

THIRD IRON, LLC
BrowZine™ SOFTWARE LICENSE AND SERVICES AGREEMENT

THIS BROWZINE™ SOFTWARE LICENSE AND SERVICES AGREEMENT (this “**Agreement**”) is made and entered into effective as of May 1, 2018 (the “**Effective Date**”), by and between Third Iron, LLC, a Delaware limited liability company (“**Third Iron**”, address of PO Box 270400, St Paul, MN 55127) and the following consortium (“**Consortium** ”):

Library or Institution Name: Council of Prairie and Pacific University Libraries (COPPUL)
Address: Room 219, Koerner Library, University of British Columbia
1958 Main Mall
Vancouver, British Columbia, V6T 1Z2
Telephone: 519-501-5358
Fax: _____
Email: carol@coppul.ca
Contact Name: Carol Stephenson

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. DEFINITIONS. As used in this Agreement, each of the following capitalized terms shall have the meaning ascribed to such term in this Section 1. All capitalized terms not defined in this Section 1 shall have the meaning ascribed to such terms in the body of this Agreement.

“**Authorized Users**” means individuals who have been authorized by the Library (in compliance with the terms of the Library’s applicable agreements with its content licensors) to access Content using the BrowZine™ Software.

“**BrowZine™ Software**” means the Third Iron software and web application that combines and organizes the Content to create complete journals in a format optimized for mobile and desktop computers.

“**Content**” means the Library Content and the Open Access Content.

“**Library Content**” means individual journal articles and other content available through databases owned or properly licensed by the Library.

“**Open Access Content**” means individual journal articles and other content that is open and available to the public.

“**Participating Library**” means a library, acting in partnership with the Consortium, that has authorized the Consortium to subscribe to the Services and license the BrowZine™ Software on the library’s behalf and for the benefit of the Participating Library and its Authorized Users. Participating libraries are listed in Schedule 1.

“**Services**” means the connection and throughput management services provided by Third Iron that allow Authorized Users to access and view the Content through the Library’s databases using the BrowZine™ Software. More specifically, Third Iron will manage the throughput of the Content by passing through

credentialing data to allow Authorized Users to access the Content using the BrowZine™ Software. For purposes of clarity, Third Iron does not access or host any Content – the Content will be accessed directly by Authorized Users using the BrowZine™ Software.

2. THE SERVICES.

2.1 Distribution of Software and Provision of the Services. During the term of this Agreement and subject to the terms and conditions set forth herein, Third Iron agrees to (i) provide the Services to help Participating Libraries manage Authorized Users’ access to the Content, and (ii) make the BrowZine™ Software available to the Participating Library’s Authorized Users through the Apple Store and other similar distribution services.

2.2 Credentialing. By means of the Services provided by Third Iron hereunder, the BrowZine™ Software will work within the Participating Library’s credentialing systems (such as EZ Proxy, Shibboleth, IP, username/password, etc.) to ensure that only Authorized Users have access to the Content. The Participating Libraries are responsible to maintain the accuracy and integrity of its credentialing systems in order to ensure that no one other than Authorized Users is allowed to access the Library Content. The Consortium shall notify Third Iron promptly of any security issues with Participating Libraries’ credentialing systems or any unauthorized access or use of the Content. Third Iron may, without liability and without further investigation, rely on the Library’s credentialing systems and provide access to the Content to any person who has the appropriate login credentials.

2.3 Restrictions. The Participating Libraries shall only make the Content available to its Authorized Users in accordance with applicable laws and government regulations and the Library shall not (i) interfere with or disrupt the

integrity or performance of the Services, (ii) engage in any act that would violate (or cause Third Iron to violate) copyright laws or the terms of its agreements with its content providers, or (iii) modify, decompile, disassemble, reverse engineer or create derivative works based on the BrowZine™ Software.

3. FEES AND PAYMENT.

3.1 Subscription Fees. The Consortium shall pay all fees as specified on the THIRD IRON QUOTE AND ORDER FORM. Except as otherwise specified herein or in the THIRD IRON QUOTE AND ORDER FORM, payment obligations are non-cancelable and fees paid are non-refundable.

3.2 Invoicing and Payment. Fees will be invoiced in advance and are due 60 days from the invoice date.

3.3 Suspension of Services. If any charge owing by the Consortium is 60 days or more overdue, Third Iron may, without limiting its other rights and remedies, suspend the Services until all amounts owing hereunder are paid in full.

3.4 Taxes. The Consortium agrees to pay all applicable taxes levied by any tax authority on the Service or the Participating Library's use thereof, which shall be separately invoiced, excluding any and all taxes based on the net income of Third Iron.

4. PROPRIETARY RIGHTS. Subject to the limited rights expressly granted hereunder, Third Iron reserves all right, title and interest in and to the Services and the BrowZine™ Software, including all intellectual property rights related thereto. No rights are granted to the Consortium or the Participating Library or the Authorized Users hereunder other than as expressly set forth herein.

5. REPRESENTATIONS AND WARRANTIES.

5.1 Library Warranty. Participating Libraries are solely responsible for maintaining a valid license to the Library Content. Participating Libraries, by and through their authorized agent, the Consortium, represent and warrant that they own or otherwise have all rights in and to the Library Content as necessary or appropriate to (i) allow Third Iron to perform the Services, and (ii) allow the Libraries Authorized Users to access and use the Library Content by means of the BrowZine™ Software.

5.2 Third Iron Warranty. Third Iron warrants that the Services will perform materially in accordance with any documentation provided to the Consortium by Third Iron. For any breach of such warranty, the Consortium's sole and exclusive remedy shall be the termination of this Agreement as provided in Section 7 below.

5.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES AND THE BROWZINE™ SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND THIRD IRON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ALL

WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Without limiting the foregoing, neither Third Iron nor any of its licensors warrants that the use of the Services or the BrowZine™ Software will be uninterrupted or error-free or makes any warranty as to the availability of the Services, the accuracy, timeliness, correctness, reliability, currency or completeness of the Content, or the results of any use of the Services.

5.4 Content Disclaimer. Third Iron hereby disclaims any liability for the accuracy, completeness or functionality of the Content. Third Iron shall have no responsibility or liability for any errors or omissions in the Content nor for any damages sustained by the Consortium, the Participating Libraries or any of their Authorized Users from any use of the Content accessed by means of the BrowZine™ Software.

6. LIMITATION OF LIABILITY

6.1 Limitation of Liability. IN NO EVENT SHALL THIRD IRON'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED, IN THE AGGREGATE, AN AMOUNT EQUAL TO THE UNUSED PORTION OF THE CONSORTIUM'S SUBSCRIPTION PAID HEREUNDER.

6.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL THIRD IRON HAVE ANY LIABILITY TO THE LIBRARY OR ANY AUTHORIZED USER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THIRD IRON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. TERM AND TERMINATION

7.1 Term of Agreement. Unless sooner terminated in accordance with the provisions hereof, this Agreement shall commence on the Effective Date and continue for the initial term described in the THIRD IRON QUOTE AND ORDER FORM. Thereafter, unless sooner terminated in accordance with the terms hereof, the term of this Agreement shall renew for additional periods of one to three years each (except that the fees for the Services shall be set at Third Iron's then-current rates), unless either party gives the other party notice of non-renewal at least 15 days before the end of the then-current term.

7.2 Termination. Either party may terminate this Agreement if the other party breaches any material provision of this Agreement and does not cure such breach within 30 days after receiving written notice thereof. In no event shall any termination relieve the Consortium of the obligation to pay any fees payable to Third Iron for the period prior to the effective date of termination.

7.3 **Surviving Provisions.** Sections 1, 3, 4, 5, 6, 7.2, 7.3 and 8 shall survive any termination or expiration of this Agreement.

8. GENERAL PROVISIONS.

8.1 **Purchase Orders and Forms.** The terms, provisions or conditions of any purchase order or any associated documentation used or submitted by the Library will be superseded exclusively by the terms of this Agreement, regardless of any failure of Third Iron to object to those terms, provisions or conditions.

8.2 **Customer Reference.** Third Iron may refer to the Consortium and Participating Libraries as its customer in its sales presentations, on the Third Iron website, in marketing materials and in other Third Iron marketing activities.

8.3 **Force Majeure.** Neither Third Iron nor its licensors will be liable or deemed to be in default for any delays or failure in performance resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authority, rain, fire, flood, accidents, earthquake(s), strikes or labor shortages, transportation facilities shortages or failures of equipment, or failures of the Internet.

8.4 **Miscellaneous.** This Agreement is not assignable or transferable by the Consortium without the prior written consent of Third Iron and any attempt to do so shall be void. Any notice, report, approval or consent required or permitted hereunder shall be in writing and will be deemed to have been duly given if delivered personally or mailed by first-class,

registered or certified U.S. mail, postage prepaid to the respective addresses of the parties as set forth in the introductory paragraph above (or such other address as a party may designate by ten (10) days notice), or sent by electronic mail. No failure to exercise, and no delay in exercising, on the part of either party, any privilege, any power or any rights hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or power hereunder preclude further exercise of any other right hereunder. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the home province of the Participating Libraries without regard to conflict of law provisions thereof. Any waivers or amendments shall be effective only if made in writing and signed by a representative of the respective parties authorized to bind the parties. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

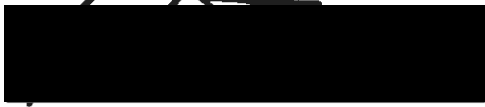
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated below.

Consortium:
By: 
(Sign

Name: Kristina McDavid

Title: Executive Director

Date: 16 May 2018.

Vendor: Third Iron, LLC
By: 

Name: Kendall Bartsch

Title: CEO

Date: May 3, 2018

Schedule 1. Participating Libraries

Brandon University
Douglas College
Simon Fraser University
University of British Columbia
University of Manitoba
University of Regina
University of Victoria

