



**Johns Hopkins University Press
Electronic Book Agreement**

This LICENSING AGREEMENT (“Agreement”) by and between Johns Hopkins University through its Press, Johns Hopkins University Press (hereinafter called “JHUP”), whose address is 2715 North Charles Street, Baltimore, Maryland 21218, and mediastudies.press (hereinafter called “Publisher”), whose primary business address is 414 W. Broad St., Bethlehem, PA 18018, is entered into as of the date it has been signed by both parties (“Effective Date”).

WHEREAS, JHUP is a non-profit publisher of scholarly publications and part of Johns Hopkins University, a non-profit educational institution organized under the laws of Maryland, and is the creator, developer, owner, aggregator, and distributor of an online electronic platform of journals, books, and other scholarly works known as Project MUSE®;

WHEREAS, university presses and certain other non-profit scholarly publishers, seek to deliver electronic versions of peer-reviewed books to the academic library and other markets, and to share economies of scale in the packaging, marketing and sales, and fulfillment and distribution under for purchase or open access terms that will encourage use of the content, increase the long-term value of the content, and drive future demand;

WHEREAS, the Publisher is the owner or duly authorized publisher of one or more Electronic Books and seeks marketing, sales, and distribution of one or more Electronic Books to academic library, institutional markets, and individual users;

WHEREAS, JHUP will market, sell, distribute, and support the sale and use of Electronic Books on the Project MUSE platform as a whole, in one or more Collections, or as Single Titles, directly to individuals and to customers that reach individuals in institutions and organizations that support scholarly research; and

WHEREAS, the Publisher and JHUP desire mutually to provide for the inclusion and distribution of Electronic Books on Project MUSE under the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual promises herein and for other good and valuable consideration, the Parties agree as follows:

I. DEFINITIONS

Electronic Books: books or other long- or short-form scholarly works and related materials.

Chapters: a distinct, divided section of content within an Electronic Book.

Institutional Purchasers: academic libraries, agencies, consortiums, or any other organizations that purchase one or more of the Publisher's Electronic Books from JHUP under an unlimited simultaneous user, DRM-free license.

Institutional Digital List Price: the price, as determined by Publisher and distributed to JHUP, at which an Electronic Book may be listed for sale and delivered to Institutional Purchasers under an unlimited simultaneous user, DRM-free license. If the Publisher is unable to assign an Institutional Digital List Price, Publisher may choose to apply a JHUP-defined multiplier to an existing price in order to determine an Institutional Digital List Price.

Individual Purchasers: an individual person who purchases one or more of the Publisher's Electronic Books or Chapters from JHUP.

Retail Digital List Price: the price, as determined by Publisher and distributed to JHUP, at which an Electronic Book may be listed for sale and delivered to Individual Purchasers.

Chapter Price: the price, as determined by Publisher and distributed to JHUP, at which individual chapters of an Electronic Book may be listed for sale and delivered to individual purchasers. If a chapter price is not distributed to JHUP, JHUP shall derive a chapter price from the Retail Digital List Price. One uniform Chapter Price is applied to each Chapter within any one Electronic Book.

Platform: the aggregation in the Project MUSE platform format of retrievable and searchable formats of Electronic Books and journals delivered to JHUP by Publishers for maintenance by JHUP and distribution to customers under the terms of this Agreement.

Platform Format: those data-encoding methods and/or forms used by JHUP to convert and encode the books, journals, and other related materials for inclusion in the platform, components of which include, but are not limited to, PDF, EPUB/HTML, SGML/XML, related graphics files, related multimedia and/or data files, and any additional or alternative encoded text standards that JHUP may, from time to time, adopt in the future, including technologies that do not yet exist.

Peer-Reviewed Books: JHUP requires participating Publishers to ensure their content undergoes a quality assurance process that meets industry standards appropriate for the subject, genre, or field of the work.

