

**BC ELN
WORLD BOOK
PROVINCIAL LICENSE AGREEMENT**

THIS AGREEMENT dated for reference the 1st day of October , 2010

BETWEEN:

World Book Education Products of Canada, a division of SFZ International Inc., having its principal place of business 233 North Michigan Avenue, Suite 2000, Chicago, Illinois 60601

(herein referred to as "**World Book**")

OF THE FIRST PART

AND: **BC ELN**, a partnership of the Province of British Columbia and its public post-secondary libraries and BC ELN affiliate members (see Schedule B), with offices at 8888 University Drive, Burnaby BC, V5A 1S6

(herein referred to as the "**LICENSEE**")

OF THE SECOND PART

WHEREAS:

- A. World Book is in the business of developing, marketing and licensing the online information and educational service of "World Book Online Reference Centre", "World Book Kids", "World Book Advanced", "Encyclopedia Decouverte" and "La Enciclopedia Estudiantil Hallazgos" consisting of a database knowledge repository of information, services and content product(s); and
- B. LICENSEE is interested in acquiring to access to these product(s) for it's Members on a cost-effective basis; and
- C. LICENSEE and World Book will, in accordance with this Agreement, develop a support and deployment plan for use and distribution of the online licensed products to Members, through ELN.

NOW THEREFORE, in consideration of these premises and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the parties), the parties agree as follows:

1 DEFINITIONS

In this Agreement:

“**Agreement**” means this contract and all schedules, attachments and amendments;

“**Authorized Users**” means all Authorized Users of the LICENSEE, that is: all current students, staff, and faculty of BC ELN partner and members libraries, whether part-time, full-time, permanent, contract, adjunct, or visiting; and retired faculty and staff with Emeritus, or equivalent status.

“**BC**” means the Province of British Columbia, Canada;

“**BC ELN**” means the Electronic Library Network a partnership of the Province of British Columbia and its public post-secondary libraries and BC ELN affiliate members (Schedule B);

“**FAQ’s**” means frequently asked questions;

“**Fair Dealing**” means the definition as defined in Canadian copyright law;

“**LICENSEE**” means BC ELN;

“**Licensed Materials**” means the electronic materials as detailed in section A above and the “Product” definition below;

“**Material**” means the content of the online resources product;

“**Member**” means BC ELN;

“**Parties**” means the parties to this agreement the LICENSEE and World Book;

“**Product**” means the licensed software and online reference databases “World Book Online Reference Centre”, “World Book Kids” “World Book Advanced”;

“**Term**” means the period or duration of time for this Agreement;

“**Walk-in-users**” means Individual members of the public are considered Walk-In Users, with rights to Access and Use the Licensed Materials under the terms and conditions of this Agreement, while they are physically on the premises of a Member. For the avoidance of doubt, Walk-In Use is intended for individual users, not as a substitution for a license by another institution.

2 DELIVERABLES

- 2.1 World Book will deliver to the LICENSEE the Products in accordance with this contract and attached schedules, which form an integral part of this Agreement.

3 LICENSE GRANT AND USE

- 3.1 WORLD BOOK, as of the date of acceptance pursuant to section 4.1 and 4.2, grants to the LICENSEE a fully paid up, non-transferable (except as provided herein), royalty free, non-exclusive license to:

- 3.1.1 use WORLD BOOK products in accordance with the terms and conditions of this agreement.

- 3.2 This Agreement shall comprise the complete terms and conditions of use. If there is a "click-through" agreement or other licensing mechanism for users with different terms and conditions, this Agreement shall supercede those agreements.

- 3.3 WORLD BOOK may not change the terms and conditions in respect to its application to Members and/or Authorized Users, without the prior written approval of the LICENSEE.

- 3.4 Authorized Users and Members may:

- 3.4.1 Access and use the online resources, product and materials from the premises of the Member, or from their home or personally-owned computer or computing device using an authorized authentication method, in order to search, retrieve, display, view, print, download, and save limited portions of the material as; and

- 3.4.2 Create persistent links to individual articles for access by Authorized Users; and

- 3.4.3 Scholarly sharing among Authorized Users who may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the materials for scholarly, educational, or scientific research or professional use; and

- 3.4.4 Members and Authorized Users may include the Licensed Material in federated or metasearch services.

- 3.5 Electronic Reserves and Virtual Learning. Permission to include Licensed content in the course of instruction using virtual and managed environments

(including but not limited to E-Reserves, virtual and/or distance learning environments, managed learning environments, virtual research environments and library environments), and/or coursepacks are NOT included under the terms of this license. Requests for such use may be submitted to WORLD BOOK for consideration on a case by case basis.

