



[www.mcintyre.ca](http://www.mcintyre.ca)   [www.on-core.ca](http://www.on-core.ca)   [www.can-core.ca](http://www.can-core.ca)

## Digital License Agreement for the ON-CORE and CAN-CORE Streaming Platforms

This agreement is made between **McIntyre Media Inc.** (Licensor), owner and developer of the ON-CORE and CAN-CORE video and content streaming platforms, with offices located at 203-75 First Street, Orangeville ON, L9W 5B6 and **British Columbia Electronic Library Network (BC ELN)**, located at W.A.C. Bennett Library, Room 7600, Simon Fraser University, 8888 University Drive, Burnaby, BC V5A 1S6 as of January 1<sup>st</sup>, 2020. Participating institutions are listed in schedule A.

### Product:

Annual Subscription to the **CAN-CORE** Streaming Platform for Post-Secondary Institutions.

### Definitions:

**Authorized Users:** Each Member and each employee, including faculty and staff of the Member (whether on a permanent, temporary, contract, adjunct, formal affiliation or visiting basis), all students of the Member, individuals other than Authorized Users when a Member has permitted to have occasional access to the Secure Network at a computer workstation physically located in libraries or similar physical premises directly controlled by the Member, individuals who are currently studying at the Member who are permitted to access the Secure Network from within the Premises or from such other places where Authorized Users may access the Licensed Materials (including but not limited to Authorized Users' offices and homes, halls of residence and student dormitories) and who have been issued by the Member with a password or other appropriate authentication methods, other users as are identified on Schedule 1, and Consortium staff.

**CAN-CORE:** A digital content streaming platform that has been created and is operated by the Licensor for use in educational institutions.

**Collection:** A group of video titles and content as organized by subject and accessed by authorized Member institutions via CAN-CORE.

**Commercial Use:** Use of the Licensed Materials for the purposes of monetary reward (whether by or for the Consortium, or Authorized Users or Walk-in Users) by means of sale, resale, loan, transfer, hire or other form of exploitation. For the avoidance of doubt, neither recovery of direct costs exclusive of the Fee by any Member from Authorized Users or Walk-in Users, nor use by the Consortium, or Authorized Users or Walk-in Users of the Licensed Materials in the course of research funded by a commercial organization, nor the payment of a fee by a person in order to be registered with the Member as a Walk-in User, is deemed to constitute Commercial Use.

**Subscription Term:** The period during which the Licensee and Authorized Users may access the platform.

**Agreement:** The Licensor hereby grants to the Licensee, being it a stand-alone institution or Consortium representing its members, the non-exclusive and non-transferable right to permit authorized users wherever located to access the Licensed Materials via a Secure Network and alternate access methods as required for the purposes of personal use, research, teaching, private study and administrative use associated with the normal practices and activities of the institution, Consortium or members, subject to the terms of this agreement. The Licensee agrees to pay the Fee and abide by the payment terms.

**Permitted Uses:** CAN-CORE and the content within the platform is licensed to allow authorized users to have accessed to the licensed materials through the educational institutions electronic learning environment provided that no admission is charged. Authorized users may access the streamed content on a single computer, tablet, mobile device, course management system or password protected website. Authorized users may download content for playback using the proprietary playback system with a valid license. Electronic links to the content may be posted on valid course or program sites for the purposes of instruction or promotion within the domain of the licensing institution.

**Prohibited Uses:** Neither the Licensee nor the Authorized Users nor Walk-in Users may mount or distribute any parts of the platform or included content on any non-licensed or unauthorized electronic network; use all or any part of the Licensed Materials for any commercial use; alter, abridge or modify the Licensed Materials unless otherwise permitted in this agreement. For the avoidance of doubt, no alteration of the words of their order or of the copyright or other notices or disclaimers is permitted.

**Licensor's Warranties, Indemnities and Limitation of Liability:** The Licensor warrants to the Licensee, be they an individual institution or consortium, that the Licensed Materials used in accordance with this agreement do not infringe the copyright or any other proprietary or intellectual property rights of any person. Licensor shall not be liable for any delay occasioned by an act of God, strikes or labor disputes or any failure or delay by any internet service provider, internet content delivery service or agency for any act, delay or omission due to their negligence. Licensor shall not be responsible for any problems or delays that may occur in or on or be related to any of the Licensee's computer hardware, mobile devices, firmware, software, or use thereof. This includes, but is not limited to, problems that may occur as a result of technical support provided by the Licensor. The Licensor shall indemnify the Licensee and hold the Licensee and Authorized Users harmless from and against any loss, damage, costs, liability and expenses arising out of any legal action taken against the Licensee claiming infringement of licensed materials or technologies. Except as expressly provided in this Agreement, the Licensor makes no representations or warranties of any kind, express or implied, including but not limited to, warranties of design, accuracy of the information contained in the Licensed Material, merchantability or fitness of use for a particular purpose.

With the exception of the protection offered under this Agreement, irrespective of the cause or form of action, the Licensor's and Licensee's aggregate liability for any claims, losses, damages or costs arising out of any breach of this Agreement shall in no circumstances exceed the Fee paid by the Licensee to the Licensor under this Agreement in respect to the term of this Agreement during which such claim, loss, damage, or cost incurred. The foregoing limitation of liability and exclusion of certain damages shall apply notwithstanding that the Licensor and Licensee may have alternate remedies available at law.

**Content Within the Collection:** The Licensor may add content, including but not limited to video and electronic resources, to the Collection at regular intervals during the course of the subscription term at no additional cost to the Licensee. The Licensor may also be required to remove content where distribution rights have expired or transferred back to the original producer or are no longer available and said content will no longer be accessible by the Licensee or



Authorized Users. Licensor agrees to provide adequate advance notice of removal of content whenever reasonably possible and will offer Licensee the option to purchase a permanent license, provided the Licensor has the right to do so.

The Licensor agrees to use reasonable efforts to make the licensed materials available to the Licensee and Authorized Users at all times and on a twenty-four hour (24) basis, save for routine maintenance but only at such times as demanded for access to licensed materials is relatively low (which shall be notified to the Licensee in advance wherever possible), and to restore access to the licensed materials as soon as possible in the event of any interruption or suspension of the service directly attributable to the Server, the Licensor's local network, and/or the Licensor's Internet Service Provider.

**Terms and Termination:** The term of this Agreement shall begin on the Agreement date and continue in force through the Subscription Terms(s) listed on Schedule A, including any renewals. Expiration and nonrenewal of subscription will result in the immediate termination, whereupon all access of Licensee and Authorized Users to the Collection shall cease.

Notwithstanding the above, this Agreement may be terminated by the Licensor if Licensee materially fails to perform or comply with this Agreement or any provision hereof. Termination hereunder shall be effective 30 days after written notice of termination given by Licensor to Licensee, if Licensee's defaults have not been cured within such thirty (30) day period.

**Licensee's Undertakings:** The Licensee shall use reasonable efforts to inform Authorized Users of the Terms and Conditions of this agreement where applicable and appropriate and will make a reasonable effort to ensure Authorized Users are appropriately notified of the importance of respecting the intellectual property rights in the licensed materials and of the sanctions that may be imposed for failing to respect these rights. Licensee shall immediately upon becoming aware of any unauthorized use or other breach, inform the Licensor and take all reasonable and appropriate steps to ensure that such activity ceases and to prevent any recurrence.

**Disclaimer of Warranties:** Content, Collection and Video Titles are supplied "as is" and Licensor makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Content or Video Titles, merchantability, or fitness of use for a particular purpose. Licensee's use of the Content, Collection or Video Titles is at the Licensee's sole risk.

**General:** This Agreement and the attached documents including schedules and addendums shall comprise the terms and conditions of issue for the Licensed material, overriding any other agreement between both parties including any "click-through" agreement that may be posted upon accessing licensed materials. This Agreement and all schedules and other documents attached and incorporated by reference. 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.

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 Licensor's Representative, without prior written consent of the other party, which consent shall not unreasonably be withheld.

Neither party's 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 or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Agreement.

In the event that a Court of competent jurisdiction deems any clause of this agreement to be void or invalid the remainder of the agreement shall remain in full force and effect.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein.

The Agreement shall be binding upon and ensure to the successors of assigns of the parties hereto.

All notices given pursuant to this Agreement are to be sent to the addresses provided above.

As Witnesses the signature of the parties the day and year below first written

A duly authorized signatory for the Licensor: McIntyre Media Inc.

Signature: _____	Date: _____
Name (printed): _____	Title: _____

A duly authorized signatory for the Licensee: British Columbia Electronic Library Network (BC ELN)

Signature: _____	Date: _____
Name: (printed): _____	Title: _____

## Schedule A

Name of the Subscription/Institution

CAN-CORE AV / Douglas College

CAN-CORE AV / Capilano University

CAN-CORE AV / North Island College

CAN-CORE AV / JIBC



McIntyre Media