

BC Electronic Library Network  
Electronic Products & Services License Agreement

THIS AGREEMENT is made the 24th day of 2019.

BETWEEN: McIntyre Media of [full address] ("the Licensor")

AND: BC ELECTRONIC LIBRARY NETWORK, 8888 University Drive, British Columbia, V5A 1S6 ("the Consortium")

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

WHEREAS the Licensor desires to grant to Members of the Consortium ("Members") the License to use such rights for the Fee, subject to the terms and conditions of this Agreement. Where applicable, additional Exhibits and Appendices may be attached to address more specific Terms and Conditions, e.g. Terms and Conditions specific to certain services, purchases, or subscriptions, in which case the attached Exhibits and Appendices form part of this Agreement.

IT IS AGREED AS FOLLOWS

The Licensor streams digital video Content (and associated audio, graphics, text, images and other data) to Members which use such content for viewing purposes.

The Licensor also hosts and streams digital video Content uploaded by such Members where the Members own the streaming rights for such Content and this Agreement includes provisions to permit the use of this hosting Service for this use.

This Agreement is intended to provide the basis for an ongoing relationship between the Licensor and the Consortium, establishing the terms of use for any Content licensed from or hosted with the Licensor over the Term of the Agreement.

1. DEFINITIONS

In this License, the following terms shall have the following meanings:

Member	BCELN partner library institution participating in a license.
Authorized Users	All current students, staff, and faculty of the Member, whether part-time, full-time, permanent, contract, adjunct, or Visiting; alumni; and retired faculty and staff with Emeritus, or equivalent status.
Walk-In Users	Individual members of the public are considered Walk-In Users, with rights to Access and Use the licensed Content and Services under the Fair Dealing provisions of the Canadian Copyright Act, while they are physically on the premises of a Member.

Licensed Content or Services      The electronic materials or services as detailed in the attached Schedule(s).

## 2. LICENSE GRANT

- 2.1 The Licensor hereby grants to the Members of the Consortium, subject to and in accordance with the terms of this Agreement, the right to access and use the Licensed Services and/or Content at the sites of Members or remotely, through secure authentication.
- 2.2 In consideration for the Licensor's provision of hosting and streaming services listed in the Schedule(s), the Consortium undertakes to pay to the Licensor the Fee in accordance with the Agreement.

## 3. PERMITTED USES

Members may allow Authorized Users to:

- 3.1 ACCESS and USE the Licensed Services and Content from the premises of the Participating Member, or remotely via secure authentication, in order to search, retrieve, display, and view Licensed Content.
- 3.2 CREATE PERSISTENT LINKS to individual Content for access by Authorized Users for Permitted Uses under this Agreement, from within secure authentication environments.
- 3.3 INTERLIBRARY LOAN by electronic means, a single copy of an individual item within the guidelines of traditional interlibrary loan practices and applicable copyright laws.
- 3.4 FAIR DEALING / CREATIVE COMMONS. Notwithstanding any other provisions of this Agreement, nothing shall in any way restrict or limit the ability of the Licensee, 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.
- 3.5 ALTER or MODIFY the Licensed Materials as necessary to provide an equivalent level of service to Authorized Users with appropriately documented disabilities.
- 3.6 COURSEPACKS / ELECTRONIC RESERVES / VIRTUAL LEARNING.  
Members may incorporate parts of the Licensed Content 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.

If the Licensor does not have the right to grant all rights under 3.6, these rights will apply exclusively to the Content for which the Licensor does have such rights.

#### 4. PROHIBITED USES

4.1 **COMMERCIAL USE.** Use of the Licensed Content or Services for the purposes of monetary reward (whether by the Consortium, Member, Authorized Users, or Walk-in Users) by means of sale, resale, loan, transfer, hire or other form of exploitation. For the avoidance of doubt, recovery of direct costs incurred by the Member in the course of providing access to Authorized Users or Walk-in Users 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

#### 5. SERVICES AND CONTENT

5.1 **SERVICES.** The Licensor shall use commercially reasonable efforts to stream the Materials (and to host and stream Member Content where applicable), including scanning for viruses; to provide sufficient capacity and rate of connectivity to provide the Members with quality service; and to make the Content available with an average of 28 days of up-time per month and to perform scheduled downtime at low-usage times. The Licensor will offer reasonable levels of continuing support via email, phone or fax, during normal business hours, for feedback, problem-solving, or general questions.

5.2 **MATERIALS CONTENT LICENSE.** This Section shall apply only if a Member is hosting Content with the Licensor. Where the Member orders hosting services for the Content, the Member grants to the Licensor the right to upload, host, store, transmit, stream, and display Member Content for that Member during the Subscription Term. The Member shall deliver the Member Content to the Licensor in the format determined by the Licensor. The Member retains ownership rights to Member Content.

The Member represents and warrants that the Member owns or has the necessary rights and licenses to grant the rights set forth in this Agreement. The Member acknowledges that it is solely responsible for all Member Content and its use and that the Licensor shall make no independent assessment or evaluation thereof.

#### 6. TERM AND TERMINATION

- 6.1 This Agreement shall commence on the date indicated on the first page of this Agreement, and shall apply to all Licensed Content and / or Services 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.
- 6.2 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.
- 6.3 In the event of early termination permitted by this Agreement, the Consortium shall be entitled to a refund of any fees or pro-rata portion thereof paid by the Consortium for any remaining period of the Agreement from the date of termination. This paragraph is invalid if the Consortium 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.
- 6.4 FUNDING CONTINGENCY. If public funding of the Consortium or funding of the Consortium by the Members is materially reduced and the Consortium thereby becomes unable to pay future amounts payable pursuant to this Agreement, the Consortium may give the Licensor written notice of termination and this Agreement shall terminate effective 30 days after the giving of such notice if the Consortium has failed to pay the Fee for the calendar year in which such notice was given, or if the Consortium has paid the Fee for the calendar year in which such notice was given, January 1 of the following year.

## 7. GENERAL

- 7.1 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.
- 7.2 ASSIGNMENT. This Agreement may not be assigned by either party to any other organization without the prior written consent of the other party.
- 7.3 WAIVER. Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.
- 7.4 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.
- 7.5 If the parties disagree over an interpretation of this Agreement or whether a party or a

Member is in breach of any part of this Agreement, the parties and any such Member 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.

7.6 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, including the BC Freedom of Information and Protection of Privacy Act, 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.

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

Accepted:

FOR THE LICENSOR: **McIntyre Media**

FOR THE CONSORTIUM: **BC ELN**

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

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

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

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

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

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

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

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



**SCHEDULE 1**

**Business Terms – McIntyre Media**

This Schedule 1 is dated 24 July 2019 to the Agreement dated 24 July 2019 between McIntyre Media and the Participating Members of the BC Electronic Library Network.

**Name and Description of Licensed Service:**

- McIntyre Media Streaming Media Hosting Service
  - For individual partner libraries
  - For a shared collection of perpetually access licensed video content

McIntyre Media hereby grants to the Licensee the right to use the Services and Content made available according to the terms and conditions of the Agreement referenced above.

**License Type:**

- X Subscription Service
  - Perpetual Access Content
  - Subscription Content

**Term of Agreement:**

- X Annual renewal
- Multi year renewal

**Access:**

- X Vendor platform
- Local Access

**Accepted:**

FOR THE LICENSOR: **McIntyre Media**

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

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

FOR THE CONSORTIUM: **BC ELN**

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

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

