

Agreement between [Content Provider] and University of Toronto Libraries for Local Archiving and Hosting on Scholars Portal

This agreement (the “**Agreement**”) for local archiving and hosting of materials is made and entered into as of **XXX** (the “**Effective Date**”), by and between the Governing Council of the University of Toronto, as represented by the University of Toronto Libraries (the “**Service Provider**”), 130 St. George Street, Toronto, Ontario, M5S 1A5, and [Publisher name and address] (the “**Content Provider**”). It sets out the terms governing the loading and hosting of Licensed Materials on Scholars Portal’s local systems for provision of access to Authorized Users and long-term preservation. Each of the parties hereto is referred to herein as a “Party”, and collectively as the “Parties.”

RECITALS

WHEREAS the Service Provider operates a local archiving and hosting service called Scholars Portal.

AND WHEREAS the Content Provider is the owner of the Licensed Materials or holds the rights granted under this Agreement.

AND WHEREAS the Service Provider desires to provide Local Archiving and Hosting through Scholars Portal of Licensed Materials to which Content Provider has agreed to allow Local Archiving and Hosting through Scholars Portal.

AND WHEREAS the Content Provider desires to provide the Licensed Materials to the Service Provider for Local Archiving and Hosting, subject to the terms and conditions of this Agreement.

AND WHEREAS all aspects of this Agreement are without prejudice to any prior agreement between the University of Toronto and any other party.

NOW THEREFORE the Parties hereby agree as follows:

DEFINITIONS

Accessible Formats means content in a format that is perceivable and operable by persons with visual, perceptual or physical disabilities and useable with assistive devices, such as screen readers and screen reading software. Such formats will comply with accessibility laws within Canada, as such laws may be amended from time to time.

Authorized Users means full and part time students, faculty and employees (including permanent, temporary, contract or visiting appointments) and researchers associated with the Licensing Institution, regardless of the physical location of such persons. Individuals not affiliated with the Licensing Institution but who are physically present at the institution site shall be deemed to be Authorized Users under the terms and conditions of this Agreement.

Licensed Materials means content licensed by Licensing Institutions that the Content Provider has agreed to make available for Local Archiving and Hosting via Scholars Portal.

Licensing Institutions means any Canadian academic institution that has signed a content license with the Content Provider that includes provision of Local Archiving & Hosting on Scholars Portal.

Local Archiving and Hosting means the process and services by which Content Provider makes available a digital copy of the Licensed Materials to Service Provider, in a form substantially equivalent

to Licensed Materials provided on Content Provider's website, for access and archiving on Service Provider's servers.

Scholars Portal is a unit of the University of Toronto Libraries. It acts as a Service Provider in the provision of Local Archiving and Hosting services on behalf of Canadian academic libraries.

TERMS OF THE AGREEMENT

1. **Grant of License:** The Content Provider agrees to make available a digital copy of the Licensed Materials to the Service Provider and hereby grants to the Service Provider the non-exclusive, non-transferable right to archive and make accessible the Licensed Materials on secure servers maintained by the Service Provider on behalf of the Licensing Institutions in accordance with the terms and conditions of this Agreement and with the content licenses Licensing Institutions signed with the Content Provider. Nothing in this Agreement prevents Authorized Users from carrying out acts that are permitted under the Copyright Act of Canada.

The Service Provider may:

- make the Licensed Materials available royalty-free to Authorized Users in perpetuity on servers maintained by Scholars Portal;
- archive the Licensed Materials in perpetuity;
- create derivatives or migrate the Licensed Materials to different formats as needed to match its technology infrastructure, to facilitate the search and use of the Licensed Materials, to meet Accessible Formats requirements, and to prevent technological obsolescence.

2. Content Provider Responsibilities

The Licensor will:

- 1) Provide the Licensed Materials to the Service Provider in a mutually agreed time frame and bear the costs associated with the electronic delivery of the Licensed Materials.
- 2) Ensure that the Licensed Materials are equivalent to those available via the Content Provider's platform or print formats, where applicable, and represents a complete version of the materials.
- 3) Work in good faith with Scholars Portal and the Service Provider to correct errors or omissions as required, including the provision of sample files if requested.
- 4) Promptly inform Scholars Portal of any updates to relevant Licensed Materials, Licensing Institutions, or Authorized User provisions, to ensure that all Licensing Institutions entitled to access Licensed Materials via Scholars Portal receive this access.

