

PORTICO™

A DIGITAL PRESERVATION SERVICE PROVIDED BY ITHAKA

PUBLICATION LICENSE AGREEMENT (E-BOOKS)

Licensors: _____

Date of Agreement: _____

This Publication License Agreement relates to the Publication(s) listed on Annex I.

Licensors Primary Contact:

(responsible for overseeing participation)

Attn: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Portico Primary Contact:

Stephanie Orphan
Publisher Relations Manager, Portico
ITHAKA
100 Campus Drive, Suite 100
Princeton, New Jersey 08540
Telephone: (609) 986-2226
Facsimile: (609) 951-0020
E-Mail: stephanie.orphan@ithaka.org

Licensors Content Contact:

(responsible for content delivery)

Attn: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Portico Content Contact:

Stephanie Orphan
Publisher Relations Manager, Portico
ITHAKA
100 Campus Drive, Suite 100
Princeton, New Jersey 08540
Telephone: (609) 986-2226
Facsimile: (609) 951-0020
E-Mail: stephanie.orphan@ithaka.org

Licensors Legal Notice Contact:

(responsible for administering legal material)

Attn: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Portico Legal Notice Contact:

Nancy A. Kopans
General Counsel & Secretary
ITHAKA
151 East 61st Street
New York, New York 10065
Telephone: (212) 500-2373
Facsimile: (212) 500-2367
E-Mail: nancy.kopans@ithaka.org

The instructions for electronic delivery of the Publication(s) to Portico are set forth on Annex II.

The instructions for payment of fees and related contact information are set forth on Annex III.

The parties agree to be bound by the terms and conditions that follow, in witness whereof, a duly authorized representative of each of the parties has signed below as of the first date above written.

LICENSOR

ITHAKA

BY: _____

BY: _____

NAME: _____

NAME: Kate Wittenberg

TITLE: _____

TITLE: Managing Director, Portico

PUBLICATION LICENSE AGREEMENT (this “**Agreement**”), entered into by and between the publication owner or publisher specified above (“**Licensor**”) and Portico, the electronic-archiving initiative of ITHAKA, a not-for-profit New York corporation (“**Portico**”), as of the date of agreement specified above (the “**Effective Date**”).

WHEREAS, Portico is dedicated to the long-term preservation of content in electronic or digital form that is of scholarly or cultural significance; and

WHEREAS, Licensor is the owner of or in the business of publishing publications in electronic or digital form and wishes to allow Portico to preserve the content of these publications in its archive for the benefit of Licensor, Licensor’s subscribers and the scholarly community;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS**

“**Archival Versions**” means the versions of the volume(s) of a Publication(s) that have been normalized, supplemented with metadata and/or otherwise modified for archiving, migration and/or delivery by or on behalf of Portico.

“**Authorized Users**” has the meaning set forth in Section 3 of this Agreement.

“**Deliver**” means to display or otherwise distribute or make available online an Archival Version of Publication(s) to a Participating Institution or Authorized User and otherwise in accordance with this Agreement. For the avoidance of doubt, Deliver does not include the distribution of a physical copy of the Archival Version or the Electronic Files.

“**Electronic Files**” means machine-readable files provided by or on behalf of Licensor in a standard or otherwise agreed format that will allow Portico to readily extract and reproduce the textual, audiovisual and other content of a Publication. The Electronic Files and their delivery are described in further detail in Annex II.

“**License**” means the rights granted to Portico by Licensor pursuant to this Agreement.

“**Publication(s)**” means the publication(s) in electronic or digital form listed on Annex I to this Agreement.

“**Published Version**” means the version of the volume(s) of a Publication published, distributed or made available in electronic or digital format by or on behalf of Licensor, as the same may be revised from time to time. For the avoidance of doubt, the Published Version includes all supplements and other related textual, audiovisual and other content, subject to the availability of Electronic Files and any third party rights with respect to such supplements or other related content.

“**Participating Institution(s)**” means the educational institutions, libraries and other interested organizations which are contracted customers for Portico and the electronic service it offers.

