



# OBC Contract for Providers

DATED December 5, 2022

**MEDIASTUDIES.PRESS**

-and-

**OPEN ACCESS BOOK COLLECTIVE**

**(OPERATING AS OPEN BOOK COLLECTIVE)**

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**PROVIDER AGREEMENT**

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THIS AGREEMENT is made the 5<sup>th</sup> of December 2022

**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 Scheme to support the Provider's activities within the open access monograph publishing ecosystem. The Supporter Scheme reflects the Providers' aims and ethos. By subscribing to this scheme, institutions will be supporting those aims and ethos.
3. OBC's platform includes an online subscription service, the 'OBC Online Ordering Service', through which institutions can subscribe to Supporter Schemes 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.

"Provider Supporter Contribution" means the contribution from a Supporter to the Provider under the Supporter Scheme, the amount of which is set out at Schedule 1.



"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.

"OBC Online Ordering Service" means the online subscription ordering service developed by OBC. The OBC Online Ordering Service can be found at [openbookcollective.org](http://openbookcollective.org)

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

"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.

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

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

"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 Online Ordering Service from time to time under which the Supporter subscribes to the Provider's Supporter Scheme.

"Supporter Scheme" means a scheme for supporting the Provider, to which an Institution may subscribe via the OBC Online Ordering Service, as described in the OBC Online Ordering Service.

"Policies" means any and all policies and/or criteria provided by OBC or its representative to the Provider relating to the OBC Online Ordering 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, 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 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. By mutual written agreement the OBC may, on behalf of the Provider, issue this invoice to each Supporter.

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.

2.8 The Provider may increase the amount of the Provider Supporter Contribution from time to time by informing OBC in writing, provided that the Provider must have the prior written agreement of OBC before increasing the amount of the Provider Supporter Contribution by more than 10% in total in any 12 month period. Increases in the Provider Supporter Contribution shall take effect in relation to Supporter



Contracts entered into after the Provider informs OBC of the increase and OBC publishes the increase via the OBC Online Ordering Service. The increase shall not affect the amount of the Provider Supporter Contribution payable under any Supporter Contract entered into before that date.

### **3. RESPONSIBILITIES OF OBC**

#### **3.1 OBC agrees to:**

- 3.1.1 promote and publicise the Supporter Scheme to potential Supporters via the OBC platform, through outreach campaigns and via third parties OBC contracts with;
- 3.1.2 provide an OBC Online Ordering 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 5<sup>th</sup> of December 2022 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 at least a majority of the OBC Board of Stewards, does anything (by act or omission) which negatively impacts, or would be reasonably likely to negatively impact, the reputation of OBC or the OBC Online Ordering 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 6 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 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
  - (iii) wasted expenditure.
- 7.3 Except as set out in clause 7.5, 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).

## **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 of 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 Joe Deville

Chair

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

[joe@openbookcollective.org](mailto:joe@openbookcollective.org)





if to the Provider: Dr Jefferson Pooley  
Director  
414 W. Broad St. Bethlehem, PA 18018 USA  
jeffersonpooley@muhlenberg.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.
- 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  
on behalf of  
**OBC**

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



Signature:

A handwritten signature in black ink, appearing to read "Joe Deville", with a large, sweeping initial "J" and "D".

Signatory name: Joe Deville

Date: December 5, 2022

Signature:

A handwritten signature in black ink, appearing to read "Jefferson Pooley", with a large, sweeping initial "J" and "P".

Signatory name: Jefferson Pooley

Date: November 30, 2022



## SCHEDULE 1

### Supporter Scheme as detailed on OBC website

mediastudies.press is a nonprofit, scholar-led, open access publisher committed to a vision of OA that does not impose author paywalls in place of reader paywalls. They are committed to bibliodiversity, scaling small, mutual aid, and the campaign to reclaim scholarly publishing and its supporting infrastructure from the oligopolists.

mediastudies.press focuses on the fields of media, communication, and film studies. They publish living works, with iterative updates stitched into their process. They also encourage multi-modal submissions that reflect the environments their authors inhabit. They currently have four series: (1) Public Domain: newly-introduced and critically annotated republications of public-domain books that promise contemporary relevance; (2) Media Manifold: original monographs and other book-length works of contemporary media scholarship; (3) Open Reader: media-themed open readers, collections of works available on the open web, selected and ordered with university courses in mind; and (4) History of Media Studies: monographs and other scholarly works centered on the history of media, communication, and film studies.

### Supporter Contributions

Tier	USD	EUR	CAD	AUD	GBP
Tier 1	360	345	480	540	300
Tier 2	240	230	320	360	200
Tier 3	120	115	160	180	100

### Benefits

Provider supplies Supporters with:

1. an annual report, or a link to a report online, detailing both key Provider activities over the year as well as key financial information, including the contribution of OBC funds to Provider revenue streams;
2. acknowledgment of supporting libraries on Provider's website, in newsletters, and on social media;
3. a 40% discount on all of Provider print editions purchased directly from Provider;
4. a seat on Provider's Library Advisory Board (optional);
5. the right to use Provider's logo in marketing activities.