

GOLD RUSH DECISION SUPPORT CONSORTIAL LICENSE AGREEMENT

This License Agreement (the “Agreement”) is entered into effective as of June 1, 2019 (the “Effective Date”), between the Colorado Alliance of Research Libraries, a Colorado non-profit corporation having its principal place of business at 3801 East Florida Avenue, Suite 515, Denver, Colorado 80210 (“Licensor”) and

- **Bureau de coopération interuniversitaire (BCI)**, 500, rue Sherbrooke Ouest, bureau 200, Montréal, QC H3A 3C6;
- **Council of Prairie and Pacific University Libraries (COPPUL)**, Room 219, Koerner Library, University of British Columbia, 1958 Main Mall, Vancouver, BC, V6T 1A2;
- **Council of Atlantic University Libraries / Conseil des bibliothèques universitaires de l’Atlantique (CAUL-CBUA)**, 120 Western Parkway, Suite 202, Bedford, NS B4B 0V2;
- **The Alberta Library (TAL)**, # 700, 10707 - 100 Avenue NW, Edmonton, AB T5J 3M1

Collectively known as the “Consortium”.

Explanatory Statement

A. Consortium is the duly-authorized representative of its members listed in Appendix A to this Agreement (the “Licensees”) for purposes of entering into this Agreement.

B. Licensor has developed and owns the Gold Rush electronic resource discovery and management service.

C. Consortium desires to obtain access to the Gold Rush service for the Licensees.

NOW, THEREFORE, in consideration of the Explanatory Statement and the mutual covenants, agreements, representations and warranties contained in this Agreement, the parties hereby agree as follows.

1. The Service. For purposes of this Agreement, the “Service” shall mean the level(s) of the Gold Rush electronic resource discovery and management service (as described in Appendix B to this Agreement) licensed to each of the Licensees (as specified in Appendix A).

2. The License. Subject to the terms and conditions set forth in this Agreement, Licensor hereby grants to each Licensee and its Authorized Users (as hereafter defined) a nonexclusive, nontransferable license to use and access the Service during the term of this Agreement. For purposes of this Agreement, “Authorized Users” shall mean employees, faculty, students and patrons of the Licensee. Licensees may use the Service at the site or sites specified in Appendix A.

3. Means of Access. Licensees and Authorized Users may access the Service over the Internet. Licensor will provide Licensees with passwords for access to the Service. There is no limit to the number of passwords or users.

4. Usage Restrictions.

a. Title lists, reports and any other content, with the exception of institution-specific electronic resource subscription data, may only be downloaded and/or printed for use by the individual Licensee. It may not be utilized for any other purpose.

b. Use of the Service is limited to Licensees and their Authorized Users. Licensees may not use the Service for the benefit of or on behalf of other institutions or persons. Consortium may use the Service for its own use only if Consortium is included as a paid Licensee in Appendix A.

c. Consortium shall, and shall use its best efforts to cause Licensees to, prevent others, including Authorized Users, from violating these restrictions on use of the Service and shall promptly notify Licenser of any actual or suspected violations.

5. Licenser Responsibilities.

a. Licenser will use commercially reasonable efforts to maintain the Service. However, Licenser shall not be responsible for the accuracy of information included in the Service which was supplied by or otherwise made available by electronic journal vendors or aggregators and shall not be responsible for any mistakes, errors or omissions contained within such information.

b. Licenser may from time to time make such enhancements or modifications to the Service as Licenser deems necessary or desirable, and such enhancements or modifications shall be made available, at no cost, to the Licensees. Licenser shall not be responsible for maintaining or supporting any replaced versions of the Service's software or database.

c. Licenser will use commercially reasonable efforts to provide continuous access to the Service, subject to periodic unavailability due to maintenance of Licenser's server(s), installation or testing of the Service, data loading, and downtime related to equipment or services outside the control of Licenser, including public or private telecommunications services or Internet nodes or facilities.

d. Licenser shall provide appropriate user documentation to each Licensee.

e. Licenser shall provide training and other support services to Licensees at prices specified in Appendix C and on a mutually-agreeable schedule.

f. Licenser shall maintain the confidentiality of Licensees' confidential information which comes into the possession of Licenser during the term of this Agreement.

6. Term and Termination. This Agreement shall terminate at the expiry of the Initial Term, unless the parties agree to renew it in writing (including by email communication) at least thirty (30) days prior to the expiry of the Initial Term. Licenser shall have the right to terminate this Agreement upon 30 days prior written notice for any material breach by Consortium or a Licensee which remains uncured ten (10) days following Consortium's receipt of notice of such breach from Licenser.

7. License Fees.

a. Consortium shall pay Licenser the Annual License Fee specified in Appendix C. Licenser will submit a single invoice to Consortium to cover the Annual License Fee for all Licensees. The initial Annual License Fee shall be due and payable within sixty (60) days after the Effective Date. The Annual

License Fee for any renewal term shall be due and payable on the applicable anniversary of the Effective Date. Licensor reserves the right to increase the Annual License Fee; provided, however, that Licensor will notify Consortium of such increase at least 60 days prior to the expiration of the initial or then-current renewal term.

b. New licensees may be added to Appendix A at any time at the Consortium's then-current per library Annual License Fee. If adding a new licensee entitles the Consortium to a greater discount in Annual License Fees, that discount shall be available to all Licensees in the Consortium commencing with the next annual renewal term.

c. All Annual License Fees paid are nonrefundable and no portion thereof will be returned for any reason, including Licensor's termination of this Agreement for a material breach, as specified in Section 6.

8. CrossRef Digital Object Identifiers. Use of digital object identifiers through the CrossRef system is available through the Service; however, either Consortium or Licensee must have a current right to use the CrossRef system through an agreement with The Publishers International Linking Association, Inc. dba CrossRef (or its successor) and must pay the appropriate usage fees directly to CrossRef.

9. Ownership.

a. The Service (including any updates thereto) is proprietary to Licensor, and title to the Service remains with the Licensor. All applicable common law and statutory rights in the Service (including any updates thereto), including rights in confidential and trade secret material, source code, object code, trademarks, service marks, patents, and copyrights, shall be and will remain the property of Licensor. Consortium and Licensees shall not sell, transfer, publish, disclose, display or otherwise make available the Service except in accordance with the terms of this Agreement. Notwithstanding any other provision of this Agreement, violation of any provision of this Section 9 shall be the basis for immediate termination of this Agreement.

b. Title to a Licensee's data entered into the electronic resource subscription management portion of the Service shall remain with the Licensee. This data may be downloaded, printed or exported from the Service using the then-existing capabilities of the Service at no charge. If any custom imports or exports of such data are required, such imports or exports shall be provided by Licensor at an additional fee mutually-agreeable to the parties.

c. Any third-party data available through the Service shall remain the property of such third party.

10. Warranties and Limitations.

a. Licensor warrants that it has the right to enter into this Agreement and to grant the rights set forth herein to Consortium/Licensees.

b. LICENSOR HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ACCESS TO THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. LICENSOR MAKES NO WARRANTIES RESPECTING ANY HARM THAT MAY BE CAUSED BY THE TRANSMISSION OF A COMPUTER VIRUS, WORM OR OTHER SUCH COMPUTER PROGRAM. LICENSOR FURTHER EXPRESSLY

DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY OF LICENSEES' AUTHORIZED USERS OR ANY THIRD PARTIES.

c. LICENSOR SHALL NOT BE LIABLE TO CONSORTIUM, LICENSEES OR AUTHORIZED USERS FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR SIMILAR DAMAGES, ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE SERVICE. IN THE EVENT THIS LIMITATION OF DAMAGES IS HELD UNENFORCEABLE, THEN THE PARTIES AGREE THAT BY REASON OF THE DIFFICULTY IN FORESEEING SUCH POSSIBLE DAMAGES, LICENSOR'S LIABILITY FOR ALL DAMAGES SHALL BE LIMITED TO A MAXIMUM OF THE AGGREGATE AMOUNT PAID BY CONSORTIUM HEREUNDER AS LIQUIDATED DAMAGES AND NOT AS PENALTY.

11. Miscellaneous.

a. This Agreement (including the Appendices hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any other oral or written agreements between the parties. This Agreement may not be modified except by written agreement signed by the parties.

b. No waiver of any breach of any term of this Agreement by either party will be deemed to imply or constitute a waiver of a breach of the same term in the future or a waiver of any other breach of this Agreement.

c. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Colorado. Any suits, proceedings and other actions relating to, arising out of or in connection with this Agreement shall be submitted to the in personam jurisdiction of the courts of the State of Colorado and venue for all such suits, proceedings and other actions shall be in the City and County of Denver, Colorado.

d. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. The rights and obligations of Consortium/Licensees under this Agreement may not be assigned or delegated by Consortium/Licensees without the prior written consent of Licensor.

e. All notices which are required or may be given under this Agreement shall be in writing and shall be given (a) by personal delivery against a receipted copy, (b) by facsimile against a confirmation of receipt, or (c) by overnight commercial courier against a delivery confirmation:

If to Licensor, to: Colorado Alliance of Research Libraries
3801 East Florida Avenue
Suite 515
Denver, Colorado 80210
Attention: George Machovec
Facsimile No.: (303) 759-3363

If to Consortium,
to:

BCI
500, rue Sherbrooke Ouest, bureau 200
Montréal, QC H3A 3C6
Attention: Arnald Desrochers
Facsimile No.:514-288-0554

COPPUL
Room 219, Koerner Library
University of British Columbia
1958 Main Mall
Vancouver, BC, V6T 1A2
Attention: Carol Stephenson
Facsimile No.:

CAUL-CBUA
120 Western Parkway, Suite 202
Bedford, NS B4B 0V2
Attention: Cynthia Holt
Facsimile No.:

The Alberta Library
700, 10707 - 100 Avenue NW
Edmonton, AB T5J 3M1
Attention: Christa Foley
Facsimile No.:

or to such other address of which written notice in accordance with this Section 11.e shall have been provided by such party. Notices may only be given in the manner described in this Section 11.e and shall be deemed received when given in such manner.

f. In the event of a breach by any party of the provisions of this Agreement, the non-breaching party shall be entitled, in addition to any remedies available at law, to equitable (including injunctive) relief.

g. The provisions of Section 4 and Sections 9 through 11, as well as any obligation to pay accrued Annual License Fees, shall survive any expiration or termination of this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IN WITNESS WHEREOF, the undersigned authorized representatives of the parties have executed this Agreement as of the day and year first written above.

[Redacted signature]

[Redacted signature]

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APPENDIX A

LICENSEES

BCI Consortium Members
• Université du Québec à Trois-Rivières (UQTR)
• École de technologie supérieure
• McGill University
• Université de Montréal
• Université du Québec à Montréal (UQAM)
• Université Laval
COPPUL Consortium Members
• Brandon University
• Royal Roads
• University of Victoria
• University of Saskatchewan
CAUL-CBUA Consortium Members
• St. Francis Xavier University
• University of Prince Edward Island
• Memorial University
• Saint Mary's University
TAL Consortium Members
• Alberta Legislature Library
• Alberta University of the Arts
• Grande Prairie Regional College
• MacEwan University
• NorQuest College
• University of Alberta
• University of Lethbridge
• University of Calgary

Total Participation: 22 Member Libraries.

The per-library price is based on the sum total of all members of all participating Consortia Canada consortiums.

APPENDIX B

THE SERVICE

Gold Rush is an electronic resource and discovery service developed by Licensor to help Licensees manage subscriptions to electronic resources and provide improved public access for their electronic journals and databases. Gold Rush is a Web-based central digital registry of databases and electronic journals and includes content from indexing/abstracting services, publishers and aggregators.

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GOLD RUSH DECISION SUPPORT

This service allows Licensee's staff to compare journal title lists from aggregators, publishers and indexing/abstracting services that have been loaded into Gold Rush. It allows the comparison of the content within packages.

All reports are generated in real time over the Web and may be viewed on any standard browser or downloaded into Microsoft Excel. Title lists are updated on a periodic basis.

In addition to the database comparison title-list generator, *Gold Rush Decision Support* contains a suite of other tools which allow users to delve into the journal content of publisher lists, aggregators and indexing/abstracting services.

APPENDIX C

ANNUAL LICENSE FEE

	Consortium Member (2-10 libraries)	Consortium Member (11- 20 libraries)	Consortium Member (20+ libraries)
Gold Rush Reports	\$585/yr	\$550/yr	\$500/yr

Fees which may be charged in addition to the Annual License Fee shall include, without limitation:

- a. Training (per Section 5.e) at Licensor's cost plus a 12 percent overhead charge (to be provided on a mutually-agreeable schedule).
- b. Hosting scanned images of contracts (\$500/year). There is no additional charge if Licensee locally hosts its own scanned images of contracts.
- c. Access to CrossRef shall be paid directly to CrossRef (per Section 8). This service is primarily useful to those using link resolution services (Gold Rush Linker). At the present CrossRef is free to libraries but if they do impose a charge it would be borne by local libraries.
- d. Any custom programming for special functionality will be subject to an additional, mutually-agreeable fee and provided by Licensor on a mutually-agreeable schedule.