“**Technologies**” means all technologies now known or hereafter developed that may be useful in creating Archival Versions of Publication(s), preserving, adapting, migrating and otherwise maintaining the Archival Versions (and the Electronic Files and Published Versions on which they are based, to the extent Portico determines to archive these materials), Delivering the Archival Versions, or otherwise in connection with the operation of Portico’s service.

2. PRESERVATION OF PUBLICATIONS

It is Portico's intent to create Archival Versions that will preserve the textual, audiovisual and other content of Publication(s) while facilitating preservation (including migration to new file formats and technologies), verification and management of the content. As a result, the Archival Versions may not contain all links and other features associated with the online version and the look and feel of the Archival Version as delivered from time to time may vary from the look and feel of the Published Version and will depend, among other things, on decisions that Portico has made with respect to the Archival Version and on the delivery platform. The Archival Versions with respect to each Publication will be based on Electronic Files selected by Portico from those available to be provided by or on behalf of Licensor.

Licensor agrees to deliver and otherwise cooperate with Portico in making available to Portico on a timely basis the Electronic Files for all issues of Publication(s) as more fully described in Annex II. Licensor also agrees to add Portico to Licensor's subscriber list so that Portico shall have online access to Publication(s), and to provide Portico with a hard copy of a specific Publication upon request to the extent available to Licensor.

Portico will archive Publication(s) starting with Publications available as of the date of this Agreement and including those published during the term of this Agreement. Portico will commence such archiving on a timely basis.

The one-time setup fee and annual contribution payable to Portico with respect to Publisher support of the archive is set forth on Annex III. Portico shall otherwise create, maintain and operate its archive and service at its sole expense, and shall ensure that its service and the Archival Versions remain reasonably available as technologies evolve.

Licensor shall have access at no additional charge to the Archival Versions of its Publications, and may use such access to verify the integrity of the Archival Versions. Licensor shall notify Portico of any errors it finds in the Archival Versions of its Publications or associated metadata generated by Portico and assist Portico with the information necessary for Portico to correct such errors.

Portico intends to store the Archival Versions in multiple locations to ensure the safety and integrity of the Archival Versions, and will use commercially reasonable efforts to maintain the security of and monitor and prevent copying and uses of the Archival Versions that are not permitted under this Agreement. Upon written request, Portico will provide Licensor with a copy of the Archival Versions of its Publication(s) available to Portico at such time for Licensor's use. At Portico's discretion, a mutually-agreed fee to cover the cost of creating and shipping this copy may be applied.

While Portico intends to work closely with Licensor and other providers of archived content to determine what constitutes the Published Version(s) and what files and data are to be preserved as part of the Archival Versions, the methods of production, compression, storage, file format and data migration, promotion, distribution and provision of the Archival Versions, and Portico's service generally, shall be within the sole discretion of Portico. In case of a disagreement between Portico and Licensor over what is the Published Version, however, the final decision will be made by the Licensor in close consultation with Portico on order to ensure the completeness of the Archival Version.

3. CONDITIONS FOR ACCESS TO ARCHIVAL VERSIONS

Portico may Deliver the Archival Versions of Publication(s) to Participating Institutions and individual users physically located in or associated with such Participating Institutions ("**Authorized Users**") only to the extent, and subject to the conditions set forth below.

Bibliographical and Preservation-Related Information. Portico may Deliver the title and bibliographic and/or preservation metadata with respect to Archival Versions to Participating Institutions and the general public at any time. No crawling or automatic indexing of the bibliographic metadata or the full text by third parties is permitted, either on the site of Portico or of Participating Institutions.

Verification and Testing. Participating Institution(s) will be entitled to designate no more than four staff members per campus or location with authority to verify or test the integrity of Portico's archive via password-protected or otherwise secure access to the Archival Versions. Participating Institution(s) and each designated staff member shall agree not to use this access or any copies of Archival Versions downloaded, saved or printed in connection with such verification or testing for purposes of distributing copies of the Archival Versions to patrons, for interlibrary loan, document delivery, or otherwise for purposes other than verifying or testing the integrity of the Archival Versions.

