

American Geophysical Union
Terms and Conditions of Use
Attachment: D

- 1. Copyright and Proprietary Rights.** AGU is the owner of all intellectual property, including but not limited to the copyrights and trademarks in and to the **AGU Products** (See Attachment A). Such ownership includes, but is not limited to, individual journals, articles, abstracts, and other items within these materials. The **AGU Products** are protected under the U.S. Trademark Act codified in Title 15 of the U.S. Code and the U.S. Copyright Act Codified in Title 17 of the U.S. Code, which is party to both the Universal Copyright Convention and the Berne Copyright Convention. Licensee (Consortium or Single Institution) agrees not to remove or obscure copyright notices. AGU grants no copyright, trademark, or ownership interests to Licensee for any of the material and proprietary information referred herein belonging to AGU.

- 2. Definitions**
 - a) AGU Electronic Editions** of a journal are defined as the content for that title from 1996 to present available in the standard Internet formats using HTML and Adobe Acrobat PDF format (Portable Document Format).
 - b) AGU Digital Library** consists of Adobe Acrobat PDF articles published between 1899 and 1995, includes the backfiles of all AGU titles, and is sold as access to a single body of research.
 - c) A Current Subscription to the AGU Electronic Edition** of a journal is defined as the content for that title from 1996 to present.
 - d) A License** to an **AGU Electronic Edition** provides the Licensee and Authorized Users access to the Electronic Edition of a journal subject to the AGU Products Terms and Conditions of Use as amended from time to time.
 - e) Authorized Users.** Authorized Users are those individuals officially affiliated with the Licensee. For example, those serving in the capacity of employees, consultants under contract with the Licensee, faculty and other teaching staff, and persons officially registered as full- or part-time students who are located at an Authorized Site and use an Authorized Terminal. Others who are physically present in the library at the Authorized Site may use the database from an Authorized Terminal but may not connect via telecommunications from locations outside the Authorized Site.
 - f) Cancellation.** Subject to the access rights as provided in Paragraph 3(c), once a subscription to any single AGU Electronic Edition is canceled, access to the Electronic Edition for that journal title is terminated. In the event this License is terminated, access to all Electronic Editions is terminated, subject to the access rights as provided in Paragraph 3(c).
 - g) Commercial Use.** Use for purposes of monetary reward by means of sale, resale, loan, transfer, hire, or other form of exploitation of the AGU Products is prohibited. Neither recovery of direct costs by the Licensee nor use by an Authorized User in the course of research funded by a commercial organization is deemed to be Commercial Use.
 - h) Formats.** AGU reserves the right to change formats with three months' notice. It is the responsibility of the Licensee/Authorized User to establish and maintain at User's expense

Internet connections to AGU and to provide and install suitable Web browsers, licenses for Adobe Acrobat, and any other software necessary to view the Products.

i) Subscription Period for the Products. A Licensee's Subscription Period begins with the first year of subscription and ends upon cancellation, e.g. if a Licensee begins its subscription in 2002 and cancels in 2007, the Subscription Period is 2002 to 2007, not 1996 to 2007.

3. Access:

a) AGU shall use reasonable commercial efforts to provide continuous availability of the licensed material through the Internet. It is understood that availability will be subject to periodic interruption due to maintenance of the server(s), installation or testing of software, loading new information files, and downtime related to equipment or services outside the control of AGU including public and private telecommunications services or Internet nodes or facilities.

b) Access Control by IP Address. Access to the **AGU Products** from within the Authorized Site is controlled by Internet Protocol (IP) addresses. Licensee is responsible for providing valid IP addresses for its organization on Attachment B. The form of these IP addresses must be acceptable to AGU. Only those IP addresses submitted by the Licensee and listed on Attachment B will have access to the material. Licensee is responsible for providing reasonable security to ensure that only Authorized Users have access to its internal network.

c) Access Rights for Cancelled Subscribers to AGU Electronic Editions. Except for termination for cause, upon request at time of cancellation, **AGU Electronic Editions** Licensees will be provided access to the content from **AGU Electronic Editions** for their Subscription Period through the Portico post-cancellation access program. Access is available only for those years and titles to which Licensee subscribed and is subject to the terms and conditions of the Portico agreement.

4. Permitted Use: Authorized Users may view, download, or print individual articles, individual book chapters, proceedings, monographs, or other individual items from the **AGU Products** for their personal scholarly research and educational use. Authorized Users may make a printed copy of individual articles or other individual items from the **AGU Products** for the internal or personal use of others who are Authorized Users but who are unable to personally access the database. Authorized Users should provide links to the **AGU Products** as part of a course pack offering, or within an e-mail communication.

