



**THIS LICENSE IS AGREED the [DATE] of [MONTH], 2021**

BETWEEN

**[NAME OF LICENSOR] of [FULL ADDRESS] (herein referred to as "Licensor") and**

**COUNCIL OF PRAIRIE AND PACIFIC UNIVERSITY LIBRARIES (COPPUL), 301-3301 Douglas St, Victoria, BC V8Z 3L2 (herein referred to as "Licensee")**

**WHEREAS** the Licensor holds or administers the rights granted under this Agreement,

**AND WHEREAS** the Licensor desires to grant to Licensee, Member Institutions, and Authorized Users 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. Where applicable, additional Schedules may be attached to address terms and conditions that relate to specific formats, in which case the attached Schedule(s) form part of this Agreement.

**IT IS AGREED AS FOLLOWS:**

## **1. DEFINITIONS**

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

**Authorized Users** All current students, staff and faculty of the Member Institution, whether full- or part-time, permanent, temporary, contract or visiting appointments, retired faculty and staff, and researchers associated with Member Institution regardless of the physical location of such persons. Additional groups of Authorized Users (e.g., alumni) may be included, as where and to the extent set out in the attached Schedule(s). Authorized Users also include individual members of the public (walk-in users) while they are physically on the premises of a Member Institution. For the avoidance of doubt, walk-in use is intended for individual users, not as a substitution for a license by another institution

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

<b>Commercial Use</b>	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.
<b>Course Packs</b>	A collection or compilation of materials (e.g. book chapters, journal articles) assembled by staff of Member Institution for use by students in a class for the purposes of instruction.
<b>Digital Rights Management</b>	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.
<b>Digital Watermarking Technology</b>	The process of embedding information into a digital document, which may be used to verify its authenticity or the identity of its owners.
<b>Discovery Services</b>	User interface and search systems for discovering and displaying content from local, database, and web-based sources
<b>Electronic Learning Environments</b>	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.
<b>Electronic Reserve</b>	Electronic copies of Licensed Materials (e.g. book chapters, journal articles, abstracts) made and stored on the Secure Network pursuant to Clause 3.9 by Member Institutions for use by Authorized Users in connection with specific courses of instruction offered by Member Institutions to such Authorized Users.
<b>License Fee</b>	The fee for the license set out in Schedule 1, or in new Schedules to this Agreement, which may be agreed by the parties from time to time.
<b>Licensed Materials</b>	The electronic materials licensed in this Agreement as detailed in the attached Schedule(s).
<b>Open Access Repository Services</b>	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.

<b>Perpetual Access</b>	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.
<b>Secure Network</b>	A computer network that is only accessible to Authorized Users by Secure Authentication.

## 2. LICENSE GRANT

- 2.1 **GENERAL.** The Licensor hereby grants to Licensee and Member Institutions the non-exclusive and non-transferable right, throughout the world, to permit Authorized Users to access the Licensed Materials via a Secure Network for the purposes of private study, research, education, distance learning, teaching, and administrative use associated with the normal practices and activities of Licensee and consistent with the fair dealing doctrine and exceptions for educational institutions and libraries permitted under the Copyright Act of Canada . Notwithstanding any other provisions of this Agreement, nothing shall in any way restrict or limit the ability of Licensee, Authorized Users to engage in or conduct any activity that is otherwise permitted under the Copyright Act of Canada.
- 2.2 **PERPETUAL ACCESS.** Licensor hereby grants a nonexclusive, royalty-free, perpetual license to Licensee for Member Institutions of the Consortium and their Authorized Users to use the Licensed Materials that were accessible during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which the Member Institutions shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

## 3. PERMITTED USES

Without limiting the rights of Member Institutions and Authorized Users at law, the Licensed Materials may be used as follows:

- 3.1 **ACCESS and USE** the Licensed Materials from the premises of the Participating Member Institution, or remotely via secure authentication, in order to search, retrieve, display and view the Licensed Materials;
- 3.2 **ELECTRONICALLY SAVE** parts of the Licensed Materials;
- 3.3 **PRINT** out single copies of parts of the Licensed Material;
- 3.4 **CREATE PERSISTENT LINKS** to the Licensed Materials for access by Authorized Users for Permitted Uses under this Agreement, from within secure authentication environments. Licensor will assist Licensee in creating such links effectively and will use the OpenURL

standard for such links whenever feasible.

