

PKP PUBLISHING SERVICES: HOSTING SUPPORT AGREEMENT

BETWEEN:

SIMON FRASER UNIVERSITY, PKP PUBLISHING SERVICES (“**PKP Services**”),
having an address at 8888 University Drive, Burnaby BC V5A 1S6

AND:

_____ (**the “Client”**), having an address at

WHEREAS:

- A. PKP Services provides technical support services (**the “Services”**); and
- B. The Client wishes to engage PKP Services to provide such services to the Client, all on the terms and conditions set out in this Agreement.

NOW THEREFORE the parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Interpretation.

For purposes of this Agreement, except as otherwise expressly provided:

(a) “**Agreement**” means this agreement, including the recitals and schedules, as supplemented and amended in writing from time to time;

(b) capitalized terms used in this Agreement shall have the meaning indicated either in this Agreement or in the PKP Services Support Options (the “**Support Options**”), which are incorporated into this Agreement by reference. The Support Options, which set out the various available levels of support at specified rates, can be found at: <https://pkpservices.sfu.ca/content/plans-pricing>

(c) descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement, and are not to be used as an aid in the interpretation of this Agreement;

(d) all references to currency refer to lawful money of Canada (unless expressed to be in some other currency) and all amounts to be calculated or paid pursuant to this Agreement are to be calculated and paid in lawful money of Canada for Canadian clients, or US Dollars for all other clients;

(e) each provision of this Agreement is intended to be severable and if any provision is illegal, invalid or unenforceable, such illegality, unenforceability or invalidity will not affect the validity of this Agreement or the remaining provisions; and

(f) words importing the singular include the plural and vice versa.

ARTICLE 2 - ENGAGEMENT

2.1 Engagement.

The Client hereby engages PKP Services to provide to the Client, those Services in connection with the Client's use of authorized versions of specific open source software (the "**Supported Software**"), as described at <https://pkpservices.sfu.ca>, which is incorporated into this Agreement by reference, and the applicable Support Option level identified by the Client and associated Support Fees (the "**Support Fees**") as set out in the annual invoice (the "**Invoice**") provided to the Client by PKP Services.

2.2 Acceptance.

PKP Services hereby agrees to provide the Services to the Client on the terms and conditions of this Agreement and in the manner and within the timeframe as stated in the Invoice provided to the Client by PKP Services.

2.3 Amendments

PKP Services reserves the right to amend the terms of the PKP Publishing Services Hosting Support Agreement, the Supported Software, and any Support Options at any time and will provide notice of amendments that affect the Services to the Client ("**Applicable Amendments**") by email to the Client's email address as stated in the Invoice and by posting notice of amendments on the PKP Services website: <https://pkpservices.sfu.ca>. For greater certainty, such amendments may include, but are not limited to, material changes in the Services to the Client. The Client must review the Applicable Amendments on the PKP Services website and explicitly confirm they are acceptable, alternately the Client may terminate this Agreement for Applicable Amendments in accordance with section 3.6 below. If the Client does not exercise either the confirmation or termination options, amendments shall be deemed to take effect thirty (30) days following the issuance of the email.

ARTICLE 3 – TERM OF THE AGREEMENT

3.1 Term.

Unless start and completion dates are expressly included in the Invoice, this Agreement will be valid from the date of last signature and will remain in effect for an initial term of twelve (12) months (the "**Initial Term**").

3.2 Renewal.

This Agreement will be automatically renewed for twelve (12) month terms (the "**Renewal Term**") until terminated by either party giving to the other party written notice of its intention not to renew at least 30 days' prior to the expiration of the Initial Term or any Renewal Term. Sixty (60) days prior to the expiration of the Renewal Term, PKP Services will provide to the Client an annual renewal invoice which will set out the rates for the upcoming Renewal Term.

