

## **Sampling Protocol**

THIS AGREEMENT to a Sampling Protocol is made effective as of the 1<sup>st</sup> day of September 1999 (this "Sampling Protocol")

**BETWEEN:**

**CANADIAN COPYRIGHT LICENSING AGENCY**, a body corporate, incorporated pursuant to the laws of Canada ("CANCOPY")

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA** as represented by the Minister of Learning (the "Alberta Minister")

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** as represented by the Minister of Education, Skills and Training (the "British Columbia Minister")

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA** as represented by the Minister of Education and Training (the "Manitoba Minister")

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK** as represented by the Minister of Education (the "New Brunswick Minister")

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND** as represented by the Minister of Education (the "Newfoundland Minister")

- and -

**THE GOVERNMENT OF THE NORTHWEST TERRITORIES** as represented by the Minister of Education, Culture and Employment (the "N.W.T. Minister")

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA** as represented by the Minister of Education and Culture (the “Nova Scotia Minister”)

- and -

**THE GOVERNMENT OF THE TERRITORY OF NUNAVUT** as represented by the Minister of Education (the “Nunavut Minister”)

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND** as represented by the Minister of Education (the “Prince Edward Island Minister”)

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN** as represented by the Minister of Education (the “Saskatchewan Minister”)

- and -

**THE GOVERNMENT OF YUKON** as represented by the Minister of Education (the “Yukon Minister”)

- and -

**THE ONTARIO PUBLIC SCHOOL BOARDS’ ASSOCIATION** (the “OPSBA”), **THE ONTARIO CATHOLIC SCHOOL TRUSTEES’ ASSOCIATION** (the “OCSTA”), **L’ASSOCIATION DES CONSEILS D’EDUCATION PUBLIQUE DE L’ONTARIO** (the “ACEPO”), **L’ASSOCIATION FRANCO-ONTARIENNE DES CONSEILS SCOLAIRES CATHOLIQUE** (the “AFOCSC”) (collectively referred to as the “Ontario School Board Associations”)

**WHEREAS** the parties have entered into a Licensing Agreement effective September 1, 1999 (hereinafter “the Licence”) that, subject to its terms and conditions, authorizes Copying of Published Works,

**AND WHEREAS** Article 8 of the Licence provides for sampling of Copying to assist CANCOPY in distributing the licensing fees to rightsholders and sets out certain terms and conditions for such sampling, including the requirement that CANCOPY and the parties to that Licence develop mutually acceptable sampling protocols to govern sampling,

**AND WHEREAS** Article 8 contemplates that such sampling protocols may include agreements to participate in or accept the results of national sampling,

**AND WHEREAS**, under Article 8.2 of the Licence, party school boards located in Nova Scotia agree to be bound by any such sampling protocol agreed to on their behalf by the Nova Scotia Minister and party school boards located in Ontario agree to be bound by any such sampling protocol agreed to on their behalf by the Ontario School Board Associations,

**NOW THEREFORE**, the parties to this sampling protocol agree as follows:

### **Article 1: Definitions and Interpretation**

#### 1.01 Definitions and Interpretation

This Sampling Protocol shall be construed in accordance with the terms and conditions of the Licence, including its definitions.

#### 1.02 Schedules

Schedules “A” and “B” form part of this Sampling Protocol. However, in the event of a conflict or inconsistency between either Schedule and Articles 1 through 12 of this Sampling Protocol, such Articles shall govern.

#### 1.03 Licence

In the event of a conflict between the Licence and this Sampling Protocol, the Licence shall govern.

#### 1.04 Headings

Headings appearing in this Sampling Protocol are for convenience and reference only, and shall not be referred to for the purposes of interpreting this Sampling Protocol.

### **Article 2: Term of Sampling Protocol**

2.01 Article 8.1 of the Licence provides for the possibility of sampling in each year of the Licence, as agreed between the parties and documented in a Sampling Protocol (“Sampling”).

- 2.02 This Sampling Protocol documents the parties' agreement with respect to Sampling to be conducted during each of the first, second and third years of the Licence.

### **Article 3: Amendment of this Sampling Protocol, Future Agreements Governing Sampling and Other Sampling**

3.01 Amendments

Except where otherwise specifically provided for, this Sampling Protocol and its schedules may be amended only by a document signed by or on behalf of all parties hereto.

3.02 Extension of this Sampling Protocol

This Sampling Protocol may be extended by amendment to form the basis of the parties' agreement in respect of Sampling to be conducted in the fourth or fifth years of the Licence. For clarity, such amendments will necessarily include incorporation of additional sample design into this Sampling Protocol, which deals with Sampling requirements for the fourth and fifth years of the Licence.

3.03 Reaching Timely Future Agreements to Govern Sampling

The parties recognize the importance of reaching timely agreements in respect of Sampling, and to facilitate timely finalization of agreements governing Sampling to be conducted during the fourth and fifth years of the Licence, agree to commence discussions about this no later than January 31, 2002.

3.04 Anticipating Changing Circumstances

For clarity, it is contemplated that any agreement in respect of Sampling in the fourth and fifth years of the Licence may differ substantially from that governing Sampling in the first, second, and third years of the Licence.

3.05 Scope of this Sampling Protocol and Other Sampling

This Sampling Protocol addresses Copying authorized within the scope of the Licence as originally executed. It is understood that additional Sampling and other data collection may be required in respect of copying authorized pursuant to any amendment to the Licence or any additional agreement between

CANCOPY and a Minister or Ministers or any Licensee or Licensees otherwise included under the Licence.

3.06 Limited Purpose of Sampling

For clarity, and without restricting the application of Article 8.1 of the Licence, the sole purpose of Sampling conducted pursuant to this Sampling Protocol is to assist CANCOPY in allocating remuneration to CANCOPY Affiliates.

**Article 4: Sample Design and Schedule for Sampling**

4.01 Sample Design

Article 8.4 of the Licence provides that Samples may be designed by CANCOPY.

4.02 Approval of Sample Design

CANCOPY has duly designed a Sample, which has been approved by the Ministers and the Ontario School Board Associations. A copy of such Sample design is attached and forms Schedule "A" to this Sampling Protocol (the "Sample Design").

4.03 Interim Amendment of Sample Design

The Sample Design may be amended from time to time to decrease the amount of Sampling conducted at Educational Institutions where there has been a documented increase in the quantity of useable Copies collected through Sampling at Educational Institutions. Responsibility for identifying and measuring any such increases, and determining the form and extent of any corresponding decreases in the amount of Sampling required, shall rest with CANCOPY in its sole and absolute discretion. Any resulting amendments to the Sample Design will be effective only if agreed in writing between all of the parties to this Sampling Protocol.

#### 4.04 Schedule for Sampling

The parties have agreed to the calendar that will govern Sampling, and this agreement is set out in the document that is appended at Schedule B (the “Sampling Calendar”).

### **Article 5: Selection for Sampling**

#### 5.01 Selection

Educational Institutions, School Boards and Ministry locations will be selected for Sampling by CANCOPY in accordance with the Sample Design, using data supplied by the Ministers and the Ontario School Board Associations (the “Data”). In the case of Ministry locations only, sampling will be conducted only at those locations that CANCOPY and the affected Minister or delegate determine are appropriate.

Hereinafter Educational Institutions, School Boards and Ministry locations will be referred to as “Sites”, except where greater specificity is required. In the case of Ministry locations only, “Site” can be used to denote a single individual or a limited group of individuals.

#### 5.02 The Data Request

To assist Ministers and the Ontario School Board Associations in supplying Data, CANCOPY will specify the nature and extent of information required in a written request, which may also specify the format in which CANCOPY would prefer to receive the Data (the “Data Request”).

#### 5.03 Responding to the Data Request

Ministers and the Ontario School Board Associations will use best efforts to provide to CANCOPY all Data, and in the format, specified in a Data Request within sixty (60) days of receiving a Data Request.

