

Agreement between the Regents of the University of Michigan and a Publishing Partner
Concerning Distribution of a Journal Title

The University of Michigan Library (“University of Michigan”) is pleased to offer publishing services to

_____ (“Publishing Partner”)

by serving as the electronic distributor for

_____ (“Journal Title”)

and providing access to it with the standard functionality for browsing, search, and retrieval that we provide for publications branded with MPublishing. Whereas the parties desire to promote effective scholarly communication that promotes local control of intellectual assets, the parties for valuable consideration agree as follows:

A. PUBLISHING PARTNER’S GRANT OF RIGHTS

The Publishing Partner grants to the University of Michigan:

1. A perpetual non-exclusive right to reproduce, republish, transmit, and distribute the content of Journal Title in electronic editions throughout the world. (These rights do not include the right to sell the content or sell access to the content.)
2. A perpetual non-exclusive right to license others to reproduce, republish, transmit, and distribute the content of Journal Title under the condition that the creator(s) is attributed, no derivative works are created, and the work is not used for commercial purposes.
 - a. The University of Michigan will communicate this right to users by applying a Creative Commons Attribution-NonCommercial-NoDerivs license to the work.
 - b. For any other type of relicensing besides a Creative Commons Attribution-NonCommercial-NoDerivs license, the University of Michigan will not license or permit others to use the work.

B. PUBLISHING PARTNER’S DUTIES

The Publishing Partner will do the following:

1. Provide a link to the site for Journal Title at the University of Michigan from any webpages maintained by Publishing Partner dedicated to Journal Title.
2. Maintain contact with the University of Michigan about any changes in the regular publishing schedule.
3. Inform the University of Michigan of any change in contact information for the Publishing Partner.
4. Regularly monitor the condition of the content and notify the University of Michigan in the event it discovers that the content has been damaged, altered or defaced.

Should Publishing Partner request any enhancements to the system or choose to make enhancements to the content (not including routine additions and corrections to content), the parties will agree upon appropriate methods and compensation, if desired by the University of Michigan, for any work undertaken by the University of Michigan.

C. PUBLISHING PARTNER'S WARRANTY

The Publishing Partner warrants that it has the right to publish Journal Title and all content within it and that it has the right to authorize the University of Michigan to make Journal Title and all content within it available electronically, consistent with this Agreement. The Publishing Partner further warrants that the content supplied does not violate or infringe the law or the rights of any third party and, specifically, that Journal Title contains no matter that is defamatory or that infringes any literary or proprietary rights, intellectual property rights, or any rights of privacy.

D. UNIVERSITY OF MICHIGAN'S DUTIES

In consideration of the Publishing Partner's grant of rights and duties, the University of Michigan will provide the necessary systems and structures to make the content available online, freely accessible to all. The University of Michigan will provide this hosting service free of charge. Furthermore:

1. Once the initial batch of content has been released to the production environment for users, the University of Michigan will endeavor to have the content of Journal Title ready for approval by the Publishing Partner within 30 business days of receipt of final electronic source files.
2. The University of Michigan will undertake to keep the content available online 24 hours per day, 7 days per week with no more than 72 hours of downtime per year.
3. The University of Michigan's software systems and services used to support online access to the content are the property of the University of Michigan or licensed by the University of Michigan. The functionality may be modified periodically as deemed necessary. Publishing Partner will be notified at least 30 days prior to any modifications that may substantially affect access to the archive.
4. The University of Michigan will use commercially available efforts to protect the content from damage, alteration, or defacement, and to maintain an archived version the content in such form as may be used to restore the content to its original condition on-line in the event of such damage, alteration, or defacement. In the event the content has been damaged, altered, or defaced, the University of Michigan will promptly restore the content to its originally approved format and appearance.
5. The University of Michigan will make a reasonable effort to forward inquiries to Publishing Partner from users requesting additional rights. The University of Michigan will not grant additional rights without the permission of Publishing Partner.

E. HOSTING TERMS AND CONDITIONS

THE UNIVERSITY OF MICHIGAN PROVIDES THE HOSTING SERVICES "AS IS" WITH NO WARRANTIES WHATSOEVER WITH RESPECT TO FUNCTIONALITY, OPERATIONS, OR USE, EXCEPT AS PROVIDED IN THIS AGREEMENT. THE UNIVERSITY OF MICHIGAN DISCLAIMS ALL

OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND/OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

IN NO EVENT SHALL THE UNIVERSITY OF MICHIGAN BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE THAT ARISE FROM THE PERFORMANCE OF THIS CONTRACT OR FROM THE BREACH OF ANY WARRANTY.

F. INDEMNITY

Each party agrees to indemnify, hold harmless, and defend the other party from all actions, claims, demands, and liabilities, including reasonable attorney’s fees and costs, arising from or relating to the indemnifying party’s (i) breach of this Agreement, (ii) negligent acts or omissions, or (iii) willful misconduct.

This Agreement shall be governed by the laws of the State of Michigan. The parties understand and expressly agree that any claims, demands, or actions asserted against the Regents of the University of Michigan, its agents, employees, or students shall be brought only in the Michigan Court of Claims, as it is the only court of exclusive jurisdiction over claims against the University of Michigan, a Michigan constitutional corporation. The Publishing Partner consents to the jurisdiction of the U.S. District Court for the Eastern District of Michigan or the Washtenaw County Circuit Court for the State of Michigan with respect to any claims arising under this Agreement.

G. TERMINATION OF THIS AGREEMENT

Either party may terminate this Agreement with at least 30 days’ notice. In the event of termination of the hosting relationship, the University of Michigan will cooperate fully and use reasonable efforts to provide a smooth transition of all necessary components of the archive to another hosting service provider designated by Publishing Partner. However, the University of Michigan reserves the right to make content accrued in reliance on this Agreement available to users according to the grant of rights by the Publishing Partner above.

H. ENTIRE AGREEMENT

This Agreement reflects the entire understanding of the parties. This Agreement may be amended only in writing by an addendum signed by the parties. Amendments are incorporated by reference to this Agreement.

The University of Michigan is pleased to collaborate with you by making this important content available.

ACCEPTED AND AGREED:

Publishing Partner Representative: _____ Date: _____

Approved for the Regents of the University of Michigan by

Date: _____

John Wilkin
Associate University Librarian for Publishing
University of Michigan

Contact information

Publishing Partner Representative	
Permanent Address	
Telephone	
Email	

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