

**Consortia Canada**

**License Agreement for Brepolis Databases**

**THIS AGREEMENT** is made the 1st day of December 2017

**BETWEEN:**

Brepols Publishers N.V., having its principal offices at Begijnhof 67, B-2300 Turnhout, Belgium and registered in the Turnhout Register of commerce: HR Turnhout 84.624

(herein referred to as "the Licensor")

**AND:**

- Council of Pacific and Prairie University Libraries (COPPUL) Room 219 Koerner Library University of Vancouver, British Columbia, V6T 1Z2
- Ontario Council of University Libraries (OCUL), 130 St. George Street, Toronto, Ontario, M5S 1A5
- The Council of Atlantic University Libraries / le Conseil des bibliothèques universitaires de l'Atlantique (CAUL-CBUA), 84 Chain Lake Drive, Suite 402 Halifax, Nova Scotia, B4S 1A2
- Bureau de coopération interuniversitaire (BCI) 500, rue Sherbrooke Ouest, bureau 200, Montréal, Quebec, H3A 3C6

(herein referred to as 'the Licensee').

"Licensee" is authorized to act for and sign this Agreement on behalf of member libraries hereinafter known as the "Member Institutions." Rights and responsibilities referenced in this Agreement in regard to "Licensee" shall apply to all the Member Institutions covered under this Agreement; however, Licensee is responsible only for fulfillment of its individual responsibilities under this Agreement. Neither Licensee nor any other Member Institution shall be liable for any breach or default of another Member Institution. Member Institutions are listed in Schedule 1.

Where applicable, additional Exhibits and Appendices may be attached to address more specific Terms and Conditions specific to certain formats such as e-books, or special purchase conditions such as Perpetual Access and Local Hosting, in which case the attached Exhibits and Appendices form an integral part of this Agreement.

This License Agreement supersedes and replaces all prior agreements and understandings, whether written or oral, between Brepols, COPPUL, OCUL, CAUL-CBUA, BCI or their Member Institutions.

**IT IS AGREED AS FOLLOWS**

**1. DEFINITIONS**

In this License, the following terms shall have the following meanings:

Authorized User	All full and part time students, faculty and employees (including permanent, temporary, contract or visiting) and researchers associated with the Member Institutions; retired faculty and staff with Emeritus or equivalent status; all registered patrons of the Member Institution, or other persons affiliated with the Member Institution or otherwise permitted to use the facilities of the Member Institution and authorized to access the Licensed Materials, regardless of physical location of such persons.
Walk-In Users	Individuals not affiliated with a Member Institution who are physically present at Member Institution sites set out in Schedule 1 shall be deemed to be Authorized Users under the terms and conditions of this Agreement. Additional groups of Authorized Users such as Member Institution alumni may be included, as where and to the extent set out in Schedule 1. For the avoidance of doubt, Walk-In Use is intended for individual users, not as a substitution for a license by another institution or organization.
Commercial Use	Use of the Licensed Materials for the purposes of monetary reward (whether by Member Institutions 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 by the Member Institution from Authorized Users, nor use of the Licensed Materials by the Member Institution or by an Authorized User in the course of research funded by a commercial organization, is deemed to be Commercial Use. Commercial Use also includes making Licensed Materials freely available in a manner that could damage the interests of the Licensor and is not allowed.
Course Packs	A collection or compilation of materials for example book chapters, journal articles assembled by staff of Member Institution for use by students in a class for the purposes of instruction.
Digital Rights Management	Also referred to as “DRM”, access control technologies that are used by hardware manufacturers, licensors, copyright holders and individuals to limit the use of digital content and devices in on-line or off-line environments.
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.
Electronic Learning Environments	Use of parts of or linking to the Licensed Material 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 Secure Network.

Electronic Reserves	Electronic copies of Licensed Materials (e.g. book chapters, journal articles, abstracts) made and stored on the Secure Network pursuant to Section 3.8 by Member Institution for use by Authorized Users in connection with specific courses of instruction offered by Member Institutions to such Authorized Users.
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 to by the parties from time to time.
Open Access Repository Services	Open-access digital repository services such as those provided by the Author's employing institution, an academic consortium, a discipline-based entity, or a governmental funding agency.
Perpetual Access	Provisions in this Agreement for continuation of access, archiving and use of Licensed Materials that shall survive any termination of the License Agreement and ensure continued access consistent with current recognized standards in the publishing industry.
Reasonable Amount	A reasonable amount is considered no more than an article, chapter, or section of the database to be used for teaching, research, or private study. A Reasonable Amount cannot be considered a substantial part of the Database and cannot stand on its own as a coherent body of data which can be relevant for a larger audience.
Secure Network	A computer network that is only accessible to Authorized Users by Secure Authentication.

## **2. LICENSE GRANT**

- 2.1 The Licensor hereby grants to the Licensee and Member Institutions, subject to and in accordance with the terms of this License, a non-exclusive and non-transferable right to permit Authorized Users to access and use the Licensed Materials at the sites of Member Institutions or remotely, through secure authentication.
- 2.2 In consideration for the Licensor's licensing of the Products and/or Services listed in the attached Schedule(s), the Licensee and Member Institutions agree to pay to the Licensor the Fee in accordance with the provisions of the attached Schedule(s).

## **3. PERMITTED USES**

Member Institutions and Authorized Users may use the Licensed Materials as follows:

- 3.1 **ACCESS and USE** the Licensed Materials from the premises of the Member Institution, or remotely via secure authentication, in order to search, retrieve, download, display, print and view the Licensed Material. For Copyright reasons and due to license agreements with other

- publishers, the Licensor limits the amount of information that can be downloaded or printed which may vary between the Licensed Materials.
- 3.2 **CREATE PERSISTENT LINKS** to individual articles for access by Authorized Users for Permitted Uses under this Agreement, from within secure authentication environments.
  - 3.3 **INTERLIBRARY LOAN** by paper or electronic means, a single copy of insubstantial parts of the Licensed Materials, within the guidelines of traditional interlibrary loan practices and applicable copyright laws.  
The Licensed Material may be used as a source for interlibrary loan in accordance with Canadian and relevant international copyright laws and standard library interlibrary loan procedures. For clarity, substantial parts of the Licensed Materials include any part that can stand on its own as a coherent body of data which can be relevant for a larger audience or that represents a considerable amount of data from the Licensed Materials.
  - 3.4 **SCHOLARLY SHARING.** Authorized Users may transmit to a third party colleague in hard copy or electronically, a Reasonable Amount of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use. The systematic extraction and/or re-utilization of insubstantial Parts of the Database, for commercial purposes or other purposes that could damage the Publisher conflicts with normal exploitation of the Database and causes prejudice to the legitimate interests of the Publisher and is not authorized.
  - 3.5 **USE IN ACADEMIC RESEARCH.** Member Institutions and Authorized Users may incorporate limited or insubstantial parts of the Licensed Materials in printed or electronic form in assignments, portfolios, theses and dissertations, including reproductions of the Licensed Material for library deposit and other non-commercial uses. Member Institutions and Authorized Users shall always mention the name of the Publisher and the designation of the Database.
  - 3.6 **FAIR DEALING / CREATIVE COMMONS.** Notwithstanding any other provisions of this Agreement, nothing shall in any way restrict or limit the ability of Member Institutions, Authorized Users or Walk-in Users to engage in or conduct any activity that is otherwise permitted under Canadian copyright laws, including without limitation pursuant to any fair dealing exceptions.
  - 3.7 **ALTER or MODIFY** the Licensed Materials as necessary to provide an equivalent level of service to Authorized Users with appropriately documented print or other disabilities. The Licensee will notify the Licensor first if modifications are required to make substantial parts of the Database accessible.
  - 3.8 **COURSEPACKS / ELECTRONIC RESERVES / VIRTUAL LEARNING.** Member Institutions and Authorized Users may incorporate parts of the Licensed Material 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 (only accessible to Authorized Users by Secure Authentication). Each item shall carry appropriate acknowledgement of the source, listing the title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorized Users. If the Licensor does not have the right to grant all rights under 3.8 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).

- 3.9 FEDERATED SEARCH. Intentionally removed.
- 3.10 DATA and TEXT MINING. Member Institutions and Authorized Users that want to conduct research employing data or text mining of the Licenses Materials need the approval of the Licensor. A separate agreement is required
- 3.11 TRAINING AND MARKETING MATERIALS. Member Institutions may display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.

#### **4. PROHIBITED USES**

- 4.1 COMMERCIAL USE. Use of the Licensed Materials for the purposes of monetary reward (whether by Member Institutions, Authorized Users or Walk-in Users) by means of sale, resale, loan, transfer, hire or other form of commerce. For the avoidance of doubt, recovery of direct costs incurred by the Member Institution in the course of providing access to Authorized Users or Walk-in Users (e.g. printing, photocopying, or administration fee) including inter-library loan, is not deemed to be Commercial Use.
- 4.2 SUBSTITUTION FOR LICENSE. No provision of this Agreement is intended to provide such substantial use as to constitute a substitution for an institutional license by a third party institution. For example, Walk-In User rights are designed for the provision of services to individuals, not blanket rights for all of the users of another institution or organization.

#### **5. THE LICENSOR'S UNDERTAKINGS**

The Licensor shall:

- 5.1 Warrant to the Licensee and the Member Institutions that the total downtime directly attributable to the Server supporting the Licensed Materials will amount to less than the equivalent of one full day in any given calendar month. Licensee will notify Licensor of access issues if not originally notified by Licensor. In the event that the total downtime exceeds this amount, the Licensor will 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.
- 5.2 Give prompt notice to the Licensee and the Member Institutions of any additions, modifications to, or deletions of the Licensed Material, beyond those that constitute the regular editorial and updating processes of maintaining the Databases. Failure by the Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by the Licensee and the Member Institutions. If any modifications render the

Licensed Materials less useful to the Member Institutions, the Licensee and the Member Institutions may treat such modifications as a material breach under sections 7.2 and 7.3 of this Agreement.

- 5.3 Notice of the Use of Digital Rights Management Technology. In the event that Licensor utilizes any type of digital rights management technology, beyond 3.1, to control the access to usage of Licensed Materials, Licensor agrees to notify Licensee of the name, contact information and any technical specifications for the digital rights management technology utilized. In no event may such Digital Rights Management Technology be used in such a way as to limit the usage rights of a Licensee, Member Institutions or any Authorized User as specified in this Agreement or under applicable law.
- 5.4 Notice of the Use of 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 Member Institutions or Authorized Users such as account numbers or IP addresses. If digital watermarking technology is used, Licensor agrees to notify the Licensee, in advance, of the name, contact information, and any technical specifications for the technology used.

## **6. THE LICENSEE AND MEMBER INSTITUTIONS UNDERTAKINGS**

The Licensee and each Member Institution shall:

- 6.1 Use reasonable efforts to ensure that access is restricted to Authorized Users, and that Authorized Users are made aware of, and comply with, the terms and conditions of this Agreement.

## **7. TERM AND TERMINATION**

- 7.1 This Agreement shall commence on the date indicated on the first page of this Agreement, and shall apply to all Licensed Materials for the time period(s) as indicated on the attached Schedule(s). Subscriptions as indicated on the attached Schedule(s) will automatically terminate at the end of the subscription period unless both parties have previously agreed in writing including by email communication to renew the subscription.
- 7.2 In the event that either party believes that the other materially has breached any obligations under this Agreement, such party shall notify the breaching party in writing. The breaching party shall have 30 days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the 30-day time period, the non-breaching party shall have the right to terminate the Agreement without further notice.
- 7.3 In the event of early termination permitted by this Agreement, the Member Institution shall be entitled to a refund of any fees or pro-rata portion thereof paid by the Member Institution for any remaining period of the Agreement from the date of termination. This paragraph is invalid if the Member Institution commits a breach of the terms of this Agreement, and fails to remedy the breach within thirty (30) days of notification by the Licensor.

- 7.4 The Licensor hereby grants to the Licensee and its Member Institutions a nonexclusive, royalty-free, license to use all material added to the Licensed Materials to which the Member Institutions subscribed during the term of this Agreement. Access to the Licensed Materials will cease upon cessation of this Agreement.
- 7.5 Funding Contingency. If funding of the Member Institution is materially reduced and the Member Institution thereby becomes unable to pay future amounts payable pursuant to this Agreement, the Member Institution may give the Licensor written notice of termination and this Agreement shall terminate for the Member Institution effective 30 days after the giving of such notice if the Member Institution has failed to pay the Fee for the calendar year in which such notice was given, or if the Member Institution has paid the Fee for the calendar year in which such notice was given, January 1 of the following year.

## **8. GENERAL**

- 8.1 The Publisher and his partners endeavor to offer an overall good-quality product and a reliable service. Nevertheless the Brepolis Databases is provided "as it stands" and the Publisher nor his partners who have been involved in the creation, production or delivery of the Brepolis Databases shall be liable for any direct or indirect damages arising out of the use of, or the inability to use, the Brepolis Databases. The Publisher does not guarantee that the Brepolis Databases will be usefully accessible in every hardware/software environment."
- 8.2 Warranty and Indemnification. The Licensor warrants that it holds the rights granted under this Agreement, and indemnifies and holds the Licensee and its Member Institutions 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 Licensee or any of its Member Institutions claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this license for any reason. **NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS LICENSE IS APPLICABLE TO THIS INDEMNIFICATION.**
- 8.3 This Agreement and attached Schedule(s) signed by Licensor and Licensee shall comprise the complete terms and conditions of use. If there is a "click-through" agreement for users, this Agreement shall override the "click-through" agreement. Notice of terms of "click-through" license terms are provided in Appendix 1.
- 8.4 Alterations to this Agreement and to the Schedules to this Agreement are only valid if they are recorded in writing and signed by both parties.
- 8.5 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 subcontract 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.
- 8.6 Notice. Any notices to be served on either of the parties or on a Member Institution by the other shall be sent by registered mail, courier or facsimile to the address of 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

by facsimile shall be deemed to have been given on the date of receipt of the notice as delivered by the courier or facsimile.

- 8.7 Force Majeure. Neither party's nor a Member Institution's delay or failure to perform any provision of this Agreement, as a result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, "denial of service" or similar attacks, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Agreement.
- 8.8 Waiver. Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.
- 8.9 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.
- 8.10 If the parties disagree over an interpretation of this Agreement or whether a party or a Member Institution is in breach of any part of this Agreement, the parties and any such Member Institution shall in good faith enter into discussions to resolve the disagreement and discuss the feasibility of resolving the disagreement without litigation. The parties shall cooperate in good faith.
- 8.11 This Agreement shall be governed by and construed in accordance with the laws of Canada applicable therein.



**SCHEDULE 2**  
**Local Archiving and Hosting of Licensed Materials**  
**Intentionally removed.**

**EXHIBIT A**

**eBooks**  
**Purchase Terms and Conditions**  
**Intentionally removed.**

**EXHIBIT B**

**Terms and Conditions of Use for eBooks**  
**Subscription Terms and Conditions**  
**Intentionally removed.**

Appendix 1. Brepolis Terms and Conditions

# Brepolis

## Terms and Conditions



By subscribing to one or more of the BREPOLiS databases or by using one or more of the BREPOLiS databases, the user is deemed to have agreed to comply with all of the terms and conditions below.

The BREPOLiS site is owned and operated by Brepols Publishers and can be accessed through [www.BREPOLiS.net](http://www.BREPOLiS.net).

Institutional subscribers (the Licensee) may provide access to their authorized users (Users), as specified in the licence agreement between Brepols Publishers and the institution. Access control is based on a check against the IP number.

Some databases are also available for private subscribers. Access control is based on a check of a combination of ID and password (in this case the Licensee is also the User).

No other access is permitted. No other users are permitted.

The BREPOLiS databases have been optimised to operate with Microsoft Internet Explorer 4.0 or higher or Netscape Navigator Version 4.0 or higher.

The Licensee and the Users have (the benefit of) a non-exclusive and non-transferable licence to have online access to one or more of the BREPOLiS Databases and to make use thereof for the period covered by the subscription. These rights are not extended to Licensee's subsidiaries, parent organizations or to any other affiliated organization or person. The Licensee may not transfer, sublet or confer the rights that are granted to him to any other organization or person.

Users are entitled to extract and re-utilize, for non-commercial purposes only, any insubstantial parts of the contents of the Database. The systematic extraction and/or re-utilization of insubstantial parts of the Database, conflicts with normal exploitation of the Database and causes prejudice to the legitimate interests of the Publisher and is not authorized.

Users who, for the purpose of illustration for teaching or scientific research, have the intention of using a substantial part extracted from the contents of the Database, should obtain, prior to use, an authorization in writing from the Publisher. In such a case, the

User shall always mention the name of the Publisher and the designation of the Database. Other use of any substantial part is not allowed.

