



2005 Sooke Road, Victoria BC V9B 5Y2
Phone: 250-391-2554 Fax: 250-391-2556
Email: coppul@royalroads.ca
Website: www.coppul.ca

THIS LICENSE IS AGREED the 10th day of December 2009

BETWEEN

BRILL of ~~153 Milk Street, Sixth Floor, Boston, MA 02109~~ ("the Licensor")

*PLANTYJYSTRAT 2 2321 JC LEIDEN,
THE NETHERLANDS*

MSD 12/14/2009

and

COUNCIL OF PRAIRIE AND PACIFIC UNIVERSITY LIBRARIES (COPPUL),
2005 Sooke Road, Victoria, British Columbia, V9B 5Y2 ('the Consortium')

WHEREAS the Licensor holds or administers the rights granted under this Agreement;

AND WHEREAS the Licensor desires to grant to Members of the Consortium the License to use such rights for the Fee, as detailed in the attached Schedule(s), subject to the terms and conditions of this Agreement,

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

In this License, the following terms shall have the following meanings:

Member COPPUL member library or affiliate member library participating in a license, as detailed in the attached Schedule(s).

Authorized Users All current students, staff, and faculty of the Member, whether part-time, full-time, permanent, contract, adjunct, or Visiting; and retired faculty and staff with Emeritus or equivalent status.

Individuals not affiliated with Licensee who are physically present at Member's site(s) as designated in Schedule 1, also known as "walk-in users" shall be deemed to be Authorized Users under the Terms and Conditions of this Agreement.

Licensed Material The electronic materials as detailed in the attached Schedule(s).

2. LICENSE GRANT

- 2.1 The Licensor hereby grants to the Members of the Consortium, subject to and in accordance with the terms of this License, the non-exclusive right to permit Authorized Users to access and use the Licensed Material at the sites of Members or remotely, through secure authentication.

3. PERMITTED USES

Members may allow Authorized Users to:

- 3.1 ACCESS and USE the Licensed Materials from the premises of the Participating Member, or remotely via secure authentication, in order to search, retrieve, display and view the Licensed Material.
- 3.2 CREATE PERSISTENT LINKS to individual articles for access by Authorized Users for Permitted Uses under this Agreement, from within secure authentication environments.
- 3.3 Supply to an Authorized User of another academic, research, or other non-commercial library (whether by post or fax or secure transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing), for the purposes of research or private study and not for Commercial Use, a paper copy of an electronic original of an individual document being part of the Licensed Materials. Members shall not supply any Non-Subscribed Content to libraries that are not Members of the Consortium. Members shall not honour requests received from for profit companies or directly from individuals.
- 3.4 SCHOLARLY SHARING. Authorized Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use.
- 3.5 FAIR DEALING / CREATIVE COMMONS. Nothing in this Agreement restricts the rights of Authorized Users under the doctrine of "fair dealing" as defined under the laws of Canada.
- 3.6 ALTER or MODIFY the Licensed Materials as necessary to provide an equivalent level of service to Authorized Users with appropriately documented print or other disabilities.
- 3.7 PERPETUALLY ACCESS content added to the Licensed Materials to which the Consortium subscribed during the term of this Agreement, if acquired through an Outright Purchase Agreement. Perpetual access may be provided by local loading of the content by Consortium or Member, for access as provided for under this Agreement, or at the vendor's site after termination of the remainder of the contract, in which case reasonable fee(s) for ongoing access may apply.

The Consortium or Member may participate in networks with other Libraries or Consortia for the purposes of ensuring preservation (e.g., LOCKSS networks), but not for providing access to other members of such networks not included in this Agreement.

- 3.8 **COURSE PACKS / ELECTRONIC RESERVES / VIRTUAL LEARNING.** Members and Authorized Users may incorporate parts of the Licensed Material in course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network (only accessible to Authorized Users by Secure Authentication). Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorized Users.

If the Licensor does not have the right to grant all rights under 3.8, these rights will apply exclusively to the content for which the Licensor does have such rights, as specified in the attached Schedule(s).

- 3.9 **FEDERATED SEARCH.** Members and Authorized Users may include the Licensed Material in federated or metasearch services.
- 3.10 **DATA and TEXT MINING.** Members and Authorized Users may conduct research employing data or text mining of the Licensed Materials.

4. **PROHIBITED USES**

- 4.1 **COMMERCIAL USE.** Use of the Licensed Materials for the purposes of monetary reward (whether by the Consortium or Authorized Users) by means of sale, resale, loan, transfer, hire or other form of exploitation. For the avoidance of doubt, recovery of direct costs incurred by the Member in the course of providing access to Authorized Users (e.g. printing, photocopying, or administration fee), is not deemed to be Commercial Use.
- 4.2 **SUBSTITUTION FOR LICENSE.** No provision of this Agreement is intended to provide such substantial use as to constitute a substitution for an institutional license by a third party institution.

5. **THE LICENSOR'S UNDERTAKINGS**

The Licensor shall:

- 5.1 Warrant to the Consortium that the total downtime directly attributable to the Server supporting the Licensed Materials will amount to less than the

equivalent of one full day in any given calendar month. In the event that the total downtime exceeds this amount, the Licensor will make appropriate restitution, such as providing a special discount equivalent to the amount of the excessive downtime to the product on the next renewal, extending the license term, or providing a refund.

