JSTOR® METASEARCH

LICENSE AGREEMENT

**Licensee Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Agreement Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Licensee Product(s) or Resource(s):** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Licensee Notice Address: JSTOR Notice Address:**

**Attn: \_\_**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Attn:** Nancy Kopans, General Counsel

**Address:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ITHAKA

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 151 East 61st Street

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ New York, New York 10065

**Telephone:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Telephone:** (212) 500-2373

**Facsimile:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Facsimile:** (212) 500-2366

**E-Mail:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **E-Mail:** Nancy.Kopans@ithaka.org

**Licensee Primary Contact: Licensee Technical Contact:**

(if different from Notice Contact) (responsible for implementing and maintaining the metasearch engine)

**Attn:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Attn:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Address:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Address:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Telephone:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Telephone:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Facsimile:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Facsimile:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **E-Mail:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Other Licensee Information

(Please notify us of updates)

## Licensee’s URL/Domain Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**User Name if Access to Metasearch Engine is Restricted:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**User Password if Access to Metasearch Engine is Restricted:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The parties agree to be bound by the terms and conditions of the JSTOR Metasearch License Agreement attached hereto, in witness whereof the parties have set their hands as of the Agreement date above.

**LICENSEE JSTOR**

## BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NAME:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **NAME: Bruce Heterick**

# TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ TITLE: VP, Institutional Participation and Strategic Partnerships

JSTOR® METASEARCH

**LICENSE AGREEMENT**

 THIS METASEARCH LICENSE AGREEMENT (this “Agreement”) is entered into by and between ITHAKA d/b/a JSTOR, a not-for-profit corporation formed under the laws of the State of New York (“JSTOR”), and Licensee (each individually a “Party” and collectively the “Parties”) specified above as of the Contract Date specified above (the “Effective Date”).

 WHEREAS, there exists a pressing need in the United States and throughout the world to make scholarly content more accessible to teachers, scholars, researchers, and students; and

 WHEREAS, JSTOR provides access to scholarly content supplied to JSTOR by the original publishers of the content; and

 WHEREAS, Licensee is in the business of providing a search tool that facilitates access to electronic scholarly resources via the World Wide Web and wishes to make scholarly content more accessible; and

 WHEREAS, JSTOR and Licensee wish to facilitate an alternative access path for persons who have access rights to both the scholarly content available through the JSTOR Archive and Metasearch Engine (as hereinafter defined);

 NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

* 1. The “JSTOR Archive” means, for purposes of this Agreement, the user interfaces, search engine, and electronic archive of scholarly content used and/or accessed by Mutually Authorized Users (as hereinafter defined) and, at JSTOR’s discretion, others, via JSTOR’s web-based interface.
	2. “Metasearch Engine” means the user interfaces, software, and content used and/or accessed by Mutually Authorized Users (as hereinafter defined) via Licensee’s own software product at the URL(s) identified on page one of this Agreement. Metasearch Engine shall include only the Licensee product(s) or resource(s) identified on page one of this Agreement.
	3. “Mutually Authorized Users” means persons who are permitted by JSTOR to access full text articles in the JSTOR Archive and, concurrently, are permitted by Licensee to access Metasearch Engine. Mutually Authorized Users may be entitled to access full text articles in the JSTOR Archive through, but not limited to, an affiliation with a JSTOR site licensee, or through a subscription agreement with a JSTOR participating publisher or publishers. Mutually Authorized Users entitled to access full text articles in the JSTOR Archive only through a license agreement with JSTOR (e.g. a license agreement with a JSTOR participating publisher) shall be limited to accessing only such full text articles in the JSTOR Archive contained in publications for which said license agreement applies.
	4. User Rules” means the JSTOR Terms and Conditions of Use available at http://www.jstor.org/page/info/about/policies/terms.jsp and as may be amended from time to time in JSTOR’s discretion.
1. GRANT OF LICENSE

2.1 JSTOR hereby grants the Licensee a limited, non-exclusive, non-transferable, worldwide, revocable, royalty-free license to direct the Metasearch Engine to the JSTOR Archive’s automated interface solely for the purpose of submitting search queries to the JSTOR Archive and receiving back result sets formatted in eXtensible Markup Language (“XML”). Licensee’s access and use of the JSTOR Archive is subject to the terms of this Agreement, the User Rules which are incorporated by reference and in accordance with technical guidelines provided to the Licensee by JSTOR.

2.2 JSTOR may, at its discretion, provide Licensee with Internet Protocol (“IP”)-based access to the JSTOR Archive (“Access”) for a limited time solely for the purpose of enabling Licensee to test the Metasearch Engine with respect to its use of JSTOR in accordance with the terms of this Agreement. Any other usage of this Access shall be prohibited, and JSTOR shall reserves the right to terminate some or all of the Access immediately and at its discretion pursuant to Section 7.2.

3. DELIVERY; ACCESS; SUPPORT

3.1 JSTOR shall supply Licensee with access to an XML gateway to enable the delivery of search results from JSTOR to Licensee solely for purposes of displaying such data in the Metasearch Engine Interface. The transfer of data shall occur solely through this gateway, and no other methods of data transfer, including but not limited to “screen scraping,” shall be permitted. Notwithstanding the foregoing, if Licensee is unable to facilitate search results delivery via the XML gateway, JSTOR may, at its sole discretion, allow Licensee to facilitate said delivery using Hypertext Transfer Protocol (HTTP) requests to the JSTOR Archive in the manner described in Exhibit A for a limited period of time.

3.2 To ensure system functionality and quality control, Licensee agrees to test the Metasearch Engine to JSTOR’s satisfaction. Such testing shall include, but not be limited to, ensuring the Metasearch Engine: (i) delivers results that are identical to search results produced by JSTOR’s native interface; (ii) delivers results no more than two (2) seconds after results are delivered by the native JSTOR interface; (iii) configures and/or filters its searches in a way that maps to JSTOR’s discipline-based search engine; and (v) describes JSTOR’s collections and disciplines in ways that are approved in advance by JSTOR. Furthermore, Licensee agrees to comply with the requirements of Exhibit A, as may be amended from time to time. Licensee’s failure to comply with the requirements set forth in Exhibit A shall constitute a material breach of this Agreement.

3.3 Access from the Metasearch Engine to content in the JSTOR Archive shall remain entirely controlled by JSTOR’s authentication mechanisms, and JSTOR shall remain solely responsible for participation in the JSTOR Archive. JSTOR shall permit only users authorized by JSTOR to use the JSTOR Archive to have access to the JSTOR Archive in connection with the services described herein. Licensee is responsible for Mutually Authorized Users’ purchasing or other arrangements for access to Metasearch Engine. It is understood that all Mutually Authorized Users using the JSTOR Archive are required to comply with the User Rules. Each Party agrees to refer to the other Party requests for access to the other Party’s database or resource.

4. INTELLECTUAL PROPERTY OWNERSHIP

4.1 Subject to the intellectual property rights of third Parties (such as licensors of the scholarly content and software programs used in the development of the databases), each Party shall retain all rights to the content used in, or in connection with, its database or software product. Except as expressly granted herein, under no circumstances shall anything in this Agreement be construed as granting, by implication, estoppel, or otherwise, to one Party a right or license to the other Party’s name, logo, design marks, trade names, or service marks (collectively, the “Trademarks”), issued patents and patent applications, copyrights and copyright registrations and applications, rights in ideas, designs, works of authorship, derivative works, or any other rights or license relating to the other Party’s intellectual property or services. If one Party acquires goodwill or reputation in any of the intellectual property of the other Party, such goodwill or reputation will automatically vest in the other Party when and as such goodwill or reputation occurs. Both Parties agree to take all actions necessary to effect such vesting.

4.2 Each Party reserves the right to make changes to the style, content, format, and structure of its respective database. The foregoing shall not prevent JSTOR and Licensee from addressing issues of quality control in accordance with Section 3.2 herein regarding data provided by the other Party. Each Party agrees to notify the other of any material changes to the style, content, or structure of its respective database.

5. LIMITED TRADEMARK LICENSE

5.1 The Parties hereby grant one another a limited, nonexclusive, royalty-free, worldwide license to use and incorporate their respective Trademarks solely for the purpose of facilitating the sending of search queries and the delivery of search result sets between one another’s databases (or software product) and linking to JSTOR’s websites in accordance with the terms and conditions herein. Both Parties reserve the right to control the use of their respective Trademarks.