#### 5.04 Assisting CANCOPY with Selection of Ministry Locations

Ministers agree to provide such other assistance to CANCOPY as might reasonably be required in order to determine the feasibility of Sampling at Ministry locations under their jurisdiction. Ministers and CANCOPY will make best efforts to conclude any such inquiries promptly, and in any event within a

time frame compatible with any implementation schedule that has been agreed to under Article 7.01 below.

5.05 Number of Sites

Except in the case of Ministry locations, CANCOPY will customarily select a greater number of Sites than is required by the Sample Design to allow for substitution, where necessary.

5.06 Substitution

- (a) Subject to the exception at Article 5.07 below, Sites will be Sampled in order as selected, except where substitution is required.
- (b) Circumstances warranting substitution will be:
  - (i) Prior participation in Sampling under this Sampling Protocol during an earlier year of the Licence;
  - (ii) CANCOPY's need to conduct additional Sampling pursuant to Article 10.05 below; and
  - (iii) Problems of a kind and degree that would interfere substantially with Sampling, such as collective action.

For clarity, geographic isolation of a Site will not constitute grounds for substitution.

- (c) Any substitutions will be determined in consultation by CANCOPY and the relevant Minister or Ontario School Board Association.
- (d) Where substitution is warranted, the Site that is dropped from the Sample will be replaced with the next Site named on the same list of Sites selected for Sampling (hereinafter Sampled Sites will be referred to as "Participating Sites").

5.07 There will be no substitution of Ministry locations under this Sampling Protocol.

5.08 No individual Site will be required to participate in Sampling under this Sampling Protocol more than once during the first, second, and third years of the Licence.

## **Article 6: Sample Methodology**

### **6.01 Methodology**

In accordance with the Sample Design, the Sample will be carried out using the extra copy method, which is described in Article 6.02 below (the “Extra Copy Method”).

### **6.02 The Extra Copy Method**

Subject to the exception at Article 6.03 below, the Extra Copy Method requires that teaching staff and other personnel follow these steps in respect of each instance of Copying under the Licence:

- (a) Make an extra Copy of the page containing the most bibliographic information about the Published Work Copied;
- (b) For Copies made from Published Works containing works of more than one creator, in addition, make a Copy of the first page of the individual extract Copied to identify the creator, and attach it to the Copy identified in (a);
- (c) Complete and attach to the extra Copy a sticker recording basic numeric and other information about the job; and
- (d) Deposit the extra Copy in a box provided by CANCOPY.

**6.03** In the case of Ministry locations, participating personnel will be required to make extra Copies of Copies made in support of any of the following three activities only: curriculum development, distance education, and testing.

**6.04** CANCOPY will create, produce, and deliver to Participating Sites, at its own cost, boxes for collection of extra Copies and such other materials it may from time to time deem necessary and appropriate to facilitate participation in the Sample.

**6.05** CANCOPY will compensate Participating Sites for the cost of paper used by them in the Sample, as evidenced by the extra Copies returned to CANCOPY at the end of the Sample.



## **Article 7: Sample Implementation**

### **7.01 The Implementation Schedule**

CANCOPY and individual Ministers will devise a mutually acceptable implementation schedule to govern Sampling of Sites within their jurisdiction in any year of the Licence, and use reasonable best efforts to keep to that schedule (the “Implementation Schedule”). The Implementation Schedule governing Sampling in Ontario in any year will be devised by CANCOPY and the Ontario School Board Associations. For clarity, an Implementation Schedule will establish the overall calendar for commencement and conduct of Sampling and related correspondence, and will be specifically designed to support adherence to the Sampling Calendar.

