

## LICENSE AGREEMENT

This Agreement dated September 30, 2011 is made between

**BC Electronic Library Network (BC ELN)**, Vancouver, British Columbia, hereinafter referred to as the Licensee

AND

**Criterion Pictures**, A Division of Canadian Media Distribution Co. Ltd., a body corporate, incorporated under the laws of Ontario and having an office at 41 Horner Avenue, Unit 3, Toronto, Ontario, M8Z 4X4, hereinafter referred to as the Licensors

Licensors and Licensee agree to the terms specified on the pages following and in the schedules outlined below:

1. **License:**  
Subject to the terms and conditions of this Agreement, the Licensors grants to the Licensee the right to exhibit certain feature films (see Schedule A) by the institutions under its jurisdiction (see Schedule B) for use in the Term and manner by the persons and for the purposes described in this Agreement, pursuant to terms and conditions of this Agreement.
2. **Term:** From: October 1, 2011 To: September 30, 2012
3. **Covers:** Titles by certain Feature Film Producers and Studios (see Schedule A)
4. **Total License Fees:** including taxes (See Schedule B)
5. **Insurance:** Licensors will maintain General Liability Insurance

Signed and delivered on behalf of the Licensee by an authorized signatory of the Licensee

\_\_\_\_\_  
Anita Cocchia  
Executive Director, BC ELN

\_\_\_\_\_  
Date

Signed and delivered on behalf of the Licensors by an authorized signatory of the Licensors

\_\_\_\_\_  
Suzi Hitchon  
Criterion Pictures

\_\_\_\_\_  
Date

## GENERAL TERMS OF THE AGREEMENT

### Definitions

6. a) **Expiry Date** means the end date of the Term as set out in Schedule B.
- b) **Term** means the period set out in Schedule B.
- c) **Media Programs** means legally manufactured videos, DVD, or laserdisc covered under Schedule A.

### The Licensor

7. Regardless of the date of execution of this agreement, The Licensor will provide the services (described in Schedule A), during the Term at the license fee (described in Schedule B), in accordance with this Agreement.
8. 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 listed in Schedule A.
9. The License hereby granted 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 film producers and studios listed on the attached Schedule A (which may be modified as necessary from time to time).  
  
The Media Programs may be obtained (rented, leased or purchased) from any retailer or any library. They must, however, be legally manufactured copies. Copies that have been dubbed from broadcast or cable, or transferred from another copy, are not covered by this agreement.
10. The Licensor will comply with all applicable municipal, provincial, federal and state laws.
11. The Licensor will be an independent contractor and not the servant, employee, agent or partner of the Licensee.
12. The Licensor will treat as confidential the records or any information which comes to the knowledge of the Licensor, its servants, employees and agents as a result of any inspection or audit of the Licensee's records, and will not publish, release or disclose any of the information, except if such disclosure is necessary to enable the Licensor to fulfill its obligations or enforce its rights under this Agreement. This obligation shall survive the termination of this agreement.

13. The Licensor will indemnify and save harmless the Licensee, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Licensee may sustain, incur, or suffer at any time either before or after the expiration or termination of this Agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Licensor or of any agent, employee, officer, director or subcontractor of the Licensor pursuant to this Agreement, and/or by reason of any breach of representation or warranty by the Licensor under this Agreement, excepting always liability arising out of the independent negligent acts of the Licensee.
14. The Licensor will maintain and pay for General Liability Insurance.
15. At the request of the Licensee, the Licensor will provide proof of this insurance to the Licensee.
16. Throughout the term of the Agreement, the Licensor shall operate a toll-free telephone number (1-800-663-0991) which shall be available to the Licensee in order that it may obtain:
  - (a) information concerning the availability of any specific title(s) within the governance of this Agreement, and/or
  - (b) the Provincial cinema classification or exhibition rating.

#### **License Fee**

17. The Fees and Expenses payable to the Licensor for the Services will not exceed, in total the amount of the License Fee.
18. Fees are based on the rate set out in Schedule B.

#### **The Licensee**

19. The Licensee will indemnify and save harmless the Licensor, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Licensor may sustain, incur or suffer at any time either before or after the expiration or termination of this Agreement, where the same or any of them are based upon, arise out of or occur by reason of any act or omission of the Licensee or of any agent, employee, officer, director or subcontractor of the Licensee pursuant to this Agreement, excepting always liability arising out of the independent negligent acts of the Licensor.
20. Notwithstanding Section 19 above, in no event shall the Licensee nor its directors, officers, employees or agents be liable for indirect, special, consequential, incidental or punitive damages, even if it has been advised of the possibility of such loss, including but not limited to any acts or omissions of another Post-Secondary Education Institution.

#### **Entertainment Option**

21. For those Post-Secondary Institutions licensed as such, the presentation of Media Programs covered by the Licensor within an entertainment context is allowed. 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 said institution. Event advertising must be limited to media targeted at the licensed Post-Secondary Institution 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.

Limited "outside" participation to on-campus entertainment presentations is acceptable, so long as no direct advertising is done outside campus boundaries.

### **Termination by Licensee**

21. Licensee may terminate this Agreement
  - a) if any warranty, representation or undertaking made by the Licensor in this Agreement (or given in any document related to this Agreement), is false or misleading in any material respect;
  - b) if the Licensor has breached any term or condition of this Agreement;
  - c) if the Licensor goes into liquidation or bankruptcy, or makes an assignment for the benefit of creditors, or makes any compromise with creditors, or a proceeding is commenced by or against the Licensor in the event of insolvency;
  - d) if any other legal proceeding involving the Licensor is instituted that in the reasonable opinion of the Licensee impairs in any way the ability of the Licensor to discharge its obligations hereunder.
22. The Licensor will forthwith notify the Licensee in writing if the circumstances described in paragraph 21 (c) or (d) materialize and in so doing will provide the Licensee with full particulars thereof.
23. Where the Licensee terminates this Agreement it will do so subject to the following conditions:
  - a) the Licensee will send a written notice of the breach to the Licensor;
  - b) the Licensor will have 30 working days within which to cure the breach;
  - c) if the Licensor is unable or unwilling to cure the breach, the Licensee may send the Licensor a written notice of termination;
  - d) this Agreement will terminate 30 days after the date on which the Licensee sends a written notice of termination; and
  - e) subject to a "set off" for any claim for loss or damages to which the Licensee may be entitled as a result of any act or omission of the Licensor relating to this Agreement, the Licensee will make any payments due prior to termination within 30 days of termination.

### **Termination by Licensor**

24. The Licensor may terminate this Agreement at any time if the Licensee has breached any term or condition of this Agreement, subject to the following conditions:
  - a) the Licensor will send a written notice of the breach to the Licensee;
  - b) the Licensee will have 30 working days within which to cure the breach;
  - c) if the Licensee is unable or unwilling to cure the breach, the Licensor may send the Licensee a written notice of termination;
  - d) this Agreement will terminate 30 days after the date on which the Licensor sends a written notice of termination; and
  - e) subject to a "set off" for any claim for loss or damages to which the Licensee may be entitled as a result of any act or omission of the Licensor relating to this Agreement, the Licensee will make any payments due prior to termination within 30 days of termination.

### **General**

25. Time is of the essence in this Agreement.
26. Any notice, waiver, statement, other document or payment and all or any part of the Media Programs that either party may be required or may desire to give or deliver to the other will be conclusively deemed validly given or delivered to and received by the addressee, if delivered personally on the date of delivery, or if mailed, on the third business day after the mailing of the same in British Columbia by prepaid post addressed if to the Licensee:

Attention: Anita Cocchia, Executive Director,  
**BC Electronic Library Network**  
8888 University Drive  
Burnaby, BC Canada  
V5A 1S6

And if to the Licensor:

Attention: Suzi Hitchon

**Criterion Pictures**

A Division of Canadian Media Distribution Co. Ltd.  
41 Horner Avenue, Unit 3  
Toronto, ON Canada M8Z 4X4

27. The Schedules are part of this Agreement.
28. All modifications, amendments, or waivers to this Agreement must be made in writing and signed by the parties.
29. Every reference to the Licensee in this Agreement includes a person duly authorized to act for or on behalf of the Licensee with respect to this Agreement.
30. This Agreement is binding upon the Licensee and its assigns and the Licensor, its successors and permitted assigns.
31. This Agreement will be governed by and construed in accordance with the laws of the Provinces of British Columbia, Ontario and Canada and the parties hereby submit to the jurisdiction of the courts sitting in the Province of British Columbia, including, subject to its own rules, the Federal Court of Canada.
32. All disputes between the parties will be resolved as follows: Either party may apply to a court of competent jurisdiction in British Columbia for interim or injunctive relief. Except for such injunctive relief, all disputes arising out of or in connection with this Agreement will be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre, pursuant to its Rules of Procedure.