

## Temple University Press Journal License Agreement

This License Agreement ("Agreement") is made effective as of \_\_\_\_\_ (the "Effective Date") between Temple University—of the Commonwealth System of Higher Education for its Temple University Press, Philadelphia, Pennsylvania 19122 (the Press) and \_\_\_\_\_ ("Licensee") located at [Address, City, State, Country, Postal/Zip code].

**1. Definitions.** As used herein, the following terms shall have the meanings designated below:

- a. "Temple University Press Journals" is an online service available from the Press on the Worldwide Web including all products, services and features offered through the service.
- b. "Authorized Users" are:
  - (i) Full and part time students and employees (including faculty, staff, affiliated researchers and independent contractors) of Licensee and the institution of which it is a part, regardless of the physical location of such persons; and
  - (ii) Licensee's patrons who are physically present at Licensee's site(s).
- c. "Licensed Material" means the electronic edition of the scholarly journal(s) and content listed in Appendix A, attached hereto and incorporated herein
- d. "Subscription Term" means the length of usage time bought by the subscriber, usually one year.

## 2. Grant of License

- a. Licensee and its Authorized Users acknowledge and agree that – as between the Press on one hand and Licensee and its Authorized Users on the other hand – the Press, the Licensed Material's sponsoring body, and/or its suppliers own all right, title, and interest, including copyright and copyright rights, in the Licensed Material and any trademarks or service marks relating thereto. Neither Licensee nor its Authorized Users shall have any right, title, or interest in the Licensed Materials except as expressly set forth in this Agreement.
- b. The Press hereby grants to Licensee a non-exclusive, revocable, non-transferable license to view, print, display, and email to oneself the Licensed

Material and the right to provide the Licensed Material to Authorized Users for the same use in accordance with paragraph 4 of this Agreement, below.

- c. Licensee shall not permit anyone other than its Authorized Users to use the Licensed Material, except as expressly set forth in this Agreement, and shall use its best efforts to enforce such prohibition.
- d. Licensee shall not alter, delete, make additions to, or in any way modify the Licensed Material or create derivative works based upon Licensed Material without the prior written permission of the Press, and shall use its best efforts to enforce such prohibition.
- e. Licensee may not remove, obscure, or modify any copyright, trademark, or other notice(s) included in the Licensed Material or allow Authorized Users to do so. Licensee shall use its best efforts to enforce such prohibition.
- f. Licensee may not use the Licensed Material for commercial purposes, including, but not limited to, the sale of Licensed Material or bulk or partial reproduction or distribution of the Licensed Material in any form, and shall prohibit the Authorized Users from doing the same. Licensee shall use its best efforts to enforce such prohibition.

### **3. Delivery of/Access to Licensed Material**

Upon payment by Licensee to the Press, the Press will provide the Licensed Material to the Licensee's authorized networks.

### **4. Authorized Use of Licensed Material**

The Licensed Materials may be used for purposes of research, education, or other non-commercial use subject to the following restrictions:

- a. **Print Copy.** Licensee and Authorized Users may print only such portion(s) of the Licensed Material for personal use so long as personal use would qualify as "fair use" under the U.S. Copyright Act.
- b. **Permanent Access/Backup Copy.** Upon prior written approval by the Press, Licensee may create one (1) copy of the entire set of Licensed Material to be maintained as a backup or archival copy during the term of this Agreement. Following termination of subscription, Licensee may use this copy for permanent access to content and may host it internally, subject to the terms and conditions of this Agreement.

- c. Electronic Links. Licensee may provide electronic links to the Licensed Materials from Licensee's web page(s), and is encouraged to do so in ways that will increase the usefulness of the Licensed Material to Authorized Users. Licensee must make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by the Press. This clause is not applicable to linking in electronic reserves, which is addressed in subparagraph 4(i) below.
- d. Caching. Licensee and Authorized Users may make such local digital copies of the Licensed Material as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.
- e. Indices. Licensee may use the Licensed Material for the preparation of or access to integrated indices to the Licensed Material, including author, article, abstract and keyword indices.
- f. Interlibrary Loan. Licensee may fulfill "Interlibrary Loan" requests from other institutions. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Act (17 U.S.C. §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and clause 3 of the *Guidelines for the Proviso of Subsection 108(g)(2)* prepared by the National Commission on New Technological Uses of Copyrighted Works. All Interlibrary Loans shall be made by post, fax or secure electronic transmission whereby the electronic file is deleted after printing.
- g. Fair use. Nothing in this Agreement is intended to limit any rights Licensee or Authorized Users might have under the fair use provisions of U.S. and international copyright law.
- h. Multiple copying and coursepack use. Authorized Users may create multiple copies of a discrete excerpt from the Licensed Material for classroom instruction use, consistent with existing "fair use" law. Each such copy shall carry appropriate acknowledgement of the source (or author), copyright, and publisher. Additional multiple copying rights may be granted by the Press in its sole discretion upon written request to the Press.
- i. Electronic reserve. Authorized Users may link to and incorporate Licensed Material in an electronic reserve for the use of Authorized Users in the course of instruction. Each item should carry an appropriate acknowledgment of the source (or author), copyright, and publisher. The electronic copies of such items shall be deleted by the Licensee when they are no longer required for such purpose.
- j. Text Mining. Authorized Users may use the Licensed Material to perform and engage in text mining /data mining activities for legitimate academic research and other educational purposes.

