

THIS VARIATION AGREEMENT is dated 5/12/2023

PARTIES

- (1) **OPEN ACCESS BOOK COLLECTIVE (OPERATING AS OPEN BOOK COLLECTIVE)**, (Company Number 14118614), a company limited by guarantee incorporated in England and Wales whose registered office is at One Bartholomew Close, London, United Kingdom, EC1A 7BL (**OBC**); and
- (2) **MEDIASTUDIES.PRESS** (Employer Identification Number 82-5377624), a nonprofit corporation whose registered office is at 414 W. Broad St. Bethlehem, PA 18018 USA (**Provider**)

BACKGROUND

- (A) OBC and the Provider are party to an agreement under which the Provider is able to seek financial support for its publishing and/or infrastructural activities through the OBC platform, dated 5/12/2022 (**Original Agreement**).
- (B) Since the execution of the Original Agreement, the parties wish to amend the Original Agreement as set out in this variation agreement (**Variation Agreement**) with effect the Variation Date (as defined below).

AGREED TERMS

1 Defined terms

- 1.1 Terms defined in the Original Agreement and used in this Variation Agreement have the meaning set out in the Original Agreement.

2 Variation

- 2.1 In consideration of the payment of £1 by OBC to the Provider (receipt of which is hereby acknowledged by the Provider) the parties enter into this Variation Agreement.
- 2.2 With effect from [the date when it has been signed by both parties] (**Variation Date**) the parties agree that the terms of the Original Agreement shall be replaced in their entirety with the terms of the agreement set out in the appendix to this Variation Agreement.
- 2.3 The rights and liabilities of the parties accrued under the Original Agreement in the period prior to the Variation Date shall not be affected by this variation and shall continue to be governed by the terms of the Original Agreement.

3 Governing law and jurisdiction

- 3.1 This Variation Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 3.2 Each party irrevocably agrees that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Variation Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Variation Agreement has been entered into on the date stated at the beginning of it.

SIGNED by a duly authorised officer for and **SIGNED** by a duly authorised officer for and
on behalf of **OPEN ACCESS BOOK** on behalf of **MEDIASTUDIES.PRESS**
COLLECTIVE (OPERATING AS OPEN
BOOK COLLECTIVE)

Signature:

Signature:

Signatory name: Lidia Uziel


Signatory name: David W Park

Date:

Date: 9/1/24

APPENDIX

OBC Contract for Providers

DATED 5/12/2023

MEDIASTUDIES.PRESS

-and-

OPEN ACCESS BOOK COLLECTIVE
(OPERATING AS OPEN BOOK COLLECTIVE)

PROVIDER AGREEMENT

THIS AGREEMENT is made on 5/12/2023

BETWEEN: **MEDIASTUDIES.PRESS** (Employer Identification Number 82-5377624), a nonprofit corporation whose registered office is at 414 W. Broad St. Bethlehem, PA 18018 USA ("Provider")

AND

OPEN ACCESS BOOK COLLECTIVE (OPERATING AS OPEN BOOK COLLECTIVE) (Company Number 14118614), a company limited by guarantee incorporated in England and Wales whose registered office is at One Bartholomew Close, London, United Kingdom, EC1A 7BL ("OBC").

BACKGROUND

1. The Providers publish academic books and other learned publications on an open access basis and/or provide infrastructure to support the publication and dissemination of open access books. OBC has developed an online platform through which the Providers are able to seek financial support for their publishing and/or infrastructural activities.
2. Each Provider has created an individual Supporter Programme to support the Provider's activities within the open access monograph publishing ecosystem. The Supporter Programme reflects the Providers' aims and ethos. By subscribing to this programme, institutions will be supporting those aims and ethos.
3. OBC's platform includes an online subscription service, the 'OBC Supporter Service', through which institutions can subscribe to Supporter Programmes in order to support the work of their chosen Providers.
4. The Provider has appointed OBC to collect the Provider Supporter Contribution from the institutions on behalf of the Provider and to forward such payment to the Provider on the terms as agreed with the Provider in this Agreement. The Provider shall in turn pay a fee to OBC, on the terms of this Agreement.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

- 1.1 In this Agreement, the following terms shall have the following meanings:

"Agreement" means this agreement between the Provider and OBC.

"Discounted Provider Supporter Contribution" means the contribution from a Supporter to the Provider under the Supporter Programme discounted in accordance with Schedule 1, paragraph C and in accordance with the relevant Supporter Contract and associated quotation.

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off [or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Net Supporter Contribution" means the total Provider Supporter Contribution actually received by OBC from the Supporter(s) under the Supporter Contract, less any monies owed to OBC by the Provider including without limitation any OBC Provider Service Fees and any OBC Development Fund Contributions and New Supporter Fees and any VAT in respect of those sums.

"New Supporter" means a Supporter who had not previously supported the Provider through a similar agreement via the OBC or another party.

