

LICENSE AGREEMENT

This LICENSE AGREEMENT (this "*Agreement*") is made the first day of October 2017 (the "*Effective Date*")

BETWEEN: PMG CALIFORNIA, INC. d/b/a CRITERION PICTURES of 30 MacIntosh Blvd., Unit 7, Vaughan, ON L4K 4P1 (herein referred to as the "*Licensor*")

AND: BC Electronic Library Network (BC ELN) of W.A.C. Bennett Library, Room 7600, Simon Fraser University, 8888 University Drive, Burnaby, BC V5A 1S (herein referred to as the "*Licensee*")

WHEREAS, the Licensor operates the Criterion On-Demand™ website (located at www.criterionondemand.com), an on-line platform for digital delivery of educationally relevant feature films (the "*COD Platform*"); and

WHEREAS, the Licensee operates as a consortium for post-secondary libraries in Canada, licensing access to electronic resources on behalf of its member libraries and their respective users; and

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Licensor and Licensee desire to make the COD Platform available to the Licensee's member libraries and their respective users.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

In addition to the terms defined in the preamble and recitals to this Agreement, the following terms shall have the following meanings:

- 1.1 "*Authorized Users*" means all current students, staff, and faculty of a Member, whether part-time, full-time, permanent, contract, adjunct, or on visiting status; and retired faculty and staff with emeritus, or equivalent status.
- 1.2 "*Change of Control*" shall mean (a) a sale to a third party of all or substantially all of the assets of a party; or (b) the transfer to a third party of fifty percent (50%) or more of the outstanding voting power of such party.
- 1.3 "*Fees*" means the fees specified in Schedule B to this Agreement.
- 1.4 "*Licensed Materials*" means the images and the digital video and audio files available for streaming on the COD Platform.
- 1.5 "*MARC Record*" means a machine-readable cataloging record.

- 1.6 “*Member*” means any member of Licensee listed in Schedule A to this Agreement.
- 1.7 “*Secure Authentication*” means the process whereby Authorized Users are authenticated by providing a set of institutional credentials to allow access to Licensed Materials when not physically present at Member sites.
- 1.8 “*Subscription Period*” means the period specified in Schedule B to this Agreement.

2. LICENSE GRANT

Subject to the terms and conditions of this Agreement, the Licensor hereby grants to the Members and their Authorized Users a non-exclusive, non-transferable, non-sublicensable, limited license, during the Subscription Period, to:

- (a) access and use the COD Platform from Member sites or remotely through Secure Authentication; and
- (b) download or stream Licensed Materials *solely* for personal, non-commercial and educational or research viewing at Member sites or remotely through Secure Authentication.

3. PERMITTED USES

- 3.1 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.
- 3.2 Members may display or create screenshots of Licensed Materials for the purpose of marketing the COD Platform internally or for training Authorized Users.
- 3.3 Licensee 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. Notwithstanding the foregoing, no right to edit or copy the content of the Licensed Materials is conferred to Licensee hereunder and any costs or expense related to providing such support services will be the exclusive responsibility of Licensee.
- 3.4 Notwithstanding any other provisions 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 Canadian copyright law.

4. RESTRICTIONS ON USE

4.1 Except as expressly permitted in Sections 2 and 3 above, Members shall not, and shall not knowingly permit Authorized Users to, use the COD Platform to:

- (a) sell, rent, display, exhibit or otherwise transfer to a third party access to the COD Platform or any of the Licensed Materials, or otherwise use the COD Platform or Licensed Materials for any commercial purposes or any monetary reward;
- (b) copy, modify, transmit, perform, create derivative works of the COD Platform, the Licensed Material, or any portion thereof;
- (c) disassemble, reverse engineer or decompile the COD Platform or any portion thereof;
- (d) use any "deep-link", "page-scrape", "robot", "spider," "offline readers," or any equivalent manual process, to access or monitor any portion of the COD Platform;
- (e) collect any personally identifiable information, including user names or passwords, from the COD Platform; or
- (f) take any actions that may circumvent, disable or damage the COD Platform's security.

4.2 Licensor hereby notifies the Licensee, and Licensee understands and agrees, that digital rights management technology will be used to control the access to usage of Licensed Materials.

5. FEES

5.1 In consideration of the licenses granted herein, Licensee shall pay to Licensor the Fees. The Fees shall be payable by Licensee within thirty (30) days after the date of invoice from Licensor.

5.2 Licensee shall provide to Licensor copies of all relevant certificates demonstrating tax-exempt status from any applicable taxes upon the execution hereof. Except as otherwise provided herein, Licensee shall be solely responsible for all taxes, duties or other levies due in connection with its use of the COD Platform other than taxes due on Licensor's income.

6. THE LICENSOR'S UNDERTAKINGS

6.1 Licensor warrants to the Licensee that the total downtime of the COD Platform that is directly and solely attributable to the server supporting the

Licensed Materials will amount to less than the equivalent of one full day in any given calendar month. In the event that the total downtime exceeds this amount, the Licensor will make appropriate restitution to Licensee, such as providing a special discount equivalent to the amount of the excessive downtime to the product on the next renewal, extending the license term, or providing a refund. THE FOREGOING STATES LICENSOR'S ONLY LIABILITY, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY, FOR A BREACH OF THE FOREGOING WARRANTY.

- 6.2 Licensor shall give prompt notice to the Licensee of the material loss or addition on the COD Platform of Licensed Material from a major film studio. Failure by the Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by the Licensee. In the event of such material loss on the COD Platform of Licensed Material from a major film studio, the Parties agree to negotiate in good faith a proportionate price adjustment.
- 6.3 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.
- 6.4 Licensor shall maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for the purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided or sold to any third party.
- 6.5 Licensor shall provide full high-quality batched sets of MARC records at no additional cost by the date of the execution of the Licence Agreement. Updates to existing records and new title records, matching the schedule of release and delivery of new content, will be provided on a mutually agreed-upon schedule and in a format that renders them useful to the Licensee and their Members.
- 6.6 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE COD PLATFORM OR THE LICENSED MATERIALS, WHICH ARE PROVIDED FOR USE "AS IS" AND "AS AVAILABLE." LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO COD PLATFORM AND THE LICENSED MATERIALS. LICENSOR NOTIFIES LICENSEE THAT MUCH OF THE LICENSED MATERIALS ARE SUPPLIED BY THIRD PARTY SUPPLIERS WHO ARE ULTIMATELY RESPONSIBLE FOR THE CONTENT THEREOF. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR DOES NOT WARRANT THE FUNCTIONS,

INFORMATION OR LINKS CONTAINED ON THE COD PLATFORM OR THAT LICENSED MATERIALS WILL MEET LICENSEE'S REQUIREMENTS, THAT THE COD PLATFORM OR THE LICENSED MATERIALS ARE FIT FOR ANY PARTICULAR PURPOSE OR THAT THE OPERATION OF THE COD PLATFORM OR THE LICENSED MATERIALS WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED. LICENSOR DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE LICENSED MATERIALS IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE.

7. THE LICENSEE'S UNDERTAKINGS

- 7.1 Licensee and each Member shall use reasonable efforts to ensure that access to the COD Platform and the Licensed Materials is restricted to Authorized Users, and that Authorized Users are made aware of the terms and conditions of this Agreement.
- 7.2 Access to the COD Platform for Members and their Authorized Users will be authorized through IP and/or user name and password authentication. Licensee, its Members and their Authorized Users agree to keep all such authentication data including user name and password (when applicable) confidential and not to disclose such information to any third party. Licensee, its Members and their Authorized Users are responsible for maintaining the security and confidentiality of all login information for Members' accounts.
- 7.3 Upon becoming aware of any unauthorized use or other breach, the Licensee or Licensor will inform each other, and the Licensee will take reasonable and appropriate steps to both ensure that such activity ceases and to prevent any recurrence. The Licensor and Licensee agree to cooperate in good faith and to provide sufficient exchange of information to prevent any further unauthorized use

8. TERM AND TERMINATION

- 8.1 This Agreement shall commence on the Effective Date, and shall apply for the Subscription Period. Subscription Periods will automatically expire unless both parties have previously agreed in writing to renew the Subscription Period.
- 8.2 In the event that either party believes that the other has breached any material 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.

- 8.3 Without limiting the foregoing or any other remedy provided in this Agreement, Licensor reserves the right to immediately suspend access to the COD Platform at any time that Licensor reasonably believes that a Member or any of its Authorized Users has failed to comply with any material term or provision of this Agreement in a manner that is not curable, including, without limitation, any time that a Member or any of its Authorized Users has infringed the rights of any third party, has engaged in conduct that is illegal, tortuous or that interferes with the technological operation of the COD Platform. Licensor also reserve the right to terminate this Agreement in the event that the basis for a suspension of access to the COD Platform continues or, in Licensor's reasonable judgment, is likely to continue.
- 8.4 In the event of early termination permitted by this Agreement due solely to a material breach of this Agreement by Licensor, the Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by the Licensee for any remaining period of the Agreement from the date of termination.
- 8.5 Immediately upon termination or expiration of this Agreement, all rights and obligations of the parties hereunder shall cease; *provided, however*, that the applicable terms of Sections 9, 10 and 11, and all causes of action arising prior to termination, shall survive termination of this Agreement. Upon termination or expiration of this Agreement, Licensee, its Members and their Authorized Users must immediately destroy all Licensed Materials obtained from the COD Platform and all copies thereof, if applicable.

9. WARRANTIES AND INDEMNIFICATION

- 9.1 Licensor represents and warrants that it holds the right to grant the rights under this Agreement and that the Licensed Materials do not infringe the intellectual property rights of any other person.
- 9.2 Licensor shall defend any action, suit or proceeding brought by a third party against Licensee, its Members and their Authorized Users in so far as it is based on a claim that the use of the Licensed Materials by the Members or their Authorized Users, as strictly permitted under this Agreement, infringes the right of any third party. Licensor shall indemnify and hold harmless Licensee, its Members and their Authorized Users from and against any and all damages, liabilities, costs and expenses (including but not limited to attorneys' fees) arising out of or incurred in connection with or as a result of any such action, suit or proceeding, *provided* that Licensor shall not be responsible for any settlement made without its written consent. **NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.**

- 9.3 Licensee shall indemnify and hold harmless Licensor and its affiliates, and

their respective officers, directors, employees and agents from and against any and all damages, liabilities, costs and expenses (including but not limited to attorneys' fees) arising out of or incurred in connection with or as a result of any such action, suit or proceeding, *provided* that Licensee shall not be responsible for any settlement made without its written consent. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

- 9.4 The obligations in Sections 9.1 and 9.2 hereof are subject to the indemnifying party being promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise.

10. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL LICENSOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE COD PLATFORM OR THE LICENSED MATERIALS, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO LICENSEE. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL LICENSOR'S TOTAL LIABILITY TO LICENSEE, ITS MEMBERS OR THEIR AUTHORIZED USERS FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR STRICT LIABILITY), EXCEED THE FEES PAID BY LICENSEE UNDER THIS AGREEMENT.

11. GENERAL

- 11.1 This Agreement and attached Schedule(s) shall comprise the complete agreement between the parties with respect to the subject matter hereof and replaces and supersedes all prior and contemporaneous written and oral agreements or statements by the parties concerning the subject matter hereof. If there is a "click-through" agreement for use of the COD Platform, this Agreement shall override the "click-through" agreement.
- 11.2 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.
- 11.3 Except in connection with a Change of Control, neither party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the

successors and assigns of the respective parties, including without limitation any partnerships, corporations, or other entities in which the parties may have a controlling interest or position.

- 11.4 Any notices to be served on either of the parties or on a Member by the other shall be sent by e-mail, registered mail, courier or facsimile to the address of the other at its address for service of notices. Any such notice sent by registered mail shall be deemed to have been given 7 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. Any such notice sent by e-mail shall be deemed to have been given on the date receipt is confirmed by the recipient.