Trigger Events. If any of the following trigger events occurs and while it is continuing, Portico may provide access to the Archival Versions of a Publication in response to requests from Participating Institutions and their Authorized Users until the Publication is once again available from Licensor or a successor, transferee or licensee as further described below.

- (A) **Publisher No Longer in Business.** Licensor is no longer in business or is no longer in the business of publishing or providing online access to previously published volumes of a Publication(s) for a period longer than ninety (90) days and there is no successor, transferee or licensee providing access as further described below.
- (B) **Title No Longer Offered.** Licensor has stopped publishing and is no longer providing online access to the Publication for a period longer than ninety (90) days and there is no successor, transferee or licensee providing access as further described below.
- (C) **Back List Titles No Longer Available.** Licensor has stopped offering or providing online access to some or all of the back list titles of the Publication for a period longer than ninety (90) days.
- (D) **Catastrophic Failure.** Licensor has stopped publishing or providing online access to the Publication for a period longer than ninety (90) days due to technical difficulties or any business interruption, bankruptcy, insolvency, receivership or business failure and there is no successor, transferee or licensee providing access as further described below.

Portico will give written notice to Licensor of the trigger event and of its intent to commence Delivery of Archival Versions at least thirty (30) days prior to commencing Delivery. Portico will not commence Delivery or will cease Delivery as promptly as reasonably practicable if it receives reasonable assurances from Licensor, its successor, or the assignee of the Publication that the trigger event has not occurred or is no longer continuing and that Licensor, or a successor, or a transferee of the Publication that has agreed in writing to assume this Agreement, or a licensee of the Publication that has agreed to be subject to the License set forth in this Agreement, is publishing or providing access to the Publication. The parties agree that the protections afforded to licensees by Section 365(n) or any other section of the U.S. Bankruptcy Code shall apply to the License hereunder.

When Portico is permitted to Deliver an Archival Version as described above under "Trigger Events" or in a rider to this Agreement providing for Portico to offer perpetual access on behalf of Licensor or Licensor's designee, copies of Archival Versions may be printed by the applicable Authorized User(s) only for educational, research or non-commercial use by Authorized User(s) in accordance with the standard terms and conditions applicable to use of the Portico service, as amended from time to time at Portico's sole discretion. Nothing in this Agreement is intended to permit the distribution of copies of any Publication by Portico or by any Participating Institution to anyone other than Authorized User(s). Nothing in this Agreement is intended to restrict Licensor from creating and distributing Publication(s) in any way. Participating Institutions are not permitted to download whole publication or significant portions of any Publication.

Portico, at its sole expense, shall provide Licensor with access to aggregated or otherwise anonymous data on usage of the Archival Versions and of its service generally.

4. GRANT OF LICENSE

Licensor hereby grants Portico a non-exclusive, royalty-free, worldwide license to

(A) Create Archival Versions of the volumes of Publication(s), including the right to extract the textual, audiovisual and other content of Publication from the Electronic Files, reproduce, modify and/or adapt such content, and/or supplement such content with metadata, indexes and other related or supplemental data, in connection with creating the Archival Versions, *provided* that nothing herein is intended to permit editorial revisions or modifications to the content of Publication(s);

(B) Maintain the Archival Versions, including the right to reproduce Archival Versions and create new Archival Versions as described above for migration or other archival purposes from time to time;

(C) Deliver Archival Versions to Participating Institutions and their Authorized Users only under the circumstances, to the extent, and subject to the conditions set forth in Section 3 of this Agreement;

(D) Solely to the extent necessary or useful to accomplish (A), (B), and (C) above, to reproduce, prepare derivative works (i.e., the Archival Versions), display, transmit, perform or otherwise distribute or make available the Archival Versions, Published Versions, Electronic Files and/or Publication(s), use any means or Technologies in connection with the foregoing, and authorize third party contractors to do any of the foregoing provided Portico remains responsible for all obligations hereunder.