II. RIGHTS OF USE; OWNERSHIP

- A. *Right of Use:* Publisher hereby grants to JHUP the nonexclusive, worldwide right during the Term (as defined in Section VIII) to market, resell, distribute, and archive and preserve certain Electronic Books as mutually agreed upon. If for some reason Publisher no longer has rights to the Electronic Book, Publisher will immediately notify JHUP in writing.
- B. *Publisher as Owner:* Publisher represents and warrants that it owns or is licensor to all rights, title and interests in and to the Electronic Books.

III. DELIVERY AND DISTRIBUTION

- A. *Electronic Books:* From time to time during the term of this Agreement, Publisher will make available to JHUP certain Electronic Books for resale the selection of which shall be mutually agreed upon. Subject to the terms hereof, JHUP shall market, resell, and distribute digital reproductions of Publisher's Electronic Books. Once Electronic Books have been converted,

under this Agreement it will remain within the platform archive under perpetual access as defined in Section III and it will continue to accrue its portion of sales earnings as defined in Section IV. If there is a legal claim in connection to any Electronic Book as defined in Section IX, JHUP will use reasonable efforts to remove the Electronic Book within thirty (30) business days of receipt of Publisher's notice as defined in Section VI.B.5.

- B. *Delivery*: Publisher or Publisher's designated vendor shall deliver to JHUP Electronic Books following the JHUP metadata requirements and file preparation and submission guidelines. Publisher shall assign an ISBN to each Electronic Book offered for sale by JHUP hereunder, to facilitate the ordering and processing thereof. This ISBN may be the same one used for other Electronic Book formats of the same book, if Publisher chooses not to create multiple electronic ISBNs.
- C. *Perpetual Access*: When any Institution or Individual purchases content on the Project MUSE platform they will have the right to access said content in perpetuity.
- D. *DOI Registration*: JHUP is working with CrossRef to expand the capability of registering DOIs for Electronic Books on Project MUSE. Publisher grants JHUP permission to register DOIs with CrossRef for each Electronic Book, set up according to the information provided in Appendix B.
- E. *Gratis Accounts*: JHUP reserves the right to allow free access to Electronic Books in the platform to select individuals or organizations, at JHUP's discretion, for the accommodation of linking partnerships, usage trials, journalistic inquiries, or any other initiatives that promote or align with JHUP's mission.

IV. SALES MODELS AND FINANCIAL TERMS

- A. *Collections Model*: an aggregation of Electronic Books from multiple publishers or a single publisher sold to Institutional Purchasers, either under a perpetual access or time-limited subscription model. At JHUP's discretion, Publisher may choose to opt a limited number of select titles out of the Collections Model for exclusive inclusion in the Institutional Single Title Model.
 - 1. *Collections Model Pricing*: Each collection price is a function of the number of titles in the collection, the institutional digital list price of each title as set by the Publisher, and the size and category of the Institutional Purchaser. Any discounts will be applied to each title in each collection per library sale.
 - 2. *Collections Model Sales Revenue Distribution*: JHUP agrees to pay the Publisher 70% of net sales revenue. JHUP will maintain a 30% commission from the net sales revenue to defray the cost of administration, marketing, sales and billing, user services, collection development, technical support, platform development, server maintenance, and overhead.
- B. *Institutional Single Title Model*: single Electronic Book sold to Institutional Purchasers on a one-time purchase basis, either purchased directly from JHUP or via a partnership with third-party library approval vendors. All books for sale in the Collections Model are also for sale in the Institutional Single Title Model by default. Publisher may choose to opt select titles out of the Institutional Single Title Model.
 - 1. *Institutional Single Title Model Pricing*: Electronic Books will be sold to Institutional Purchasers at the Institutional Digital List Price as set by the Publisher.