5. Use by Others Through InterLibrary Loan: Except as set forth in Section 6 below, Users may use the **AGU Products** to fulfill requests for InterLibrary Loan (ILL). InterLibrary Loan shall include requests to support noncommercial scholarly research by patrons of other libraries such as public, school, or college libraries. A Licensee may obtain a copy of an individual article, individual book chapters, proceedings, monographs, or other individual items from the **AGU Products** in PDF and transmit it to the ILL requesting Library by mail, fax, or electronic transmission.

6. Prohibited Use: Except as provided in Section 5 above, Licensee/Authorized User agrees not to forward, transfer, sell, rent, or otherwise knowingly distribute or provide access to the contents of **AGU Products** or any portions thereof to any third party. Individual articles or other individual items from the **AGU Products** and other information obtained from these

services may not be used for fee-for-service purposes such as document delivery. The **AGU Products** may not be used to supply single articles or other individual items to InterLibrary Loan requesters that are employed by a commercial organization or by a library that belongs to a for-profit company without prior written approval from AGU.

Authorized User agrees not to modify, alter, or create derivative works or remove or alter the authors' names or the Publisher's copyright notices or other means of identification of disclaimers as they appear in the materials contained in the **AGU Products** without prior written permission from AGU.

Individual articles and other individual items from the **AGU Products** that include information obtained as a result of access to the **AGU Products** are not to be systematically downloaded or republished in any media, print, or electronic form. Individual articles or other individual items from the **AGU Products** may not be downloaded in aggregate quantities or centrally stored for later retrieval.

Licensee (Consortium or Single Institution) acknowledges that AGU may prevent Members and their patrons, including Authorized Users, as the case may be, from using, implementing, or authorizing use of any computerized or automated tool or application to search, index, test, or otherwise obtain information from Licensed Materials (including without limitation any "spidering" or web crawler application) that has a detrimental impact on the use of the services under this Agreement. Licensee agrees to assist AGU in correcting unauthorized use of such methods or applications and acknowledges that AGU may from time to time implement tools or other controls on Licensed Materials to regulate or restrict use of computerized or automated applications that are used to search, index, test, or obtain information from Licensed Materials. AGU acknowledges that Licensee may not be able to prevent its Patrons from using such methods or applications.

Licensee is required to notify AGU of any infringements of copyrights or unauthorized use of which they become aware. Licensee will cooperate with the AGU in investigating any such unauthorized uses and taking reasonable steps to prevent a reoccurrence.

- 7. Warranty and Limitation of Liability:** AGU MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, ERROR FREE OR UNINTERRUPTED OPERATION, OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. THE **AGU PRODUCTS** ARE LICENSED "AS-IS." LICENSEE AGREES THAT AGU SHALL NOT BE LIABLE FOR LICENSEE FOR ANY CLAIMS OR DAMAGES WHICH MAY BE SUFFERED BY LICENSEE, INCLUDING BUT NOT LIMITED TO LOSSES OR DAMAGES RESULTING FROM THE USE OF THE **AGU PRODUCTS** OR LOSS OF DATA AS A RESULT OF DELAYS, NONDELIVERIES, OR SERVICE INTERRUPTIONS, REGARDLESS OF WHETHER SUCH CLAIMS OR DAMAGES WERE CAUSED BY AN ACT OR OMISSION OF AGU. UNDER NO CIRCUMSTANCES SHALL AGU BE LIABLE TO THE LICENSEE, AUTHORIZED USERS, OR ANY OTHER PERSON FOR

ANY SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OR INABILITY TO ACCESS **AGU PRODUCTS**.

8. Delivery of the **AGU Products** is in the District of Columbia, U.S.A.

9. **General:**

a) **Entire Agreement.** This Sales and License Agreement and these Terms and Conditions constitute the entire agreement of the parties and supersede all prior and contemporaneous communications, understandings, and/or agreements.

b) **Assignment.** This Agreement and Licensee's rights and obligations hereunder may not be assigned by Licensee to any other third party without the prior written consent of AGU.

c) **Notices.** Any written notices required hereunder shall be delivered via U.S. Mail, express courier, confirmed facsimile, or confirmed email, to such locations, telephone numbers, and addresses as each of AGU and Licensee shall notify the other from time to time. Notice shall be deemed to have been sufficiently given or served as follows: (a) four (4) business days after mailing if delivered by U.S. Mail; (b) one (1) business day after mailing if notice is given by reputable express courier; or (c) when sent, if by facsimile or electronic mail and a confirmation copy is sent by U.S. Mail or express courier.

d) **Force Majeure.** Neither party's delay or failure to perform any provision of this Agreement as a result of circumstances beyond its control, including but not limited to war, acts of terrorism, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities, shall be deemed to be, or give rise to, a breach of this Agreement.

e) **Severability.** In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.

f) **Waiver.** Either party's waiver or failure to require performance by the other of any provision of this Agreement will not affect its full right to require such performance at any subsequent time or be taken or held to be a waiver of the provision itself.