5. INTELLECTUAL PROPERTY OWNERSHIP AND NOTICES

This Agreement is not intended to grant Portico any rights with respect to the Publication(s) other than the non-exclusive License expressly set forth in this Agreement. As between Licensor and Portico, Licensor shall retain all copyrights and other intellectual property rights in the Publication(s), the Published Versions, and the content of the Archival Versions, and subject to Licensor's rights and any third party rights (including those of authors), Portico shall own all copyrights and other intellectual property rights in Portico-created information, content, and/or technology created by or on behalf of Portico in connection with creating and maintaining the Archival Versions and Portico's service generally, including but not limited to any software and techniques and processes for ingesting, storing, migrating, searching and distributing Archival Versions, metadata and/or indices, and user interfaces that are created by or on behalf of Portico. Each party shall have the right to register and to affect renewal of its respective intellectual property rights as set forth in this Section 5 in the United States and throughout the world.

Portico will retain any visible copyright notices in the Electronic Files in the Archival Versions, and will display a copyright notice identifying the holder of the copyright in the Publication (or if Licensor fails to provide the name of the owner, identifying Licensor as the owner of the copyright in Publication). Licensor agrees to cooperate with Portico to provide available information as to the copyright ownership and date of first publication of the works included in Publication in an agreed upon electronic or digital form as part of the Electronic Files or by some other mutually acceptable means. Portico shall also include a notice informing users of the limitation on copies printed from the Portico service and that use of the Archival Versions is subject to all of the terms and conditions of the Portico service, as amended from time to time at Portico's sole discretion.

In the event of a dispute with respect to any Publication or portion thereof, or the Archival Version thereof, Portico shall have discretion to suspend Delivery of the Archival Version, remove such Archival Version from its archive and otherwise take such action as it deems necessary to comply with applicable law. If Licensor receives a written claim by a third party that a Publication or portion thereof infringes the copyrights, trade secrets or other proprietary rights of such third party and determines in good faith upon the advice of counsel that the continued Delivery of such Publication by Portico exposes Publisher to Damages (as defined in Section 7 of this Agreement), it shall so notify Portico in writing and Portico agrees to suspend Delivery of such Publication until (A) such dispute has been resolved, (B) such third party has

agreed to hold Licensor harmless from any Damages in connection with such Delivery by Portico, or (C) Portico agrees in writing to indemnify Licensor against any such Damages upon the terms set forth in the third paragraph of Section 7 of this Agreement.

6. LIMITED TRADEMARK LICENSE

Each party hereby grants to the other a non-exclusive, royalty-free, worldwide right and license to use and incorporate its trademarks in connection with the promotion of the Portico service during the term of this Agreement. Each party agrees to (a) adhere to standards consistent with the high level of quality associated with such trademarks, (b) provide the other party with samples of printed materials or web pages containing such trademarks, or links to the other's web site(s), (c) notify the other of substantive changes made to such printed materials or web pages with respect to such trademarks or links, and (d) cooperate in making such changes to such printed materials or web pages as are reasonably requested.

7. REPRESENTATIONS AND WARRANTIES; MUTUAL INDEMNITY

Licensor represents and warrants that (a) it possesses all rights in the Publication necessary to grant the License, (b) it is authorized to enter into this Agreement, and (c) it has caused this Agreement to be executed by an authorized representative, subject to the possibility of reversion or other supervening rights described below.

Portico represents and warrants that (a) it is authorized to enter into this Agreement, (b) it has caused this Agreement to be executed by an authorized representative, and (c) that it will exercise reasonable care, consistent with industry standard practices, in carrying out its duties hereunder.

Portico understands that Licensor from time to time may designate specific portion(s) of Publication(s) proposed to be archived with respect to which Licensor cannot make the representation set forth in (a) above because Licensor makes a good faith determination upon the advice of counsel that it does not have the necessary contractual rights to make the representation, and with respect to which Licensor or Portico would need to obtain consent from the applicable copyright holder or otherwise obtain any necessary rights. Licensor agrees to cooperate with Portico to provide such notice as to any portion(s) of such Publication(s) with respect to which Licensor cannot make the representation (or can only make the representation as to Delivery at a reduced resolution or in accordance with other limitations imposed by third parties) in agreed upon electronic or digital form as part of the Electronic Files or by some other mutually acceptable means.