2. *Evidence-Based Acquisitions*: All Electronic Books in the Institutional Single Title Model are eligible to be included in Institutional Purchaser's Evidence-Based Acquisitions program. Access to these Electronic Books is made available for a standard term of twelve (12) months. The Institutional Purchaser makes purchase decisions based on usage at the end of the standard term.
 3. *Single Title Model Sales Revenue Distribution*: sales revenue distribution depends on the channel used to process the sale. The following applies whether a title is purchased individually as a Single Title or as part of an Evidence-Based Acquisitions program.
 - a. If an Electronic Book is purchased directly from JHUP, JHUP agrees to pay the Publisher 70% of net sales revenue. JHUP will maintain a 30% commission from the net sales revenue to defray the cost of administration, marketing, sales and billing, user services, collection development, technical support, platform development, server maintenance, and overhead.
 - b. If an Electronic Book is purchased via a partnership with third-party library approval vendors, JHUP agrees to pay the Publisher 70% of net sales revenue less third-party library approval vendor fees. JHUP will maintain a 30% commission from the net sales revenue.
- C. *Individual Content Sales Model*: single Electronic Book or individual chapters of a book sold to Individual Purchasers on a one-time purchase basis directly from JHUP. This sales model is optional and may be opted into on a book-by-book or chapter-by-chapter basis by the Publisher, using tools provided by JHUP.
1. *Individual Content Sales Pricing*: full Electronic Books will be sold to Individual Purchasers at the Retail Digital List Price as set by the Publisher, plus a JHUP service fee to cover the transactional costs of administering the sale. Chapters of Electronic Books will be sold to Individual Purchasers at the Chapter Price as set by the Publisher, plus a JHUP service fee to cover the transactional costs of administering the sale.
 2. *Individual Content Sales Model Revenue Distribution*: Publisher will receive payment of the full amount of the Retail Digital List Price or Chapter Price for each Individual Content Sale. JHUP shall retain the sum of the service fee for each sale.
 3. *Individual Content Sales Rights*: Publisher shall be responsible for indicating which Electronic Books and chapters are available for sale to Individual Purchasers, and for clearing all appropriate worldwide electronic rights for selling each unit of content to individuals.
- D. *Reporting and Payment*: JHUP shall provide Publisher with a report showing the calculation of the amount of sales revenue distribution payable to Publisher and listing the Electronic Books sold either as Single Titles or in Collections. JHUP shall distribute similar reports, on the same timetable, for Electronic Books sold under purchase or subscription models. The net sums owed to Publisher will be paid in United States Dollars (USD) to each Publisher sixty (60) business days after the end of each June and December. In the event that a scheduled Electronic Book does not launch on the Project MUSE platform for any reason or is open access, no revenue will be assigned to it. In the event that payments to Publisher are less than one hundred dollars (\$100.00), no payment will be required of JHUP until a subsequent period when the amount will have reached one hundred dollars (\$100.00).
- E. *Open Access Status Change*: If an Electronic Book currently for sale on the Project MUSE

platform enters into any Open Access business model, via the Publisher or any third-party aggregator, funder, or distributor, Publisher shall notify JHUP immediately. The Electronic Book shall transition on the Project MUSE platform from a Sales Model to the Open Access Model (see Section V). The Electronic Book will no longer generate sales or payment to Publisher. The Electronic Book will not incur a fee as defined in Section V.C.

V. OPEN ACCESS MODEL TERMS

- A. *Access*: JHUP shall make available on Project MUSE Electronic Books that the Parties agree should be distributed to any individuals or institutions without access restrictions or paywall fees (“Open Access Books”). Publisher agrees to grant JHUP a perpetual license to the Open Access Books such that on termination of the Agreement, JHUP shall have the right to retain the previously included Open Access Books on the Project MUSE platform in perpetuity, in accordance with the terms of the Agreement, unless Publisher becomes aware of an intellectual property rights issue which would have prevented it from granting permission initially.
- B. *License*: Publisher may, at its discretion, select a Creative Commons license at a title level as defined at creativecommons.org (“CC License”), choosing to define the specific terms of reuse for each Open Access Book. Should Publisher not select a CC License, the Project MUSE Terms and Conditions of Use shall apply.
- C. *Fees*: To partially offset the costs of converting, hosting, and distributing Open Access Books on Project MUSE, Publisher shall pay JHUP a fee of \$100.00 (one hundred dollars) for each Open Access Book submitted and launched on the Project MUSE platform. Electronic Books already on the platform that transition from a Sales Model to the Open Access model will not incur a fee. JHUP will charge Publisher twice per year for the applicable fees. For the purpose of clarity, JHUP shall not owe Publisher any funds or fees for Open Access Books.

