

The University of Alberta and the University of Calgary as represented by the Health Knowledge Network (HKN)

License Agreement for Electronic Products

THIS AGREEMENT is made effective the 1st day of April, 2016.

BETWEEN: SAGE Publications, Inc. Of 2455 Teller Road, Thousand Oaks, CA 91320 (herein referred to as "the Licensor")

AND: The University of Alberta and the University of Calgary as represented by the Health Knowledge Network (HKN) (herein referred to as 'the Licensee') on behalf of its Participating Institution(s)

"Licensee" is authorized to act for and sign this Agreement on behalf of " Participating Institutions." Rights and responsibilities referenced in this Agreement in regard to "Licensee" shall apply to all the Participating Institutions covered under this Agreement; however, Licensee is responsible only for fulfillment of its individual responsibilities under this Agreement. Neither Licensee nor any other Participating Institution shall be liable for any breach or default of another Participating Institution provided that in the event of receipt of written notice from Licensee of any such breach by another Participating Institution, Licensee shall work together in good faith with Licensor to address any such breach in a timely and comprehensive manner until any such breach is corrected to Licensor's satisfaction. Participating 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, in which case the attached Exhibits and Appendices form an integral part of this Agreement when executed by all parties.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

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

Authorized User	All current full and part time students, faculty and employees (including permanent, temporary, contract or visiting) and researchers associated with the Participating Institutions, regardless of physical location of such persons; retired faculty and staff with Emeritus or equivalent status; all registered patrons of the Participating Institution, or other persons affiliated with the Participating Institution or otherwise permitted to use the facilities of the Participating Institution and authorized to access the Licensed Materials via a Secure Network only for the time they are within the physical premises of the Participating Institution.
Walk-In Users	Individuals not affiliated with a Participating Institution who are physically present at Participating Institution sites set out in Schedule 1 shall be deemed to be Authorized Users under the

terms and conditions of this Agreement only for the time they are within the physical premises of the Participating Institution. Additional groups of Authorized Users such as Participating Institution alumni may be included, as where and to the extent set out in Schedule 1. For the avoidance of doubt, the term Walk-In Users as defined herein 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 Participating Institutions or Authorized Users) by means of sale, resale, loan, transfer, hire or other form of commerce or exploitation of the Licensed Materials. For the avoidance of doubt, neither recovery of direct costs by the Participating Institution from Authorized Users, nor use of the Licensed Materials by the Participating Institution or by an Authorized User in the course of research funded by a commercial organization, is deemed to be Commercial Use.
Course Packs	A collection or compilation of materials for example book chapters, journal articles assembled by staff of Participating Institution for use by students in a class for the purposes of instruction.
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, in compliance with applicable Copyright Laws.
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 Participating Institution for use by Authorized Users via Secure Network in connection with specific courses of instruction offered by Participating Institutions to such Authorized Users.
Intellectual Property Rights	Patents, trademarks, trade names, design rights, copyright, database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the

foregoing which may subsist anywhere in the world.

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 and executed 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.
Secure Network	A computer network that is only accessible to Authorized Users by Secure Authentication.

2. LICENSE GRANT AND PROPRIETARY RIGHTS TO THE LICENSED MATERIALS

- 2.1 The Licensor hereby grants to the Licensee and Participating 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 Participating Institutions or remotely, through a Secure Network that is only accessible by 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 agrees to pay to the Licensor the Fee in accordance with the provisions of the attached Schedule(s).
- 2.3 On its own behalf and on behalf of the Participating Institutions, Licensee acknowledges and agrees that (i) the Licensed Materials and the Intellectual Property Rights are proprietary to Licensor, (ii) the Licensed Materials and the Intellectual Property Rights shall remain the exclusive property of Licensor, and (iii) Licensee, the Participating Institutions and the Authorized Users shall have no rights in or to the Licensed Materials and the Intellectual Property Rights other than as set forth herein. The Licensed Materials are copyrighted by Licensor or third parties and all rights are reserved by Licensor and those third parties except as set forth in this Agreement. Neither Licensee nor the Participating Institutions shall duplicate, distribute, sell, commercially exploit, create derivative works from, or otherwise make available the Products or the materials and/or information contained therein, in any form or medium, to any third party other than Authorized Users or as otherwise specifically authorized by this Agreement. Licensee shall make commercially reasonable efforts to prevent piracy or unauthorized distribution of the Licensed Materials.
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3. PERMITTED USES