"New Supporter Fee" means a fee equal to two and a half percent (2.5%) of any Provider Supporter Contribution payable by a Supporter in relation to the Provider in the first year of any contributions made by a new Supporter to the Provider under the Supporter Contract.

"OBC Development Fund Contribution" means a contribution equal to five perfect (5%) of any Provider Supporter Contribution payable by a Supporter under the Supporter Contract.

"OBC Provider Service Fee" means a fee equal to five percent (5%) of any Provider Supporter Contribution payable by a Supporter under the Supporter Contract.

"OBC Supporter Service" means the subscription service developed by OBC. Prices for OBC's Supporter Service can be found at openbookcollective.org.

"Policies" means any and all policies and/or criteria provided by OBC or its representative to the Provider relating to the OBC Supporter Service.

"Provider Supporter Contribution" means the Standard Provider Supporter Contribution or the Discounted Provider Supporter Contribution, as agreed in accordance with the relevant Supporter Contract and associated quotation.

"Standard Provider Supporter Contribution" means the baseline contribution from a Supporter to the Provider under the Supporter Programme, the amount of which is set out at Schedule 1, paragraph B.

"Subscription Order and Acceptance Form" means the form used by OBC as part of the OBC Supporter Service identifying the Supporter Programmes subscribed to by a Supporter.

"Supporter" means an institution that supports the Provider under the Supporter Programme.

"Supporter Contract" means an agreement entered into between the Supporter and OBC (acting as principal for itself and as agent on behalf of the Provider) on such terms as OBC may publish through the OBC Supporter Service from time to time under which the Supporter subscribes to the Provider's Supporter Programme.

"Supporter Programme" means a programme for supporting the Provider, to which an Institution may subscribe via the OBC Supporter Service, as described in the OBC Supporter Service.

- 1.2 Headings contained in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.
- 1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.
- 1.4 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. RESPONSIBILITIES OF THE PROVIDER

- 2.1 The Provider agrees to pay OBC the OBC Provider Service Fee, the New Supporter Fee (in the first year of any contributions made by a new Supporter to the Provider under the Supporter Contract) and the OBC Development Fund Contribution. Such payments shall be in pounds sterling, unless otherwise agreed between the parties. Such payments are stated exclusive of VAT. Where VAT is payable in respect of any of those payments the Provider shall pay the VAT to OBC in addition to those payments.
- 2.2 The Provider acknowledges and agrees that OBC will set off the OBC Provider Service Fee, the New Supporter Fee and the OBC Development Fund Contribution, any VAT thereon (and any other amount owed to OBC by the Provider) against any amount due to the Provider under this Agreement.
- 2.3 The Provider agrees to comply with all Policies.

- 2.4 The Provider shall comply with Schedule 1, including the Policies provided, except as otherwise agreed in writing from time to time between the parties.
- 2.5 The Provider agrees to provide the OBC with any information the OBC reasonably requires in relation to the VAT treatment of any sums payable by or to the Provider under this Agreement.
- 2.6 The Provider agrees, at OBC's request, to issue an invoice to each Supporter detailing the Provider Supporter Contributions payable by that Supporter and any VAT payable by the Supporter in respect of the Provider Supporter Contributions.
- 2.7 The Provider agrees to provide reasonable prior notice to OBC ahead of any material changes in its operating practices which could affect the Provider's ability to comply with its obligations under this Agreement.

3. RESPONSIBILITIES OF OBC

- 3.1 OBC agrees to and the Provider permits OBC to:
 - 3.1.1 promote and publicise the Supporter Programme to potential Supporters via the OBC platform, through outreach campaigns and via third parties and/or third party platforms such as JISC and Lyrasis;
 - 3.1.2 provide an OBC Supporter Service by which potential Supporters can enter into the Supporter Contract;
 - 3.1.3 enter into the Supporter Contract as agent on behalf of the Provider insofar as the Supporter Contract purports to create any rights and obligations for the Provider (and the Provider hereby authorises OBC to do so);
 - 3.1.3 collect and save the details of the Supporter(s) and inform the Provider when OBC accepts a new Supporter;
 - 3.1.4 pay the Net Supporter Contribution to the Provider within 60 days of being received from such Supporter(s), unless otherwise agreed from time to time with the Provider.

4. TERM AND TERMINATION

- 4.1 The term of this Agreement begins on [the date when it has been signed by both parties] (the **Commencement Date**) and will remain in full force and effect until terminated as provided for in this Clause 4.
- 4.2 Any party may terminate this Agreement at any time:
 - 4.2.1 if the other party commits a material breach of any term of this Agreement and (if such breach is irremediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or

- 4.2.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice.

- 4.3 Either party may terminate this Agreement for any reason on giving not less than 90 days' written notice to the other party.