- 3.6 Fair Dealing. Nothing in this agreement restricts the rights of Authorized Users under the doctrine of "fair dealing" as defined under the copyright laws of Canada or as permitted under Creative Commons licensing, and/or Fair Dealing.

4 DEPLOYMENT AND DISTRIBUTION

- 4.1 WORLD BOOK will provide to the LICENSEE instructions for accessing the Licensed Materials via Secure Authentication methods, including IP addresses, referring URL, cookies and/or Username and Password.
- 4.2 The LICENSEE reserves the right of approval for content in relation to this contract which may affect LICENSEE and/or Members' messaging, information, branding, logo(s), images or any other material aspect to its operations.
- 4.3 In the event that World Book utilizes any type of digital rights management technology to control the access to usage of licensed materials, World Book 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 the LICENSEE and it's Members.
- 4.4 If any type of digital watermarking technology is used for any element of the materials, World Book 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 Authorized Users such as account numbers or IP addresses. If digital watermarking technology is used, World Book agrees to notify the LICENSEE in advance, of the name, contact information, and any technical specifications for the technology used.

5 TECHNICAL SUPPORT AND TRAINING

- 5.1 Technical and installation support for the LICENSEE shall be provided by WORLD BOOK and available during regular business hours, at minimum 8:00-4:30 pm pacific standard time Monday to Friday excluding statutory holidays. WORLD BOOK will endeavour to provide support to members where appropriate or most efficient. Any members whom World Book is not able to service the LICENSEE will be immediately notify with the appropriate contact

information of the member as necessary.

- 5.2 WORLD BOOK warrants to the LICENSEE that the total aggregate downtime of the products directly attributable to World Book 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, appropriate restitution to the satisfaction of the LICENSEE will be made or other remedies to this contract may be invoked.
- 5.3 World Book shall give reasonable notice being 60 to 90 days to the LICENSEE of any additions, modifications to, or deletions of the Products, including any changes in embargo periods or total coverage (e.g. start and end dates of full-text coverage of serials). If withdrawal of content represents a significant loss as deemed by the LICENSEE, then the Consortium may treat such modifications as a material breach of this Agreement.

6 PAYMENT AND TERM

- 6.1 The payments and term of the Agreement shall be made in the manner and at the times specified in Schedule A.
- 6.2 The LICENSEE will be responsible for taxes and other government fees or charges for which it is unable to provide proof of exemption.
- 6.3 WORLD BOOK agrees the fee in Schedule A is all inclusive and the LICENSEE and its Members shall not be liable to any further charges in respect to the licenses, software and support services provided pursuant to this Agreement.

7 TERMINATION

- 7.1 WORLD BOOK will notify the LICENSEE 120 days in advance of its intent to discontinue a WORLD BOOK product to the consumer market ceasing support and access to the program. Any discontinuation of licensed product and services that adversely impacts the nature of this agreement in the opinion of the LICENSEE may be cause for termination of this Agreement.
- 7.2 If WORLD BOOK is found to be in breach of this Agreement, and the breach is not resolved in accordance with this Agreement, at the sole discretion of the LICENSEE, any monies paid to World Book for future use will be fully refunded.
- 7.3 If the Licensee has failed to pay the fees as defined in Schedule A in this Agreement for the term outstanding, at World Book's discretion this Agreement may be terminated.
- 7.4 If public funding of the LICENSEE or funding of the LICENSEE by Members is

materially reduced and the LICENSEE thereby becomes unable to pay future amounts pursuant to this Agreement, the LICENSEE will provide World Book written notice and termination of this Agreement.

8 REPORTING

8.1 WORLD BOOK will keep accurate usage records according to the COUNTER Code of Compliance for LICENSEE and agrees to work with Members to provide management and usage reports; and

8.1.1 provide a quarterly report to the LICENSEE by sector where specified and within 10 business days of any request.

9 REPRESENTATION AND WARRANTY

9.1 WORLD BOOK represents and warrants that:

9.1.1 it is a corporation duly organized and validly existing under the laws of The State of Illinois, and in BC is represented by World Book Educational Products of Canada; and

9.1.2 it has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement; and

9.1.3 it owns or has the legal ability to grant rights under this Agreement in WORLD BOOK; and

9.1.4 it has no knowledge of any fact that materially adversely affects, or so far as it can foresee, might materially adversely affect, its properties, assets, condition (financial or otherwise), business or operations; and

9.1.5 all information, statements, documents and reports furnished or submitted by WORLD BOOK to the LICENSEE in connection with this Agreement are true and correct.

10 ASSIGNMENT

10.1 WORLD BOOK will provide prior written notice 120 days in advance to the LICENSEE of any assignment of its obligations under this Agreement.

10.1.1 Assignment of any services, content or delivery by World Book without obtaining written approval from the LICENSEE may be cause for

termination of this Agreement at the sole discretion of the LICENSEE.

11 OBLIGATIONS

- 11.1 WORLD BOOK undertakes to use its best endeavours to develop and maintain the Product to a high standard and to the satisfaction of the LICENSEE and its members and, in particular, WORLD BOOK will:
- 11.1.1 upon request keep the LICENSEE, fully informed of the development of the software and content; and
 - 11.1.2 make reasonable efforts, from time to time, to obtain input and comment from the LICENSEE during the development of program content and the software.
- 11.2 The LICENSEE and its Members will 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.
- 11.3 World Book will use reasonable efforts to ensure proper service, support, implementation and deployment to LICENSEE members.
- 11.4 World Book is restricted from selling these products in this Agreement to Members without the approval of the LICENSEE.

12 WAIVER

- 12.1 The failure on the part of the LICENSEE to exercise or enforce any right under this agreement shall not be deemed to be a waiver of any such right or bar the enforcement of such right at any time pursuant to this Agreement.
- 12.2 It is intended that all provisions of this Agreement shall be fully binding and effective between the parties, however, in the event that any particular provision or a part of this agreement is found to be void or unenforceable for any reason, all other provisions shall prevail and remain in full force and effect.
- 12.3 If a provision of written communications or any other end user agreement is inconsistent or conflicts with the attached schedules or any other provision of this Agreement, the provisions in this Agreement and any amendments shall prevail.

13 DISPUTE RESOLUTION

13.1 All disputes arising out of or in connection with this Agreement will be referred to and finally resolved by arbitration pursuant to the *Commercial Arbitration Act*.

13.2 If a remedy or solution between the parties cannot be achieved within 30 days either party will have the option to request Arbitration. The LICENSEE and WORLD BOOK agree to:

13.2.1 expedite the arbitration process as quickly as possible to reach a resolution; and

13.2.2 have personnel with the authority to make key decisions and presentations available wherever reasonably possible.

14 CONFIDENTIALITY

14.1 The parties will treat as confidential all identified information and materials supplied or obtained in relation to this agreement, and will not, without the prior written consent of the other party, except as required by applicable law, permit its disclosure except to the extent that such disclosure is necessary to enable the parties to fulfill their obligations under this Agreement.

14.2 WORLD BOOK agrees to comply with the provision of the BC Freedom of Information and Protection of Privacy (FOIP) Act, which includes a provision that no personal information of any Authorized User may be stored on a server or location outside of Canada.

15 INDEMNITY

15.1 WORLD BOOK shall indemnify and save harmless the LICENSEE, its members, employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the LICENSEE may incur arising out of this Agreement;

15.1.1 where caused by negligence of WORLD BOOK; or

15.1.2 based on a claim that any materials or services produced by WORLD BOOK under this agreement infringe any patent, copyright, trade secret or proprietary right.

16 LIABILITY

16.1 WORLD BOOK acknowledges that the LICENSEE will not be liable in respect to any breach of a term or condition by an Authorized User or Member. The sole recourse of WORLD BOOK with LICENSEE support will be against the Authorized User or Member.

17 FORCE MAJURE

17.1 Either party's delay or failure to perform any provision of this Agreement, as a result of circumstances beyond its control (including, without limitation, Acts of God, war, strikes, governmental restrictions, power, telecommunications or internet failures, or damage to or destruction of any facilities) shall not be deemed to be, or to give rise to, a breach of this Agreement.

18 SURVIVAL

18.1 In the event of termination of this Agreement under section 7.1, the LICENSEE may continue to use remaining WORLD BOOK products in accordance with the licenses granted pursuant to this Agreement and no license fee or other costs shall be payable to WORLD BOOK for the term.

18.2 Sections 1, 7, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 shall survive termination of this Agreement.

19 GOVERNING LAW

19.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

20 GENERAL

20.1 This agreement may not be amended or modified except in writing signed by the authorized officers of the parties.

20.2 In this agreement, unless the context of the agreement requires otherwise, the singular number shall include the plural and vice versa.

21 NOTICES

21.1 All notices and other correspondence and communications under this Agreement must be delivered personally, by courier or mail, to the addresses or sent by fax using the fax numbers specified, as follows:

BC Electronic Library
Network
8888 University Drive,
Burnaby BC V5A 1S6

Attention: Anita Cocchia /
Heather Morrison
Phone No.: (778) 782-7003
Fax No.: (778)782-3023

(b) if to WORLD BOOK
233 North Michigan Avenue, Suite 2000
Chicago, Illinois
60601

Attention: Ian Glassford
Phone No: (888) 611-0378
Fax No: (204) 832-9957

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.