### **7.02 Avoiding Scheduling Conflicts and Other Impediments to Sampling**

To facilitate adherence to the Sampling Calendar and the Sampling procedures, Ministers and the Ontario School Board Associations will make all reasonable efforts to identify for CANCOPY the following before finalization of the Implementation Schedule governing Sampling within their jurisdiction during any year:

- (a) The general calendar governing the delivery of education during the year, including all holidays and professional development days;
- (b) The date and duration of all planned jurisdiction-wide events that are capable of substantially interrupting participation in Sampling or interfering with CANCOPY’s schedule for contacting and visiting Participating Sites for the purposes of implementing the Sample;
- (c) The date and duration of events planned at the School Board level that are capable of substantially interrupting participation in Sampling or interfering with CANCOPY’s schedule for contacting and visiting Participating Sites for the purposes of implementing the Sample; and
- (d) Any other reasonably foreseeable circumstance capable of substantially interfering with Sample implementation or participation, such as a provision in a collective agreement or the prospect of collective action.

### **7.03 Contact and Address Information**

- (a) Ministers, and in the case of Ontario, the Ontario School Board Associations, will supply to CANCOPY the following information about each Participating Site: full postal address, full street address, telephone

number, (where available) facsimile number, a contact name and title, and an estimate of the number of staff who Copy (except in the case of Participating Sites which are Educational Institutions, for which Ministers and the Ontario School Board Associations will supply an estimate of the number of teachers, librarians, and secretaries who Copy only).

- (b) In the case of Participating Sites that are Educational Institutions, Ministers and the Ontario School Board Associations will supply the following additional information about the School Board, if any, that has jurisdiction over the Educational Institution: name, full postal address, full street address, telephone number, (where available) facsimile number, and a contact name and title.
- (c) Ministers and the Ontario School Board Associations will make reasonable efforts to ensure that all such information is current for the year during which the Sample will be conducted.

#### 7.04 Language of Communication

Should a Minister or any of the Ontario School Board Associations wish to ensure that CANCOPY communicates in French to Sites that use French as their principal language of communication, it must indicate this and identify all such Sites to CANCOPY when it provides contact and address information, pursuant to Article 7.03 above.

#### 7.05 Notifying Sites of Selection

Except in the case of Ontario, CANCOPY and Ministers will each correspond with each Participating Site to notify it of its selection for Sampling and to explain the purpose and importance of the Sample. In the case of Educational Institutions, CANCOPY and the Minister will also correspond with any School Board that has jurisdiction over the Educational Institution to advise it of the selection. The Ontario School Board Associations will correspond with Participating Sites in Ontario, and in the case of Educational Institutions, also with the School Board that has jurisdiction over the Educational Institution, concerning selection and the purpose and importance of the Sample.

All correspondence regarding selection for Sampling or to explain the purpose of the Sampling process will be prepared in collaboration by CANCOPY and Ministers, or in the case of Ontario, by CANCOPY and the Ontario School Board Associations. CANCOPY will have a reasonable opportunity to review and comment on any such correspondence generated by Ministers and the Ontario School Board Associations; and Ministers and the Ontario School Board Associations will have a reasonable opportunity to review and comment on any

such correspondence generated by CANCOPY. It is understood that the time frame for such review and comment might be as short as 7 business days.

7.06 Informing Participating Sites about Sampling

CANCOPY will provide Participating Sites with information about the Sample for the purposes of initiating the Sample and assisting personnel to understand and comply with the requirements of the Extra Copy Method. It is contemplated that this information may be provided by means of an on-site visit or any other reasonable alternative means that may be arranged between CANCOPY and a Participating Site.

**Article 8: Language**

8.01 Ministers and the Ontario School Board Associations may identify to CANCOPY Participating Sites under their jurisdiction that use French as their principal language of communication, in accordance with Article 7.04 above.

8.02 CANCOPY will provide any Participating Sites designated by a Minister or a Ontario School Board Association as working principally in French with explanatory materials in French, and ensure that any CANCOPY representative who visits any so-designated Site provides information about the Sample in French.

**Article 9: Sample Participation**

9.01 Subject to Article 9.02, each Participating Site will co-operate by:

- (a) Designating one individual who will be responsible for liaising with CANCOPY about the Sample (the “Sample Co-ordinator”);
- (b) Co-operating with CANCOPY in scheduling commencement of the Sample;
- (c) Assisting CANCOPY in introducing the Sample to all personnel who are likely to make Copies under the Licence in the ordinary course of their duties, or in the case of Ministry locations, all personnel who will be affected by the Sample, through:

- (i) Co-operating with CANCOPY, if requested, in scheduling an on-site information session, and taking steps to ensure the attendance of a maximum number of personnel at that information session; or
- (ii) If there is to be no on-site information session, providing information to such personnel directly in a manner arranged between the Sample Co-ordinator and CANCOPY;
- (d) Using best efforts to ensure that any personnel likely to Copy who do not receive information about the Sample as provided for in (c) are fully informed about the Sample and participate fully in it;
- (vi) Providing information about copying equipment, when requested, to permit CANCOPY to provide a sufficient quantity of Sample boxes and explanatory materials for the Sample;
- (vii) Taking all reasonable steps to ensure that all instances of Copying are recorded, as required by the Sample methodology, for the duration of the Sample period, including instances of Copying done off-site;
- (viii) Providing access to CANCOPY for the purposes of any scheduled information session and locating all relevant copying equipment;
- (ix) Ensuring the continued display of Sample boxes and explanatory materials provided by CANCOPY for the duration of the Sample period;
- (x) Using best efforts to monitor the contents of the Sample boxes over the Sample period to protect them against damage or loss; and
- (xi) Co-operating fully with CANCOPY and any third party courier in delivering the extra Copies collected to CANCOPY at the end of the Sample period.

9.02 The requirements to display Sample boxes and explanatory materials and monitor Sample boxes, under Articles 9.01 (ix) and (x) above, do not apply in the case of Ministry locations at which affected personnel share Copying facilities with other personnel who are not involved in Sampling. In those instances, alternative procedures for the collection and protection of extra Copies will be devised in collaboration by CANCOPY and the Sample Co-ordinator.

9.03 CANCOPY shall use reasonable efforts to ensure that Sampling is carried out at the reasonable convenience of Participating Sites.

## **Article 10: Sample Participation**

### **10.01 Sample Participation**

Participating Sites will use best reasonable efforts to follow the Extra Copy Method and to record all instances of Copying performed for the scheduled duration of the Sample.

### **10.02 Support of the Minister**

Pursuant to Article 8.5 of the Licence, Ministers, the Ontario School Board Associations and School Boards shall use reasonable efforts to ensure that each Participating Site under its jurisdiction -- or in the case of the Ontario School Board Associations, each Participating Site represented by it -- fully participates in the Sample, as described in this Sampling Protocol, and to this end will assist CANCOPY in any way it may reasonably require.

### **10.03 Assistance for Participating Sites**

To facilitate participation in Sampling, CANCOPY will be available to Participating Sites to answer substantive licensing questions and questions about the Sample over the telephone, toll-free, during Sampling.

### **10.04 Incentives**

To encourage full participation in Sampling, CANCOPY will offer incentives to Participating Sites, as follows:

- (a) Incentives will be awarded to Participating Sites that participate well in Sampling.
- (b) Quality of participation will be measured objectively, taking into account factors including the number of bibliographic records indicated as statistically likely by historic sampling data.
- (c) CANCOPY will notify each Participating Site on or before the first day of Sampling of the form of incentive that will be available to it.
- (d) Subject only to the requirement in (c) above, it is understood that the form of incentive offered will vary as between Participating Sites in any one year of the Licence, and may change from time to time.

#### 10.05 Material Failure to Participate in Sampling

CANCOPY will have the right to conduct additional Sampling where a Participating Site has, in CANCOPY's assessment, materially failed to meet the requirement of the Extra Copy Method to record all instances of Copying under the Licence. In keeping with Article 5.06, such additional Sampling will be conducted at the next Site named on the same list of Sites selected for Sampling under Article 5.01.