Licensor: Criterion Pictures
Attn: General Manager
30 MacIntosh Blvd., Unit 7
Vaughan, ON L4K 4P1
Email: jwalker@globaleagleent.com
Phone: 1.800.668.0749 ext. 228
Fax: 1.866.664.7545

Licensee: Consortium: BC Electronic Library Network
Attn: Manager
Address: W.A.C. Bennett Library, Room 7600
Simon Fraser University
8888 University Drive
Burnaby, BC V5A 1S
Email: office@bceln.ca
Phone: 778.782.7003
Fax: 778-782-3023

- 11.5 Neither party's nor a Member'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.
- 11.6 Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.
- 11.7 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.
- 11.8 Any legal controversy or legal claim arising out of or relating to this Agreement shall be settled by binding arbitration in accordance with the commercial arbitration rules of the Canadian Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in Toronto, Ontario, and judgment on the arbitration award may be entered into by any court having jurisdiction thereof. Either party may seek any interim or preliminary relief from a court of competent jurisdiction necessary to protect the rights or property of this party pending the completion of the arbitration. In any arbitration arising out of or related to this Agreement, the arbitrator(s) shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. If the arbitrator(s) determine a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator(s) may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. Should either party file an action contrary to this provision, the other party may recover costs and attorneys' fees reasonably incurred in challenging such action. If the Arbitration provision of this Agreement shall be found to be unlawful, void or for any reason unenforceable, then any lawsuit or claim arising out of this Agreement shall be brought in the Superior Court of Justice located in Toronto, Ontario.
- 11.9 The COD Platform is owned and controlled by Criterion Pictures from its office in Vaughan, Ontario, Canada. It is licensed solely for use within Canada, its territories and possessions. Licensee will use reasonable efforts to inform its Members and Authorized Users of the territory limitations on the license granted hereunder.

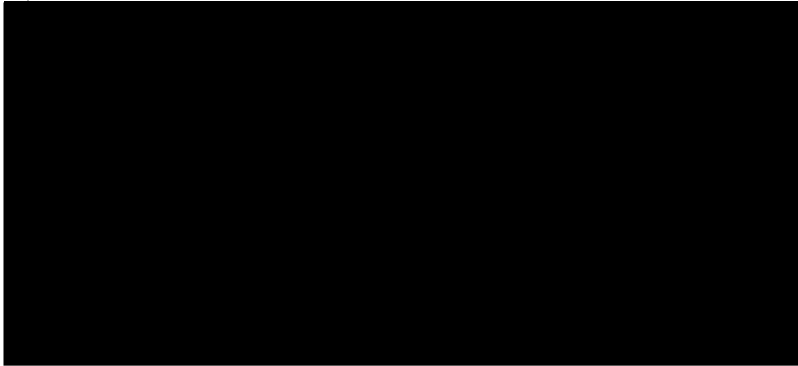
11.10 This Agreement shall be governed by and construed in accordance with the laws of the province of Ontario, and the laws of Canada applicable therein.

11.11 This Agreement may be executed in one or more counterparts, which will together constitute but one and the same instrument.

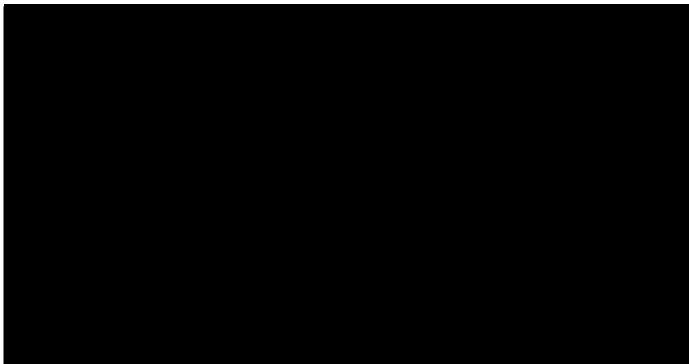
AS WITNESS the hands of the parties the day and year below first written

Accepted:

FOR THE LICENSOR:



FOR THE LICENSEE:



Schedule A

Members

BC ELN members (also referred to as partner libraries) are listed on the consortium website at <http://bceln.ca/partner-libraries>.

Schedule B

Subscription Period and Fees

1. **Subscription Period.** The Subscription Period shall begin on 1 October 2017 and continue through and including September 30, 2018.

2. **Fees.** The pricing for the licenses granted under the Agreement for the Subscription Period shall be as follows:

Enrolment	Description	Licensee's Rate	Years	Total
	Criterion-on-Demand		1	
			HST	
			Total	

GST and PST may be applied at the time of invoicing.