

ALUKA

PARTICIPATION AGREEMENT

Aluka is a non-profit initiative that has brought scholars, archivists, librarians, and activists from around the world together in the creation of a digital library of content from and about Africa. This participation agreement (this “**Agreement**”) describes the terms upon which your institution may join Aluka and provide for access to the digital library, as well as provide scholars at your institution with the opportunity to contribute materials they would like to share.

Your Institution’s Information

(Please type or print clearly, and ensure this information remains current by providing regular updates.)

Name: _____

Address: _____

Country: _____

Other Locations or Campuses:

(Aluka may consider multiple campuses or locations to be separate institutions, and participation fees and license terms will be proposed accordingly.)

Primary Contact

(The person responsible for overseeing your institution’s participation in Aluka)

Name: _____

Title: _____

E-Mail: _____

Telephone: _____

Facsimile: _____

Address: _____

Technical Contact

(The person responsible for coordinating technical details with Aluka)

Name: _____

Title: _____

E-Mail: _____

Telephone: _____

Facsimile: _____

Address: _____

Billing Contact

(The person responsible for coordinating billing and payments with Aluka)

Name: _____

Title: _____

E-Mail: _____

Telephone: _____

Facsimile: _____

Address: _____

Technical Information

IP Addresses or domain ranges for computers at your locations or campuses:

(IP addresses or domain ranges must be static and restricted. If IP information is not available, Aluka User Services staff will contact the Technical Contact listed above to obtain the information and initiate access with an Institutional ID and Password.)

If you use or plan to use a proxy server, please provide the information below.

Type of proxy server: _____

IP address for the proxy server: _____

URL of the webpage that offers information about how to use the proxy:

1. DEFINITIONS

The terms below shall have the following meanings for purposes of this Agreement:

“**Digital Library**” means the digital library of content from and about Africa that has been gathered by the Aluka initiative and contributed by participating institutions and their users. A summary of the current contents of the Digital Library is available at <http://www.aluka.org/page/content/index.jsp> or upon request.

“**Materials**” means the digital materials made available in the Digital Library for use by participating Institutions and their Users, or any portion of these materials.

“**Institution**” means any institution participating in the Aluka initiative. A list of the institutions participating in Aluka is at www.aluka.org/page/join/participants.jsp. Any references to “**you**” or “**your Institution**” refer to the institution that has entered into this Agreement.

“**User Rules**” means the terms and conditions Users must agree to in order to use the Digital Library. A copy of the current version of the User Rules is attached.

“**Users**” means the persons who are authorized to use a participating Institution’s libraries or other library resources. Your Users must be either affiliated with your Institution as students, faculty or employees, or walk-in users of facilities that are open to the public.

2. USE OF THE DIGITAL LIBRARY

A. Your Institution and its authorized Users shall have the right to access the Materials in the Digital Library as more fully described in this Agreement.

B. It is understood that the purpose of the Digital Library is to facilitate access to the Materials by participating Institutions and their authorized Users solely for research, scholarship and similar non-commercial educational purposes. Use of the Digital Library or the Materials for commercial purposes, including but not limited to the sale of Materials, fee-for-service use of the Digital Library, or commercial reproduction or distribution of Materials in any form, is strictly prohibited.

C. Your Institution must agree, and your Users will be required to agree as a condition of access to the Materials, to respect the rights of all copyright holders in the Materials, and not knowingly use the Materials in a manner that would infringe the copyright in the Materials, subject to and in accordance with laws and rulings with respect to “fair use” or “fair dealing” and other laws relating to the use of copyrighted materials for scholarly purposes that may apply in your jurisdiction. From time to time, Aluka may be required to make changes to the User Rules, or to suspend the availability of certain Materials in the Digital Library, where in our judgment such measures are reasonably necessary in order to respect the rights of copyright holders or otherwise to comply with applicable law.

D. Your Institution and your Users must agree to seek permission of the copyright holder for any use other than for research and scholarship in accordance with the terms of this Agreement, and that they will not copy, download or attempt to download any substantial portion of the Materials in the Digital Library, or remove, obscure or modify any copyright or other notices included in the Digital Library or the Materials. Materials may not be saved or printed except for use by or distribution to Users at participating Institutions in accordance with the User Rules. You may provide links to specific Materials in the Digital Library on websites maintained for the use of your Users, and Aluka will provide instructions as to how to create such links, but downloading or saving local copies of the Materials for electronic reserve and similar purposes is not permitted.