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

- 3.1 **ACCESS and USE** the Licensed Materials by Authorized Users for Permitted Uses from the premises of the Participating Institution, or remotely via Secure Network, in order to search, retrieve, download, display, print and view the Licensed Material.
- 3.2 **CREATE PERSISTENT LINKS** to individual articles for access by Authorized Users for Permitted Uses under this Agreement, from a Secure Network within secure authentication environments.
- 3.3 **INTERLIBRARY LOAN** by paper or electronic means, a single copy of an individual document 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.
- 3.4 **SCHOLARLY SHARING.** Authorized Users may transmit to a third party colleague in hard copy or electronically, reasonable amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use in compliance with applicable copyright laws.
- 3.5 **USE IN ACADEMIC RESEARCH.** Participating Institutions and Authorized Users may incorporate limited 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.
- 3.6 **FAIR DEALING / CREATIVE COMMONS.** Notwithstanding any other provisions of this Agreement, nothing shall in any way restrict or limit the ability of Participating 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, or as permitted under Creative Commons licensing.
- 3.7 **ALTER or MODIFY** the Licensed Materials as reasonably necessary to provide an equivalent level of service to Authorized Users with appropriately documented print or other disabilities.
- 3.8 **COURSEPACKS / ELECTRONIC RESERVES / VIRTUAL LEARNING.** Participating 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.** Licensor will make reasonable efforts to make their material available for library standard federated and metasearch interface and search systems for discovering and displaying content; for example, but not limited to, industry standard systems provided by: ProQuest, EBSCO, OCLC , ExLibris
- 3.10 **DATA and TEXT MINING.** Participating Institutions and Authorized Users may conduct research employing data or text mining of the Licensed Materials and disseminate results publicly for non-commercial purposes including legitimate academic research and other educational purposes but not for commercial purposes.
- 3.11 **TRAINING AND MARKETING MATERIALS.** Participating Institutions may display, download or print the Licensed Materials for the purpose of training Authorized Users or groups of Authorized Users.

4. PROHIBITED USES AND RESTRICTIONS ON USE

- 4.1 **COMMERCIAL USE.** Use of the Licensed Materials for the purposes of monetary reward (whether by Participating Institutions, Authorized Users or Walk-in Users) by means of sale, resale, loan, transfer, hire or other form of commerce or exploitation of the Licensed Materials. For the avoidance of doubt, recovery of direct costs incurred by the Participating 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 as specifically set forth in this Agreement, not blanket rights for all of the users of another institution or organization.
- 4.3 Except as provided herein, Licensee and Authorized Users shall not use, alter, decompile, modify, display or distribute the Licensed Materials as follows:

Alter Identification. Remove, obscure or modify copyright notices, text acknowledging, attributions or other means of identification or disclaimers as they appear.

Alter Products. Alter, decompile, adapt or modify the Licensed Materials, except to the extent necessary to make it perceptible on a computer screen and as enabled by the software and hardware used to view the Licensed Materials, or as otherwise permitted in this Agreement. Alteration of words or images or their order is strictly prohibited.

Distribution. Display or distribute any part of the Licensed Materials on any electronic network, including without limitation, the Internet, and any other distribution medium now in existence or hereinafter created, other than by a Secure Network with secure authentication; print and distribute any portion(s) of the Licensed Materials to persons or entities other than the Licensee or Authorized Users.

Public Display or Screening. Display or screen the Licensed Materials or portions thereof publicly for entertainment or non-educational use.

5. THE LICENSOR'S UNDERTAKINGS

The Licensor shall:

- 5.1 exercise commercially reasonable efforts to help ensure 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 subject to force majeure events beyond the reasonable control of Licensee. In the event that the total downtime exceeds this amount, the Licensee shall notify the Licensor of such in writing and provide reasonable substantiation of such downtime to Licensor and upon receipt of same Licensor will make appropriate restitution, such as providing a special discount equivalent to the amount of the excessive downtime to the Licensed Materials on the next renewal, extending the license term in an amount equivalent to the excessive downtime, or providing an equitable pro-rata refund based on such excessive downtime as reasonably determined by the parties.
- 5.2 Give prompt notice to the Licensee and the Participating Institutions of any material additions, modifications to, or deletions of the Licensed Material. Failure by the Licensor to provide such reasonable notice shall be grounds for termination of the Agreement by the Licensee and the Participating Institutions on the terms set forth herein in sections 7.2 and 7.3 of this Agreement. If any modifications render the Licensed Materials less useful to the Participating Institutions, the Licensee and the Participating Institutions may treat such modifications as a material breach under sections 7.2 and 7.3 of this Agreement.