3.3 Termination for Default.

Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by giving the other not less than sixty (60) days' prior written notice of the effective date of such termination if the other party is in material default of any of the terms or conditions of this Agreement and such default has not been cured within thirty (30) days after the non-defaulting party has given the defaulting party written notice of the default.

3.5 Termination by PKP Services.

PKP Services may terminate this Agreement for Services, on one hundred eighty (180) days written notice to the Client. In the event of such early termination by PKP Services, PKP Services shall provide a refund of the Support Fees for the remainder of the current term of this Agreement.

3.6 Termination for Applicable Amendments.

The Client may terminate this Agreement for Applicable Amendments by providing PKP Services with written notice of termination no later than thirty (30) days after PKP Services has notified the client of Applicable Amendments. In the event of such early termination for Applicable Amendments, PKP Services will provide a refund of the Support Fees for the remainder of the current term of this Agreement .

ARTICLE 4 –PAYMENT TERMS

4.1 Invoicing & Payment Terms.

PKP Services shall issue the Invoice to the Client for the Support Fees pre-payable by the Client to PKP Services on an annual basis. PKP Services shall send all Invoices to the address set out in the Notice Provision at section 10.8 of this Agreement. The Client shall pay such Invoices within 30 days after the issue date of the Invoice. Payment will be made in either CAD or USD funds as specified by the applicable fee level on the Invoice provided by PKP Services.

4.2 Taxes.

The Client shall pay all applicable taxes, howsoever designated, to the extent attributable to this Agreement or to any part, service or material furnished hereunder.

ARTICLE 5 - GENERAL PROVISIONS APPLICABLE TO SERVICES

5.1 Standard of Services.

PKP's mandate is to improve the scholarly and public quality of academic research through the research, development, implementation, and support of open source software to support scholarly publishing and communication. PKP encourages the use of innovative publishing models that adhere to those traditional scholarly publishing practices that ensure rigorous standards of quality. The hosting services and custom support offered by PKP Services are provided to advance the mandate of this project. PKP Services reserves the right to refuse or terminate the Supported Services to any Client whose

publications or associated activities are judged to be inconsistent with PKP's stated mandate. Such determinations will be on the advice of an editorial review group consisting of 4 - 6 members drawn from (a) the editors of journals hosted by PKP Publishing Service and (b) the PKP Members Committee. PKP Services will use its good faith, commercially reasonable efforts to ensure that support services are conducted in a professional and workman-like manner by qualified personnel.

Unless expressly included in the Invoice, this Agreement specifically excludes the following:

- (a) Any software other than the Supported Software;
- (b) Any classroom training or on-site consulting;
- (c) Design of any application, including layout work;
- (d) Copy, proof, or similar editing services;
- (e) Any services including upgrades for any Supported Software that has been modified or customised by the Client, unless undertaken as part of custom programming services specified as part of a Custom Services Agreement;
- (f) Data recovery services as a consequence of Client's deletions, accidental or otherwise, of data; or
- (g) Data modification services that cannot be performed via existing software functionality.

ARTICLE 6 – CLIENT RESPONSIBILITIES

6.1 Terms of Use

The Client agrees not to post or transmit through the PKP hosting services any material or content that: violates or infringes in any way the rights of others including but not limited to copyright and related intellectual property laws; solicits, encourages or promotes the use of illegal substances or activities that are unlawful, threatening, abusive, harassing, defamatory, libelous, derogatory, invasive of privacy or publicity rights, vulgar, obscene, hateful, pornography or otherwise objectionable; gives rise to civil or criminal liability or otherwise violates any local, provincial or federal laws. The Client shall not engage in any activity on the hosting services that restricts or inhibits any other user from using the hosting services at PKP by "hacking", "cracking", "spoofing" or defacing any portions of them.

The Client shall not knowingly post or transmit through the hosting services at PKP Services any software or other materials that contain viruses, worms, time bombs, Trojan horses, or other harmful or disruptive component, political campaign materials, chain letters, mass mailings, spam mail, any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the hosting services at the PKP or its content.

The Client agrees that the use of the Services and the Supported Software are at its sole risk and that PKP Services is not responsible for any alleged or actual damages caused by or attributed to the use of the Services and Supported Software.

6.2 Customizations.

The Client may configure and customize the Supported Software to meet their specific requirements but they will also be responsible for maintaining all such customizations. PKP Services is not responsible for ensuring that any Client customizations will continue to function properly following upgrades of the

Supported Software. PKP Services reserves the right to charge an additional fee for upgrades that require additional effort due to extensive customization or other unique Client requirements.

6.3 Written Request and Supporting Information.

The Client shall always provide a written request for support via the PKP Help Ticket system together with all data that is relevant for resolving each support request. Relevant data may include, but is not limited to, detailed descriptions of the problem, actions leading to the problem, screenshots of the problem, and error messages displayed by the system. The Client is required to respond within seventy-two (72) hours to requests by PKP Services for additional information or feedback.

ARTICLE 7 – CLIENT ACKNOWLEDGEMENTS, REPRESENTATIONS AND WARRANTIES

7.1 Acknowledgements.

The Client acknowledges that the use of all Support Options is subject to all applicable local, provincial, national and international laws and regulations and the Client agrees not to violate any such laws and regulations. Without limiting the generality of the foregoing, the Client acknowledges that any acts to deliberately damage hosting services at PKP is a violation of such laws and a breach of this Agreement and PKP Services reserves the right to seek damages for any such acts to the fullest extent permitted by law.

7.2 Representations and Warranties.

The Client represents and warrants to PKP Services that the Client:

- (a) Is engaged in a lawful enterprise or activity;
- (b) Can enter into legally binding contracts and is authorized to enter into this Agreement; and
- (c) Is in compliance with all applicable laws in its jurisdiction.

ARTICLE 8 – INTELLECTUAL PROPERTY

8.1 Data Ownership

Any data, irrespective of format, created and uploaded by the Client will be owned by the Client or the existing copyright holder. PKP Services reserves the right to retain a copy of all data for ongoing access and long term preservation unless the Client explicitly prohibits it. PKP Services will deliver to the Client a copy of all data in the existing file formats used by the Services at that time.

8.2 Applicability of the GNU General Public License

All of the Supported Software has been made available as open source software under the terms of the GNU General Public License (“GPL”). The terms and conditions of the GNU GPL also apply to any copying, distribution or modification that the Client may undertake independently.

ARTICLE 9 – DISCLAIMER OF WARRANTIES

9.1 Disclaimer

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SFU-PKP SERVICES DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUPPORTED SOFTWARE, CORRECTIONS AND THE SERVICES PROVIDED HEREUNDER, INCLUDING PROMISES, REPRESENTATIONS AND WARRANTIES AS TO CONDITION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT , OR ANY IMPLIED WARRANTY OF INFORMATION CONTENT OR SYSTEM INTEGRATION.

Without limiting the generality of the foregoing, PKP Services does not warrant that its advice or programming will be error free. The foregoing disclaimer also includes any third party service providers such as telecommunications and internet service providers that may be used by PKP Services.

PKP Services disclaims all liability whatsoever to the Client or any other party for any act or omission that may result in consequential, indirect, special or such other damages including but not limited to, any damage for lost profits, loss of data or loss of business, even if PKP Services has been advised of the possibility of such damages.

IN NO EVENT SHALL THE LIABILITY OF PKP SERVICES TO THE CLIENT FOR ANY CLAIM WHATSOEVER RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF THE SUPPORT FEES PAID FOR THE SERVICES THAT GAVE RISE TO THE CLAIM WITHIN THE CALENDAR YEAR DURING WHICH THE CLAIM AROSE.

ARTICLE 10 - MISCELLANEOUS PROVISIONS

10.1 Relationship.

The parties to this Agreement are, and shall remain, independent contractors with respect to each other. Nothing in this Agreement will be deemed to establish or otherwise create a relationship of agency, employment, partnership or otherwise between the parties except that of independent contractor.

10.2 Governing Law.

This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia including but not limited to British Columbia's Freedom of Information/Privacy Protection Act (FIPPA), and the laws of Canada applicable therein.

10.3 Dispute Resolution.

Both during and after the performance of their obligations under this Agreement, each of the Client and PKP Services shall make *bona fide* efforts to resolve any disputes arising between them by amicable negotiations and provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations. Each of the Client and PKP Services shall use its reasonable

efforts to conduct any dispute resolution procedures herein as efficiently and cost effectively as possible. Each of the Client and PKP Services shall attempt to resolve all disputes arising out of or in connection with this Agreement, or in respect of any legal relationship associated with it or from it, by mediated negotiation with the assistance of a neutral person appointed by the British Columbia International Commercial Arbitration Centre administered under its Commercial Mediation Rules. If the dispute cannot be settled within thirty (30) days after the mediator has been appointed, or such other period agreed to in writing by the parties, the dispute will be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre, pursuant to its Rules. In the absence of any written agreement otherwise, the place of arbitration shall be Vancouver, British Columbia.

10.4 Schedules.

Any schedules attached to this Agreement are incorporated into and form part of this Agreement as fully as if they were included in the main body of this Agreement.

10.5 Amendments.

This Agreement may not be modified or amended in whole or in part, unless such an amendment is in writing and executed by both PKP Services and the Client.

10.6 Assignment.

Neither the Client nor PKP may assign this Agreement or any of its rights under this Agreement without the prior written consent of the other. Any assignment without prior written consent is ineffective.

10.7 Binding Effect.

This Agreement will enure to the benefit of and be binding upon the heirs, executors, administrators, legal representatives, successors and permitted assigns of the parties, as applicable.

10.8 Notices.

Any notice or other communication required or permitted to be given or made under this Agreement will be in writing and will be effectively given and made if sent by email or delivered personally or sent by registered mail or prepaid courier service, in each case to the applicable address as follows:

if to PKP Services:	SFU Library, PKP Publishing Services, 8888 University Drive Burnaby, British Columbia V5A 1S6 Email: pkp-hosted@sfu.ca Attention: Manager of Administrative Services
if to the Client:	Via the contact information stated on the Invoice

Any such communication so given or made will be deemed to have been given or made and to have been received on the day of delivery. Any party may change its address for service from time to time by notice to the other party in accordance with this section.

10.9 Entire Agreement.

Except as otherwise agreed in writing by the parties, this Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes all previous expectations, understandings, communications, representations and agreements with respect to the subject matter of this Agreement, whether verbal or written.

10.10 Force Majeure.

Neither party will be liable for, nor will either party be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, labour problem, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented with reasonable care.

10.11 Further Assurances.

The parties will execute and deliver to each other such further instruments and assurances and do such further acts as may be required to give effect to this Agreement.

10.12 Waiver.

No party is to be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing, and any such written waiver will apply only to the matter so waived and not to any additional, continuing or subsequent matter of the same or different kind.

10.13 Counterparts.

This Agreement may be executed in any number of counterparts with the same effect as if all parties had all signed the same document. All counterparts will be construed together and will constitute one and the same agreement.

10.14 Electronic Transmission.

This Agreement or any counterpart may be executed by a party and delivered by facsimile or electronically in portable document format (pdf) and if so executed and delivered this Agreement or such counterpart will for all purposes be as effective as if the party had executed and delivered the Agreement or a counterpart bearing an original signature.

10.15 Effective Date.

This Agreement will become effective upon acceptance of this Agreement. The date this Agreement is accepted will be deemed the date of this agreement.

PKP Services _____ Name: Brian Owen Title: Associate University Librarian, Library Technology Services & Special Collections	 _____ Date
[INSERT NAME OF CLIENT] _____ Name: Title:	 _____ Date