E. You agree to use reasonable good faith efforts (1) to prevent any uses of the Digital Library or the Materials that violate the User Rules or the terms of this Agreement, (2) to prevent persons other than authorized Users from accessing the Digital Library by means of the access Aluka is furnishing to your Institution, and (3) to notify Aluka promptly if you learn of any use of the Digital Library that is unauthorized or violates the User Rules or this agreement. You understand that in the event of any unauthorized use of the Digital Library or the Materials, Aluka may be required to suspend or terminate that User's access to the Digital Library, and in some cases to suspend use of the Digital Library from the Internet Protocol ("IP") address or addresses from which the unauthorized use occurred pending resolution of the problem. In the event of any such unauthorized use, you will use reasonable efforts to assist Aluka in resolving the problem to the parties' mutual satisfaction.

3. CONTRIBUTING CONTENT TO THE LIBRARY

A. Aluka actively solicits contributions and recommendations of relevant content for the Digital Library from its Participating Institutions and their Users. Our goal is to make the Digital Library a community where interested institutions and scholars can actively share source materials and scholarship and thereby enrich the quality of research, scholarship and teaching regarding Africa.

B. The decision whether to include materials in the Digital Library will be made by Aluka and its scholarly advisors on the basis of relevance, whether adequate quality digitized versions and metadata are available or can be made available at reasonable cost, whether any required consents can be obtained, and any other legal or practical considerations raised by the contributed or recommended materials. In cases where a User is seeking to contribute his or her own content, the User will be asked to sign a standard form of Aluka consent representing that he or she has the necessary rights. In cases where a participating Institution wishes to contribute or make available larger collections of content to Aluka, the parties will enter into a separate agreement.

4. ACCESSING THE LIBRARY; AVAILABILITY AND SUPPORT

A. Each participating Institution is responsible for establishing and maintaining its own equipment and Internet access. Aluka is dedicated to trying to make the Digital Library available to all Institutions and their Users, and Aluka will try to design the delivery platform and Digital Library in a

way that will make use of the most widely available technologies, and make use of limited bandwidth as efficiently as possible in order to try to accommodate all Users. Aluka will also use reasonable efforts to design the delivery platform and Digital Library in a way that makes Aluka as accessible as possible to Users with disabilities and to comply with the terms of any applicable laws relating to accessibility of services to people with disabilities.

B. Aluka will use reasonable efforts to support your Institution and its Users in use of the Digital Library, as more fully described on Schedule B. Aluka will use reasonable efforts to make the Digital Library available online via the Internet to your Institution and its Users on a continuous basis, subject to periodic unavailability due to maintenance of equipment, the installation or testing of software, the loading of content as it becomes available, and events outside the control of Aluka. If you should ever wish to discontinue participation in Aluka due to persistent or severe service problems or outages, you may do so under Paragraph 6B.

C. Access to the Digital Library shall be controlled by the use of IP addresses, as well as registration of individual Users by Aluka. You will be responsible for providing lists of valid IP addresses or Users to Aluka upon request, and updating such lists on a regular basis. If you use a proxy server or other similar form of non-IP based remote access to provide access to the Digital Library to Users at other IP addresses, you agree to use reasonable efforts to work with Aluka to resolve any security issues that may arise to the parties' mutual satisfaction.

5. PARTICIPATION FEES

Participation fees vary according to the Institution's annual library expenditures and will be invoiced on an annual basis. Participation fees have been waived for non-profit institutions on the continent of Africa. For more details on how to calculate the participation fee, if any, payable by your Institution, please see Schedule A. You shall be responsible for any applicable taxes, subject to any applicable exemptions from taxes for which you provide appropriate documentation.

6. TERM AND TERMINATION

A. This Agreement will take effect when signed by both parties and will have an initial term of three years from that date. This Agreement will thereafter renew for successive one (1) year terms unless terminated by written notice prior to payment of the annual invoice for such renewal term.

B. If either your Institution or Aluka believes there has been a material breach of this Agreement, they shall notify the other party in writing, and the other party shall have thirty (30) days from notice to cure the breach and notify the complaining party of the steps it has taken to try to resolve the problem. If the breach is not cured, or by its nature cannot be cured, the non-breaching party shall have the right to terminate this Agreement immediately by written notice.

