

## USER LICENCE AGREEMENT

**BETWEEN:** **ÉRUDIT CONSORTIUM**, General Partnership, incorporated under the Civil Code of Quebec, having its headquarters at 2900 Édouard Montpetit, Roger Gaudry Pavilion, Suite T-239, Montreal, Quebec, Canada, H3T 1J4.

**AND:** **The subscriber**, legally incorporated under the laws of his country.

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### PREAMBLE

Whereas ÉRUDIT offers online access services to scholarly journals in digital format;

Whereas the Licensee wishes to subscribe to the services offered by ÉRUDIT in accordance with the conditions set out in the present Agreement;

Whereas the Parties are duly authorized and have the capacity to enter into and perform this Agreement;

### NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

#### 1. DEFINITIONS

The following definitions apply to this Agreement:

**Authorized User** A tenured, temporary, contractual or guest member of the Licensee's teaching or other staff, or a student who is enrolled in a class at the Licensee's institution, who is authorized to access the Licensee's Secure Network from the library or any other place where he or she works or studies, including but not limited to the User's home, office, student residence or any other building on the Licensee's campus, and to whom the Licensee has issued a password or other means of identification.

**Commercial Use** Use of Documents covered by this Agreement by or for the Licensee, an Authorized User or a Walk-in User for the purposes of monetary reward from third parties through sale, resale, loan, transfer, rent or any other form of use. For the purposes of this Agreement, Commercial Use does not include recovery by the Licensee of costs directly generated by an Authorized User or use of Documents by the Licensee or an Authorized User in the course of a research project funded by a company.

**Course Pack** A collection or compilation of Documents (e.g., book reviews and journal articles) assembled by the Licensee's staff for use by students in the course of a class offered by the Licensee's institution.

<b>Digital Reserve</b>	Digital copies of Documents (e.g., book reviews and journal articles) stored on the Licensee's Secure Network and made available for use by students in the course of classes offered by the Licensee's institution.
<b>Document</b>	A document in digital format available through ÉRUDIT.
<b>Force Majeure</b>	An external, unforeseeable, irresistible event that makes it absolutely impossible to perform an obligation.
<b>Intellectual Property</b>	A right to, title to or interest in intellectual property, in particular copyright, including all moral and property rights, and all derived rights pertaining to Documents.
<b>Personal Information</b>	Information, including but not limited to family names, first names, billing addresses, telephone numbers and email addresses, that ÉRUDIT is led to gather from the Licensee and/or Authorized Users and/or Walk-in Users.
<b>Policy on Use</b>	The policy governing use of ÉRUDIT's services as described more fully in the Policy on Use of ÉRUDIT's Services.
<b>Premises</b>	The physical premises of the Licensee, where there are computers which IP addresses are set out when you subscribe.
<b>Secure Network</b>	A network, whether standalone or in the Internet environment, which is accessible only to Users who are authorized by the Licensee, whose identities are authenticated at the time of log-in to the network and periodically thereafter in accordance with current industry standards, such as encryption, and who are subject to ÉRUDIT's Policy on Use.
<b>Server</b>	The Server belonging to ÉRUDIT or a third party designated by ÉRUDIT and on which Documents are stored and made available.
<b>Subscription Period</b>	The period of subscription to ÉRUDIT's services.
<b>Subscription Fee</b>	A fee for subscription to online access services covering the last two (2) years of publication of the Documents offered by ÉRUDIT.
<b>Walk-in User</b>	An individual other than an Authorized User to whom the Licensee grants occasional access to the Secure Network using the computers available on the Licensee's Premises.

## **2. PURPOSE**

- 2.1 Upon payment of the Subscription Fee in compliance with the payment schedule, ÉRUDIT shall grant the Licensee's Authorized Users and Walk-in Users the right to access Documents through the Secure Network for research, teaching, personal and administrative purposes, in accordance with the Licensee's usual practices and activities, the general conditions set out in this Agreement and ÉRUDIT's Policy on Use. The right to access is non-exclusive, non-transferable and not limited by territorial boundaries.
- 2.2 This Agreement comes into effect at the beginning of the Subscription Period, and terminates at the end of the Subscription Period, unless the Subscription Period is renewed through an agreement between the Parties.

