

**THIS LICENSING AGREEMENT** effective as of the 1st day of September, 1999

**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 (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 (the “Nova Scotia Minister”)

- and -

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

- and -

**THE ONTARIO PUBLIC SCHOOL BOARDS’ ASSOCIATION** (the “OPSBA”)

- and -

**THE ONTARIO CATHOLIC SCHOOL TRUSTEES’ ASSOCIATION** (the “OCSTA”)

- and -

**L’ASSOCIATION DES CONSEILS D’EDUCATION PUBLIQUE DE L’ONTARIO** (the “ACEPO”)

- and -

**L’ASSOCIATION FRANCO-ONTARIENNE DES CONSEILS SCOLAIRES CATHOLIQUES** (the “AFOCSC”)

- 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 -

**EACH SCHOOL BOARD DEFINED IN ARTICLE 2.1(v) which has signed this Licence on its own behalf on the space provided in Schedule “A” appended hereto** (collectively referred to as the “Party School Boards”)

**FOR AND IN CONSIDERATION** of the mutual covenants contained in this Licence and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the Parties to this Licence, the Parties agree as follows:

**ARTICLE 1: RECITALS**

1.1 **Recitals:** This Licence recites the following circumstances:

- (a) CANCOPY is authorized to grant to the Licensees a licence to make and distribute Copies of Published Works in its Repertoire;
- (b) The Licensees wish to acquire such rights as are described in Article 1.1(a);
- (c) In order to accomplish and give effect to the foregoing, CANCOPY and the Licensees have entered into this licensing agreement;
- (d) The purpose of this Licence is to permit the Licensees to make and distribute Copies in consideration of remuneration to copyright holders and thereby to provide access to Published Works without substituting for material or Published Works which a user would otherwise reasonably be expected to purchase;
- (e) The Parties agree that the payments to be made under this Licence are not based on any pre-estimate of the number of Copies being made under this Licence or the value of such Copies; and
- (f) Such additional recitals as may be applicable individually to any Party as set out in Schedule “D”.

**ARTICLE 2: DEFINITIONS AND INTERPRETATION**

2.1 **Definitions:** In this Licence, including the recitals set forth in Article 1, the following words and expressions have the following corresponding meanings:

- (a) **“Affiliate”** means any individual author or publisher, estate of an author or publisher, organization representing authors or publishers, or other person with interests in copyright works, who has licensed reprographic and other reproduction rights to CANCOPY;
- (b) **“Alternate Format Copy”** means a large print (produced by reprographic process) Copy of Published Works for persons who by reason of a sensory, physical or neural handicap cannot effectively use print materials and persons involved in the educational use of any such Alternate Format Copies;
- (c) **“Authorized Purposes”** means Copying for any not-for-profit purpose within or in support of the mandate of the Educational Institutions in Canada, including:
  - (i) educational (including testing and examination activities), professional, research, archival, administrative and recreational activities;
  - (ii) communication with and providing information to parents, school advisory/parent councils and other members of the community;

- (iii) Copying related to the production of teacher implementation documents, correspondence school and distance learning courses, curriculum documents, workshop packages, provincial examinations and all other similar Copying activity; and
- (iv) making a reasonable number of Copies for reference in or a loan by Libraries;
- (d) **“Bank Rate”**, in respect of any payment on which interest is payable pursuant to Article 7.8, means the discount rate of interest set by the Bank of Canada prevailing at the opening of business on the date such payment became due;
- (e) **“Claim”** means a claim for royalties, loss, expenses, damages (including punitive damages), accounting of profits, causes of action, costs and liabilities arising from or out of Copying (including production of Alternate Format Copies), whether or not the Published Works are in the Repertoire, including legal costs incurred by a Licensee in the defence of legal proceedings, but excluding the following:
  - (i) a claim with respect to the works which are referred to in Article 4.3, subject to the exceptions provided for in Article 4.3;
  - (ii) a claim based on an alleged infringement of moral rights; or
  - (iii) a claim by CANCOPY arising from this Licence;
- (f) **“Copy”** means, except where specific reference is made to Alternate Format Copies, a visually perceivable facsimile reproduction of all or part of a Published Work made by means of:
  - (i) a reprographic process, including photocopying and xerography, duplication from a stencil, copying onto microform (including microfilm and microfiche), typing, transcription by hand or drawing (including tracing) onto acetate or other material for an overhead or slide projection, and overhead or slide projection;
  - (ii) subject to Article 5.15, a computer or wordprocessor or by a copier (such as a Xerox Docutech or Kodak 1500 Series) that makes an intermediate digital copy in order to make a paper Copy; and
  - (iii) subject to Article 5.15, facsimile transmission;

and “Copying” has a corresponding meaning;

- (g) **“Copyright Owner”** means, in respect of any act in relation to a copyright work, the person or persons with authority to authorize such act;
- (h) **“Course Pack”** means a compilation of materials (bound or otherwise assembled, either at once or gradually over time) that is designed for use by students of an Educational Institution to support a course or unit of study and is either intended, or may reasonably be expected, to be used instead of a Published Work that might otherwise have been purchased. A Course Pack may comprise a variety of types

of material, published and unpublished, and may include original content. A compilation that includes Copies taken from fewer than four sources and totalling fewer than twenty (20) pages is not a Course Pack for the purposes of this Licence;

- (i) **“Educational Institution”** means any institution providing publicly funded primary, elementary or secondary school programming and operated under the authority of a School Board or a Ministry, provided that with respect to the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan this definition shall be modified in accordance with Schedule “D”;
- (j) **“Exclusions List”** means the list of Published Works appended to this Licence as Schedule “B”;
- (k) **“Full-time-equivalent Student”** means, in respect of each Ministry and School Board, the equivalent of one student qualifying as a full-time-equivalent student of an Educational Institution as determined in accordance with the policies of the Ministry related to the funding of Educational Institutions under its jurisdiction;
- (l) **“FTE Determination Date”** means, in respect of each Ministry and School Board, the date as of which the number of Full-time-equivalent Students is calculated for any given year in accordance with the policies of the Ministry relating to the funding of Educational Institutions under its jurisdiction;
- (m) **“Index”** means the All-items (goods and services) category of the Consumer Price Index for Canada;
- (n) **“Library”** includes a resource or learning centre or any similar collection of Published Works that is part of or belongs to a Licensee;
- (o) **“Licence”** means the licence granted by CANCOPY to the Licensees pursuant to Article 4.1 hereof and the terms and conditions set forth in this licensing agreement, and any reference to “this Licence” is a reference to this Agreement in its entirety;
- (p) **“Licensee”** means:
  - (i) any Minister or School Board which has become a Party in accordance with Article 3.1;
  - (ii) any Ministry of a Minister who has become a Party in accordance with Article 3.1; or
  - (iii) any School Board or Educational Institution in a Province whose Minister or School Board has become a Party in accordance with Article 3.1;
- (q) **“Minister”** means any one of the Alberta Minister, the British Columbia Minister, the Manitoba Minister, the New Brunswick Minister, the Newfoundland Minister, the N.W.T. Minister, the Nova Scotia Minister, the Nunavut Minister, the Prince Edward Island Minister, the Saskatchewan Minister and the Yukon Minister, or any successor or substituted minister resulting from a reorganization of the government of a Province or Territory;

- (f) **“Ministry”** means:
- (i) In respect of the Province of Alberta, the Alberta Department of Learning (also referred to as the “Alberta Ministry”);
  - (ii) In respect of the Province of British Columbia, the British Columbia Ministry of Education (also referred to as the British Columbia Ministry”);
  - (iii) In respect of the Province of Manitoba, the Manitoba Department of Education and Training (also referred to as the “Manitoba Ministry”);
  - (iv) In respect of the Province of New Brunswick, the New Brunswick Department of Education (also referred to as the “New Brunswick Ministry”);
  - (v) In respect of the Province of Newfoundland, the Newfoundland and Labrador Department of Education (also referred to as the “Newfoundland Ministry”);
  - (vi) In respect of the Northwest Territories, the Northwest Territories Department of Education, Culture and Employment (also referred to as the “N.W.T. Ministry”);
  - (vii) In respect of the Province of Nova Scotia, the Nova Scotia Department of Education (also referred to as the “Nova Scotia Ministry”);
  - (viii) In respect of the Territory of Nunavut, the Nunavut Department of Education (also referred to as the “Nunavut Ministry”);
  - (ix) In respect of the Province of Prince Edward Island, the Prince Edward Island Department of Education (also known as the “Prince Edward Island Ministry”);
  - (x) In respect of the Province of Saskatchewan, the Saskatchewan Department of Education (also known as the “Saskatchewan Ministry”);
  - (xi) In respect of the Government of the Yukon, the Yukon Department of Education (also referred to as the “Yukon Ministry”); and
  - (xii) For the purposes of Articles 2.1(k) and (l) only includes, in respect of the Province of Ontario, the Ontario Ministry of Education;

or any successor or substituted ministry resulting from a reorganization of the government of any particular Province or Territory.

- (s) **“Ontario School Boards”** means those School Boards listed in Schedule “A” which are designated in that Schedule as being School Boards in the Province of Ontario;
- (t) **“Ontario School Board Associations”** means, collectively, the OPSBA, the OCSTA, the ACEPO and the AFOCSC;
- (u) **“Party”**, subject to Article 3.1, means CANCOPY, each of the Ministers, each of the Party School Boards and the Ontario School Board Associations;

- (v) **“Party School Board”**, subject to Article 3.1 hereof, means each School Board listed on Schedule “A” appended hereto which has executed this Licence on its own behalf;
- (w) **“Paying Licensee”** means, provided it is a Party:
  - (i) In respect of the Alberta Ministry and any of the School Boards under the control of the Alberta Ministry, the Alberta Minister;
  - (ii) In respect of the British Columbia Ministry and any of the School Boards under the control of the British Columbia Ministry, the British Columbia Minister;
  - (iii) In respect of the Manitoba Ministry and any of the Educational Institutions and School Boards under the authority of the Manitoba Ministry, the Manitoba Minister;
  - (iv) In respect of the New Brunswick Ministry, the New Brunswick Minister;
  - (v) In respect of the Newfoundland Ministry and any of the School Boards under the control of the Newfoundland Ministry, the Newfoundland Minister;
  - (vi) In respect of the N.W.T. Ministry and any of the School Boards under the control of the N.W.T. Ministry, the N.W.T. Minister;
  - (vii) In respect of the Nova Scotia Ministry and any of the School Boards under the control of the Nova Scotia Ministry, the Nova Scotia Minister;
  - (viii) In respect of the Nunavut Ministry and any of the School Boards under the control of the Nunavut Ministry, the Nunavut Minister;
  - (ix) In respect of the Prince Edward Island Ministry and any of the School Boards under the control of the Prince Edward Island Ministry, the Prince Edward Island Minister;
  - (x) In respect of the Saskatchewan Ministry and any of the School Boards under the control of the Saskatchewan Ministry, the Saskatchewan Minister;
  - (xi) In respect of the Yukon Ministry and any of the School Boards under the control of the Yukon Ministry, the Yukon Minister;
  - (xii) In respect of the Ontario School Boards, each such Ontario School Board;
- (x) **“Published Work”** means literary, dramatic, artistic and musical copyright works or parts of such copyright works, of which printed copies have been distributed to the public, including but not restricted to books, folios, magazines, newspapers, journals and other periodical publications;
- (y) **“Repertoire”** means those Published Works published in Canada by an Affiliate or published in or outside Canada by other Copyright Owners where an agreement between CANCOPY and another collective society or licensing body authorizes CANCOPY to represent such other Copyright Owners; and

- (z) **“School Board”** means any one of the school boards, school districts, divisional education councils, conseils scolaires or similar entities or organizations described or listed in Schedule “A” appended to this Agreement, or any successor or substituted entities or organizations resulting from a reorganization of such entities or organizations within any particular Province or Territory, provided that Schedule “A” may be amended with effect as of the commencement of each of the periods described in Articles 7.1(b) to (e) hereof by the delivery to CANCOPY by any of the Ministers, not later than thirty (30) days prior to the commencement of each of the periods referred to above, of an amended list of school boards under the authority of any of the Ministers or Party School Boards providing the revised list.

**2.2 Interpretative Rules for Ontario School Boards:** For the purpose of interpreting and applying this Licence (including, for greater certainty, Article 2.6) as between CANCOPY and any particular Ontario School Board, any rights, benefits, obligations, restrictions or other terms and conditions enjoyed by or imposed upon a Minister (other than those arising pursuant to Articles 8 and 15.3) shall be enjoyed by or imposed upon the particular Ontario School Board. The use of the word “Minister” in Articles 8 and 15.3 refers only to those entities defined as Ministers herein and does not include “Ontario School Boards”.