VI. RESPONSIBILITIES OF EACH PARTY

A. JHUP

- 1. JHUP shall be responsible for the development and operation of the platform, and electronic access thereto, including but not limited to maintaining and supporting software and converted data from the Electronic Books. JHUP will make available on its system updates or new releases thereof to customers, as the converted data are ready for access or delivery.
- 2. JHUP shall set and administer its policies and procedures. JHUP reserves the right to seek advice and consultation with the Project MUSE Advisory Board when appropriate.
- 3. JHUP shall report sales to Publisher as outlined in Section IV.C.
- 4. JHUP shall report from time to time through various communication formats platform and technological improvements, future plans, and other information of interest to the participating publishers.
- 5. JHUP shall market and sell Electronic Books to libraries, research institutions, organizations, and individual customers. JHUP shall raise awareness of Electronic Books among individual end-users, and other entities.

6. JHUP shall manage sales, marketing, billing, collection, customer service, access control, accounting, and distribution of payments to publishers.
7. JHUP may redistribute Electronic Books to third parties under terms that are mutually agreeable to conduct marketing, archiving, reselling, discovery services, linking partner services, or other obligations of JHUP under this Agreement during the Term.
8. JHUP shall provide Publisher statistics in conformance with industry standards. Publisher may access statistics independently at any time via the Project MUSE Publisher Portal.
9. JHUP shall not remove any by-lines, disclaimers, or copyright notices from any material submitted by the Publisher and shall, if requested by the Publisher, forthwith withdraw from all its products any material that the Publisher believes on bona fide legal grounds to be, or is likely to be, infringing the rights of another person, or is otherwise illegal.

B. PUBLISHER

1. Publisher shall conform to metadata and file submission requirements will be set by JHUP and provided to Publisher and are subject to modification from time to time.
2. Publisher shall provide JHUP with Electronic Books according to JHUP specifications.
3. Publisher shall be responsible for obtaining all rights necessary to permit its Electronic Books to be sold throughout the world.
3. Publisher shall not embargo or otherwise restrict the distribution of Electronic Books submitted to JHUP for inclusion on the platform. Publisher represents and warrants that previously unpublished books intended for inclusion on the platform will be submitted as soon as electronic editions are published.
4. Publisher shall pay all royalties due to authors on the sales of Electronic Books, as stipulated in the contracts between the Publisher and its authors.
5. Publisher shall notify JHUP in writing regarding any Electronic Book that Publisher determines must be withdrawn from the platform. JHUP shall use reasonable efforts to remove the Electronic Book(s) within thirty (30) business days of receipt of Publisher's notice. If feasible, Publisher shall provide a mutually agreeable replacement Electronic Book. If the Electronic Book(s) have been purchased by Institutional or Individual Purchasers, JHUP may charge a per-book fee to cover the costs of Electronic Book removal from the platform and other platforms, notifications, and compensation to customers.

VII. ARCHIVING AND PRESERVATION

Publisher's Electronic Books will be archived and preserved by JHUP through Portico, a not-for-profit service committed to the preservation of digital publications, so long as Publisher maintains this Agreement with JHUP. Any costs for archival and preservation services deemed reasonable and customary by JHUP shall be borne by JHUP. Publisher authorizes JHUP to provide copies of Publisher's Electronic Books to Portico. This content will be made available to licensed Portico participants only in the unlikely event that the Publisher's Electronic Books are no longer available for reasons including but not limited to: the Publisher is no longer in business, the Electronic Books are no longer offered, or the Publisher, due to catastrophic failure, is no longer able to provide access to the Electronic Books for a

certain period of time, due to technical difficulties or any business interruption, bankruptcy, insolvency, receivership or business failure under the terms set forth in the agreement between JHUP and Portico, as may be amended from time to time.

