

# Terms and Conditions for Library Use of Canadian Electronic Library Content

This Agreement constitutes a non-exclusive, non-transferable license to use the content, data and platform available at [www.dèsLibris.ca](http://www.dèsLibris.ca). This includes the content as made available under the "Canadian Electronic Library" tradename on the ebrary platform.

## 1. THE PARTIES:

"Customer" means the person(s) and/or organization (s) that desire to license dèsLibris for the benefit of its "Authorized Users." "Site" means the website at [www.dèsLibris.ca](http://www.dèsLibris.ca) "CEL" means Canadian Electronic Library, which is a tradename owned by Gibson Publishing Connections, a corporation registered in Ontario, Canada.

## 2. CONTENT:

"Content" means the entire dèsLibris site, which includes "Copyright Titles" owned by copyright holders, "Metadata" owned by CEL, and software licensed by CEL to host and present the Content. "Public Documents" are monographs which have been made publicly available on other websites by their owners or which have been declared by their owners as available under a Creative Commons license.

## 3. GRANT OF LICENSE:

Subject to the restrictions contained in Article 5 below, the Customer is hereby granted a non-exclusive license to use dèsLibris in ways that are consistent with Canadian copyright, U.S. Fair Use Provisions and international law.

## 4. PERMITTED USES:

**Copyright Titles** are protected by the Canada Copyright Act. Subject to the restrictions set out in Section 5. Authorized Users may make limited noncommercial use of portions of the Content; may copy and print portions of the Content using the copy and print features provided on the dèsLibris site to the extent permitted under Canadian law pursuant to the doctrine of fair dealing. Links to the Content are permitted without restriction. Access or use of the Content as delivered by dèsLibris on a web-enabled portable device is permitted. Any other use of a Copyright Title requires written permission from the copyright holder.

**Public Document Titles** may be downloaded and shared freely under the terms of the [Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Unported License](https://creativecommons.org/licenses/by-nc-nd/3.0/).

## 5. RESTRICTED USES:

Customer and its Authorized Users may not: modify or create a derivative work from the Content; remove, obscure, or modify copyright notices; sell, distribute or commercially exploit

the Content; make electronic copies of any portion of any Title for the purpose of any form of electronic redistribution, including coursepacks, reserve or inter-library loan systems.

For greater clarity:

#### *Coursepacks*

You may not make copies (print or electronic) of any portion of Copyright Titles for inclusion in course packs. Links may be shared with anyone, but only those with IP-authenticated access will be able to read full text of Copyright Titles. Open Access Titles may be used without restriction.

#### *e-Reserve*

Because the Content is licensed only to a specific system or institution, paper or electronic copies of Copyright Titles may not be made for purposes of e-reserve. Links maybe shared with anyone, but only those with IP-authenticated access will be able to read full text of Copyright Titles.

#### *Interlibrary Loan*

Because the Content is licensed only to a specific system or institution, paper or electronic copies of any portion of copyright titles may not be made for purposes of inter-library loan. Links maybe shared with anyone, but only those with IP-authenticated access will be able to read full text of Copyright Titles.

## 6. AUTHORIZED USERS:

Authorized Users are the Customer's currently enrolled full- or part-time students, employees, faculty, staff,affiliated researchers, distance learners, and visiting scholars. Authorized use includes remote access through an authentication (proxy) server that guarantees access only by Authorized Users. Walk-in patrons are also authorized to access dèsLibris while physically present at the Site.

## 7. DELIVERY / ACCESS:

dèsLibris will be stored by CEL at one or more locations in digital form. If the Customer has paid for a Web subscription, Authorized Users will be granted access to the location(s).

## 8. CUSTOMER SUPPORT:

CEL will offer reasonable levels of continuing support via email, phone or fax, during normal business hours, for feedback, problem-solving, or general questions. Any technical assistance that CEL may provide to the Customer is provided at the sole risk of the Customer.

## 9. PRICING AND TERM:

The price of dèsLibris and terms of use are as invoiced. CEL will provide Web access for each term for which the Customer has paid the subscription fee or the owner's access fee; the charges may change periodically.

## 10. POPULATION SERVED:

dèsLibris and CEL pricing is based on population served, which is defined as follows:

### *Academic libraries: FTE*

The definition and calculation of FTE includes all current students, staff, and faculty of the Member, whether part-time, full-time, permanent, contract, adjunct, or Visiting; and retired faculty and staff with Emeritus, or equivalent status. Although not included in the above calculation, authorized users may include walk-in users, who are other individuals who have been issued a password or other authentication to use library resources from computer terminals within the library premises. Alumnae are not included in this license, although special arrangements may be made to include related authenticated individuals.

### *Public libraries: Cardholders*

Population served includes only authorized cardholders, not general population.

### *Special libraries: Knowledge workers*

These are individuals within the organization who would reasonably be expected to use library resources.

CEL reserves the right to cease offering the Customer the opportunity to renew a subscription.

## 11. PRODUCT UPDATES:

The Customer will have online access to updates to dèsLibris for which the appropriate fee has been paid. CEL provides no guarantee that any specific content or Title will be available through dèsLibris. Access rights on copyright Titles, which are controlled by Publishers, can change without notice, so Titles may be removed without penalty or notice. Therefore there is no warranty offered to Customers that any Title will be available on the site.

## 12. PERFORMANCE:

CEL will use reasonable efforts to ensure that its servers have sufficient capacity and rate of connectivity to provide the Customer with a quality of service comparable to current standards in the online information industry. CEL will use reasonable efforts to provide continuous service with an average of 28 days of up-time per month and will attempt to perform scheduled downtime at low-usage times.

## 13. LIMITATION OF WARRANTIES AND LIABILITY:

CEL and the Content Owners warrant and represent that they have the right to enter into this Agreement and to deliver dèsLibris "as is." This warranty is in lieu of any and all other

warranties, written or oral, express or implied, including without limitation, warranties of merchant ability of fitness for a particular purpose, all of which CEL disclaims. In no event will CEL be liable for more than the license fee paid, whether such liability arises from breach of warranty, breach of this contract, or otherwise, and whether in contract or in tort, including negligence and strict liability.

#### 14. TERMINATION:

If the Customer materially and seriously breaches any term of this Agreement, CEL may, in addition to its other legal rights and remedies, terminate this license 30 days after written notice to Customer, if Customer has not remedied the breach within the 30 days. Upon any termination, the Customer will erase all electronic storage of copies of dèsLibris made by the Customer. Any termination, whether or not pursuant to this Article 13, will not affect any obligation or liability of a party arising prior to termination, and the provisions of Articles 13 will survive any termination. If there is a significant loss in the content of a collection during the term of a subscription, the Customer may terminate either the package or the license as a whole from the time of the loss. In this event CEL agrees to refund Customer for the remainder of the subscription term from the date of termination.

#### 15. FORCE MAJEURE:

Neither CEL nor the Content Owners will be responsible for any delay or failure in performance resulting from any cause beyond their control.

#### 16. APPLICABLE LAW:

This Agreement will be governed by and construed in accordance with the laws of the province of Ontario without giving effect to the principles of conflict of laws thereof, and to the extent permitted by applicable law, the Customer and CEL consents to the jurisdiction of courts situated in Ontario in any action arising under this Agreement.

#### 17. DISPUTE RESOLUTION:

If any differences arise between the Customer and CEL relating to the meaning of this Agreement, the parties agree to resolve such differences through Arbitration or by any other means to which the two parties may agree.

#### 18. ENTIRE UNDERSTANDING:

This Agreement constitutes the entire understanding of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written.

#### 19. AMENDMENT:

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of the Customer and CEL.

## 20. RIGHTS OF CONTENT OWNERS:

The rights granted by CEL in this Agreement do not supersede any existing rights belonging to the content owners.

## 21. SEVERABILITY:

If a term or condition of this Agreement is invalid or unenforceable, the remaining terms and conditions here of shall remain in full force and effect and shall be enforceable to the maximum extent permitted by law.

## Appendix A: Subscription Content

Content provided under a subscription license model is made available for a limited term as defined by the invoice. CEL offers three subscription license models:

Library License	Academic, Public and School Library systems. An option for Special Libraries.	Using IP authentication, supports an indefinite number of anonymous users.
Defined User License: Group	Any organization not requiring IP authentication.	Using password login, supports one or more users sharing the resource.
Defined User License: Individual	Individuals	Password login

Within the Library and Defined User models are the following additional license types designed for subscribers requiring more limited access at lower prices:

### Concurrent Usage by Account:

This option allows any number of authorized individuals to use dèSLibris without limit for searching, previewing and research. This license sets limits on reading access. The license sets a counter based on the contract price to limit the number of users permitted to be in “read” mode simultaneously. “Read” mode is initiated when a user opens a title for fulltext viewing (gaining access to all pages.) To maximize book availability, download to personal devices may be disabled by the account administrator. Since online books are typically used for only brief intervals, this license model will provide adequate access for smaller libraries and organizations.

### Simultaneous Usage by Title:

This license, available for certain collections, allows any number of authorized individuals to use dèSLibris without limit for searching, previewing and research. This license option sets limits on reading access for any given Title in the collection. The license restricts the number of users permitted to open the same Title at the same time. For example, when a user opens a Title for fulltext viewing, a one-concurrent user license would block reading access to that Title by other users until the first user has “closed” the book. This license would not restrict the number of users who may be in read mode simultaneously, as long as they are accessing different titles. To maximize book availability, downloads to personal devices may be disabled by the account administrator.

## Appendix B: Purchased Content

Perpetual Access Licenses are granted in return for payment of a one-time fee.

These options are available:

- Single-user: Access is limited to one user per title.
- 3-user: Three users may access the content in "read" mode concurrently.
- Unlimited Multiple-user: No limit is applied to the number of users who may access the content in "read" mode simultaneously.

These terms apply to Perpetual Access licenses:

- a.** The Perpetual Access License, granted in perpetuity, may be revoked only if Customer materially breaches this Agreement, or if the licensed materials contain errors or could be subject to an infringement or other adverse claim by a third party.
- b.** CEL reserves the right to apply a Continuing Service Fee, upon payment of which CEL will provide Customer and its Authorized Users with online access to the Purchased Content, plus any included updates, on a proprietary platform designed to enhance the research experience. CEL will maintain systems and technology that help Customer comply with use restrictions and security standards required by CEL's licensors.
- c.** If Customer loses the ability to access its Purchased Content online through CEL (e.g., if CEL discontinues online access services), or if the Purchased Content is otherwise eligible for local loading, Customer may obtain digital copies from the CEL Repository upon certifying that it will secure and restrict use of the Purchased Content as contemplated under this Agreement, using systems and technology at least as protective as CEL's. All use of the materials delivered continue to be subject to this Agreement. File transfer costs, if any, are Customer's responsibility.
- d.** Subject to any content-specific restrictions, Customer and its Authorized Users may extract and compile data from locally-loaded copies of the Purchased Content solely for Customer's teaching, learning, and research purposes.

## Appendix C: Local Hosting

### Definitions

These definitions apply to the terms under which CEL will provide hosting of Local Content.

“Client” is an individual or institution holding a valid subscription to a CEL subscription content Service.

“Content Service” is a collection of monographs licensed by CEL to a client for use under the terms and conditions outlined at <https://www.canadianelectroniclibrary.ca/Library%20License.aspx>

“Hosting” and “Hosting Services” refer to desLibris services, for a fixed period of time, of hosting and providing access to licensed materials, and providing associated customer service and technical support. Hosting fees are distinct from Purchase Prices.

“Local Content” includes two subcategories:

“Licensed Local Content” is one or more monographs licensed from a third party by Client ; “Owned Local Content” are monographs for which copyright/intellectual property is owned by Client.

“Locally Hosted Service” means a secure system providing access and viewing functionality as well as secure digital rights management functions sufficient to protect the Intellectual Property Rights of the copyright holders of the Materials. A Locally Hosted Service may be operated by the Institution or remotely managed.

### Terms and Conditions

Client will provide Local Content in a format and method to be mutually agreed. CEL will host this on the desLibris platform, providing accessibility to authenticated users as specified by Client, protecting the Intellectual Property Rights held by Client.

When Local Content is provided to CEL, Client will designate access rights for each title using the matrix below.

### Termination

This agreement may be terminated by Client without limitation by written notice to CEL. Where terminated, CEL will suspend all access to the Local Content within 7 days of notice date.