

CABINET MAGAZINE
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CABINET MAGAZINE INSTITUTIONAL SUBSCRIPTION AGREEMENT

This CABINET MAGAZINE INSTITUTIONAL SUBSCRIPTION AGREEMENT (the “Agreement”) governs the terms upon which Immaterial Incorporated, d/b/a Cabinet magazine, (“Cabinet”), a 501(c)(3) non-profit having an address at 300 Nevins Street, Brooklyn, New York 11217, makes the Cabinet Site available to institutional subscribers and their authorized users (as defined below). Except as it may expressly agree otherwise in writing, Cabinet does not authorize any access to the Cabinet Site by institutional subscribers or their authorized users other than pursuant to the terms of this Agreement.

With respect to each Cabinet institutional subscriber (the “Subscriber”), this Agreement is made and entered into between Cabinet and the Subscriber (each, a “Party” and collectively, the “Parties”) as of the date (the “Effective Date”) on which such Subscriber either (i) submits directly to Cabinet an executed institutional subscription order form containing an acknowledgment of the terms of this Agreement and agreement to be bound by them, or (ii) submits a subscription request to Cabinet through a subscription agent and transmits to Cabinet an executed copy of Appendix A to this Agreement.

- A. WHEREAS, Cabinet is the operator of an online information service available on a subscription basis which provides articles of interest to faculty, administrators, students, library patrons, and others and is willing to grant a license to Subscriber on the terms and conditions set forth below;
- B. WHEREAS, Subscriber is an institution (such as a university, library, museum, school, or other education, art or cultural institution) that desires to obtain from Cabinet an institution-wide subscription license to the Licensed Content available through the Cabinet Site;

NOW, THEREFORE, in consideration of the recitals, covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions. For purposes of this Agreement, the following definitions apply:

“Authorized Site” means the commonly networked single campus/location of an institution which is in the same geographic location, under a single administrative management unit. For purposes of clarification, (i) for an organization with multiple campuses/locations within one city,

campuses/locations that report to the same Chief Academic Officer or Chief Administrative Officer may be considered part of the same Authorized Site, but (ii) campuses/locations will require separate subscriptions (and may not be considered part of the same Authorized Site) if they are located in different cities or report to different administrative management units.

“Authorized User(s)” means: (a) individuals who are authorized by the Subscriber to access the Subscriber’s information services available through a Secure Network at an Authorized Site or via a secure proxy server and who are: (i) affiliated with the Subscriber at the Authorized Site as current students (whether full or part time), faculty, library patrons, employees, or in some other capacity whereby they are permitted to access such services in the Subscriber’s ordinary course of business, or (ii) are physically present on the Subscriber’s premises at the Authorized Site. For the avoidance of doubt, Authorized Users shall not include alumni.

“Fair Use” means the use by the Subscriber or an Authorized User: (a) conforming to Sections 107 and 108 of the Copyright Act of 1976 as those provisions have been amended and may be amended from time to time, or (b) conforming to the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (“CONTU Guidelines”).

“Licensed Content” means such content, information, and features as are made available by Cabinet through the Cabinet Site.

“Secure Network” means a network (whether stand alone or a virtual network within the Internet) which is only accessible to Authorized Users whose identities are authenticated at the time of log-in and periodically thereafter consistent with current best practices and whose conduct is subject to regulation by the Subscriber.

“Subscription Administrator” means the individual designated by the Subscriber (and any replacements designated by Subscriber with prior written notice to Cabinet) to handle matters relating to this Agreement, complete the activation process for the Licensed Content, update authorized IP addresses for access to the Licensed Content, ensure the confidentiality of passwords and data exchanged in connection with this Agreement, and to be Cabinet’s contact person, all as more specifically set forth below.

“The Cabinet Site” means the Internet site with the URL <https://www.cabinetmagazine.org>.

