

PORTICO®

JOURNAL ARCHIVE LICENSE AGREEMENT

(Please type or print clearly)

Licensee (Institution or System) Name: _____

Licensee Address: _____

Agreement Date: _____

Contact Information: *Please ensure this information remains current by providing regular updates.*

Licensee Primary Contact:

Attn: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Portico Primary Contact:

Kenneth DiFiore
Associate Director of Library Relations, Portico
c/o ITHAKA
149 Fifth Avenue, 8th Floor
New York, New York 10010
Telephone: (212) 358-6415
Facsimile: (212) 358-6499
Email: participation@portico.org

Licensee Technical Contact:

Attn: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Licensee Legal Notice Contact:

Attn: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Portico Legal Notice Contact:

Nancy Kopans
General Counsel & Secretary, ITHAKA
149 Fifth Avenue, 8th Floor
New York, New York 10010
Telephone: (212) 358-6400
Facsimile: (212) 358-6499
E-Mail: nancy.kopans@ithaka.org

Licensee Billing Contact:

Attn: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Financial Services Department -- Portico
ITHAKA
151 East 61st Street
New York, New York 10065
Telephone: (212) 500-2600
Facsimile: (212) 500-2367
E-Mail: portico.finance@ithaka.org

If this license is to cover multiple campuses or system branches, please list them below (attach additional sheets if necessary):

Note: Information regarding multiple campuses or system branches will be used to calculate the annual Archive Support Payment described on Schedule A.

Designated Staff

Licensee may designate up to four staff members per campus or system branch that will be provided password protected full access to the Portico archive for verification and testing purposes only. Please list the initial Designated Staff and their email addresses below (attach additional sheets if necessary):

Name	Email Address
1) _____	_____
2) _____	_____
3) _____	_____
4) _____	_____

Technical Information:

When campus-wide access to archived content is necessary and permitted by publisher agreements, Portico will contact the Licensee Technical Contact listed on the cover page of this agreement for IP addresses or domain names used by its campus(es) and other pertinent information. Portico reserves the right to delay access until the necessary information is provided.

The parties agree to be bound by the terms and conditions of this Archive License Agreement, in witness whereof the parties have set their hands as of the date above.

LICENSEE

PORTICO

BY: _____
NAME: _____
TITLE: _____

BY: _____
NAME: Nancy Kopans
TITLE: General Counsel & Secretary, ITHAKA

ARCHIVE LICENSE AGREEMENT (this “**Agreement**”), entered into by and between the Licensee set forth on the cover page of this Agreement and Portico, an electronic-archiving service being part of ITHAKA, a New York not-for-profit corporation (“**Portico**”), as of the date set forth on the cover page of this Agreement.

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

“**Archive**” means the collection of Archival Versions of journals originally published or distributed in digital or electronic form or in both print form and electronic or digital form being preserved by Portico, or any portion thereof. A list of the journals included in the Archive and coverage information is available on the Portico website or upon request from Portico.

“**Archival Version**” means the versions of an article or issue of a journal archived by Portico that have been normalized, supplemented with metadata and otherwise prepared for archiving and migration. The Archival Version is intended to preserve the intellectual content of a journal, whether in the form of text, data, images, audio or video, while facilitating preservation (including migration to new file formats and technologies), verification and management of the content, but may not have the same formatting or look and feel as the Published Version.

“**Authorized Users**” means persons who are authorized to use Licensee’s library facilities who (a) are affiliated with Licensee as students, faculty or employees, or (b) are physically present on campus or in the Library.

“**Deliver**” means to display or otherwise distribute or make available an Archival Version to Licensee or an Authorized User and otherwise in accordance with this Agreement.

“**Derivative Work**” means a work based upon one or more preexisting works such as a modification, enhancement, adaptation, translation, abridgment or any other form in which such preexisting work may be transformed or incorporated and which, if prepared without authorization of the owner of the copyright or other intellectual property right in such preexisting work, would constitute an infringement of such right.

“**Intellectual Property**” means any trademarks, issued patents and patent applications, copyrights and copyright registrations and applications, rights in ideas, designs, works of authorship, Derivative Works, and all other intellectual property rights relating to the Archive.

“**Library**” means Licensee’s library building(s).

“**Materials**” means any portion or portions of the content in, or printed from, the Archive.

“**User Rules**” means those terms and conditions for use of the Archive that appear on certain screen displays in the Archive as such may be amended from time to time, or that are otherwise provided to Licensee or to Authorized Users by Portico. The User Rules shall at all times remain consistent with the terms of this Agreement.

