

Electronic Health Library of British Columbia License Agreement. 2023

THIS AGREEMENT is made day of [year]

BETWEEN: [NAME OF LICENSOR] of [full address] (herein referred to as "the Licensor")

AND: ELECTRONIC HEALTH LIBRARY OF BRITISH COLUMBIA (eHLbc),
8888 University Drive, British Columbia, V5A 1S6 (herein referred to as "the Consortium")

WHEREAS the Consortium is authorized to act for and sign this License Agreement ("Agreement") on behalf of its member organizations, hereinafter known as the "Member(s)". Rights and responsibilities referenced in this Agreement in regard to "Consortium" shall apply to all Members covered under this Agreement; however, the Consortium is responsible only for fulfillment of its individual responsibilities under this Agreement. The Consortium nor any other Member shall be liable for any breach or default of another Member., and

WHEREAS the Licensor holds or administers the rights granted under this Agreement; and

WHEREAS the Licensor desires to grant to Members of the Consortium the license to use such rights for the License Fee, as detailed in the attached Schedule(s), subject to the terms and conditions of this Agreement. 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 e-books, 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 License, the following terms shall have the following meanings:

Accessible Formats Content in a format that is perceivable and operable by persons with visual, perceptual, physical, or other print disabilities, and is usable with assistive devices and software.

Authorized Users Authorized Users include all individuals who are granted Library privileges according to the policies of Member. This includes all current students, staff, and faculty of Member, (whether full- or part-time, permanent, temporary, contract or visiting appointments), retired faculty and staff, alumni, and researchers, associated with Member regardless of the physical location of such persons.

Within non-academic institutions, this also includes individuals who are working or studying at the Member including clinical and allied

healthcare practitioners and staff (whether full- or part-time, permanent, temporary, contract or visiting appointments), and individuals who are independent contractors or employed by independent contractors associated with Member regardless of the physical location of such persons.

Authorized Users also include individual members of the public (walk-in users) 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 Agreement by another institution.

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| Bibliographic Reference Management Systems | Bibliographic Reference Management Systems, also referred to as reference management, citation management, or personal bibliographic management software, are tools used by scholars and authors for storing, organizing, and sharing bibliographic citations or references, and for formatting bibliographies useful for authors' articles. |
| Click-Through License | Terms and conditions relating to Licensed Materials that the Licensor requires Authorized Users to accept by clicking a button or hyperlink in to gain access on the Platform. |
| Commercial Use | Use of the Licensed Materials for the purposes of monetary reward (whether by Member 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 exclusive of the License Fee by a Member from Authorized Users, nor use of the Licensed Materials by a Member or by an Authorized User in the course of research funded by a commercial organization, nor the payment of a fee by a person to be registered with a Member, is deemed to be Commercial Use. |
| Confidential Information | Designates any information for which the access is restricted under any Canadian federal or provincial legislation. |
| Consortium | The group of organizations (which may have multiple sites) and their associated libraries that have formed a single collective representation for negotiation and execution of this Agreement. The group includes private and public post-secondary institutions, and other educational institutions and research organizations and their associated libraries. |
| Course Packs | A collection or compilation, in print or electronic form, of scholarly materials (e.g. book chapters, journal articles) assembled by staff of a Member for use by students in a class for the purpose of instruction. |
| Digital Rights Management | Also referred to as "DRM", access control technologies that are used to limit the use of digital content and devices in on-line or off-line |

environments.

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| 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. |
| Discovery Services | User interface and search systems for discovering and displaying content from local, database, and web-based sources. |
| Electronic Learning Environments | Use of parts of or linking to the Licensed Materials 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 Member's Secure Network for use by its faculty, students and staff in connection with specific courses of instruction offered by a Member. |
| Electronic Reserve | Electronic copies of Licensed Materials (e.g. book chapters, journal articles, abstracts) made and stored on a Member's Secure Network for use by Authorized Users in connection with specific courses of instruction offered by Members to such Authorized Users. |
| Knowledge Base | A centralized database of all publishers' and aggregators' up-to-date and detailed bibliographic and content information about their electronic collections which Members use to manage, track, and deliver access to the Licensed Materials to which they subscribe. |
| License Fee | The applicable fee for a license to the Licensed Materials, whether a one-time fee or an annual or other subscription fee, as set out in Schedule 1 , or in new Schedules to this Agreement, which may be agreed by the parties from time to time. |
| Licensed Materials | The materials as detailed in the attached Schedule(s) as may be amended from time to time by agreement between the parties. |
| Member | Universities, educational institutions, research organizations, public libraries, or healthcare facilities that are in membership of the Consortium, or for whom the Consortium license resources, and are listed in the attached Schedule(s), and which have agreed by virtue of their membership to be bound by the terms and conditions of this License as if they were a party to it jointly with the Consortium. |
| Open Access Repository Services | Online services designed to preserve and provide open access to journal article reprints or preprints, audio, video and other media, and/or digital data. Repositories may be maintained by, but not limited to, author's employing institution, an academic consortium, a discipline- based |

entity, or a governmental funding agency.

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| Perpetual Access | Provisions in this Agreement for continuation of access, archiving and use of Licensed Materials that shall survive any termination of the Agreement and ensure continued access consistent with the then current recognized standards in the publishing industry. |
| Platform | The combined hardware and software used by the Licensor to provide online access to the Licensed Materials. |
| Scholarly and Educational Use | Use of the Licensed Materials for the purpose of academic research, scholarship, education, and other related purposes, including extraction and manipulation for the purpose of illustration, explanation, example, comment, criticism, teaching, research, and analysis. |
| Secure Network | A computer network that incorporates reasonable security measures to only allow access to Authorized Users by secure authentication, consistent with current industry standards. |
| Text and Data Mining | A machine process by which information may be derived from the Licensed Materials by identifying patterns and trends within natural language through methods such as text categorization, statistical pattern recognition, concept or sentiment extraction, and the association of natural language with indexing terms. |
| Usage Data | Data collected by the Licensor of the activities or uses on the Platform on the number of chapters, articles or other single items downloaded, printed or viewed from the Licensed Materials. |

2. LICENSE GRANT

- 2.1 **GENERAL.** The Licensor hereby grants to the Members of the Consortium, subject to and in accordance with the terms of this Agreement, a non-exclusive and non-transferable right, through-out the world, to access and use the Licensed Materials at the sites of Members or remotely, via a Secure Network, for the purposes of private study, research, education, distance learning, teaching, administrative use, and other Scholarly and Educational Use consistent with the normal practices and activities of Consortium and Members.

Such use shall be consistent with the fair dealing doctrine and exceptions for educational institutions and libraries permitted under the Copyright Act of Canada. Nothing in this Agreement shall prevent Authorized Users and Members from carrying out acts - and the Licensor agrees not to configure the Platform or take any other actions that would have the effect of preventing Authorized Users and Members from carrying out acts - that are permitted under the Copyright Act of Canada.

2.2 PERPETUAL ACCESS. The Licensor hereby grants to the Consortium and the Members a non-exclusive, royalty-free, perpetual license for Members and their Authorized Users to use, after the termination of this Agreement, the Licensed Materials for which Perpetual Access rights are granted, as specified in **Schedule 1**. Such use shall be in accordance with the provisions of this Agreement relating to the use of Licensed Materials, including restrictions on use and related liabilities, which provisions shall survive any termination of this Agreement, as per **9.3 [Termination with Perpetual Rights]**.

3. PERMITTED USES

3.1 ACCESS and USE. Member and Authorized Users may access and use Licensed Materials from the premises of the Member, or remotely, via a Secure Network, to search, retrieve, display, download, print, save and view the Licensed Materials.

3.2 ALTER or MODIFY. If the Licensed Materials are not already provided in Accessible Formats, Member and Authorized Users may alter or modify the Licensed Materials as necessary to provide an equivalent level of service to Authorized Users with disabilities if the Licensed Materials

3.3 CLASSROOM HANDOUTS. Member may distribute classroom handouts, as single copies of individual items of the Licensed Materials, in print or electronic form. For the avoidance of doubt, classroom handouts shall include the distribution of a copy for teaching purposes to all individual student Authorized Users in a class at a Member.

3.4 COURSEPACKS and ELECTRONIC RESERVES and VIRTUAL LEARNING. Members and Authorized Users may incorporate parts of the Licensed Materials in course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network, but not for Commercial Use. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in alternate formats, may also be offered to Authorized Users that require Accessible Formats.

If the Licensor does not have the right to grant all rights 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).

3.5 DATA and TEXT MINING. Member and Authorized Users may apply automated tools and processes to the Licensed Materials for the purposes of textual analysis and visual mapping of textual and/or statistical relationships within the context of Scholarly and Educational Use. Member and Authorized Users may make the results

available for use by others, so long as the purpose is not to create a product for use by third parties that would substitute for the Licensed Materials.

- 3.6 **INTERLIBRARY LOAN.** Member may distribute a single copy of an individual document, being part of the Licensed Materials, by paper or electronic means, to another institution within the guidelines of traditional interlibrary loan practices and applicable copyright laws.
- 3.7 **PERSISTENT LINKS.** Member may create persistent links to individual articles for access by Authorized Users via a Secure Network.
- 3.8 **PUBLIC PERFORMANCE RIGHTS.** Subscription to Licensed Materials includes Public Performance Rights for private, educational and research purposes but not for Commercial Use.
- 3.9 **RESEARCH and TEACHING and PROFESSIONAL PRACTICE.** Member and Authorized Users may (a.) incorporate parts of the Licensed Materials in printed or electronic form in assignments, portfolios, theses, dissertations, teaching, conference presentations, and lectures, with appropriate credit; (b.) make full use, with appropriate credit, of the Licensed Materials in research and publications for personal, scholarly, educational, or professional use; (c.) supply print or electronic copies of individual articles or parts of articles taken from the Licensed Materials to fulfill enquiries from third parties for medical information purposes and (d.) store a single copy of an individual document being part of the Licensed Materials, including within secure personal Bibliographic Reference Management Systems. For the avoidance of doubt, reproductions of portions of the Licensed Materials for library deposit, such as in institutional repositories, and other non-commercial uses, with appropriate credit, are permitted. For the avoidance of doubt, none of these activities may be undertaken for Commercial Use.
- 3.10 **SCHOLARLY SHARING.** Authorized Users may transmit to a third party colleague, who is not an Authorized User, in hard copy or electronically, reasonable amounts of the Licensed Materials for Scholarly and Educational Use, but not for Commercial Use.
- 3.11 **TRAINING AND MARKETING MATERIALS.** Member may display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users.
- 3.12 **USAGE DATA SHARING.** Consortium and Members are permitted to share Usage Data, provided that the disclosure of such data fully protects the anonymity of individual users and the confidentiality of their searches and is not contrary to applicable privacy laws.

4. **PROHIBITED USES**

- 4.1 **COMMERCIAL USE.** Consortium, Member, and Authorized Users may not use

any part of the Licensed Materials for any Commercial Use without the Licensor's explicit permission. For the avoidance of doubt, recovery of direct costs incurred by the Member in the course of providing access to Authorized Users or Walk-in Users (e.g. printing, photocopying, or administration fee) including interlibrary loan, is not deemed to be Commercial Use.

- 4.2 **MODIFYING WORKS.** Consortium, Member, and Authorized Users may not abridge, modify, translate, or adapt works in order to publish, distribute or make available the Licensed Materials, other than as permitted in this Agreement.
- 4.3 **PUBLIC REDISTRIBUTION.** Except as permitted in this Agreement, Consortium, Member, and Authorized Users may not re-distribute, reproduce or transmit to anyone other than Authorized Users the whole or any part of the Licensed Materials by any means including electronic (e.g. via email), nor post it on publicly-accessible web sites or networks.
- 4.4 **REMOVAL OF COPYRIGHT NOTICE.** Consortium, Member, and Authorized Users shall not remove, obscure or alter in any way the authors' names or the Licensor's copyright notices, trademark notices, other notices, logos or other means of identification or disclaimers as they appear in the Licensed Materials.
- 4.5 **SYSTEMATIC DOWNLOADING.** Except as permitted in this Agreement, Consortium, Members, and Authorized Users shall not systematically make print or electronic copies of multiple extracts of the Licensed Materials, or use robots, spiders, crawlers or other automated downloading programs, algorithms or devices to continuously and automatically search, scrape, extract, deep-link, index, or disrupt the use of the Licensed Materials for any purpose.

5. THE LICENSOR'S UNDERTAKINGS

- 5.1 **ACCESS.** Licensor shall, upon the subscription start date of the License Agreement as specified in Schedule 1, make the Licensed Materials available to the Members. Licensor shall provide sufficient information to the Consortium and Member to enable Authorized Users to access the Licensed Materials. Whenever feasible, Licensor will use the OpenURL standard (ANSI/NISO Z39.88) to create persistent links.

Licensor shall ensure that the Platform has adequate capacity and bandwidth to support the usage by the Members and Authorized Users at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web. Licensor shall ensure that Licensed Materials will be accessible and interoperable with prevailing Web browsers including, at a minimum, the most recent two major releases (current release and one release prior).

If Access does not meet recognized standards of authentication for educational institutions or violates any laws relating to Privacy and Personal Information and the Licensor is not able to provide an identical alternative for Authorized Users to access

and use the Licensed Materials, Consortium may terminate this Agreement, and **9.[Term and Termination]** will apply.

5.2 **ACCESSIBLE FORMATS.** Licensor shall conform to the ISO Standard (ISO/IEC 40500:2012) and any subsequent updates based on the World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 and comply with applicable Canadian laws relating to accessibility to ensure that the Licensed Materials are accessible to all Authorized Users. If Licensed Materials are not in Accessible Format, **3.2 [Alter or Modify]** will apply.

5.3 **AUTHOR'S RIGHTS TO USE THEIR OWN WORK.** Notwithstanding any terms or conditions to the contrary in any author agreement between Authors and Licensor, Authors affiliated with Member 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 Use, 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.

If the Licensor does not have the right to grant all rights, these rights will apply exclusively to the content for which the Licensor does have such rights, as specified in **Schedule 1.**

5.4 **AVAILABILITY OF LICENSED MATERIALS.** Licensor shall use reasonable efforts to make the Licensed Materials available to Consortium and Member at all times and on a twenty-four hour basis, save for routine maintenance (for which Licensor shall notify Consortium in advance), and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service. Scheduled down-time will be performed at a time designed to minimize inconvenience with advance notice. Other than for routine maintenance, it is expected that the service will be available on average 98% of the time or better.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Consortium shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. If Licensor fails to repair the nonconformity in a reasonable time, Licensor shall 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. Persistent failure to comply with the provisions set forth in this Agreement may be treated as a breach of this Agreement and **9.5 [Early Termination for Breach]** will apply.

5.5 **BRANDING.** Licensor will provide to each Member the option to brand the Licensor’s Platform with the name of the Member.

- 5.6 **CLICK-THROUGH LICENSE TERMS.** This Agreement and attached Schedule(s) signed by Licensor and Consortium shall comprise the complete terms and conditions of use. If Licensor uses a “click-through” license for end users, Licensor shall provide Consortium with notice of and an opportunity to comment on such terms. In the event of any conflict between the ‘click-through’ terms and this Agreement, the terms of this Agreement shall prevail.
- 5.7 **DIGITAL RIGHTS MANAGEMENT TECHNOLOGY.** In the event that Licensor utilizes any type of Digital Rights Management technology (DRM) to control the access to usage of Licensed Materials, Licensor agrees to notify Consortium of the name, contact information and any technical specifications for the DRM utilized. In no event may such DRM be used in such a way as to limit the usage rights of a Member, Consortium, or any Authorized User as specified in this Agreement or under applicable privacy and data protection laws.
- 5.8 **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 Authorized Users such as account numbers or IP addresses. If digital Watermarking Technology is used, Licensor agrees to notify the Consortium, in advance, of the name, contact information, and any technical specifications for the technology used. Any Digital Watermarking Technology shall be applied in a manner consistent with applicable privacy and data protection laws to protect the anonymity of individual users and the confidentiality of their access or usage of the Licensed Materials.
- 5.9 **DISCOVERY SERVICES.** Licensor agrees to provide third-party vendors of Discovery Services, on an ongoing and timely basis, with as comprehensive content for indexing as possible, including citation metadata (including subject heading and keywords), abstracts, and full text, to facilitate optimal discovery of the Licensed Materials for the benefit of Authorized Users.
- 5.10 **MARC RECORDS.** When applicable to the Licensed Materials, Licensor shall provide Members with full OCLC-quality batched sets of MARC records at no additional cost by the date of the execution of this Agreement. Updates to existing records and new title records, matching the schedule of release and delivery of new publications, will be provided on a mutually agreed-upon schedule and in a format that renders them useful to the Consortium and Members.
- 5.11 **MODIFICATIONS TO LICENSED MATERIALS.** Licensor shall give prompt notice to the Consortium of any additions, modifications to, or deletions of the Licensed Materials. Failure by the Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by the Consortium. If any modifications render the Licensed Materials less useful to the Consortium or its Members, the Consortium may treat such modifications as a material breach and 7.3 [Notice of Unauthorized Use or Breach] shall apply.

Consortium understands that, from time to time, the Licensed Materials may migrate to, or be available in, other formats. If Licensor develops a new access, delivery or download method during the term of this Agreement, this service shall be made available to Member and Authorized Users at no additional charge. Licensor will make reasonable efforts to ensure the content and metadata provided complies with current recognized international standards.

Additional details about additions, modifications, or deletions may be added including process for continued access due to format or access changes or transfer of ownership.

- 5.12 **OPEN ACCESS REVENUE TRACKING.** In the event that the 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 Materials under the open access option and decrease license fees accordingly
- 5.13 **PRESERVATION OF LICENSED MATERIALS.** When applicable to the Licensed Materials, Licensor will make available a digital archive of the Licensed Materials and associated metadata on its servers, and with at least one of the following third-party archiving services: Portico, CLOCKSS, LOCKSS, Scholars Portal, or another mutually agreed-upon archiving service, and inform the Consortium on which of the archiving services the archive may be found. The archive will be maintained in perpetuity, with its format converted from time to time as appropriate if the technology used for storage or access changes. If the Licensor is unable to continue to provide Perpetual Access from its servers, the Consortium is entitled to access the archive from the third-party archiving service to fulfill Perpetual Access and Continuing Access rights under this Agreement, as per **2.2 [Perpetual Access]**.
- 5.14 **TITLE LISTS.** Licensor shall provide, in KBART-compliant format as appropriate, access to an itemized title list that specifies the Licensed Materials accessible to Member. Licensor shall provide such title lists to third-party vendors of Knowledge Bases on an ongoing and timely basis.
- 5.15 **USAGE DATA.** Licensor will collect Usage Data according to the most recent release of the Project COUNTER Code of Practice or agreed-upon alternate format as appropriate for the Licensed Materials. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected. Usage Data will be provided as requested by Consortium or Member. Licensor agrees to compile combined statistics of all Members on request. The Licensor shall not disclose to other parties Usage Data about the Consortium, Members, or Authorized Users without the Consortium and the Members' permission.

6. THE CONSORTIUM'S UNDERTAKINGS

- 6.1 **LICENSE TERMS.** Consortium shall inform the Members of the terms and conditions of this Agreement as outlined in **3. [Permitted Uses]** and **4. [Prohibited**

Uses]. Members shall use reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement.

6.2 **INTELLECTUAL PROPERTY RIGHTS.** Consortium and Members shall use reasonable efforts to ensure that all Authorized Users are aware of the importance of respecting the intellectual property rights in the Licensed Materials.

6.3 **MEMBER INFORMATION.** The Consortium shall provide to the Licensor information to enable the Licensor to provide access to the Licensed Materials. Should the Members make any significant change to such information, the Consortium or Member shall use reasonable efforts to notify the Licensor in a timely manner.

6.4 **PROTECTION FROM UNAUTHORIZED USE.** Member shall make reasonable efforts to limit access to the Licensed Materials to Authorized Users, and to protect the Licensed Materials from unauthorized use. Upon becoming aware of any unauthorized use or other breach, Member shall inform the Licensor as per 7.3 [Notice of Unauthorized Use or Breach]. Neither the Consortium nor the Members are liable to the Licensor in respect of any such unauthorized use so long as such reasonable efforts were made.

7. **MUTUAL OBLIGATIONS OF CONSORTIUM AND LICENSOR**

7.1 **LOCAL LOADING.** For Licensed Materials with Perpetual access, Licensor and Consortium agree to negotiate in good faith a separate agreement, at any point in the term of this Agreement, for perpetual local loading and alternate hosting of the Licensed Materials on the Member's server or a third-party server, as designated by the Member.

7.2 **PRIVACY OF USER DATA.** Licensor and Consortium agree to comply with all applicable laws relating to privacy of data and personal information to protect the anonymity of individual users and the confidentiality of their access and usage of the Licensed Materials. Any user data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate anonymized form.

7.3 **NOTICE OF UNAUTHORIZED USE OR BREACH.** Upon becoming aware of any unauthorized use or other breach, the Licensor, Consortium, and Member will inform the others and take reasonable and appropriate steps to both ensure that such activity ceases and to prevent any recurrence. The Licensor, Consortium, and Member agree to cooperate in good faith and to provide sufficient exchange of information to prevent any further unauthorized use.

The Licensor reserves the right to temporarily suspend any Member Institution's access to Licensed Materials for infringement of the Licensor's intellectual property rights in

the Licensed Materials or for a breach of the terms of this License Agreement that threatens either the performance or security of the Platform. The Licensor shall not suspend access without first providing written notice to both Consortium and the relevant Member. Forthwith, after suspending such access the Licensor shall issue a notice to the Member and Consortium of the breach, specifying the activity of the Member that caused the breach. The Licensor shall forthwith restore access to the Member upon receipt of notice that such activity has ceased and that the Member has made reasonable efforts to protect against recurrence of such activity. Termination of the Agreement due to breach shall be governed by **9.5 [Early Termination for Breach]**.

8. FEES

8.1 **PAYMENT.** In consideration for Licensor's licensing of the Licensed Materials listed in the attached Schedule(s), Consortium and Member agree to pay Licensor License Fees in accordance with the provisions of **Schedule 1**.

8.2 **FEE ADJUSTMENT.** Adjustments to the License Fee may occur as a result of clauses elsewhere in this Agreement and shall be made at the time of annual invoicing within a term, or at renewal or termination.

8.3 **INVOICES.** Payment to Licensor shall be due sixty (60) days after receipt of the invoice to the Consortium.

9. TERM AND TERMINATION

9.1 **TERM.** This Agreement shall commence at the beginning of the term for each of the Licensed Materials as set out in **Schedule 1** or in new Schedules that may be added subsequently. This Agreement shall be renewable at the end of the current term if agreed in writing by both parties, no less than sixty (60) days prior to the termination of this Agreement.

9.2 **TERMINATION OF SUBSCRIPTIONS.** On termination all rights and obligations of the parties automatically terminate.

9.3 **TERMINATION WITH PERPETUAL RIGHTS.** On termination, the Licensor must fulfill obligations in respect of Licensed Materials to which access continues to be permitted as provided in **2.2 [Perpetual Access]**. Authorized Users shall have access to Licensed Materials in a manner and form substantially equivalent to the means by which access is provided during the term of this Agreement, with provisions for ensuring forward compatibility with new technologies.

Licensor shall:

a.) provide continuing online access to archival copies of the Licensed Materials on the Licensor's Platform without supplementary fees to the Consortium or Members;

b.) provide to the Consortium, Member, or third-party archiving service, upon request

and within 90 days, one copy of the entire set of Licensed Materials and associated metadata to be maintained as an archival copy for the purpose of delivering continuing online access to Authorized Users.

The cost of electronic delivery of Licensed Materials and associated metadata to the Consortium or Member or a third-party archiving service shall be borne by Licensor, unless otherwise agreed upon by the parties.

The archival copy from the Licensor shall be provided without Digital Rights Management Technology in a mutually agreeable medium suitable to the Licensed Materials, but may not contain all the links and other features and functionality associated with the Licensed Materials pursuant to this Agreement.

- 9.4 **EARLY TERMINATION FOR PAYMENT DEFAULT.** The Licensor may terminate this Agreement by notice to the Consortium if the Consortium willfully defaults in making payment of the License Fee as provided in this License Agreement and fails to remedy such default within sixty (60) days of notification in writing by the Licensor.
- 9.5 **EARLY TERMINATION FOR BREACH.** In the event that any party believes that the other materially has breached any obligations under this Agreement, such party shall notify the breaching party in writing, including by email communication. The breaching party shall have sixty (60) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing, including by email communication, that cure has been affected. If the breach is not cured within the 60-day time period, the non-breaching party shall have the right to terminate the Agreement without further notice.
- 9.6 **EARLY TERMINATION FOR LICENSOR INSOLVENCY.** The Consortium may terminate this Agreement by notice to the Licensor if the Licensor becomes insolvent, admits insolvency or a general inability to pay its debts as they become due, has appointed a receiver or administrative receiver over it or over any part of its undertaking or assets, passes a resolution for winding up other than a bona fide plan of solvent amalgamation or reconstruction, files a petition for protection under any applicable bankruptcy code, or has filed against it or becomes subject to an insolvent petition in bankruptcy or an order to that effect.
- 9.7 **EARLY TERMINATION FOR FINANCIAL EXIGENCY OF CONSORTIUM.** The Consortium may terminate this Agreement if public funding of the Consortium or funding of the Consortium by its Members is materially reduced, and the Consortium thereby becomes unable to pay future amounts payable pursuant to this Agreement. The Consortium will give the Licensor notice of such termination and this Agreement shall terminate effective sixty (60) days after the giving of such notice.
- 9.8 **EARLY TERMINATION BY A MEMBER.** The performance of a Member of its obligations under the Agreement shall be subject to and contingent upon the

availability of funds provided, allocated, or allotted in institutional budgets for the purpose of the Agreement for the current and future license term. If a Member executes this option in a single year or multi-year agreement, no refund of payments already received by Licensor will be owed to the Consortium or Member. The determination of whether funds are available shall be made in the sole discretion of the applicable Member. The termination of participation by any Member will not constitute a default or a termination of participation of any other Member under the Agreement and shall not be grounds for any increase in fees payable by other Members. Upon termination, a Member has the ability to exercise its rights under 2.2 [Perpetual Rights].

9.9 EARLY TERMINATION REFUND. In the event of early termination permitted by this Agreement, the Member shall be entitled to a refund of any fees or pro-rata portion thereof paid by the Member for any remaining period of the Agreement from the date of termination. This paragraph is invalid if the Member commits a willful, material and consistent breach of the terms of this Agreement and fails to remedy the breach within sixty (60) days of notification by the Licensor, as per **9.5 [Early Termination for Breach]**.

10. GENERAL

10.1 ENTIRE AGREEMENT. This Agreement and attached Schedule(s) constitute the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written, including any online terms and conditions of use.

10.2 AMENDMENT. Alterations to this Agreement are only valid if they are recorded in writing and signed by both parties. Schedules will be updated to reflect renewal of term fees and member participation details, to the original Agreement.

10.3 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 the Licensor's Representative, without the prior written consent of the other party, which consent shall not unreasonably be withheld. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties.

10.4 EXECUTION. This Agreement and any amendment thereto may be executed in counterparts, and signatures exchanged by mail or electronic means are effective to the same extent as original signatures.

10.5 NOTICES. Any notices to be served on either of the parties or on a Member by the other shall be sent by registered mail, electronic mail, or courier to the address of the addressee as set out in this Agreement or to such other address as notified by either party to 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 electronic mail shall be deemed to have been given on the date of receipt.

- 10.6 **WARRANTY AND INDEMNIFICATION.** The Licensor warrants that it holds the rights granted under this Agreement and that the Licensed Materials used in accordance with this Agreement do not infringe the copyright or any other proprietary or intellectual property rights of any person. The Licensor indemnifies and holds the Consortium 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 Consortium or any of its Members claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this License for any reason.
- 10.7 **DEEMED MEMBER BENEFIT.** Licensor represents and warrants that all benefits, warranties, and other terms and conditions with the Consortium of this Agreement are and will continue to be no less favorable than those currently being, or which will be offered by the Licensor to Members directly on their own Agreements. Members may elect to use this Agreement for their own direct licenses.
- 10.8 **CONSORTIAL OFFER.** Any Member may participate in the offer, at any time during the term of this Agreement, even if the Member already subscribes under different terms than those outlined in this Agreement. In such an event, and at the request of the Consortium, the Member will become a Participating Member under the terms of this Agreement at the end of their current term. Terms offered to the Consortia shall be no less favorable than those offered to the Member directly. Licensor will prorate fees for Members that join this Agreement after the start date of the term beginning on the first day that the Licensed Materials are made available to the Member under this Agreement and expiring on the end date of the term.
- 10.9 **LIMITATIONS ON WARRANTIES.** Neither Party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of this Agreement, or the use of or the inability to use the Licensed Materials. Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trade-mark rights, moral rights, or the disclosure of confidential information. The maximum liability for both parties, if any, under this Agreement, or related directly or indirectly to the Licensed Materials, whether in contract, tort or otherwise, shall be limited to the total amount of yearly fees paid by a Member to the Licensor.

Except for the express warranties stated herein, the Licensed Materials are provided on an “as is” basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Materials or any part thereof, including any and all implied warranties of quality, performance,

merchantable quality or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus or other such malicious computer program. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

- 10.10 **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, terrorism, insurrections, strikes or other work stoppages, or any other cause beyond the reasonable control of the party whose performance is affected.
- 10.11 **WAIVER.** Either party's waiver or failure to require performance by the other, of any provision of this Agreement will not affect its full right to require such performance at any subsequent time or be taken or held to be a waiver of the provision itself.
- 10.12 **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.
- 10.13 **DISPUTE RESOLUTION.** If the parties disagree over an interpretation of this Agreement or whether a party is in breach of any part of this Agreement, the parties shall in good faith enter into negotiations to resolve the disagreement by mediation or other means short of litigation. The parties shall cooperate in good faith in pursuing mediation or such other means.
- 10.14 **GOVERNING LAW and VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia, and the laws of Canada applicable therein, including the applicable provincial laws regarding Freedom of Information and Protection of Privacy, and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the courts of British Columbia and Canada.

The Parties have executed this Agreement by their respective, duly authorized representatives on the dates written below.

FOR THE LICENSOR: **[Full Name]**

Name: _____

Position / Title: _____

Signature: _____

Date: _____

FOR THE CONSORTIUM: **Electronic Health Library of British Columbia**

Name: _____

Position / Title: _____

Signature: _____

Date: _____

SCHEDULE 1: Business Terms

This Schedule 1 is dated_____to the Agreement dated_____between [LICENSOR] and the ELECTRONIC HEALTH LIBRARY OF BRITISH COLUMBIA (eHLbc),

The following Schedule 1 is a sample of the information to include in the “Business Terms”. This portion of the License Agreement may take a variety of forms, for example a Consortium’s Order Form in spreadsheet format, or a vendor’s Product Order Form. In addition to the following, the Business Terms may be used to clarify technical specifications where these are considered essential to the license per se.

Licensed Materials for each participating Member institution may be incorporated, if appropriate or a link to a Website may be used to refer to these details. It is recommended that the details of Member entitlements be detailed in the Agreement itself rather than pointing to a Website for Perpetual Licensed Materials to provide a permanent record.

Additional Schedules, such as a schedule for title lists, may be added as needed.

An Amendment may be added to reflect changes or additions to the language of the License Agreement.

An Exhibit may be used if there are additional details, such as the inclusion of the text of a vendor’s click-through-web agreement.

Schedules, Amendments, and Exhibits will be identified as part of the License Agreement, indicating the License Agreement Name and Date, and signed by appropriate signing authorities.

Name and Description of Licensed Materials (*eHLbc Website link can be used instead of providing details.*)

Members Covered by this Agreement (*eHLbc Website link can be used instead of listing members*)

Term of Agreement: (*start and end dates*):

Agreement Member participation, entitlements and fees to be provided in (*select all that apply*):

- Vendor order forms
- Vendor response forms used for multi-consortia offers
- Agreement Schedule
- Other (please specify)

License Type

- Perpetual Access to full content after cancellation with no maintenance fees
- Perpetual Access to full content after cancellation with maintenance fees
- Limited Perpetual Access to content after cancellation (provide details)
- Subscription without continued access after cancellation

Format of Licensed Materials (*select all that apply*)

- Journal
- Index
- Full text database
- Ebook
- Media
- Data
- Tool
- Other (*specify*)

Authentication methods supported:

- IP recognition
- Open Athens
- Shibboleth
- Single-sign on
- Individual username/password
- Institutional username/password
- Other (*specify*)

Access level

- Unlimited access
- Limited access: Simultaneous user access (please provide details)
- Limited access: other (please provide details)

Frequency of content updates (*select all that apply*)

- No updates during term
- One-time archive (no updates)
- Multiple times per year
- One annual update
- As new Licensed Materials are published
- Other (provide details)

Years of access:

- Current publishing year only
- All content years available
- Archive (*specify years*)
- Other (*specify*)

Access Considerations: (*include any restrictions to Authorized Users or Permitted Uses in this section*)

The Parties have executed this Schedule(s) by their respective, duly authorized representatives on the dates written below.

FOR THE LICENSOR: [**Full Name**]

Name: _____

Position / Title: _____

Signature: _____

Date: _____

FOR THE CONSORTIUM: **Electronic Health Library of British Columbia**

Name: _____

Position / Title: _____

Signature: _____