- 3.5 **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.
- 3.6 **SCHOLARLY SHARING.** Member Institutions and Authorized Users may transmit to a third-party colleague in hard copy or electronically, reasonable amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for Commercial Use.
- 3.7 **USE IN ACADEMIC RESEARCH.** Member Institutions and Authorized Users may incorporate parts of the Licensed Materials in printed or electronic form in assignments and portfolios, theses and in dissertations (“the Academic Works”), and to make reproductions of the Academic Works for personal use and library deposit. Reproductions of the Academic Works may be provided to sponsors of those Academic Works. Authorized Users shall specify the title and copyright owner of the Licensed Material used in the Academic Works.
- 3.8 **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.
- 3.9 **COURSE PACKS / ELECTRONIC RESERVE / VIRTUAL LEARNING** by Member Institutions 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 other formats, such as Braille, may also be offered to Authorized Users.
- 3.10 **CLASSROOM HANDOUTS.** Distribute single copies of individual items of the Licensed Materials in print or electronic form to Authorized Users in a class at a Participating Member Institution for teaching purposes.
- 3.11 **AUTHOR'S RIGHTS.** Notwithstanding any terms or conditions to the contrary in any author agreement between Authors and Licensor, Authors affiliated with Licensee whose work (“Content”) is accepted for publication within the Licensed Materials shall retain the non-exclusive, irrevocable, royalty-free right to use their Content for scholarly and educational purposes, including self-archiving or depositing the Content in institutional, subject-based, national or other open repositories or archives (including the author’s own web pages or departmental servers), and to comply with all grant or institutional requirements associated with the Content. For the avoidance of doubt, it is the intent of the parties to this Agreement that Authors are third party beneficiaries of this provision of the Agreement. If the Licensor does not have the right to grant all rights under 3.11, these rights will apply exclusively to the content for which the Licensor does have such rights, as specified in the attached Schedule(s).

- 3.12 **DISCOVERY SERVICES.** Connect the Licensed Material to the Participating Institution's Discovery Services, when technically able to do so, in order to facilitate optimal discovery of the content for the benefit of Authorized Users.
- 3.13 **DATA and TEXT MINING.** Member Institutions and Authorized Users may use the Licensed Material to perform and engage in text mining/data mining activities for academic research and other educational purposes and allow Authorized Users to disseminate the results publicly for non-Commercial purposes.
- 3.14 **TRAINING AND MARKETING MATERIALS.** Member Institutions and Authorized Users may display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users.
- 3.15 **BRANDING.** Member Institutions may request that Licensed Materials be branded with the name of the institution on the homepage of the product, or otherwise as agreed, in order to publicize the acquisition to Authorized Users.

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

- 4.1 **UNAUTHORIZED USE.** Licensee shall not knowingly permit anyone other than Member Institutions and Authorized Users to use the Licensed Materials.
- 4.2 **REMOVAL OF COPYRIGHT NOTICE.** Licensee may not remove, obscure or modify any copyright notices included in the Licensed Materials.
- 4.3 **COMMERCIAL USE.** Licensee may not use the Licensed Materials for any Commercial Use. 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.

#### **5. MUTUAL RESPONSIBILITIES**

- 5.1 **CONFIDENTIALITY OF USER DATA.** Licensor and Licensee agree to protect the anonymity of individual users and the confidentiality of their searches. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate anonymized form.

#### **6. LICENSOR'S UNDERTAKINGS**

- 6.1 **AVAILABILITY OF LICENSED MATERIALS.** Upon the Effective Date, Licensor shall make the Licensed Materials available to Licensee.
- 6.2 **QUALITY OF SERVICE.** Licensor shall use reasonable efforts to ensure that Licensor's servers have sufficient capacity and rate of connectivity to support the usage of Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Agreement.