3. Service Provider Responsibilities

Scholars Portal will:

- 1) Mount, provide access to, maintain, support and archive the Licensed Materials on its or third-party service provider's secure servers.

- 2) Ensure that the digital content of Licensed Materials provided on its servers represents a complete, faithful and timely replication of the Licensed Materials provided by the Content Provider.
- 3) Maintain the integrity of the Licensed Materials, but may create derivatives of the Licensed Materials as described in Section 1.
- 4) Provide a secure network for access and archiving.
- 5) Implement security and entitlement control procedures for any Licensed Materials that are not open access, ensuring only Authorized Users affiliated with Licensing Institutions have access.
- 6) Make reasonable efforts to protect Licensed Materials from uses not permitted under the Agreement. When made aware of any unauthorized uses or other breaches, the Service Provider will inform the Content Provider and the parties will cooperate to ensure that such activity ceases.
- 7) Make reasonable efforts to load materials in a timely manner after receiving files and updates.
- 8) Notify the Content Provider of any problems associated with loading the Licensed Materials or metadata within a reasonable time following receipt.
- 9) Provide usage data to the Content Provider on a mutually agreed schedule.
- 10) Bear costs associated with archiving, loading and providing access to the Licensed Materials on Scholars Portal.

4. Mutual Responsibilities

- 1) The Parties agree to maintain the confidentiality of any data related to the usage of the Licensed Materials on Scholars Portals' platforms. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate anonymized form. Raw usage data, including but not limited to information relating to the identity of specific users or uses, shall not be provided to any third party.
- 2) Should any disagreement arise regarding the interpretation of this Agreement, or whether a party is in breach of any party of this Agreement, the parties will enter into good faith negotiations to resolve the disagreement.
- 3) The Content Provider may withdraw any item or part of the Licensed Materials to which they no longer have the right to publish, or where the Content Provider has legal grounds to do so. Scholars Portal retains the right to archive the materials that have been withdrawn, but will remove access to the withdrawn materials from its platforms.
- 4) Content Providers and its suppliers retain all copyrights in and to the publications included in the Licensed Materials.
- 5) Scholars Portal retains all rights to the technology and all proprietary rights used to host and provide access to Licensed Materials including the secure network, all software, search engines, user interfaces, and source and object codes.

5. Warranties and Indemnification

Content Provider represents, warrants and covenants that: (a) it has the right to license the rights granted under this Agreement for Local Archiving and Hosting of Licensed Materials on the servers of the Service Provider; (b) it has obtained any and all necessary permissions from third parties to provide Local Archiving and Hosting of the Licensed Materials; (c) Local Archiving and Hosting shall not infringe the copyright of any third party.

Content Provider hereby agrees to indemnify and hold harmless the Service Provider, its employees, students and agents against all costs, suits or claims, demands, lawsuits and other proceedings (including legal, expert and consultant fees), cases of actions, claims, demands, lawsuits and other proceedings by whomever made, sustained, incurred, brought or prosecuted, in any way based upon a breach of its warranties above.

6. Term and Termination

This Agreement shall commence on the Effective Date.

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of both parties.

Should any party decide to terminate this Agreement, the Licensed Materials will remain accessible through the Service Provider in perpetuity unless the parties have previously agreed to any exceptions to such perpetuity.

Institutions wishing to sign content licenses with the Content Provider and access content via Scholars Portal should reference this set of Terms (*Agreement between [Content Provider] and University of Toronto Libraries for Local Archiving and Hosting on Scholars Portal*) in their content licenses.

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.

For [Content Provider]:

Name and Title:

Signed:

Date:

For The Governing Council of the University of Toronto:

Larry Alford, University Chief Librarian

Signed:

Date:

