

This COLLEGE PREMIUM LICENCE AGREEMENT is between THE CANADIAN COPYRIGHT LICENSING AGENCY ("Access Copyright"), located at Suite 800, 1 Yonge Street, Toronto, Ontario, M5E 1E5, and

College of the Rockies

(the "Licensee"), located at

2700 College Way, P.O. Box 8500 Cranbrook, British Columbia, V1C 5L7

effective as of July 1, 2015 (the "Effective Date").

THE PARTIES AGREE AS FOLLOWS:

1. TERM

The initial term of this agreement commences on the Effective Date and ends on August 31, 2018. The term of this agreement will automatically be extended by consecutive one-year terms, unless no later than three (3) months before each extension begins, either party notifies the other party in writing that it does not wish to extend this agreement or that it wishes to renegotiate the terms of this agreement.

2. GRANT OF LICENCE

(a) Subject to the terms and conditions of this agreement, Access Copyright hereby grants the Licensee a non-exclusive licence, for any Authorized Person to:

- i. make Copies of up to twenty percent (20%) of a Repertoire Work or make Copies of
 1. an entire page or article from a magazine, journal or newspaper that is a Repertoire Work,
 2. an entire short story, play, poem, essay or article from a Repertoire Work that contains other Published Works,
 3. an entire entry or article from a reference work that is a Repertoire Work,
 4. 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 Repertoire Work that contains other Published Works, or
 5. an entire chapter from a book that is a Repertoire Work, provided that it is no more than twenty-five percent (25%) of that Repertoire Work,for any Authorized Purpose, including for use in a Course Collection, and
- ii. make a single Copy of a Repertoire Work in accordance with subsection 2(a)(i) for the purpose of interlibrary loan to an institution or corporation licensed by Access Copyright or to any non-profit educational institution, library, archive or museum, in instances where an exception does not already apply.

(b) Apart from the rights specifically granted in this agreement, the Licensee is granted no other right or licence in the Repertoire Works. Access Copyright does not grant the Licensee a licence to gain or to secure access to Repertoire Works for the purposes of Copying Repertoire Works or for any other purpose.

3. CONCURRENT COPYING ALTERNATIVES

Nothing in this agreement is intended to prevent the Licensee from reproducing, making available, distributing or transmitting works under a licence or other arrangement authorizing those acts or as permitted under the *Copyright Act*, R.S.C. 1985, c. C-42 (the "*Copyright Act*").

4. CONDITIONS OF LICENCE

- (a) Copies shall be made only from Repertoire Works that are lawfully obtained by the Authorized Person making the Copies, without violating any licence, agreement or notice on a publication that prohibits reproduction of any part of the publication under a collective licence, and without circumventing a technological protection measure that controls access to or restricts reproduction, distribution or transmission of a Repertoire Work.
- (b) Copying from the same Repertoire Work for the same Course of Study in the same Academic Year beyond the limits set out in section 2 is prohibited.
- (c) Copies of Repertoire Works shall not be altered and shall include, where reasonable, a credit to the author, artist or illustrator, and to the source.
- (d) Copies of Repertoire Works shall not be used in association with any partisan political activities or for endorsement or advertising of a commercial product or service.
- (e) Copies of Repertoire Works shall only be distributed, made available, accessible or transmitted to Authorized Persons or in accordance with subsection 2(a)(ii).
- (f) Copies of Repertoire Works shall not be transmitted, posted, uploaded or stored on any device, medium, computer, computer network, public network, the Internet, or in any other manner that makes the Copies publicly available or accessible to persons other than Authorized Persons.
- (g) Copies of Repertoire Works shall not be transmitted, posted, uploaded, stored or indexed with the intention or result of creating a library of Published Works, except as part of a Course Collection.
- (h) The Licensee shall take reasonable steps to ensure that Authorized Persons and Subcontractors comply with the conditions set out in subsections 4(a) to (g).

5. 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 Full-time-equivalent Students, as of the FTE Determination Date for the prior Academic Year, by the royalty rate of CAD\$7.00 (the "*Royalties*").
- (b) Starting September 1, 2018, the Royalties payable for each Academic Year shall be increased in accordance with 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.

6. PAYMENT

- (a) Within thirty (30) days of the Effective Date of this agreement, and no later than fifteen (15) days prior to the start of each Academic Year during the term of this agreement, the Licensee shall deliver to Access Copyright a written report specifying the number of Full-time-equivalent Students as of the FTE Determination Date for the prior Academic Year.
- (b) Access Copyright shall issue to the Licensee, by no later than ten (10) business days after receiving the written report delivered under subsection 6(a), an invoice setting out the Royalties payable by the Licensee for that Academic Year and applicable government taxes.
- (c) The Licensee shall pay the Royalties and applicable government taxes to Access Copyright within thirty (30) days of any invoice issued by Access Copyright.
- (d) Payments may be delivered by hand, postage-paid mail or electronic bank transfer.

7. INTEREST

Any payment not received by Access Copyright by its due date shall bear interest from that date until the date the payment is received. Interest on any unpaid balance shall be calculated daily at a rate equal to one per cent (1%) above the bank rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not be compounded.

8. RECORDS AND REPORTING

- (a) The Licensee shall maintain accurate and complete records of all Copies made by the Licensee for use in paper course packs, using the logging tool at <http://www.accesscopyright.ca/educators/full-reporting-logs-for-post-secondary-institutions/>, as otherwise provided by Access Copyright or as otherwise agreed to between the parties.
- (b) For each Academic Year during the term of this agreement, the Licensee shall provide to Access Copyright the records maintained in accordance with subsection 8(a) for paper course packs made between:
- i. January 1 and May 31 by no later than June 30;
 - ii. June 1 and August 31 by no later than September 30; and
 - iii. September 1 and December 31 by no later than January 31.

For greater certainty, there are no additional amounts payable for making Course Collections provided that the Copies are within the limits specified in subsection 2(a)(i).

9. INDEMNITY

- (a) Access Copyright will indemnify the Licensee for any liability or loss resulting from any Claim made against the Licensee for Copies or Course Collections that are made after the Effective Date and that arise from the exercise of rights under this agreement, provided that:
- i. the Licensee provides Access Copyright with written notice of the Claim within ten (10) business days of becoming aware of the Claim;
 - ii. the Licensee is not in breach of any term of this agreement;
 - iii. no admission, offer of payment, indemnity or settlement offer is made or given on the Licensee's behalf or on behalf of Access Copyright without Access Copyright's prior written consent; and
 - iv. the Licensee permits Access Copyright to participate in the defence of the Claim with its own legal counsel and in such ways as Access Copyright reasonably requires, at Access Copyright's own expense.
- (b) If the Licensee settles any Claim without the prior written consent of Access Copyright, which shall not be unreasonably withheld, the Licensee shall be deemed to have waived its right to be indemnified by Access Copyright in respect of the Claim.

10. SUBCONTRACTING

- (a) The Licensee may, by a written agreement, authorize a person other than an Authorized Person (a "Subcontractor") to perform the acts set out in subsection 2(a)(i) for paper course packs only, provided that:
- i. the Licensee maintains a record of the agreement;
 - ii. the Licensee provides a copy of the agreement to Access Copyright within twenty (20) business days after the agreement is entered into; and
 - iii. the agreement requires the Subcontractor to maintain and provide the records referred to in section 8 to Access Copyright and otherwise comply with all conditions set out in this agreement.
- (b) The Subcontractor may further subcontract performing the acts set out in subsection 2(a)(i) for paper course packs only, subject to compliance with all conditions set out in this agreement, but may not subcontract its obligation to provide Access Copyright with the records referred to in section 8.
- (c) 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 subsection 2(a)(i) on behalf of the Licensee for paper course packs only, subject to compliance with all conditions set out in this agreement. The third party will maintain and provide the records referred to in section 8 to Access Copyright.
- (d) The Royalties to be paid under section 5 include payment for the Copying performed by a Subcontractor or other third party in accordance with this section. Access Copyright will not require the Subcontractor or third party to pay any additional Royalties for Copies made in accordance with this agreement.

11. TERMINATION

- (a) If either party materially breaches any of its obligations under this agreement, the non-breaching party may give written notice of the material breach to the party in breach. If the breaching party does not cure or take

reasonable steps to cure the breach within twenty (20) business days of receipt of the notice of breach, the non-breaching party may terminate this agreement by written notice of termination, to be effective on the date specified in the notice of termination.

- (b) In the event that either party terminates this agreement under subsection 11(a) or the agreement expires:
 - i. the Licensee shall submit any outstanding payments, interest or records under this agreement within twenty (20) business days of the effective date of termination of this agreement; and
 - ii. Access Copyright shall refund to the Licensee the portion of the Royalties paid under section 5 that are applicable to the period of the Academic Year following the effective date of termination, within twenty (20) business days of that effective date.
- (c) The obligation of the Licensee to submit payments and records to Access Copyright covering any period prior to termination in accordance with this agreement survives the termination of this agreement. Section 9 of this agreement survives the termination of this agreement for three (3) years following the effective date of termination of this agreement.

12. TARIFF APPLICATION

Consistent with section 70.191 of the *Copyright Act*, Access Copyright will not seek to enforce the Tariff against the Licensee in respect of Repertoire Works Copied during the term of and in accordance with this agreement.

13. NO ADMISSIONS

- (a) This agreement is intended to facilitate the reproduction of copyright-protected Repertoire Works while respecting academic freedom and privacy.
- (b) The parties have entered into this agreement to permit the reproduction by the Licensee of Repertoire Works at a time of uncertainty, disagreement and ongoing litigation about the scope and interpretation of the rights, obligations and exceptions, including fair dealing, under the *Copyright Act*. The parties acknowledge and agree that the Royalties payable under this agreement reflect this uncertainty and are not an admission of the actual value of the rights licensed or the volume of Repertoire Works Copied for any proceeding unrelated to a breach of this agreement.
- (c) The definitions in this agreement, in particular the terms "Copy", "Course Collection" and "Published Work", are for the purposes of this agreement and do not preclude the parties from advancing a different interpretation of these terms in any proceeding unrelated to a breach of this agreement.

14. ADDRESSES FOR NOTICES AND PAYMENT

- (a) The Licensee shall send all notices, payments (other than by electronic bank transfer) and other communications under this agreement 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

- (b) Access Copyright shall send all communications under this agreement to the Licensee's last address of which Access Copyright has been notified in writing.

15. DELIVERY OF NOTICES

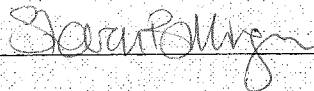
- (a) For a notice under this agreement to be valid, it must be in writing and delivered by hand, courier, postage-paid mail, fax or email.
- (b) A notice mailed in Canada shall be presumed to have been received three (3) business days after the day it was mailed, in the absence of evidence to the contrary.
- (c) A notice sent by fax or email shall be presumed to have been received on the first business day following the day it is transmitted, in the absence of evidence to the contrary.

16. MISCELLANEOUS

- (a) The parties shall not assign this agreement or any part of this agreement without the prior written consent of the other party.
- (b) This agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.
- (c) The invalidity or unenforceability of any particular provision of this agreement will not affect or limit the validity or enforceability of the remaining provisions.
- (d) This agreement (together with Schedules A and B) constitutes the entire agreement and understanding 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 or otherwise) except as specifically set out in this agreement.
- (e) No amendment of this agreement will be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or of a failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or of failure to comply with any other obligation.
- (f) This agreement is governed by the laws of the province of Ontario and the laws of Canada applicable in Ontario, excluding any rule or principle of conflicts of law that may provide otherwise.

ACCESS COPYRIGHT,
THE CANADIAN COPYRIGHT LICENSING AGENCY

Date: April 29 2015

Signature: 

Name: STEVEN BILLINGER

Title: DIRECTOR TECHNOLOGY NEW VENTURES

Date: April 29, 2015

LICENSEE: College of the Rockies

Signature: 

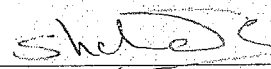
Name: Stan Chung

Title: Vice President Education & Applied Research

For Licensees that require a second signatory:

Date: April 29, 2015

LICENSEE: _____

Signature: 

Name: SHAHIDA RASHID

Title: Manager, College Library Services

**SCHEDULE A
DEFINITIONS**

For purposes of this agreement, the following definitions apply:

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

"Authorized Person" means

- (a) a Student;
- (b) a Staff Member; or
- (c) a Library Patron.

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

"Claim" means a written statement or demand including any document commencing legal proceedings that alleges that the Licensee or an Authorized Person has infringed copyright in a Published Work, except for a statement or demand based on an alleged infringement of moral rights, and for any claim by Access Copyright.

"Copy" means a reproduction, communication to the public or making available by or as a consequence of:

- (a) reproducing by a reprographic process, including by photocopying and xerography;
- (b) scanning;
- (c) printing;
- (d) transmitting by electronic mail or fax;
- (e) storing on a local storage device or medium;
- (f) posting, uploading, or storing on a Secure Network;
- (g) transmitting from a Secure Network and storing on a local storage device or medium;
- (h) projecting an image using a computer or other device; or
- (i) displaying on a computer or other device.

"Copying" means making a Copy.

"Course Collection" means (1) Copies of Repertoire Works assembled into paper course packs or (2) Copies of Repertoire Works assembled into digital course packs or Copies of Repertoire Works posted, uploaded, or stored on a Secure Network and made available to Students.

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

"Full-time-equivalent Students" means the full-time Students or equivalents of one full-time Student of the Licensee, calculated in accordance with provincial or territorial government reporting guidelines or other guidelines agreed upon by Access Copyright and the Licensee, each acting reasonably.

"FTE Determination Date" means the date by which the total number of Full-time-equivalent Students was calculated by the Licensee.

"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 Licensee defined on page 1 of this agreement, the persons and bodies listed in Schedule B.

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

“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. A Musical Work is not a Published Work for the purposes of this agreement.

“Repertoire Work” means a Published Work in which Access Copyright as a collective society administers the reproduction right, the communication to the public right, or the making available right, 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.

“Secure Network” means an electronic network, Internet or cloud-based storage service that is only accessible by an Authorized Person authenticated by a user name and password or 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.

“the Tariff” means any tariff approved by the Copyright Board of Canada covering the term of this agreement, including the *Access Copyright Post-Secondary Educational Institution Tariff, 2014-2017*, as replaced, renewed, superseded, or extended by future or subsequent tariffs filed by Access Copyright and approved or certified by the Copyright Board of Canada.

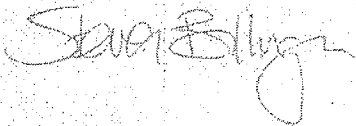
SCHEDULE B
PERSONS AND BODIES TO BE COVERED UNDER THIS AGREEMENT

access
premium | College Premium
Licence Agreement

Access Copyright is pleased to extend to you a new licence offering, Access Premium (*The College Premium Licence Agreement*) – an offer that is part of our renewed commitment to serving the content and copyright management needs of educators.

These offerings were developed with input from Access Copyright's post-secondary education customers and are designed to provide greater convenience, value and choice.

The Access Premium agreement delivers convenient, institution-wide pre-clearance to copy up to 20% of individual titles in Access Copyright's repertoire. Access Premium incorporates a single flat price per FTE and the lightest reporting requirements of any of Access Copyright's educational licences.



Steve Billinger
Director, Technology & New Ventures

Access Copyright
The Canadian Copyright Licensing Agency
One Yonge Street, Suite 800
Toronto, Ontario
M5E 1E5
416-868-1620
416-868-1621 (fax)
info@accesscopyright.ca

access©

Select. Create. Share. Reward.