Licensors shall use reasonable efforts to make the Licensed Materials available to Licensee at all times and on a twenty-four-hour basis, save for routine maintenance periods (for which Licensors shall notify Licensee in advance wherever possible), and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service. Scheduled down-time will be performed at a time designed to minimize inconvenience to Licensee with advance notice. Other than for routine maintenance, it is expected that the service will be available on average 98% of the time or better.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensors, and Licensors shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensors fail to repair the nonconformity in a reasonable time, Licensors shall 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. Persistent failure to comply with the provisions set forth in this Agreement may be treated as a breach of this Agreement in accordance of Clause 9.2 [Breach of Agreement]

- 6.3 **ASSURANCE OF COMPLETENESS AND QUALITY OF CONTENT.** The content of the Licensed Materials shall not normally contain less material than in any equivalent print editions, where applicable, or the equivalents of the Licensed Materials provided on Licensors' digital platform. Any exceptions shall be identified in Schedule 2 and agreed upon in advance by both Licensors and Licensee.
- 6.4 **TITLE LISTS.** Licensors shall provide to the Licensee either 60 days before the renewal of the subscription period, in KBART-compliant format as appropriate, an itemized title list that specifies the Licensed Materials accessible to the Members for the upcoming term or the upcoming calendar year. Licensors shall provide such title lists to third-party vendors of Knowledge Bases on an ongoing and timely basis.
- 6.5 **MARC RECORDS.** When applicable to the Licensed Materials, Licensors shall provide full OCLC-quality batched sets of MARC records at no additional cost by the date of the execution of this License Agreement. Updates to existing records and new title records, matching the schedule of release and delivery of new publications, will be provided on a mutually agreed-upon schedule and in a format that renders them useful to the Licensee and Members.
- 6.6 **TRAINING AND SUPPORT.** Licensors will offer installation support, including assistance with the implementation of any Licensors software. Licensors will provide appropriate training to Licensee staff relating to the use of the Licensed Materials and any Licensors software. Licensors will offer reasonable levels of continuing support to assist Licensee in use of the Licensed Materials. Licensors will make its personnel available by email, phone or via the Web, or in person during regular business hours, Monday through Friday for training and user access support. Licensors will provide and maintain help files and other appropriate user documentation in connection with the use of and access to Licensed Material.

- 6.7 **COLLECTION OF USAGE DATA.** Licensor will collect usage data according to the most recent release of the Project COUNTER Code of Practice. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected. Usage Data will be provided as requested by Licensee. Monthly reports compiled for the subscription term will be required as part of the renewal process. Licensor agrees to compile combined statistics of all Member Institutions for Consortium, upon request.
- 6.8 **ARCHIVING AND PRESERVATION.** Licensor will make available a digital archive of the Licensed Materials on its servers, or on the servers of a mutually agreeable third party (“Archive”) and inform the Licensee on which of the archiving services the archive may be found. The Archive will be maintained in perpetuity, with their format converted from time to time as appropriate if the technology used for storage or access changes. Licensor will make reasonable efforts to ensure that files are being retained simultaneously in several formats., The parties agree that where the Archive cannot be maintained for any reason, Clauses 2.2 [Perpetual Access] and 9.5 [Continued Access to Licensed Materials] shall apply and the Licensee is entitled to access the archive from the third-party archiving service to fulfill Perpetual Access rights.
- 6.9 **WITHDRAWAL OF LICENSED MATERIALS.** Licensor reserves the right at any time to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish and for which Licensor has been unable to meet the requirements of Clause 6.8 [Archiving and Preservation] and 6.10 [Addition to Licensed Materials], or any item or part of an item for which Licensor has legal grounds to allege infringement of copyright or defamation. Licensor shall give written notice to Licensee of such withdrawal. If the withdrawn material represents more than ten per cent (10%) of the Licensed Material then available under this Agreement Licensor shall make a pro rata refund of part of the License Fee to Licensee, taking into account the amount of material withdrawn and the remaining unexpired portion of the Subscription Period. Withdrawal of Licensed Materials from Servers shall be governed by the provisions set out by signing of the separate Local Archiving and Hosting of Licensed Materials Agreement. If the modification results in the content being no longer useful to Member Institutions, the Licensee and Member Institutions may within thirty (30) days of such notice treat such changes as a breach of this License.

If any Licensed Materials are permanently removed from Licensor’s servers, Licensor shall make a permanent note or mark indicating that the Licensed Materials were removed and providing sufficient explanation as to the reasons for its removal.

- 6.10 **ADDITION TO THE LICENSED MATERIALS.** Licensor reserves the right to add new materials to the Licensed Materials. Licensor shall give written notice to Licensee of such new materials. Any fees arising from the addition of new materials, not otherwise contemplated in Schedule 2 to be added from time to time, shall be the subject of negotiation and Licensor and Licensee must mutually agree and consent to any increase (if any) in the License Fees for subsequent years arising from the addition of new materials as

Licensed Materials.

- 6.11 **LOSS OF OWNERSHIP OF LICENSED MATERIAL.** Without limiting Licensor's other obligations under this Agreement, in the event that ownership of all or any part of the Licensed Material is sold by Licensor or otherwise transferred to a third party, Licensor will use all reasonable efforts to retain a non-exclusive copy of the affected Licensed Materials and make them available free of charge through Licensor's server or by supplying such material free of charge to Licensee in accordance with the procedure described in Clause 9.5 [Continued Access to Licensed Materials]. Where Licensor cannot provide a non-exclusive copy, Licensor shall make a pro rata refund of the License Fee to Licensee, taking into account the amount of material lost and the remaining unexpired portion of the Subscription Period. Licensor will support and practice the TRANSFER code of practice ([www.uksg.org/Transfer/Code](http://www.uksg.org/Transfer/Code)).
- 6.12 **FORMAT DELIVERY.** It is recognized that the interoperability of the Licensed Materials with new types of format delivery and accessible formats, will enhance the usability and value of the content for all types of users. Licensor will provide the Member Institutions and their Authorized Users with access to content in all available formats, including any newly-developed and available delivery format during the term of this Agreement, for no additional fee. Licensor will make reasonable efforts to ensure the content and metadata provided complies with current recognized international standards. Licensor agrees to make reasonable efforts to comply with the Web Consortium Web Content Guidelines (<http://www.w3.org/Consortium>). If Licensor develops new delivery or download formats that are accessible by mobile devices during the term of this Agreement, this service shall be made available to Member Institutions and Authorized Users at no additional charge.
- 6.13 **NOTICE OF "CLICK-THROUGH" LICENSE TERMS.** In the event that Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall the terms of such "click-through" licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "click-through" licenses and this Agreement, the terms of this Agreement shall prevail.
- 6.14 **DISCOVERY SERVICES.** Provide third-party vendors of Discovery Services, on an ongoing and timely basis, with as comprehensive content for indexing as possible, including citation metadata (including subject heading and keywords), abstracts, and full-text, to facilitate optimal discovery of the Licensed Materials for the benefit of Authorized Users.
- 6.15 **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.

- 6.16 **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 or other notices will not be visible to the human eye and will not degrade the quality of the presentation of the document. These watermarks or other notices shall not contain information pertaining to Authorized Users, including 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.
- 6.17 **NOTICE OF ACCESS CHANGES TO LICENSED MATERIALS.** The Licensor shall provide 60 days notice to the Licensee prior to the renewal date if the method of access moves to platforms or products that require Authorized Users to create accounts through any third party vendor or social media site. If the new access method does not meet the privacy standards of a Member Institution, or violates any laws relating to Privacy and Personal Information, and the Licensor is not able to provide an identical alternative for Authorized Users to access and use the Licensed Materials, Licensee may terminate this Agreement. Each Member shall be entitled to a refund of any License Fees or pro-rata portion thereof paid by the Licensee for the remaining balance of the then-current Subscription Period as outlined in Section 9.3 REFUND EARLY TERMINATION.
- 6.18 **OPEN ACCESS REVENUE.** In the event that Licensor offers a for-pay open access option to its authors, Licensor agrees to annually review the number of open access articles published in the Licensed Material under the open access option and decrease license fees accordingly.

## 7. LICENSEE'S UNDERTAKINGS

The Licensee and each Member Institution shall:

- 7.1 **PROVIDE NOTICE OF LICENSE TERMS TO AUTHORIZED USERS.** The Licensee and each Member shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement including, in particular, any limitations on access or use of the Licensed Materials as set forth in this Agreement.
- 7.2 **PROTECTION FROM UNAUTHORIZED USE.** The Licensee and each Member shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. Upon becoming aware of any unauthorized use or other breach, the Member shall inform Licensor in a timely manner and take reasonable and appropriate steps to ensure that such activity ceases and to prevent any future recurrence. Both parties agree to cooperate in good faith and provide sufficient exchange of information to prevent any further unauthorized use.

In the event of any substantial unauthorized use of the Licensed Materials by an Authorized User: (a) Licensor may terminate such Authorized User's access to the Licensed

Materials; (b) Licensor may suspend access through the Internet Protocol (“IP”) addresses from which such unauthorized use occurred, limited to the specific IP address or subnet from which the use occurred; or (c) Licensee or Member Institutions shall terminate such Authorized User’s access to the Licensed Materials upon Licensor’s request. Licensor shall take none of the steps described in this paragraph without first providing written notice to both Licensee and the relevant Member Institutions.

## **8. FEES**

- 8.1 **PAYMENT.** In consideration for Licensor’s licensing of the Licensed Material listed in the attached schedule(s), Licensee and Member Institutions agree to pay Licensor fees in accordance with the provisions of Schedule 1. Payment to Licensor will be due sixty (60) days after receipt of the invoice.
- 8.2 **NOTICE OF PRICE INCREASES.** Licensor shall provide Licensee with a price list for all Licensed Materials no less than sixty (60) days prior to the end of the current term.

## **9. TERM AND TERMINATION**

- 9.1 **TERM AND RENEWAL.** This Agreement shall commence at the beginning of the term for each of the Licensed Materials as set out in Schedule 1 or in new Schedules that may be added subsequently; and shall automatically terminate at the end of the term, unless the parties have previously agreed to renew it. On termination all rights and obligations of the parties automatically terminate except for obligations in respect of Licensed Materials to which access continues to be permitted as provided in Clause 2.2.
- 9.2 **BREACH OF AGREEMENT.** Either party may provide notice in writing to the other party if the other party has materially breached any obligations under this Agreement. The breaching party shall have 60 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 60-day time period, the non-breaching party shall have the right to terminate the Agreement upon written notice.
- 9.3 **REFUND EARLY TERMINATION.** In the event of early termination permitted by this Agreement, the Licensee shall be entitled to a refund of any License Fees or pro-rata portion thereof paid by the Licensee for the remaining balance of the then-current Subscription Period. This Clause is invalid if the Licensee commits a willful, material and consistent breach of the terms of this Agreement and fails to remedy the breach within sixty (60) days of notification by Licensor.
- 9.4 **EXTENSION OF TERM.** In the event that this Agreement is terminated pursuant to Clause 9.2 [Breach of Agreement], the Licensee, at its option and on notice to Licensor, may at no additional charge extend the date of termination of this Agreement by the later of: (i) 30 days; (ii) the remaining days in the term up to 90 days, provided that the Licensee has remedied any material breaches giving rise to the termination; or (iii) the time in which any Licensed Materials were not provided or were inaccessible, in material breach by Licensor of this Agreement.

- 9.5 **CONTINUED ACCESS TO LICENSED MATERIALS.** Without limiting its obligations under this Agreement, Licensor represents, warrants and covenants that, in the unlikely event that it cannot assume the responsibility for maintaining the Archive pursuant to Clause 6.8 [Archiving and Preservation], or if Licensor ceases doing business or otherwise cannot honour the terms of this Agreement, Licensor will undertake one of the following courses of action: (a) transfer the Archive to one or more third parties mutually acceptable to both Licensor and Licensee, where perpetual access may be maintained pursuant to Clause 2.2; or (b) supply Licensee with a machine-readable, DRM-free, digital copy of the Licensed Materials in a mutually acceptable format. Licensee is authorized to make such further copies in perpetuity as it may deem necessary for purposes of archival preservation, refreshing, or migration, including migration to other formats, so long as the purpose of such copying is solely for continued use and/or archival retention of the data and does not violate or extend the use rights contained in this Agreement.
- 9.6 **FUNDING CONTINGENCY.** For multi-year subscriptions, if funding of a Member Institution is materially reduced and Member Institution thereby becomes unable to pay future amounts payable pursuant to this Agreement, Member Institution may give Licensor written notice of termination and this Agreement shall terminate effective the later of: (i) 30 days after the giving of such notice; or (ii) the expiration of any prepaid 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 Institution 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.

## 10. GENERAL

- 10.1 **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 Licensee 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 Members claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this License for any reason.
- 10.2 **LIMITATIONS ON WARRANTIES.** 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, arising out of this Agreement, or the use of or the inability to use the Licensed Materials. Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trade-mark rights, moral rights, or the disclosure of confidential information.

Except for the express warranties stated herein, the Licensed Materials are provided on an “as is” basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Materials or any part thereof, including any and all implied warranties of quality, performance, merchantable quality or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus or other such malicious computer program. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

- 10.3 **ENTIRE AGREEMENT.** This Agreement and attached Schedule(s) constitute the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written, including any online Terms and Conditions of use.
- 10.4 **AMENDMENT.** 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.
- 10.5 **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 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. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties.
- 10.6 **NOTICES.** Any notices to be served on either of the parties or on a Member by the other shall be sent by registered mail, electronic mail, or courier to the address of the addressee as set out in this License Agreement or to such other address as notified by either party to 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 electronic mail shall be deemed to have been given on the date of receipt.,
- 10.7 **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, terrorism, insurrections, strikes or other work stoppages, or any other cause beyond the reasonable control of the party whose performance is affected.
- 10.8 **WAIVER.** Either party's waiver or failure to require performance by the other, of any provision of this Agreement will not affect its full right to require such performance at any subsequent time or be taken or held to be a waiver of the provision itself.
- 10.9 **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.

- 10.10 **DISPUTE RESOLUTION.** If the parties disagree over an interpretation of this Agreement or whether a party is in breach of any part of this Agreement, the parties shall in good faith enter into negotiations to resolve the disagreement.
- 10.11 **GOVERNING LAW.** 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.
- 11. DEEMED MEMBER BENEFIT.** Licensor represents and warrants that all benefits, warranties, and other terms and conditions with the Licensee of this Agreement are and will continue to be no less favorable than those currently being, or which will be offered by the Licensor to Member Institutions directly on their own Agreements. Members may elect to use this License for their own direct agreements.
- 12. CONSORTIAL OFFER.** Any Member Institution may participate in the consortial offer, at any time during the term of this Agreement, even if the Member Institution already subscribes under different terms than those outlined in this Agreement. In such an event, and at the request of the Licensee, the Member Institution will become a Participating Member Institution under the terms of this Agreement at the end of their current term. Terms offered to the Consortia shall be no less favorable than those offered to the Member Institution directly. Licensor will prorate fees for Member Institutions that join this Agreement after the start date of the term beginning on the first day that the Licensed Materials are made available to the Member Institution under this Agreement and expiring on the end date of the term.

**AS WITNESSED** by the signatures of the parties on the day and year noted below.

**Accepted:**

<b>FOR LICENSOR</b>	<b>FOR COPPUL</b>
Name	Name
Title	Executive Director
Signature	Signature
Date	Date

**SCHEDULE 1 BUSINESS TERMS**

This Schedule 1 is dated \_\_\_\_\_ to the Agreement dated \_\_\_\_\_ between  
**[name of Licensor]** and the **Council of Prairie and Pacific University Libraries (COPPUL)**.

**Name and Description of Licensed Material** (Use Schedule 2 to provide entitlement details per participating Member Institution)

**Term of Agreement: (start and end dates):**

**License Type**

- Perpetual Access to full content after cancellation with no maintenance fees
- Perpetual Access to full content after cancellation with maintenance fees
- Limited Perpetual Access to content after cancellation (provide details)
- Subscription without continued access after cancellation

**Payment Schedule**

- One-time purchase
- Annual renewal
- Annual maintenance fee
- Multi-year payment (provide details)

**Consortia Pricing Model:**

- Per FTE
- FTE tiers
- Per relevant FTE
- Flat fee
- Lump sum
- Other (provide details)

**Fee:**

**Tax added to invoice:**

**Access via:**

- Vendor platform: (URL)
- Other: (details)

**Concurrent access:**

- Unlimited
- Limited: (enter details)

Authentication method:

- IP recognition
- Shibboleth
- Single-sign on
- Individual username/password
- Institutional username/password
- Other: (specify)

**Additional Authorized Users:**

- Alumni
- Additional Groups of Users [details]

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FOR LICENSOR	FOR COPPUL
Name	Name
Title	Executive Director
Signature	Signature
Date	Date



## SCHEDULE 2

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