

**License Agreement for Electronic Products**

**THIS AGREEMENT** is made the     day of            [year]

**BETWEEN: National Film Board of Canada**, agent of the Canadian Federal Crown, established pursuant to the *National Film Act*, [R.S.C. (1985) ch. N-8], having its principal place of business at: 3155 Côte de Liesse Road, Montreal, Quebec, H4N 2N4 (herein referred to as "the Licensor")

**AND: [Name and Address of Participating Consortium]** (herein referred to as 'the Licensee').

“Licensee” is authorized to act for and sign this Agreement on behalf of member libraries, which may include public libraries, elementary and secondary schools, colleges, and universities, 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 (for example, 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, including the charging of an entry fee. 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 (e.g. 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	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 AND INTELLECTUAL PROPERTY**

- 2.1      The Licensor hereby grants to the Licensee and Member Institutions, subject to and in accordance with the terms of this License, including the payment of the License Fee by the Licensee and Member Institutions, a non-exclusive and non-transferable right to permit Authorized Users to access and use the Licensed Materials at the sites of Member Institutions for the applicable term. Remote access and use of the Licensed Materials, through secure authentication, is permitted for educational institutions or for public libraries that have purchased a subscription that includes remote access.
- 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).
- 2.3      The Licensed Materials and software displayed or otherwise accessible through the Licensed Materials are protected under Canadian and foreign copyright or other laws, and are owned by the Licensor, its licensors or the party accredited as the provider of the Licensed Materials. In addition, the Licensed Materials is protected under copyright law as a collective work and/or compilation pursuant to Canadian and foreign laws.
- 2.4      Licensee, Member Institutions and its Authorized Users shall respect all copyright notices, information and restrictions on or contained in any of the Licensed Materials. Any use, reproduction, alteration, modification, public performance or display, uploading or posting onto the internet, transmission, redistribution or other exploitation of the Licensed Materials, whether in whole or in part, other than expressly set out herein, is prohibited without the express written permission of the Licensor.
- 2.5      NATIONAL FILM BOARD OF CANADA, OFFICE NATIONAL DU FILM DU CANADA, NFB and ONF are official marks or trademarks of the Licensor. Other names, words, titles, phrases, logos, designs, graphics, icons and trademarks displayed on the Licensed Materials may constitute registered or unregistered trademarks of the Licensor or third parties. While certain trademarks of third parties may be used by the Licensor under license, the display of third-party trademarks on the Licensed Materials should not be taken to imply any relationship or license between the Licensor and the owner of said trademark or to imply that the Licensor endorses the wares, services or business of the owner of said trademark. Nothing contained on the Licensed Materials should be construed as granting you any license or right to use any trademark logo or design of Licensor or any third party, without the written permission of the Licensor or the respective owner of any third-party trademark.

## **3. PERMITTED USES**

Member Institutions and Authorized Users may use the Licensed Materials during the term as follows:

- 3.1 ACCESS and USE the Licensed Materials from the premises of the Member Institution, or, when permitted, remotely via secure authentication, in order to search, retrieve, download (only content designated by Licensor as downloadable), display, print, and view the Licensed Material.
  - 3.2 CREATE PERSISTENT LINKS to individual films for access by Authorized Users for Permitted Uses under this Agreement, from within secure authentication environments.
  - 3.3 USE IN ACADEMIC RESEARCH. Member Institutions and Authorized Users may incorporate limited unsubstantial 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.
  - 3.4 FAIR DEALING. 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,.
  - 3.5 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, including providing closed captioning, transcripts, and described video.
  - 3.6 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 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 3.7 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).
  - 3.7 FEDERATED SEARCH. Member Institutions and Authorized Users may include the Licensed Material in federated or metasearch services.
  - 3.8 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.
  - 3.9 TRAINING AND MARKETING MATERIALS. Member Institutions may display, download (only content designated by Licensor as downloadable) or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.
4. **PROHIBITED USES**

Member Institutions and Authorized Users may not use the Licensed Materials during the term as follows:

- 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, including the charging of an entry fee. 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), 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.
- 4.3 Authorized Users will have the option of creating a valid username and password for the purpose of accessing the Licensed Materials (the "Log-In Information"). Member Institutions and its Authorized Users must keep all Log-In Information strictly confidential, and all Log-In Information may be used only by the assigned user. Member Institutions and its Authorized Users are responsible for taking reasonable measures to maintain the security and confidentiality of all Log-In Information, and for preventing access to the Licensed Materials by unauthorized persons using a user's Log-In Information.

## **5. THE LICENSOR'S UNDERTAKINGS**

- 5.1 The Licensor shall 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 24 hours 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 or extending the license term.
- 5.2 The Licensor shall make available updates of the MARC records on a quarterly basis.
- 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 (with the exception of the customizing of the features by Authorized Users), Licensor agrees to notify Licensee of the name, contact information and any technical specifications for the digital rights management technology utilized. In no event may such Digital Rights Management Technology be used in such a way as to limit the permitted 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.

- 5.5 The availability of the Licensed Materials will change from time to time. The quality of the display of the streaming Licensed Materials may vary from computer to computer, and device to device, and may be affected by a variety of factors, such as location, the bandwidth available through and/or speed of the Internet connection. Member Institutions are responsible for all Internet access charges. The Licensed Materials are provided as is. The Licensor may, in its sole discretion, make changes to the Licensed Materials, including but not limited to modifying, adding and/or removing films or other content. The Licensor will make best efforts to notify Licensee of significant changes to the Licensed Materials.

## **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 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. In addition to a termination for material breach, Licensor may terminate the Agreement if the Licensee files a petition for bankruptcy, becomes insolvent, or makes an assignment for the benefit of its creditors, or a receiver is appointed for the other party or its business. For the purposes of this provision “material breach” shall mean, as it applies to the Licensee and Member Institutions, the failure of Licensee or Member Institutions to perform any material obligation, including, without limitation, the following: (i) non-payment of the License Fees due under the Agreement, and (ii) use of the Licensed Materials in violation of the terms of this Agreement.

Except upon termination for the failure of Licensee to perform any material obligation, if the Agreement is terminated prior to the end of the Term of the Agreement, NFB shall refund to the Licensee the funds paid under the Agreement pro-rated based on the number of months remaining in the Term of the Agreement. The parties hereby agree that in the event of the termination of this Agreement, any and all funds due to NFB by Licensee, or due to Licensee by NFB, shall be paid by the other party within thirty (30) days of the date of expiration or termination, as the case may be.

- 7.3 In the event of early termination permitted by this Agreement, the Member Institution shall immediately cease exercising any of the rights granted pursuant to this Agreement other than

those that survive beyond the Agreement. Except upon early termination for the failure of Licensee or Member Institutions to perform any material obligation, the Member Institution shall be entitled to a refund of any License Fees paid under the Agreement by the Member Institution pro-rated based on the number of months remaining in the term of the Agreement.

- 7.4 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 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 subcontract 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 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 All of the terms and conditions of this Agreement shall remain confidential, and no public statement or other public announcement regarding this Agreement in whole or in part shall be released, issued or made without prior written approval of the other party, except to the extent necessary by each Party to: (i) comply with law or the valid order of a court of competent jurisdiction, in which event(s) the Party making such disclosure shall so notify the other as promptly as practicable (if possible, prior to making such disclosure), and shall seek confidential treatment of such information, (ii) conduct its normal reporting or review procedure to its parent and affiliated companies, their investors and equity partners, banks, auditors, attorneys, and similar professionals, and provided such entities and professionals agree to be bound by these confidentiality provisions, (iii) enforce its rights hereunder, (iv) as to the Licensor, comply with any applicable laws and regulations that the Licensor is subject to as an agency of the federal government of Canada, (v) as to the Licensee, Member Institutions and its Authorized Users, comply with the terms and conditions of this Agreement.
- 8.12 This Agreement shall be governed by and construed in accordance with the laws of the province of Quebec, 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 Montreal, Quebec, Canada.
- 8.13 This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which taken together shall be deemed to constitute one and the same instrument. This Agreement may be executed and delivered by facsimile transmission or in PDF format by e-mail transmission with the same force and effect as if it were executed and delivered by the parties simultaneously in the presence of one another, and signatures on a facsimile or PDF print copy hereof shall be deemed authorized original signatures.

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

**Accepted:**

[enter Consortium/date]

**FOR THE LICENSOR: [Full Name]**

Name: \_\_\_\_\_

Position / Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**FOR THE LICENSEE AND MEMBER INSTITUTIONS: [Full Name]**

Name: \_\_\_\_\_

Position / Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE 1

### Business Terms

This Schedule 1 is dated \_\_\_\_\_ to the Agreement dated \_\_\_\_\_ between the National Film Board of Canada and Licensee and their Member Libraries, as listed below.

**Name and Description of Licensed Material:**

NFB CAMPUS – a subscription video-on-demand service that provides educational audio-visual and interactive works, text, still images, study guides, indexes, databases and other materials through streaming technology delivered via a password-protected (or IP authentication) Internet site located at the URL addresses [www.nfb.ca](http://www.nfb.ca) and [www.onf.ca](http://www.onf.ca)

**License Type:**

Subscription without continued access after cancellation

**Term of Agreement:** 01-January-2018 to 31-December-2018

**Payment Schedule:**

Annual renewal

**Fee and invoicing:**

Single invoice to the consortium, bill to: *(Insert consortium's name and billing address)*

**Access:**

Vendor Platform: <http://www.nfb.ca/explore-all-films/>

**Additional License Rights or Restrictions:**

MARC Records updated quarterly.

Includes public performance rights for all films available from NFB.ca for non-educational institutions

Remote access available only for educational institutions and public libraries that purchase a subscription for remote access.

**Member Institutions:**

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

**Accepted:**

**FOR THE LICENSOR: [Full Name]**

[enter Consortium/date]

Name: \_\_\_\_\_

Position / Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**FOR THE LICENSEE AND MEMBER INSTITUTIONS: [Full Name]**

Name: \_\_\_\_\_

Position / Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_