



ELECTRONIC JOURNALS AND DATABASES LICENSE AGREEMENT

THIS AGREEMENT AGREED the [DATE] of [MONTH], 2016

BETWEEN

[NAME OF LICENSOR] of [FULL ADDRESS] ("Licensor")

and

Ontario Council of University Libraries, 130 St. George Street, Toronto, Ontario, M5S 1A5 ("Licensee")

WHEREAS Licensor is the owner or licensee of the publications and other materials described in Schedule 2, as may be amended from time to time ("**Licensed Materials**").

AND WHEREAS Licensee is an affiliate of the COU Holding Association Inc. ("**Council of Ontario Universities**") and Licensee has appointed the Council of Ontario Universities to act as its representative in procuring and administering the business terms of this Agreement, as set out in Schedule 1, on behalf of OCUL and its members, who are Ontario university libraries who may be member or associate members of Licensee, or otherwise represented by Licensee (each, a "**Member Institution**").

AND WHEREAS Licensee desires to enable Member Institutions to use the Licensed Materials and Licensor desires to grant to Licensee and Member Institutions a license to use the Licensed Materials for the License Fee, subject to the terms and conditions of this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

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

"Accessible Formats" means content in a format that is perceivable and operable by persons with visual, perceptual or physical disabilities and be useable with assistive devices, such as screen readers and screen reading software. Such formats will comply with accessibility laws within Canada, including the *Information and Communication Standards of Ontario* Regulation 191/11 and the *Accessibility for Ontarians with Disabilities Act, 2005* (as such laws may be amended from time to time). To address the requirements of such laws, in particular the *Information and Communication Standards of Ontario* Regulation 191/11, web content must conform with the ISO Standard (ISO/IEC 40500:2012) (*World Wide Web Consortium Web Content Accessibility Guidelines* (WCAG) 2.0, at Level A starting in 2014 and to Level AA by 2021 (<http://www.w3.org/WAI/intro/wcag.php>) in accordance with the schedules and requirements of the foregoing laws, as may be amended from time to time, to the extent required to comply with such laws.

"Authorized Users" means full and part time students, faculty and employees (including permanent, temporary, contract or visiting appointments) and researchers associated with

the Member Institutions, regardless of the physical location of such persons. Individuals not affiliated with Member Institutions who are physically present at Member Institution sites set out in Schedule 1 (also known as “walk-in users”) shall be deemed to be Authorized Users under the terms and conditions of this Agreement. Additional groups of Authorized Users (for example, Member Institution alumni) may be included, as where and to the extent set out in Schedule 1.

“**Commercial Use**” means use of the Licensed Materials for the purposes of monetary reward (whether by Licensee or Authorized Users) by means of sale, resale, loan, transfer, hire or other form of commerce. For the avoidance of doubt, the following uses shall be deemed not to constitute Commercial Use: (i) recovery of direct costs by any Member Institutions from Authorized Users in the course of research funded by a commercial organization; (ii) the payment of an administrative fee by a person in order to be registered with the Member Institution as a walk-in user; and (iii) the recovery of costs pursuant to Section 3.5.

“**Digital Rights Management**” means access control technologies that are used by hardware manufacturers, publishers, copyright holders and individuals to limit the use of digital content and devices in online or off-line environments.

“**Digital Watermarking Technology**” means 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**” means use of parts of or linking to the Licensed Material in virtual or managed environments (including virtual learning environments, managed learning environments, virtual research environments, library environments, and courseware technologies) hosted on a Secure Network.

“**Electronic Reserves**” means electronic copies of Licensed Materials (e.g. book chapters, journal articles, abstracts) made available and stored on the Secure Network pursuant to Section 3.7 by Licensee for use by Authorized Users in connection with specific courses of instruction offered by an Institution Member to such Authorized Users.

“**License Fee**” means 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 by the parties from time to time.

