

This university licence agreement is between ACCESS COPYRIGHT, THE CANADIAN COPYRIGHT LICENSING AGENCY ("**Access Copyright**"), located at Suite 800, 1 Yonge Street, Toronto, Ontario, M5E 1E5, and:

\_\_\_\_\_ ( the "**Licensee**"),

located at \_\_\_\_\_

Access Copyright is a not-for-profit collective society that represents the reproduction rights of rightsholders, and grants licences for the use of copyright-protected published works. Access Copyright has filed a tariff with the Copyright Board of Canada, the *Access Copyright Post-Secondary Educational Institutions Tariff, 2011-2013*, to cover the reproduction of published works by post-secondary educational institutions across Canada, excluding Quebec (the "**Tariff**").

The Institution is a university that uses photocopiers, scanners and other reproduction technologies to reproduce copyright-protected works. The Licensee wishes to obtain a licence to legally reproduce copyright-protected works in ways that would be outside the scope of fair dealing, or any other applicable exception, under the *Copyright Act*, R.S.C. 1985, c. C-42, as amended from time to time (the "**Copyright Act**").

The parties wish to enter into an agreement, instead of relying on the Tariff, to facilitate access, use, reproduction and distribution of copyright-protected works, while respecting academic freedom and privacy.

The parties therefore agree as follows:

## 1. Definitions

For the purposes of this agreement, the following definitions apply:

"**Academic Year**" means the 12-month period from September 1 to August 31.

"**Alternate Format Copy**" means an audio, Braille, large print (by a reprographic process) or machine-readable reproduction of all or part of a Published Work.

"**Authorized Person**" means

- (a) a Student; or
- (b) a Staff Member.

"**Authorized Purposes**" means all purposes within or in support of the mandate of the Licensee.

"**Claim**" means a written statement or demand that alleges that the Licensee has infringed copyright in any Published Work, including any document commencing legal proceedings.

"**Copy**" means any reproduction, in any material form whatever, including a Digital Copy, that is made by or as a consequence of any of the following activities:

- (a) reproducing by a reprographic process, including reproduction by photocopying and xerography;
- (b) scanning a paper copy to make a Digital Copy;
- (c) printing a Digital Copy;
- (d) transmission by electronic mail;
- (e) transmission by facsimile;
- (f) storage of a Digital Copy on a local storage device or medium;
- (g) posting or uploading a Digital Copy to a Secure Network or storing a Digital Copy on a Secure Network;

- (h) transmitting a Digital Copy from a Secure Network and storing it on a local storage device or medium;
- (i) projecting an image using a computer or other device;
- (j) displaying a Digital Copy on a computer or other device; and
- (k) posting a link or hyperlink to a Digital Copy.

“**Copying**” means making a Copy and “Copied” shall have a corresponding meaning.

“**Course Collection**” means for use by an Authorized Person as part of a Course of Study, and whether for required or recommended reading for the Course of Study or otherwise:

- (a) Paper Copies of Published Works assembled into course packs; or
- (b) Digital Copies of Published Works that are
  - (i) emailed, linked or hyperlinked to, or
  - (ii) posted, uploaded to, or stored, on a Secure Network.

“**Course of Study**” means a course, unit or program of academic, continuing, professional, or vocational study administered or hosted by the Licensee.

“**Digital Copy**” means a reproduction in any digital form including optical or electronic format.

“**Exclusions List**” means a list in PDF format or a searchable database provided by Access Copyright, identifying Published Works that are not Repertoire Works.

“**Full-time-equivalent Student**” means a full-time Student or the equivalent of one full-time Student of the Licensee.

“**FTE Determination Date**” means the date as of which the number of Full-time-equivalent Students is calculated by the Institution for any given Academic Year.

“**Inclusions List**” means a list in PDF format or a searchable database provided by Access Copyright, identifying Published Works in born-digital format that are Repertoire Works.

“**Library Patron**” means

- (a) a Student;
- (b) a Staff Member; or
- (c) any other person who is entitled to in-person or remote library privileges at the Licensee.

“**Licensee**” includes, in addition to the Institution identified above, the related institutions listed in Schedule “A”.

“**Musical Work**” means any work of music or musical composition, with or without words, and includes any compilation thereof.

“**Published Work**” means a literary, dramatic or artistic work protected by copyright in Canada, of which copies have been made available to the public with the consent or acquiescence of the copyright owner but excludes a Musical Work.

“**Repertoire Work**” means a Published Work in which Access Copyright collectively administers the rights, as authorized by the copyright owner or by another collective management organization, whether by assignment, licence, agency or otherwise, and includes any Copy of a Repertoire Work. For clarity, Repertoire Works consist of Published Works that have a print equivalent and are not on the Exclusions List and Published Works in born-digital format that are identified on the Inclusions List.

“**Secure Network**” means a network that is operated by the Licensee, or for and subject to the control of the Licensee (such as a network hosted by a third party and/or accessible through a web interface) and which is only

accessible by an Authorized Person who is approved by the Licensee by means of a process of authentication which, at the time of login, identifies the user as an Authorized Person, whether by user name and password or by some other equally secure method.

**“Staff Member”** means, in respect of the Licensee,

- (a) an instructor, lecturer or sessional lecturer;
  - (b) an assistant, associate, full, visiting, adjunct replacement or seconded professor;
  - (c) a teaching or research assistant, tutor, fellow or post-graduate fellow;
  - (d) a demonstrator, proctor, invigilator, or marker;
  - (e) a librarian or library assistant;
  - (f) a lab monitor, clinical instructor or clinician;
  - (g) a counsellor;
  - (h) an academic administrator;
  - (i) a medical resident;
  - (j) administrative support staff for any of the above positions;
  - (k) any other person in a position essentially comparable to any of those listed above; and
  - (l) any employee, regardless of his or her position,
- in each case whether the person in question is paid or unpaid.

**“Student”** means a person registered or engaged in a Course of Study.

**“Subcontractor”** has the meaning set out in section 16.

## 2. Term

(a) The initial term of this agreement is from January 1, 2011 to December 31, 2015. The initial term will be extended automatically by consecutive one-year terms unless,

- (i) no later than three months before any such extension would begin either party notifies the other in writing that it does not wish to extend this agreement, in which case section 17 of this agreement shall apply; or
- (ii) no later than seven months before any such extension would begin either party notifies the other in writing that it wishes to re-negotiate the terms of this agreement, in which case section 19 shall apply.

(b) The initial term and all extensions shall together be considered the “Term” of this agreement.

## 3. Grant of Licence

(a) Access Copyright hereby grants a licence to the Licensee which entitles any Authorized Person, for any Authorized Purpose, to

- (i) make a Copy of up to ten per cent (10%) of a Repertoire Work;
- (ii) make a Copy of up to twenty per cent (20%) of a Repertoire Work as part of a Course Collection;
- (iii) make a Copy of a Repertoire Work that is
  - A. an entire newspaper or periodical article,
  - B. an entire page of a newspaper or periodical,
  - C. a single short story, play, poem, essay or article from a Published Work that contains other Published Works,
  - D. an entire entry from an encyclopaedia, annotated bibliography, dictionary or similar reference work,
  - E. an entire reproduction of an artistic work (including any drawing, painting, print, photograph or other reproduction of a work of sculpture, architectural work or work of artistic craftsmanship) from a Published Work that contains other Published Works, or

F. one chapter, provided it is no more than twenty per cent (20%) of a book,

provided that in each case that the Copy is made in accordance with the conditions in sections 4, 5 and 6.

(b) Access Copyright hereby grants a licence to the Licensee which entitles an Authorized Person and any Library Patron to:

- (i) make a Copy of up to ten per cent (10%) of a Repertoire Work; or
- (ii) make a Copy of a Repertoire Work that is
  - A. an entire newspaper or periodical article,
  - B. an entire page of a newspaper or periodical,
  - C. a single short story, play, poem, essay or article from a Published Work that contains other Published Works,
  - D. an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work,
  - E. an entire reproduction of an artistic work (including any drawing, painting, print, photograph or other reproduction of a work of sculpture, architectural work or work of artistic craftsmanship) from a Published Work that contains other Published Works, or
  - F. one chapter, provided it is no more than twenty per cent (20%) of a book,

for any Library Patron, and further entitles an Authorized Person to make such a Copy for the purposes of interlibrary loan to another institution or corporation licensed by Access Copyright, or to another non-profit educational institution, library, archive or museum, provided in each case that the Copy is made in accordance with the conditions in sections 4, 5 and 6.