2. CONTENTS OF ARCHIVE; ACCESS TO ARCHIVE; GRANT OF LICENSE

2.1 The Archive will consist of Archival Versions of articles and issues from scholarly journals originally published or otherwise distributed in electronic or digital form, or in both print form and electronic or digital form. A list of the journals included in the Archive is available and coverage

information is available on the Portico website or upon request from Portico. Archival Versions are intended to facilitate the preservation of the intellectual content of these journals, whether in the form of text, data, images, audio or video, and preserve access to this content as new standards and technologies evolve, but may not preserve the formatting or look and feel of the published version.

2.2 Under Portico's agreements with the publishers who make their content available for the Archive, Portico is permitted to Deliver the Archival Versions to participating institutions such as Licensee under the following circumstances:

Bibliographical and Preservation-Related Information. Portico will provide access to bibliographic metadata and/or preservation metadata with respect to the titles and issues for which Archival Versions have been created to Licensee and the general public.

Verification and Testing. Portico will provide access to the Archival Versions for purposes of verification and testing as described in this paragraph. Licensee may designate up to four staff members per campus covered by this Agreement (the "**Designated Staff**") with authority to verify or test the integrity of Portico's archive via password protected or otherwise secure access to the Archival Versions. Licensee and each Designated Staff must agree to use this access, or any copies of Archival Versions downloaded, saved or printed, only for verification or testing purposes, and not for distributing copies of the Archival Versions to patrons, for interlibrary loan, document delivery, or otherwise for any purpose other than verifying or testing the integrity of the Archival Versions.

Perpetual Access. Some of the publishers with content in the Archive have a policy of providing access to back issues to former purchasers or subscribers. This access is commonly referred to as "perpetual access." While many of these publishers provide websites of their own or rely upon other mechanisms for providing perpetual access, some publishers have designated, and publishers may in the future designate, Portico as one of the sources for perpetual access to publications. A list of publications for which Portico has been designated by the publisher as one means for providing perpetual access is available on the Portico website or upon request from Portico. Where Portico is providing perpetual access for a particular publication, Licensee may submit perpetual access claims by certifying, either electronically or in writing, that it was a purchaser or subscriber with respect to the electronic version of the applicable volume(s) or issue(s) of the publication to which it was seeking access, and if an Archival Version is available, Portico will promptly provide a copy of the certification to the publisher for verification and commence Delivery of the requested Archival Version if the publisher has not notified Portico and Licensee of an objection in writing within thirty (30) days.

Trigger Events. If any of the following trigger events occurs and while it is continuing, Portico will enable access to the applicable Archival Versions by Licensee and its Authorized Users until the publication is once again offered by the publisher or a successor as described below. A publisher may also request that Portico provide access on its behalf earlier than described below in the event of an interruption in service.

- (A) **Publisher No Longer in Business.** The publisher is no longer in business, or is no longer in the business of publishing or providing access to previously published issues of scholarly journals.
- (B) **Title No Longer Offered.** The publisher has stopped publishing and is no longer providing access to the publication and its back issues.
- (C) **Back Issues No Longer Available.** The publisher has stopped publishing or providing access to some or all of the back issues of the publication for a period longer than ninety (90) days.

- (D) **Catastrophic Failure.** The publisher has stopped publishing or providing 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.

When Portico determines that any of the foregoing events has occurred and is continuing, Portico will give written notice to the publisher of the trigger event and of its intent to enable campus-wide access to the applicable Archival Versions after an agreed upon period not to exceed sixty (60) days. Portico will not initiate or will discontinue campus-wide access if and when it receives reasonable assurances from the publisher that the trigger event has not occurred, or is no longer continuing and the publisher (or a successor, or a transferee of the publication that has agreed in writing to assume the agreement between the publisher and Portico, or a licensee of the publication that has agreed in writing to be bound by the license set forth in the agreement between the publisher and Portico) is publishing or providing access to the publication and its back issues.

When Portico is permitted to Deliver Archival Versions as described above under “Perpetual Access,” or “Trigger Events,” copies of the Archival Versions may be printed or saved only for educational, research or non-commercial use by Authorized User(s) and otherwise in accordance with the User Rules and this Agreement.

2.3 Portico hereby grants to Licensee a non-exclusive license to use the Archive and to provide the Archive to the Designated Staff and to other Authorized Users when and as permitted herein (the “**License**”).