“**Licensee’s Representative**” means a third party appointed by Licensee to act on Licensee’s behalf, with notice to Licensor, who may execute this Agreement and other documents under this Agreement on behalf of Licensee and undertake specific and defined portions of Licensee’s obligations under this Agreement, as agreed to between Licensee and such third party. As of the Effective Date, the Licensee’s Representative will be the Council of Ontario Universities.

“**Perpetual Access**” means provisions in this Agreement for continuation of access, archiving and use of Licensed Materials that shall survive any expiration or termination of this Agreement and ensure continued access consistent with current recognized standards in the publishing industry.

“**Premises**” means the physical premises of the library or libraries operated by the Member Institutions.

“Print Course Packs” means a collection or compilation of materials (e.g. book chapters, journal articles) assembled by staff of a Member Institution for use by students in a class for the purposes of instruction.

“Secure Network” means a computer network which is only accessible to Authorized Users by secure authentication.

“Server” means a server, either Licensor’s server or a third party server designated by Licensor, on which the Licensed Materials and associated access software are mounted and may be accessed.

“Subscription Period” means the period normally covered by the volumes and issues of the Licensed Material as listed in Schedule 1, regardless of the actual date of publication.

“Text or Data Mining” means a machine process by which information may be derived by identifying patterns and trends within natural language through text categorization, statistical pattern recognition, concept or sentiment extraction, and the association of natural language with indexing terms.

“Usage Data” means the data and other reporting requirements specified in Section 6.12, which will be made accessible to Licensee in a format acceptable to Licensee.

2. GRANT OF LICENSE

2.1 General.

Licensor hereby grants to Licensee and the Member Institutions the nonexclusive and non-transferable right 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 Member Institutions and Authorized Users. Nothing in this Agreement shall prevent Authorized Users and Member Institutions from carrying out acts that are permitted under the Copyright Act of Canada.

Except for the rights granted under this Agreement, all other rights are reserved and shall remain exclusive to Licensor.

2.2 Perpetual Access.

Except for termination by Licensor pursuant to Section 10.4, Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to Licensee for Member Institutions 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. For the purposes of clarity, signing of the separate Local Archiving and Hosting of Licensed Materials Agreement shall constitute prior agreement to enforce all of the provisions of Section 2.2.

3. USAGE RIGHTS

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

3.1 Display.

Member Institutions and Authorized Users shall have the right to electronically display the Licensed Materials.

3.2 Digitally Copy.

Member Institutions and Authorized Users may download and digitally copy a reasonable portion of the Licensed Materials.

3.3 Print Copy.

Member Institutions and Authorized Users may print a reasonable portion of the Licensed Materials.

3.4 Saving Copy.

Member Institutions and Authorized Users may electronically save reasonable portions of the Licensed Materials.

3.5 Recovery of Copying Costs.

Member Institutions may charge a fee to Authorized Users or others to cover costs of printing portions of Licensed Materials for Authorized Users, including the costs associated with reproducing portions of the Licensed Materials for the creation of Print Course Packs. Such fees shall not constitute Commercial Use.

3.6 Print Course Packs/Electronic Reserve.

Member Institutions and Authorized Users may incorporate a reasonable portion of the Licensed Materials in Print Course Packs and Electronic Reserve collections for the use of Authorized Users in the course of instruction at a Member Institution, but not for Commercial Use. Each such item shall carry appropriate attribution of the source. Print Course Packs in non-electronic non-print perceptible form, such as audio or Braille, may also be offered to Authorized Users who, in the reasonable opinion of the Member Institution, have a visual, perceptual, or physical disability.

3.7 Electronic Learning Environments.

Member Institutions and Authorized Users may incorporate reasonable portions of or links to the Licensed Materials to be used in virtual or managed environments (e.g. course management systems). Each such item shall carry appropriate attribution of the source.

3.8 Use in Academic Research.

Member Institutions and Authorized Users may incorporate reasonable portions of the Licensed Material in printed or electronic form in assignments, portfolios, theses and

dissertations, including reproductions of portions of the Licensed Material for deposit in institutional repositories and other non-Commercial Uses.