Portico understands that in some cases Licensor's rights may be subject to rights of Licensor's authors, contributors, societies or other third party copyright owners to a reversion of the copyright when the publication goes out-of-print, or to other supervening rights which may terminate Licensor's rights to make available a particular Publication, and that such a reversion or other supervening rights may impact Portico's ability to make the Publication available after a trigger event to Participating Institutions that have not previously purchased the Publication. Licensor agrees to use reasonable efforts to notify Portico of the loss of rights upon receiving a trigger event notice from Portico, AND IN SUCH EVENT Portico will promptly suspend Delivery of the Archival Version of such Publication to Participating Institutions that have not previously purchased the Publication until the rights holders with respect to such Publication have given their permission. In the event Portico is unable to locate the author after a diligent search and the passage of time and believes it would be appropriate to rely on fair use or any laws relating to "orphan works" then in effect to Deliver such Publications in whole or in part, Portico agrees to indemnify and hold harmless Licensor against any Damages in connection with this decision by Portico.

Licensor shall indemnify and hold harmless Portico, its affiliates and its and their directors, officers, employees, agents, successors, assigns, licensees and distributors (its "**Indemnified Persons**") against any and all judgments, settlements, penalties, costs and expenses, including attorneys' fees (any "**Damages**"), paid or incurred in connection with any action, suit, claim, and/or proceeding by any party which arises from any breach of Licensor's representations and warranties herein or from Licensor's use of any Archival Version provided to Licensor. Portico shall indemnify and hold harmless Licensor and its

Indemnified Persons against any and all Damages paid or incurred in connection with any action, suit, claim, and/or proceeding by any party which arises from any breach of Portico's representations and warranties herein or from any copyright infringement due to changes made in creating the Archival Versions that were not contemplated by this Agreement. In connection with the foregoing, the indemnified party will give the indemnifying party prompt written notice of all actions, suits, claims, and/or proceedings, provide reasonable cooperation in the investigation and defense of same, and permit the indemnifying party to defend such matters at its expense with legal counsel of its choice. Except as otherwise provided in this paragraph, each party shall pay its respective costs and/or losses in the event of a claim by a third party relating to the subject matter of this Agreement.

EXCEPT AS OTHERWISE PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY TO THE OTHER, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PORTICO MAKES NO WARRANTIES RESPECTING THE PERFORMANCE AND AVAILABILITY OF ITS SERVICE, OR ANY HARM THAT MAY BE CAUSED BY THE TRANSMISSION OF A COMPUTER VIRUS, WORM, TIME BOMB OR OTHER SUCH COMPUTER PROGRAM. PORTICO FURTHER MAKES NO WARRANTY RESPECTING IMPROPER USAGE OF ITS SERVICE BY USERS.

8. TERM; TERMINATION

The initial term of this Agreement will be for the remainder of the year in which the Effective Date falls and the following three (3) calendar years. This Agreement will renew automatically at the end of the initial term for successive one (1) year renewal terms absent written notice delivered at least three (3) months prior to the end of the initial term or the applicable renewal term. In addition, either party has the right to terminate this Agreement for material breach of this Agreement by the other party that cannot be cured or that remains uncured thirty (30) days after written notice thereof.

In the event of termination, Licensor shall have no obligation to pay an annual contribution for any year after the effective date of termination and no obligation to continue to make available Electronic Files or to otherwise permit the archiving of any volumes of Publication(s) that have not yet been delivered to Portico. Portico may create Archival Versions of the volumes of Publication(s) for which Portico has received the Electronic Files as of the effective date of termination and continue to retain, migrate and Deliver copies of the Archival Versions of Publication(s) to its Authorized Users in accordance with the terms of this Agreement, and the provisions of this Agreement shall survive the effective termination date solely with respect to such volumes of Publication(s). Licensor understands that the License granted by this Agreement is intended to be perpetual and irrevocable as to such materials, and that accordingly it will be limited to seeking injunctive relief or monetary damages as its remedies under this Agreement.