C. Your Institution may terminate this Agreement by written notice if, in its reasonable opinion, such action is necessary due to changes in the User Rules, Materials made available through the

Digital Library, or authentication and security arrangements required in connection with access to the Digital Library, if such changes would materially impair the ability of your Institution and its Users to use the Digital Library for its intended purposes. Aluka may terminate this Agreement by written notice if, in Aluka's reasonable opinion, such action is necessary due to violations of the User Rules.

D. In the event of any termination of this Agreement due to breach by Aluka under Paragraph 6B, or under Paragraph 6C, Aluka shall provide a prorated refund of the fees paid to support the Digital Library for the remaining portion of the term.

7. INTELLECTUAL PROPERTY AND TRADEMARK MATTERS

A. Your Institution agrees, and your authorized Users shall be required to agree, that the Materials (other than Materials that are in the public domain under applicable law), the content of the Aluka delivery platform other than the Materials, and any proprietary software distributed by Aluka to facilitate use of the Digital Library, are subject to copyright and other third party rights, and may not be used except as expressly permitted by this Agreement or applicable law.

B. Neither party may use the other's name or trademarks in a way likely to cause confusion as to the origin of goods or services, or to endorse or show affiliation with the other, except as specifically approved. Aluka may include your Institution in a list of all of the institutions that are participating in Aluka. Your Institution may announce its participation, however we ask that you provide Aluka a copy of any such announcement in advance.

8. REPRESENTATIONS AND WARRANTIES

A. 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.

B. You represent and warrant that the list of campuses and facilities, and any lists of IP addresses and/or passwords, that you provide to Aluka under this Agreement will be true and correct to the best of your knowledge. If you wish to add additional campuses or facilities, please contact Aluka.

C. Aluka is unable to verify the accuracy or otherwise control the information contained in the Materials, and therefore makes no representation or warranty, and expressly disclaims any liability, with respect to the content of the Materials, including any responsibility for inaccurate information or omissions of information, libel, breaches of privacy, any implied endorsement or violation of rights of publicity or trademark rights, any violations of authors or others' moral rights to attribution and the integrity of their work, or the disclosure of confidential information therein.

D. In the event that your Institution receives any written notice that use of the Materials constitutes infringement, or of any claim of libel or other claim pertaining to any Materials, you agree to notify Aluka promptly. Upon such notification, or if Aluka learns of such a claim from another source, Aluka may remove such Materials from the Digital Library pending the resolution of such claim. Aluka agrees to indemnify and hold harmless your Institution and its Users against damages for copyright infringement (and related legal fees and expenses) arising out of use of the Digital Library for its intended purposes in accordance with the User Rules and this Agreement, provided that they notify Aluka promptly of any such claim and allow Aluka to control the defense and/or settlement of the dispute. Your Institution agrees to indemnify Aluka against any damage arising from breach of this Agreement to the extent allowed by applicable law, it being understood that only individual Users shall be held responsible for any violations by them of the User Rules.

E. Aluka will not be liable for any claim or damages of any kind resulting from the unavailability of the Digital Library or any particular Materials. If the Digital Library fails to operate in conformance with the terms of this Agreement, you should notify Aluka, and we will endeavor to remedy the problem. In no event, however, shall Aluka bear any liability in excess of the fees paid to Aluka absent willful misconduct. 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.

F. THE LIBRARY IS PROVIDED ON AN “AS IS” BASIS. ALUKA DISCLAIMS ANY AND ALL WARRANTIES OR REPRESENTATIONS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT, WHETHER ORAL OR WRITTEN AND WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WHILE ALUKA WILL USE REASONABLE EFFORTS TO DETECT ANY COMPUTER VIRUS OR OTHER HARMFUL SOFTWARE, ALUKA CAN OFFER NO ASSURANCES THAT VIRUSES OR OTHER SUCH HARMFUL SOFTWARE WILL ALWAYS BE SUCCESSFULLY DETECTED.

9. NOTICES

All notices given pursuant to this Agreement shall be in writing and by registered mail or may be delivered by hand or by overnight carrier, or shall be deemed received five (5) business days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent as specified above. Either party may from time to time change its address for notices by sending written notice of the new address to the other party.

10. MISCELLANEOUS

A. This Agreement constitutes the entire agreement of the parties and replaces all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. In the event your Institution has entered or enters into a separate agreement with Aluka relating

to collaboration between Aluka and your Institution for specific content contributed or to be contributed to the Digital Library, nothing herein shall affect the validity of that agreement, and in the event of any conflict between the terms of that agreements and this Agreement, the terms of that agreement shall be controlling. Only a written amendment signed by an authorized representative(s) of your Institution and Aluka can change the terms of this Agreement or any other agreement between your Institution and Aluka.

B. Nothing in this Agreement shall give either party the right or ability to act on behalf of the other or otherwise create any agency, joint venture or legal partnership between the parties.

C. If a party chooses to waive compliance with any of the terms of this Agreement, they shall not thereby be deemed to have waived any other terms of this Agreement or any continuing breach of this Agreement.

D. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable under the law of any jurisdiction, it shall be replaced with a provision that comes as close as possible under applicable law to the provision that has been deemed invalid, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

E. Neither party may assign or transfer, 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. Currently, Aluka is being incubated within Ithaka Harbors, Inc., a non-profit organization. In the event Ithaka establishes or selects another non-profit organization to operate Aluka and/or the Digital Library, Ithaka will provide notice of the assignment, and if you have any reasonable objection to the assignment, you may give notice of your election to terminate this Agreement within forty-five (45) days of the date of such notice.

[Signature page follows.]

IN WITNESS WHEREOF, this Participation Agreement has been agreed and accepted as of the last date set forth below, as witnessed by the signatures of duly authorized representatives of the parties:

On Behalf of Your Institution:

On Behalf of Aluka:

Name of Institution or Organization

Signature

Name: _____

Title: _____

Date: _____

Signature

Name: _____

Title: _____

Date: _____

SCHEDULE A

PARTICIPATION FEE FOR NON-AFRICAN INSTITUTIONS

Total of Licensee's Library Materials Expenditure (LME) for the most recently completed fiscal year (the year ended on _____, 200__): \$ _____

Network Participation Fee (NPF) (to be completed by Aluka) \$ _____

The Network Participation Fee is the annual payment by Licensee to support Aluka. Licensee will be asked to confirm their library materials expenditures for the most recently completed fiscal year, and Aluka will determine the appropriate Network Participation Fee based on the LME. For further details regarding how the Network Participation Fee will be determined, please see www.aluka.org/about/participation_fees.html.

Aluka will provide additional pass-through savings of 5% to libraries that belong to a participating consortium. Please contact Aluka Library Relations for a list of participating consortia. Please list any consortia to which your institution is a member:

Consortia Participation: _____

Licensee will be invoiced for the Network Participation Fee on an annual basis, and such amount shall be due and payable within thirty (30) days of the date of the invoice.

The Network Participation Fee may be subject to reasonable increases, however in the event of any increase, Licensee may terminate this Agreement by written notice to Aluka within (60) days after notice of the increase. Any such termination shall be subject to Section 6D of this Agreement.

If Licensee does not want to be charged Value Added Tax (VAT), please provide the VAT #:
_____ *(applicable to international institutions only)*

All payments shall be made by check, in U.S. dollars, payable to Ithaka Harbors, Inc. and shall be mailed to the attention of:

Financial Services Department – Aluka
Ithaka Harbors, Inc.
151 East 61st Street
New York, New York 10065

Payments may also be made by credit card or wire transfer. Any payments made more than thirty (30) days after they are due and payable shall be subject to financing fee of 1.5% per month.

SUPPORT

Aluka will provide the following support to assist Licensee and Authorized Users in their use of the archive. Support will be provided at reasonable levels during the term of the Agreement.

Support will be available by email from 9:00am to 5:00pm Eastern Standard Time, Monday through Friday, for feedback, problem-solving, or general questions. The contact information is as follows:

Aluka User Services
100 Campus Drive, Suite 100
Princeton, New Jersey 08540
Email: user_services@aluka.org
+1 (609) 986-2263

Initial support will include:

- Assistance with establishing access to Aluka
- Providing general information and training materials
- Establishing participation in Aluka's email groups and/or listservs

Continuing support will include:

- Troubleshooting problems with access or use of Aluka
- Updating IP addresses and other access-related information as needed
- Online help files and user documentation
- Providing regular updates via email and/or listservs regarding scheduled content updates, upgrades, and maintenance
- Maintenance of email groups and/or listservs for discussion of Aluka-related matters