

**Consortia Canada**

**License Agreement for Electronic Products**

**THIS AGREEMENT** is made the 5th day of April 2018

**BETWEEN: Annual Reviews** of 4139 El Camino Way, Palo Alto, California, 94303-0139 USA (herein referred to as "the Licensor")

**AND:**

- Council of Pacific and Prairie University Libraries Room 219 Koerner Library University of Vancouver, British Columbia, V6T 1Z2 (COPPUL),
- Ontario Council of University Libraries, 130 St. George Street, Toronto, Ontario, M5S 1A5 (OCUL),
- The Council of Atlantic University Libraries / le Conseil des bibliotheques universitaires de l'Atlantique, 84 Chain Lake Drive, Suite 402 Halifax, Nova Scotia, B4S 1A2 (CAUL-CBUA),
- Bureau de coopération interuniversitaire (BCI) 500, rue Sherbrooke Ouest, bureau 200, Montréal, QC H3A 3C6

(herein referred to as 'the Licensee').

"Licensee" is authorized to act for and sign this Agreement on behalf of member libraries hereinafter known as the "Member Institutions." Rights and responsibilities referenced in this Agreement in regard to "Licensee" shall apply to all the Member Institutions covered under this Agreement; however, Licensee is responsible only for fulfillment of its individual responsibilities under this Agreement. Neither Licensee nor any other Member Institution shall be liable for any breach or default of another Member Institution. Member Institutions are listed in Schedule 1.

Where applicable, additional Exhibits and Appendices may be attached to address more specific Terms and Conditions specific to certain formats such as e-books, or special purchase conditions such as Perpetual Access, in which case the attached Exhibits and Appendices form an integral part of this Agreement.

**IT IS AGREED AS FOLLOWS**

**1. DEFINITIONS**

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

Authorized User	All full and part time students, faculty and employees (including permanent, temporary, contract or visiting) and researchers associated with the Member Institutions, regardless of physical location of such persons; retired faculty and staff with Emeritus or equivalent status; all registered patrons of the Member Institution, or other persons affiliated with the Member Institution or otherwise permitted to use the facilities of the Member Institution and authorized to access the Licensed Materials.
-----------------	---

Walk-In Users	Individuals not affiliated with a Member Institution who are
---------------	--

physically present at Member Institution sites set out in Schedule 1 shall be deemed to be Authorized Users under the terms and conditions of this Agreement. Additional groups of Authorized Users such as Member Institution alumni may be included, as where and to the extent set out in Schedule 1. For the avoidance of doubt, Walk-In Use is intended for individual users, not as a substitution for a license by another institution or organization.

Commercial Use	Use of the Licensed Materials for the purposes of monetary reward (whether by Member Institutions or Authorized Users) by means of sale, resale, loan, transfer, hire or other form of commerce. For the avoidance of doubt, neither recovery of direct costs by the Member Institution from Authorized Users, nor use of the Licensed Materials by the Member Institution or by an Authorized User in the course of research funded by a commercial organization, is deemed to be Commercial Use.
Course Packs	A collection or compilation of materials for example book chapters, journal articles assembled by staff of Member Institution for use by students in a class for the purposes of instruction.
Digital Rights Management	Also referred to as “DRM”, access control technologies that are used by hardware manufacturers, licensors, copyright holders and individuals to limit the use of digital content and devices in on-line or off-line environments.
Digital Watermarking Technology	The process of embedding information into a digital document, which may be used to verify its authenticity or the identity of its owners.
Electronic Learning Environments	Use of parts of or linking to the Licensed Material in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments, library environments, and courseware technologies) hosted on a Secure Network.
Electronic Reserves	Electronic copies of Licensed Materials (e.g. book chapters, journal articles, abstracts) made and stored on the Secure Network pursuant to Section 3.8 by Member Institution for use by Authorized Users in connection with specific courses of instruction offered by Member Institutions to such Authorized Users.
License Fee	The applicable fee for a license to the Licensed Materials, whether a one-time fee or an annual or other subscription fee, as set out in Schedule 1, or in new Schedules to this Agreement which may be agreed to by the parties from time to time.

Open Access Repository Services	Open-access digital repository services such as those provided by the Author's employing institution, an academic consortium, a discipline-based entity, or a governmental funding agency.
Perpetual Access	Provisions in this Agreement for continuation of access, archiving and use of Licensed Materials that shall survive any termination of the License Agreement and ensure continued access consistent with current recognized standards in the publishing industry.
Secure Network	A computer network that is only accessible to Authorized Users by Secure Authentication.

