



**[MONTH] [DAY], [YEAR]**

**THIS LICENSE AGREEMENT IS MADE AS OF the [DAY] day of [MONTH] [YEAR]**

**BETWEEN**

1 **[NAME]** of **[ADDRESS]** ("the Publisher")

and

2 **CANADIAN RESEARCH KNOWLEDGE NETWORK** of 11 Holland Avenue, Suite #301, Ottawa, Ontario, Canada, K1Y 4S1 ("the Consortium")

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

**AND WHEREAS** the Publisher desires to grant to Members of the Consortium the License to use such rights for the Fee, subject to the terms and conditions of this Agreement,

IT IS AGREED AS FOLLOWS:

**1. DEFINITIONS**

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

**Access Notice** As defined in clause 12.4.

**Authorized Users** Each Member and each employee, including faculty, of the Member (whether on a permanent, temporary, contract, adjunct, formal affiliation or visiting basis), alumni of the Member, and individuals who are currently studying at the Member, who are permitted to access the Secure Network from within the Premises or from such other places where Authorized Users work or study (including but not limited to Authorized Users' offices and homes, halls of residence and student dormitories) and who have been issued by the Member with a password or other authentication and such other users as are identified on Schedule 1.

<b>Commercial Use</b>	Use of the Licensed Materials for the purposes of monetary reward (whether by or for the Consortium, or Authorized Users or Walk-in Users) by means of sale, resale, loan, transfer, hire or other form of exploitation. For the avoidance of doubt, neither recovery of direct costs exclusive of the Fee by any Member from Authorized Users or Walk-in Users, nor use by the Consortium, or Authorized Users or Walk-in Users of the Licensed Materials in the course of research funded by a commercial organization, nor the payment of a fee by a person in order to be registered with the Member as a Walk-in User, is deemed to constitute Commercial Use.
<b>Content</b>	The works by an author affiliated with a Member as published in the Licensed Materials.
<b>Course Packs</b>	A collection or compilation of materials (e.g. book chapters, journal articles) assembled by a Member for use by its students in a class for the purposes of instruction.
<b>Database</b>	The electronic items as set out in Schedule 3 including textual, numerical and statistical data; indexes, abstracts and other metadata; graphics; images; linking data; and any other data which the Publisher has the right to license, or to which access is provided by the Publisher, pursuant to the terms of this Agreement, as may be supplemented or modified from time to time by or on behalf of the Publisher but subject to the terms of this Agreement.
<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>	The use of electronic systems, such as course management systems, on a Member's Secure Network for use by its students in connection with specific courses of instruction offered by a Member to its students.
<b>Electronic Reserve</b>	Electronic copies of materials (e.g. book chapters, journal articles) made and stored on the Secure Network by the Consortium or by a Member for use by its students in connection with specific courses of instruction offered by a Member to its students.
<b>Fee</b>	The Fee set out in Schedule 2 as may be amended from time to time by agreement between the parties.

<b>Historical Licensed Materials</b>	As defined in clause 12.4.
<b>Licensed Materials</b>	The Database and Licensed Software as set out in Schedule 3 as may be amended from time to time by agreement between the parties.
<b>Licensed Software</b>	The software to be made available by Publisher as set out in Schedule 3 intended for use to search, view, retrieve, display, download and print any electronic item in the Database, as may be modified from time to time.
<b>Member</b>	A university, other educational institution or research organization that is a member of the Consortium and listed in Schedule 4, and which has agreed by virtue of its membership to be bound by the terms and conditions of this Agreement.
<b>Payment Schedule</b>	The intervals for payment of the Fee set out in Schedule 2.
<b>Perpetual Access</b>	Access in perpetuity to the Historical Licensed Materials which is retained by the Member after termination of the License, or as determined by the Agreement.
<b>Premises</b>	The physical premises of the Member, at which a computer having an IP address, as set out in Schedule 5, is installed.
<b>Publisher's Representative</b>	A third party appointed from time to time by the Publisher to act on the Publisher's behalf who undertakes any or all of the Publisher's obligations under this Agreement, as agreed between the Publisher and the Publisher's Representative.
<b>Secure Network</b>	A network (whether a standalone network or a virtual network within the Internet) that is only accessible to Authorized Users and Walk-in Users approved by a Member whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Member.
<b>Server</b>	The server, either the Publisher's server or a third party server designated by the Publisher, on which the Licensed Materials are mounted and may be accessed.
<b>Text or Data Mining</b>	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.

