

**Consortia Canada
License Agreement for Electronic Products**

THIS AGREEMENT is made the 29th day of September 2014

BETWEEN: RMIT Training Pty Ltd of Level 9, 501 Swanston Street, Melbourne VIC 3000, Australia (herein referred to as "the Licensors")

AND: BC Electronic Library Network of W.A.C. Bennett Library, room 7600, Simon Fraser University, 8888 University Drive, Burnaby BC V5A 1S6, Canada (herein referred to as 'the Licensee').

"Licensee" is authorized to act for and sign this Agreement on behalf of member libraries hereinafter known as the "Member Institutions." Rights and responsibilities referenced in this Agreement in regard to "Licensee" shall apply to all the Member Institutions covered under this Agreement; however, Licensee is responsible only for fulfillment of its individual responsibilities under this Agreement. Neither Licensee nor any other Member Institution shall be liable for any breach or default of another Member Institution. Member Institutions are listed in Schedule 1.

Where applicable, additional Exhibits and Appendices may be attached to address more specific Terms and Conditions specific to certain formats such as e-books, or special purchase conditions such as Perpetual Access, in which case the attached Exhibits and Appendices form an integral part of this Agreement.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

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

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| Authorized User | All full and part time students, faculty and employees (including permanent, temporary, contract or visiting) and researchers associated with the Member Institutions, regardless of physical location of such persons; retired faculty and staff with Emeritus or equivalent status; all registered patrons of the Member Institution, or other persons affiliated with the Member Institution or otherwise permitted to use the facilities of the Member Institution and authorized to access the Licensed Materials. |
| Walk-In Users | Individuals not affiliated with a Member Institution who are physically present at Member Institution sites set out in Schedule 1 shall be deemed to be Authorized Users under the terms and conditions of this Agreement. Additional groups of Authorized Users such as Member Institution alumni may be included, as where and to the extent set out in Schedule 1. For the avoidance of doubt, Walk-In Use is intended for individual users, not as a substitution for a license by another institution or organization. |

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| Commercial Use | Use of the Licensed Materials for the purposes of monetary reward (whether by Member Institutions or Authorized Users) by means of sale, resale, loan, transfer, hire or other form of commerce. For the avoidance of doubt, neither recovery of direct costs by the Member Institution from Authorized Users, nor use of the Licensed Materials by the Member Institution or by an Authorized User in the course of research funded by a commercial organization, is deemed to be Commercial Use. |
| Course Packs | A collection or compilation of materials for example book chapters, journal articles assembled by staff of Member Institution for use by students in a class for the purposes of instruction. |
| Digital Rights Management | Also referred to as “DRM”, access control technologies that are used by hardware manufacturers, licensors, copyright holders and individuals to limit the use of digital content and devices in on-line or off-line environments. |
| Digital Watermarking Technology | 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 | Use of parts of or linking to the Licensed Material in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments, library environments, and courseware technologies) hosted on a Secure Network. |
| Electronic Reserves | Electronic copies of Licensed Materials (e.g. book chapters, journal articles, abstracts) made and stored on the Secure Network pursuant to Section 3.8 by Member Institution for use by Authorized Users in connection with specific courses of instruction offered by Member Institutions to such Authorized Users. |
| License Fee | 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 to by the parties from time to time. |
| Open Access Repository Services | Open-access digital repository services such as those provided by the Author’s employing institution, an academic consortium, a discipline-based entity, or a governmental funding agency. |
| Perpetual Access | Provisions in this Agreement for continuation of access, archiving and use of Licensed Materials that shall survive any termination of the License Agreement and ensure continued access consistent with current recognized standards in the publishing industry. |

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| Secure Network | A computer network that is only accessible to Authorized Users by Secure Authentication. |
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2. LICENSE GRANT

- 2.1 The Licensors hereby grants to the Licensee and Member Institutions, subject to and in accordance with the terms of this License, a non-exclusive and non-transferable right to permit Authorized Users to access and use the Licensed Materials at the sites of Member Institutions or remotely, through secure authentication.
- 2.2 In consideration for the Licensors' licensing of the Products and/or Services listed in the attached Schedule(s), the Licensee and Member Institutions agree to pay to the Licensors the Fee in accordance with the provisions of the attached Schedule(s).

3. PERMITTED USES

Member Institutions and Authorized Users may use the Licensed Materials as follows:

- 3.1 ACCESS and USE the Licensed Materials from the premises of the Member Institution, or remotely via secure authentication, in order to search, retrieve, download, display, print and view the Licensed Material for research and study purposes.
- 3.2 CREATE PERSISTENT LINKS to individual articles for access by Authorized Users for Permitted Uses under this Agreement, from within secure authentication environments.
- 3.3 INTERLIBRARY LOAN by paper or electronic means, a single copy of an individual document within the guidelines of traditional interlibrary loan practices and applicable copyright laws.
The Licensed Material may be used as a source for interlibrary loan in accordance with Canadian and relevant international copyright laws and standard library interlibrary loan procedures.
- 3.4 SCHOLARLY SHARING. 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.
- 3.5 USE IN ACADEMIC RESEARCH. Member Institutions and Authorized Users may incorporate limited parts of the Licensed Materials in printed or electronic form in assignments, portfolios, theses and dissertations, including reproductions of the Licensed Material for library deposit and other non-commercial uses.
- 3.6 FAIR DEALING / CREATIVE COMMONS. Notwithstanding any other provisions of this Agreement, nothing shall in any way restrict or limit the ability of Member Institutions, Authorized Users or Walk-in Users to engage in or conduct any activity that is otherwise permitted under Canadian copyright laws, including without limitation pursuant to any fair dealing exceptions, or as permitted under Creative Commons licensing.

- 3.7 ALTER or MODIFY the Licensed Materials as necessary to provide an equivalent level of service to Authorized Users with appropriately documented print or other disabilities.
- 3.8 COURSEPACKS / ELECTRONIC RESERVES / VIRTUAL LEARNING. Member Institutions and Authorized Users may incorporate reference (including links) to the Licensed Material in course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network (only accessible to Authorized Users by Secure Authentication). Each item shall carry appropriate acknowledgement of the source, listing the title and copyright owner. For the avoidance of doubt, the licensed material may not be incorporated into course packs, but references to the licensed material in the form of citations or links.
- 3.9 FEDERATED SEARCH. Member Institutions and Authorized Users may include the Licensed Material in federated or metasearch services.
- 3.10 DATA and TEXT MINING. Member Institutions and Authorized Users may conduct research employing data or text mining of the Licensed Materials and disseminate results publicly for non-commercial purposes.
- 3.11 TRAINING AND MARKETING MATERIALS. Member Institutions may display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.

4. PROHIBITED USES

- 4.1 COMMERCIAL USE. Use of the Licensed Materials for the purposes of monetary reward (whether by Member Institutions, Authorized Users or Walk-in Users) by means of sale, resale, loan, transfer, hire or other form of commerce. For the avoidance of doubt, recovery of direct costs incurred by the Member Institution in the course of providing access to Authorized Users or Walk-in Users (e.g. printing, photocopying, or administration fee) including inter-library loan is not deemed to be Commercial Use.
- 4.2 SUBSTITUTION FOR LICENSE. No provision of this Agreement is intended to provide such substantial use as to constitute a substitution for an institutional license by a third party institution. For example, Walk-In User rights are designed for the provision of services to individuals, not blanket rights for all of the users of another institution or organization.

5. THE LICENSOR'S UNDERTAKINGS

The Licensor shall:

- 5.1 Warrant to the Licensee and the Member Institutions that the total downtime directly attributable to the Server supporting the Licensed Materials will amount to less than the equivalent of 500 hours in a year. In the event that the total downtime exceeds this amount, the Licensor will make appropriate restitution, such as providing a special discount equivalent to the amount of the excessive downtime to the product on the next renewal, extending the license term, or providing a refund.

- 5.2 On written request of the Licensee give reasonable notice to the Licensee and the Member Institutions of any additions, modifications to, or deletions of the Licensed Material, Provided the Licensee makes no more than one request in each six month period. Failure by the Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by the Licensee and the Member Institutions. If any modifications render the Licensed Materials significantly less useful to the Member Institutions, the Licensee and the Member Institutions may treat such modifications as a material breach under sections 7.2 and 7.3 of this Agreement.
- 5.3 Notice of the Use of Digital Rights Management Technology. In the event that Licensor utilizes any type of digital rights management technology to control the access to usage of Licensed Materials, Licensor agrees to notify 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, Member Institutions or any Authorized User as specified in this Agreement or under applicable law.
- 5.4 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 will not be visible to the human eye and will not degrade image quality. These watermarks shall not contain information pertaining to Member Institutions or Authorized Users such as account numbers or IP addresses. If digital watermarking technology is used, Licensor agrees to notify the Licensee, in advance, of the name, contact information, and any technical specifications for the technology used.

6. THE LICENSE AND MEMBER INSTITUTIONS UNDERTAKINGS

The Licensee and each Member Institution shall:

- 6.1 Use reasonable efforts to ensure that access is restricted to Authorized Users, and that Authorized Users are made aware of, and comply with, the terms and conditions of this Agreement.

7. TERM AND TERMINATION

- 7.1 This Agreement shall commence on the date indicated on the first page of this Agreement, and shall apply to all Licensed Materials for the time period(s) as indicated on the attached Schedule(s). Subscriptions as indicated on the attached Schedule(s) will automatically terminate at the end of the subscription period unless both parties have previously agreed in writing including by email communication to renew the subscription.
- 7.2 In the event that either party believes that the other materially has breached any obligations under this Agreement, such party shall notify the breaching party in writing. The breaching party shall have 30 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 30-day time period, the non-breaching party shall have the right to terminate the Agreement without further notice.

- 7.3 In the event of early termination permitted by this Agreement, the Member Institution shall be entitled to a refund of any fees or pro-rata portion thereof paid by the Member Institution for any remaining period of the Agreement from the date of termination. This paragraph is invalid if the Member Institution commits a willful, material and consistent breach of the terms of this Agreement, and fails to remedy the breach within thirty (30) days of notification by the Licensor.
- 7.4 The Licensor hereby grants to the Licensee and its participating Member Institutions a nonexclusive, royalty-free, subscription license to use all material added to the Licensed Materials under the subscription term of this Agreement. Access to Licensed Materials will discontinue for participating Member Institutions upon cancelling a subscription.

8. GENERAL

- 8.1 **Warranty and Indemnification.** The Licensor warrants that it holds the rights granted under this Agreement, and indemnifies and holds the Licensee and its Member Institutions harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Licensee or any of its Member Institutions claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this license for any reason. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS LICENSE IS APPLICABLE TO THIS INDEMNIFICATION.
- 8.2 This Agreement and attached Schedule(s) signed by Licensor and Licensee shall comprise the complete terms and conditions of use. If there is a "click-through" agreement for users, this Agreement shall override the "click-through" agreement.
- 8.3 Notice of terms of "click-through" license terms: in the event that Licensor uses a "click-through" license for end users, Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In the event of any conflict between the 'click-through' terms and this License, the terms of this License shall prevail.
- 8.4 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.
- 8.5 **Assignment.** This Agreement may not be assigned by either party to any other person or organization without the prior written consent of the other party, nor may either party subcontract any of its obligations, except as provided in this Agreement in respect of the management and operation of the Server and the Licensor's Representative, without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 8.6 **Notice.** Any notices to be served on either of the parties or on a Member Institution by the other shall be sent by registered mail, courier or email to the address of 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 notice as delivered by the courier or email.

- 8.7 Force Majeure. Neither party's nor a Member Institution'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.
- 8.8 Waiver. Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.
- 8.9 Severability. If any provision of this Agreement is found invalid or unenforceable pursuant to a decree or decision of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable according to its terms.
- 8.10 If the parties disagree over an interpretation of this Agreement or whether a party or a Member Institution is in breach of any part of this Agreement, the parties and any such Member Institution 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 other such means.
- 8.11 This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia and the laws of Canada applicable therein. Both parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the courts of British Columbia Canada.

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

Accepted:

FOR THE LICENSOR: RMIT Training Pty Ltd

Name: _____

Position / Title: _____

Signature: _____

Date: _____

FOR THE LICENSEE AND MEMBER INSTITUTIONS: BC Electronic Library Network

Name: _____

Position / Title: _____

Signature: _____

Date: _____

SCHEDULE 1

Business Terms

This Schedule 1 is dated September 29, 2014 to the Agreement dated September 29, 2014 between [name of Licensor] and Licensee and the Member Institutions of Consortia Canada, as listed below.

Name and Description of Licensed Material:

Informit Indigenous Collection

License Type:

Annual subscription without continued access after cancellation

Term of Agreement:

Five years with automatic renewal unless requested otherwise by either party

Payment Schedule:

Invoices will be payable within 60 days of being issued.

Fee and invoicing:

As per schedules submitted by each consortium

Access:

Vendor Platform

Users:

As defined in Section 1

Additional License Rights or Restrictions:

MARC Records

Authorized Users:

(Listed under individual consortium licenses)