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- 5.3 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 Participating 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. For avoidance of doubt, digital watermarking shall not inhibit or limit or interfere with participating institutions rights or ability to use the product to further the intent and purpose of this Agreement

6. THE LICENSE AND PARTICIPATING INSTITUTIONS UNDERTAKINGS

The Licensee shall make reasonable efforts to ensure that each Participating 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 with further written notice.
- 7.3 In the event of early termination permitted by this Agreement, the Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by the Participating Institution for any remaining period of the Agreement from the date of termination. This paragraph is invalid if the Participating Institution commits a willful, material and consistent breach of the terms of this Agreement, and fails to remedy the breach within thirty (30) days of notification by the Licensor.

Participating Institution

- 7.4 **Funding Contingency.** If funding of the Participating Institution is materially reduced and the Licensee or Participating Institution thereby becomes unable to pay future amounts payable pursuant to this Agreement, the Licensee may give the Licensor written notice of termination and this Agreement shall terminate for the Participating Institution effective 30 days after the giving of such notice if the Licensee has failed to pay the Fee for the calendar year in which such notice was given, or if the Licensee has paid the Fee for the calendar year in which such notice was given, January 1 of the following year.

8. GENERAL

- 8.1 **Warranty and Indemnification.** The Licensor warrants that it holds the rights granted under this Agreement, and indemnifies and holds the Licensee and its Participating 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 Participating 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.**

- 8.2 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.
- 8.3 Notice of terms of "click-through" license terms: in the event that Licensor uses a "click-through" license for end users, Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In the event of any conflict between the 'click-through' terms and this License, the terms of this License shall prevail.
- 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 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.
- 8.6 Notice. Any notices to be served on either of the parties or on a Participating 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 Participating 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 Participating Institution is in breach of any part of this Agreement, the parties and any such Participating Institution shall in good faith enter into negotiations to resolve the disagreement and discuss the feasibility of resolving the disagreement by mediation or other means short of litigation. The parties shall cooperate in good faith in pursuing mediation or other such means.

8.11 This Agreement shall be governed by and construed in accordance with the laws of the province of Alberta, and the laws of Canada applicable therein. Both 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 Alberta, Canada.

8.12 **LICENSOR IS PROVIDING THE LICENSED MATERIALS IN AN "AS IS" CONDITION, AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS OR THE SAGE PLATFORM INCLUDING, WITHOUT LIMITATION, THE USE OR RESULTS TO BE OBTAINED FROM USING THE LICENSED MATERIALS OR THE SAGE PLATFORM.**

8.13 **EXCEPT AS OTHERWISE PROVIDED HEREIN TO THE CONTRARY, HEREIN TO THE CONTRARY, LICENSOR SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, OR BUSINESS INTERRUPTION, ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE LICENSED MATERIALS AND/OR THE SAGE PLATFORM (EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). IN ADDITION, LICENSOR SHALL NOT BE LIABLE FOR ANY DAMAGES OR LIABILITY THAT RESULT OR ARISE FROM THE RESULTS OF LICENSEE'S USE OR INABILITY TO USE THE LICENSED MATERIAL(S) AND/OR THE SAGE PLATFORM. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY. BUT, TO THE EXTENT THE FOREGOING LIMITATIONS OF LIABILITY ARE, IN WHOLE OR IN PART, HELD TO BE INAPPLICABLE OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF SAGE FOR ANY REASON AND UPON ANY CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY RELATED TO THE LICENSED MATERIAL(S) AND/OR THE SAGE PLATFORM OR THIS AGREEMENT SHALL BE LIMITED TO LICENSEE'S DIRECT DAMAGES ACTUALLY INCURRED UP TO THE FEES PAID BY LICENSEE FOR THE LICENSED MATERIAL(S) AND ACCESS TO THE SAGE PLATFORM WITHIN THE TWELVE MONTH PERIOD PRECEDING LICENSEE'S ASSERTION OF LIABILITY.**

8.14 Licensee hereby provides its express consent for Licensor, its affiliates and their respective designees to contact Licensee (including, without limitation, its personnel and other contacts made by Licensor during the course of its business dealings with Licensee) in connection with this Agreement and/or in connection with any promotional, marketing, sales and/or any other business communication, correspondence or matters related to Licensor or its affiliates. Licensee

understands that such consent may be withdrawn by Licensee at a later time. This clause shall survive expiration or earlier termination of this Agreement.