5.2 The Parties agree to adhere to standards consistent with the high level of quality associated with one another’s Trademarks. Neither Party shall use any Trademarks or other database content to make it appear that the other Party is endorsing, sponsoring, or recommending the information, goods, or services in its web site. Neither Party shall suggest the other Party is affiliated with it, its advertisers, or other entities to which it is linked, and neither Party will otherwise misrepresent its relationship with the other Party or present false or misleading information about the other Party’s products or services. Neither Party shall use the Trademarks, or other materials, in a manner that is likely to cause confusion with, dilute, or damage the reputation of the other Party or its database. Neither Party shall place the other Party’s web pages in a “frame” within that Party’s web site, use other techniques that alter or obstruct the visual or other presentation of the other Party’s database in whole or in part, or otherwise impose editorial comment or commercial material or any other type of identification on or in proximity to content displayed in the other Party’s database without written permission from an authorized representative of the other Party. Neither Party shall use the name or logo of the other Party, its participants, or content in any “metatag” without the other Party’s express written permission.

5.3 In a manner approved in advance in writing by JSTOR, Licensee may use the plain text name and logo of JSTOR in identifying resources available for searching and when search results are provided by the Metasearch Engine; however, unless JSTOR expressly agrees in advance in writing, Licensee may not otherwise use the name or logo of JSTOR, its participants, or content in connection with the Metasearch Engine. Licensee shall not use the names or logos of JSTOR, its participants, or content in any advertising or promotion without express written permission from JSTOR. Each Party shall provide the other with samples of any literature produced containing the other Party’s Trademarks and will notify the other Party of the URL of literature or web pages it creates containing Trademarks of the other Party or links to the other's web site, and of substantive changes made to any such web pages. In connection with the foregoing, each Party agrees to cooperate in making changes to such literature or web pages as reasonably requested by the other Party.

1. REPRESENTATIONS AND WARRANTIES

6.1 Licensee represents and warrants that its Metasearch Engine will attempt to deliver search result sets from the JSTOR Archive, is operating twenty-four (24) hours a day every day of the year and is secure.

6.2 Each Party hereby represents and warrants that it is duly organized and validly subsisting and has full authority to enter into this Agreement and to bind the Party to the terms and conditions herein. Each Party further represents and warrants that it has caused this Agreement to be executed by a duly authorized representative.

6.3 **OTHER THAN THE EXPRESS WARRANTIES STATED IN THIS SECTION 6, THE JSTOR ARCHIVE AND DATA PROVIDED TO LICENSEE UNDER THIS AGREEMENT ARE PROVIDED ON AN “AS IS” BASIS, AND JSTOR AND LICENSEE DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAWANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, ORAL OR WRITTEN), RELATING TO THE JSTOR ARCHIVE OR METASEARCH ENGINE OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Neither Party makes any warranties respecting improper usage of its respective database by users or any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. Both Parties further expressly disclaim any warranty or representation to Mutually Authorized Users, or to any third Party.

6.4 Neither Party shall be liable for any loss, injury, claim, liability or damage of any kind resulting from the unavailability of the other Party’s database, interruption of the services provided hereunder, or arising out of or in connection with the other Party’s linking activities. If either Party’s database fails to operate, that Party shall promptly notify the other Party, and the other Party’s sole obligation shall be to repair the nonconformity. Neither Party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, even if advised of the possibility of a claim. Neither Party shall have any responsibility or liability for any content appearing in the other Party’s database or for any link to or from third Party web sites.

1. TERM AND TERMINATION

7.1 This Agreement shall continue in effect for one (1) year from the first day of the calendar year that follows the Effective Date, and will renew for successive one (1) year terms unless earlier terminated by either Party by written notice not less than sixty (60) days prior to the end of the then-current term.

* 1. In the event that either Party believes that the other materially has breached any obligations under this Agreement, or if either Party believes that the other has exceeded the scope of the License, such Party shall so notify the breaching Party in writing. The breaching Party shall have fifteen (15) days from the receipt of notice to cure the alleged breach and to notify the non-breaching Party in writing that cure has been effected. If the breach is not cured within the fifteen (15) day period, the non-breaching Party shall have the right to terminate the Agreement without further notice. Either Party may terminate this Agreement by notice to the other if the other becomes insolvent or makes an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or part of its assets. In addition, JSTOR may terminate this Agreement on ten (10) days notice if the quality and/or testing of Licensee's links is not, in JSTOR’s reasonable opinion, satisfactory and on ten (10) days’ written notice if, in JSTOR’s reasonable opinion, the cumulative effect of violations of User Rules by Mutually Authorized Users or violations of this Agreement by Licensee justifies such termination.