### **Article 11: Reporting**

- 11.01 CANCOPY will generate and provide to individual Ministers, and to the Ontario School Board Associations collectively, written reports about Sampling conducted at Participating Sites under their jurisdiction, or in the case of the Ontario School Board Associations, at Educational Institutions and School Boards in Ontario, pursuant to this Sampling Protocol, during any individual year of the Sampling Plan ("Reports").
- 11.02 The purpose of such Reports will be to assist Ministers and the Ontario School Board Associations in assessing Sample participation and the general character of Copying, including those Published Works and types of Published Work Copied most frequently under the Licence.
- 11.03 Although final responsibility for determining the form and content of Reports will rest with CANCOPY, Ministers and the Ontario School Board Associations will have the option of requesting the inclusion of specific topics of interest to them in the Reports. Any such requests must, however, be made to CANCOPY no later than September 30 in the Licence year in which the Sampling is undertaken.
- 11.04 It is agreed that nothing in this Article 11 obliges CANCOPY to generate information or analysis that is not otherwise captured by or for CANCOPY in the ordinary course of business, or to include in the Reports information that CANCOPY determines, in its discretion, to be unsuitable for public disclosure.
- 11.04 CANCOPY will generate and deliver any such Reports to Ministers or the Ontario School Board Associations, as the case may be, on a schedule compatible with CANCOPY's own internal business schedule.

**Article 12: Miscellaneous**

12.01 Succession of Obligations

This Sampling Protocol will inure to the benefit of and be binding upon CANCOPY, its successors (including successors under the Licence) and permitted assigns and the Ministers and the Ontario School Board Associations, their successors and permitted assigns.

12.02 Representations and Warranties

The Ministers represent and warrant to CANCOPY that they have the authority to fulfill or cause to be fulfilled all of the obligations imposed upon them and Participating Sites under their jurisdiction, pursuant to this Sampling Protocol.

12.03 Time is of the Essence

Time will be of the essence in this Sampling Protocol.

12.04 Counterparts

This Sampling Protocol may be executed in one or more counterparts, and the execution of such counterparts by all parties hereto shall constitute a binding agreement among all of the parties.

**IN WITNESS WHEREOF** the parties have executed this Sampling Protocol.

Date: _____	CANADIAN COPYRIGHT LICENSING AGENCY Per: _____ Title: _____
	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA as represented by the Minister of Learning _____

Date: _____	Title: _____
Date: _____	<p>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Education</p> <p>_____</p> <p>Title: _____</p>
Date: _____	<p>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA as represented by the Minister of Education and Training</p> <p>_____</p> <p>Title: _____</p>
Date: _____	<p>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK as represented by the Minister of Education</p> <p>_____</p> <p>Title: _____</p>
Date: _____	<p>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND as represented by the Minister of Education</p> <p>_____</p> <p>Title: _____</p>
	<p>THE GOVERNMENT OF THE NORTHWEST TERRITORIES as represented by the Minister of Education, Culture and Employment</p>



Date: _____ 	_____ Title: _____
Date: _____ 	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA as represented by the Minister of Education and Culture _____ Title: _____
Date: _____ 	THE GOVERNMENT OF NUNAVUT as represented by the Minister of Education _____ Title: _____
Date: _____ 	THE ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION _____ Title: _____
Date: _____ 	THE ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION _____ Title: _____
Date: _____ 	L'ASSOCIATION DES CONSEILS D'EDUCATION DE L'ONTARIO _____ Title: _____

<hr/>   Date: _____	L'ASSOCIATION FRANCO-ONTARIENNE DES CONSEILS SCOLAIRES CATHOLIQUES  <hr/> Title: _____
Date: _____	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND as represented by the Minister of Education  <hr/> Title: _____
Date: _____	THE GOVERNMENT OF YUKON as represented by the Minister of Education  <hr/> Title: _____

## **Schedule "A"**

## **Schedule “B”**