose conduct is subject to regulation by the Licensee.

Server

The server, either the Publisher's server or a third party server designated by the Publisher, on which the Licensed Material is mounted and may be accessed.

1.2. Headings contained in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3. Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

2. AGREEMENT

2.1. Access grant

The Publisher agrees to grant Licensee as specified in definition of Licensee in this agreement and as amended from time to time by the Parties, a non-exclusive and non-transferable right to access and use the Licensed Material and to allow Authorised Users to access and use the Licensed Material via a Secure Network for Educational purposes and the Licensee agrees to pay the Fee. The right specified in this clause is granted in all countries of the world.

3. PERMITTED USES

3.1 This Agreement shall be deemed to complement and extend the rights of the Licensee under the Russian Copyright law and nothing in this Agreement shall constitute a waiver of any statutory rights held by the Licensee from time to time under the law or any amending legislation. In addition, nothing in this Agreement is intended to limit in any way Licensee's or any Authorised User's rights under the Fair Use provisions of United States or international copyright law to use the Licensed Material

3.2. Licensee may:

3.2.1. Allow Authorised Users to have access to the Licensed Material from the Server via a Secure Network. Authorized Users shall have unlimited and simultaneous user access to the Licensed Materials.

3.2.2. Display, save electronically, print and distribute (also on the Licensee's public website) parts of the Licensed Material including trademarks, logos and screenshots for the purpose of promotion or testing or for training Authorised Users.

3.2.3. Allow authorized Users who are staff members to use the Licensed Material as an information source for indexing and adding metadata to library catalogues and open institutional repositories, publication databases and/or bibliographies of the Licensee.

3.3. Authorised Users may:

3.3.1. Search, download, view, retrieve and display the Licensed Material

3.3.2. Electronically save copies of parts of the Licensed Material.

3.3.3. Print off single copies of parts of Licensed Material.

3.3.4. Distribute parts of the Licensed Material in print or electronic form to other Authorised Users. This shall include the distribution of a copy for teaching purposes to each individual student Authorised User taking part in a course.

3.3.5. Distribute single copies of parts of the Licensed Material in print or electronic form including email to third parties for the purposes of scientific research and communication or to be used for the basis of discussion groups.

3.3.6. Publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other such similar activity.

3.3.7. Incorporate parts of the Licensed Material in printed or electronic form in Academic Works, including reproductions of the Academic Works for personal use and library deposit, if such use conforms to the customary and usual practice of the Licensee. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works.

Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner.

3.3.8. Incorporate parts of the Licensed Material in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users who, in the reasonable opinion of the Licensee, are visually impaired.

3.3.9. Deposit the learning and teaching objects as referred to in clause 3.3.8. in electronic repositories operated by the Licensee on a Secure Network. The access and use of such learning and teaching objects shall be governed by the terms and conditions of the applicable repository.

4. PROHIBITED USE

The Licensee, Authorised Users may not:

4.1. Permit anyone other than Authorised Users to access or use the Licensed Material, save as permitted in this Agreement.

4.2. Systematically make printed or electronic copies of multiple extracts or entire issues of the Licensed Material save as permitted in this Agreement.

4.3. Display or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than a Secure Network save as permitted in this Agreement.

4.4. Use the whole or any part of the Licensed Material for any Commercial Use or any purpose other than Educational Use.

4.5. Remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Material.

4.6. Publish, distribute or make available the Licensed Material, works based on the Licensed Material or works which combine it with any other material, save as permitted in this Agreement

4.7. Alter, abridge, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, to Authorised Users or as otherwise permitted in this agreement. For the avoidance of doubt, no alteration of the words or their order is permitted.

4.8. Translate articles from the original language to other languages without notifications.

5. PUBLISHER'S UNDERTAKINGS

The Publisher shall:

5.1. Provide access to the Licensed Material via the World Wide Web by means of the use of IP address authentication or by other means agreed between the Licensee and the Publisher from time to time.

5.2. Make the Licensed Material available to the Licensee from the Server at the start of the Agreement Term. The Publisher will notify the Licensee at least sixty (60) days in advance of any anticipated specification change applicable to the Licensed Material. If the changes render the Licensed Material less useful in a material respect to the Licensee, the Licensee may within thirty days of such notice treat such changes as a material breach of this Agreement.