## **2. LICENSE GRANT**

- 2.1 The Licensor hereby grants to the Licensee and Member Institutions, subject to and in accordance with the terms of this License, a non-exclusive and non-transferable right to permit Authorized Users to access and use the Licensed Materials at the sites of Member Institutions or remotely, through secure authentication.
- 2.2 In consideration for the Licensor's licensing of the Products and/or Services listed in the attached Schedule(s), the Licensee and Member Institutions agree to pay to the Licensor the Fee in accordance with the provisions of the attached Schedule(s).
- 2.3 The Licensor hereby grants to the Licensee and the Members a non-exclusive, royalty-free, perpetual license for Members and their Authorized Users to use, after the termination of this License Agreement, the Licensed Materials for which Perpetual Access rights are granted, as specified in Schedule 1. Such use shall be in accordance with the provisions of this License Agreement relating to the use of Licensed Materials, including restrictions on use and related liabilities, which provisions shall survive any termination of this License Agreement.

## **3. PERMITTED USES**

Member Institutions and Authorized Users may use the Licensed Materials as follows:

- 3.1 **ACCESS and USE** the Licensed Materials from the premises of the Member Institution, or remotely via secure authentication, in order to search, retrieve, download, display, print 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 **INTERLIBRARY LOAN** by paper or electronic means, a single copy of an individual document within the guidelines of traditional interlibrary loan practices and applicable copyright laws.

- The Licensed Material may be used as a source for interlibrary loan in accordance with Canadian and relevant international copyright laws and standard library interlibrary loan procedures.
- 3.4 **SCHOLARLY SHARING.** Authorized Users may transmit to a third party colleague in hard copy or electronically one copy of Licensed Materials for personal use or scholarly, educational, or scientific research or professional use.
- 3.5 **USE IN ACADEMIC RESEARCH.** Member Institutions and Authorized Users may incorporate limited parts of the Licensed Materials in printed or electronic form in assignments, portfolios, theses and dissertations, including reproductions of the Licensed Material for library deposit and other non-commercial uses.
- 3.6 **FAIR DEALING / CREATIVE COMMONS.** Notwithstanding any other provisions of this Agreement, nothing shall in any way restrict or limit the ability of Member Institutions, Authorized Users or Walk-in Users to engage in or conduct any activity that is otherwise permitted under Canadian copyright laws, including without limitation pursuant to any fair dealing exceptions, or as permitted under Creative Commons licensing.
- 3.7 **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.
- 3.8 **COURSEPACKS / ELECTRONIC RESERVES / VIRTUAL LEARNING.** Member Institutions and Authorized Users may incorporate links to 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 the 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 for all Licensed Materials, 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.** Member Institutions and Authorized Users may include the Licensed Material in federated or metasearch services.
- 3.10 **DATA and TEXT MINING.** Member Institutions and Authorized Users may conduct research employing data or text mining of the Licensed Materials and disseminate results publicly for non-commercial purposes when a specific request is made to the Licensor
- 3.11 **TRAINING AND MARKETING MATERIALS.** Member Institutions may display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.

#### **4. PROHIBITED USES**

- 4.1 **COMMERCIAL USE.** Use of the Licensed Materials for the purposes of monetary reward (whether by Member Institutions, Authorized Users or Walk-in Users) by means of sale, resale, loan, transfer, hire or other form of commerce. For the avoidance of doubt, recovery of direct costs incurred by the Member Institution in the course of providing access to Authorized Users or Walk-in Users (e.g. printing, photocopying, or administration fee) including inter-library loan, 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. For example, Walk-In User rights are designed for the provision of services to individuals, not blanket rights for all of the users of another institution or organization.

## **5. THE LICENSOR'S UNDERTAKINGS**

The Licensor shall:

- 5.1 Warrant to the Licensee and the Member Institutions 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 Give prompt notice to the Licensee and the Member Institutions of any additions, modifications to, or deletions of the Licensed Material. Failure by the Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by the Licensee and the Member Institutions. If any modifications render the Licensed Materials less useful to the Member Institutions, the Licensee and the Member Institutions may treat such modifications as a material breach under sections 7.2 and 7.3 of this Agreement.
- 5.3 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 Licensee 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 Licensee, Member Institutions or any Authorized User as specified in this Agreement or under applicable law.
- 5.4 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 Member Institutions or Authorized Users such as account numbers or IP addresses. If digital watermarking technology is used, Licensor agrees to notify the Licensee, in advance, of the name, contact information, and any technical specifications for the technology used.

## **6. THE LICENSE AND MEMBER INSTITUTIONS UNDERTAKINGS**

The Licensee and each Member Institution 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. TERM AND TERMINATION**

- 7.1 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 terminate at the end of the subscription period unless both parties have previously agreed in writing including by email communication to renew the subscription.
- 7.2 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.
- 7.3 If this Agreement is terminated, or an institution cancels, access to the years for which Perpetual Access was licensed via
- a.) Licensor shall provide continuing online access to archival copies of the Licensed Materials on the Licensor's Platform without supplementary fees to the Licensee or Members;
  - b) Licensor agrees to continue to honour the Local Archiving and Hosting of Licensed Materials, Addendum September 24, 2010 between the Governing Council of the University of Toronto, acting as service provider to OCUL, and Annual Reviews, to the OCUL Electronic Products License, dated September 24, 2010, Exhibit A.
- 7.4 Funding Contingency. If funding of the Member Institution is materially reduced and the Member Institution thereby becomes unable to pay future amounts payable pursuant to this Agreement, the Member Institution may give the Licensor written notice of termination and this Agreement shall terminate for the Member Institution effective 30 days after the giving of such notice if the Member Institution has failed to pay the Fee for the calendar year in which such notice was given, or if the Member Institution has paid the Fee for the calendar year in which such notice was given, January 1 of the following year.
- 7.5 A Member Institution's performance of its obligations under a multi-year License Agreement shall be subject to and contingent upon the availability of funds provided, allocated, or allotted in institutional budgets for the purpose of payment for the subscription periods covered under the License Agreement. Any Member Institution may, at its sole option, provide written notice to the Licensor and Licensee, no later than 60 days before the annual renewal date within a multi-year agreement, of the inability to fulfill its obligations due to financial difficulties and the intent to terminate its participation in the License Agreement for the balance of the subscription period.

The determination of whether funds are available shall be made at the sole discretion of the applicable Member Institution, i.e. the Member will not need to demonstrate financial exigency by disclosing its financial statements. The termination of participation by any Member Institution will not constitute a default or a termination of participation of any other Member Institutions under the License Agreement and shall not be grounds for any increase in fees payable by other Members. Upon termination, a Member Institution has the ability to execute its Perpetual Access rights.

## **8. GENERAL**

- 8.1 Warranty and Indemnification. The Licensor warrants that it holds the rights granted under this Agreement, and indemnifies and holds the Licensee and its Member Institutions 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 Licensee or any of its Member Institutions claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this license for any reason. **NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS LICENSE IS APPLICABLE TO THIS INDEMNIFICATION.**
- 8.2 This Agreement and attached Schedule(s) signed by Licensor and Licensee 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.
- 8.3 Notice of terms of "click-through" license terms: in the event that Licensor uses a "click-through" license for end users, Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In the event of any conflict between the 'click-through' terms and this License, the terms of this License shall prevail.
- 8.4 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.
- 8.5 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 subcontract 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.
- 8.6 Notice. Any notices to be served on either of the parties or on a Member Institution 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 notice as delivered by the courier or facsimile.
- 8.7 Force Majeure. Neither party's nor a Member Institution'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.
- 8.8 Waiver. Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.
- 8.9 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.
- 8.10 If the parties disagree over an interpretation of this Agreement or whether a party or a Member Institution is in breach of any part of this Agreement, the parties and any such Member Institution 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.
- 8.11 This Agreement shall be governed by reciprocal law. Any dispute arising with respect to, or in connection with the agreement, shall be submitted to the jurisdiction of the courts of Licensor's Country or state, and governed by its laws if there are any claims to be dealt with from Licensor against the Licensee. Similarly, if any dispute arising with respect to, or in connection with the agreement shall be submitted to the jurisdiction of the courts in the state or country of the Licensee if there are any claims to be dealt with from Licensee against the Licensor. Counter claims will be dealt with at the same place and according to the same law, as applicable to the first claim



## SCHEDULE 1

### Business Terms

This Schedule 1 is dated April 5 2018 to the Agreement dated April 5 2018 between Annual Reviews and Licensee and the Member Institutions of Consortia Canada, as listed below.

**Authorized Users and Name and Description of Licensed Material:** see tables below

#### License Type:

Perpetual Access to full content after cancellation

- To get pre-2014 access to volumes institutions would need to have purchased the EBVC to have both ownership *and* access.
- For current participants in the license that are upgrading to new collection or renewing the most recent collection, they will receive current (2018) and 4(2014-2017) years of permanent rights to the content.
- For those customers who have purchased EBVC, we will fill in the gap for all journals between the most current collection and the back volumes giving access to all volumes within the collection.
- For institutions that are currently purchasing the smaller iterations of the Sciences collection and have purchased the EBVC we would also fill the gaps back to volume 1 for the journals they're adding. (see above)

For institutions that are currently purchasing the econ collection and have also purchased the EBVC (currently for Sciences only), we also include the Economics back files to 2009.

#### Term of Agreement:

#### Payment Schedule:

- Annual renewal
- Multi-year payment

**Fee and invoicing: Each consortium is invoiced and is responsible for payment of its own members.**

#### Access:

- Vendor Platform (*Please provide URL*) [www.annualreviews.org](http://www.annualreviews.org)
- Other, please specify (*for local loading, the Agreement for the Local Archiving and Hosting of Licensed Materials or a separate Agreement must also be signed*)

**Users: (in addition to Authorized Users, as defined in Section 1).**

- Alumni

#### Additional License Rights or Restrictions:

AUTHOR'S RIGHT TO USE THEIR OWN WORK

The AR's Author Policy is published at:<http://www.annualreviews.org/page/authors/author-instructions/submitting/copyright-guidelines> and is part of the agreement in its most recent version.

## **EXHIBIT A LOCAL ARCHIVING AND HOSTING OF LICENSED MATERIALS**

**THIS ADDENDUM IS AGREED** the 24th of September, 2010

### **BETWEEN**

Annual Reviews  
4139 El Camino Way  
Palo Alto, CA 94306

The Governing Council of the University of Toronto represented by the University of Toronto Libraries, acting as Service Provider to OCUL under contract (herein referred to as the Service Provider)

### **WHEREAS**

This is an Addendum to the OCUL Electronic Products License Agreement ("the License Agreement") dated September 24, 2010 and made between the Licensor and the Licensee's authorized representative, the Service Provider, as defined in section 1.11 of the License Agreement;

NOW IT IS HEREBY AGREED as follows;

From the Date hereof the License Agreement shall be amended as follows;

1. General.

Licensor agrees to deliver electronic copies of the Licensed Materials to the Licensee for the purposes of loading onto its Server(s) and to provide access to its Members and Authorized Users (also known as 'local hosting'). Licensee hosting services are limited to those Servers within the Server Domain name of Scholarsportal.info and related IP address ranges.

2. Format.

Licensor agrees to provide Licensed Materials in the following formats:

PDF image files for the full-text of content.

SGML or XML structure information (commonly known as 'headers' or 'header data') for each article conforming to the publishers DTD or XML Schema.

In addition, Licensor agrees to provide Licensee with any other metadata information, including any DTD or XML Schemas, for the purposes of accurately loading, storing and rendering the Licensed Materials on the Server(s) operated by the Service Provider. In addition Licensor agrees to Portability clause 6.6.

### 6.6 Portability

*The Licensee shall have the right to migrate the Licensed Materials on a locally hosted system to new formats, in response to technological change, in order to ensure ongoing access to Authorized Users, within the framework of this License. As per article 9.5, it is understood that digital rights management technology shall not interfere with this right.*

### 9.5 Notice of the Use of Digital Rights Management Technology clause 9.5.

*In the event that Licensor utilizes any type of digital rights management technology to control the access or the usage of Licensed Materials, Licensor agrees to notify Licensee 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 Licensee or any Authorized User as specified in this License or under applicable copyright law.*

Licensor agrees to use reasonable efforts to assist the Licensee in all activities required to render a faithful reproduction of the Licensed Materials on the Licensee's servers, including making appropriately trained staff available during normal business hours for assistance (8:00 am to 4:00 pm PST).

The content of the Licensed Materials provided shall not normally materially differ from any equivalent print editions of books. Any exceptions shall be identified and agreed upon in advance by both Licensor and Licensee.

### 3. Schedule of Delivery.

Licensor agrees to make copies of the Licensed Materials available to the Licensee in a format consistent with this License within a reasonable time period. For the purposes of clarity, Licensor will provide all current Licensed Materials within a period of 90 (days) working days from the date of this License. In addition, Licensor agrees to provide Licensee with any subsequent content or update to the Licensed Materials after the first appearance of the Licensed Materials on the Licensor's web server(s) within a period of 30 (days) working days.

### 4. Notification of Updates.

Licensor agrees to provide Licensee with information pertaining to any subsequent modifications to the Licensed Materials within a period of ten (10) working days.

### 5. Withdrawal of Licensed Materials.

Licensor shall give written notice of any intention to withdraw any part of the Licensed Materials from their Server in accordance with Section 6.9 of this License. Licensor may request that the Licensee remove an item or part(s) of the Licensed Materials present on the server(s) operated by the Service Provider by providing detailed rationale in writing to the Licensee no less than sixty (60) days prior to the scheduled date of removal from Licensor's Server. Licensor shall not knowingly cause the removal or deletion of any part of the Licensed Materials on the Server(s) operated by the Service Provider through the use of data loads or any related data delivery mechanisms or processes. Licensee retains the right to archive and continue to provide access to the withdrawn Licensed Material provided that