- 4.4 This Agreement may be terminated by OBC on 14 days' written notice if the Provider becomes insolvent, admits insolvency or a general inability to pay its debts as they become due, takes any step or action in connection with its entering administration, provisional liquidation, or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business, or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

- 4.5 This Agreement may be terminated by OBC immediately if the Provider:

- 4.5.1 breaches any Policies; or

- 4.5.2 in the reasonable opinion of OBC, does anything (by act or omission) which negatively impacts, or would be reasonably likely to negatively impact, the reputation of OBC or the OBC Supporter Service.

- 4.6 Each party's rights and obligations under or in relation to any Supporter Contract entered into prior to termination of this Agreement shall remain in full force and effect until termination or expiry of that Supporter Contract.

5. FORCE MAJEURE

- 5.1 In this Clause 5 an event of "Force Majeure" means circumstances beyond the control of the relevant party (including war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities).

- 5.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused from the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

6. ASSIGNMENT

- 6.1 Except as permitted for under this Agreement, neither this Agreement nor any of the rights and obligations under it may be sub-contracted, assigned or novated by either party without obtaining the prior written consent of the other party. The Provider hereby consents to any assignment or novation by OBC to a legal entity set up to perform the obligations and enjoy the benefits of OBC.

7. LIABILITY

- 7.1 In this Clause 7 reference to 'liability' include all liability arising under or in connection with this agreement whether in contract, tort (including negligence) or otherwise.
- 7.2 Except as provided for in clause 7.5, neither the Provider nor OBC will have any liability arising out of or in connection with the Agreement, for:
- (i) any indirect or consequential loss;
 - (ii) loss of profits or revenue;
 - (iii) loss of business, contracts, or opportunity;
 - (iv) loss of anticipated savings; or
 - (v) wasted expenditure.
- 7.3 Except as set out in clause 7.5 and clause 7.7, the total liability of the Provider arising out of or in connection with this Agreement shall not exceed the total amount of the Net Supporter Contribution received by the Provider under this Agreement.
- 7.4 Except as set out in clause 7.5, the total liability of OBC arising out of or in connection with this Agreement shall not exceed the total amount of the OBC Provider Service Fees and OBC Development Fund Contributions received by the OBC under this Agreement.
- 7.5 No party limits its liability for:
- (i) death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement;
 - (ii) its own fraud or that of its employees or agents in the course of their engagement; or
 - (iii) any other liability which cannot lawfully be limited.
- 7.6 Nothing in this Agreement limits or excludes each party's liability for the Net Supporter Contribution or the OBC Provider Service Fees, New Supporter Fees or OBC Development Fund Contributions (as applicable).

- 7.7 The Provider will indemnify and keep indemnified OBC for the amount of any liabilities, costs, expenses, damages, claims or losses that OBC incurs as a result of or in connection with any IPR Claim. An **IPR Claim** is a claim or allegation that the use of any materials of any nature or form provided to OBC under or in connection with this Agreement by the Provider, or at the Provider's request, infringes the rights of any third party, including their Intellectual Property Rights.

8. GOVERNING LAW AND DISPUTE RESOLUTION

- 8.1 This Agreement and any dispute arising out of or in connection with it (including non-contractual disputes) shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to the exclusive jurisdiction of the English courts.
- 8.2 The parties agree to use reasonable efforts to resolve disputes in an informal manner, by decision of the Managing Director (or equivalent) of the Provider and the Director of OBC. Where the parties agree that a dispute arising out or in connection with this Agreement would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement.
- 8.3 Any person to whom a reference is made under Clause 8.2 shall act as expert and not as an arbitrator and their decision (which shall be given by them in writing and shall state the reasons for their decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 8.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 8.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

9. NOTICES

- 9.1 All notices required to be given under this Agreement shall be given in writing in English and sent by email, courier, or special delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received one (1) day after the date of sending in the case of email or three (3) days after the date of posting in the case of special delivery or despatch in the case of courier:

if to OBC:

Dr Lidia Uziel

Director

OBC

Address: One Bartholomew Close, London EC1A
7BL, United Kingdom

Email: uziel@ucsb.edu

If to the Provider:

Name: David Park

Title: Associate Director, mediastudies.press

Address: 414 W. Broad St. Bethlehem, PA 18018

USA

Email: park@lakeforest.edu

10. GENERAL

- 10.1 This Agreement constitutes the entire agreement between the parties and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing. It supersedes any previous agreements between the parties in relation to the same subject matter.
- 10.2 Nothing in this Agreement shall be construed to create any relationship of partnership or employment between any of the parties.
- 10.3 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
- 10.4 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either a party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
- 10.5 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

SIGNED by a duly authorised officer for and **SIGNED** by a duly authorised officer for and
on behalf of on behalf of

OBC

MEDIASTUDIES.PRESS

Signature:

Signature:

Signatory name: Lidia Uziel

Signatory name: David W Park

Date:

Date: 9/1/24