## **5. Access by and Authentication of Authorized Users**

Licensee and its Authorized Users shall be identified, authenticated, and granted access to the Licensed Materials by the use of Internet Protocol ("IP") addresses provided by Licensee to The Press.

## **6. Temple University Press Performance**

- a. Availability of Licensed Material. The Press shall use reasonable efforts to make the Licensed Material available to Licensee within a reasonable amount of time following payment by Licensee.
- b. Support. The Press will offer reasonable levels of support to assist Licensee and Authorized Users in use of the Licensed Material.
- c. Service. The Press shall use reasonable efforts to provide service twenty-four (24) hours a day, seven (7) days a week; however, during said time, periods of downtime will occur. 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 Press, including, but not limited to, public or private telecommunications services or internet nodes or facilities. Scheduled down-time necessary for upgrades and maintenance, among other reasons, will be performed at a time intended to minimize inconvenience to Licensee.
- d. Notification of Modifications of Licensed Material. The Press may, from time to time, add to, modify, delete and/or migrate portions or all of the Licensed Materials to other formats.
- e. Completeness of Content. Where applicable, the Press shall use reasonable efforts to ensure that the online content is at least as complete as print versions of the Licensed Material and represents complete, accurate, and timely replications of the corresponding content contained within the print versions of such Materials. The Press will cooperate with Licensee to identify and correct errors or omissions.
- f. Withdrawal of Licensed Material. The Press reserves the right to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Press shall inform Licensee of such withdrawal within a reasonable amount of time following the removal of any item pursuant to this subparagraph.

- g. Accessibility. The Press shall use reasonable efforts to ensure that the Licensed Material adheres to the following standards and guidelines: Section 508 of the Rehabilitation Act or W3C WAI WCAG 2.0 Level A.

## **7. Licensee Performance**

- a. Provision of Notice of License Terms to Authorized Users. Licensee must use its best efforts to provide notice to Authorized Users of the license terms granted hereunder, including, but not limited to, the allowed and prohibited uses and access of the Licensed Material.
- b. Protection from Unauthorized Use. In the event of any unauthorized use of the Licensed Material by an Authorized User, (a) the Press may terminate such Authorized User's access to the Licensed Material, (b) the Press may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee must terminate such Authorized User's access to the Licensed Material upon the Press's request.
- c. Maintaining Confidentiality of Access Passwords. Where access to the Licensed Material is to be controlled by use of passwords, Licensee shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party. Licensee shall use its best efforts to maintain the confidentiality of any institutional passwords provided by the Press.

## **8. Mutual Performance**

- a. Confidentiality of User Data. The Press and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Material by Licensee and its Authorized Users, unless said information must be disclosed pursuant to applicable state or federal law. Such data may be used solely for purposes directly related to the Licensed Material and may only be provided to third parties in aggregate form unless disclosure under applicable laws requires otherwise. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party unless applicable laws require otherwise.
- b. Implementation of Developing Security Protocols. Licensee and the Press shall cooperate in the implementation of security and control protocols and procedures as they are developed by either party during the term of this Agreement.

## **9. Term**

This Agreement shall continue in effect for the duration of any Subscription Term.

## **10. Post-cancellation Access**

Except where the termination is due to a breach of the Agreement by the Licensee that the Licensee had failed to remedy as provided in sections 7 and 8 of this Agreement, on termination of this Agreement, the Press shall provide the Licensee with post-cancellation access through the Press web site as long as the Press holds publishing rights to the Licensed Material. Post-cancellation access will continue to be made available following termination of the Press's publishing agreement for the Licensed Material if such rights are granted to the Press by the Licensed Material's owner.

