

LICENSE AGREEMENT

The License Agreement for Use of ACLS HEB Collection, along with any schedule or attachments (the "Agreement"), is made effective as of September 30, 2019 (the "Effective Date") between

The Regents of the University of Michigan
on behalf of Michigan Publishing
839 Greene Street.
Ann Arbor, MI 48104
("Licensor")

And

LYRASIS
1438 W. Peachtree St, NW
Suite 150
Atlanta, GA 30309 USA
("LYRASIS").

LYRASIS, as the signatory for this Agreement, is responsible for informing all the Participating Institutions of the terms and conditions governing access to each Institution's subscribed ebooks from the Licensor. Participating Institutions include those that have subscribed ebooks through LYRASIS under the terms of this Agreement, without any further requirement of membership at LYRASIS. LYRASIS will obtain an email statement from each Participating Institution agreeing to abide by the terms of the license. All reasonable efforts should be made to ensure that Authorized Users at each Participating Institution are aware of, and abide by, the terms and conditions that apply to all that Institution's acquired products.

LYRASIS is responsible only for fulfillment of its individual responsibilities under this Agreement. Neither LYRASIS nor any Participating Institution shall be liable for any breach or default of another Participating Institution.

In consideration of the mutual promises this Agreement contains, and other valuable and sufficient consideration, the Licensor and LYRASIS agree as follows:

1. GRANT OF LICENSE

1.1. Nature of Materials. The materials that are the subject of this Agreement are the titles in the ACLS Humanities E-Book Collection as listed by the Licensor on the 1st January of the subscription (calendar) year (the "Licensed Materials").

1.2. Grant of License. The Licensor hereby grants Participating Libraries in the Agreement non-exclusive, worldwide access to and use of the Licensed Materials for the applicable subscription

period, and the right to provide the Licensed Materials to Authorized Users (which are defined in Section 3, below) in accordance with this Agreement's terms and conditions.

2. FEES

2.1. Fees and Payment. LYRASIS will remit payment for all Participating Libraries' orders of the Licensed Materials within 60 days of receipt of the invoice.

3. AUTHORIZED USERS AND USES

3.1. Authorized Users. Access to the Licensed Materials will be made available to all Authorized Users of the Participating Institution, defined as follows:

a. The Participating Institution's full-time and part-time students, regardless of their physical location;

b. The Participating Institution's full-time and part-time employees (including faculty, staff, affiliated researchers, and independent contractors), regardless of their physical location;

c. Patrons not affiliated with Participating Institution, who are physically present at Participating Institution's site(s) ("Walk-ins").

3.2. Authorized Uses. The Participating Institution and Authorized Users may access or use the Licensed Materials for the following purposes:

a. Anticipated Uses: An unlimited number of concurrent Authorized Users may view, print, and download a reasonable portion of the Licensed Materials for their own noncommercial educational and research use, consistent with the exceptions and limitations of the U.S. Copyright Act, including 17 USC §107, §108, §110, §121, and the Copyright Act of Canada.

b. Course Reserves: Participating Institution and Authorized Users may use the Licensed Materials for print and electronic reserve readings in connection with specific courses of instruction offered by Participating Institution.

c. Lawful Uses. The parties agree that nothing in this Agreement shall limit the rights of Participating Institutions, Authorized Users or others to make otherwise lawful uses of the Licensed Materials, including uses authorized by §§107-122 of the U.S. Copyright Act or the Copyright Act of Canada.

4. ACCESS

4.1. Access. Participating Institutions will have subscription access to content from the paid subscription term.

4.2. Authentication. Licensor will use reasonable efforts to provide authentication methods that conform to current industry standards.

