

LICENSE AGREEMENT

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

THE INDEPENDENT BERKELEY STUDENT PUBLISHING COMPANY, INC.

This License Agreement (the "Agreement") is made and entered into as of the 21st day of December, 2011, by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation ("University") and THE INDEPENDENT BERKELEY STUDENT PUBLISHING COMPANY, INC., a California not-for-profit corporation with its principal office located on the campus of University of California, Berkeley, California ("IBSPC").

WITNESSETH

WHEREAS, University owns the name "The Daily Californian" formerly used to identify a daily student newspaper on the University of California, Berkeley campus, and the name "Daily Cal"; and

WHEREAS, University and IBSPC have been parties to written agreements for the license by the University to IBSPC of the name Daily Californian for the publication of a newspaper directed primarily to the students, faculty and staff of the University and distributed exclusively on the University's Berkeley campus since 1971; and

WHEREAS, a written agreement between the parties hereto dated June 22, 2006, for the license by the University to IBSPC of the name Daily Californian for the publication of a newspaper directed primarily to the students, faculty and staff of the University and distributed exclusively on the University's Berkeley campus, will expire on March 30, 2012; and

WHEREAS, the parties wish to enter into a new license agreement for IBSPC to continue, and which shall supersede the existing agreement between the parties, to publish the same newspaper in print and/or electronic forms, and provide experience and training to the University students in journalism and newspaper management, including

the use of related digital technologies and Internet services, upon the terms and conditions set forth below.

NOW, THEREFORE, the parties agree as follows:

1. TERM. This Agreement shall become effective upon execution, and expire on December 31, 2021. Unless otherwise terminated pursuant to the terms herein, this Agreement shall automatically renew for two-year terms upon the expiration of the initial term of the Agreement or any subsequent renewal period, provided that, however, either party may notify the other party in writing three months before the end of this Agreement or any renewal period thereof, of its desire to renegotiate this Agreement.

1.01 Termination with Notice; Modification. Either party may request modification or amendment to the terms of this Agreement with a written notice to the other party in which case the two parties shall discuss in good faith the requested modification or amendment in an effort to reach an agreement. Any provision to the contrary notwithstanding, either party may in its discretion terminate this Agreement with 180 days' written notice to the other party.

1.02 Termination for Cause. Anything in this Agreement to the contrary notwithstanding, either party to this Agreement may terminate this Agreement in the event that the other party has materially breached this Agreement, and failed to cure such breach within 30 days of receiving notice of the breach.

2. LICENSE.

2.01 Grant of License. University hereby grants to IBSPC an exclusive, royalty-free, non-transferable, non-sublicensable, revocable license for the term of this Agreement to use the name "The Daily Californian" as the title of its publication and the term "Daily Cal" in the name of the website "dailycal.org" to publish a printed and/or online newspaper primarily for use by the students, faculty and staff of the University of California, Berkeley, and to sell advertising and otherwise raise funds for the sole purpose of supporting such newspaper.

2.02 Restriction on License. IBSPC's right to the names "The Daily Californian" and "Daily Cal" is strictly limited to the scope set forth in the preceding paragraph. IBSPC shall not use "The Daily Californian" or "Daily Cal" as its corporate name or in any other way represent itself as the owner of "The Daily Californian" or "Daily Cal" (collectively referred to as "Marks") or use any of the Marks in any manner not expressly permitted by the preceding paragraph.

2.03 Acknowledgement on Masthead. Each issue of the IBSPC's print or digital publications shall carry on its masthead the following words: "This publication is not an official publication of the University of California. It is published by an independent non-profit corporation using the name "The Daily Californian" under a license granted by the Regents of the University of California."

3. ON-CAMPUS DISTRIBUTION. The University hereby grants to IBSPC the right to distribute a printed newspaper that a) includes paid advertising, b) is distributed for free, c) is published with a frequency of no fewer than one issue per month during school terms (fall, summer and spring semesters), and d) primarily targets readers who are students, faculty and staff at the University of California, Berkeley, at mutually agreed-upon locations on the Berkeley campus. The University agrees not to distribute or aid another party in the distribution on campus any other printed newspaper with all of these four characteristics, except for any newspaper that is published by or for a University department, or a campus, or student organization that is registered with, sponsored or recognized by the University in compliance with University policies.