2. Grant of License. Subject to the terms and conditions of this Agreement, Cabinet hereby grants to Subscriber, and Subscriber accepts, a non-exclusive, non-transferable license (with no sublicense rights):

(a) to allow Authorized Users, during the Term of this Agreement, to access, retrieve, view, electronically download and save, or reproduce a reasonable number of copies of the Licensed Content solely for the purposes of research, teaching, scholarship, private study, and Fair Use; and

(b) to allow personnel within the scope of their employment at the Authorized Site periodically to make and lend an electronic or print copy of individual items of the Licensed Content in order to fulfill requests for such item by a third party library or other institution under the Subscriber’s then-current inter-library loan agreements applicable to the Authorized Site, provided that: (i) such copies are not

routinely or systematically provided (whether in one occasion or over a period of time) in such a manner or in such quantities as to substitute for a subscription by the receiving library or the end user, (ii) all copies reproduce any proprietary legends included on the material by Cabinet, (iii) the reproduction and lending is made without any purpose of direct or indirect commercial advantage, and (iv) the Subscriber and its personnel have no notice or reason to believe that the copy or copies would be used for any purpose other than research, teaching, scholarship, private study or other Fair Use.

(c) to incorporate articles, reviews, and other material from the Licensed Content into electronic 'coursepacks' for use in connection with courses offered by the Subscriber for academic credit, provided that such excerpts are deleted by the Subscriber by the end of the semester in which they are used (with such deletion confirmed in writing to Cabinet upon request).

3. License Limitations. Products and services offered by or through Cabinet now or hereafter, other than the Licensed Content, are not included in this Agreement. Cabinet reserves the right to determine the scope and selection of content that is made available as part of the Licensed Content at any time while this Agreement is in effect. The Subscriber is hereby notified that Licensed Content is available for subscription by end users and other libraries at a reasonable price, and the Subscriber may notify end users and other libraries of this. The Subscriber expressly acknowledges that all copyrights, patent rights, trademarks, services marks, trade secrets and other intellectual property rights relating to the Licensed Content and the Cabinet Site (collectively the "Cabinet Intellectual Property"), are the sole and exclusive property of Cabinet and that this Agreement does not convey to any right, title, or interest therein except for the right to use the Licensed Content and the Cabinet Site in accordance with the terms and conditions of this Agreement.

4. Prohibited Uses. Subscriber expressly acknowledges and agrees that the Cabinet Site and the Licensed Content will be for the personal, non-commercial use of Authorized Users only, and that neither Subscriber nor Authorized Users have the right to:

(a) modify, adapt, retransmit, resell, redistribute or compile the Licensed Content, in whole or in part, including for purposes of creating text books or for any other commercial endeavors, except as approved in advance in writing by Cabinet. Cabinet and its suppliers reserve all rights and licenses to the Licensed Content not expressly granted to Subscriber hereunder;

(b) remove or alter the authors' names or Cabinet's copyright notices or other means of identification or disclaimers as they appear in the Licensed Content or Cabinet Site. All copies of any Licensed Content made by or on behalf of Subscriber under this Agreement shall bear all proprietary rights and other legends of Cabinet and its suppliers as reflected on the electronic copy; or

(c) systematically make printed or electronic copies other than as provided in Section 2 above.

5. Access to Licensed Content. In order for Authorized Users to access the Cabinet Site and the Licensed Content, Subscriber will provide to Cabinet (through password-protected access by the Subscription Administrator of Cabinet's designated server, by email, or in such other manner as requested by Cabinet from time to time) a list of valid IP addresses through which access shall be allowed to the Licensed Content. Subscriber is responsible for updating the list of IP addresses it provides to Cabinet. Subscriber will make all reasonable efforts to ensure that access to the Cabinet Site will be limited to only Authorized Users and to give notice to Authorized Users of the license use limitations under this Agreement. Subscriber agrees to notify Cabinet promptly of any instances in which Subscriber becomes aware that non-authorized Users may have obtained access to the Cabinet Site, or whereby Authorized Users may have exceeded or intend to exceed the scope of the license granted

above in Section 2, and further agrees to make reasonable efforts to assist Cabinet in identifying the source of the unauthorized use and addressing the matter. Cabinet reserves the right to suspend access through any Subscriber IP address in order to address likely or actual unauthorized or illegal conduct, to protect its systems, as otherwise required by legal authority or process of law, or as otherwise reasonably believed necessary by Cabinet. Subscriber shall be fully liable for any acts or omissions of any individual users (authorized or otherwise) who access, receive, or use the Cabinet Site, Cabinet magazine, or any other associated content, software, systems or technology through an IP address provided to Cabinet by Subscriber, as if such acts or omissions were made by the Subscriber itself.

6. Management of Cabinet Site. The Cabinet Site will be located on Cabinet's server or the server of a third party, as determined by Cabinet. Cabinet reserves the right, at its sole discretion, to block or remove from the Cabinet Site any content which Cabinet believes may be illegal or harmful to Cabinet in any way, which conflicts with Cabinet's obligations to third parties, or which Cabinet in its reasonable discretion believes should be blocked or removed. Cabinet also reserves the right, in its sole discretion, to edit, refuse to post or remove any material submitted to or posted on the chat rooms, bulletin boards or on any other user generated pages, and to terminate or suspend access by Authorized Users who make unauthorized or illegal use of the Cabinet Site. Although Cabinet may from time to time monitor or review discussions, chats, postings, transmissions, bulletin boards and other user generated pages on the Cabinet Site, Cabinet is not under any obligation to do so. Subscriber acknowledges that Cabinet does not control the information available on bulletin boards, chat rooms and other user generated pages and that any opinions, advice, statements, services, offers or other information or content presented or disseminated on any bulletin board, chat room or on any other user generated pages are those of their respective authors who are solely liable for their content.

7. Quality of Service. Cabinet will make reasonable efforts to ensure uninterrupted online access to and continuous availability of the Cabinet Site to authorized users in accordance with this license, and to restore access as promptly as possible in the event of an interruption or suspension of the service which is not attributable to any third-part service provider over which Cabinet has no control (e.g., an Internet or telecommunications service provider).

8. Terms of Payment. Subscriber agrees to pay Cabinet the nonrefundable subscription fee in effect at the time its subscription order is communicated to Cabinet. Subscriber will be responsible for the payment of any taxes and duties assessed it in connection with the license granted herein.

9. Ownership, Confidentiality, and Reporting.

(a) Licensed Content and Trademarks. Subscriber acknowledges that Cabinet and its suppliers own all worldwide rights, title, and interest in and to the Licensed Content, and all related information, software, data, layouts and formats made available by Cabinet or through the Cabinet Site, including, but not limited to, all copyrights (including without limitation audiovisual works and oral rights), patents, and other worldwide intellectual property rights therein. Cabinet and its licensors own all right, title, and interest in and to their respective trademarks, service marks, and logos ("Marks") worldwide and such Marks cannot be used by Subscriber without the prior written approval of Cabinet.

(b) Usage Data. All data collected by or on behalf of Cabinet relating any use of the Cabinet Site or the Licensed Content by any users is and shall remain at all times the sole property of Cabinet.

(c) Confidentiality. Subscriber hereby agrees that the user name and password provided or made accessible by Cabinet to Subscriber shall be and remain at all times the confidential property of Cabinet and shall not be disclosed by Subscriber to any persons other than the Subscriber Administrator and those of its personnel involved with the implementation of this Agreement. Subscriber agrees to exercise

reasonable commercial efforts to safeguard user names and passwords and keep them confidential.

10. Term, Renewal and Termination.

(a) Term. The initial term of this Agreement shall commence on the Effective Date and continue through Cabinet's publication of the first issue following the final subscription issue indicated upon Subscriber's order form (or order request conveyed through a subscription agent). (By way of example, if Subscriber purchases a 24-issue subscription while issue #100 is the current issue, such subscription would run from issue #100 to issue #123, and the term of the corresponding agreement would expire immediately upon Cabinet's publication of issue #124).

(b) Renewal. Subscriber may renew (and thereby extend both the term of this Agreement and the final issue of such Subscriber's subscription) at any time by paying Cabinet's then-prevailing subscription fee for institutional subscribers. Any such renewal will be subject to the terms of this Agreement, or to the then current form of these Terms and Conditions, which will be provided to Subscriber by Cabinet in the event that any changes are made to them. In the event that Cabinet determines that Licensed Content can no longer be made available, it shall have the right either to terminate or not renew this Agreement by notice to Subscriber, provided that it refunds any Subscription Fee for the unexpired portion of the term of this Agreement.

(c) Termination. In addition to the termination right provided in Section 10(b), either party may terminate this Agreement if the other party materially breaches any of its obligations hereunder and such breach remains uncured for thirty (30) days following written notice of the breach to the breaching party. In the event Subscriber terminates pursuant to this section as a result of an uncured breach by Cabinet, Subscriber shall be entitled to a refund of any fees paid by Subscriber for any unused portion of the then-current term, as Subscriber's sole and exclusive remedy for such breach. Upon any termination or expiration of this Agreement: (i) the license rights granted under this Agreement immediately terminate; (ii) Subscriber shall promptly discontinue any use of the Licensed Content, the Marks and Cabinet Intellectual Property; and (iii) the provisions of Sections 9(a), 9(b) and 9(c) will survive any termination or expiration of this Agreement.

11. Limited Warranty and Disclaimers.

(a) Warranties. Cabinet warrants that it has the right and authority to enter into this Agreement and to grant to Subscriber the rights granted hereunder. The Subscriber warrants that it has the right and authority to enter into this Agreement.

(b) Disclaimer. EXCEPT AS SET FORTH IN SECTION 11(a) ABOVE, CABINET AND ITS SUPPLIERS GIVE NO WARRANTY OF ANY KIND IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, WITH RESPECT TO THE LICENSED CONTENT AND ANY OTHER INFORMATION, SERVICES OR MATERIALS PROVIDED OR MADE AVAILABLE BY CABINET HEREUNDER.

CABINET AND ITS SUPPLIERS HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, SYSTEM INTEGRATION, TITLE, NON-INFRINGEMENT AND NONINTERFERENCE.

CABINET DOES NOT MAKE ANY WARRANTY THAT THE LICENSED CONTENT WILL BE

AVAILABLE WITHOUT INTERRUPTION, ERROR-FREE, VIRUS-FREE, OR FREE OF MALICIOUS OR DAMAGING CONTENT.

12. Limitation of Liability.

(a) Exclusion of Damages. IN NO EVENT WILL CABINET OR ITS SUPPLIERS BE LIABLE TO SUBSCRIBER, SUBSCRIBERS' AUTHORIZED USERS OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE LICENSED CONTENT, OR THE CABINET SITE, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT CABINET OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

SUBSCRIBER AGREES THAT CABINET WILL NOT BE LIABLE FOR ANY CREDITS, REFUNDS, OR DAMAGES OF ANY KIND FOR SERVICE INTERRUPTIONS, LATENCY, INCOMPLETE CONTENT TRANSMISSION, GENERAL NETWORK FAILURES OR OTHER FAILURES REGARDING CONTENT ACCESS OR TRANSMISSION WHICH MAY FROM TIME TO TIME MAKE THE LICENSED CONTENT OR THE CABINET SITE UNAVAILABLE TO AUTHORIZED USERS.

THE SUBSCRIBER FURTHER AGREES THAT NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THE LICENSED CONTENT MAY BE BROUGHT BY THE SUBSCRIBER MORE THAN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO SUCH ACTION HAS OCCURRED.

(b) Total Liability. IN NO EVENT WILL CABINET'S AND ITS SUPPLIERS' TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, EXCEED THE ANNUAL SUBSCRIPTION FEE OF THE YEAR IN WHICH THE CAUSE OF ACTION OCCURS.

13. General Provisions

(a) Assignment. Subscriber may not assign this Agreement, in whole or in part, without Cabinet's prior written consent, which shall not be unreasonably withheld. Any attempt to assign this Agreement other than as permitted herein will be null and of no effect. Without limiting the foregoing, this Agreement will inure to the benefit of and bind the parties' respective successors and permitted assigns.