7.3 Upon termination of this Agreement, all rights granted hereunder shall be terminated, except as otherwise noted, and Licensee shall, within thirty (30) days of termination, remove or deactivate all links to JSTOR, shall remove all search results from the Metasearch Engine that lead directly to JSTOR content, and shall cease using JSTOR’s Trademarks in association with Licensee’s product(s), and forthwith provide a written statement that the aforementioned deactivation has taken place.

8. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of laws principles. The Parties hereby irrevocably consent to the jurisdiction of the state and federal courts located in the County of New York, New York in any action arising out of or relating to this Agreement, and waive any other venue to which either Party may be entitled by domicile or otherwise.

9. NOTICES

All notices given pursuant to this Agreement shall be in writing and sent to the Notice Address specified on page one hereof. Notices may be delivered by hand, by overnight carrier, or shall be deemed to be received within five (5) business days after mailing if sent by registered or certified mail, postage prepaid. If any notice is sent by facsimile, then confirmation copies must be sent as specified above. Either Party may from time to time change its Notice Address by written notice to the other Party.

1. CONFIDENTIALITY

10.1 JSTOR and Licensee shall not, during the term of this Agreement or any time thereafter, disclose, or permit any of their employees, agents, or assignees to disclose, to any other person or entity any Confidential Information (as defined below) of the other Party. “Confidential Information” shall mean all data, reports, instructions, directions, interpretations, specifications, forecasts, and records containing or otherwise reflecting information concerning the Parties, their affiliates, and subsidiaries that is not available to the general public and is provided by one Party to the other in the course of their dealings, together with all analyses, compilations, studies, or other documents or materials, whether prepared by one of the Parties or by others, that contain or otherwise reflect such information. Confidential information does not include information which (a) was or becomes generally available to the public other than as a result of a disclosure by the receiving Party or its representatives or (b) was or becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party or its advisers, provided that such source was not known by the receiving Party to be bound by any agreement to keep such information confidential, or otherwise prohibited from transmitting the information to the receiving Party by a contractual, legal or fiduciary obligation.

10.2 Each Party may use the Confidential Information of the other Party, and may disclose such Confidential Information to its Representatives who are bound to confidentiality obligations at least as stringent as those set forth herein, only to the limited extent necessary to perform its obligations or enjoy its rights under this Agreement. Each Party agrees to exercise reasonable care (and no less than the care it uses with respect to similar Confidential Information of its own) to prevent the unauthorized disclosure of the other Party’s Confidential Information. Each Party agrees that the other Party would be irreparably injured by a breach of this Section 10 and that the other Party shall be entitled, in addition to any other remedies, to injunctive relief and specific performance to enforce the terms hereof.

11. MISCELLANEOUS

11.1 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. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of JSTOR and Licensee.

11.2 This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

11.3 Nothing contained herein shall be deemed to create an agency, joint venture, or partnership relationship between the Parties. Neither Party shall use or attempt to exercise apparent authority concerning the other Party in its dealings with third Parties.

11.4 Nothing in this Agreement shall be construed as providing for compensation to either Party for its services under this Agreement, and each Party shall bear the costs of performing its obligations hereunder.

11.5 Neither Party shall be liable in damages or have the right to cancel 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, strikes, fires, floods, work stoppages, unavailability of materials, carriers or communications facilities, and/or any other cause beyond the reasonable control of the Party whose performance is affected.

11.6 Waiver of any provision herein shall not be deemed to be a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

11.7 If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

 11.8 Neither Party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except however that JSTOR may make such assignment to one or more of its affiliated entities.

**EXHIBIT A**

In accordance with Section 3.1 of the Agreement, JSTOR may, from time to time, allow Licensee to facilitate delivery of search results using Hypertext Transfer Protocol (“HTTP”) requests to the JSTOR Archive, provided that the HTTP requests contain within them a User-agent string taking the following form. JSTOR reserves the right to eliminate or modify the following options at its sole discretion upon reasonable advance notice to Metasearch Engine.

**It is mandatory that the Licensee include the VENDOR field in the User-agent string.**

**MOZVER (compatible; VENDOR; PRODUCT; OS; OPTIONAL)**

Where:

 **MOZVER** is mozilla equivalent version like "Mozilla/4.0"

 **VENDOR** is the metasearch vendor name

 **PRODUCT** is product name and version

 **OS** is Operating System version

 **OPTIONAL** is for any additional modules or customizations or comments

For example:

Mozilla/4.0 (compatible; Vendor; Productname 1.2.333; MSIE 7.0; Windows NT 5.1)