**2.3 Interpretative Rules for New Brunswick:** For the purpose of interpreting and applying this Licence (including, for greater certainty, Article 2.6) as between CANCOPY and the New Brunswick Minister, any rights, benefits, obligations, restrictions or other terms and conditions enjoyed by or imposed upon a School Board shall be enjoyed by or imposed upon the New Brunswick Minister.

**2.4 General Interpretive Rule:** The rights and obligations conferred and imposed upon Ministers, School Boards, Educational Institutions and Ontario School Board Associations under this Licence are only conferred or imposed upon such persons or entities as are Licensees (or, in the case of the Ontario School Board Associations, Parties).

**2.5 Interpretive Rule re Licensees:** An Educational Institution shall only be a Licensee in respect of its students who are counted as Full-time-equivalent Students.

**2.6 Governing Law:** The interpretation and application of this Licence as between CANCOPY and a particular Minister shall be governed by and construed in accordance with the laws specified in Schedule “D”.

**2.7 Schedules:** The following Schedules are incorporated into and form a part of this Agreement:

- (a) Schedule “A”: List of School Boards;
- (b) Schedule “B”: Exclusions List;
- (c) Schedule “C”: Addresses for Notice; and



- (d) Schedule “D”: Specific Interpretative Rules and Provisions for individual Ministers and Ontario School Boards.

2.8 **Headings:** Headings appearing in this Licence are for convenience of reference only, and shall not be referred to for the purpose of interpreting this Licence.

2.9 **Currency:** References in this Licence to currency are references to lawful money of Canada.

### **ARTICLE 3: TERM OF LICENCE**

3.1 **Date Licence Concluded:** This Licence shall be deemed to have been concluded as between CANCOPY and a particular Party as of the later of:

- (a) The 15th day of October, 1999; and
- (b) The date upon which the last of either CANCOPY or the particular Party actually executed this Licence,

provided that any intended Party that has not actually executed this Licence on or prior to the 1st day of October, 1999 may not thereafter become a Party to this Licence without the written consent of CANCOPY.

3.2 **Term of Licence:** The term of this Licence shall commence on the 1st day of September, 1999 and end on the 31st day of August, 2004.<sup>1</sup>

3.3 **Provisions to Survive Termination:** The following provisions of this Licence shall survive the expiration or earlier termination of this Licence:

- (a) The restrictions imposed upon CANCOPY pursuant to Article 8 with respect to the use of information acquired by CANCOPY as a result of sampling activity;
- (b) CANCOPY’s obligation to indemnify Licensees and related provisions of Article 9 in respect of Copies made prior to termination; and
- (c) Any obligation owed by one Party to another (including, without limitation, payment of pro-rated fees or partial refunds of fees already paid) resulting from a termination of this Licence as contemplated in Article 16.

### **ARTICLE 4: GRANTING OF LICENCE**

4.1 **Granting of Licence:** CANCOPY hereby grants to the Licensees and to persons acting under a Licensee’s authority a licence to make and distribute Copies (including Alternate Format Copies) of Published Works in the Repertoire, for Authorized Purposes and subject to the terms and conditions of this Licence.

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<sup>1</sup> This licence expired on August 31, 2004 but has been extended by agreement between the parties until the Copyright Board of Canada sets a tariff.

4.2 **No Restrictions:** For greater certainty, this Licence shall not in any way restrict, hinder or prohibit a Licensee from engaging in any activity which may lawfully be done by the Licensee without a licence or other authorization from CANCOPY or any other party.

4.3 **Categories of Work to which Licence does not Apply:** This Licence does not apply to any of the following categories of work:

- (a) workcards, assignment sheets, tests and examination papers, and material intended for one-time use such as workbooks and activity books;
- (b) all works published by Her Majesty in Right of Canada or any Province or any Territory other than the Province of Quebec or works for which Her Majesty the Queen in Right of Canada or any Province or Territory other than the Province of Quebec holds copyright;
- (c) Published Works on the Exclusions List and Published Works published outside countries listed in the Exclusions List;
- (d) originals of artistic works including photographs or prints;
- (e) photographic negatives or other transparencies (positives), mounted or unmounted;
- (f) musical works in print form;
- (g) instruction manuals and teachers' guides;
- (h) unpublished works; and
- (i) publications that contain a prominent notice expressly prohibiting Copying under a licence from a collective society or licensing body.