4.3. Restrictions. Licensor and Participating Institution agree to the following use and access restrictions on the Licensed Materials.

a. Unauthorized Use. Participating Institution shall not knowingly or intentionally permit anyone other than Authorized Users to use the Licensed Materials.

b. Modification of Licensed Materials. Participating Institution shall not modify or create a derivative work of the Licensed Materials without the Licensor's express, prior, and written permission, unless the Licensed Materials have been made available under an open license that allows modification and creation of derivative works, are in the public domain, or as provided for elsewhere in this Agreement.

c. Removal of Copyright or Trademark Notice. Participating Institution may not remove, obscure or modify any valid copyright or trademark notices included in the Licensed Materials.

d. Commercial Purposes. Participating Institution may not use the Licensed Materials for commercial purposes. This restriction expressly prohibits the Participating Institution from selling Licensed Materials. For the avoidance of doubt, research conducted by Participating Institution and Authorized Users that is supported by a commercial entity shall not be considered use for commercial purposes.

5. PERFORMANCE OBLIGATIONS

5.1. Licensor Performance Obligations. The Licensor will use reasonable efforts to ensure that its performance will meet or exceed industry standards and practices. Additionally, the Licensor agrees to the following performance standards.

a. Quality of service. The Licensor, either directly or through a contractor, shall use all reasonable endeavors to make access available on a 24-hour basis. But if access is suspended or interrupted or a defect occurs that prevents access, The Licensor's liability shall be limited to using all reasonable efforts to restore access as soon as is practicable. The Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, and downtime related to the failure of equipment or services outside the control of The Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. The Licensor shall use reasonable efforts to ensure that the host servers have sufficient capacity and rate of connectivity to provide Participating Institutions and their Authorized Users with a quality of service comparable to current standards in the scholarly information provision industry.

b. Discovery of Licensed Materials. Licensor shall make the Licensed Materials available through ProQuest, EBSCO, and OCLC Discovery Service Systems for indexing and discovery purposes. Licensor shall provide to Participating Institution's discovery service vendors on an ongoing basis the citation and complete descriptive metadata (including all subject headings, abstracts, and keywords), and full-text content necessary to facilitate optimal discovery and accessibility of the content for the benefit of Participating Institution and Authorized Users. Licensor shall make reasonable efforts to support other Discovery Service Systems not owned by ProQuest, EBSCO, and OCLC.

c. Persistent Linking. Licensor will comply with the most current version of the OpenURL standard (ANSI/NISO Z39.88) and will provide a mechanism for persistent links to content.

d. MARC Records. Licensor shall provide industry standard MARC records. These will be provided free of charge. Updates to existing records and new title records, matching the schedule of release and delivery of new publications, will also be provided.

e. Withdrawal of Content. The Licensor may withdraw from the Licensed Material any item that it no longer retains the right from the publishers to include, or that it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable. The Licensor shall give written notice, including by general announcement or posting at the record of the relevant work, to LYRASIS and the Participating Institutions of such withdrawal. If the withdrawal represents more than 10% of the Licensed Material listed as of January 1 of the subscription (calendar) year, The Licensor shall refund to the Participating Institutions that part of the fee that is in proportion to the amount of content withdrawn. If any modifications render the Licensed Material less useful to the Participating Institutions or their Authorized Users, LYRASIS and the Participating Institutions may treat such modifications as a material breach subject to the early termination provisions of this Agreement.

f. Usage Statistics. Collection and analysis of data on the usage of the licensed content will assist the Licensor, LYRASIS, and the Participating Institutions in understanding the impact of the Licensed Material. The Licensor shall provide use data on a timely and regular basis in conformance with the most current version of the Codes of Practice for Project COUNTER. Participating Institutions may gather use and management data independently at local sites. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.

g. Confidentiality of Personally Identifiable Information. The Licensor agrees that no personally identifiable information, including but not limited to log-ins recorded in system logs, IP addresses of patrons accessing the system, saved searches, usernames and passwords, will be shared with non-contracted third parties for any reason other than internal enhanced analysis of the use of the content, except in response to a subpoena, court order, or other legal requirement.

h. **Disabilities Compliance.** The Licensor, as the hosting provider, shall make best efforts to comply with the Americans with Disabilities Act (ADA) guidelines for textual content by supporting assistive software or devices such as large print interfaces and alternate keyboard or pointer interfaces in a manner consistent with the Web Content Accessibility Guidelines published by the World Wide Web Consortium's Web Accessibility Initiative, which may be found at <http://www.w3.org/WAI/GL/#Publications>. The Licensor shall make available a current completed Voluntary Product Accessibility Template (VPAT) to demonstrate compliance with the federal Section 508 standards. If the product does not comply with Section 508 standards, the Participating Institutions have the right to adapt the Licensed Material in order to comply with federal and state law.