VIII. TERM AND TERMINATION

- A. *Term.* The initial term (the “Initial Term”) of this Agreement shall commence as of the Effective Date and shall continue for three years unless sooner terminated as provided herein, and shall continue for successive renewal periods each for a term of three years until terminated in accordance with the terms hereof (each a “Renewal Period”; the Initial Term together with any Renewal Period hereof is deemed the “Term.”). Either party may terminate this Agreement at the end of the then current Term by providing the other party written notice at least six (6) months prior to the expiration of such Term.
- B. *Termination or Suspension Due to Breach.* Either Party may suspend performance and/or terminate this Agreement immediately upon written notice to the other Party if such other Party is in material breach of any representation, warranty, covenant, term or condition of this Agreement and fails to cure such breach within thirty (30) business days after receiving written notice of such breach from the nonbreaching Party.
- C. *Force Majeure.* No Party shall be liable to any other Party under this Agreement for any delay or failure to perform its obligations under this Agreement if such delay or failure arises from any cause(s) beyond such Party’s reasonable control, including labor disputes, strikes, natural disasters, utility or communications failures, vandalism, war, acts of terrorism, riots, insurrections, embargoes, or laws, regulations or orders of any governmental entity.

IX. WARRANTIES

- A. Each Party represents and warrants to the others that it has right and power to enter into and perform this Agreement according to its terms.
- B. Publisher warrants to JHUP that: (i) the Electronic Books and JHUP’s use of the same hereunder do not violate or infringe the rights of any third party or the laws or regulations of any governmental or judicial authority; (ii) each Electronic Book shall not defame any third party; (iii) each Electronic Book shall not contain any instructions to cause physical harm to any individuals or their property.
- C. JHUP reserves the right to remove any Electronic Book which appears to violate the agreement.
- D. JHUP reserves the right to decline to distribute or to cease distribution of an Electronic Book at any time if it determines in good faith that the Electronic Book is likely to expose JHUP to a legal claim, or to financial or reputational harm.

X. INDEMNIFICATION

Publisher assures JHUP that Publisher will not knowingly infringe on the copyright of others and requires authors to represent, warrant, and indemnify Publisher in the event of an infringement. Publisher further agrees that it will not knowingly publish in the Electronic Books any matter that is libelous or otherwise legally actionable. Publisher shall require its authors to provide representations, warranties, and indemnification with respect to works contributed to the Electronic Books. Regardless of whether

Publisher recoups indemnification from its author or authors, Publisher shall remain responsible to indemnify JHUP for any third party claims arising from or related to Publisher's Electronic Books. The Parties agree that JHUP, as an online service provider, does not control and is not responsible for confirming that the content provided by Publisher for use as part of the Project MUSE platform does not violate the copyrights of any third party. If either Party becomes aware of any threatened, potential, or actual allegation that any of the content provided by Publisher violates the intellectual property rights of any third party, the first Party who received notice will contact the other Party promptly. The Parties agree that JHUP shall act expeditiously to temporarily remove any such potentially infringing or legally actionable material at the direction of the Publisher, pursuant to Section IX, and shall likewise act expeditiously to temporarily remove any such potentially infringing or legally actionable material upon notice from a third party, without Publisher's prior consent or direction. JHUP may refuse to convert to platform format any material deemed by JHUP to be in violation of this provision. This right of refusal will not relieve the Publisher of its obligation to indemnify JHUP for third party claims arising from or related to allegedly libelous or legally actionable materials contained in Publisher's books.

XI. LIMITATION ON DAMAGES

Except with respect to the Indemnification obligation set forth in Section X, neither party shall be liable to the other party hereto for any indirect, incidental, consequential, or special damages to such other party, even if such party has been advised of the possibility of such damages.

XII. NOTICES AND CHANGES OF ADDRESS

- A. *Change of Address*: Each Party shall provide the others with written notice of any change of address within thirty (30) business days.
- B. *Change of Status*: The Publisher shall provide JHUP with written notice in the event of a change in the organization's tax status or ownership within thirty (30) business days. JHUP reserves the right to terminate this Agreement if such a change results in the Publisher operating as a for-profit organization by any broad definition.

XIII. MISCELLANEOUS

- A. *Relationship of Parties*. The Parties are independent contractors and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, franchise arrangement, agency relationship, or joint venture between or among them.
- B. *No Ongoing Waiver*. A waiver of any breach of any of the provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof.
- C. *Enforceability*. This Agreement shall be binding upon the Parties and their respective heirs, successors, assigns and personal representatives.
- D. *Counterparts*. This Agreement may be executed in counterparts, each of which shall be deemed an original, and as executed shall constitute one agreement, binding on all Parties even though all Parties do not sign the same counterpart.
- E. *Severability*. If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, such provision shall be given the maximum effect permitted under applicable law, and the remainder of this Agreement shall remain valid and fully enforceable according to its terms.

- F. *Headings*. The Section headings used in this Agreement are for ease of reference only, are not substantive, and shall not be used to interpret any provision of this Agreement.
- G. *Governing Law*. The internal laws of the State of Maryland shall govern this Agreement without regard to conflict of law principles. The parties agree that all disputes shall be resolved in the state or federal courts within the State of Maryland, and each party waives their right to jury trial.
- H. *Entire Agreement*. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound by the terms of this Agreement, have caused this Agreement to be executed by their duly authorized representatives as of

JOHNS HOPKINS UNIVERSITY ON BEHALF OF JOHNS HOPKINS UNIVERSITY PRESS

By: 0663D9F3AF07454...


Barbara Kline Pope

Director, Johns Hopkins University Press

02-NOV-2020 | 18:17 EST

Date: _____

PUBLISHER

By: 

Name: Jefferson Pooley

Title: Director, mediastudies.press

Date: November 1, 2020

APPENDIX A: Publisher Information

<p>Publisher name: mediastudies.press</p> <p>Tax ID# 82-5377624</p> <p>Address: 414 W. Broad St. Bethlehem, PA 18018 USA</p> <p>Phone: +1-484-695-9033</p> <p>Fax:</p>	
<p><i>Primary Contact:</i></p> <p>Name: Jeff Pooley</p> <p>Phone: +1-484-695-9033</p> <p>E-mail: press@mediastudies.press</p> <p><i>Legal Contact:</i></p> <p>Name: Jeff Pooley</p> <p>Phone: +1-484-695-9033</p> <p>E-mail: press@mediastudies.press</p>	<p><i>Production or Digital Asset Manager (DAM) Vendor Contact:</i></p> <p>Name: Jeff Pooley</p> <p>Phone: +1-484-695-9033</p> <p>E-mail: press@mediastudies.press</p> <p><i>Financial Contact:</i></p> <p>Name: Jeff Pooley</p> <p>Phone: +1-484-695-9033</p> <p>E-mail: press@mediastudies.press</p>

APPENDIX B: DOI Registration Information

CrossRef Membership: Y ☒ N ☐

CrossRef Prefix: 10.32376

Primary Contact for CrossRef Correspondence:

Name: Jeff Pooley

Title: Director

Email: press@mediastudies.press

Phone: +1-484-695-9033

Does the publisher have their own DOI prefix? Yes

Additional/Alternative DOI Registration Service(s) (if applicable):

APPENDIX C: Nonprofit Status Declaration

Publisher, or parent Company, is classified as a nonprofit organization, as defined by Publisher's main country of business (please check one):

Yes ☒

No (explanation below) ☐

Primary Contact for Questions about Nonprofit Status:

Name: Jeff Pooley

Email: press@mediastudies.press

Phone: +1-484-695-9033

Additional Information from Publisher Clarifying Nonprofit Status:

mediastudies.press is a registered Pennsylvania nonprofit corporation, with 501(c)(3) tax-exempt status from the IRS.