For the avoidance of doubt, post-cancellation access rights apply to all Licensed Material available during the term of this Agreement, including issues that were published prior to the term of the subscription, to which retroactive access was provided to the Licensee as a benefit of an active subscription.

## **11. Disclaimer of Warranties**

EXCEPT FOR THE REPRESENTATION STATED HEREIN, THE LICENSED MATERIAL IS PROVIDED ON AN "AS IS" BASIS, AND THE PRESS DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, ORAL OR WRITTEN) RELATING TO THE LICENSED MATERIALS OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PRESS 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. THE PRESS FURTHER DISCLAIMS ANY WARRANTY OF NON-INFRINGEMENT. THE PRESS FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO AUTHORIZED USERS OR TO ANY THIRD PARTY.

## **12. Limitation of Liability**

THE PRESS SHALL NOT 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, ARISING OUT OF OR RELATING TO THE USE OR INABILITY TO USE THE LICENSED MATERIAL, WHETHER IN CONTRACT OR IN TORT. THE LIABILITY OF THE PRESS FOR ANY DIRECT DAMAGES, OTHER THAN THOSE THAT ARE EXPRESSLY DISCLAIMED BELOW, IS LIMITED TO AN AGGREGATE OF THE LICENSE FEE PAID FOR THE LICENSED MATERIAL.

THE PRESS MAKES NO REPRESENTATION OR WARRANTY EXCEPT AS SET FORTH HEREIN, AND EXPRESSLY DISCLAIMS ANY LIABILITY WITH RESPECT TO

THE CONTENT OF ANY LICENSED MATERIALS, INCLUDING BUT NOT LIMITED TO ERRORS OR OMISSIONS CONTAINED THEREIN; LIBEL; INFRINGEMENT OF RIGHTS OF PUBLICITY OR PRIVACY; INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING, BUT NOT LIMITED TO, COPYRIGHT, PATENT, TRADE SECRET, TRADEMARK, OR MORAL RIGHTS; OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION.

#### **14. Assignment and Transfer**

Licensee may not transfer or assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the Press.

#### **16. Dispute Resolution**

In the event 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.

#### **17. General**

##### **a. 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, terrorism, insurrections, labor disputes, and/or any other cause beyond the reasonable control of the party whose performance is affected.

##### **b. Severability**

If any provision of this Agreement is 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. The parties shall negotiate in good faith on a replacement provision designed to express the original intent of the parties in a lawful manner.

##### **c. Waiver**

Waiver of any provision herein shall not be deemed 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. Notices**

All notices given pursuant to this Agreement shall be in writing and may be hand

delivered, or shall be deemed received within three 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 by mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

**If to Temple University Press:**

Temple University Press  
TASB  
1852 N. 10<sup>th</sup> Street  
Philadelphia, PA 19122

**If to Licensee:**

[Licensee  
Address of Licensee  
City of Licensee  
State of Licensee  
Country of Licensee  
Postal Code of Licensee]

**e. Survival**

Notwithstanding any termination or expiration of this Agreement, paragraphs 8, 11, and 12 shall survive.

**f. Headings**

The paragraph headings in this Agreement are used for convenience only, are not substantive, and shall not be interpreted to define, describe, or otherwise limit the interpretation of the provision under the paragraph headings or of the Agreement as a whole.

**g. Entire Agreement**

This Agreement constitutes the entire agreement of the parties and supersedes all prior and contemporaneous communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. No amendment to this Agreement shall be effective unless it is in a writing signed by authorized representatives of both parties.



**AGREED TO AND ACCEPTED:**

**TEMPLE UNIVERSITY-OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION on behalf of its TEMPLE UNIVERSITY PRESS**

\_\_\_\_\_  
Jaison Kurichi  
Associate Vice President for Budget

Date: \_\_\_\_\_

**LICENSEE:**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Authorized Signature

Print Name:

Title:

Address:

Telephone No.:

E-mail:

**READ AND ACKNOWLEDGED BY:**

**TEMPLE UNIVERSITY PRESS**

\_\_\_\_\_  
Mary Rose Muccie  
Director  
215-926-2145  
maryrose.muccie@temple.edu

Date: \_\_\_\_\_

## Appendix A

Commonwealth: A Journal of Pennsylvania Politics and Policy

Kalfou: A Journal of Comparative and Relational Ethnic Studies