(c) Access Copyright hereby grants a licence to the Licensee which entitles any Authorized Person, for any Authorized Purpose, to make a Copy of

- (i) up to twenty per cent (20%) of a Repertoire Work to replace any damaged or missing pages of the work in the collection of a library or archive that forms part of or is associated with the Licensee; and
- (ii) an Alternate Format Copy of a Repertoire Work, for use by an Authorized Person who is blind, visually impaired or otherwise unable to view normal print because of a disability and by those involved in assisting that person – where no such Alternate Format Copy is, to the knowledge of the Licensee, commercially available on the Canadian market at a reasonable price and within a reasonable period of time – provided that the Licensee:
  - A. includes, on any such Alternate Format Copy, the international copyright symbol (©), a credit to the publisher and the author(s) of the Repertoire Work (where known), and the following notice:
    - “This material has been in alternate format under permission from Access Copyright. Further reproduction, distribution or transmission is prohibited, except as otherwise permitted by law.”; and
  - B. provides a copy of the Alternate Format Copy to Access Copyright, on behalf of the owner of copyright in the Repertoire Work, on request and if available.

#### **4. Conditions of Licence Applicable to all Copies**

(a) Except as specifically authorized under section 3(b), no Copies of Repertoire Works shall be made available, distributed, or transmitted to a person who is not an Authorized Person.

(b) There shall be no Copying of the same Repertoire Work beyond the limits set out in section 3 for any one Course of Study in any one Academic Year. For clarity, where a Copy made in accordance with paragraph 3(a)(iii) comprises less than the percentage of a particular Repertoire Work that may be Copied pursuant to paragraph

3(a)(i) or (ii), as applicable, the Licensee may Copy additional parts of that Repertoire Work to the maximum allowed under the applicable paragraph.

(c) Copies of Repertoire Works shall not be stored or indexed with the intention of creating a library of Published Works, except as permitted by this agreement as part of a Course Collection.

(d) Copies shall only be made from Repertoire Works that are lawfully obtained by the Authorized Person making the Copies, and only without violating any licensing or other contractual terms between the Authorized Person and any third party which prohibit such Copying under a collective licence.

(e) Copies of Repertoire Works shall be true copies.

## **5. Additional Conditions Applicable to Digital Copies**

(a) Digital Copies of Repertoire Works shall not be transmitted to, posted or uploaded to, or stored on any computer network other than a Secure Network.

(b) Digital Copies of Repertoire Works stored on Secure Networks shall be made available and accessible only to Authorized Persons segregated by individual Course of Study.

(c) This agreement does not authorize the Licensee to transmit, post or upload Digital Copies of Repertoire Works to, or to store them on, any device or medium, computer or computer network, including the Internet or some other public network, in such a manner that makes them publicly available or accessible.

(d) Where the Licensee is no longer covered by this agreement, the Licensee shall immediately use reasonable efforts to (i) prevent access to Digital Copies of Repertoire Works made under this agreement and stored on a Secure Network under its control, and (ii) inform all Authorized Persons that the Licensee no longer has a licence from Access Copyright for the use of the Repertoire Works.

(e) Nothing in this agreement authorizes any person to descramble a scrambled work or decrypt an encrypted work or to otherwise avoid, bypass, remove, deactivate, impair, or otherwise circumvent a technological measure that restricts or controls access to, copying, retention, distribution, or transmission of a Repertoire Work.

(f) Nothing in this agreement prevents the Licensee, or any Authorized Person, from using the Internet or another public network to gain access to a Repertoire Work for the purpose of using it in accordance with this agreement, or from providing a link or hyperlink to a Repertoire Work that is posted or stored other than on a Secure Network (including but not limited to the Internet or another public network).

(g) For clarity, the licences granted pursuant to section 3 apply only to the Copying of Repertoire Works, irrespective of the source of those Repertoire Works. It is acknowledged and agreed that Access Copyright does not grant any licence to the Licensee or any Authorized Person to secure access to Published Works.

## **6. Attribution Condition**

Copies made pursuant to this agreement shall include, where reasonable, on at least one page, (a) a credit to the author, artist or illustrator, and to the source; and (b) a notice stating "Copied under Permission from Access Copyright. Further reproduction, distribution or transmission is prohibited, except as otherwise permitted by law."

## **7. Notification of the Terms and Conditions of Copying**

Within twenty (20) business days of the signing of this agreement by both parties, the Licensee will make reasonable efforts to ensure the notice attached as Schedule "B" is affixed within the immediate vicinity of library photocopiers, Student computer rooms or labs, and all centralized department and other copy centres, in a

manner sufficient to ensure that Authorized Persons are made aware of the terms of this licence and of the tools available to the Licensee to confirm a Published Work's status as a Repertoire Work. The Licensee shall also make reasonable efforts to provide a clearly visible link to the notice on its library website home page and each website home page created for a Course of Study and made available on a Secure Network.

## **8. Royalties**

(a) For each Academic Year during the term of this agreement, the Licensee shall pay to Access Copyright a royalty calculated by multiplying the number of its Full-time-equivalent Students, as of the FTE Determination Date for that Academic Year, by the royalty rate of \$26.00 CAD (the "Royalties"). For any months in the Term that fall outside of an Academic Year, the Licensee shall pay to Access Copyright the Royalties prorated by the number of months in that period.

(b) Starting January 1, 2016, the Royalties payable for each one-year Academic Year shall be increased by the Consumer Price Index for the previous calendar year as determined and published by Statistics Canada as the All-items index.

(c) The Royalties payable under this agreement are exclusive of any federal or provincial taxes.

## **9. Payment**

(a) The Licensee shall deliver to Access Copyright, by no later than November 15 of each Academic Year (or the next business day if this should fall on a weekend or holiday), a written report specifying the number of Full-time-equivalent Students as of the FTE Determination Date for that Academic Year, calculated in accordance with guidelines agreed upon by Access Copyright and the Licensee, each acting reasonably.

(b) Access Copyright shall issue to the Licensee, by no later than ten (10) business days after receiving from the Licensee the information delivered pursuant to subsection 9(a), an invoice setting out the amount payable by the Licensee for that Academic Year pursuant to subsection 8(a), together with any federal and provincial taxes applicable thereto, and the Licensee shall pay the Royalties and applicable taxes in a single lump-sum payment on or before December 15 of that Academic Year.

(c) In order to ascertain the most accurate number of Full-time-equivalent Students, the Licensee may, in its discretion, recalculate its number of Full-time equivalent Students in February of each Academic Year, using the same methodology contemplated by subsection 9(a) and deliver to Access Copyright a written report specifying the recalculated number of Full-time equivalent Students on or before March 15 of said Academic Year. If the resulting number is greater than that previously reported to Access Copyright in accordance with subsection 9(b), Access Copyright shall issue a revised invoice to the Licensee within ten (10) business days after receiving the report, and (i) if the Royalties payable are greater than those already paid pursuant to subsection 9(b), the Licensee shall pay the additional Royalties and any applicable taxes thereon in a single lump-sum payment within ten (10) business days after receiving the revised invoice; and (ii) if the Royalties payable are less than those already paid pursuant to subsection 9(b), Access Copyright shall refund the difference to the Licensee within ten (10) business days after issuing the revised invoice.

## **10. Interest**

Any payment not received by Access Copyright by its due date shall bear interest from such due date until the date the payment is received. Interest on any unpaid balance shall be calculated daily at a rate equal to one percent above the bank rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

## 11. Reporting and Survey of Bibliographic and Volume Data

- (a) The Licensee shall maintain records of all Copies made by the Licensee for use in paper Course Collections, which records shall specify, for each of such Copies made, the title, excerpt title, publisher, author or authors (where known), the ISBN/ISSN number (where known), the number of pages in the Published Work, the specific pages Copied, the total number of pages Copied and the number of sets made. Each Academic Year during the Term, the Licensee shall provide copies of such records to Access Copyright as follows:
- (i) for Copies made between September 1 to December 31 by no later than January 31,
  - (ii) for Copies made between January 1 to May 30 by no later than June 30, and
  - (iii) for Copies made between June 1 and August 31 by no later than September 30.
- (b) To the extent reasonable, the Licensee shall use the logging tool provided by Access Copyright at <http://www.accesscopyright.ca/educators/full-reporting-logs-for-post-secondary-institutions/>, or as otherwise provided by Access Copyright.
- (c) Within six months of signing this agreement, or as otherwise agreed between the parties, the Licensee shall participate if requested in the survey ("Survey") and/or further reporting to be designed by a group of experts comprising of no more than five representatives appointed by the Association of Universities and Colleges of Canada (AUCC) and no more than five representatives appointed by Access Copyright. The purposes of the Survey and/or further reporting shall be to provide:
- (i) valid and reliable bibliographic data to Access Copyright for the purposes of allowing Access Copyright to make a fair distribution of the Royalties to its affiliates; and
  - (ii) valid and reliable volume data to the Licensee and Access Copyright for the purposes of trending the appropriateness of the Royalties and other terms and conditions of this agreement.
- (d) The Survey methodology and reporting structure pursuant to subsection 11 (c) will incorporate the following guiding principles:
- (i) The Survey will attempt to minimize the administrative burden on the parties, and in particular on the Licensee's academic staff and Students;
  - (ii) The Survey must comply with all applicable privacy legislation and the Licensee's privacy policies;
  - (iii) The Survey shall respect the principles of academic freedom, for example, by not providing access to the Licensee's, its Students' and academic staff's chat rooms and e-mails;
  - (iv) To the fullest extent reasonable, the Survey will only collect and provide Access Copyright with anonymized bibliographic and volume data; and
  - (v) Access Copyright acknowledges that the Licensee is bound by collective agreements.

## 12. Compliance

The Licensee shall take reasonable steps to ensure that it complies with the conditions in sections 3, 4, 5 and 6 and that no Copying by Authorized Persons or Subcontractors takes place in contravention of the conditions set out in sections 3, 4, 5 and 6.

## 13. Indemnity

(a) Access Copyright will indemnify and hold harmless the Licensee, and any Authorized Person, from and against any damages, losses, expenses and liabilities (including reasonable legal and professional costs) resulting directly or indirectly from any Claim made against the Licensee or any Authorized Person in relation to:

(i) the Copying of:

- A. a Published Work that has been made available in print format to the public with the consent or acquiescence of the copyright owner that was not, at the time the Copy was made, on the Exclusions List; or
- B. a Published Work that has been made available in born digital format to the public with the consent or acquiescence of the copyright owner that was, at the time the Copy was made, on the Inclusions List,

(ii) by the Licensee or any Authorized Person consistent with the terms and conditions applicable to Repertoire Works under section 3, 4 and 5 of this agreement,

(iii) provided that the Licensee:

- A. provides Access Copyright with notice of the Claim within ten (10) business days of receipt of the Claim or the date of service of the Claim on the Licensee, whichever is later;
- B. is not in breach of its material obligations under this agreement;
- C. does not make any admission of liability, or offer of payment or indemnity, whether on its behalf or on behalf of Access Copyright, without Access Copyright's prior written consent; and
- D. permits Access Copyright to participate in the defence of the Claim in such ways as Access Copyright reasonably requires.

(b) If the Licensee settles any Claim without the prior written consent of Access Copyright, the Licensee shall be deemed to have waived its right to be indemnified by Access Copyright in respect of such Claim.

(c) Notwithstanding subsections 13(a) and (b), this section 13 shall only apply to Claims made against the Licensee or any Authorized Person after the date both parties have signed this agreement.

#### **14. Records Retention and Audit**

(a) The Licensee shall keep and preserve, for a period of three years after the end of the Academic Year to which they relate, all records (which may include internal audits) from which the Royalties payable pursuant to this agreement can be readily ascertained.

(b) To verify the accuracy of the reporting provided by the Licensee under section 9(a), Access Copyright (or its agents) may audit these records, no more than once per Academic Year and once during the calendar year immediately following the end of the term of this agreement, on giving five (5) business days' written notice to the Licensee. For the purpose of these audits, Access Copyright shall have the right of access during normal business hours only to those parts of the premises of the Licensee reasonably necessary to access the records retained pursuant to subsection 9(a).

(c) Access Copyright shall, upon request, supply a copy of the report of the audit to the Licensee.

(d) If an audit conducted in accordance with this section reasonably determines that Royalties invoiced by Access Copyright have been understated in respect of any Royalties that ought to have been paid pursuant to this agreement by more than ten per cent (10%), the Licensee shall pay the reasonable costs of the audit.

#### **15. Adjustments**

Adjustments in the amount of Royalties (and audit costs if applicable) owed as a result of an audit under section 14, or as a result of an error or omission, shall be applied to the next invoice issued by Access Copyright to the



Licensee, or, if this agreement has expired or has been terminated, paid or refunded within twenty (20) business days of receipt of notice of such adjustment(s).

## 16. Subcontracting of Uses

(a) The Licensee may authorize by written agreement a person other than an Authorized Person (a “Subcontractor”) to perform the acts set out in section 3, subject to the conditions set out in sections 4, 5 and 6, provided that:

- (i) a record is kept of all such written agreements;
- (ii) the Licensee provides a copy of any such agreement to Access Copyright within twenty (20) business days after such agreement is entered into;
- (iii) the Subcontractor agrees to maintain the records referred to in section 11(a) and to provide copies of those records to Access Copyright in accordance with that section and complies with all conditions, restrictions, and limitations set out in this agreement; and
- (iv) the Subcontractor shall not further subcontract to any other person any rights or obligations granted or imposed under this agreement.

Access Copyright will not require the Subcontractor to pay any additional Royalties in relation to Copies made pursuant to this subsection (a).

(b) Upon request from the Licensee, Access Copyright may authorize a third party that is licensed by Access Copyright to perform the acts set out in section 3 on behalf of the Licensee, subject to the conditions sets out in sections 4, 5 and 6. Access Copyright will notify the Licensee of the third parties that are licensed by Access Copyright and that service the Licensee by no later than October 1 of each Academic Year during the Term. The Licensee shall use best efforts to communicate such notice to its Authorized Persons.

(c) For clarity, the Royalties to be paid pursuant to section 8 include payment for the Copying performed by subcontractors or other third parties in accordance with this section 16.

## 17. Termination

(a) If the Licensee is in breach of any of its obligations under this agreement, Access Copyright may give written notice to the Licensee of such breach, and if the Licensee does not cure such breach within twenty (20) business days of receipt of such notice, Access Copyright may terminate this agreement. Such termination shall be effective on the receipt of such notice of termination, or the date specified in the notice, whichever is later.

(b) In the event of termination pursuant to section 2(a)(i), 17(a) or 19(c) of this agreement:

- (i) the Licensee shall submit any outstanding payments and interest owing pursuant to sections 9 and 10 of this agreement and any outstanding records pursuant to section 11(a) of this agreement to Access Copyright within twenty (20) business days of the effective date of termination of this agreement;
- (ii) As of the effective date of termination, the Licensee shall within a reasonable time remove anything from the Licensee’s premises relating to Access Copyright as a licensor of the Licensee, including notices of the terms and conditions of Copying pursuant to section 7; and
- (iii) Access Copyright shall refund to the Licensee the portion of the Royalty paid under section 8 pro-rated over the Academic Year based on the effective date of termination within twenty (20) business days of the effective date of termination of this agreement.

(c) The obligation of the Licensee to pay outstanding royalties and interest owing to Access Copyright at the end of the Term pursuant to sections 9 and 10 of this agreement, and the obligation to provide records pursuant to

section 11(a) of this agreement up to the effective date of the termination of this agreement, shall survive termination of this agreement.

### **18. Application of the Tariff**

Consistent with section 70.191 of the *Copyright Act*, Access Copyright will not seek to enforce the Tariff, and any renewals, extensions or replacements of the Tariff, against the Licensee during the Term.

### **19. Renegotiation of Extension Terms**

(a) Where either party gives notice pursuant to section 2(a)(ii) of its wish to negotiate the terms and conditions of this agreement, the licensee and any other institution or institutions that have also entered into a licensing agreement with Access Copyright and that have also given notice of their wish to re-negotiate the terms and conditions this agreement (the Licensee and the other licensees who have given such notice are referred to herein collectively as the “Negotiating Licensees”) shall together choose a negotiating team (the “Institutions’ Negotiating Team”) consisting of no more than five (5) representatives, which shall include senior administrators of the Negotiating Licensees and the AUCC, to negotiate the terms of an amended model licence (an “Amended Model Licence”) in good faith with a negotiating team chosen by Access Copyright (the “Access Copyright Negotiating Team”) consisting of no more than five (5) representatives, which shall include members of Access Copyright’s Board of Directors and staff.

(b) If after a period of thirty (30) business days from the giving of notice under section 2(a)(ii), the Access Copyright Negotiating Team and the Institutions’ Negotiating Team have failed to agree on the terms and conditions of an Amended Model Licence, the Institutions’ Negotiating Team and the Access Copyright Negotiating Team will jointly appoint a mediator to assist the Institutions’ Negotiating Team and the Access Copyright Negotiating Team to reach agreement on the terms and conditions of the Amended Model Licence. The Institutions’ Negotiating Team and Access Copyright will share the mediator’s costs and fees equally. If after an additional period of three (3) months, the Institutions’ Negotiating Team and the Access Copyright Negotiating Team have not reached agreement on the terms and conditions of an Amended Model Licence, the Institutions’ Negotiating Team and the Access Copyright Negotiating Team may, on mutual agreement, extend the time period to attempt to reach such agreement by an additional three (3) months.

(c) If at the end of the period set out in section 19(b), including any extension on mutual agreement, the Institutions’ Negotiating Team and the Access Copyright Negotiating Team have not reached an agreement on the terms and conditions of an Amended Model Licence,

(i) this agreement will terminate at the end of the Term; and

(ii) the obligation of the Licensee to pay outstanding royalties and interest owing to Access Copyright at the end of the Term pursuant to sections 9 and 10 of this agreement, and the obligation to provide records pursuant to section 11(a) of this agreement up to the effective date of the termination of this agreement, shall survive termination of this agreement.

### **20. Concurrent Rights to Copy**

(a) Nothing in this agreement is intended to prevent the Licensee from accessing, using, reproducing or distributing works as permitted under the *Copyright Act*.

(b) Nothing in this agreement is intended to prevent the Licensee from accessing, using, reproducing or distributing Published Works pursuant to a licence or other arrangement made directly between the Licensee and the copyright holder, copyright owner, or another collective society administering reproduction rights.

## 21. Disputed Terms

- (a) The parties have agreed to certain definitions for the purposes this agreement; in particular the terms “Copy”, “Course Collection” and “Published Work”.
- (b) Notwithstanding subsection 21(a), the definitions in subsection 21(a) have been agreed to on a without prejudice basis to the ability of the parties to argue in any proceeding unrelated to this agreement that a different definition should apply. In particular, the parties note that they disagree on whether every act in the definition of “Copy”, “Course Collection” and “Published Work” constitute a compensable reproduction under the *Copyright Act*.

## 22. Addresses for Notices and Payment

- (a) Anything that the Licensee sends to Access Copyright shall be sent to:
  - Executive Director, Access Copyright
  - The Canadian Copyright Licensing Agency
  - One Yonge Street, Suite 800
  - Toronto, Ontario M5E 1E5
  - Telephone: 416-868-1620
  - Fax: 416-868-1621
  - Email: [postsec@accesscopyright.ca](mailto:postsec@accesscopyright.ca)
- (b) Anything that Access Copyright sends to the Licensee pursuant to this agreement, including all notices, shall be in writing and sent to the last address of which Access Copyright has been notified in writing.

## 23. Delivery of Notices and Payment

- (a) A notice may be delivered by hand, courier, by postage-paid mail, by fax or email. A payment may be delivered by hand, courier, by postage-paid mail or by electronic bank transfer.
- (b) Anything mailed in Canada shall be presumed to have been received three (3) business days after the day it was mailed.
- (c) A notice or payment sent by fax, email or by electronic bank transfer shall be presumed to have been received on the first business day following the day it is transmitted.

## 24. Confidentiality

The results of any audit of the Licensee shall be treated as confidential information. All other information, including all other reports, payment, and the Licensee’s status as a licensee of Access Copyright, is not confidential information.

## 25. Miscellaneous

- (a) This agreement will enure to the benefit of and be binding on the parties and their respective successors and permitted assigns. This agreement may not be assigned without the written consent of the other party.
- (b) The invalidity or unenforceability of any particular provision of this agreement will not affect or limit the validity or unenforceability of the remaining provisions.
- (c) This agreement (together with the Schedules A and B), constitutes the entire agreement between the parties pertaining to the subject matter of this agreement and supersedes all prior agreements, understandings,

negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this agreement (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this agreement.

(d) No amendment of this agreement will be effective unless made in writing and signed by the parties.

(e) This agreement is governed by the laws of the province of Ontario and the laws of Canada applicable in Ontario, excluding any rule of principle or conflicts of law that may provide otherwise.

## 26. Effective Date

This agreement is effective as of January 1, 2011.

### **ACCESS COPYRIGHT, THE CANADIAN COPYRIGHT LICENSING AGENCY**

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Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LICENSEE:** \_\_\_\_\_

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Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE "A"**

**PERSONS AND BODIES TO BE COVERED UNDER THIS AGREEMENT**

**SCHEDULE "B"**  
**NOTIFICATION OF THE TERMS OF COPYING**

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