### **3. RIGHTS**

- 3.1 Subject to Article 6 and upon complete payment of the Subscription Fee, the Licensee may:
- 3.1.1 Store temporary local digital copies of all or some Documents by means of caching of all or part of the Documents in order to enable Authorized Users and Walk-in Users to use the Documents efficiently. This clause shall not be interpreted as allowing the Licensee to provide Authorized Users with duplicate copies of Documents;
  - 3.1.2 Allow Authorized Users and Walk-in Users to access Documents on the Server through the Secure Network;
  - 3.1.3 From a Licensee server through the Secure Network, provide Authorized Users and Walk-in Users with access to Documents metadata using a search engine that indexes bibliographical records containing journal titles, the names of the authors of articles, article titles, abstracts and key words;
  - 3.1.4 Provide a single paper or digital copy of a specific article upon request by an Authorized User;
  - 3.1.5 Display, download or print Documents for the purposes of internal marketing, tests or training for Authorized Users.
- 3.2 Subject to Article 6, Authorized Users and Walk-in Users may:
- 3.2.1 Search, consult and display Documents;
  - 3.2.2 Save digital copies of articles or sections of Documents for personal use;
  - 3.2.3 Print single copies of sections of Documents;
  - 3.2.4 Distribute single copies of articles or sections of Documents in paper or digital form to other Authorized Users. Under the terms of this Agreement and for teaching and research purposes, this includes the distribution of copies to each Authorized User registered as a student at the Licensee's institution, in compliance with provisions concerning the payment of royalties to copyright holders, where applicable.
- 3.3 This Agreement shall not be interpreted as limiting the ability of the Licensee, Authorized Users or Walk-in Users to use Documents in any other manner that is legal in Canada under the *Copyright Act* (RS 1985, c. C-42).

### **4. SUPPLY OF COPIES TO OTHER LIBRARIES**

- 4.1 Subject to Article 6, the Licensee may supply (by mail, fax or the Ariel or another equivalent system under the condition that the digital file transmitted is destroyed after being printed on paper) single paper or digital copies of articles or parts of Documents to a user of another library for research or personal use, but not for Commercial Use.

## **5. COURSE PACKS AND DIGITAL RESERVE**

- 5.1 Subject to Article 6, articles and sections of Documents can be included in printed Course Packs or placed on Digital Reserve so that they can be used by Authorized Users in the course of classes offered at the Licensee's institution, but not for Commercial Use and in compliance with provisions concerning the payment of royalties to copyright holders, where applicable. Course Packs and sections of Documents placed in the Digital Reserve must clearly indicate the source of the Document, such as the title of the journal, publisher's name, volume and numbers, title of the article, author's name and year of publication.
- 5.2 All copies of Documents provided for in clause 5.1 must be destroyed by the Licensee at the end of use, in compliance with ERUDIT's Policy on Use.
- 5.3 Under exceptional circumstances and if the Licensee considers that it is necessary, Course Packs can be offered to some Authorized Users with hearing and/or vision impairments in a format other than digital or printed, for example, in audio or Braille format.

## **6. PROHIBITED USES**

- 6.1 The Licensee, Authorized Users and Walk-in Users may not under any circumstances:
- 6.1.1 Remove or alter the authors' names or any other reference or proviso of the copyright holder appearing on Documents;
  - 6.1.2 Systematically make digital or printed copies of multiple sections of Documents;
  - 6.1.3 Use for any reason "robot" or "spider" software to systematically make digital or paper copies of multiple sections of Documents;
  - 6.1.4 Download or distribute complete or sections of Documents on any digital network, including but not limited to any network that can be accessed via the Internet, but not including the Secure Network;
  - 6.1.5 Abuse the rights set out in Article 3.
- 6.2 Written authorization from ÉRUDIT is required in the following cases:
- 6.2.1 Commercial Use of complete or sections of Documents;
  - 6.2.2 Systematic distribution of complete or sections of Documents to users other than Authorized Users, except in the cases described in clause 4.1.
  - 6.2.3 Publication, distribution or provision of access to Documents, work based on Documents and works that combine Documents with any other document, except if the use is permitted under the present Agreement;
  - 6.2.4 Use of trademarks and other logos appearing on Documents;
  - 6.2.5 Change or adaptation of complete or sections of Documents, as well as change or creation of abridged versions of Documents, except if such actions are required to display Documents on a computer screen or if the case is provided for under this Agreement. Changes to words or word order are always strictly prohibited.

## 7. ÉRUDIT'S UNDERTAKINGS

- 7.1 ÉRUDIT affirms and warrants that to the best of its knowledge it holds all the rights and has the capacity to sign this Agreement, and that the Documents infringe no third party's copyright, property right or intellectual property right.
- 7.2 ÉRUDIT shall:
- 7.2.1 Make the Documents available to the Licensee on the Server in accordance with the media, and format. ÉRUDIT shall notify the Licensee at least sixty (60) days in advance of any change to Documents. If the change in question impairs use of Documents, the Licensee may, within thirty (30) days of receipt of the notice, consider the change to be cause to cancel the Agreement within the meaning of clauses 10.1.2 and 10.4;
  - 7.2.2 Make reasonable efforts to provide access to a digital copy of every new issue of a journal within three (3) months following receipt of the files by ÉRUDIT. If technical difficulties make it impossible to provide access to a digital copy of an issue of a journal, the reasons for this must be identified and conveyed to the Licensee in a timely manner;
  - 7.2.3 Within thirty (30) days after this Agreement comes into effect, provide the Licensee with all information required to access Documents;
  - 7.2.4 Make reasonable efforts to ensure that the Server is powerful enough and that the bandwidth is appropriate to support the Licensee's use of the service in accordance with current standards in the Web publication industry of this type of document;
  - 7.2.5 Make reasonable efforts to provide the Licensee and Authorized Users with access to Documents at all times, twenty-four (24) hours a day, except when maintenance has to be carried out, in which case the Licensee must be given prior notice of the service interruption. Access to Documents shall be re-established as soon as possible if there is a service interruption or suspension. However, ÉRUDIT cannot guarantee continuous, uninterrupted access to the Documents and cannot be held responsible by the Licensee, Authorized Users or Walk-in Users for the consequences of such interruptions.
  - 7.2.6 Make every necessary effort to ensure maintenance of and compliance with the terms of this Agreement if the rights to some Documents are transferred by the rightholders to a new publisher.
- 7.3 ÉRUDIT reserves the right to withdraw from Documents any section for which it no longer holds the publication rights or if there is reasonable cause to believe that it infringes copyright, or is libellous, obscene or otherwise in violation of the law. ÉRUDIT shall give the Licensee written notice of such withdrawal. If the withdrawal concerns over ten percent (10%) of the Documents, ÉRUDIT shall reimburse the Licensee for the portion of the Subscription Fee paid to cover the unused Subscription Period. If, following such a withdrawal, the Documents are no longer useful to the Licensee, the latter may, within thirty (30) days of receipt of the notice, consider the change to be cause to cancel this Agreement.
- 7.4 When this Agreement comes to term, ÉRUDIT undertakes to maintain free access for the Licensee to the portion of the Documents related to the Subscription Period for which the Subscription Fee has been paid. This clause does not apply in cases in which this Agreement has been cancelled for the reasons set out in clauses 10.1.1, 10.1.3 and 10.1.4.
- 7.5 By gathering and analysing data on Document use, ÉRUDIT and the Licensee can assess the impact of this Agreement. ÉRUDIT shall provide the Licensee with data on the number of articles downloaded annually in accordance with the order of the list of journal titles. The data shall be used by ÉRUDIT and the Licensee for purely internal and private statistical purposes. Compilation of the data and all subsequent use of it must comply with the *Act respecting access*

*to documents held by public bodies and the protection of personal information and the Act respecting the protection of personal information in the private sector.* The parties shall take all necessary measures to ensure the anonymity of both Authorized and Walk-in Users and the confidentiality of their research.

- 7.6 The warranties and claims respecting Documents made by ÉRUDIT in this Agreement shall be the only guarantees provided and constitute a limited guarantee. The Licensee explicitly waives any claim to any other guarantee, whether explicit or legal and covering, but not limited to, hidden defects, loss of title and fitness for specific uses.
- 7.7 Subject to clause 7.1, ÉRUDIT shall under no circumstances be held responsible to the Licensee or any other person including, but not limited to, Authorized Users and Walk-in Users, for any special, exemplary, incidental or indirect damages resulting from use of or inability to use Documents. ÉRUDIT's liability for any claims, losses or damages resulting from breach of this Agreement shall always be limited to the Subscription Fees paid by the Licensee to ÉRUDIT for the Subscription Period.

## **8. THE LICENSEE'S UNDERTAKINGS**

- 8.1 The Licensee shall:
- 8.1.1 Make reasonable efforts to ensure that Authorized Users and Walk-in Users are notified of and comply with the terms of this Agreement and ÉRUDIT's Policy on Use, and take all appropriate action to ensure that Documents are used legally;
  - 8.1.2 Make reasonable efforts to ensure compliance with the terms of this Agreement, notify ÉRUDIT as soon as it becomes aware of unauthorized use of Documents and take all reasonable and appropriate action, including but not limited to punitive sanctions, in order to ensure that non-compliant use ceases and does not recur;
  - 8.1.3 Assign passwords and any other information giving access to ÉRUDIT's services to Authorized Users only and to Walk-in Users upon request, and make reasonable efforts to ensure that this information is not disclosed to benefit third parties;
  - 8.1.4 Within thirty (30) days of the date that this Agreement comes into effect, provide ÉRUDIT, with all information required for ÉRUDIT to provide access to Documents in accordance with the undertaking described in clause 7.2.3. If the Licensee has to make significant changes to the information, it must notify ÉRUDIT at least ten (10) days before the changes come into effect;
  - 8.1.5 Keep a record of information about Authorized and External Users and any information concerning their access to Érudit services when it is necessary to identify user abuse.
  - 8.1.6 Make reasonable efforts to ensure that only Authorized Users and Walk-in Users access Documents.
- 8.2 Subject to applicable legislation, the Licensee agrees to indemnify, defend and hold ÉRUDIT harmless from any loss, damages, costs, responsibility and expenses, including reasonable legal fees and honoraria, resulting from any claim or legal action brought against the Licensee concerning any use of Documents by the Licensee or Authorized or Walk-in Users or from any failure by the Licensee to discharge the obligations set out in this Agreement.
- 8.3 The Licensee shall pay the Subscription Fee within thirty (30) days of receipt of the invoice and, if applicable, within thirty (30) days of receipt of the invoice preceding every subsequent Subscription Period. Receipt of payment is an essential condition for this Agreement to come into

effect. For the purposes of this Agreement, the Subscription Fee shall not include any taxes and the Licensee alone shall be liable for any taxes applicable to the Subscription Fee.

The Subscription Fee shall be paid to ÉRUDIT's authorized representative:

Érudit- Service des abonnements  
Centre d'Édition numérique  
Université de Montréal  
DGTIC - Pavillon Roger Gaudry  
C.P. 6128, Succursale Centre-ville  
Montréal (Québec) H3C 3J7

## **9. UNDERTAKINGS BY BOTH PARTIES**

- 9.1 Each party shall make all reasonable efforts to protect and comply with the Intellectual Property, Personal Information and property rights of the other party, in compliance with this Agreement and ÉRUDIT's Policy on Use.