5.3. Provide sufficient Server capacity and bandwidth to support the usage of the Licensee and its Authorised Users at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Agreement.

5.4. Use its best endeavours to make the Licensed Materials available to the Licensee and to Authorised and Walk-in Users at all times and on a twenty-four hour basis, save for routine maintenance, and to restore access to the Licensed Material as soon as possible in the event of an interruption or suspension of the service. If the online access is continuously interrupted for a

period of two (2) weeks or more due to failure on the Publisher's side, the Publisher shall refund to the Licensee that part of the Fee that is in proportion to the time that the Licensed Material has not been available due to interruptions in the online access.

5.5. Provide statistics regarding the online usage of the Licensed Material to the Licensee.

Statistics will be provided on at least a quarterly basis. All usage data shall be compiled in a manner consistent with applicable privacy and data protection laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.

5.6. Will use its best endeavours to provide customer support, webinars or online training sessions when necessary.

5.7. Use its best endeavours to ensure Licensed Material will meet the open URL standard for the term of the Agreement.

5.8. Provide upon request the Licensee with the necessary data to allow the Licensed Materials to be searched by Licensee's Authorized Users.

5.9. Provide the Licensee information regarding changes in the Licensed Material. The information must include titles and ISSN or ISBN numbers. The information must be limited to the Licensed Material.

5.10. Reserve the right at any time to withdraw from the Licensed Material any item or part of an item for which the Publisher no longer retains the right to publish or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene or unlawful. The Publisher shall give written notice to the Licensee of such withdrawal 90 days prior to the withdrawal. If the withdrawn material represents more than ten percent (10%) of the Licensed Material the Publisher shall make a pro rata refund of part of the Fee, considering the amount of material withdrawn and the remaining unexpired portion of the Term. If the withdrawal results in the Licensed Material being less useful to the Licensee, it may within thirty days of such notice treat such changes as a material breach of this Agreement.

5.11. The Publisher guarantees the protection of personal data of authorized and walk-in users.

6. LICENSEE'S UNDERTAKINGS

6.1. The Licensee shall

6.1.1 Provide Publisher a list of valid IP addresses and update those lists on a regular basis.

6.1.2. Use reasonable endeavours to notify Authorised Users of the user terms and conditions of this Agreement.

6.1.3. Use reasonable endeavours to ensure that only Authorised Users are permitted access to the Licensed Materials.

6.1.4. Immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence.

6.2. Nothing in this Agreement shall make the Licensee liable for breach of the terms of the Agreement by any Authorised User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

7. UNDERTAKINGS BY BOTH PARTIES

The Licensee acknowledges that the intellectual property rights in the Licensed Material are the sole and exclusive property of the Publisher or are duly licensed to the Publisher and that this Agreement does not assign or transfer to the Licensee any right, title or interest therein except for the right to use the Licensed Material in accordance with the terms and conditions of this Agreement.

8. WARRANTIES AND REPRESENTATIONS

8.1. The Publisher warrants and represents to the Licensee that the Licensed Material and all Intellectual Property Rights therein are owned by or licensed to the Publisher and that the Licensed Material used as contemplated in this Agreement does not infringe any Intellectual Property Rights of any natural or legal person.

8.2. The Publisher shall indemnify and hold the Licensee harmless from and against any loss, damage, cost, liability or expense including legal and professional fees arising out of any legal action taken against the Licensee claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this Agreement for any reason. This indemnity shall not apply if the Licensee has amended the Licensed Material in any way not permitted by this Agreement, and such amendment has caused the loss, damage, cost, liability or expense.

8.3. While the Publisher has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Material, the Publisher makes no representation and gives no warranty express or implied with regard to the information contained in or any part of the Licensed Material including (without limitation) the fitness of such information or part for any purposes whatsoever and the Publisher accepts no liability for loss suffered or incurred by the Licensee or Authorized Users as a result of their reliance on the Licensed Material.

8.4. Publisher represents and warrants that information security procedures, processes and systems will at all times meet or exceed all applicable information security laws, standards, rules and requirements related to any personal data concerning Authorized Users.

9. LIMITATION OF LIABILITY

Save as provided in Clause 8.2. neither party will be liable to the other in contract or negligence or otherwise for (i) any special, indirect, incidental, punitive or consequential damages (ii) loss of direct or indirect profits, business, contracts, revenue or anticipated savings or for any increased costs or expenses.

10. TERMINATION

10.1. In addition to automatic termination at the end of the term unless renewed this Agreement terminates if either party gives written notice to the other in the following circumstances:

10.1.1. Either party commits a material or persistent breach of any term of this Agreement and fails to remedy the breach (if capable of remedy) within thirty days of notification in writing by the other party.

10.1.2. Either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

10.1.3. A change in control of a Licensee occurs, a Licensee merges with or acquires an organization, breaks up or if changes relevant to this Agreement occur in the Licensee's permission to organize higher level education or other legislation regarding the Licensee and relevant to this Agreement.

10.2. On termination of this Agreement the Publisher shall refund the proportion of the Fee that represents the paid but un-expired part of the Term.

10.3. On termination all rights and obligations of the parties automatically terminate except for those specified in clauses 10.4. (online access to archival copies), 8.1-8.4. (warranty, indemnity), sections 3 and 4 (permitted and prohibited uses).

11. GENERAL

11.1. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Agreement, whether oral or written.

11.2. ALTERATIONS

Alterations to this Agreement and to the Schedules to this Agreement (which may be altered separately from the body of this Agreement without affecting the validity of the Agreement as a whole) are only valid if they are recorded in writing and signed by both parties.

11.3. ASSIGNMENT

This Agreement may not be assigned by either party to any other person or organization, nor may either party sub-contract any of its obligations, without the prior written consent of the other party, which consent shall not unreasonably be withheld. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Agreement and agrees to be bound to all the terms of this Agreement.

11.4. NOTICES

All notices required to be given under this Agreement shall be given in writing and sent by electronic mail, fax or first class registered or recorded delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received (a) twenty-four (24) hours after successful transmission in the case of electronic mail or fax; (b) fourteen (14) days after the date of posting in the case of first class registered or recorded delivery:

Notices to the Licensee shall be sent to the following address:

UC San Diego
9500 Gilman Dr.
La Jolla, CA 92093
electroniclib@ucsd.edu

Notices to the Publisher shall be sent to the following address:

Academic Studies Press

1577 Beacon Street, Brookline,
Massachusetts 02446
mgargyants@academicstudiespress.com

11.5. FORCE MAJEURE

Neither party's delay or failure to perform any provision of this Agreement, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Agreement.

11.6. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

11.7. WAIVER

The failure of either party to require performance by the other party of any provision of this Agreement will not affect its full right to require such performance at any subsequent time; nor will the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

11.8. 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.

11.9. DISPUTE RESOLUTION

In the event any dispute, controversy or claim arises between the parties under or in connection with this Agreement, the parties agree to first exercise their best efforts to resolve the dispute as soon as possible via negotiations.

If these negotiations are unsuccessful any dispute, controversy or claim arising between the parties under or in connection with this Agreement shall be settled in arbitration in accordance with California law.

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

FOR THE PUBLISHER:

[text deleted]

Print Name: Igor Nemirovsky
Title: Director

[text deleted]

FOR THE LICENSEE

[text deleted]

Print Name: Roger Smith
Title: AUL, Scholarly Resources and Services
Address: 9500 Gilman Dr. La Jolla, CA 92093
Telephone:
E-mail:

SCHEDULES

This Agreement includes the following Schedules (which can be amended from time to time), which are incorporated as if fully set forth herein:

Schedule 1: The List of Electronic Publications

Schedule 2: Fee

Schedule 1: The List of Electronic Publications

N	Title	Subscription
1	BiblioRossica. Leading Russian Scholarly Presses collection.	Perpetual access

Schedule 2: Fee

The Licensee shall, in consideration for the rights granted under this Agreement, pay the Fees as set out below.

The Fee [text deleted]

The Fees are exclusive of VAT.

Payment will be made within thirty (30) days of receipt of the invoice.

FOR THE PUBLISHER:

[text deleted]

Print Name: Igor Nemirovsky

[text deleted]

FOR THE LICENSEE

[text deleted]

Print Name: Roger Smith

Title: AUL, Scholarly Resources and Services

Address: 9500 Gilman Dr. La Jolla, CA 92093

Telephone:

E-mail: