

Consortia Canada

License Agreement for ACF Streaming

THIS AGREEMENT is made the **27th** day of **August 2021**

BETWEEN: AUDIO CINE FILMS INC. of| 1955 Ch. Cote-de-Liesse Rd, suite 210 | Montréal (Québec) H4N 3A8 (herein referred to as "the Licensor")

AND: BC Electronic Library Network of W.A.C. Bennett Library, Room 7600, Simon Fraser University, 8888 University Drive Burnaby, BC V5A 1S6 (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, in which case the attached Exhibits and Appendices form an integral part of this Agreement.

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, regardless of physical location of such persons; 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.
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.
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.

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.
- 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 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, or as permitted under Creative Commons licensing.
- 3.4 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.
- 3.5 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).

- 3.6 **FEDERATED SEARCH.** Member Institutions and Authorized Users may include the Licensed Material in federated or metasearch services.
- 3.7 **DATA and TEXT MINING.** Member Institutions and Authorized Users may conduct research employing data or text mining of the Licensed Materials and disseminate results publicly for non-commercial purposes.
- 3.8 **TRAINING AND MARKETING MATERIALS.** Member Institutions may display Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.
- 3.9 **PUBLIC PERFORMANCE RIGHTS.** Subscription to Licensed Materials includes Public Performance Rights for private, educational and research purposes on the premise and indoors of the participating Member Institution.

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. 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. 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 to control the access to usage of Licensed Materials, in no event may 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 LICENSE 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 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.
- 7.4 The Licensor hereby grants to the Licensee and its Member Institutions a nonexclusive, royalty-free, perpetual license to use all material added to the Licensed Materials to which the Member Institutions subscribed during the term of this Agreement. Usage of materials

acquired in this fashion shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination 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 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.
- 8.2 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 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 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 British Columbia, 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 British Columbia, Canada.

AS WITNESS the hands of the parties the day and year below first written

Accepted:

FOR THE LICENSOR: [Full Name]

Name: _____

Position / Title: _____

Signature: _____

Date: _____

FOR THE LICENSEE AND MEMBER INSTITUTIONS: [Full Name]

Name: Anita Cocchia _____

Position / Title: Executive Director _____

Signature:  _____

Date: October 18, 2021 _____

SCHEDULE 1

Business Terms

This Schedule 1 is dated **August 27, 2021** to the Agreement dated **August 27, 2021** between **AUDIO CINE FILMS** and Licensee and the Member Institutions of Consortia Canada, as listed below.

Authorized Users:

(List names of all Member Institutions participating in this Agreement)

Name and Description of Licensed Material: ACF Streaming

Camosun College	ACF Streaming
Capilano University	ACF Streaming
Douglas College	ACF Streaming
Emily Carr University of Art + Design	ACF Streaming
Justice Institute of British Columbia	ACF Streaming
Langara College	ACF Streaming
Okanagan College	ACF Streaming
Royal Roads University	ACF Streaming
University of British Columbia	ACF Streaming
University of Victoria	ACF Streaming

License Type:

- Perpetual Access to full content after cancellation
 Perpetual access may be provided by local loading of the content by Licensee or the Member Institution for access as provided for under Schedule 2 or by entering into a separate agreement with a Member or a duly authorized representative (e.g. a consortium acting on behalf of the Member) at any point in the term of this License Agreement, for perpetual local loading and alternate hosting of the Licensed Materials on the Member’s server or a third-party server, as designated by the Member, or at the vendor's site after termination of the remainder of the contract, in which case reasonable fee(s) for ongoing access may apply.
- Limited perpetual access to content after cancellation *(provide details)*
- Subscription without continued access after cancellation

Term of Agreement: August 1 – July 31

Payment Schedule:

- One-time purchase
- Annual renewal
- Maintenance fee

- Multi-year payment

Fee and invoicing: Each consortium is invoiced and is responsible for payment of its own members.

Access:

- Vendor Platform (*Please provide URL*)
- Other, please specify (*for local loading, the Agreement for the Local Archiving and Hosting of Licensed Materials or a separate Agreement must also be signed*)

Users: (*in addition to Authorized Users, as defined in Section 1*).

- Alumni
- Additional Groups of Users: (*Please provide details*)

Additional License Rights or Restrictions:

(Please provide details on any specifics on the grant of license or usage rights)

- MARC Records
- Open Access revenue

In the event that Licensor offers a for-pay open access option to its authors, Licensor agrees to annually review the number of open access articles published in the Licensed Content under the open access option and decrease license fees accordingly.

AUTHOR'S RIGHT TO USE THEIR OWN WORK

Authors affiliated with a Member Institution whose work (“Content”) is accepted for publication within the Licensed Materials shall retain the non-exclusive, irrevocable, royalty-free right to use their Content for scholarly and educational purposes, including self-archiving or depositing the Content in institutional, subject-based, national or other open repositories or archives (including the author’s own web pages or departmental servers), and to comply with all grant or institutional requirements associated with the Content. For the avoidance of doubt, it is the intent of the parties to this Agreement that Authors are third party beneficiaries of this provision of the Agreement.

Schedule 1, 2, and Exhibit A and B

The Parties have executed [Schedule 1, 2, Exhibit A, B] by their respective, duly authorized representatives on the dates written below.

FOR THE LICENSOR: AUDIO CINE FILMS

Name: _____

Position / Title: _____

Signature: _____

Date: _____

FOR THE LICENSEE AND MEMBER INSTITUTIONS: [Full Name]

Name: Anita Cocchia

Position / Title: Executive Director

Signature: 

Date: October 18, 2021