3.9 Electronic Links.

Licensor agrees to use reasonable efforts to comply with the OpenURL standard. Licensee may provide electronic links to the Licensed Materials from Member Institutions' web pages and is encouraged to do so in ways that will increase the usefulness of the Licensed Materials to Authorized Users. Licensor will assist Licensee in creating such links effectively, and will use the OpenURL standard for such links whenever feasible. Licensee may make changes in the appearance of such links or statements accompanying such links as reasonably requested by Licensor.

3.10 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 Uses. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and excerpts from the Licensed Materials in Authorized User own scientific, scholarly and educational works.

3.11 Interlibrary Loan.

Member Institutions shall be permitted to supply to a library of a non-Member (whether by post, fax email or secure electronic transmission or secure post-to-Web, provided that the Member Institution requests that the electronic file is deleted immediately after printing or other reasonable measures are taken to protect further distribution of the Licensed Materials), for fair dealing purposes and not for Commercial Use, a single copy of an electronic original of an individual document being part of the Licensed Materials. Files transmitted in this manner must carry the copyright notices in the Licensed Materials. Licensee agrees to fulfill interlibrary loan requests in compliance with sections 29 or 30 of Canadian Copyright Act, as may be amended from time to time.

3.12 Training Materials.

Member Institutions and Authorized Users may display, download or print the Licensed Materials for the purpose of internal marketing, testing or training Authorized Users or groups of Authorized Users.

3.13 Marketing Materials.

Member Institutions and Authorized Users may display, download or print training and promotional materials related to the Licensed Materials for the purpose of internal marketing or for training Authorized Users or groups of Authorized Users.

3.14 Branding.

Licensee 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 the Authorized Users of Licensee.

3.15 Persons with Visual, Perceptual or Physical Disabilities.

Licensed Materials must be provided in an Accessible Format. Without limiting the previous sentence, in the event that any Licensed Materials are not in Accessible Format, the Member Institution shall have the right to modify or copy the Licensed Materials in order to make it useable to Authorized Users within the scope of this Agreement.

3.16 Text or Data Mining.

Member Institutions and authorized users shall be permitted to apply automated tools and processes to the Licensed Materials, for the purposes of data mining for purposes of textual analysis and visual mapping of textual relationships, within the context of scholarship or research activities.

4. PROHIBITED USES

4.1 Unauthorized Use.

Licensee shall not knowingly permit anyone other than Members and Authorized Users to use the Licensed Materials.

4.2 Modification of Licensed Materials.

Licensee shall not modify, manipulate, or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

4.3 Removal of Copyright Notice.

Licensee may not remove, obscure or modify any copyright notices included in the Licensed Materials.

4.4 Commercial Use.

Licensee may not use the Licensed Material for any Commercial Use.

5. MUTUAL RESPONSIBILITIES

5.1 Confidentiality of User Data.

Licensor and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee, Members or Authorized Users. 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. Raw usage data, including but not limited to information relating to the identity of specific users or uses, shall not be provided to any third party except Member Institutions and service providers for Licensee or Members.

5.2 Implementation of Developing Security Privacy Protocols.

Licensor and Licensee shall cooperate in the implementation of security, privacy and control protocols and procedures as they are developed during the term of this Agreement.

6. LICENSOR RESPONSIBILITIES

6.1 Availability of Licensed Materials.

Upon the Effective Date, Licensor shall make the Licensed Materials available to Licensee.

6.2 Documentation.

Licensor will provide and maintain help files and other appropriate user documentation in connection with the use of and access to Licensed Materials.

6.3 Training and Support.

Licensor will offer installation support, including assisting with the implementation of any Licensor software. Licensor will provide appropriate training to Licensee staff relating to the use of the Licensed Materials and any Licensor software. Licensor will offer reasonable levels of continuing support to assist Licensee in use of the Licensed Materials. Licensor 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.

6.4 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.

Licensor 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 Licensor 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. It is expected that the service will be available on average 98% of the time or better (other than during routine maintenance periods).

