

BC Electronic Library Network (BCELN)

License Agreement for Electronic Products

THIS AGREEMENT is made the 1st day of June 2018 (the “Effective Date”)

BETWEEN: EBSCO Publishing of 10 Estes Street, Ipswich, MA, 01938, USA (herein referred to as the “Licensor”)

AND: BC Electronic Library Network (BCELN) of 8888 University Drive, British Columbia, V5A 1S6, CANADA (herein referred to as the “Licensee”).

Licensee, as the authorized representative and agent for the Members of the Consortium, is authorized to act for and sign this Agreement on behalf of a group of Participating Institutions represented by BCELN hereinafter known as the “Participating Institutions.” Rights and responsibilities referenced in this Agreement in regard to Licensee shall apply to all the Participating Institutions covered under this Agreement; however, Licensee is responsible only for fulfillment of its individual responsibilities under this Agreement. Neither Licensee nor any of the other Participating Institutions shall be liable for any breach or default of another Participating Institution.

Where applicable, additional exhibits and appendices may be attached to address more specific terms and conditions, e.g. terms and conditions specific to certain formats such as ebooks, or special purchase conditions such as Perpetual Access, in which case the attached exhibits and appendices form part of this Agreement.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

In this Agreement, 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 Participating Institutions, regardless of physical location of such persons; retired faculty and staff with emeritus or equivalent status; all registered patrons of the Participating Institution, or other persons affiliated with the Participating Institution or otherwise permitted to use the facilities of the Participating Institution and authorized to access the Licensed Material.
Commercial Use	Use of Licensed Material for the purpose of monetary reward (whether by Participating 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 Participating Institution from Authorized Users, nor the use of Licensed Material by the Participating 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 (e.g. book chapters, journal articles) assembled by staff of a Participating Institution for use by students in a class for the purpose of instruction.
Digital Rights Management	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 Material (e.g. book chapters, journal articles, abstracts) made and stored on the Secure Network pursuant to Section 3.8 by Participating Institutions for use by Authorized Users in connection with specific courses of instruction offered by Participating Institutions to such Authorized Users.
Interlibrary Loan	A transaction in which Licensed Material, or a copy of Licensed Material, is made available by Participating Institution to another upon request.
Licensed Material	The electronic material as set out in Schedule 1 or in new schedules to this Agreement that may be agreed to by the Licensee and Licensor from time to time.
Participating Institution	The Member Institutions of BC ELN that choose to license electronic products that support the teaching, learning, research, and educational requirements of their institution.
Perpetual Access	Provisions in this Agreement for continuation of access, archiving and use of Licensed Material that shall survive any termination of this Agreement and ensure continued access consistent with current recognized standards in the publishing industry.
Persistent Link	An Internet address (URL) that links directly to Licensed Material and that remains unchanged over time.

Purchase Fee	The one-time payment set out in Schedule 1 for Perpetual Access to the Licensed Material. For the avoidance of doubt, the Purchase Fee shall be exclusive of any sales, use, value added or similar taxes and Licensee shall be liable for any such taxes in addition to the Purchase Fee.
Secure Authentication	The process whereby Authorized Users are authenticated by providing a set of institutional credentials to allow access to Licensed Material when not physically present at Participating Institution sites or to Licensed Materials made available on Secure Networks, including but not limited to Electronic Learning Environments or Electronic Reserves.
Secure Network	A computer network that is only accessible to Authorized Users via Secure Authentication.
Subscription Fee	The annual Subscription Fee set out in Schedule 1 or in new schedules to this Agreement which may be agreed upon by the Licensee and Licensor from time to time. For the avoidance of doubt, the Subscription Fee shall be exclusive of any sales, use, or similar taxes and Licensee shall be liable for any such taxes in addition to the Subscription Fee.
Walk-In Users	Individuals not affiliated with a Participating Institution who are physically present at Participating Institution sites set out in Schedule 1 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.

2. LICENSE GRANT

- 2.1 GENERAL. Licensor hereby grants to Licensee and Participating Institutions, subject to and in accordance with the terms of this Agreement, a non-exclusive and non-transferable right to permit Authorized Users to access and use the Licensed Material at the sites of Participating Institutions or remotely, through Secure Authentication.
- 2.2 FEES. In consideration for Licensor's licensing of the Licensed Material listed in the attached schedule(s), Licensee agrees to pay to Licensor the fees in accordance with the provisions of the attached schedule(s).

3. PERMITTED USES

Permitted Uses under Section 3 apply to the vast majority of content in EBSCO databases. However, publishers may impose their own conditions of use applicable only to their content. Such conditions of use shall be displayed on the computer screen displays associated with such content. As long as the following uses are not prohibited in the copyright statement accompanying the content to use used, Participating Institutions and Authorized Users may use the licensed material as follows:

- 3.1 ACCESS AND USE. Access and use the Licensed Material from the premises of the

- Participating Institution, or remotely via Secure Authentication, in order to search, retrieve, download, display, and view the Licensed Material.
- 3.2 PERSISTENT LINKS. Create Persistent Links to individual articles for access by Authorized Users for permitted uses, within Secure Networks.
- 3.3 INTERLIBRARY LOAN. Loan, by paper or electronic means, a single copy of an individual document within the guidelines of traditional Interlibrary Loan practices and applicable jurisdictional copyright laws. The electronic form of 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. Transmit to a third-party colleague in hard copy or electronically, reasonable amounts of the Licensed Material for personal use or scholarly, educational, or scientific research or professional use.
- 3.5 USE IN ACADEMIC RESEARCH. Incorporate limited parts of the Licensed Material 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 USE and FAIR DEALING. Nothing in this agreement restricts Participating Institutions, Authorized Users, or Walk-in Users from engaging in or conducting any activity that is otherwise permitted under the doctrine of “fair use” as defined under the laws of the United States and/or “fair dealing” as defined in Canada.
- 3.7 ACCESSIBLE FORMATS. Alter or modify the format of the Licensed Material as necessary to provide an equivalent level of service to Authorized Users with appropriately documented print or other disabilities.
- 3.8 ELECTRONIC RESERVES / ELECTRONIC LEARNING ENVIRONMENTS. Incorporate parts of the Licensed Material, whether in print or electronic format, in, 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 Electronic Learning Environments hosted on a Secure Network . Each item shall carry appropriate acknowledgement of the source, listing title, and copyright owner. Permission to include content in course packs is NOT included under the terms of this License.
- 3.9 FEDERATED SEARCH. Licensor shall include the Licensed Material in federated, metasearch, or discovery services.
- 3.10 TRAINING AND MARKETING MATERIALS. Display, download or print the Licensed Material, including screenshots, for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.
- 4. PROHIBITED USES**
- 4.1 UNAUTHORIZED USE. Participating Institutions shall not knowingly permit anyone other than Authorized Users to use the Licensed Material.
- 4.2 COMMERCIAL USE. Use of the Licensed Material for the purpose of monetary reward (whether by Participating Institutions, Authorized Users or Walk-In Users) by means of

sale, resale, loan, transfer, hire, or other form of commerce is prohibited. For the avoidance of doubt, recovery of direct costs incurred by the Participating Institution in the course of providing access to Authorized Users or Walk-In Users (e.g. printing, photocopying, or administration fee) is not deemed to be Commercial Use.

- 4.3 **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. LICENSOR'S UNDERTAKINGS

Licensor shall:

- 5.1 **ACCESS.** Upon the Effective Date of this Agreement, make the licensed material available to Licensee.
- 5.2 **DOWNTIME.** Warrant to Licensee and the Participating Institutions that the total downtime directly attributable to the server supporting the Licensed Material will amount to less than the equivalent of one full day in any given calendar month. In the event that the total downtime exceeds this amount, 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.
- 5.3 **ADDITIONS, DELETIONS, AND MODIFICATIONS.** Give reasonable notice to Licensee and the Participating Institutions of any additions, modifications to, or deletions of the Licensed Material. Failure by Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by Licensee and the Participating Institutions. If any modifications represent a withdrawal of more than 10% of the total content or render the Licensed Material less useful to the Participating Institutions, Licensee and the Participating Institutions may treat such modifications as a material breach under sections 7.2 and 7.3 of this Agreement.
- 5.4 **NOTICE OF 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 Material, 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 Licensee, Participating Institutions, or any Authorized User as specified in this Agreement or under applicable law.
- 5.5 **NOTICE OF USE OF DIGITAL WATERMARKING TECHNOLOGY.** If Licensor utilizes any type of Digital Watermarking Technology for any element of the Licensed Material, 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 Participating Institutions or Authorized Users such as account numbers or IP addresses. If Digital Watermarking Technology is used, Licensor agrees to notify Licensee, in advance, of the name, contact information, and any technical specifications for the technology used.
- 5.6 **CONFIDENTIALITY.** Maintain the confidentiality of any data relating to the usage of

the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided or sold to any third party.

6. PARTICIPATING INSTITUTIONS UNDERTAKINGS

Each Participating Institution shall:

- 6.1 **RESTRICTION OF ACCESS.** Use reasonable efforts to ensure that access is restricted to Authorized Users, and that Authorized Users are made aware of, the terms and conditions of this Agreement. Participating Institutions will use reasonable efforts to protect the Licensed Material from any use that is not permitted under this Agreement.

7. TERM AND TERMINATION

- 7.1 **RENEWAL.** This Agreement shall commence on the Effective Date, and shall apply to all Licensed Material for the time period(s) 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 to renew.
- 7.2 **BREACH OF AGREEMENT.** 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 thirty (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. This Agreement may also be terminated automatically in the event of the insolvency, bankruptcy, receivership or similar status of the Licensor. This Agreement may be terminated by the Licensee in the event that the Licensor merges, combines or amalgamates with another entity or there is some change to control of the Licensor.
- 7.3 **EARLY TERMINATION.** In the event of early termination permitted or required by this Agreement, the Participating Institution shall be entitled to a refund of any fees or pro-rata portion thereof paid by the Participating Institution for any remaining period of the Agreement from the date of termination. This paragraph is invalid if the Participating 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 Licensor.
- 7.4 **FUNDING CONTINGENCY.** If funding of the Participating Institution is materially reduced and the Participating Institution thereby becomes unable to pay future amounts payable pursuant to this Agreement, the Participating Institution may give the Licensor written notice of termination and this Agreement shall terminate effective thirty (30) days after the giving of such notice if the Participating Institution has failed to pay the Fee for the calendar year in which such notice was given, or if the Participating Institution has paid the Fee for the calendar year in which such notice was given, January 1 of the following year.

8. GENERAL

- 8.1 **WARRANTIES AND INDEMNITY.** Licensor represents and warrants that it holds the right to grant the rights granted under this Agreement and that the Licensed Material does not infringe any intellectual property rights of any other person. Licensor indemnifies and holds Licensee and its Participating 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 Licensee or any of the Participating Institutions or their Authorized Users claiming actual or alleged infringement of such rights. These representations and warranties and indemnity shall survive the termination of this Agreement for any reason. No limitation of liability set forth elsewhere in this Agreement or elsewhere is applicable to this indemnification.
- 8.2 **ENTIRE AGREEMENT.** This Agreement and the 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 **AMENDMENT.** This Agreement, including any changes made to this Agreement from time to time, and together with any schedules, appendices and other attachments, constitutes the entire agreement between the Licensee and Licensor relating to the subject matter hereof, and supersedes all previous agreements, written, oral, or otherwise, between the parties with respect to the subject matter hereof. References to “Agreement” throughout this document include all schedules, appendices, and other attachments. Alterations to this Agreement and to the schedules, appendices, and other attachments are only valid if they are recorded in writing and signed by both parties. In the event of any conflict or inconsistency between the terms of this Agreement and any schedules, appendices, or other attachments, such conflict or inconsistency shall be resolved according to the following order of paramountcy:
- (a) The relevant schedule
 - (b) Any attachment or appendix to the relevant schedule
 - (c) The body of this Agreement
- 8.4 **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 sub-contract any of its obligations, except as provided in this Agreement in respect of the management and operation of the server and Licensor’s representative, without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 8.5 **NOTICE.** Any notices to be served on either of the parties or on a Participating 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 five (5) 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.
- 8.6 **FORCE MAJEURE.** Neither party’s nor a Participating 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, provided, however, that a party may terminate this Agreement

if the force majeure event last more than seven days by giving notice to the other party of such termination, in which case the provisions of section 7.3 shall apply and each Participating Institution shall be entitled to a refund of any fees or pro-rata portion thereof paid by the Participating Institution for any remaining period of the Agreement from the date of the force majeure event/termination.

- 8.7 WAIVER. Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.
- 8.8 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.
- 8.9 DISPUTE RESOLUTION. If the parties disagree over an interpretation of this Agreement or whether a party or a Participating Institution is in breach of any part of this Agreement, the parties and any such Participating Institution shall 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 co-operate in good faith in pursuing mediation or other such means.
- 8.10 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the province of BC, 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 BC, Canada.

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

Accepted:

FOR THE LICENSOR: EBSCO Publishing

Name: _____

Position / Title: _____

Signature: _____

Date: _____

FOR THE LICENSEE: BC Electronic Library Network

Name: _____

Position / Title: _____

Signature: _____

Date: _____