3. USE OF ARCHIVE

3.1 It is understood that the purpose of Portico is to provide effective preservation of the archived content and that access to the Archive will be permitted only when and under the conditions described in Paragraph 2.2.

3.2 Licensee shall not permit anyone other than Designated Staff, and where campus-wide access to a publication has been enabled under the circumstances described in Paragraph 2.2, other Authorized Users, to use the Archive. The Archive is intended for educational and other non-commercial use by Licensee and its Designated Staff and/or Authorized Users, as applicable, and Licensee must agree not to use the Archive for commercial purposes, including but not limited to the sale of Materials, fee-for-service use of the Archive, or bulk reproduction or distribution of Materials in any form, nor may Licensee impose special charges on Authorized Users for use of the Archive beyond reasonable printing or administrative costs. Under no circumstances may Licensee (a) remove, obscure or modify any copyright or other notices included in the Archive or the Materials, (b) use Materials in a manner that would infringe the copyright therein, or (c) copy, download, or attempt to download an entire issue or issues of a publication from the Archive or substantial portions of the Archive.

3.3 Licensee shall use all reasonable efforts to protect the Archive from any use that is not permitted under this Agreement, and shall notify Portico of any such use of which it learns or is notified. In the event of violation of the terms of this Agreement or of the User Rules, Licensee acknowledges that Portico may be required to impose further restrictions on access to, and downloading and printing from, the Archive. Portico and Licensee shall from time to time consult on the establishment of measures to prevent uses of the Archive that are not permitted under this Agreement, and to inform Designated Staff and Authorized Users as to the conditions under which Archival Versions are available and of the User Rules.

3.4 In the event of any unauthorized use of the Archive by Designated Staff or another Authorized User, (a) Portico may suspend or terminate such Designated Staff or other Authorized User’s access to the Archive, (b) upon notice to Licensee except in exigent circumstances, Portico may suspend or terminate the access of the IP address(es) from which such unauthorized use occurred, and/or (c) Licensee shall suspend or terminate such Designated Staff or Authorized User’s access to the Archive upon Portico’s request.

3.5 The parties shall cooperate in gathering data on usage of the Archive, and shall provide such data to each other upon request. Notwithstanding the foregoing, the parties shall not provide data from which an individual user could be identified, unless such disclosure is reasonably necessary for pursuing a claim or investigation concerning alleged violation(s) of the User Rules or is in response to a subpoena, court order, or other legal proceeding.

4. DELIVERY; SUPPORT

4.1 The Archive will be stored at one or more locations in digital form accessible by telecommunications links between such locations and Licensee's or Authorized Users' workstations.

4.2 Access to the Archive by Licensee's Designated Staff shall be controlled by passwords provided by Portico. Licensee shall be responsible for promptly notifying Portico of any changes in the names or status of the Designated Staff. When access to the Archive by Authorized Users other than Designated Staff will be enabled, access shall be controlled by Portico through the use of IP addresses and/or, at Portico's sole discretion, passwords or other means. Licensee shall be responsible for providing sets of IP addresses, or if applicable, lists of passwords, to Portico, and updating such information on a regular basis. Any such updates shall be subject to the terms and conditions of this Agreement. Licensee shall cooperate with Portico in the implementation of reasonable additional security procedures as they are developed.

4.3 Licensee shall inform Portico if it makes use of a proxy server to provide access to the Archive, or if it becomes aware of a proxy server that is providing such access.

4.4 Portico shall provide support to Licensee and to Designated Staff and other Authorized Users in accordance with the terms set forth on Schedule B attached hereto and incorporated herein.

4.5 Licensee is responsible for establishing and maintaining hardware and Internet access to provide access to, and to transmit, the Archive to Authorized Users. Licensee understands that standard computer terminals and Internet browser software are required to access the Archive. Licensee understands that from time to time the required and/or recommended hardware and software for accessing the Archive may be updated.

5. SUPPORT FOR THE PORTICO ARCHIVE

5.1 Licensee shall make payments to support the Portico Archive described in Schedule A.

5.2 Licensee shall be responsible for all costs associated with establishing access to the Archive as set forth in Section 4.5 above, including but not limited to any telecommunications or other charges imposed by carriers, proprietary network operators and Internet access providers, or licenses for browser software. Licensee shall further be responsible for all costs, fees and taxes relating to Licensee's or Designated Staff or other Authorized Users' use of the Archive, and where Licensee is exempt from any applicable tax, Licensee agrees to provide appropriate documentation upon request.

