

ARCHIVE PRESERVATION AGREEMENT

Archive Preservation Agreement, dated as of January 28, 2007 between the **Portico initiative of Ithaka Harbors, Inc.**, and the **Koninklijke Bibliotheek**, the National Library of the Netherlands.

RECITALS

WHEREAS, Portico has established an archive for electronic scholarly resources and is engaged in archiving scholarly content on behalf of the publishing and library communities, and

WHEREAS, the Koninklijke Bibliotheek (KB) has embraced the important task of preserving and providing long-term access to electronic publications, and

WHEREAS, Portico wishes to provide for safekeeping of the data under its care by establishing a number of locations around the world where redundant backups of the data can be securely stored, and

WHEREAS, given the complimentary nature of their missions, Portico and KB wish to establish a relationship whereby KB serves as one of the institutions selected to safeguard these stored materials,

NOW THEREFORE, the parties have entered into the following agreement.

AGREEMENT

1. Preservation and Storage of Data

Portico will entrust physical storage media containing a complete copy of the Portico archive (the "**Archive Backup**") to the KB for safekeeping on behalf of Portico. Portico remains the sole owner of the physical storage media on which the Archive Backup is stored.

2. Process for Deposit of Data

At least semi-annually Portico will make shipments of the Archive Backup on standard physical storage media accompanied by an inventory setting forth the number of media and the contents thereof, and notify KB by email of the shipment details. KB shall acknowledge receipt of the Archive Backup by email, and promptly store the Archival Backup in the agreed upon location.

3. Access and Security; Other Conditions of Storage

Physical access to the Archive Backup shall be strictly controlled and no use or copying of the data will be allowed without the express written permission of Portico, or in the absence of Portico, the publisher or other rights holder with respect to such data.

The details with respect to the secure area where the Archive Backup will be stored, the names of the individuals who will have access to the Archive Backup, and the other details with respect to the proposed storage arrangements are set forth on Exhibit A, which may be amended by the parties from time to time.

Portico will have the right to inspect the area where the Archive Backup is stored at any time during normal working hours.

4. Prompt Notice of Any Security Breach or Other Problem

KB agrees to provide prompt notice in the event it learns of any security breach or unauthorized access to the Archive Backup, or of any problem with the conditions under which the Archive Backup is being stored. In the event of any such security breach, unauthorized access or problem with the storage arrangements, the parties agree to use their best efforts and share all available information to promptly remedy the situation.

5. Return of Data

In the event the return of the Archive Backup is ever requested by Portico, or upon the termination of this Agreement, the KB will promptly return the Archival Backup to Portico.

6. Costs and Expenses

In the event the KB will incur any costs and expenses in connection with implementing any security measures, climate control or other storage conditions, or verification and testing arrangements, or otherwise wishes to request reimbursement for safekeeping the Archive Backup, the KB shall so advise Portico in advance and Portico shall pay any such approved costs within 30 days of receiving appropriate documentation with respect thereto.

7. Term and Termination

This Agreement shall take effect when executed by both parties and shall continue in effect until terminated. This Agreement may be terminated by either party with or without cause on one month's prior notice. 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 five (5) days after written notice thereof.

8. Representations and Warranties

Each of Portico and KB represents and warrants that it possesses all rights necessary to enter into this Agreement and that this Agreement has been duly authorized and executed and constitutes a valid and binding obligation of that party, enforceable in accordance with its terms.

9. Compliance with Law

Each of Portico and KB agree at all times to comply with all applicable laws, rules and regulations, including without limitation any laws with respect to copyright and ownership or use of intellectual property.

12. Force Majeure; Limitation of Liability

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, or any other cause beyond the reasonable control of the party whose performance is affected.

No party shall bear any financial liability in connection with this Agreement absent misconduct, willful breach or gross negligence.

13. Miscellaneous.

A. Notices. Except as otherwise set forth in this Agreement, all notices given pursuant to this Agreement shall be in writing and sent to the address for notices specified below. Notices may be delivered by any means requiring receipt signature, or by facsimile confirmed by first class mail. Either party may from time to time change its address for notices by written notice to the other party.

Portico: Portico
100 Campus Drive, Suite 100
Princeton, New Jersey 08540
U.S.A.
Attention: Eileen G. Fenton, Executive Director
E-Mail: eileen.fenton@portico.org
Facsimile: (609) 951-0020
Telephone: (609) 986-2215

with a copy to: Ithaca Harbors, Inc.
151 East 61st Street
New York, New York 10065

Attention: D. Barnaby Gibson, General Counsel
E-Mail: barnaby.gibson@ithaka.org
Facsimile: (212) 500-2366
Telephone: (212) 500-2342

KB: **Koninklijke Bibliotheek**
Prins Willem-Alexanderhof 5
2595 BE The Hague
The Netherlands
Attention: Dr. E. van Eijck van Heslinga, Program Manager
E-Mail: els.vaneijck@kb.nl
Facsimile: +31.70.3140.427
Telephone: +31.70.3140.178

B. Entire Agreement. 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.

C. Counterparts; Amendments; Waivers. 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. 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 the KB. Waiver of any provision in this Agreement 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.

D. Severability. 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.


E. Assignment. 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.

F. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York or the United States of America as applicable, excluding any laws that might direct the application of the laws of another jurisdiction.


[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Archive Preservation Agreement to be signed by a duly authorized representative upon the date set forth above.

PORTICO OF ITHAKA HARBOR, INC.

By: 
Eileen Fenton
Executive Director

KONINKLIJKE BIBLIOTHEEK

By: 
Dr. Wim van Drimmelen
Director General

Details of Storage Arrangements

The Archive Backup will be stored in a locked, climate-controlled room at one or more KB facilities as described below:

Koninklijke Bibliotheek
Prins Willem-Alexanderhof 5
2595 BE, The Hague
The Netherlands

The tapes will be stored in a separate closet placed in a climate control computer room on the 4th floor of the main building at the Koninklijke Bibliotheek.

Physical access to the Archive Backup will be restricted to the following individuals:

Dr. Els van Eijck van Heslinga
Program Manager International e-Depot
E-Mail: els.vaneijck@kb.nl
Facsimile: +31.70.3140.427
Telephone: +31.70.3140.178

Peter Boel, B-ICT
IT- Specialist
E-Mail: peter.boel@kb.nl
Facsimile: +31.70.3140.501
Telephone: +31.70.3140.462