

**British Columbia Electronic Library Network  
Public Performance Rights License Agreement. 2024**

**THIS AGREEMENT** is made the 1<sup>st</sup> day of August 2024

**BETWEEN: PMG CALIFORNIA, INC. d/b/a CRITERION PICTURES** of 106 Saunders Rd., Unit 6, Barrie, ON L4N 9A8 (herein referred to as the “**Licensor**”)

**AND:**

**BRITISH COLUMBIA ELECTRONIC LIBRARY NETWORK (BC ELN)**, 8888 University Drive, British Columbia, V5A 1S6 (herein referred to as the “**Consortium**”)

**WHEREAS** the Consortium is authorized to act for and sign this License Agreement (“**Agreement**”) on behalf of organizations participating under this Agreement, hereinafter known as the “**Members**” as listed in the Schedule(s). Rights and responsibilities referenced in this Agreement in regard to “**Consortium**” shall apply to all Members covered under this Agreement; however, the Consortium is responsible only for fulfillment of its individual responsibilities under this Agreement. The Consortium nor any other Member shall be liable for any breach or default of another Member., and

**WHEREAS** the Licensor holds or administers the rights granted under this Agreement; and

**WHEREAS** the Licensor desires to grant to Members of the Consortium the license to use such rights for the License Fee, as detailed in the attached Schedule(s), subject to the terms and conditions of this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS**

**License Fee** The applicable fee for right to conduct public non-theatrical, non-commercial screenings of the feature film videos produced by the Feature Film Producers and Studios listed in the Schedule(s).

**Media Programs and Films** are used interchangeably in this Agreement. Media Programs or Films are those titles available from the Feature Film Producers and Studios as set out in the Schedule(s).

**Members** are universities, educational institutions, research organizations, or libraries that are in membership of the Consortium, or for whom the Consortium license resources and services, and are listed in the attached Schedule(s), and which have agreed by virtue of their membership to be bound by the terms and conditions of this Agreement as if they were a party to it jointly with the Consortium. Members may be for-profit or publicly funded organizations.

**Subscription Term** is the term set out in Schedule(s).

**2. LICENSE GRANT:**

**2.1 Entertainment Screenings:** This Agreement covers and allows for the presentation of Media Programs covered by the Licensor within an entertainment context. Subject to the terms and conditions of this Agreement, the Licensor grants to the Members of the Consortium the non-exclusive right to conduct public non-theatrical, non-commercial screenings of the feature film videos produced by the Feature Film Producers and Studios listed in the Schedule(s) under its jurisdiction, for use in the Subscription Term, for the purposes described in this Agreement, pursuant to terms and conditions of this Agreement.

**This Agreement does not cover screenings whereby admission fees are charged. All screenings must be free to attend.**

**2.2 Education Classroom Screenings:** This Agreement covers and allows for the presentation of Media Programs covered by the Licensor within an education and training context. Subject to the terms and conditions of this Agreement, the Licensor grants to the Members of for-profit institutions the non-exclusive right to conduct classroom non-theatrical, non-commercial screenings of the feature film videos produced by the Feature Film Producers and Studios listed in the Schedule(s) under its jurisdiction, for use in the Subscription Term, for the purposes described in this Agreement, pursuant to terms and conditions of this Agreement.

Nothing in this Agreement shall prevent Members of publicly funded institutions from carrying out acts that are permitted under Section 29.5 of the Copyright Act of Canada: *"It is not an infringement of copyright for an educational institution or a person acting under its authority to do the following acts if they are done on the premises of an educational institution for educational or training purposes and not for profit, before an audience consisting primarily of students of the educational institution, instructors acting under the authority of the educational institution or any person who is directly responsible for setting a curriculum for the educational institution"*.

### **3. PERMITTED and PROHIBITED USES**

**3.1 Source of Feature Films:** The Agreement is solely for the Media Programs to which the Licensor holds Canadian Public Performance Rights, and for which it is the authorized and licensed distributor for the Feature Film Producers and Studios listed on the attached Schedule(s) (which may be modified as necessary from time to time).

The Media Programs may be obtained (rented, leased, or purchased) from any retailer or borrowed from a library or private collection. They must, however, be legally obtained and not infringing copies. Copies that have been dubbed from broadcast or cable, or transferred from another copy, are not covered by this Agreement.

Films still in theatrical release are not included. Only Films listed on the Licensor's website may be shown, and only in accordance with availability dates listed on their website.

This Agreement does not supersede end user agreements or terms of service for home-use streaming services. Films on these platforms are generally not permitted for use in public screenings. The home-use streaming services may provide a grant of permission specifically for educational use for some Films. Please refer to the terms of service of these home-use streaming platforms for limitations on use outside of private/home settings. It is the responsibility of Members to comply with terms of service.

**3.2 Entertainment Screenings:** Student Associations and other such groups may conduct on-campus, not-for-profit presentations for non-educational purposes. Presentations must be limited to students and faculty enrolled or employed at Member Institutions. Event advertising must be limited to media targeted at the licensed Member and its students and staff. In the case of print advertising, the advertisements may only appear in campus media (e.g. a student newspaper) and not in general community newspapers. All screenings must be free events. For fee screenings are not allowed. Limited "outside" participation to on-campus entertainment presentations is acceptable, so long as no direct advertising is done outside campus boundaries and the event is not open to the general public.

**3.3 Education Classroom Screenings:** Classroom viewing at for-profit institutions for education or training purposes is allowed, and the Copyright Act allows for classroom screenings at publicly funded institutions. Films may not be mounted on course management software.

#### 4. THE LICENSOR'S UNDERTAKINGS

- 4.1 **Services.** Regardless of the date of execution of this Agreement, The Licensor will provide the services during the term at the License fee in accordance with this Agreement and as set out in the Schedule(s).
- 4.2 **Rights and Authority.** The Licensor represents and warrants that it has the rights and authority to grant to the Licensee the rights and licenses granted by this Agreement. The Licensor further represents and warrants that it has the right to license Canadian public performance of the Media Programs owned by the producers and studios as set out in the Schedule(s).
- 4.3 **Makeup of Media Programs.** The Licensor may add to the Media Programs, during the Subscription Term, and at no added cost to Consortium. The Licensor may also be required to purge the Media Programs at regular, scheduled intervals of individual items that are no longer in distribution, after which such items will be removed from the Media Programs and will no longer be accessible by the Member. The Licensor agrees to provide thirty (30) calendar days' advance notice of such removal whenever reasonably possible. Throughout the term of the Agreement, the Licensor shall operate a toll-free telephone number which shall be available to the Licensee in order that it may obtain information concerning the availability of any specific title(s) within the governance of this Agreement.
- 4.4 **Independent Contractor.** The Licensor will be an independent contractor and not the servant, employee, agent or partner of the Consortium.
- 4.5 **Privacy of User Data and Access.** Licensor and the Consortium agree to comply with all applicable laws relating to privacy of data and personal information to protect the anonymity of individual users and the confidentiality of their access and usage of the Media Programs. Any user data may be used solely for purposes directly related to the Media Programs and may only be provided to third parties in aggregate anonymized form. This obligation shall survive the termination of this Agreement.
- 4.6 **Insurance.** The Licensor will maintain and pay for General Liability Insurance. At the request of the Licensee, the Licensor will provide proof of this insurance to the Consortium.

#### 5. TERM and TERMINATION

- 5.1 **Term and Fees.** The Subscription Term and fees shall begin on the date set out in the Schedule(s). This Agreement may be renewed or extended upon the mutual agreement of the parties. Licensor shall provide Consortium with a price list for services, no less than sixty (60) days prior to the end of term. Payment to Licensor is due sixty (60) days after the receipt of the invoice. Upon the expiry or termination of the Subscription Term, all access to the Media Programs shall cease.

The Licensor is responsible for all rental or purchase fees for Media Programs covered by the Licensor. Under special arrangements and agreements, the Licensor agrees to supply Members with titles not easily obtainable in their location(s). Acquisitions and transport fees shall be applicable for any such demand.

- 5.2 **Breach.** Upon becoming aware of a breach of the Agreement, the Licensor, Consortium, and Member will inform the others and take reasonable and appropriate steps to both ensure that such activity ceases and to prevent any recurrence. The Licensor, Consortium, and Member agree to cooperate in good faith and to provide sufficient exchange of information to prevent any further unauthorized use. The breaching party shall have sixty (60) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing, including by email

communication, that cure has been affected. If the breach is not cured within the 60-day time period, the non-breaching party shall have the right to terminate the Agreement without further notice.

## GENERAL

**5.3 Entire Agreement.** This Agreement and attached Schedule(s) constitute the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written, including any online terms and conditions of use.

**5.4 Limitations on Warranties.** Neither Party shall be liable for any indirect, special, incidental, punitive, or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of this Agreement, or the use of or the inability to use the Media Programs. Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Media Programs, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trade-mark rights, moral rights, or the disclosure of confidential information.

Except for the express warranties stated herein, the Media Programs are provided on an “as is” basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Media Programs or any part thereof, including any and all implied warranties of quality, performance, merchantable quality or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus or other such malicious computer program. Licensor further expressly disclaims any warranty or representation to Consortium or Member, or to any third party.

**5.5 Trademarks.** Except as permitted by applicable laws, the Consortium and its Member are prohibited from using any of the trademarks appearing in the Media Programs, without express written consent from their respective trademark owners.

**5.6 Assignment or Transfer.** Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party. Neither party to this Agreement may unreasonably withhold or delay such written consent.

**5.7 Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia, Province of Quebec, and the laws of Canada applicable therein, including the applicable provincial laws regarding Freedom of Information and Protection of Privacy, and the 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 and Canada.

## SCHEDULE 1: Business Terms

This Schedule 1 is dated August 1, 2024, to the Agreement dated August 1, 2024, between **PMG CALIFORNIA, INC. d/b/a CRITERION PICTURES** and the **BRITISH COLUMBIA ELECTRONIC LIBRARY NETWORK (BC ELN)**,

**Term of Agreement: October 1 to September 30, renewed annually**

**Feature Film Producers covered by this Agreement:** <http://www.criterionpic.com/cpl/qsearch.htx>

**Members Covered by this Agreement:**

- Education and training on-campus classroom screenings at private-funded institutions as listed at <https://bceln.ca/resources/feature-film-public-performance-rights-education-criterion>
- Entertainment screenings at for-profit and publicly funded institutions as listed at <https://bceln.ca/resources/feature-film-public-performance-rights-entertainment-criterion>

**Agreement Member participation, entitlements and fees to be provided in (select all that apply):**

- Vendor order forms (for fees)
- Agreement Schedule (for changes to participation and changes to the Agreement)

**Additional License Rights or Restrictions Notes:** *(include any restrictions not specified elsewhere in Agreement)*

The Parties have executed this Agreement by their respective, duly authorized representatives on the dates written below.

FOR THE LICENSOR: **PMG CALIFORNIA, INC. d/b/a CRITERION PICTURES**

Name: Suzanne Hitchon

Position / Title: VP Operations

Signature: 

Date: July 26, 2024

FOR THE CONSORTIUM: **British Columbia Electronic Library Network**

Name: Sunni Nishimura

Position / Title: Executive Director

Signature: 

Date: July 25, 2024