- 5.2 The Publisher reserves the right at any time to withdraw from the Licensed Materials and the Non-Subscribed Content any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Consortium of such withdrawal. If the withdrawal results in the Licensed Materials being no longer useful to the Consortium, the Consortium may within thirty days of such notice treat such changes as a breach of this License under sections 8.2 and 8.3 of this Agreement.
- 5.3 Give prompt notice to the Consortium of any significant change in business model with implications for the costs of the Members and revenue for the Licensor, including any optional open access model allowing Authors who are also Authorized Users to make their work openly accessible, for a fee.
- 5.4 The Publisher provides the Consortium with the opportunity to generate statistics using the administrative services at <http://subs.brillonline.nl>.
- 5.5 Notice of the Use of Digital Rights Management Technology.
In the event that Licensor utilizes any type of digital rights management technology to control the access to usage of Licensed Materials, Licensor agrees to notify the Consortium of the name, contact information and any technical specifications for the digital rights management technology utilized. In no event may such Digital Rights Management Technology be used in such a way as to limit the usage rights of a Member or any Authorized User as specified in this Agreement or under applicable law.
- 5.6 Notice of the Use of Digital Watermarking Technology.
If Licensor utilizes any type of digital watermarking technology for any element of the Licensed Materials, Licensor agrees that watermarks will not be visible to the human eye and will not degrade image quality. These watermarks shall not contain information pertaining to Authorized Users such as account numbers or IP addresses. If digital watermarking technology is used, Licensor agrees to notify the Consortium, in advance, of the name, contact information, and any technical specifications for the technology used.

6. THE CONSORTIUM'S UNDERTAKINGS

The Consortium and each Member shall:

- 6.1 Use reasonable efforts to ensure that access is restricted to Authorized Users, and that Authorized Users are made aware of, and comply with, the terms and conditions of this Agreement.

7. LICENSE FEE

- 7.1 In consideration for the rights granted under this Agreement, the Consortium agrees on behalf of the Members that the Members will pay the Fee for the Products and/or Services listed in Schedule 1 within thirty (30) days of receipt of invoice. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Member shall be liable for any such taxes in addition to the Fee.

8. TERM AND TERMINATION

- 8.1 This Agreement shall commence on the date indicated on the first page of this Agreement, and shall apply to all Licensed Materials for the time period(s) as indicated on the attached Schedule(s). Subscriptions as indicated on the attached Schedule(s) will automatically renew at the end of the subscription period unless both parties have previously agreed to cancel the subscription.
- 8.2 In the event that either party believes that the other materially has breached any obligations under this Agreement, such party shall notify the breaching party in writing. The breaching party shall have 30 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 30-day time period, the non-breaching party shall have the right to terminate the Agreement without further notice.
- 8.3 In the event of early termination permitted by this Agreement, the Consortium shall be entitled to a refund of any fees or pro-rata portion thereof paid by the consortium for any remaining period of the Agreement from the date of termination. This paragraph is invalid if the Consortium commits a willful, material and consistent breach of the terms of this Agreement, and fails to remedy the breach within thirty (30) days of notification by the Licensor.
- 8.4 The Licensor hereby grants to the Consortium and its Members a nonexclusive, royalty-free, perpetual license to use all material added to the Licensed Materials to which the Consortium subscribed during the term of this Agreement, if acquired by the Member by way of an Outright Purchase Agreement. Usage of materials acquired in this fashion shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement.

9. GENERAL

- 9.1 Warranty and Indemnification. The Licensor warrants that it holds the rights granted under this Agreement and that the Licensed Materials used in accordance with this Agreement do not infringe the copyright or any other proprietary or intellectual property rights of any person. The Licensor indemnifies and holds the Consortium harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Consortium or any of its Members claiming actual or alleged infringement of such rights.
- 9.2 This Agreement and attached Schedule(s) signed by Licensor and Consortium shall comprise the complete terms and conditions of use. If there is a "click-through agreement for users, this Agreement shall override the "click-through" agreement.
- 9.3 Alterations to this Agreement and to the Schedules to this Agreement are only valid if they are recorded in writing and signed by both parties.
- 9.4 Assignment. This Agreement may not be assigned by either party to any other person or organization without the prior written consent of the other party, nor may either party sub-contract any of its obligations, except as provided in this Agreement in respect of the management and operation of the Server and the Licensor's Representative, without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 9.5 Notice. Any notices to be served on either of the parties or on a Member by the other shall be sent by registered mail, courier or facsimile to the address of the other as its address for service of notices. Any such notice sent by registered mail shall be deemed to have been given 14 days after the date of posting the mail. Any such notice sent by courier or by facsimile shall be deemed to have been given on the date of receipt of the courier or facsimile.
- 9.6 Force Majeure. Neither party's nor a Member's delay or failure to perform any provision of this Agreement, as a result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, "denial of service" or similar attacks, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Agreement.
- 9.7 Waiver. Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.

- 9.8 Severability. If any provision of this Agreement is found invalid or unenforceable pursuant to a decree or decision of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable according to its terms.
- 9.9 If the parties disagree over an interpretation of this Agreement or whether a party or a Member is in breach of any part of this Agreement, the parties and any such Member shall in good faith enter into negotiations to resolve the disagreement and discuss the feasibility of resolving the disagreement by mediation or other means short of litigation. The parties shall cooperate in good faith in pursuing mediation or other such means.
- 9.10 This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia, and the laws of Canada applicable therein, including the applicable provincial laws regarding Freedom of Information and Protection of Privacy, and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the courts of British Columbia and Canada.

AS WITNESS the hands of the parties the day and year below first written

Accepted:

FOR THE LICENSOR: BRILL

Signature:  Date: 12/14/2009

Name (in block capitals): M STEPHEN DAVIS

Position / Title: EXECUTIVE VICE-PRESIDENT

FOR THE CONSORTIUM: COUNCIL OF PRAIRIE AND PACIFIC
UNIVERSITY LIBRARIES

Signature:  Date: December 10, 2009

Name (in block capitals): Alexander Slade