



## LICENSE AGREEMENT

### For the Licensor's own works (e.g. an author) or works they have commissioned (a publisher, newspaper, etc.)

This LICENSE AGREEMENT (the "**Agreement**"), dated as of [DATE] (the "**Effective Date**"), is made by the Canadian Research Knowledge Network ("**CRKN**"), with offices located at 411-11 Holland Avenue, Ottawa, ON, K1Y 4S1, and [LICENSOR NAME] (the "**Licensor**"), with an address at [ADDRESS].

#### BACKGROUND

- A. The Licensor has the right to license the materials described in Schedule A (the "**Works**") and wishes to grant to CRKN a license to the Works.
- B. CRKN is a Trusted Digital Repository and wishes to obtain a perpetual license to the Works for the purpose of making the Works publicly available as part of CRKN's Canadiana or other collections.
- C. The Licensor hereby agrees to provide CRKN a license to the Works on the terms and conditions set out in this Agreement.

In consideration of the mutual covenants, terms and conditions set out in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. Grant of License

1.1 **License.** The Licensor hereby grants to CRKN a non-exclusive, irrevocable, perpetual, worldwide, sublicenseable right and license to use, reproduce, display, convert, transmit and distribute, in any format and any medium, the Works for the following purposes:

- (a) uploading and storing the Works onto CRKN's electronic systems;
- (b) publishing the Works electronically on the Internet, whether on CRKN's publicly accessible website or any other repository, source or media selected by CRKN from time to time, which includes making the Works available to the public to view, download and use, subject to Section 1.2;
- (c) converting the Works to any format or medium for security, back-up, preservation and other purposes authorized under this Agreement; and
- (d) authorizing third parties to exercise CRKN's rights under this Agreement on behalf of CRKN.

1.2 **Public Access.** CRKN will make digital copies of the Works available via its website or other electronic means for the public to view, download, copy and use on the following terms: **[choose the terms that best suit the Works, including the legal and dispute risk]**

**Option 1:** The following Creative Commons license: **[insert the chosen CC license]**

**[If all materials are known to be in the public domain or are intended to be public domain, consider the CC0 or Public Domain license.]**

**Option 2:** The following **[insert other licensing platform name]** license: **[insert the chosen license]**

**Option 3:** © **[name of licensor]**. Published with Permission. All Rights Reserved.

**Option 4:** other: **[insert other choice]**

1.3 **Rights Statements.** CRKN will, at its discretion, attach a rights statement to the Works at the collection, sub-collection level, or the individual item-level. CRKN will abide by the copyright laws and what are considered to be sound practices for copyright notice provisions in Canada.

- 1.4. Trusted Digital Repository. The Licensor acknowledges that CRKN is a Trusted Digital Repository and will maintain such certifications as CRKN from time to time determines necessary to fulfill its commitment to preserve its collections (including the Works) in perpetuity. By entering into this Agreement, the Licensor agrees to CRKN's permanent preservation of the Works as part of the CRKN's collections, in keeping with the relevant CRKN preservation and collection policies. No termination of this Agreement shall have the effect of removing the Works from CRKN's repository or otherwise interfering with CRKN's commitments and requirements as a Trusted Digital Repository.
- 1.5. Delivery. On the Effective Date, or such other date the parties may agree upon in writing, the Licensor shall deliver the following to CRKN:
- (a) the Works in the following format(s): [insert description of the format]; and
  - (b) any documents, correspondence, and information as are necessary to use the Works in accordance with this Agreement.

## 2. Licensor's Representations and Warranties

2.1 The Licensor represents, warrants and covenants that:

- (a) it either: (i) solely and exclusively owns the right, title and interest in and to the Works in connection with CRKN's uses permitted under this Agreement; or (ii) has obtained from all persons and entities who are, or whose intellectual property is, identified, depicted or otherwise referred to in the Works, such written and signed licenses, permissions, waivers and consents, including those relating to personality, publicity, privacy and any intellectual property rights, as are or reasonably may be expected to be necessary for CRKN to exercise its rights in the Works as permitted under this Agreement, without incurring any payment or other obligation to, or otherwise violating any right of, any such person or entity;
- (b) all information the Licensor has provided about the Works is, to the best of the Licensor's knowledge and belief, accurate;
- (c) the exercise by CRKN of the rights and license granted under this Agreement will not infringe or otherwise conflict with the rights of any other person or entity;
- (d) it is under no current obligation or restriction, nor will it knowingly assume any such obligation or restrictions, that does or could in any way interfere or conflict with the grant of rights and licenses to CRKN under this Agreement;
- (e) the Works do not, to the best of the Licensor's knowledge and belief, contain any libelous or other unlawful matter and does not violate anyone's right to privacy; and
- (f) there is no litigation, opposition or other claim outstanding or, to the knowledge of the Licensor, threatened against or affecting the Licensor or the Works.

2.2 The Licensor acknowledges that CRKN staff has not and will not independently review the Works and that CRKN is relying on the representations and warranties the Licensor has made in Section 2.

## 3. Release, Indemnification and Liability

3.1 Release. The Licensor agrees that CRKN will not be responsible for any use or misuse of the Works by any person who accesses the Works through CRKN's website or other source.

3.2 Indemnity. The Licensor will indemnify, defend and hold harmless CRKN and its affiliates, officers, directors, employees, agents and sublicensees (each, a "**CRKN Indemnified Party**") from and against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, fees, costs, or expenses of whatever kind, including legal fees (collectively, "**Losses**"), arising out of or in connection with any third-party claim, suit, action or proceeding ("**Third-Party Claim**") relating to any actual or alleged: (a) breach by the Licensor of any representation, warranty, covenant or obligation under this Agreement, or (b) infringement or other violation of any intellectual property or other personal or proprietary rights of any person or entity resulting from the use of the Works by any CRKN Indemnified Party as permitted under this Agreement.

3.3 Indemnification Procedure. CRKN will promptly notify the Licensor upon becoming aware of a Third-Party Claim under this Section 3 ("**Indemnified Claim**"). The Licensor will promptly assume control of the defence and investigation of the Indemnified Claim and CRKN will reasonably cooperate with the Licensor in connection with the Indemnified Claim, at the Licensor's sole cost and expense. CRKN may participate in the defence of such Indemnified Claim with counsel of its own choosing, at its own cost and expense. The Licensor will not settle any Indemnified Claim on any terms or in any manner that adversely affects the rights of any CRKN Indemnified Party without CRKN's prior written consent (which consent may not be unreasonably withheld, conditioned or delayed). If the Licensor fails or refuses to assume control of the defence of such Indemnified Claim, CRKN will have the right, but no obligation, to defend against such Indemnified Claim, including settling such Indemnified Claim after giving notice to the Licensor, in each case in such manner and on such terms CRKN may deem appropriate. CRKN's failure to perform any obligation under this Section 3.3 will not relieve the Licensor of its indemnification obligations, including with respect to any Losses, except to the extent that the Licensor can demonstrate that it has been materially prejudiced as a result by such failure.

3.4 Limitation of Liability. To the fullest extent permitted by applicable law, neither party will be liable to the other party for any consequential, incidental, indirect, exemplary, special, punitive, or aggravated damages, or for any loss of actual or anticipated profits (regardless of how these are classified as damages), whether arising out of breach of contract, tort (including negligence), or otherwise (including the entry into, performance, or breach of this Agreement), regardless of whether such damage was foreseeable and whether either party has been advised of the possibility of such damages. The foregoing limitations do not apply to the Licensor's indemnification obligations this Agreement.

#### 4. Term and Dispute Resolution

4.1 Term. The term of this Agreement will commence on the Effective Date and will, subject to Sections 1.3 (Trusted Digital Repository) and (c) (Survival), remain in force until terminated in accordance with this Agreement.

4.2 Disputes. If any dispute arises between the Parties relating to the application, interpretation, implementation or validity of this Agreement, or if there is an allegation of a breach of this Agreement, the dispute will be dealt with in accordance with this provision.

(a) Any party may formally initiate this provision by sending a written notice to the other party, describing the dispute and setting out a reasonable cure period, which will not be less than 30 days.

(b) If the parties are unable to resolve their dispute within the cure period, either party may send the matter to a representative at the senior manager/director level or equivalent position, and notify the other party, in writing (the "**Formal Notice**"). As soon as practicable after receiving the Formal Notice, the receiving party will designate a representative at the senior manager/director level or equivalent position, and such representatives will meet to resolve the matter.

(c) If within 30 days following the delivery of the Formal Notice, the representatives are unable to resolve the matter, the parties agree to resolve the dispute by arbitration using the Canadian Arbitration Association Expedited Arbitration Rules. The parties agree that the Canadian Arbitration Association Expedited Arbitration Rules give the parties a fair opportunity to present their case and respond to the case of the other side. The arbitration shall be held in Ottawa, Ontario, Canada, and shall proceed in accordance with the provisions of the *Arbitration Act* (Ontario). Judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

4.3 Survival. Notwithstanding termination of this Agreement for any reason, Sections 0, 2, 3, (c) and 5 and any right, obligation or required performance of the parties in this Agreement which, by its nature and context is intended to survive termination of this Agreement, will survive any such termination. For greater certainty, termination of this Agreement shall not prevent CRKN from maintaining a copy of the Works as part of its collections and making such copies publicly available in keeping with its commitments as a Trusted Digital Repository.

#### 5. General

5.1 Assignment. CRKN may assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement, without the Licensor's consent, to one or more of the following: a successor non-profit entity; one or more of the members of CRKN, or one or more registered Canadian charities or "qualified donees" as that term are defined in the *Income Tax Act* (Canada). The Licensor acknowledges that, as of the date of this Agreement, the CRKN succession plan includes transferring copies of CRKN's collections to three institutions: the University of Alberta, University of Toronto, and Library and Archives Canada.

- 5.2 Interpretation. For purposes of this Agreement, any schedules and exhibits referred to in this Agreement will be deemed to be an integral part of this Agreement
  
- 5.3 Entire Agreement and Amendments. This Agreement, including and together with any related attachments, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. No amendment or modification to this Agreement is effective unless it is in writing and signed by an authorized representative of each party.
  
- 5.4 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties to this Agreement and their respective successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or will confer upon any third party any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.
  
- 5.5 Relationship of the Parties. Nothing contained in this Agreement will be interpreted as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties and neither party has authority to contract for or bind the other party in any manner whatsoever.
  
- 5.6 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect the enforceability of any other term or provision of this Agreement, or invalidate or render unenforceable such term or provision.
  
- 5.7 Waiver. No waiver by any party of any of the provisions of this Agreement will be effective unless explicitly set out in writing and signed by the party so waiving. Except as otherwise set out in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement will operate or be interpreted as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, remedy, power, or privilege.
  
- 5.8 Governing Law. This Agreement, and all matters arising out of or relating to this Agreement, is governed exclusively by the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario, without regard to any conflict of law principles. The parties irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario for any actions or proceedings arising out of or relating to the enforcement of this Agreement.
  
- 5.9 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

The Licensor and CRKN have caused this Agreement to be executed as of the Effective Date by their respective duly authorized signatories.

**[LICENSOR NAME]**

**CANADIAN RESEARCH KNOWLEDGE NETWORK**

By \_\_\_\_\_  
 Name:  
 Title:

By \_\_\_\_\_  
 Name:  
 Title:

**SCHEDULE A**

**DESCRIPTION OF WORKS**

**[Insert description of the Works being licensed under this Agreement. This description should include all titles, authors, citations, pre/post-print status, embargo periods, and other relevant information.]**