<b>Usage Data</b>	The data and reporting requirements specified in Schedule 6, made available to the Consortium and Members in machine-readable form.
<b>Walk-in Users</b>	Individuals other than Authorized Users, whom a Member has permitted to have occasional access to the Secure Network at a computer workstation physically located on the Member's Premises.

## 2 GRANT OF LICENSE

- 2.1 The Publisher hereby grants to the Consortium and the Members the non-exclusive and non-transferable right to permit Authorized Users wherever located to access the Licensed Materials via a Secure Network and using the access methods specified in Schedule 3 for the purposes of research, teaching, private study, and administrative use associated with the normal practices and activities of the Consortium and the Members, subject to the terms and conditions of this Agreement. The Consortium agrees to pay the Fee and abide by the Payment Schedule as specified in Schedule 2.
- 2.2 The Publisher hereby grants to the Consortium and the Members a non-exclusive, royalty-free, perpetual license for Members and their Authorized Users to use, after the termination of this Agreement, the Licensed Materials that were accessible during the term of this Agreement. Such use shall be subject to clauses 3, 4, 5, 6, 12.4, 12.4.1, and 12.4.2 of this Agreement, which provisions shall survive any termination of this Agreement. The means by which the Members 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.
- 2.3 Notwithstanding any terms or conditions to the contrary in any agreement between authors affiliated with a Member and the Publisher, the Publisher hereby grants to the Members the non-exclusive, irrevocable, royalty-free right to archive or deposit the Content online in institutional, subject-based, national, or other open repositories or archives.
- 2.4 This Agreement shall commence as of the date of this Agreement and shall terminate automatically on [DATE] unless previously terminated in accordance with the terms of this Agreement.

## 3. USAGE RIGHTS

- 3.1 The Consortium and the Members, subject to clause 6 below, may:
- 3.1.1 Make such local electronic copies of part of the Licensed Materials by means of caching as may be necessary solely to ensure efficient use of such materials by Authorized Users and Walk-in Users.

- 3.1.2 Allow Authorized Users and Walk-in Users to have access to the Licensed Materials including an integrated author, article title and keyword index of Licensed Materials, from the Server via the Secure Network.
  - 3.1.3 Provide single printed or electronic copies of single articles upon request to individual Authorized Users.
  - 3.1.4 Allow Authorized Users to have access to the Licensed Materials through the Member's Electronic Learning Environment.
  - 3.1.5 Display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users.
  - 3.1.6 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.
- 3.2 Authorized Users and Walk-in Users, subject to clause 6 below, may:
- 3.2.1 Search, view, retrieve and display the Licensed Materials.
  - 3.2.2 Electronically save parts of the Licensed Materials for personal use.
  - 3.2.3 Print single copies of parts of the Licensed Materials.
  - 3.2.4 Distribute single copies of individual articles or items of the Licensed Materials in print or electronic form to other Authorized Users; for the avoidance of doubt, this sub-clause shall include the distribution of a copy for teaching purposes to all individual student Authorized Users in a class at a Member.
- 3.3 Nothing in this Agreement shall in any way limit the ability of the Consortium, Authorized Users and Walk-in Users to engage in or conduct any activity that would not constitute an infringement under Canadian copyright laws, in respect of a copyrighted work.

#### **4 SUPPLY OF COPIES TO OTHER LIBRARIES**

- 4.1 Members, subject to clause 6 below, may supply to a library of a non-Member (whether by post, fax or secure transmission, or appropriate electronic means, whereby the electronic file is deleted immediately after printing), for the purposes of research or private study, a single copy of an electronic original of an individual document being part of the Licensed Materials.

#### **5 COURSE PACKS AND ELECTRONIC RESERVE**

- 5.1 Members, subject to clause 6 below, may incorporate parts of the Licensed Materials in printed Course Packs and Electronic Reserve collections for the use of Authorized Users in the course of instruction at a Member, but not for Commercial Use. Each

such item shall carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the Publisher. Copies of such items shall be deleted by the Member when they are no longer used for such purpose. 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, are visually impaired.

## **6 PROHIBITED USES**

6.1 Neither the Consortium nor Authorized Users nor Walk-in Users may:

- 6.1.1 remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials.
- 6.1.2 use any software such as webcrawlers, or any other means to systemically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose.
- 6.1.3 mount or distribute any part of the Licensed Materials on any electronic network, including without limitation the Internet and the World Wide Web without the prior written consent of the Publisher or except pursuant to Clause 12 of this Agreement or any separate agreement as the Publisher and a Member may enter into.

6.2 The Publisher's explicit written permission must be obtained in order to:

- 6.2.1 use all or any part of the Licensed Materials for any Commercial Use.
- 6.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorized Users other than permitted under clause 4.1.
- 6.2.3 publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this Agreement.
- 6.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen or as otherwise permitted in this Agreement, to Authorized User and Walk-in Users. For the avoidance of doubt, no alteration of the words or their order or of the copyright or other notices or disclaimers is permitted.

## **7 PUBLISHER'S WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY**

7.1 The Publisher warrants to the Consortium and the Members 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.

7.2 The Publisher warrants to the Consortium and the Members that it has the right and power to grant the license to access and use the Licensed Materials as provided for in this Agreement.



- 7.3 The Publisher shall indemnify and hold the Consortium and the Members 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 Consortium or any of its Members claiming infringement of such rights. This indemnity shall survive the termination of this Agreement for any reason. This indemnity shall not apply to any specific Licensed Materials if the Consortium or any of its Members has amended the Licensed Materials in any way not permitted by this Agreement.
- 7.4 The Publisher warrants to the Consortium that the total non-scheduled downtime directly attributable to the Server, the Publisher's local network, and/or the Publisher's Internet Service Provider supporting the Licensed Materials will cumulatively amount to less than 12 hours during the periods of 6:30 am through 8:00 pm Eastern Time, Monday through Friday, in any given calendar month.
- 7.5 Except as expressly provided in this Agreement, the Publisher makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Materials, merchantability or fitness of use for a particular purpose. The Licensed Materials are supplied 'as is'.
- 7.6 Except as provided in clause 7.1, under no circumstances shall the Publisher be liable to the Consortium or the Members or any other person, including but not limited to Authorized Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials.
- 7.7 Irrespective of the cause or form of action, the Publisher's aggregate liability for any claims, losses, or damages arising out of any breach of this Agreement shall in no circumstances exceed the Fee paid by the Consortium to the Publisher under this Agreement in respect of the term of this Agreement during which such claim, loss or damage occurred. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

## **8 PUBLISHER'S UNDERTAKINGS**

8.1 The Publisher shall:

- 8.1.1 make the Licensed Materials available to the Consortium and the Members from the Server in the media, format and time schedule specified in Schedule 3. The Publisher will notify the Consortium at least sixty (60) days in advance of any anticipated specification change applicable to the Licensed Materials. If the change renders the Licensed Materials less useful in a material respect to the Consortium and the Members, the Consortium may treat such changes as a material or persistent breach of this Agreement under clause 12.1.2.
- 8.1.2 provide to the Consortium before December 31 of each year within the subscription period, in KBART-compliant format, an itemized holdings report that specifies the Licensed Materials accessible to the Members for the upcoming

calendar year. In the event that there are optional portions contained within the Licensed Materials to which all Members do not subscribe, the Publisher shall provide separate lists for each option.

- 8.1.3 use reasonable and timely efforts to provide to third party vendors of Discovery Services, on an ongoing basis, with as comprehensive content for indexing as possible, including citation metadata (including subject headings and keywords), abstracts and full-text to facilitate optimal discovery of the content for the benefit of Authorized Users.
  - 8.1.4 use reasonable efforts to make available the electronic copy of each journal issue in the Licensed Materials not later than the day of publication of the printed version. In the event that for technical reasons this is not possible for any particular journal, as a matter of course, such journal shall be identified at the time of licensing, together with such reasons.
  - 8.1.5 provide the Consortium, within 30 days of receipt of information from the Consortium per clause 10.1.3, with information sufficient to enable the Consortium and Authorized Users and Walk-in Users to access the Licensed Materials.
  - 8.1.6 use reasonable efforts to ensure that the Server has adequate capacity and bandwidth to support the usage by the Consortium and Authorized Users and Walk-in Users 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.
  - 8.1.7 use reasonable efforts to ensure that Licensed Materials will be accessible and inter-operable with prevailing Web browsers including at a minimum, the most recent two major releases (current release and one release prior) and all the associated subsets. Any upgrades or functional changes to the Server will be implemented in a manner that ensures that, at a minimum, the most recent two major releases and all of the associated subsets of prevailing Web browsers at that time will continue to inter-operate with the Server and be able to access, retrieve and display the Licensed Materials.
  - 8.1.8 use reasonable efforts to make the Licensed Materials available to the Consortium and Authorized Users at all times and on a twenty-four hour (24) basis, save for routine maintenance but only at such times as demand for access to Licensed Materials is relatively low (which shall be notified to the Consortium in advance whenever possible), and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service directly attributable to the Server, the Publisher's local network, and/or the Publisher's Internet Service Provider.
- 8.2 The Publisher reserves the right at any time to withdraw or add any titles and some/all associated items from/to the Licensed Materials. The Publisher shall give written notice to the Consortium of such changes. If any change(s) singly or



cumulatively render(s) the Licensed Materials less useful in a material respect to the Consortium and the Members, the Consortium may treat such changes as a material or persistent breach of this Agreement under clause 12.1.2.

8.3 The Publisher shall collect and compile Usage Data.

8.4 The Publisher shall disclose to the Consortium such Usage Data relating to the Consortium as the Consortium may request, provided that the disclosure of such data fully protects the anonymity of individual users and the confidentiality of their searches, and is not contrary to applicable privacy laws. The Publisher shall disclose to each Member such Usage Data relating to the Member as the Member may request, providing that the disclosure of such data fully protects the anonymity of individual users, the confidentiality of their searches, and is not contrary to applicable privacy laws.

8.5 The Publisher shall not disclose or sell to other parties statistical usage information about the Consortium or Authorized Users or Walk-in Users without the Consortium's and the Members' permission.

8.6 In the event that the Publisher offers an open access option to its authors, the Publisher agrees to annually review the number of open access articles published in the Licensed Materials under the open access option. For all Licensed Materials in which such articles are published, the Publisher will share with the Consortium the number and citations of articles published under the open access option by authors at the Members, listed by journal title.

The Publisher will enter into good faith discussions with the Consortium concerning mechanisms by which open access article publication fees can offset the subscription fees paid by the Members for Licensed Materials, with a goal of reducing subscription fees in proportion to the revenue received through such article publication fees.

## **9 LICENSE FEE**

9.1 The Consortium shall, in consideration for the rights granted under this Agreement, pay the Fee in accordance with the Payment Schedule. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Consortium shall be liable for any such taxes in addition to the Fee.

## **10 CONSORTIUM'S AND MEMBER'S UNDERTAKINGS**

10.1 The Consortium shall:

10.1.1 use reasonable efforts to inform the Members of the terms and conditions of this Agreement.

10.1.2 in the event the Consortium receives information about a breach of any of the terms of this Agreement by a Member, promptly enter into discussions with the Member and use reasonable efforts to convince the Member to rectify the breach within thirty (30) days as required by clause 12.7. The Consortium shall also

concurrently notify the Publisher at the same time as it enters into discussions with the Member.

10.1.3 provide the Publisher, within 30 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Materials in accordance with its obligation under clause 8.1.3. Should the Members make any significant change to such information, the Consortium shall notify the Publisher not less than ten (10) days before the change takes effect.

10.2 The Members shall:

10.2.1 use reasonable efforts to ensure that Authorized Users and Walk-in Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and of the sanctions which each Member imposes for failing to respect such rights.

10.2.2 use reasonable efforts to notify Authorized Users and Walk-in Users of the terms and conditions of this Agreement applicable to them and to take steps to protect the Licensed Materials from unauthorized use or other breaches of this Agreement.

10.2.3 use reasonable efforts to monitor compliance with the terms and conditions of this Agreement by Authorized Users and Walk-In Users, and immediately upon becoming aware of any unauthorized use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence.

10.2.4 keep full and up-to-date records of all Authorized Users and their access details and provide the Consortium with details of such additions, deletions or other alterations to such records as are necessary to advise and enable the Publisher to provide Authorized Users with access to the Licensed Materials in accordance with this Agreement.

10.2.5 use reasonable efforts to ensure that only Authorized Users and Walk-in Users are permitted access to the Licensed Materials.

## **11 UNDERTAKINGS BY BOTH PARTIES**

11.1 Each party shall use its best efforts to safeguard the intellectual property, confidential information and proprietary rights of the other party.

## **12 TERM AND TERMINATION**

12.1 In addition to automatic termination under clause 2.4, this Agreement shall be terminated:

12.1.1 if the Consortium willfully defaults in making payment of the Fee as provided in this Agreement and fails to remedy such default within thirty (30) days of notification in writing by the Publisher.

- 12.1.2 if the Publisher commits a material or persistent breach of any term of this Agreement and fails to remedy the breach within thirty (30) days of notification in writing by the Consortium.
- 12.1.3 if the Consortium commits a willful, material or persistent breach of the terms of this Agreement, and fails to remedy the breach within thirty (30) days of notification in writing by the Publisher.
- 12.2 If public funding of the Consortium or funding of the Consortium by the Members is materially reduced and the Consortium thereby becomes unable to pay future amounts payable pursuant to this Agreement, the Consortium may give the Publisher written notice of termination and this Agreement shall terminate effective 30 days after the giving of such notice if the Consortium has failed to pay the Fee for the calendar year in which such notice was given, or if the Consortium has paid the Fee for the calendar year in which such notice was given, January 1 of the following year.
- 12.3 On termination all rights and obligations of the parties automatically terminate except for obligations in respect of Licensed Materials for which perpetual access is provided for in clause 12.4.
- 12.4 Upon termination of this Agreement a Member may provide a notice to the Publisher (the "Access Notice") of its desire to exercise its rights for perpetual access to and use of the Licensed Materials that were made available to the Member pursuant to this Agreement and each previous Agreement between the Publisher and the Consortium concerning all or part of the Licensed Materials (collectively the "Historical Licensed Materials"). Upon receipt of the Access Notice the Publisher shall provide to the Member and its Authorized Users and Walk-in Users access to the Historical Licensed Materials in the same manner in which the Publisher provided access to the Licensed Materials immediately prior to the date of termination of this Agreement all without change. The Member and its Authorized Users and Walk-in Users shall have the same rights with respect to the Historical Licensed Materials as they had immediately prior to the date of termination of this Agreement.

In addition to the above, the Publisher and the Member shall negotiate in good faith for other methods of perpetual access to the Historical Licensed Materials. Options include the following:

- a) continuing online access to archival copies of the Historical Licensed Materials on the Server;
- b) supplying archival copies of the Historical Licensed Materials to the Member in an electronic medium mutually agreed between the parties;
- c) supplying archival copies of the Historical Licensed Materials to an appropriate hosting and archiving facility (e.g. OCUL Scholars Portal) for continuing online access to the Historical Licensed Materials;

- d) granting access to the Historical Licensed Materials through an archival service provider such as, but not limited to, Portico as appropriate;
- e) other options as mutually agreed between the Publisher and the Member.

For the avoidance of doubt, access and use of the Historical Licensed Materials shall be subject to the terms and conditions as set out in clauses 3, 4, 5, 6, 12.4, 12.4.1, and 12.4.2 of this Agreement, notwithstanding the termination of this Agreement. Members are permitted to make copies or re-format the Historical Licensed Materials to ensure their future preservation and accessibility.

- 12.4.1 In the event that ownership of part of the Historical Licensed Materials is sold by the Publisher or is otherwise transferred to another publisher, the Publisher shall use reasonable efforts to retain a copy of the Historical Licensed Materials in accordance with the UKSG Transfer Code of Practice and make it available to a Member and its Authorized Users and Walk-in Users as required by clause 12.4.
- 12.4.2 The Historical Licensed Materials made available in accordance with clause 12.4 shall be the complete content except that such Historical Licensed Materials may not contain all the links and other platform features and functionality associated with the Licensed Materials licensed pursuant to this Agreement.
- 12.5 On termination of this Agreement for cause, as specified in clauses 12.1.1 and 12.1.3, the Consortium shall immediately cease to make available the Licensed Materials to Authorized Users and Walk-in Users.
- 12.6 On termination of this Agreement for cause, as specified in clause 12.1.2, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the term of this Agreement.
- 12.7 If a Member commits a willful, material or persistent breach of the terms of this Agreement and the Member fails to remedy the breach within thirty (30) days' notice from the Publisher to the Member and the Consortium, or the Member fails to commence and diligently pursue steps to remedy the breach within thirty (30) days' notice from the Publisher to the Member and the Consortium, the Publisher may terminate the license and rights granted to the Member pursuant to this Agreement by giving notice of termination to the Member and the Consortium. Upon the giving of notice of termination, the Publisher may discontinue providing the Member access to the Licensed Materials for the remainder of the term of this Agreement.
- 12.8 The Publisher reserves the right to temporarily suspend any Member's access to Licensed Materials for infringement of the Publisher's intellectual property rights in the Licensed Materials or for a breach of the terms of this Agreement that threatens either the performance or security of the Server. Forthwith after suspending such access the Publisher shall issue a notice to the Member and the

Consortium of the breach specifying the activity of the Member that caused the breach. The Publisher shall forthwith restore access to the Member upon receipt of notice that such activity has ceased and that the Member has made reasonable efforts to protect against recurrence of such activity.

- 12.9 In the event that the Publisher is in breach of its warranty set out in clause 7.4, the Consortium, at its option and on notice to the Publisher, may extend the term of this Agreement by one full calendar month for each such breach.

### **13 GENERAL**

- 13.1.1 The following documents shall comprise the entire agreement between both parties concerning the subject matter of this Agreement, and, in the event of any dispute concerning construction thereof, shall have the following order of precedence:

- a.) This Agreement and all schedules and other documents attached and incorporated by reference.
- b.) The Publisher's response to the Consortium's Request for Proposal dated [DATE].
- c.) The Consortium's Request for Proposal dated [DATE].

- 13.2 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.

- 13.3 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 Publisher's Representative, without the prior written consent of the other party, which consent shall not unreasonably be withheld.

- 13.4 If rights in all or any part of the Licensed Materials are assigned to another publisher, the Publisher shall use its best efforts to ensure that the terms and conditions of this Agreement are maintained.

- 13.5 Any notices to be served on either of the parties or on a Member by the other shall be sent by registered mail, courier or facsimile 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. Any such notice sent by registered mail shall be deemed to have been given 14 days after the date of posting the mail. Any such notice sent by courier or by facsimile shall be deemed to have been given on the date of receipt of the courier or facsimile.

- 13.6 Neither party's nor a Member's delay or failure to perform any provision of this Agreement, as a result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, "denial of service" or similar attacks, or



damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Agreement.

- 13.7 The invalidity or un-enforceability of any provision of this Agreement shall not affect the continuation or enforceability of the remainder of this Agreement.
- 13.8 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.
- 13.9 If the parties disagree over an interpretation of this Agreement or whether a party or a Member is in breach of any part of this Agreement, the parties and any such Member shall in good faith enter into negotiations to resolve the disagreement and discuss the feasibility of resolving the disagreement by mediation or other means short of litigation. The parties shall cooperate in good faith in pursuing mediation or such other means.
- 13.10 This Agreement shall be governed by and construed in accordance with the laws of the province of Ontario, and the laws of Canada applicable therein.
- 13.11 The Publisher agrees that any action or proceeding instituted by it relating to this Agreement or its dealings with the Consortium or a Member pursuant to this Agreement shall be brought in a court of competent jurisdiction in the Province of Ontario, Canada, and for that purpose the Publisher now irrevocably and unconditionally attorns and submits to the jurisdiction of such court. The Publisher further agrees that either the Consortium or any Member may, at their sole discretion, bring any action or proceeding relating to this Agreement in a court of competent jurisdiction in the Province of Ontario, Canada or in any jurisdiction in which the Publisher is incorporated, registered or resident. In any such event, the Publisher agrees that it will irrevocably waive any right to, and will not, oppose any such action or proceeding on any jurisdictional basis, including forum non conveniens.

**AS WITNESS** the hands of the parties the day and year below first written

FOR THE PUBLISHER: **[NAME]**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: \_\_\_\_\_

FOR THE CONSORTIUM: **CANADIAN RESEARCH KNOWLEDGE NETWORK**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: Executive Director \_\_\_\_\_

**SCHEDULE 1**

**AUTHORIZED USERS**

A schedule dated [DATE] to the Agreement [DATE] between [**PUBLISHER NAME**] and **CANADIAN RESEARCH KNOWLEDGE NETWORK**.

This Agreement covers Authorized Users as specified in Section 1 – DEFINITIONS of the Agreement, for the Members participating in the Agreement as set out in Schedule 4 of the Agreement.

For avoidance of doubt, Authorized Users include those persons who are granted regular library user privileges according to the normal policies of the Members participating in the Agreement.

**AS WITNESS** the hands of the parties the day and year below first written

FOR THE PUBLISHER: [**NAME**]

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: \_\_\_\_\_

FOR THE CONSORTIUM: **CANADIAN RESEARCH KNOWLEDGE NETWORK**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: Executive Director

**SCHEDULE 2**

**FEE**

A schedule dated [DATE] to the Agreement [DATE] between [**PUBLISHER NAME**] and **CANADIAN RESEARCH KNOWLEDGE NETWORK**.

**All fees in [Canadian/US] dollars.**

**TOTAL FEE**

**PAYMENT SCHEDULE**

**AS WITNESS** the hands of the parties the day and year below first written

FOR THE PUBLISHER: [**NAME**]

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: \_\_\_\_\_

FOR THE CONSORTIUM: **CANADIAN RESEARCH KNOWLEDGE NETWORK**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: Executive Director

**SCHEDULE 3**

**LICENSED MATERIALS AND ACCESS METHOD**

A schedule dated [DATE] to the Agreement [DATE] between [**PUBLISHER NAME**] and **CANADIAN RESEARCH KNOWLEDGE NETWORK**.

**THE LICENSED MATERIALS**

**Subscription start date:**

**Subscription end date:**

**ACCESS METHOD**

Unlimited use of the Licensed Materials on the Publisher’s Server via the World Wide Web.

User authentication mechanisms supported are:

**Local Loading and Local/Alternate Hosting:** Publisher agrees to negotiate, at any point in the term of this Agreement, a separate Agreement in good faith with the Member or a duly authorized representative (e.g. a library consortium acting on behalf of the Member) for local hosting on the Member’s server or a third party server, as designated by the Member.

**PERPETUAL ACCESS:**

**AS WITNESS** the hands of the parties the day and year below first written

FOR THE PUBLISHER: [**NAME**]

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: \_\_\_\_\_

FOR THE CONSORTIUM: **CANADIAN RESEARCH KNOWLEDGE NETWORK**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: Executive Director \_\_\_\_\_



**SCHEDULE 4**

**MEMBERS OF THE CONSORTIUM PARTICIPATING IN THE AGREEMENT**

A schedule dated [DATE] to the Agreement [DATE] between [**PUBLISHER NAME**] and **CANADIAN RESEARCH KNOWLEDGE NETWORK**.

**AS WITNESS** the hands of the parties the day and year below first written

FOR THE PUBLISHER: [**NAME**]

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: \_\_\_\_\_

FOR THE CONSORTIUM: **CANADIAN RESEARCH KNOWLEDGE NETWORK**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: Executive Director

**SCHEDULE 5**

**IP ADDRESSES/RANGES OF THE MEMBERS PARTICIPATING IN THE AGREEMENT**

A schedule dated [DATE] to the Agreement [DATE] between [**PUBLISHER NAME**] and **CANADIAN RESEARCH KNOWLEDGE NETWORK**.

See spreadsheet attached (filename: XX)

**AS WITNESS** the hands of the parties the day and year below first written

FOR THE PUBLISHER: [**NAME**]

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: \_\_\_\_\_

FOR THE CONSORTIUM: **CANADIAN RESEARCH KNOWLEDGE NETWORK**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: Executive Director

**SCHEDULE 6**

**USAGE DATA AND REPORTING REQUIREMENTS**

A schedule dated [DATE] to the Agreement [DATE] between [**PUBLISHER NAME**] and **CANADIAN RESEARCH KNOWLEDGE NETWORK**.

Usage reporting frequency:

Currency of data:

Distribution of usage data:

Level of reporting:

Exportable to applications:

Customized:

**AS WITNESS** the hands of the parties the day and year below first written

FOR THE PUBLISHER: [**NAME**]

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: \_\_\_\_\_

FOR THE CONSORTIUM: **CANADIAN RESEARCH KNOWLEDGE NETWORK**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (in block capitals): \_\_\_\_\_

Position / Title: Executive Director