Notwithstanding the excluded categories listed above, a Published Work is covered by this Licence if a notice on the copyright page or elsewhere in the publication itself authorizes Copying under a licence with CANCOPY or from a collective society or licensing body which has an agreement with CANCOPY.

#### 4.4 **Exclusions List**

- (a) The list of Published Works contained in Schedule "B" and Published Works published outside the countries listed in the preamble to Schedule "B" are excluded from this Licence.
- (b) CANCOPY may make additions or deletions to the Exclusions List no more than once within each twelve-month period commencing September 1st of each year during the term of this Licence by delivering to each Paying Licensee a revised Exclusions List specifying such additions or deletions, provided that any such revisions to the Exclusions List may only take effect as of the 1st day of September of each year during the term of this Licence and notice of such proposed revisions shall be delivered to the Paying Licensees not less than sixty (60) days prior to such date.

- (c) Each Minister shall deliver to each School Board and Educational Institution under his or her authority a copy of the Exclusions List and any revised Exclusions List within sixty (60) days of receipt from CANCOPY.
- (d) CANCOPY shall deliver to the Ministers, simultaneously with the execution and delivery of this Licence, a list of all collective societies or licensing bodies with which CANCOPY has concluded agreements, and shall notify the Ministers of any revisions to the list not later than thirty (30) days following the conclusion of any new agreements or the expiration of any existing agreements with such collective societies or licensing bodies.

## **ARTICLE 5: TERMS AND CONDITIONS OF COPYING**

**5.1 Permitted Copying:** This Agreement authorizes Copying of either ten percent (10%) of a Published Work, or any of the following parts of a Published Work, whichever is greater:

- (a) an entire single short story, play, essay, article or poem from a book or periodical issue (including a set of conference proceedings) containing other works;
- (b) an entire newspaper article or page;
- (c) an entire entry from an encyclopaedia, dictionary, annotated bibliography or similar reference work;
- (d) an entire reproduction of an artistic work (including drawings, paintings, prints, photographs and works of sculpture, architecture or artistic craftsmanship) from a book or periodical issue containing other works; and
- (e) an entire chapter which is twenty percent (20%) or less of a book.

**5.2 Copying Rare or Fragile Materials for Preservation:** Subject to Article 5.5, the making of Copies in excess of Copying permitted by this Licence may be made by a Library to prevent deterioration of a rare or fragile Published Work in its holdings.

**5.3 Copying Damaged or Missing Pages:** Subject to Article 5.5, the making of Copies of Published Works in excess of the Copying permitted by this Licence may be made by a Library to replace any damaged or missing pages in a Published Work in its holdings.

**5.4 Copying Out-of-Print Works:** Subject to Article 5.5, a single Copy of an entire missing or damaged out-of-print Published Work may be made by a Library to replace a publication of such a work in its holdings.

**5.5 Obtaining Written Permission:**

- (a) Prior to the making of Copies authorized by Articles 5.2, 5.3, 5.4 and 5.7, a Licensee shall first obtain written confirmation of permission from CANCOPY.
- (b) Such permission shall be granted by CANCOPY at no cost on confirmation that the Published Work in question is out-of-print in all available editions.

- (c) The Licensee will be deemed to have complied with Paragraph 5.5(a) if the Licensee requests permission from CANCOPY in the manner provided for giving notice herein and CANCOPY does not respond within ten (10) business days of receipt of the request. The time of receipt of any such request shall be calculated in accordance with Article 14.2.
- (d) Where permission is denied, CANCOPY will use reasonable efforts to provide to the Licensee print status information including the source or sources from which the publication may be obtained.

**5.6 Clearance Service for Copying Beyond the Limits:** CANCOPY will use reasonable efforts to clear requests to Copy Published Works in excess of the terms and conditions set out in this Licence. Such clearances may be subject to payment of royalties and to a different tariff than for Copies permitted by this Licence, as required by the Copyright Owner or CANCOPY.

**5.7 Work Cards, Assignment Sheets and Tests:** Notwithstanding Article 4.3(a) and subject to Article 5.5, this Licence authorizes Copying of up to a maximum of ten percent (10%) over time of work cards, assignment sheets and tests and examination papers by a Licensee, if such Copies are made to replace originals purchased by the person making the Copies, the portion Copied is not intended for one-time use and is no longer commercially available.

