

British Columbia Electronic Library Network Streaming Media License Agreement. 2024

THIS AGREEMENT is made day of [year]

BETWEEN: [NAME OF LICENSOR] of [full address] (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 its member organizations, hereinafter known as the "Member(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. Where applicable, additional Exhibits and Appendices may be attached to address more specific terms and conditions, e.g. 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 part of this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

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

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| Accessible Formats | Content in a format that is perceivable and operable by persons with visual, perceptual, physical, or other print disabilities, and is usable with assistive devices and software. |
| Authorized Users | Authorized Users include all individuals who are granted Library privileges according to the policies of Member. This includes all current students, staff, and faculty of Member, (whether full- or part-time, permanent, temporary, contract or visiting appointments), retired faculty and staff, alumni, and researchers, associated with Member regardless of the physical location of such persons. Within non-academic institutions, this also includes individuals who are working or studying at the Member including clinical and allied healthcare practitioners and staff (whether full- or part-time, permanent, temporary, contract or visiting appointments), and individuals who are independent contractors or employed by independent contractors associated with Member regardless of the physical location of such persons. Authorized Users also include individual members of the public (walk-in users) while they are physically on the premises of a Member. For the avoidance of doubt, walk-in use is intended for individual users, not as a substitution for a License Agreement by another institution. |
| Commercial Use | Use of the Licensed Materials for the purposes of monetary reward (whether by Member or Authorized Users) by means of sale, resale, loan, transfer, hire or other |

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| | form of commerce. For the avoidance of doubt, neither recovery of direct costs exclusive of the License Fee by a Member from Authorized Users, nor use of the Licensed Materials by a Member or by an Authorized User in the course of research funded by a commercial organization, nor the payment of a fee by a person to be registered with a Member, is deemed to be Commercial Use. |
| Confidential Information | Designates any information for which the access is restricted under any Canadian federal or provincial legislation. |
| Consortium | The group of organizations (which may have multiple sites) and their associated libraries that have formed a single collective representation for negotiation and execution of this Agreement. The group includes private and public post-secondary institutions, and other educational institutions and research organizations and their associated libraries. |
| Continued Access | Access, archiving and use of Licensed Materials consistent with current recognized standards in the industry. |
| 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 by the parties from time to time. |
| Licensed Materials | The materials as detailed in the attached Schedule(s) as may be amended from time to time by agreement between the parties. |
| Secure Authentication | The process whereby Authorized Users are authenticated by providing a set of institutional credentials. |
| Secure Network | A computer network that incorporates reasonable security measures to only allow access to Authorized Users by secure authentication, consistent with current industry standards. |
| Subscription Term | The term set out in Schedule 1 to this Agreement. |
| Third Party Hosting Service | A digital video delivery management and playback service operated by a third party. |

2. LICENSE GRANT

The Licensor hereby grants to the Members of the Consortium, subject to and in accordance with the terms of this Agreement, a non-exclusive and non-transferable right, through-out the world, to access and use the Licensed Materials at the sites of Members or remotely, via a Secure Network, for the purposes of private study, research, education, distance learning, teaching, presentations, entertainment and non-commercial multimedia projects in accordance and consistent with the fair dealing rights under the Canada Copyright Act.

3. PERMITTED USES

Members and their Authorized Users may stream, display, publicly perform, record, or exhibit asynchronously the Licensed Materials on computers or networks, course management systems, library discoverability systems, or password-protected websites, and to copy, in whole or in part, the Licensed Materials as needed for such purposes.

Members and their Authorized Users may create persistent links to individual films for access by Authorized Users for uses permitted under this agreement, from within Secure Authentication environments.

Members may display or create screenshots of Licensed Materials for the purpose of marketing the Licensed Materials internally or for training Authorized Users.

Members may provide support services in conjunction with the Licensed Materials in the form of closed captioning, transcripts, and described video to the extent not provided by Licensor and as required by local, provincial or federal law to provide an equivalent level of service to Authorized Users with appropriately documented disabilities.

Where Members and their Authorized Users agree that a Third-Party Hosting Service will host the Licensed Materials, and a Member has entered into an agreement with a Third-Party Hosting Service, the Licensor authorizes the Member to sub-license the Licensed Materials to the Third-Party Hosting Service on the same terms and conditions of this Agreement. Unless otherwise agreed, the Member shall deliver the Licensed Materials, to the Third Party Hosting Service in the format determined by the consent of the parties and the Third Party Hosting Service.

Subscription to Licensed Materials includes Public Performance Rights for private, educational and research purposes but not for Commercial Use.

Notwithstanding any other provision of this Agreement, nothing shall in any way restrict or limit the ability of Members or their Authorized Users to engage in or conduct any activity that is otherwise permitted under the Canadian Copyright Act.

4. PROHIBITED USES

Neither Member nor Authorized Users may mount or distribute any element of the Licensed Materials on any electronic network accessible to parties who are not Authorized Users, including without limitation the Internet and the World Wide Web.

The Member will implement and maintain industry standard security systems and measures in line with industry practice; and issue passwords or credentials used to access the Licensed Materials only to Authorized Users and take reasonable measures to notify all Authorized Users not to divulge any passwords or credentials to any third party.