In the event that Portico ceases to operate and no successor non-profit organization can be found to maintain the Archival Versions, on the same or similar terms and conditions provided hereby. Portico agrees to provide a copy of the Archival Versions available to Portico (and the Electronic Files and/or Published Versions, to the extent archived by Portico) with respect to the Publication(s) to both Licensor and an appropriate not-for-profit institution such as the Library of Congress and assign its rights hereunder to such institution.

9. GOVERNING LAW; ARBITRATION

This Agreement shall be interpreted and construed according to, and governed by, the laws of the State of New York (except that where a state requires that the laws of that state apply to agreements entered into by a state university or other state institution, the reference to "New York" shall be deemed replaced with a reference to the applicable state) or United States Federal law, as applicable, excluding any such laws that might direct the application of the laws of another jurisdiction.

Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled by arbitration, including joint and/or consolidated arbitration where practicable, in New York,

New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

10. NOTICES

All notices given pursuant to this Agreement shall be in writing and sent to the address for notices specified on the cover page of this Agreement. Notices may be delivered by hand, by overnight carrier, or shall be deemed to be received within five (5) business days after mailing if sent by registered or certified mail, postage prepaid. If any notice is sent by facsimile, then confirmation copies must be sent as specified above. Either party may from time to time change its address for notices by written notice to the other party.

11. MISCELLANEOUS

11.1 This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements between the parties relating to the subject matter hereof, whether oral or written. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Portico and Licensor.

11.2 This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

11.3 Nothing contained herein shall be deemed to create an agency, joint venture, or partnership relationship between the parties.

11.4 Neither party shall be liable in damages or have the right to cancel 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, insurrections, strikes, fires, floods, work stoppages, unavailability of materials, carriers or communications facilities, and/or any other cause beyond the reasonable control of the party whose performance is affected.

11.5 Waiver of any provision herein shall not be deemed to be 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.

11.6 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.

11.7 The parties hereto agree to execute, acknowledge, and deliver all such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.

11.8 Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, except that ITHAKA may transfer its rights and obligations under this Agreement to a non-profit organization established by ITHAKA to offer the Portico service and maintain the Archival Versions, and except as contemplated by the last paragraph of Section 8.

[REMAINDER OF PAGE IS BLANK]

ANNEX I

COVERED PUBLICATIONS

Unless one or more boxes are checked below, this Agreement covers all e-books titles offered by Licensor for which the applicable files are available to Licensor.

- Current and Future Titles. This Agreement covers the e-book titles first offered by Licensor in the year of this Agreement and subsequent years.
- Backlist Titles. This Agreement is intended to cover the e-book titles first offered by Publisher in the following years: _____

Publisher agrees to furnish, together with this Agreement or as promptly as practicable after signing this Agreement, a complete list of the applicable title names and ISBN and E-ISBNs, either in the form of an Excel compatible spreadsheet or by indicating here a URL where the definitive list can be downloaded: _____

In the event that Licensor furnishes Electronic Files for archiving with respect to an e-book title that was not included on the list furnished or made available to Portico, the e-book title will be archived as a Publication under this Agreement, however Portico will provide a complete list of e-book titles for which Electronic Files were furnished during the course of each year as part of its annual report to Licensor regarding its archiving activities, and if Licensor indicates in writing or via email within ninety (90) days of receipt of this report that such Electronic Files were delivered in error, Portico will not make available the Archival Version of such Publication to Participating Institutions and their Authorized Users in the event of a Trigger Event absent prior written consent of the Licensor or the expiration of all applicable copyrights.

ANNEX II

DELIVERY OF ELECTRONIC FILES TO PORTICO

INITIAL SET-UP

Portico will need to work with Licensor to determine the appropriate Electronic Files to be provided by or on behalf of Licensor and the most efficient way for Licensor or its agents to deliver the Electronic Files to Portico, and will otherwise need information and cooperation from Licensor as part of the initial set-up of the Portico service to receive, normalize and store the Publication(s).

Accordingly, in connection with this initial set-up, and from time to time thereafter as required, Licensor agrees to promptly make available to Portico:

(1) representative samples of the Published Versions of the Publication(s),

(2) information regarding the files and file formats that are delivered as part of the Published Versions, generated in creating the Published Versions or otherwise available to Licensor (for example, the original high resolution images from which lower resolution images actually displayed to subscribers are derived),

(3) samples as requested of the files described in (2) above,

(4) the documentation related to the files described in (2) above, including without limitation the documentation and details with respect to any proprietary file formats, document type definitions (DTD) and/or metadata used in connection with the Publication(s), and

(5) such other information or assistance as Portico shall reasonably request.