3.01 Definition of "on campus." For purposes of Paragraph 3 and any other provisions of this Agreement concerning distribution of IBSPC's printed newspaper, "on campus" means any real property owned, rented, or managed by or for the benefit of the University of California, Berkeley, including but not limited to dormitories, dining facilities, health centers, offices, athletic venues, and stadiums.

4. IBSPC OBLIGATIONS. IBSPC agrees that during the term of this Agreement and any renewal period thereof it shall abide by the following obligations:

4.01 Compliance with Law and University Policies. IBSPC shall comply with all applicable laws and University policies and regulations in its use of the Marks and distribution activities permitted under this Agreement.

4.02 Ensuring Student, Staff, Faculty and Alumni Involvement. During the effective term of this Agreement, at least three-quarters of IBSPC's editorial voting group membership shall be currently registered students at the University of California, Berkeley, and at least one-third of IBSPC's Board of Directors shall be either currently registered students and/or faculty or staff and/or alumni of the University of California, Berkeley. So long as this Agreement remains in effect, the newspaper shall remain a student-run and student-produced newspaper directed primarily to students, faculty, and staff on the Berkeley campus of the University of California.

4.03 Limitations on Advertising Content. The IBSPC shall refuse advertising in its print and digital that promotes gambling, alcoholic beverages, tobacco products; or selling or distributing material (e.g., term papers, research, or theses) that might be submitted for academic credit. Upon notification to the IBSPC's editor-in-chief from the University that an advertiser might be in violation of this clause, the IBSPC shall immediately investigate the concern, remove the advertisement at issue if there is reasonable ground to believe that a violation of this clause has occurred, and inform the University of the action it has taken or a plan to remedy the violation, all within ten business days of initial notification by the University.

4.04 Assisting University in Protecting Trademarks. The IBSPC shall use its best efforts to prevent unlicensed advertisers from using the Marks or any other University of California, Berkeley's trademarks or proprietary names in its publications. The University acknowledges that IBSPC does not know which advertisers or potential advertisers have licenses to use such trademarks. Nevertheless, IBSPC shall

i. Ask advertisers to provide proof of licensing if and when it has reason to doubt that the advertiser is licensed to make use of University trademarks shown in any advertisement. The IBSPC will cooperate with the University's Office of Marketing & Business Outreach (OMBO) when IBSPC is informed by OMBO that a current advertiser is unlicensed. If said advertiser cannot provide proof that it holds a valid license, the IBSPC will require the advertiser to immediately remove the trademark(s) from its advertising in the IBSPC's publications.

ii. Respond to OMBO in writing within five business days of receiving notice with a plan to remedy any advertiser's violation of any law and/or University policies. In the event that IBSPC's response is unsatisfactory to the University, the University may take actions against the advertiser at its discretion.

IBSPC expressly agrees that breach of any of the covenants set forth above would constitute a material breach of this Agreement and entitle the University to terminate this Agreement if the breach is not cured within 30 days of IBSPC being notified of the breach.

5. UNIVERSITY OBLIGATION: EDITORIAL INDEPENDENCE. The University acknowledges and understands that the IBSPC is an independent organization dedicated to student journalism and the exercise of students' First Amendment rights to free speech. The University agrees not to attempt to exercise any control or influence over IBSPC or its staff, with respect to the content of the newspaper except as expressly permitted by this Agreement, nor deny distribution of the newspaper or cancel this Agreement because of the content of the newspaper, provided that in its operation, content, and publication of the newspaper IBSPC complies with all applicable laws and UC policies and the requirements of this Agreement. University may, however, terminate this Agreement or take other remedial measures if IBSPC breaches any of its covenants set forth in Article 4 of this Agreement.

6. ON-CAMPUS DISTRIBUTION VENUE. The University in its sole discretion will make reasonable efforts to accommodate IBSPC's requests for building new distribution racks on campus or modifying or moving existing distribution racks or similar facilities. Any such IBSPC request shall be submitted for review and

decision by the University in accordance with the procedures and policies set forth in Exhibit A attached hereto and incorporated hereinto as part of this Agreement. Any approved construction or modification or relocation of on-campus distribution facilities shall be undertaken at the expense of IBSPC, unless otherwise expressly agreed by the University. IBSPC agrees to abide by all applicable University policies and procedures, including but not limited to the provisions set forth in Exhibit A, in applying for, using or advertising on any on-campus distribution racks or similar facilities.