## **10. TERMINATION AND CANCELLATION OF THIS AGREEMENT**

- 10.1 Aside from termination of this Agreement at the end of the Subscription Period as set out in clause 2.2 and unless the Subscription Period is renewed, this Agreement shall be terminated:
- 10.1.1 If the Licensee fails to pay the Subscription Fee and does not pay within thirty (30) days of receipt of written notice from ÉRUDIT;
  - 10.1.2 If ÉRUDIT intentionally and repeatedly breaches any clause of this Agreement when such breach can be prevented, and if it fails to remedy the situation within sixty (60) days of receipt of written notice from the Licensee;
  - 10.1.3 If the Licensee intentionally and repeatedly infringes ÉRUDIT's copyright or any other property right, if the rights defined in Article 3 are abused or if Documents are used in a prohibited manner within the meaning of Article 6 of this Agreement;
  - 10.1.4 In case of bankruptcy, insolvency, liquidation, seizure, assignment of property, or discontinuance of business by either of the Parties.
- 10.2 Upon termination of this Agreement, all of the Parties' rights and obligations shall be extinguished, except for obligations related to Documents access to which remains permitted under clause 7.4. However, termination of this Agreement does not entail that a party loses a right or is freed from an obligation, particularly with respect to Intellectual Property, the limitation on the guarantee and the limitation on liability. Such rights and obligations survive termination of this Agreement.
- 10.3 Upon cancellation of this Agreement for the reasons set out in clauses 10.1.1 and 10.1.3, the Licensee shall immediately cease distributing and making Documents available to Authorized and Walk-in Users, and destroy every copy of the Documents in its possession.
- 10.4 Upon cancellation of this Agreement by the Licensee for the reasons set out in clauses 7.3 and 10.1.2, ÉRUDIT shall reimburse without delay the portion of Subscription Fee equivalent to the portion of the Subscription Period for which the Licensee has paid but has not used.

## 11. GENERAL PROVISIONS

- 11.1 The preamble is an integral part of this Agreement.
- 11.2 This Agreement comes into effect upon its acceptance.
- 11.3 This Agreement sets out the whole, integral agreement between the Parties and excludes all prior or concomitant documents, contracts and verbal promises that may have been made in the course of the negotiations that preceded the complete execution of this Agreement and that the Parties declare inadmissible as evidence that could change or affect in any way any clause in this Agreement.
- 11.4 This Agreement may be amended only by another written document duly signed by all of the Parties.
- 11.5 Neither party may assign or otherwise transfer to a third party all or part of the rights contained in this Agreement without obtaining prior written permission to that effect from the other party.
- 11.6 Any notice addressed to a party shall be considered to have been given validly if it is in writing and sent by registered or certified mail, bailiff or courier service to the address indicated at the beginning of this Agreement or any other address of which the party concerned may inform the other party by similar means. A copy of every notice sent by email must also be sent using one of the above-mentioned delivery methods.
- 11.7 Neither party shall be considered to have breached this Agreement if performance of all or some of its obligations is delayed or prevented by Force Majeure.
- 11.8 If an article, paragraph or provision (or part thereof) proves to be illegal or nul and void, the legality of neither the other articles, paragraphs and provisions in this Agreement, nor the rest of the article, paragraph or provision in question shall be affected in any way, unless the opposite intention is clear in the text.
- 11.9 A party's silence, negligence or tardiness in exercising a right or taking recourse available or open under this Agreement shall never be interpreted as a waiver of such rights and recourse.

- 11.10 The Parties agree to resolve by arbitration any dispute arising out of interpretation or application of this Agreement, and to exclude all other recourse, including injunction. If the Parties disagree on the interpretation or application of this Agreement, one of them may submit the dispute to arbitration. In order to do so, the party wishing to use arbitration shall send the other party written notice stating its position, indicating that the dispute has been referred to arbitration and suggesting the name of an arbitrator. The other party shall choose another arbitrator within fifteen (15) days of receiving the notice. The two arbitrators appointed in this way shall choose a third arbitrator. The arbitrators shall have discretion to determine the procedure and rules of evidence. They may act as amicable compounders. In case of disagreement on the rules and procedure, Articles 940 and following on arbitration in the Quebec *Code of Civil Procedure* shall apply. In every case, the Parties agree to comply immediately with any decision rendered under this clause, which shall be executory, final and without appeal.