Consortium, Member, and Authorized Users may not use of any part of the Licensed Materials for Commercial Use.

Consortium, Member, and Authorized Users may not edit, copy, transmit, modify, distribute, sell, or create derivative works except as expressly permitted by the Canada Copyright Act, or as otherwise permitted herein.

5. THE LICENSOR'S UNDERTAKINGS

5.1 Discovery Services. Licensor agrees to provide third-party vendors of Discovery Services, on an ongoing and timely basis, with as comprehensive content for indexing as possible, including citation metadata (including subject heading and keywords), abstracts, and full text, to facilitate optimal discovery of the Licensed Materials for the benefit of Authorized Users.

5.2 Makeup of Licensed Materials. The Licensor may add to the Licensed Materials, which includes batch loads of the Licensed Materials, at regular intervals during the Subscription Term, and at no added cost to Consortium or Member. The Licensor may also be required to purge the Licensed Materials at regular, scheduled intervals of individual items that are no longer in distribution, after which such items

will be removed from the Licensed Materials and will no longer be accessible by the Member or Authorized Users.

The Licensor agrees to provide thirty (30) calendar days' advance notice of such removal whenever reasonably possible, and if the Licensor has the right to do so, will offer the option to purchase a perpetual license for such purged materials.

If any change(s) singly or cumulatively render(s) the Licensed Materials less useful in a material respect to the Consortium and Member, the Consortium may treat such changes as a material or persistent breach of this Agreement. The Licensor shall refund the Consortium and Member that part of the License Fee that is in proportion to the total amount of material removed from the Licensed Materials and the remaining unexpired portion of the Subscription Term.

5.3 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 Licensed Materials. Any user data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate anonymized form. This obligation shall survive the termination of this Agreement.

5.4 Continued Access to Licensed Materials. Without limiting its obligations under this Agreement, Licensor represents, warrants and covenants that, in the unlikely event that it cannot assume the responsibility for maintaining Continued Access or archiving of the Licensed Materials, or if Licensor ceases doing business or otherwise cannot honour the terms of this Agreement, Licensor will undertake one of the following courses of action: (a) transfer the archive to one or more third parties mutually acceptable to Licensor and Consortium, where Continued Access may be maintained, or (b) Consortium may, at its option, obtain copies of the Licensed Materials in a medium and format mutually agreed upon between the parties, provided that Consortium pays Licensor an amount limited to the reasonable costs associated with reproducing the Licensed Materials.

6. TERM AND TERMINATION

The Subscription Term and fees shall begin on the date set out in **Schedule 1**. This Agreement may be renewed or extended upon the mutual agreement of the parties. Licensor shall provide Consortium with a price list for all Licensed Materials 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 Licensed Materials shall cease, unless Continued Access to any portion of the Licensed Material is agreed upon as outlined in **Schedule 1**.

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.

7. GENERAL

- 7.1 **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.
- 7.2 **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 Licensed Materials. Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, 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 Licensed Materials 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 Licensed Materials 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 Member or its Authorized Users, or to any third party.
- 7.3 **Trademarks.** Except as permitted by applicable laws, the Consortium and its Member are prohibited from using any of the trademarks appearing in the Licensed Materials, without express written consent from their respective trademark owners.
- 7.4 **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.
- 7.5 **Deemed Member Benefit.** Licensor represents and warrants that all benefits, warranties, and other terms and conditions with the Consortium of this Agreement are and will continue to be no less favorable than those currently being, or which will be offered by the Licensor to Members directly on their own Agreements. Members may elect to use this Agreement for their own direct licenses.
- 7.6 **Consortial Offer.** Any Member may participate in the offer, at any time during the term of this Agreement, even if the Member already subscribes under different terms than those outlined in this Agreement. In such an event, and at the request of the Consortium, the Member will become a Participating Member under the terms of this Agreement at the end of their current term. Terms offered to the Consortia shall be no less favorable than those offered to the Member directly. Licensor will prorate fees for Members that join this Agreement after the start date of the term beginning on the first day that the Licensed Materials are made available to the Member under this Agreement and expiring on the end date of the term.
- 7.7 **Governing Law and Venue.** 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 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.

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

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

Name: _____

Position / Title: _____

Signature: _____

Date: _____

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

Name: _____

Position / Title: _____

Signature: _____

Date: _____

SCHEDULE 1: Business Terms

This Schedule 1 is dated _____ to the Agreement dated between [LICENSOR] and the BRITISH COLUMBIA ELECTRONIC LIBRARY NETWORK (BC ELN),

Name and Description of Licensed Materials (BC ELN Website link can be used instead of providing detail or an additional Schedule.)

Members Covered by this Agreement (BC ELN Website link can be used instead of listing members)

Term of Agreement: (start and end dates):

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

- Vendor order forms
- Vendor response forms used for multi-consortia offers
- Agreement Schedule
- Other (please specify)

Authentication methods supported:

- IP recognition
- Open Athens
- Shibboleth
- Single-sign on
- Individual username/password
- Institutional username/password
- Other (specify)

Access:

- Vendor platform
- Local access
- Third party hosting

Access Considerations: (include any restrictions to Authorized Users or Permitted Uses in this section)

Additional License Rights or Restrictions Notes: