

This License Agreement for Use of the Electronic Version of the University of Michigan Press Ebook Collection, along with any schedule or attachments (the "Agreement"), is made effective as of October 1, 2018 (the "Effective Date")

Between

Regents of the University of Michigan
on behalf of **University of Michigan Press**

881 N. University Ave.

Ann Arbor, MI 48109

("Licensor")

And

LYRASIS

1438 W. Peachtree St, NW

Suite 150

Atlanta, GA 30309 USA

("LYRASIS").

LYRASIS, as the signatory for this Agreement, is responsible for informing all of the Participating Institutions of the terms and conditions governing access to each Institution's purchased ebooks from the Licensor. Participating Institutions include those that have purchased ebooks through LYRASIS under the terms of this Agreement, without any further requirement of membership at LYRASIS. LYRASIS will obtain an email statement from each Participating Institution agreeing to abide by the terms of the Agreement. All reasonable efforts should be made to ensure that Authorized Users at each Participating Institution are aware of, and abide by, the terms and conditions that apply to all of that Institution's acquired products.

LYRASIS is responsible only for fulfillment of its individual responsibilities under this Agreement. Neither LYRASIS nor any Participating Institution shall be liable for any breach or default of another Participating Institution.

In consideration of the mutual promises this Agreement contains, and other valuable and sufficient consideration, the Licensor and LYRASIS agree as follows:

1. GRANT OF LICENSE

1.1. **Nature of Materials.** The materials that are the subject of this Agreement are set forth in Schedule 1 (the "Licensed Materials").

1.2. **Grant of License.** The Licensor hereby grants Participating Libraries in the Agreement non-exclusive, worldwide access to and use of the Licensed Materials, and a license to provide the Licensed Materials to Authorized Users (which are defined in Section 3, below) in accordance with this Agreement's terms and conditions.

2. FEES

2.1. **Fees and Payment.** Upon the placement of an order, LYRASIS will invoice Participating Institutions with payment due in 30 days. LYRASIS will collect payment and remit funds to the Licensor within 30 days of the receipt of payment from the Participating Institution.

3. AUTHORIZED USERS AND USES

3.1. **Authorized Users.** Access to licensed materials from the University of Michigan Press Ebook Collection will be made available to all Authorized Users of the Participating Institution, defined as follows:

- a. The Participating Institution's full-time and part-time students, regardless of their physical location;
- b. The Participating Institution's full-time and part-time employees (including faculty, staff, and affiliated researchers), regardless of their physical location;
- c. People to whom Participating Institution has issued valid identification cards; and
- d. Patrons not affiliated with Participating Institution, who are physically present at Participating Institution's site(s) ("Walk-ins").

3.2. **Authorized Uses.** The Participating Institution and Authorized Users may access or use the Licensed Materials for the following purposes:

- a. *Anticipated Uses:* An unlimited number of concurrent Authorized Users may view, print, and download a reasonable portion of the Licensed Materials for their own noncommercial educational and research use.

- b. *Scholarly Sharing*: Authorized Users may transmit to a third party colleague electronically using the toll-free linking functionality within the Collection portions of the Licensed Material for personal use or scholarly, educational, scientific research, or professional use, but in no case for re-sale. In addition, Authorized Users may use, with appropriate credit, figures, tables, and excerpts from the Licensed Material in the Authorized User's own scientific, scholarly, and educational works.
- c. *Interlibrary loan*: Participating Institutions may fulfill requests from other institutions, a practice commonly called Interlibrary Loan. Participating Institutions agree to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives"), as well as the Copyright Act of Canada. 17 USC §108 (d)–(g). Requests may be fulfilled using electronic, paper, or intermediated means. Requests that are filled by electronic file transmission must be provided to the requesting library using standard industry secure file transmission services that ensure the deletion of the file after the defined period of use. Non-secure electronic file transmission is not permitted.
- d. *Course Reserves*: Participating Institution and Authorized Users may use the Licensed Materials for print and electronic reserve readings in connection with specific courses of instruction offered by Participating Institution.
- e. *Text mining*: Participating Institutions and their Authorized Users may, subject to prior notification and approval by the Licensor, using reasonable practices, engage in text processing, which is any kind of analysis of natural language text. The Licensor will make appropriate arrangements prior to the start of this activity to account for heavy usage and ensure continued access for the user. This may include but not be limited to a process by which information may be derived from text by identifying patterns and trends within natural language through text categorization, statistical pattern recognition, concept or sentiment extraction, and the association of natural language with indexing terms. Technology will not be used to hinder any uses granted under this section.
- f. *Backup Copy*. Licensor will permit Participating Institution to create one (1) copy of the entire set of Licensed Materials purchased with a perpetual access license to be maintained as a backup copy. In the event that the Agreement is terminated, Participating Institution may use the backup copy to exercise any perpetual license uses granted in this Agreement, including but not limited to use of the backup copy as the archival copy as specified in Section 8, below.
- g. *Lawful Uses*. The parties agree that nothing in this Agreement shall limit the rights of Participating Institutions, Authorized Users or others to make otherwise lawful uses of the Licensed Materials, including uses authorized by §§107-122 of the U.S. Copyright Act or the Copyright Act of Canada.

4. ACCESS

4.1. **Access.** Participating Institutions will have perpetual access to content from the paid year(s).

4.2. **Authentication.** Licensor will use reasonable efforts to provide authentication methods that conform to current industry standards.

4.3. **Restrictions.** Licensor and Participating Institutions agree to the following use and access restrictions on the Licensed Materials.

a. *Unauthorized Use.* Except as specifically provided elsewhere in this Agreement, Licensee shall not knowingly or intentionally permit anyone other than Authorized Users to use the Licensed Materials.

b. *Modification of Licensed Materials.* Participating Institutions shall not modify or create a derivative work of the Licensed Materials without the Licensor's express, prior, and written permission, unless the Licensed Materials have been made available under an open license that allows modification and creation of derivative works, are in the public domain, or as provided for elsewhere in this Agreement.

c. *Removal of Copyright or Trademark Notice.* Participating Institutions may not remove, obscure or modify any valid copyright or trademark notices included in the Licensed Materials.

d. *Commercial Purposes.* Other than as specifically permitted in this Agreement, Participating Institutions may not use the Licensed Materials for commercial purposes. This restriction expressly prohibits the Participating Institutions from selling Licensed Materials. For the avoidance of doubt, research conducted by Participating Institutions and Authorized Users that is supported by a commercial entity shall not be considered use for commercial purposes.

5. PERFORMANCE OBLIGATIONS

5.1. **Licensor Performance Obligations.** The Licensor will use reasonable efforts to ensure that its performance will meet or exceed industry standards and practices. Additionally, the Licensor agrees to the following performance standards.

a. *Quality of service.* The Licensor, either directly or through a contractor, shall use all reasonable endeavors to make access available on a 24-hour basis. But if access is suspended or interrupted or a defect occurs that prevents access, The Licensor's liability shall be limited to using reasonable efforts to restore access as soon as is practicable. The Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional licensed materials as they become

available, and downtime related to the failure of equipment or services outside the control of the Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. The Licensor shall use reasonable efforts to ensure that the host servers have sufficient capacity and rate of connectivity to provide Participating Institutions and their Authorized Users with a quality of service comparable to current standards in the scholarly information provision industry in the US and Canada.

- b. *Discovery of Licensed Materials.* Licensor shall make the Licensed Materials available through ProQuest, EBSCO, and OCLC Discovery Service Systems for indexing and discovery purposes. Licensor shall provide to Participating Institutions' discovery service vendors on an ongoing basis the citation and complete descriptive metadata (including all subject headings, abstracts, and keywords), and full-text content necessary to facilitate optimal discovery and accessibility of the content for the benefit of Licensee and Authorized Users. Licensor shall make reasonable efforts to support other Discovery Service Systems not owned by ProQuest, EBSCO, and OCLC.
- c. *Persistent Linking.* Licensor will comply with the most current version of the OpenURL standard (ANSI/NISO Z39.88), and will provide a mechanism for persistent links to content.
- d. *MARC Records.* Licensor shall provide industry standard MARC records prepared by the University of Michigan Library. These will be provided free of charge. Updates to existing records and new title records, matching the schedule of release and delivery of new publications, will also be provided.
- e. *Withdrawal of Content.* The Licensor may withdraw parts of the Licensed Material if there is reasonable cause to suspect that the content offends the rights of third parties or is illegal in any other way, for example being defamatory or obscene. The Licensor shall give written notice, including by general announcement or posting at the record of the relevant work, to LYRASIS and the Participating Institutions of such withdrawal. If the withdrawal represents more than 10% of the Licensed Material, the Licensor shall refund to the Participating Institutions that part of the fee that is in proportion to the amount of content withdrawn. If any modifications render the Licensed Material less useful to the Participating Institutions or their Authorized Users, LYRASIS and the Participating Institutions may treat such modifications as a material breach subject to the early termination provisions of this Agreement.
- f. *Usage Statistics.* Collection and analysis of data on the usage of the licensed content will assist the Licensor, LYRASIS, and the Participating Institutions in understanding the impact of the Licensed Material. The Licensor shall provide use data on a timely and regular basis in conformance with the Codes of Practice for Project COUNTER located at: http://www.projectcounter.org/code_practice.html. Participating Institutions may gather use and management data independently at local sites. Such usage data shall be compiled in a manner

consistent with applicable privacy and data protection laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.

- g. *Confidentiality of Personally Identifiable Information.* The Licensor agrees that no personally identifiable information, including but not limited to log-ins recorded in system logs, IP addresses of patrons accessing the system, saved searches, usernames and passwords, will be shared with non-contracted third parties for any reason other than internal enhanced analysis of the use of the content, except in response to a subpoena, court order, or other legal requirement.
- h. *Disabilities Compliance.* The Licensor, as the hosting provider, shall make best efforts to comply with the Americans with Disabilities Act (ADA) guidelines for textual content by supporting assistive software or devices such as large print interfaces and alternate keyboard or pointer interfaces in a manner consistent with the Web Content Accessibility Guidelines published by the World Wide Web Consortium's Web Accessibility Initiative, which may be found at <http://www.w3.org/WAI/GL/#Publications>. The Licensor shall make available as part of the Collection purchase a current completed Voluntary Product Accessibility Template (VPAT) to demonstrate compliance with the federal Section 508 standards. If the product does not comply with Section 508 standards, the Participating Institutions may adapt the Licensed Material in order to comply with federal and state law.
- i. *Problems with Licensed Materials.* If access to the Licensed Material does not conform with the terms of the Agreement, the Licensor shall immediately notify LYRASIS and Participating Institutions, and the Licensor shall promptly use reasonable efforts to restore access to the Licensed Material as soon as possible. In the event that the Licensor fails to repair the nonconformity in a reasonable time, the Licensor shall reimburse the Participating Institutions in an amount that is proportional to the total fees paid by the Participating Institutions under the Agreement.
- j. *Open Access Option.* In the event that Licensor offers open access titles as part of the Licensed Materials, these titles will be included on the platform, but cost will not be included in the Collection or applied to those titles.

5.2. Mutual Performance Obligations. In addition to their respective, specific performance obligations, the Licensor and Participating Institutions agree to be bound by the following performance standards.

- a. *Notification of Unauthorized Use.* In the event a Participating Institution has notice of an unauthorized use of the Licensed Materials and cannot promptly remedy it, the Institution shall immediately notify the Licensor.

In the event the Licensor has notice of unauthorized use of the Licensed Materials by a Participating Institution or users, the Licensor will notify the Participating Institution, and the Participating Institution will cooperate with the Licensor to address the unauthorized use and avoid a recurrence.

Any unauthorized use that is considered a breach of obligations under this Agreement shall be subject to Section 6, below.

6. TERM, RENEWAL AND TERMINATION

6.1. Agreement Term. The initial term of this agreement shall be in effect from October 1, 2018 until December 31, 2019.

6.2. Renewal. This Agreement between the Licensor and LYRASIS will be renewed automatically each year through December 31, 2023, subject to the terms herein unless either party gives termination notice in writing to the other by December 1 for the following year.

6.3. Termination for Breach. In the event of any unauthorized use of the Licensed Material by an Authorized User, the Participating Institution shall provide reasonable cooperation to the Licensor in the investigation of any unauthorized use of the Licensed Material of which it is made aware. If requested to do so by the Licensor, the Participating Institution shall use reasonable efforts to remedy such unauthorized use and prevent its recurrence.

The Licensor may terminate such Authorized User's access to the Licensed Material after first providing 60 days' notice to the Participating Institution and cooperating with the Participating Institution to avoid recurrence of any unauthorized use. The reasonable privacy and confidentiality of all Authorized Users shall be protected by the Participating Institution.

Such temporary suspensions will be of the shortest duration possible sufficient to terminate the alleged unauthorized activity and prevent its resumption.

In the event that LYRASIS, a Participating Institution, or the Licensor commits a breach of the agreement, the breaching party will be informed in writing, and given 60 days to mend the breach. If the breach is not cured, the non-breaching party may terminate the agreement upon written notice and, in the case of the Participating Institution as the non-breaching party, with a pro-rated discount. A breach by a Participating Institution shall be actionable only as a breach of contract, not as a copyright infringement.

7. DISPUTE RESOLUTION

7.1. Dispute Resolution. In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement that are not affected by the dispute.

8. HOSTING OPTIONS, ARCHIVING AND PERPETUAL LICENSE

8.1. **Hosting.** The Perpetual Access Licensed Material is made available via the platform offered by the Licensor only to active Participating Institutions. Participating Institutions have the option of making other hosting arrangements, including local hosting, vendor hosting, or trusted third-party hosting. DRM-free PDFs or other acceptable formats of the Perpetual Access Licensed Material will be provided to Participating Institutions on request. The Participating Institution understands that some more complex and fully-featured material may not be possible for the Licensor to transmit for local hosting. Any content made available on the Participating Institution's platform or other hosting arrangement is subject to the conditions for use and access stated in this Agreement, including the supply of usage data from the site to the Licensor on a scheduled basis.

8.2. **Archival Copy.** The Licensor will provide Participating Institutions with one (1) copy in a mutually-acceptable format (or grant permission to make one copy) of any Perpetual Access Licensed Material content that is sold to another publisher/provider or discontinued for any reason, to fulfill a Participating Institution's license to the content for an unlimited period of time in this Agreement. Participating Institutions are authorized to make such further copies of Perpetual Access Licensed Material in perpetuity as they may deem necessary for purposes of archival preservation, refreshing, or migration, including migration to other formats, so long as the purpose of such copying is solely for continued use and/or archival retention of the data and does not violate or extend the use licenses contained in this Agreement.

8.3. **Third-Party Archiving Services.** The Licensor will archive ebooks in the Collection with at least one of the following trusted preservation agents, Portico and CLOCKSS, to the extent technologically possible, recognizing that the Collection may contain enhanced ebooks that currently cannot be preserved by any third-party service. The Licensor acknowledges that a Participating Library may engage the services of a third-party trusted archives service and/or participate in collaborative archiving endeavors to fulfill the requirements of this provision. The Licensor agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the content available for archiving purposes. Participating Institutions may perpetually use the trusted third party to archive and restore the content, so long as a Participating Institution's use is otherwise consistent with this Agreement. The Licensor further acknowledges and agrees that, in using the third-party archival system, the content may be made available to other system participants who indicate are authorized to use the content.

Upon termination of this Agreement or upon request, the Licensor agrees to provide to Participating Institutions in a mutually acceptable format a machine-readable copy of the Perpetual Access Licensed Material for the Participating Institution's use. The Licensor may assess a reasonable fee for the added service of providing the Licensed Material to a hosting site for a Participating Institution.

8.4. Perpetual License Content purchases made under the terms of this Agreement will include licenses for perpetual access to the content within the published Collection. The provisions of this Agreement will survive any termination of the Agreement. Except in the case of termination for cause, the Licensor shall provide Participating Institutions access to the Perpetual Access Licensed Material in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

9. WARRANTIES AND INDEMNIFICATION

9.1. The Licensor warrants it has all necessary legal and equitable rights, permissions, and clearances to license the Licensed Materials to the Licensee for the purposes outlined in this Agreement, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright or other rights of any third party.

9.2. Each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, and agents from and against any costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees which may arise out of the indemnifying party's acts or omissions under this Agreement for which the indemnifying party would be liable in law or equity.

10. MISCELLANEOUS PROVISIONS

10. 1. Force Majeure. Neither party shall be liable in damages or have the right to terminate 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 and/or any other cause beyond the reasonable control of the party whose performance is affected.

LYRASIS

By: 

Name: Celeste Feather

Its: Sr. Dir. Of Licensing and Partnerships

Date: October 15, 2018

The Regents of the University of Michigan

By: 

Name: Paul Labute

Its: Procurement Supervisor

Date: October 17, 2018

Schedule 1: Licensed Materials

The Licensed Materials that are the subject of this Agreement are the University of Michigan Press Ebook Collection titles from first year of publication through the present day:

- Frontlist Ebook Collection comprised of the current year titles
- Backlist Ebook Collections comprised of titles published prior to the current year

For the avoidance of doubt, the Collection in this Agreement, as well as any reference to any works—including all references to Licensed Materials—referred to herein do not include works of the Regents of the University of Michigan other than works under the aegis of the University of Michigan Press / Michigan Publishing.

Schedule 2: Collection Purchase Options

Participating institutions may purchase access to University of Michigan Press Ebooks in any of the following ways:

- **Perpetual Access of Frontlist Collection** - A purchase by which the Participating Institution acquires the current annual collection for a one-time payment with multi-user rights.
- **Perpetual Access of any Non-Frontlist Annual Collection** – A purchase by which the Participating Institution acquires the non-frontlist or backlist annual collection for a one-time payment with multi-user rights.