(b) Dispute Resolution. The parties agree to make good faith, diligent and reasonable commercial efforts to resolve any disputes under this Agreement by designating one senior executive of each party to negotiate for a mutually agreeable period of at least ten business days once a party has provided written notice of a dispute and its desire that the parties negotiate a resolution to it. In the event such efforts are not successful, the parties hereby agree to submit their dispute to binding arbitration, and such arbitration may be commenced by either party after the passage of 30 days following delivery of written notice of a dispute. Such arbitration shall be conducted in New York, NY, unless another location is agreed to by the parties, and it shall be governed by the then current rules for commercial arbitration of the AAA and conducted before a single arbitrator. In the event the parties cannot agree on the arbitrator, the AAA shall be allowed to appoint such arbitrator. The arbitrator may not award punitive damages or any damages prohibited or excluded by the terms of this Agreement, and the arbitrator may not amend

or modify the terms of this Agreement. Any award rendered by the arbitrator will be final and binding and judgment may be entered therein in any court of competent jurisdiction. Nothing herein shall affect the right of either party to seek interim or emergency injunctive relief before a court of competent jurisdiction. Cabinet reserves the right to suspend service hereunder pending resolution of a dispute unless Subscriber escrows any amounts in dispute (in the case of a payment dispute) and provides written assurance that continuation of service hereunder will not give rise to any claim or remedies or damages by Subscriber for the period service is provided while the dispute is pending.

(c) Notice. Any notice under this Agreement shall be in writing and may be delivered by personal delivery, express courier, confirmed e-mail, or certified or registered mail, postage prepaid and return receipt requested. Notices will be deemed to be effective upon receipt. Notices shall be sent to a party at its address set forth above or at such other address as that party may specify in writing pursuant to this section.

(d) No Agency. Cabinet is only a licensor and an independent contractor of Subscriber. The parties will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture. The arrangements contemplated by this Agreement are non-exclusive and nothing in this Agreement shall be construed as limiting the ability of the other party to enter into similar arrangements with other parties.

(e) Entire Agreement. This Agreement, together with its exhibits, is the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, negotiations and communications regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

(f) Severability. If any portion of this Agreement shall be declared invalid or unenforceable by any competent arbitrator or court of competent jurisdiction, that portion or provision shall be construed as nearly as possible so as to effectuate the parties' contractual intentions evidenced through such invalid or unenforceable provision, and the remaining portions thereof shall nonetheless remain in full force and effect.

(g) Counterparts. This Agreement may be executed in multiple counterparts (and by facsimile), and each of which, when executed, shall be deemed to be an original copy hereof, and all such counterparts together shall constitute one single agreement.

(h) No Third Party Beneficiaries. Subscriber acknowledges and agrees that this Agreement is between Subscriber and Cabinet only, that Cabinet will have no responsibility to any Authorized User(s) or third parties, and that there are no intended third party beneficiaries to this Agreement.

(i) Authority of Subscriber Representative. Subscriber warrants and represents that its representative confirming that Subscriber is bound by the terms of this Agreement has authority to do so.

APPENDIX A – ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The current version of the CABINET MAGAZINE INSTITUTIONAL SUBSCRIPTION AGREEMENT is located at:

https://www.cabinetmagazine.org/subscribe/Cabinet_Magazine_Institutional_Subscription_Agreement_2021_12_15.pdf

Please complete and submit to subscriptions@cabinetmagazine.org

Through the signature of its authorized representative below, Subscriber (i) confirms that it has read and understands the terms of the Cabinet Magazine Institutional Subscription Agreement, and (ii) agrees that the Cabinet Magazine Institutional Subscription Agreement is a binding agreement between Cabinet and Subscriber.

CONFIRMED AND AGREED:

Subscribing Institution’s Name (“Subscriber”)

Library Agency Purchase Order Number (if applicable and known)

Subscriber’s Cabinet-assigned ID Number (if applicable and known)

Signature of Authorized Representative

Printed Name of and Title of Representative

Date

Email