6. TERM AND TERMINATION

6.1 This Agreement shall continue in effect for two (2) years from the first day of the calendar year that follows the date of this Agreement, and thereafter will renew for successive one (1) year terms unless earlier terminated by either party by written notice not less than thirty (30) days prior to the end of the then-current term.

6.2 In the event that either party believes that the other has materially breached any obligations under this Agreement, or if Portico believes that Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60)

days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice. In addition, Portico may terminate this Agreement on sixty (60) days' written notice if, in Portico's reasonable opinion, the cumulative effect of violations of this Agreement or the User Rules by Designated Staff or Authorized Users justifies such termination. If Licensee terminates this Agreement due to breach by Portico, Portico shall provide a pro rata refund of the annual fee for the unused portion of the then-current year.

6.3 In the event that Portico ceases to operate and no successor non-profit organization can be found to maintain the Archival Versions, Portico agrees to provide a copy of the Archival Versions available to Portico to an appropriate not-for-profit institution and assign its rights hereunder to such institution.

6.4 Upon termination of this Agreement all online access to the Archive by Licensee and its Designated Staff and Authorized Users shall be terminated. Copies of Materials printed or saved hereunder may be retained by Licensee or Authorized Users and used subject to the terms of Section 2.2 and Section 3 of this Agreement, which terms shall survive any termination of this Agreement.

7. PROPRIETARY RIGHTS

7.1 Licensee hereby recognizes and agrees that the Archive and all Intellectual Property are proprietary to Portico, subject to the rights of third parties therein. Licensee hereby warrants that it will not, during the term of this Agreement or any time thereafter, attach, dispute or contest, directly or indirectly, Portico's right and title in and to the Archive, nor assist or aid others to do so.

7.2 Neither party may use the other's name or trademark(s) in a way likely to cause confusion as to the origin of goods or services, or to endorse or show affiliation with the other, except as specifically approved. Notwithstanding the foregoing, (i) Portico may use Licensee's name and/or the name of the Library to identify Licensee in a list of participants, but use in any other context requires Licensee's permission, and (ii) Licensee is encouraged to use Portico's name to announce its participation to Authorized Users, provided that Licensee supplies Portico with a copy of such announcements upon Portico's request.

7.3 Licensee shall not modify, manipulate, or create a Derivative Work of the Archive without the prior written permission of Portico.

8. REPRESENTATIONS AND WARRANTIES

8.1 Each party hereby represents and warrants that it is duly organized and validly subsisting and has full authority to enter into this Agreement and to bind the party to the terms and conditions herein. Each party further represents and warrants that it has caused this Agreement to be executed by a duly authorized representative.

8.2 Licensee represents and warrants that any lists of Designated Staff and/or Authorized Users, IP addresses, passwords and other relevant information provided to Portico will be accurate and valid, and that Licensee will use reasonable efforts to maintain sufficient security with respect to such IP addresses and/or passwords so that no one other than Designated Staff and/or Authorized Users, as applicable, will be able to access the Archive. Portico reserves the right to assess additional fees and require additional license terms for users other than those whose use is expressly authorized by this Agreement

8.3 The Archive has been developed and is maintained with reasonable professional care. Portico shall use reasonable efforts to provide continuous online availability of the Archive, subject to periodic unavailability due to maintenance of the server(s), the installation or testing of software, the addition of new archived content as new Archival Versions are prepared, and downtime related to

equipment or services outside the control of Portico, including public or private telecommunications services or internet nodes or facilities.

8.4 Portico represents and warrants that use of the Archive by Designated Staff and/or other Authorized Users, as applicable, in accordance with the terms of this Agreement shall not infringe the copyright of any third party. The foregoing shall not apply, however, to modifications or Derivative Works of the Archive created by Licensee or by any third party, nor to improper usage of the Archive by Designated Staff or Authorized Users. Subject to constraints imposed by or in our agreements with publishers, Portico shall use reasonable efforts to ensure that the Archival Version of a journal preserves the intellectual content of the published version, whether in the form of text, data, images, audio or video, however, it is understood that the Archival Version may not preserve the formatting or look and feel of the published version. Portico makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information. Notwithstanding the foregoing, Licensee agrees to notify Portico of any infringement, libel, or other claim pertaining to any Materials of which Licensee becomes aware. Upon such notification or if Portico learns of such a claim from another source, Portico may suspend availability of such Materials or remove such Materials from the Archive pending the resolution of such claim.