7. CONTRACTING WITH THIRD PARTY. IBSPC specifically acknowledges any use of University property, placement of any newsstand or similar structure on University property, or advertising on University property needs to be approved in writing by the authorized representative of the University. IBSPC agrees that unless expressly approved in writing by the University, IBSPC will not enter into any agreement with any non-University person or entity regarding the use of University property, the placement of newsstands, newspaper distribution boxes, or advertising on University property.

8. INDEMNIFICATION. The parties agree to indemnify each other as follows:

8.01 University's Indemnification. The University shall defend, indemnify and hold IBSPC, its officers, agents and employees, harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, agents, or employees.

8.02 IBSPC indemnification. IBSPC shall defend, indemnify and hold University, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the

negligent or intentional acts or omissions of IBSPC, its officers, agents, or employees.

8.03 Intellectual Property and Other Rights Indemnity. Each party shall indemnify, defend, and hold harmless the other party, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any allegation that any artwork, news reporting, editorials, articles, information, data, software, documentation, materials, components, or programs furnished by the indemnifying party infringes the copyright, trademark, patent, or any other form of intellectual property right of a third party, defames, invades the privacy, or otherwise violates the legally protected rights, of a third party, provided, however, that the indemnifying party shall be informed as soon as practicable of the suit or action, and given the opportunity to participate in the defense thereof. No limitation of liability set forth elsewhere in this Agreement, if any, shall be applicable to this paragraph.

9. **INSURANCE.** Upon execution of this Agreement, IBSPC shall furnish University with a Certificate of Insurance with a carrier and in a form satisfactory to University naming The Regents of the University of California as an additional insured only with respect to items a) through d) in this Paragraph, but only in proportion to, and to the extent of, the negligent or intentional acts or omissions of IBSPC or any person or persons under the IBSPC's direct supervision and control, with the following limits of coverage:

9.01 Insurance Categories and Coverage

a) General Liability, Comprehensive or Commercial Form

(1) Each Occurrence	\$ 1,000,000
(2) Products Completed Operations Aggregate	\$2,000,000
(3) Personal and Advertising Injury, including but not limited to damage arising from invasion of privacy, libel, slander and defamation of character	\$1,000,000
(4) General Aggregate	\$2,000,000

However, if such insurance is written on a claim made following termination of this agreement, coverage shall survive for a period of not

less than three years. Coverage shall provide for a retroactive date of placement prior to or coinciding with the effective date of the agreement.

- b) **Business Automobile Liability:** for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
- c) **Worker's Compensation:** as required under California State Law.
- d) **Insurance Certificate.** Said insurance shall be evidenced to be primary insurance as respects to The Regents of the University of California, its officers, agents and employees. Any insurance or self-insurance maintained by The Regents of the University of California shall be excess and non-contributory with this insurance.

9.02 Notice of Change in Insurance. All Certificates of Insurance issued to the University must provide for thirty (30)-day advance written notice to the University of any modification, change, or cancellation of any of the insurance coverage.

10. NOTICE. Any communication in respect of this Agreement shall be sent via regular or electronic mail to the following addresses:

For the University:

Maria Rubinshteyn

Office of Marketing and Business Outreach

420 Eshleman Hall

Berkeley, CA, 94720-1928

510.642.9120

mrubinsh@berkeley.edu

Ling Zhu
Business Contracts Office
412 O'Brien Hall
Berkeley, CA 94720-5620
Phone: 510-642-1944
lingzhu@berkeley.edu

And with regard to racks or other structures:

Jim Horner
Capital Projects
1936 University Ave.
Berkeley, CA 94704
510-642-7535
jhorner@cp.berkeley.edu

For IBSPC:

Michael Wagner
The Independent Berkeley Student Publishing Company, Inc.
[650-248-869](tel:650-248-869)
mwagner@dailycal.org

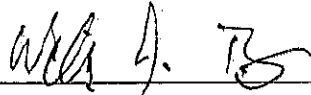
11. ASSIGNMENT. This Agreement shall not be assigned by IBSPC or the University without the express written consent of the other party.

12. ENTIRE AGREEMENT. This Agreement and all attachments incorporated hereinto shall constitute the entire agreement of the parties on the subject matter covered hereunder and shall supersede any other agreements or understanding of the parties, oral

or written, prior to or contemporaneous with, the effective date of this Agreement, regarding the same subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

By 
William J. Brauer
Title: Senior Business Contracts Officer
Date: 12-21-11

THE INDEPENDENT
BERKELEY STUDENT PUBLISHING
COMPANY, INC.

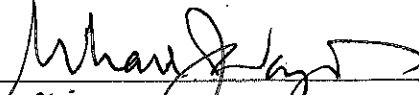
By 
MICHAEL J. WAGNER
Title: PUBLISHER
Date: 12-21-11

EXHIBIT A

Process for review and approval of Daily Cal distribution boxes on campus property

Definition: Distribution boxes shall be defined as any indoor or outdoor newspaper stand, dispenser, rack, kiosk or other receptacle in which the Daily Californian newspaper/publication may be placed.

Outdoor distribution:

If the Daily Cal wants to make changes to the design and/or placement of outdoor distribution stands located on Regents' property associated with UC Berkeley, they shall submit proposals to the Office of the Vice Chancellor – Facilities Services (VC-FS) for review and approval of design and location, in order to assure that distribution stands are installed in accordance with campus policies and guidelines. The VC-FS has designated the Campus Landscape Architect as his staff contact for the Daily Cal. A proposal must be submitted to the Campus Landscape Architect in advance of finalizing manufacturing or installation agreements. The proposal must include the following:

- renderings of the proposed design
- dimensions
- proposed materials, colors and installation details
- proposed manufacturer (if known)
- plan for maintenance
- evidence of ADA compliance
- proposed locations

The Campus Landscape Architect will be responsible for review of the proposed design and placement with appropriate campus units, including (but not limited to) Capital Projects, Physical Plant-Campus Services, and the Campus Fire Marshal. The Campus Landscape Architect will work directly with the Daily Cal to reach agreement and if appropriate, make recommendations for installation. There may be a charge for the services rendered by the Campus Landscape Architect.

Interior distribution:

If the Daily Cal has a proposal for interior distribution racks in UC Berkeley facilities, that proposal, which is to include all of the information listed above, will go to the Vice Chancellor - Facilities Services. The VC-FS has designated the Campus Landscape Architect as his staff contact for the Daily Cal for any

proposed interior distribution racks. A proposal must be submitted to the Campus Landscape Architect in advance of finalizing manufacturing or installation agreements. The Campus Landscape Architect will review the proposal with appropriate campus groups, coordinate with the VC-FS and work with the Daily Cal to reach agreement.

Advertising:

If any design includes a proposal for **advertising** as part of the distribution box, details of a proposed program must be included in submittals to the VC-FS, who will coordinate review and dis/approval with the Office of Marketing & Business Outreach (OMBO). Commercial advertising on campus is not permitted.

Exceptions and guidelines are as follows:

1. University sponsored events, defined as those events hosted by a campus department in support of the University's mission of education, research, or public service (e.g., public service announcements), may be advertised. No other commercial advertising is permitted on central campus grounds.
2. All other commercial advertising is restricted to pre-approved locations on campus and is only permitted if:
 - The advertisements have been approved by OMBO prior to production and installation.
 - The advertisements comply with appropriate business standards, laws and University policies and must adhere to the highest standards of good taste, appropriate to the public image and reputation of the University of California, Berkeley.
 - The advertisement does not promote an individual, company, product, or service which would conflict with a University agreement or which infringes on any of the University's rights.
 - The advertising does not include tobacco products, liquor, gambling, or fire arms.
 - The Daily Cal shall ensure that all approved advertising is consistently maintained and neat in appearance and that any advertising that is torn or otherwise unsightly (e.g. defaced with graffiti) is promptly removed or replaced.
 - Dated advertisements are removed from the racks no later than (7) business days following the final date of an advertised event or offer.
3. Notwithstanding the foregoing, the University may require the Daily Cal to promptly remove, at the Daily Cal's sole cost and expense, any advertising that University did not approve or, in its sole discretion, considers unsightly or inappropriate.