From among the files and file formats available to Licensor (for example, XML, SGML and/or PDF files), Portico will select the Electronic Files to be delivered by or on behalf of Licensor. The Electronic Files will be used to create Archival Versions of the Publication(s) but will not themselves necessarily be preserved once Portico has created an Archival Version.

Portico and Licensor will agree on a mutually acceptable means of formatting and delivering the Electronic Files selected by Portico, including without limitation any manifest or file naming or directory structure convention reasonably required by Portico with respect to the Electronic Files.

Licensor agrees to use reasonable efforts to inform Portico prior to making changes to the format and delivery of Publication(s) and/or the Electronic Files that may impact the processing of such Publication(s) and/or Electronic Files by Portico so that the parties may avoid or minimize any associated disruption and/or expense.

DELIVERY OF ELECTRONIC FILES

The Electronic Files determined as described above with respect to each new volume of each Publication shall be delivered via the agreed upon means not later than three (3) months after the date or first publication date of such volume.

The Electronic Files determined as described above with respect to any volumes of each Publication to be archived by Portico shall be delivered by the agreed upon means on a mutually agreed schedule.

CONTACT INFORMATION

To coordinate the initial set-up of delivery of the Electronic Files, or if you encounter any difficulty or anticipate any changes in the format or delivery of the Electronic Files or the Published Versions that may impact the processing of the Publication(s) by Portico, please contact the Portico Content Contact listed on the cover page of this Agreement.

ANNEX III

One-Time Set-up Fee and Supporting Publisher Contribution

One-time Set-up Fee: \$ _____

Annual Contribution: \$ _____

The one-time setup fee and annual contribution for the first year shall be due promptly upon signing this Agreement. Portico shall send an invoice for the annual contribution at the beginning of each calendar year. The annual contribution shall be due and payable within thirty (30) days after the date of invoice.

General

All payments shall be made by check payable to ITHAKA at the following address:

Attn: Portico Accounts Receivable
ITHAKA
151 East 61st Street
New York, New York 10065

Overdue amounts will bear interest at the rate of 10% per year.

PORTICO™

A DIGITAL PRESERVATION SERVICE PROVIDED BY ITHAKA

PERPETUAL ACCESS RIDER TO PUBLICATION LICENSE AGREEMENT

The following provision shall be included in Section 3 of the Publication License Agreement between the parties:

Perpetual Access. Licensor agrees that Portico shall provide access to the Archival Versions to Licensor's former purchasers and/or institutions that are otherwise entitled to perpetual access to the Archival Versions. Participating Institutions may submit perpetual access claims to Portico by certifying, either electronically or in writing, that they were a purchaser (or are otherwise entitled to perpetual access) with respect to the electronic version of the applicable volume of the applicable Publication(s) to which they are seeking access. Portico will promptly provide a copy of the certification to Licensor's designated legal contact or subscription agent for verification by Licensor. If Licensor has not notified Portico that the claim cannot be verified (for example, because of Licensor's inability to confirm the institution's status as a purchaser or subscriber) in writing within thirty (30) days, Portico may Deliver the requested Archival Versions and Portico will consider the claim to be verified. By signing this Perpetual Access Rider, Licensor understands and agrees that Portico will honor all verified claims for Perpetual Access made by Participating Institutions pursuant to this Perpetual Access Rider and that, in the event of any conflict between the terms of this Perpetual Access Rider and the terms of any agreement between the Licensor and Participating Institution regarding perpetual access to the Publication(s), the terms of this Perpetual Access Rider will prevail.

In witness whereof, a duly authorized representative of each of the parties has signed below as of the first date above written.

LICENSOR

ITHAKA

BY: _____

BY: _____

NAME: _____

NAME: Kate Wittenberg

TITLE: _____

TITLE: Managing Director, Portico