

Consortia Canada
Subscription & Hosting Services License Agreement for Electronic Products

THIS AGREEMENT is made the day of [year]

BETWEEN: Licensor with offices at 27500 Drake Road, Farmington Hills MI 48331 (herein referred to as "the Licensor")

AND: [Name and Address of Participating Consortium] (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:

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 attached Schedules, shall be deemed to be Authorized Users under the terms and conditions of this Agreement. 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.
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 electronic 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 amended by the parties from time to time.
Hosting Fee	Shall mean the fee paid annually by Licensee and its Members Institutions for the hosting of Licensed Material on Licensor’s online proprietary online systems as set out in Schedule 1, or in new Schedules to this Agreement which may be amended by the parties from time to time. Hosting fees may be capped in accordance with Licensor’s hosting fee policy provided a continuance by Licensee to pay the applicable hosting fee invoiced annually by Licensor.
Perpetual Access	Provisions in this Agreement for continuation of access, archiving and use of Licensed Materials for which a fee has been paid for perpetual access, that shall survive any termination of the License Agreement and ensure continued access consistent with current recognized standards in the publishing industry.

Secure Network A computer network that is only accessible to Authorized Users by Secure Authentication.

2. LICENSE GRANT

- 2.1 The Licensor 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 The Licensee and Member Institutions Authorized Users may only access the Licensed Material (as defined in this Agreement) via the Licensee and Member Institution's Authorized Sites using such Authorized User's personal access codes provided by the Licensee. Users may not share their access codes with others or access the Licensed Materials as an Authorized User under this Agreement other than via an Authorized Site
- 2.3 Authorized Users who remotely access the Licensed Material may do so from home or another location, provided, that proper security procedures are undertaken by the Licensee that will prevent remote access by unauthorized users. Licensee and Member Institutions shall take all reasonable precautions to limit the usage of the Licensed Material to those specifically authorized by this Agreement and shall use reasonable efforts to inform its Authorized Users of the provisions of this Agreement. The Licensee agrees to notify Licensor if it becomes aware of any of the following: (a) any loss or theft of the Licensee's passwords(s); (b) any unauthorized use of any of the Licensee's passwords(s) of the Licensed Material; or (c) any breach by an Authorized User of the terms of this Agreement. Upon becoming aware of any breach of the terms of this Agreement by an Authorized User, the Licensee agrees to work with Licensor to correct such practices.
- 2.4 In consideration for the Licensor's licensing of the Products and/or Services listed in the attached Schedule(s), the Licensee and Member Institutions agree to pay to the Licensor 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.
- 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. Licensees and Member Institutions may use the Licensed Materials for the purpose of supplying interlibrary loan requests in accordance with the guidelines of traditional interlibrary loan practices and applicable copyright law (17 USCA section 108, the US Copyright statutes), subject to Licensor's rights to third party materials contained in the Licensed Materials, by paper or electronic means, a single copy of an

- individual document. Licensed Materials not available for Interlibrary Loan purposes shall be identified in the schedules attached herein.
- 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. 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,.
- 3.7 May download, display, view and print and/or make limited paper or electronic copies of citations, abstracts, full text or portions thereof for internal business purposes and for Licensee's Authorized Users' educational research and personal non-commercial use only
- 3.8 ELECTRONIC COURSEPACKS/ELECTRONIC RESERVES/VIRTUAL LEARNING. Member Institutions and Authorized Users may incorporate parts of the Licensed Material in electronic 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 but not for commercial or for-profit purposes (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. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorized Users. If the Licensor does not have the right to grant all rights under 3.8 for all Licensed Materials, these rights will apply exclusively to the content for which the Licensor does have such rights, as specified in the attached Schedule(s).
- 3.9 FEDERATED SEARCH. Member Institutions and Authorized Users may include the Licensed Material in federated or metasearch services.
- 3.10 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 Licensor shall use commercially reasonable efforts to provide continuous availability of the online Licensed Materials, subject to periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of data and downtime related to equipment, the failure of communications networks, or services outside of control of Licensor. Licensor shall use reasonable efforts to provide an average of 98% up time per month. Normal scheduled downtime will be performed during regular maintenance window hours of 4am to 6am, Eastern Standard Time; emergency maintenance is performed on as necessary. Licensor shall use best efforts to provide advance notice to the Licensee and Member Institutions in the event of such emergencies.
- 5.2 Give prompt notice to the Licensee and the Member Institutions of any additions, modifications to, or deletions of the Licensed Material. 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 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.
- 5.5 Licensor warrants to the Licensee and its Authorized Users, that the Licensed Material used in accordance with this Agreement does not infringe the copyright or any other proprietary or intellectual property rights of any person. Licensor further warrants that it owns and has the right to make available the Licensed Material to the Licensee.
- 5.6 Although Licensor believes the Licensed Material to be reliable, Licensor does not guarantee or warrant any information or materials contained in or produced by the Licensed Material or

the accuracy, completeness or reliability of the Licensed Material Any data or information contained in or provided in connection with the Licensed Material may be incomplete or condensed. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT, LICENSOR PROVIDES THE LICENSED MATERIAL ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND AND LICENSOR DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL LICENSOR BE LIABLE FOR: INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING FOR LOST PROFITS, LOST DATA, OR OTHERWISE.

- 5.7 IN NO EVENT SHALL LICENSOR OR ANY THIRD PARTY DATA SUPPLIER BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED MATERIAL OR FOR THE LOSS OR DAMAGE OR CORRUPTION OF DATA, LOSS OF PROGRAMS, LOSS OF BUSINESS OR GOODWILL, OR OTHER DAMAGES OR LOSSES OF ANY NATURE ARISING OUT OF THE USE, OR INABILITY TO USE THE LICENSED MATERIAL, INCLUDING WITHOUT LIMITATION LOSSES ARISING FROM ANY ERRORS, OMISSIONS OR OTHER INACCURACIES IN OR CORRUPTION CAUSED WHETHER BY TRANSMISSION PROCESSING OR OTHERWISE TO THE MATERIAL PUBLISHED IN THE LICENSED MATERIAL OR OTHERWISE MADE ACCESSIBLE THROUGH THE LICENSED MATERIAL. IN NO EVENT SHALL LICENSOR'S OR THIRD PARTY DATA SUPPLIER'S LIABILITY UNDER THIS AGREEMENT WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE EXCEED THE ANNUAL FEE RECEIVED BY LICENSOR FROM LICENSEE.

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 or such longer period of time as is reasonably required if the breach cannot be remedied within such thirty (30) day period 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 or such longer period of time as is reasonably required if the breach cannot be remedied within such thirty (30) day

- period, the non-breaching party shall have the right to terminate the Agreement without further notice.
- 7.3 In the event of early termination for cause permitted by this Agreement, the Member Institution shall be entitled to a refund or credit as negotiated between the parties, 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 Member Institutions a nonexclusive, non-transferrable, royalty-free, perpetual license to use all material for which a fee has been paid for perpetual access, to which the Member Institutions has purchased during the term of this Agreement. Usage of materials acquired in this fashion shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement.
- 7.5 Funding Contingency. If funding of the Member Institution is materially reduced and the Member Institution thereby becomes unable to pay future amounts payable pursuant to this Agreement, the Member Institution and Licensor agree to that this Agreement shall be terminated or amended to reflect any reduction of funds. Such new terms will be agreed to in writing by both parties and appended to this Agreement. In any event if funds are not appropriated to effect such continuation, Licensee may give the Licensor written notice of termination and this Agreement shall terminate without further liability to Licensor or any other entity, for the Member Institution effective 30 days after the giving of such notice if the Member Institution has failed to pay the Fee for the calendar year in which such notice was given, or if the Member Institution has paid the Fee for the calendar year in which such notice was given, January 1 of the following year.
- 7.6 Licensor may at any time (without prejudice to its other rights or remedies) terminate this Agreement and any order form hereunder or in connection herewith (an "Order Form") with written notice to the Licensee in the with respect to the delivery of any part of the Licensed Material from any third party (a "Source"), upon request of such Source or immediately upon termination of Licensor's agreement with such Source.
- 7.7 On termination, all rights and obligations of the parties automatically terminate:
- a. Licensee shall immediately cease to distribute or make available the Licensed Material to Authorized Users, and shall destroy all Licensed Material locally mounted pursuant to Section 3.8
 - b. In the case of Licensed Material for which a fee is paid for continual or perpetual access to the materials, on termination of this Agreement, (otherwise than as a result of notice being given by Licensor for breach of contract) Licensor shall provide reasonable assistance to the Licensee as needed to enable the Licensee and any third party vendor engaged by the Licensee to host, and provide to Licensee and its Authorized Users uninterrupted on-line Internet web-based access to the Licensed Material
 - c. Use of the CD-ROMs and FTP electronic feeds after subscription expiration is subject to the license granted under this Agreement. In the case of CD-ROM or FTP electronic feeds for which a license fee is paid for continual or perpetual access to the materials, Licensee may retain the CD-ROM or FTP electronic feed unless the license is terminated due to breach of this Agreement. In the event of breach of any term of this Agreement,

Licensor may, in addition to its other legal rights and remedies, terminate the license granted and upon written notice of such termination Licensee shall certify the destruction of all copies of the Licensed Material including the CD-ROMs or FTP electronic feeds as well as any downloaded copies of the licensed materials.

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 consent of the other party, provided that Licensor shall be permitted to assign this Agreement to an affiliate, a successor in interest or in connection with a change of control or transfer of assets to which this Agreement relates, without the consent of the Licensee
- 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 facsimile 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 facsimile.
- 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 Copyrighted Works. Except for the specific rights granted herein, all right, title and interest, including copyrights to the Licensed Materials, are owned exclusively by Licensor. All rights in respect thereof are reserved to the Licensors and its licensors. Through this Agreement Licensee obtains certain limited rights to the Licensed Materials, but Licensee does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with such Licensed Materials. All such copyrights and intellectual property rights remain the property of Licensor and its licensors.
- 8.12 This Agreement shall be governed by and construed in accordance with the laws of the province of [participating consortium], 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 [province of participating consortium], Canada.

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

Accepted:

FOR THE LICENSOR: LICENSOR

Name: _____

Position / Title: _____

Signature: _____

Date: _____

FOR THE LICENSEE AND MEMBER INSTITUTIONS: [Full Name]

Name: _____

Position / Title: _____

Signature: _____

Date: _____

**SCHEDULE 1
Business Terms**

This Schedule 1 is dated _____ to the Agreement dated _____ between **Licensor** and Licensee and the Member Institutions of Consortia Canada, as listed below.

This License Agreement and the Customer Order Form both shall comprise the entire agreement for Options 1 and 2

Name and Description of Licensed Material: National Geographic Digital

Three Different Options available:

- Option 1: National Geographic: 1888 – 1994 Archive
- Option 2: National Geographic: 1888 – 1994 Archive AND 1995 – Current
- Option 3: National Geographic: 1995 Current

License Type:

- Perpetual Access to full content after cancellation
- Limited perpetual access to content after cancellation (*provide details*)
- Subscription without continued access after cancellation
- Option 1: National Geographic: 1888 – 1994 Archive includes perpetual access to all material
- Option 2: National Geographic: 1888 – 1994 Archive AND 1995 – Current includes perpetual access to 1888 – 1994 Archive and subscription without continued access after cancellation for 1995 – Current
- Option 3: National Geographic: 1995 Current includes subscription without continued access after cancellation

Payment Schedule:

- Option 1: National Geographic: 1888 – 1994 Archive: One-time payment and optional annual hosting fee
- Option 2: National Geographic: 1888 – 1994 Archive AND 1995: One-time payment and optional annual hosting fee and annual subscription fee
- Option 3: National Geographic: 1995 Current: annual subscription fee

Cengage will invoice for any due payments annually

Fee and invoicing: As per annual pricing provided by Cengage

Additional License Rights or Restrictions:

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

MARC Records

Open Access revenue

In the event that Licensor offers a for-pay open access option to its authors, Licensor agrees to annually review the number of open access articles published in the Licensed Content under the open access option and decrease license fees accordingly.

AUTHOR'S RIGHT TO USE THEIR OWN WORK

Authors affiliated with a Member Institution whose work (“Content”) is accepted for publication within the Licensed Materials shall retain the non-exclusive, irrevocable, royalty-free right to use their Content for scholarly and educational purposes, including self-archiving or depositing the Content in institutional, subject-based, national or other open repositories or archives (including the author’s own web pages or departmental servers), and to comply with all grant or institutional requirements associated with the Content. For the avoidance of doubt, it is the intent of the parties to this Agreement that Authors are third party beneficiaries of this provision of the Agreement.

Authorized Users:

(List names of all Member Institutions participating in this Agreement)

Accepted:

FOR THE LICENSOR: LICENSOR

Name: _____

Position / Title: _____

Signature: _____

Date: _____

FOR THE LICENSEE AND MEMBER INSTITUTIONS: [Full Name]

Name: _____

Position / Title: _____

Signature: _____

Date: _____

SCHEDULE 2
PURCHASE TERMS
Local Archiving and Hosting of Licensed Materials

This Schedule 2 is dated _____ to the Agreement dated _____ between Cengage Learning and Licensee and the Member Libraries of Consortia Canada, as listed in Schedule 1.

1. General

On termination of hosting services through Licensor, continued access shall be available through a trusted 3rd party digital preservation and electronic archiving vendor where Licensor has deposited a machine-readable commercially viable copy of the Licensed Materials. For Licensed Materials not on deposit, upon request or upon termination of Licensee's Agreement, Licensor shall provide a backup copy of the Licensed Materials provided in all cases that the Licensed Materials remains generally available via Licensor and Licensor retains sufficient rights to make available the Licensed Materials at the time of such request. This backup copy shall be subject to the same terms and conditions of usage as the online Licensed Materials. Licensee may be charged for the cost of the physical copy on a cost recovery basis. Licensee acknowledges that Licensor may not retain all necessary rights to Licensed Materials in perpetuity and Licensor's provisions of access to the Licensed Materials is subject in all instances to Licensor's continuing rights to the Licensed Materials from third party content providers.

2. Format

Licensor agrees to provide Licensed Materials in a physical format and on media best suited the content.

3. Terms and Conditions

- A. **General Provisions.** This order form is subject to the terms and conditions of Licensor's Subscription and Hosting Services Agreement and shall be effective only upon acceptance by Licensor. By signing this order form, using the relevant Digital Archives Collections (each "Product"), or making any payment for any relevant Product, the Licensee agrees to be bound by and comply with these Terms and Conditions. All rights in and to the Product shall remain the exclusive property of Licensor and its licensors. Neither Licensee or any Authorized User may (i) commercially exploit the Product or portions thereof, by any means, including without limitation, sale, exchange, barter, transfer, assignment, distribution, or, public display (ii) transfer, assign or sublicense any the rights or obligations under this Agreement, or (iii) take any action which would obscure the copyright, trademark or other proprietary notices contained in the Product.
- B. **Delivery.** Upon acceptance of this order form, Licensor shall deliver access to the Product via the World Wide Web using Licensor's proprietary online systems. In addition to hosted Products, Licensor will deliver to Licensee (unless otherwise agreed between Licensor and the Licensee) the Product formatted in a universal serial bus drive ("USB Drive") or on media best suited the content (the "Hard Copies") as set forth on this Schedule 2. Following delivery of the Hard Copies, as between Licensor and Licensee, Licensee shall be solely responsible for all maintenance and support, equipment, systems and software for the Hard Copies.

Licensor will continue to provide hosting services for the Product as set forth in the Subscription and Hosting Agreement between Licensor and the Licensee.

- C. **Terms of Use.** Licensee may: make further copies of the Product in perpetuity, as necessary for purposes of preservation, refreshing, or migration, including migration to other formats, solely to permit continued access to and/or archival retention of the Product in the manner permitted hereunder; Licensee acknowledges and agrees that, except for the specific rights granted herein, all right, title and interest, including the copyrights to the Product are owned exclusively by Licensor and its licensors. All rights in respect thereof are reserved to Licensor and such licensors. By purchasing the Product hereunder, Licensee obtains certain limited rights to the Products pursuant to this Order Form, but Licensee does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with such Products. All such copyrights and intellectual property rights remain the property of Licensor and its licensors. Licensor shall be permitted to assign this Agreement to an affiliate, a successor in interest or in connection with a change of control or transfer of assets to which this Agreement relates, without the consent of the Licensee. Licensee may not assign this Agreement, or any of its rights or obligations hereunder without Licensor's prior written consent. These Terms and Conditions shall be binding upon and inure to the benefit of each party's successors in interest and permitted assigns.
- D. **Disclaimer.** Licensor does not guarantee or warrant any information or materials contained in or produced by the Product, or the accuracy, completeness or reliability of the Product. Any data or information contained in or provided in connection with the Collections may be incomplete or condensed. LICENSOR PROVIDES THE PRODUCT(S) ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND AND LICENSOR DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL LICENSOR BE LIABLE FOR: INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING FOR LOST PROFITS, LOST DATA, OR OTHERWISE. IN NO EVENT SHALL LICENSOR'S LIABILITY HEREUNDER, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID HEREUNDER FOR THE PURCHASE OF THE PRODUCTS.
- E. **Returns.** Licensee's obligation to pay the fee set forth in exchange for the Product is absolute and non-refundable.
- F. **Shipping.** The Product shall be delivered in current standard data formats and on media best suited the content.
- G. **MARC Records.** In this Schedule, the following shall apply for access to and purchase according to the terms and conditions hereof: (i) MARC Records may be added to group catalogs or bibliographic utilities for reference needs and for the purpose of indicating holdings but not in a way that allows another library to download, update or otherwise use the records in their own catalog; nor will the group catalog or bibliographic utility provide the records as a record set to any other library or third party; (ii) As long as the records are not exported into systems or utilities beyond those specified above, there will be no additional charges for access to and use of the MARC data. Plans to add or export the records beyond such configurations will require negotiate with Licensor in advance; (iii) Record transfer from third-party vendors performed by FTP or any other media must be deleted from the Licensee's receiving site. Records that have

been copied from the transfer file and loaded into the Licensee's system must be deleted from the Licensee's FTP site and; (iv) If record transfer is performed per magnetic tapes, these tapes must be returned, after loading to Licensor or its assigned third-party vendor. Tapes are to be returned within thirty (30) days of receipt unless otherwise authorized by Licensor.

- H. **Confidentiality.** Licensee shall not use itself or reveal to any person or business, confidential or proprietary information or material gained as a result of this Agreement, including without limitation, the terms and conditions of this Agreement, except as may be required by any court of competent jurisdiction, governmental agency, law or regulation (in such event, Licensee shall notify Licensor before disclosing this Agreement). Notwithstanding the foregoing, the terms and conditions of this Agreement may be revealed by Licensee as part of the normal reporting or review procedure to its accountants, auditors and legal counsel, provided such accountants, auditors, and legal counsel agree to keep such information confidential. This clause shall not supersede any non-disclosure agreement separately executed between the parties, and such terms and conditions thereof shall remain in full force and effect and shall be deemed incorporated herein and shall take precedence over any conflicting terms herein.
- I. **Definitions.** In this Schedule the following definitions shall apply for access to and purchase according to the terms and conditions hereof: **"Product"** shall mean the Licensor Digital Archives Collection taken as a whole, that are available for purchase in an electronic format as indicated herein; **"MARC Records,"** digitized machine-aided readable catalog records; **"Standing Order,"** the automatic delivery of the newest title and/or volume in a series as they become available; **"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. In no event shall Licensee's subcontractors, affiliates be deemed to be Authorized Users, without the prior written consent of Licensor in each instance. **"Hosting Fees,"** shall mean a fee which has been paid for continual or perpetual access through Licensor's proprietary on-line systems. Hosting fees are based on the number of Products purchased by an individual library. Hosting fees will be capped in accordance with Licensor's hosting fee policy provided Licensee continues to pay the applicable hosting fee as invoiced annually by Licensor.
- J. **Portability:** Licensee and Member Institutions shall have the right to migrate the Licensed Content on a locally hosted system to new formats, in response to technological change, in order to ensure ongoing access to Authorized Users, within the framework of this Agreement. Digital rights management technology shall not interfere with this right. Licensor shall have no obligation to provide Licensee with any updates to the Licensed Materials provided under this section. Licensee shall be solely responsible for the installation, maintenance and support on Licensee's network and/or any network access resources required for Licensee's Authorized Users to access the Licensed Materials.

4. Notification of Updates

Licensor agrees to provide Licensee and Member Institutions with information pertaining to any subsequent modifications to the Licensed Materials within a period of ten (10) working days.

5. Withdrawal of Licensed Materials

Licensor shall give written notice of any intention to withdraw any part of the Licensed Materials from their Server in accordance with Section 5.2 of this License. Licensor may request that the Licensee and Member Institutions remove an item or part(s) of the Licensed Materials present on the server(s) operated by the Service Provider by providing detailed rationale in writing to the Licensee and Member Institutions no less than sixty (60) days prior to the scheduled date of removal from Licensor's Server. Licensor shall not knowingly cause the removal or deletion of any part of the Licensed Materials on the Server(s) operated by the Service Provider through the use of data loads or any related data delivery mechanisms or processes. Licensee and Member Institutions retain the right to archive and continue to provide access to the withdrawn Licensed Material provided that a permanent note, mark or URL link is made indicating that the Licensed Material has been removed from the Licensor's Servers. Where possible, a link will be made from the Server(s) operated by the Service Provider to the Licensor's Server to provide the rationale as to why the Licensed Material was removed.

- K. Licensor agrees to use reasonable efforts to assist the Licensee and Member Institutions in all activities required to render a faithful reproduction of the Licensed Materials on the Licensee's and Member Institutions' servers, including making appropriately trained staff available during normal business hours for assistance (8:00 am to 5:00 pm EST).
- L. The content of the Licensed Materials provided shall not normally materially differ from any equivalent print editions of books. Any exceptions shall be identified and agreed upon in advance by both Licensor and Licensee and Member Institutions.

3. Schedule of Delivery

Licensor agrees to make copies of the Licensed Materials available to the Licensee and Member Institutions in a format consistent with this License within a reasonable time period. For the purposes of clarity, Licensor will provide all current Licensed Materials within a period of ninety (90) working days from the date of this License.

Accepted:

FOR THE LICENSOR: [Full Name]

Name: _____

Position / Title: _____

Signature: _____

Date: _____

FOR THE LICENSEE AND MEMBER INSTITUTIONS: [Full Name]

Name: _____

Position / Title: _____

Signature: _____

Date: _____