i. **Problems with Licensed Materials.** If access to the Licensed Material does not conform with the terms of the Agreement, the Licensor shall immediately notify LYRASIS and Participating Institutions, and the Licensor shall promptly use reasonable efforts to restore access to the Licensed Material as soon as possible. In the event that the Licensor fails to repair the nonconformity in a reasonable time, the Licensor shall reimburse the Participating Institutions in an amount that is proportional to the total fees paid by the Participating Institutions under the Agreement.

j. **Open Access Option.** In the event that Licensor offers open access titles, these titles will be included on the platform, but these titles will included in the collection at no cost to the Participating Institutions.

5.2.Mutual Performance Obligations. In addition to their respective, specific performance obligations, the Licensor and Participating Institutions agree to be bound by the following performance standards.

a. **Notification of Unauthorized Use.** In the event a Participating Institution has notice of an unauthorized use of the Licensed Materials and cannot promptly remedy it, the Institution shall immediately notify the Licensor.

In the event the Licensor has notice of unauthorized use of the Licensed Materials, the Licensor will immediately notify the Participating Institution, and the Institution will cooperate with the Licensor to address the unauthorized use and avoid a recurrence.

Any unauthorized use that is considered a breach of obligations under this Agreement shall be subject to Section 6, below.

6. TERM, RENEWAL AND TERMINATION

6.1. Agreement Term. This Agreement shall be in effect from September 30, 2019, until July 31, 2021.

6.2. Renewal. This Agreement between the Licensor and LYRASIS will be renewed automatically each year through July 31, 2021, subject to the terms herein unless either party gives termination notice in writing to the other 90 days prior to the end of the term.

6.3. Termination for Breach. In the event of any unauthorized use of the Licensed Material by an Authorized User, the Participating Institution shall provide reasonable cooperation to the Licensor in the investigation of any unauthorized use of the Licensed Material of which it is made aware. If requested to do so by the Licensor, the Participating Institution shall use reasonable efforts to remedy such unauthorized use and prevent its recurrence.

The Licensor may terminate such Authorized User's access to the Licensed Material after first providing 60 days' notice to the Participating Institution and cooperating with the Participating Institution to avoid recurrence of any unauthorized use. The reasonable privacy and confidentiality of all Authorized Users shall be protected by the Participating Institution.

Such temporary suspensions will be of the shortest duration possible sufficient to terminate the alleged unauthorized activity and prevent its resumption.

In the event that LYRASIS, a Participating Institution, or the Licensor commits a breach of the agreement, the breaching party will be informed in writing, and given 60 days to mend the breach. If the breach is not cured, the non-breaching party may terminate the agreement upon written notice and, in the case of the Participating Institution as the non-breaching party, with a pro-rated discount. A breach by a Participating Institution shall be actionable only as a breach of contract, not as copyright infringement.

7. DISPUTE RESOLUTION

7.1. Dispute Resolution. In the event of 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.

8. WARRANTIES AND INDEMNIFICATION

8.1. The Licensor warrants it has all necessary legal and equitable rights, permissions, and clearances to license the Licensed Materials to the Participating Institution for the purposes outlined in this Agreement, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright or other rights of any third party.

8.2. Each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, and agents from and against any costs, losses, damages, liabilities, expenses, demands and judgements, including court costs and attorney fees which may arise

out of the indemnifying party's acts or omissions under this Agreement for which the indemnifying party would be liable in law or equity.

9. MISCELLANEOUS PROVISIONS

9.1. 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, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

LYRASIS

By: *Celeste Feather*
Name: Celeste Feather
Title: Senior Director of Content and Scholarly Communication Initiatives
Date: 9/30/19

The Regents of the University of Michigan

By: *Kevin W. White*
Name: Kevin W. White
Title: Senior Procurement Agent
Date: 9/30/2019