The Licensee and the Users are not entitled to reproduce, distribute, modify, supplement or split the contents or structure of the Database. Furthermore, neither the Licensee nor the Users are entitled to rearrange the Database or to set up derived Databases.

In case of unauthorized use the Publisher or the institutional Licensee will deny access to this unauthorized user by blocking without prior notification the IP address that has been used to access the Database.

The use of the search software, made available together with the Database, is included in the subscription price. The User undertakes to use exclusively that search software when consulting the Database.

The Publisher guarantees to the Licensee that he has full rights to grant access and use of the databases. All copyright rights to the content and design of the Databases and of the BREPOLiS environment, the search page and other interfaces, designs and lay-out as well as names, trade marks and logos are owned by the Publisher and / or his partners. More copyright information about each database can be found alongside the database title on the database selection screen on the BREPOLiS website.

The Publisher and his partners endeavour to offer an overall good-quality product and a reliable service. Nevertheless the Database is provided "as it stands" and neither the Publisher nor his partners who have been involved in the creation, production or delivery of the Database shall be liable for any direct or indirect damages arising out of the use of, or the inability to use, the Database. The Publisher does not guarantee that the Database will be usefully accessible in every hardware/software environment.

In case of force majeure events or any other events beyond the reasonable control of the Publisher, the Publisher shall use his best efforts to restore all services as soon as possible. However the Publisher can never be liable for any direct or indirect damages due to events of force majeure.

No transfer of copyright is made by this licence.

In case of non-compliance with one or more of the above paragraphs, the Publisher is entitled to claim damages from any party or person who is involved in this non-compliance.

If any damage is being caused by the Licensee to the Publisher, who can produce evidence of the damage, the Licensee will pay the full amount of the damage suffered.

If any damage is being caused by the Publisher to the Licensee, who can produce evidence of the damage, the Publisher will pay compensation to the Licensee. This

compensation paid by the Publisher will in all cases be limited to the annual subscription fee paid by the Licensee.

The Publisher undertakes to make the latest version of the Database permanently available to the Licensee and the Authorized Users. Therefore the Database and the interfaces are subject to change without notice.

If the Publisher does not perform his material obligations and does not solve the material defaults within 30 days after notice is received in reasonable detail, the Licensee is entitled to terminate this Agreement, unless the Publisher can provide evidence that he cannot be held liable for the non-performance of his obligations.

These Terms and Conditions do not replace the written and signed Licence Agreement between the Licensee and the Publisher, but repeat certain aspects which are binding for all users of the BREPOLiS databases. In case of contradiction the Licence Agreement prevails over these Terms & Conditions.

Belgian law is applicable to these Terms & Conditions.

The Courts of Turnhout (Belgium) have jurisdiction in case of a conflict in this matter.

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#### Definitions used in the Terms & Conditions:

"Database": the collection of systematically arranged data which are individually accessible by electronic means.

"The Authorized Users": those persons who have access to and use of the Database through the Licensee's network, object of a separate Licence Agreement, in their relationship with the Licensee. Those persons may only be:

- All staff members employed by the Licensee, including temporary staff members
- Students accredited by the Licensee; registered users of the library
- Visitors consulting the Database on-site, in the library/or on the campus, excluding remote access from outside campus or library buildings.

"Users": all kinds of Users who access the database including the Licensee and his Authorized Users and private subscribers.

"IP address": a unique string of figures which identifies the computer of an Internet user.

"Extraction": the permanent or temporary transfer of all or a substantial part of the contents of the Database to another medium by any means or in any form.

"Re-utilization: " any form of making available to the public all or a substantial part of the contents of the Database, by distribution of copies, by renting, by on-line or other forms of transmission.

"Education": the systematic and - according to accepted principles - organised transfer of elementary and comprehensive knowledge and skills by appointed and competent teachers to individuals or to a group of persons gathered together for that purpose.

"Scientific research": the investigation of any subject of scholarship.

"Substantial part": any part of the Database that can stand on its own as a coherent body of data which can be relevant for a larger audience or that represents a considerable amount of data from the Database.

"Insubstantial part": any part of the Database which cannot be considered to be a substantial part of the Database.

"Force majeure event": fire, flood, earthquake, elements of nature or Acts of God, acts of war, terrorism, riots, civil disorders, strikes, lockouts, labour difficulties, or any other similar cause beyond the reasonable control of a (non-performing) party.

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