8.5 OTHER THAN THE EXPRESS WARRANTIES STATED IN THIS SECTION 8, THE ARCHIVE IS PROVIDED ON AN “AS IS” BASIS, AND PORTICO DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, ORAL OR WRITTEN), RELATING TO THE ARCHIVE OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PORTICO MAKES NO WARRANTIES RESPECTING ANY HARM THAT MAY BE CAUSED BY THE TRANSMISSION OF A COMPUTER VIRUS, WORM, TIME BOMB, LOGIC BOMB OR OTHER SUCH COMPUTER PROGRAM. PORTICO FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO AUTHORIZED USERS, OR TO ANY THIRD PARTY.

8.6 Portico shall not be liable for any loss, injury, claim, liability or damage of any kind resulting from the unavailability of the Archive, interruption of the services provided hereunder, or arising out of or in connection with Licensee’s use of Materials. If the Archive fails to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Portico, and Portico’s sole obligation shall be to repair the nonconformity identified by Licensee. In no event shall Portico’s liability exceed the fees paid to Portico by Licensee. Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, even if advised of the possibility of a claim.

8.7 Portico expressly disclaims all representations and warranties set forth in this Section 8 to the extent invoked in connection with a claim based upon or arising out of usage in any country other than the United States. Access to the Archive by Designated Staff or other Authorized Users outside of the United States may be terminated by Portico if warranted, in Portico's sole opinion, by applicable laws or regulations.

9. NOTICES

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

10. MISCELLANEOUS

10.1 This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements 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 Licensee.

10.2 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.

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

10.4 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.

10.5 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.

10.6 Licensee may not assign or transfer, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of Portico, which consent shall not be unreasonably withheld or delayed. Portico may assign its rights and obligations under this Agreement to a successor non-profit organization selected to maintain the Archival Versions and operate the Archive.

**SCHEDULE A
PAYMENT TERMS**

Licensee: _____

Total of licensee's Library Materials Expenditures (LME) for the most recently completed fiscal year (the year ended on _____, 200 _): \$ _____

Base Annual Archive Support Payment \$ _____

The Archive Support Payment is the annual payment by Licensee to support the Portico archive. Licensee will be asked to confirm their library materials expenditures for the then most recently-completed fiscal year and invoiced for the applicable Archive Support Payment on an annual basis, and such amount shall be due and payable within thirty (30) days of the date of the invoice. The Archive Support Payment may be subject to reasonable increases, however in the event of any increase Licensee may terminate this Agreement by written notice to Portico within sixty (60) days after notice of the increase. Any such termination shall be subject to Section 6.4 of this Agreement.

Consortia Savings

Portico will provide additional pass-through savings of 5% to libraries that belong to a participating consortium. Please see www.portico.org/libraries/consortia.html for a list of participating consortia. If you are a member of a participating consortia, please check the box below and indicate the consortia(s):

Consortia Participation: _____

Consortia Savings: Base Annual Archive Support Payment x (.05) = \$(_____)

Total Annual Archive Support Payment \$ _____

To calculate the Total Annual Archive Support payment, please subtract any applicable Consortia Savings from the Base Annual Archive Support payment.

Other Payment Terms

Any payments made more than thirty (30) days after they are due and payable shall be subject to a financing fee of 1.5% per month. All payments shall be made by check payable to ITHAKA and shall be mailed to the attention of:

**Financial Services Department -- Portico
ITHAKA
151 East 61st Street
New York, New York 10065**

SCHEDULE B

SUPPORT

Portico will provide the following support to assist Licensee and Authorized Users in their use of the archive. Support will be provided at reasonable levels during the term of the Agreement.

Support will be available by email from 9:00am to 5:00pm EST, Monday through Friday, for feedback, problem-solving, or general questions. The contact information is as follows:

Portico User Services
301 E. Liberty, Suite 250
Ann Arbor, MI 48104-2262
Email: support@portico.org
For US and Canadian participants: (877) 422-4022 (toll free)
For International Participants: (734) 998-7287

Initial support will include:

- Assistance with establishing access to the Portico system
- Providing general information and training materials
- Establishing participation in Portico's email groups and/or listservs

Continuing support will include:

- Troubleshooting problems with access or use of Portico
- Updating IP addresses and other access-related information as needed
- Online help files and user documentation
- Providing regular updates via email and/or listservs regarding scheduled content updates, upgrades, and maintenance
- Maintenance of email groups and/or listservs for discussion of Portico-related matters