



MICROFORM

ACADEMIC PUBLISHERS

LICENCE TO ACCESS (INSTITUTIONS)

This Licence Agreement is made effective as of 7 June 2024 between Microform Imaging Limited, trading as Microform Academic Publishers of [Text deleted] and University of California, San Diego of 9500 Gilman Dr. #0175A, La Jolla, CA 92093, USA

In consideration of the mutual promises contained herein and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement:
 - 1.1.1 **“Affiliated Users”** means full and part time students (including fee-paying students enrolled in distance education programs offered or sponsored by the Licensee), employees (including faculty, staff, alumni, affiliated researches and independent contractors) of the Licensee who in all cases need access to the Publication for the purpose of their research, education or other non-commercial use and any other person to consult the Publication who are not affiliated with the Licensee but use the Publications for the sole purpose of private study but on the sole condition that the person be present on the Licensee’s premises and use a Networked Computer.
 - 1.1.2 **“Agreement”** means this Licence Agreement.
 - 1.1.3 **“Administrator Account”** means the administrator assigned to monitor usage of the Publication.
 - 1.1.4 **“Confidential Information”** means any data relating to the usage of the Publication by the Licensee and its Affiliated Users, any statistics relating to usage of the Publication which is provided by the Licensor to the Licensee and any information (including, without limitation, in written, oral, visual or electronic format or on tape or disk) which is not publicly available including, but not limited to, the data, know-how and information about design, developments, specifications, manuals, instructions, customer lists, sales, marketing, promotion, distribution, business plans, forecasts and technical of other expertise.
 - 1.1.5 **“Effective date”** means the date the Agreement comes in to effect.
 - 1.1.6 **“Licensee”** means University of California, San Diego.

- 1.1.7 “**Licensor**” means Microform Imaging Limited, trading as Microform Academic Publishers.
- 1.1.8 “**Major Modification**” means a withdrawal of over 30% of the content of the Publication.
- 1.1.9 “**Networked Computer**” means a computer networked within the Licensee’s IP address range.
- 1.1.10 “**Publication**” means ***The Collapse of the Ottoman Empire and the Partition of the Middle East, 1879-1919.***

2 The Licence

- 2.1 The text of this Agreement together with a request howsoever communicated on the part of the Licensee to access the Publication and the invoice issued by the Licensor in respect of a such a request represents the Agreement between the Licensor and the Licensee in its entirety irrespective of an understanding based on any other communication between the above mentioned parties whether prior to or during the agreed Access Period.

3 Grant of a Licence to Access the Publication

- 3.1 The Licensor hereby grants the Licensee a limited non-exclusive, non-transferable right to use the Publication, including the right for its Affiliated Users to use the Publications, for the purposes set out in and in accordance with this Agreement.
- 3.2 In accepting this Agreement, the Licensee and its Affiliated Users acknowledge that the copyright and title to the Publication and any trademarks, design rights, database rights, domain names or any other intellectual property rights subsisting herein or relating thereto remain with the Licensor. Neither the Licensee or its Affiliated Users shall have right, title or interest in the Publication except as expressly set forth in this Agreement.
- 3.3 The Licensee shall not grant sub-licences, in whole or in part, of any of the rights granted under this Agreement, or sub-contract any aspects of exploitation of the rights licensed to it without the Licensor’s prior written consent. However, the Licensee may permit Affiliated Users to use the Publication on the terms set out in this Agreement and on condition that such Affiliated Users do not grant any further sub-licence.
- 3.4 The Licence granted will be the following type as stated on the Licensee’s invoice:
 - 3.4.1 A Licence in Perpetuity whereby the Licensee opts for continual access to the Publication for the upfront cost of [Text deleted] and shall incur a hosting fee to be agreed separately to this Agreement and invoiced annually to the Licensee from the beginning of the second year of this Agreement.

4 Authorised use of Publications

- 4.1 The Licensee and Affiliated Users may use the Publication for the purposes of research, education and private study.
- 4.2 The Licensee may permit its Affiliated Users to:
 - 4.2.1 Download, retain, store and use unlimited portions of the Publication,

- 4.2.2 Make use of the Publication for the purpose of display to individuals or groups in lectures, seminars, museums, galleries, reading rooms and offices on its premises,
- 4.2.3 Perform and engage in text mining/data mining activities in relation to the Publication for legitimate academic research and other non-commercial educational purposes without obtaining the Licensor's prior written consent,
- 4.2.4 Print multiple copies of no more than 10% of the Publication as handouts to students and other participants in courses or lectures offered by the Licensee on its premises or in the case of fee-paying distance-learning students, remotely,
- 4.2.5 Create multiple links to the Publication or pages within it from online catalogues and subject or course related bibliographies and finding aids enabling access as clause 4.1,
- 4.2.6 Transmit electronically or on paper and solely for scholarly research purposes but in no case for re-sale, 5% of the Publication to individual colleagues who are not Affiliated Users,
- 4.2.7 Include individual images from the Publication or text transcribed from the Publication with due attribution within scholarly submissions to bona fide academic journals and academic monographs provided that the prior permission of the owner or holder of the original documents has been obtained and that the Licensor is kept notified and,
- 4.2.8 Make digital copies of images or associated metadata from the Publication to save them for as long as required in relation to the uses permitted in clause 4 of this Agreement.

5 Prohibited uses of the Publication

- 5.1 The Licensee, any Affiliated Users or any person benefiting from this Agreement to access the Publications is prohibited from engaging in any of the following except as permitted in clause 4 above:
 - 5.1.1 Permitting anyone other than the Affiliated Users to use the Publication and the Publication shall not be distributed to any unaffiliated users or third parties,
 - 5.1.2 Using the Publication for commercial purposes, including but not limited to the sale of the Publication or bulk reproduction or distribution of the Publication in any form,
 - 5.1.3 Recreating or republishing the Publication or any part thereof be it in form of images or transcribed text without first obtaining the Licensor's consent in writing,
 - 5.1.4 Modifying the Publication in any way including and not limited to removing, obscuring or modifying any statement or mark denoting ownership of intellectual or other property rights therein such as copyright notices,
 - 5.1.5 Reproducing, disassembling, recompiling, translating or reverse-engineering any part of the software used therein.

6 Obligations on the Licensor

- 6.1 In return for payment in full of the fee agreed between the parties and providing that the Licensee has returned a signed copy of this Agreement and given all necessary information to the Licensor to enable the Licensor to make the Publication available to the Licensee, the Licensor undertakes to provide the Licensee with:
 - 6.1.1 The ability to access the Publication as permitted in clause 4 of this Agreement wherever possible via the internet seven (7) days per week and uninterrupted access except as provided in clause 7 of this agreement,

- 6.1.2 A username and password for the Administrator Account necessary to monitor the usage of the Publication,
 - 6.1.3 Reasonable advance notice of any scheduled change or allowable downtime to the content or the location of the Publication,
 - 6.1.4 Implementation of any of the Licensor's software and use of the Publication. The Licensor will use reasonable endeavours to make its personnel available by email, phone or fax for feedback, problem solving or general questions. The Licensor shall not provide any onsite installation in respect of the Publication or relevant software,
 - 6.1.5 Adequate support in the form of documentation, online help files and from time to time, updates on new features in order to make effective use of the Publication including where necessary forwarding to the Administrator Account holder copies of reports suggesting possible abuse of the terms of this Agreement and
 - 6.1.6 Privacy and protecting the information the Licensor collects in the operation of access to the Publication and will take all reasonable steps to maintain the security and privacy of this information. The Licensor will ensure that any information it collects will be relevant and not excessive for purposes of operating the Publication and will be deleted when no longer needed. The Licensor will only disclose to third parties navigational and transactional information in the form of anonymous, aggregate usage statistics and demographics in forms that do not reveal an Affiliated User's or the Licensee's identity or confidential information.
- 6.2 The Licensor reserves the right in the unlikely event that the Publication be withdrawn or a Major Modification be made, to modify or withdraw from the Publication 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 Intellectual Property Rights, or which is inaccurate, defamatory, offensive or otherwise likely to be unlawful or promote illegal or unlawful activity. In relation to the withdrawal of a material part of the Publication, such that this is a Major Modification, the Licensor shall give written notice to the Licensee of such withdrawal no later than 30 days following the removal of any item in writing.

7 Interruptions in Accessibility

- 7.1 The allowable downtime includes periodic unavailability due to:
- 7.1.1 Maintenance of the server(s),
 - 7.1.2 The installation or testing of software,
 - 7.1.3 The loading of additional Publication as they become available,
 - 7.1.4 Updating resources and relevant technologies as necessary to improve the service consistent with overall standards in the online information provision industry.
- 7.2 The Licensor further undertakes to:
- 7.2.1 Schedule any downtime for upgrading or maintaining the Publication, its online system or the server in order to minimise inconvenience to the Licensee and its Affiliated Users,
 - 7.2.2 Give the Licensee advance email notice of such scheduled downtime,
 - 7.2.3 Take all reasonable steps to ensure that such downtime that does occur, whether scheduled or not, remain below 2.5% per month on average over any three month period,

- 7.2.4 Reimburse the Licensee in the event of any downtime which exceeds the limit in clause 7.2.3 above and in proportion to the excess experienced,
 - 7.2.5 To promptly use reasonable efforts to restore access to the Publication if the Licensee notifies the Licensor that the Publication has failed to operate in conformance with the terms of the Agreement and
 - 7.2.6 In the event that the Licensor is unable to fulfil its obligation under clause 6.1.1 above, provide the Licensee with a functional backup copy of the Publication on an electronic storage device, for example CD-Rom or DVD, or by file transfer protocol for uploading on to the Licensee's server for use as a replacement only until the end of the Access Period.
- 7.3 The Licensee understand that from time to time the Publication may be modified; including additions, revisions, amendments and deletions by the Licensor and/or that portions of the Publication may migrate to other formats. This is part of the Licensor ensuring that the Publication are current and up to date and accordingly such modifications, additions or deletions shall not be grounds for the Licensee to terminate this Agreement for breach.
- 7.4 The schedule change or allowable downtime does not include any unavailability which occurs due to a Force Majeure event, see clause 15 in this Agreement.

8 Obligations on part of the Licensee

- 8.1 The Licensee undertakes to:
- 8.1.1 Make every effort to communicate with Affiliated Users on the following terms and conditions of use of the Publication:
 - a) State that any Publication being supplied are for the Affiliated User's personal use,
 - b) Prohibit reproduction or distribution of the Publication that violates applicable law,
 - c) Contain a reservation for the Licensor of all Intellectual Property Rights and other rights in the Publication,
 - d) Set out the limitations of use of the Publication as set forth in this agreement and
 - e) The Licensee shall provide a copy of such terms and conditions of use to the Licensor should the Licensor request this.
 - 8.1.2 Comply with all applicable laws in performing its obligations and exercising its rights under this Agreement,
 - 8.1.3 Check via its Administrator Account that the details of its IP address range and other information required to ensure effective online access including the name and email address of its designated contact are correct as entered by the Licensor,
 - 8.1.4 Notify the Licensor at the earliest opportunity of any:
 - a) Changes to the information required in clause 8.1 above,
 - b) Problems experienced in accessing or using either the Publication or the associated Administrator Account, or
 - c) Significant errors or omissions identified in either the metadata or the images which compromise the Publication.
 - 8.1.5 Make every effort to communicate to any person benefiting from this Agreement to access the Publication is aware of the limitations on use and to take reasonable precautions to identify and prevent any systematic unauthorised use,

- 8.1.6 Use only email addresses which contain the Licensee's domain name,
- 8.1.7 Terminate access if any person is found to be abusing the terms of this Agreement upon receipt of a reasonable request from the Licensor and
- 8.1.8 Secure permission in advance from the Licensor to use the Publication in ways not otherwise provided for in clause 4 of this Agreement.

9 Access management fee

- 9.1 There shall be an access management fee charged annually by the Licensor to the Licensee annually [Text deleted]). The Licensor has the right to amend this fee during subsequent years but any planned increase shall be first communicated to the Licensee.

10 Termination

- 10.1 If either party deems the other to have breached its obligations under this Agreement then:
 - 10.1.1 It shall notify the other, giving details of the alleged breach,
 - 10.1.2 The party thus notified shall have thirty (30) days to cure the breach and failure to do within the period stated shall constitute sufficient ground for the party not at fault to terminate this Agreement and
 - 10.1.3 If the Licensor is found to be at fault then the Licensee shall be entitled to the reimbursement of an amount of the total fee paid which is proportionate to the unexpired balance of the Access Period or part thereof in the case of payment by instalments.
- 10.2 Either party may by written notice to the other party terminate this Agreement immediately if:
 - 10.2.1 The other party ceases, or threatens to cease to carry on business
- 10.3 On any expiration or termination of this Agreement, all rights and authorisations granted by the Licensor to the Licensee under this Agreement shall automatically terminate and immediately revert to the Licensor and online access to the Publication by the Licensee and its Affiliated Users shall be terminated.

11 Warranties

- 11.1 Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement.
- 11.2 The Licensor warrants that it has acquired the permissions necessary from the holders of any surviving intellectual or other property rights to publish the Publication for use as set forth in this Agreement and so far as it is aware, use of the Publication by the Licensee in accordance with terms of this Agreement shall not infringe the copyright of any third party.
- 11.3 The Licensee warrants that it will not knowingly use the Publication:
 - 11.3.1 So as to infringe any third party's copyright,
 - 11.3.2 In a manner which is defamatory, libellous, obscene or otherwise unlawful or
 - 11.3.3 In a manner which will violate any applicable law, statute or subordinate legislation.

12 Limitations

- 12.1 Notwithstanding anything else in this Agreement:

- 12.1.1 Nothing in this Agreement shall limit either party's liability for death or personal injury caused by its negligence.
- 12.1.2 Where expressly provided in this Agreement, all conditions, warranties, covenants, representations and undertakings which may be implied, whether statutory or otherwise, in respect of the performance by either party of its obligations hereunder are excluded to the maximum extent permitted by law.
- 12.1.3 Neither party shall be liable to the other party for indirect or consequential loss or damage howsoever arising, or for any loss (whether direct or indirect or consequential) or profits, use, anticipated savings, goodwill or contracts or for any loss arising from damaged, corrupted or lost data.
- 12.1.4 The aggregate liability of each party in relation to this Agreement shall not in total exceed an amount equal to the charges paid under this Agreement, whether such liability arises in contract, tort, misrepresentation, breach of duty or otherwise.

13 Legal Disputes

- 13.1 If any dispute arises in connection with this Agreement, directors or other senior representatives of the parties with authority to settle this dispute will, within seven (7) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 13.2 If the dispute is not resolved at the said meeting, the parties will attempt to settle by mediation in accordance with California Law.
- 13.3 No party may commence any court proceedings or arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 13.4 The parties agree that the state of California shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

14 Governing Law

- 14.1 This Agreement shall be interpreted and construed according to, and governed by, the laws of California.

15 Force Majeure

- 15.1 Neither party shall be in breach of this Agreement nor liable for delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 15.2 If such circumstances were to arise, the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other party.

16 Entire Agreement

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

17 Severability

17.1 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.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18 Waiver

18.1 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 of other provisions of this Agreement.

19 Notices

19.1 Unless otherwise stated or agreed, any formal notice relating to this Agreement must be in writing and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or email to the party required to receive the notice at the address provided for this purpose from time to time.

19.2 Any notice shall be deemed to have been received:

19.2.1 If delivered personally at the address for the intended party,

19.2.2 If sent by prepaid first class post or recorded, it will be deemed received after five (5) business days after posting,

19.2.3 If delivery by commercial courier, on the date and at the time that courier's delivery receipt is signed,

19.2.4 If sent by fax, it will be deemed received after five (5) business days after transmission and

19.2.5 If sent by email, it will be deemed received after five (5) business days after transmission.

19.3 Either party may from time to time change its notice address by written notice to the other party:

19.3.1 If to the Licensor:

Microform Academic Publishers,
[\[Text deleted\]](#)

19.3.2 If to the Licensee:

University of California, San Diego
9500 Gilman Dr. #0175A,
La Jolla,
CA 92093,
USA

20. Third Party Rights

20.1 A person who is not party to this Agreement shall not have any rights under or in connection with it.

21. Partnership

21.1 Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor constitute either party the agent of the other party for any purpose.

22. Assignment

22.1 The Licensor may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

The parties have executed this Agreement by their respective, duly authorised representatives as of the Effective Date.

FOR THE LICENSOR:

Signature of Authorised Signatory of Publisher

[Text deleted] Page 2024-07-23

Date

Microform Academic Publishers,
[Text deleted]

FOR THE LICENSEE

Signature of Authorised Signatory

[Text deleted] 2024-07-23

Date

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