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount proportional to the total License Fees owed by Licensee under this Agreement. Persistent failure to comply with the provisions set forth in this Agreement may be treated as a breach of this Agreement in accordance of Section 10.4.

6.5 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.

6.6 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 Licensor’s digital platform. Any exceptions shall be identified in Schedule 2 and agreed upon in advance by both Licensor and Licensee.

6.7 Archiving.

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**”). 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. Without limiting the foregoing in this Section 6.7, the parties agree that where the Archive cannot be maintained for any reason, Sections 2.2 and 10.7 shall apply.

6.8 Notification of Modifications of Licensed Materials.

Licensee understands that from time to time the Licensed Materials may be added to, modified, or deleted by Licensor or that portions of the Licensed Materials may migrate to other formats. Licensor shall give a sixty (60) day notice of any such changes to Licensee. Failure by Licensor to provide such reasonable notice shall be grounds for immediate termination of this Agreement by Licensee. If any modifications render the Licensed Materials less useful to Licensee, Licensee may treat such modifications as a breach of this Agreement for the purposes of Section 10.4.

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 Sections 6.7 and 6.10, 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 apro 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 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 in accordance with Section 6.8. 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 Section 10.7. 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.

6.12 Usage Data and Reports.

Licensor shall collect, compile and make available Usage Data to the Member Institutions on a monthly basis (or such other period as requested by Licensee). Licensor agrees to compile combined statistics of all Member Institutions for Licensee, upon request.

6.13 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. 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 able available to Member Institutions and Authorized Users at no additional charge.

6.14 Notice of Use of Digital Rights Management Technology.

In the event that Licensor utilizes any type of Digital Rights Management 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 Agreement or under applicable law.

6.15 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. Licensor agrees to maintain the confidentiality of Authorized Users as required by Section 5.1. If watermarks or other notices are used,

Licensor agrees to notify Licensee, in advance, of the name, contact information, and any technical specifications for the technology.

7. LICENSEE'S AND MEMBERS' RESPONSIBILITIES

7.1 Provision of Notice of License Terms to Authorized Users.

Licensee 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 Provision of Notice of Intellectual Property Right to Authorized Users.

Licensor or its content providers retain all copyrights in and to the publications included in the Licensed Materials. The Member Institutions shall make reasonable efforts to provide Authorized Users with notice of any applicable intellectual property or other rights related to the Licensed Materials. Licensee shall make reasonable efforts to prevent any infringement that comes to the attention of Licensee or its Member Institutions, of any intellectual property or other rights of Licensor in the Licensed Materials. Licensee shall promptly notify Licensor of any infringement that arises that comes to its attention, and will take appropriate reasonable steps to avoid its recurrence.

7.3 Protection from Unauthorized Use.

The Member Institutions shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. The Member Institutions shall use reasonable efforts to comply with the terms and conditions of this Agreement by Authorized Users, and upon becoming aware of any unauthorized use or other breach, inform Licensee and 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.

7.4 Maintaining Confidentiality of Access Passwords.

Where access to the Licensed Materials is to be controlled by use of passwords, Licensee may issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party. Licensor will issue log-on identification numbers and passwords to Licensee in accordance with the requirements of Schedule 1.

8. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

8.1 General.

Licensor represents, warrants and covenants that: (a) it has the right to license the rights granted under this Agreement to use Licensed Materials; (b) it has obtained any and all necessary permissions from third parties to license the Licensed Materials; (c) use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright or any other intellectual property rights of any third party; and (d) all services and activities of Licensor under this Agreement will be conducted in a reasonable and workmanlike manner in accordance with industry standards.

8.2 Physical Media.

Licensor represents, warrants and covenants that the physical medium, if any, on which the Licensed Materials is provided to Licensee will be free from defects, and may be returned and replaced if it is found to be defective.

8.3 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.

8.4 Indemnities.

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable legal fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement for any reason. This indemnity shall not apply to any specific Licensed Material if Licensee or any of its Member Institutions has amended the Licensed Material in any way not permitted by this Agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

9. GENERAL

9.1 Entire Agreement.

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

9.2 Amendment.

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee on behalf of its Member Institutions.

9.3 Assignment & Transfer.

This Agreement may not be assigned by either party to any other person or organization, nor may either party sub-contract any of its obligations, without the prior written consent of the other party. Such consent shall not be unreasonably withheld. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties.

9.4 Notices.

Any notices to be served on either of the parties by the other shall be sent by email or fax unless either party requires prepaid recorded delivery or registered post to the address of the addressee as set out in this Agreement or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within 14 days of posting.

9.5 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.

9.6 Severability.

The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation or enforceability of the remainder of this Agreement.

9.7 Waiver of Contractual Right.

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.

9.8 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario 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 laws of Ontario and Canada applicable therein. Both parties agree that any action or proceeding relating to this Agreement will be brought to a court of competent jurisdiction in the Province of Ontario, Canada.

9.9 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.

9.10 Interpretation.

Unless expressly set out in Schedule 1, all dollar amounts set forth or referred to in this Agreement or any schedule will be in the currency set out in Schedule 1. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation". Unless otherwise expressly stated herein, all rights and remedies of a party under this Agreement are in addition to the party's other rights and remedies and are cumulative, not alternative. A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes the statute or the regulation. Any reference to policies or guidelines includes all amendments, supplements or replacements of such policies or guidelines. Any reference to websites include all successor websites and content therein.

10. TERM AND TERMINATION

10.1 Term and Renewal.

This Agreement shall commence at the beginning of the Subscription Period for each of the Licensed Materials as set out in Schedule 1 and that may be added subsequently; and shall remain in effect until the end of the Subscription Period, when the Agreement shall automatically terminate unless the parties have agreed in writing to renew it for subsequent Subscription Periods.

10.2 Refund Early Termination.

In the event of early termination permitted by this Agreement, Licensee shall be entitled to a refund of any License Fees or pro-rata portion thereof paid by Licensee for the remaining balance of the then-current Subscription Period. This Section is invalid if 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.

10.3 Suspension of Access.

Licensor reserves the right to temporarily suspend any Member Institution's access to the Licensed Materials for substantial infringement of a person's intellectual property rights in the Licensed Materials contrary to this Agreement, or for a breach of the terms of this Agreement that threatens either the performance or security of a Server. Any account suspension by Licensor shall comply with the provisions laid out in Section 7.3. As soon as possible, but no later than immediately after suspending such access, Licensor shall issue a notice to the Member Institution and Licensee of the breach specifying the activity of the Member Institution that caused the suspension. Licensor shall forthwith restore access to

the Member Institution upon receipt of notice that such activity has ceased and that the Member Institution has made reasonable efforts to protect against recurrence of such activity. Any suspension under this Section 10.3 will be only to the extent required to prevent or mitigate any material adverse impact on Licensor.

10.4 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.

10.5 Extension of Term.

In the event that this Agreement is terminated pursuant to Section 10.4, 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 Subscription Period up to 90 days, provided that 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.

10.6 Funding Contingency.

If public funding of Licensee or funding of Licensee by the Member Institutions is materially reduced and Licensee thereby becomes unable to pay future amounts payable pursuant to this Agreement, Licensee 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.

10.7 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 Section 6.7, 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 Licensor and Licensee, where perpetual access may be maintained pursuant to Section 2.2; or (b) Licensee may, at its option, obtain copies of the Licensed Materials in a medium and format mutually agreed upon between the parties, provided that Licensee pays Licensor an amount limited to the reasonable costs associated with reproducing the Licensed Materials.

10.8 Early Termination by Member Institution

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, as per 2.2.

11. FEES AND PAYMENT

11.1 License Fee.

Licensee will pay Licensor the applicable License Fees as set out in Schedule 1. Licensor may invoice Licensee on the terms set out in Schedule 1. The License Fees are exclusive of any sales, use, value added or similar taxes. Licensee will pay and Licensor will remit all applicable taxes to the applicable taxing authorities as required by applicable law.

11.2 Additional Costs and Expenses.

Licensor is required to pay all costs and expenses required in discharging its obligations pursuant to this Agreement unless expressly stated otherwise in this Agreement or agreed by Licensee in writing.

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

FOR LICENSOR

Full Name and Address:

Name:

Position / Title:

Date:

Signature:

FOR LICENSEE

Ontario Council of University Libraries
130 St. George St.
Toronto, Ontario Canada M5S 1A5

JOHN BARNETT
EXECUTIVE DIRECTOR

Date:

Signature:

SCHEDULE 1
BUSINESS TERMS

This Schedule 1 is dated _____ to the Agreement dated _____ between **[name of Licensor]** and the Ontario Council of University Libraries.

Name and Description of Licensed Material: *(Please provide full and accurate listing of product contents)*

License Type:

- Perpetual Access to full content after cancellation
- Limited perpetual access to content after cancellation *(provide details)*
- Subscription without continued access after cancellation

Term of Agreement:

Payment Schedule:

- One-time purchase
- Annual renewal
- Maintenance fee
- Multi-year payment

Fee and invoicing:

Access:

- Vendor Platform *(Please provide URL)*
- OCUL Scholars Portal Platform *(if the Scholars Portal platform is used, the Agreement for the Local Archiving and Hosting of Licensed Materials at Scholars Portal or alternate Local Load Agreement must also be signed)*

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

- Alumni
- Additional Groups of Users: *(Please provide details)*

Data Standards and Discovery Systems Functionality

(Please provide details on the standards and codes of practice supported that OCUL views are critical to ensuring content is discoverable and usable)

- Project Counter Code of Practice for usage statistics (www.projectcounter.org)
- TRANSFER Code of Practice for Journals (www.uksg.org/Transfer/Code)
- KBART and Open URL for journals (www.niso.org/workrooms/kbart)
- World Wide Web Consortium Web Content Guidelines (www.w3.org/Consortium)
- World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 (www.w3.org)
 - Level A Compliance
 - Level AA Compliance
- Provide metadata for indexing in Discovery systems (please provide details of which systems index your content)

Open Access

1. Self Archiving

(Please select all that apply and provide details below or provide additional documentation appended to this Agreement)

- Self Archiving Open Access level supported (www.sherpa.ac.uk/romeoinfo.html)
 - Gold
 - Green
 - Other
 - Not supported

- Version of author's publication permitted for self-archiving in institutional repositories
 - Post-publication with journal formatting
 - Final preprint with some publisher formatting
 - Unformatted final preprint
 - Other
 - Not supported

2. Author Fees

(Please provide details on the support for authors to make their research Open Access upon publication. Please select all that apply and provide details below or provide additional documentation appended to this Agreement)

- Institutional Membership
- Author Fees
- Modified Pricing for Author Fee or Institutional Subscriptions Model
- Other
- Not supported

Additional License Rights or Restrictions:

(Please provide details on any specifics on the grant of license or usage rights)

Authorized Users:

(List names of all Member Institutions participating in this Agreement; IP Addresses are available at <http://www.ocul.on.ca/node/39>)

Algoma University
Brock University
Carleton University
Guelph, University of
Lakehead University
Laurentian University
McMaster University
Nipissing University
OCAD University

Ontario Institute of Technology, University of
Ottawa, University of
Queen's University
Royal Military College
Ryerson University
Toronto, University of
Trent University
Waterloo, University of
Western University
Wilfrid Laurier University
Windsor, University of
York University

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

FOR LICENSOR

Full Name and Address:

Name:

Position / Title:

Date:

Signature:

FOR LICENSEE

Ontario Council of University Libraries
130 St. George St.
Toronto, Ontario Canada M5S 1A5

JOHN BARNETT
EXECUTIVE DIRECTOR

Date:

Signature:

SCHEDULE 2

LICENSED MATERIALS

[DATED] / [UPDATED]
(to be completed by Licensor)