

**Sample Agreement between the Regents of the University of Michigan and [Publishing Partner]
Concerning Distribution of [Journal Title]**

The University of Michigan Library (“University of Michigan”) is pleased to offer hosting services to [Publishing Partner] by serving as its electronic distributor, and by providing access to [Journal Title].

Specifically, the University of Michigan and [Publishing Partner] agree to the following:

Content, License, and Hosting Services

1. [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. [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.
2. [Publishing Partner] grants the University of Michigan a number (N) year, non-exclusive, non-transferable license to reproduce and distribute the content of [Journal Title] in electronic forms. These rights do not include the right to sell the content or sell access to the content.
3. The University of Michigan will provide hosting services, including: server capacity and storage hardware; information retrieval and display software; authorization and authentication mechanisms through IP addresses and individual user accounts; statistics reporting.
4. [Publishing Partner] agrees to compensate the University of Michigan for a variable hosting fee computed at fifteen percent (15%) of annual subscription revenues from all products including access to the version of [Journal Title] hosted by University of Michigan as detailed in the Addendum on Hosting Fee for Subscription-Based Journals.
5. [Publishing Partner] will be invoiced by the University of Michigan quarterly as detailed in the Addendum on Hosting Fee for Subscription-Based Journals. The invoice will be sent to the attention of the signatory of this letter of Agreement.
6. Once an 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. For the publishing schedule, see the Addendum for Publication Schedule.
7. 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.
8. The University of Michigan’s software systems and services used to support online access to this 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.
9. 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.

10. This Agreement remains in effect for **number (N)** years beginning **[start date]**. Following **[date of expiry]**, **[Publishing Partner]** may terminate its relationship with the University of Michigan 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 the hosting service provider designated by the **[Publishing Partner]**. If this Agreement is terminated, the University of Michigan reserves the right to continue making available to University of Michigan users content acquired during the course of this Agreement.

Protection of the Content

1. The University of Michigan will use commercially reasonable 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.
2. **[Publishing Partner]** will 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.
3. 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.

General Hosting Terms and Conditions

1. 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.
2. 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.
3. The University of Michigan's maximum liability under this Agreement shall not exceed the purchase price of services which gives rise to the claim. The customer's sole and exclusive remedy for any cause of action under this contract is a claim for damages which in no event will exceed the price of the specific product as to which the claim is made.
4. Any action resulting from any breach on the part of the University of Michigan must be commenced within one year after the cause of action has accrued.
5. 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.
6. 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.

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

THIS LETTER OF AGREEMENT APPROVED AND ACCEPTED BY:

On behalf of the Regents of the University of Michigan:

Date: _____

Name: _____

Signature: _____

Title: _____

Address: 818 Hatcher Graduate Library South
913 S. University Ave.
Ann Arbor, MI 48109-1190

Phone: _____

Fax: 734-763-5080

E-Mail: _____@umich.edu

On behalf of [Publishing Partner]:

Date: _____

Name: _____

Signature: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

E-Mail: _____