**5.8 Access to Clearance Service for Print Music:** Licensees shall have access to any music clearance service offered by CANCOPY during the term of this Licence. It is understood that CANCOPY's ability to clear requests to Copy musical works in print form may be limited and may change or cease at any time. It is also understood that such clearances will be subject to additional payment of royalties, provided that any such royalties shall be calculated with reference to the prevailing standard royalty rates charged by CANCOPY for such clearances.

**5.9 Special Restriction on use of Artistic Works of Living Artists:** This Licence does not authorize Copying of any published artistic work by a living artist for mounting as a slide without accompanying material (in addition to captions) from other artistic or literary works, subject to the following: This Licence does authorize Copying of a published artistic work by a living artist for mounting as slide without any accompanying material if a Licensee has confirmed that such material or slide is not available for purchase.

**5.10 General Prohibitions:**

- (a) There shall be no systematic, cumulative Copying from the same Published Work beyond the limits set out in Article 5.1 for one course of study or program in one academic year or over time for retention in files maintained by a Library or any individual making Copies under the authority of a Licensee under this Licence.
- (b) No Copies under this Licence shall be made for or used in a Course Pack.
- (c) This Licence does not permit unrestricted Copying. Copying of a Published Work beyond the terms and conditions of this Licence, unless permitted by the *Copyright Act*, requires the specific authorization of CANCOPY or the Copyright Owner.

- (d) This Licence does not include the Published Works described or listed on the Exclusions List.
- (e) No Copies made under this Licence may be sold, provided that:
  - (i) for the purposes of this Licence, a sale of Copies shall not include a transaction whereby a Licensee recovers an amount not exceeding the direct cost of producing and distributing Copies; and
  - (ii) nothing herein shall otherwise restrict a Licensee from recovering the direct cost of producing and distributing Copies.

5.11 **Notice on Copies:** The Licensees shall notify their respective employees and agents that, in accordance with good bibliographic practice, Copies of Published Works shall include, on at least one page, a credit to the author, artist or illustrator, and to the source.

5.12 **Material for Copying:** All Copying shall be on to sheets of paper except for the making of a single Copy:

- (a) on a sheet of acetate or similar transparent material for the purpose of viewing by means of an overhead projector or slide viewer;
- (b) as a photograph mounted as a slide, subject to the restrictions on slides in this Licence; or
- (c) on microform for research and archival purposes.

5.13 **Multiple Copies:** Except where otherwise stated, this Licence authorizes the making of:

- (a) the number of Copies which is sufficient to permit each student to have one Copy only for his or her personal study and each teacher to have two Copies;
- (b) the number of Copies required for administrative purposes, including communication of information to parents and to the community; and
- (c) a reasonable number of Copies for reference in or loan by Libraries.

5.14 **Calculation of Limits:** For greater certainty, the limits to permitted Copying imposed by this Licence shall not be applied collectively, but rather shall be determined with reference to each person making Copies under the authority of a Licensee.

5.15 **Electronic Files:** Input or output of Published Works (without adaptation) into or from an electronic file by computer or wordprocessor shall be permitted under this Licence but only in amounts authorized for Copying and according to the conditions contained in Article 5, and only for the purposes of producing paper Copies. This Licence does not authorize dissemination of any such electronic file in any electronic form in any way whatsoever, including on disk or over a computer network. All such files shall be erased from memory or the storage device promptly after all of the paper Copies required have been produced and in any event no later than the expiry of this Licence, unless otherwise agreed by CANCOPY and the relevant Minister prior to such expiry.

## **ARTICLE 6: PRODUCTION OF ALTERNATE FORMAT COPIES**

### **6.1 Authorization:**

- (a) This Licence authorizes production of Alternate Format Copies of all or any part of Published Works within the Repertoire which are published in Canada.
- (b) Works described or listed on the Exclusions List are not covered by this Licence.
- (c) For the purposes of this Article 6 only, this authorization is extended to include materials listed in Article 4.3 (a).

**6.2 Restrictions on Use:** The use of Alternate Format Copies shall be restricted to persons who by reason of a sensory, physical or neural handicap cannot effectively use print materials and persons involved in the educational use of any such Alternate Format Copies.

**6.3 Alterations:** Alternate Format Copies of all or part of a Published Work shall contain no alterations from the portion copied.

**6.4 Notice on Alternate Format Copies:** The Licensees shall notify employees and agents engaged in the production of Alternate Format Copies under this Licence that, in accordance with good bibliographic practice, Alternate Format Copies shall include a credit to the author, artist or illustrator, and to the source.

## **ARTICLE 7: LICENSING FEES**

**7.1 Licensing Fees:** In consideration of the rights granted to the Licensees pursuant to this Licence, each Paying Licensee shall pay the following fees to CANCOPY:

- (a) In respect of the period commencing on the 1st day of September, 1999 and ending on the 31st day of August, 2000, an amount equal to the product obtained when Two Dollars Ten Cents (\$2.10) is multiplied by the aggregate number of the Paying Licensee's Full-time-equivalent Students;
- (b) In respect of the period commencing on the 1st day of September, 2000 and ending on the 31st day of August, 2001, an amount equal to the product obtained when Two Dollars Fifteen Cents (\$2.15) is multiplied by the aggregate number of the Paying Licensee's Full-time-equivalent Students;
- (c) In respect of the period commencing on the 1st day of September, 2001 and ending on the 31st day of August, 2002, an amount equal to the product obtained when Two Dollars Twenty Cents (\$2.20) is multiplied by the aggregate number of the Paying Licensee's Full-time-equivalent Students;
- (d) In respect of the period commencing on the 1st day of September, 2002 and ending on the 31st day of August, 2003, an amount equal to the product obtained when the aggregate number of the Paying Licensee's Full-time-equivalent Students is multiplied by the sum of:
  - (i) Two Dollars Twenty Cents (\$2.20); and

- (ii) The product obtained when Two Dollars Twenty Cents (\$2.20) is multiplied by the average monthly percentage increase of the Index as calculated from August, 2001 to July, 2002, or three percent (3%), whichever is lesser; and
- (e) In respect of the period commencing on the 1st day of September, 2003 and ending on the 31st day of August, 2004, an amount equal to the product obtained when the aggregate number of the Paying Licensee's Full-time-equivalent Students is multiplied by the sum of:
  - (i) The fee payable per Full-time-equivalent Student pursuant to Article 7.1(d); and
  - (ii) The product obtained when the fee payable pursuant to Article 7.1(d) is multiplied by the average monthly percentage increase of the Index as calculated from August, 2002 to July, 2003, or three percent (3%), whichever is lesser.

## **7.2 Calculation of Full-time equivalent Students:**

- (a) Licensing fees in respect of each period described in Articles 7.1(a) to (d) shall be calculated with reference to Full-time-equivalent Student statistics as of the FTE Determination Date occurring during the immediately preceding twelve month period, and shall be payable in accordance with Article 7.3; and
- (b) Licensing fees in respect of the period described in Article 7.1(e) shall be calculated with reference to Full-time-equivalent Student statistics as of the FTE Determination Date occurring during that period, and shall be payable in accordance with Article 7.3.

## **7.3 Payment of Licensing Fees:**

- (a) Licensing fees payable by each Paying Licensee in respect of each period described in Articles 7.1(a) to (d) shall be payable in two equal instalments as follows:
  - (i) the first instalment shall be paid on or before the later of:
    - (A) October 31 occurring in the particular period; and
    - (B) the 60th day following receipt by the Paying Licensee of an invoice in respect of such payment as required pursuant to Article 7.6; and
  - (ii) the second instalment shall be paid on or before the later of:
    - (A) April 30 occurring in the particular period; and
    - (B) the 60<sup>th</sup> day following receipt by the Paying Licensee of an invoice in respect of such payment as required pursuant to Article 7.6.
- (b) Licensing fees payable by each Paying Licensee in respect of the period described in Article 7.1(e) shall be payable in two instalments as follows:
  - (i) the first instalment, which shall be equal to fifty percent (50%) of the product obtained when the rate per Full-time-equivalent Student in respect of the period described in Article 7.1(e) is multiplied by the number of Full-time-equivalent Students as of the FTE Determination Date occurring in the immediately preceding twelve month period, shall be paid on or before the later of:
    - (A) October 31, 2003; and
    - (B) the 60th day following receipt by the Paying Licensee of an invoice in respect of such payment as required pursuant to Article 7.6; and
  - (ii) the second instalment, which shall be equal to the amount, if any, by which the amount payable pursuant to Article 7.1 (e) exceeds the amount paid pursuant to Article 7.3 (b) (i), shall be paid on or before the later of:



- (A) May 31, 2004; and
- (B) the 60th day following receipt by the Paying Licensee of an invoice in respect of such payment as required pursuant to Article 7.6.

**7.4 Provision of Annual Full-time-equivalent Student Statistics:** Each Paying Licensee shall, in respect of each of the periods described in Articles 7.1(a) to (e), deliver to CANCOPY a written notice specifying the number of Full-time-equivalent Students for such Paying Licensee as follows:

- (a) In respect of the period described in Article 7.1(a), the number of Full-time-equivalent Students calculated in accordance with Article 7.2 by the earlier of fifteen (15) days following its execution of this Licence and October 1, 1999;
- (b) In respect of the periods described in Articles 7.1(b) to (d), the number of Full-time-equivalent Students calculated in accordance with Article 7.2 for each such period by no later than August 1<sup>st</sup> of 2000, 2001 and 2002, respectively; and
- (c) In respect of the period described in Article 7.1(e),
  - (i) The number of Full-time-equivalent Students as of the FTE Determination Date in the immediately preceding twelve month period by August 1, 2003; and
  - (ii) The number of Full-time-equivalent Students calculated in accordance with Article 7.2(b) by no later than March 1, 2004.

**7.5 Failure to Comply with Article 7.4:** In the event that a Paying Licensee fails to provide annual Full-time-equivalent Student numbers for any period to CANCOPY on or before the dates provided for the delivery of such numbers in accordance with Article 7.4:

- (a) the number of days following receipt of an invoice from CANCOPY within which the Paying Licensee must remit payment in accordance with Article 7.3(a) or (b), as the case may be, shall be reduced accordingly; and
- (b) If such numbers are not delivered to CANCOPY on or before the dates set out in Articles 7.3(a)(i)(A), (a)(ii)(A), (b)(k)(A), and (b)(ii)(A), such instalments shall nevertheless become due and payable on such dates. CANCOPY shall be entitled to invoice and receive payment based on the most recent Full-time-equivalent Student numbers which have been provided by the Paying Licensee to CANCOPY. In the event that the Paying Licensee's Full-time-equivalent Students calculated in accordance with Article 7.4 are greater than the amount for which a payment was made in accordance with this Article 7.5(b), CANCOPY shall be entitled to the difference plus interest on such difference as provided for in Article 7.8. The Paying Licensee shall be entitled to require that its next instalment payment subsequently be adjusted with reference to the applicable Full-time-equivalent Student numbers, provided it has supplied such numbers to CANCOPY within the prescribed time frame. In the case of the instalment

referred to in Article 7.3(b)(ii), such an adjustment shall be made if the Paying Licensee has supplied such numbers not later than August 31, 2004.

**7.6 Invoicing:** CANCOPY shall issue to each of the Paying Licensees, in respect of each period described in Articles 7.1(a) to (e), invoices setting out the amounts which are payable by the Paying Licensee on each of the two instalment dates specified in Article 7.3 and describing the manner in which such Licensing Fees were calculated, and such invoices shall, subject to Article 7.5, be delivered to each of the Paying Licensees not later than sixty (60) days prior to the date specified in respect of such payment pursuant to Articles 7.3(a) or (b), as the case may be.

**7.7 Taxes:** The Paying Licensee shall pay to CANCOPY as may be required by law any sums in respect of any applicable taxes levied on the Paying Licensee by any government that CANCOPY is required to collect in respect of this Licence, calculated at the rate of taxation then in force. Additional specific provisions relating to taxation as may be applicable between CANCOPY and any particular Party are set out in Schedule "D".

**7.8 Interest:** The Paying Licensee shall be liable to pay, without demand from CANCOPY, simple interest at the Bank Rate plus one and one-quarter percent (1¼%) per annum on any amount which becomes overdue from the day such amount became overdue until the day prior to the date of payment, inclusive; however, interest will not be payable unless the amount outstanding has been unpaid for more than fifteen (15) days following the due date.

**7.9 Appropriations:** The application of this Licence as between CANCOPY and any other Party shall be subject to such provisions concerning legislative appropriations as may be set out in Schedule "D". A Minister shall notify CANCOPY forthwith and provide particulars upon becoming aware that the application of this Licence may be affected by the operation of legislative appropriations as more particularly set out in Schedule "D".

## **ARTICLE 8: BIBLIOGRAPHIC SAMPLING**

**8.1 Sampling Protocol:** Subject to Article 8.2, annual bibliographic sampling will be conducted in accordance with this Article 8 to assist CANCOPY in allocating remuneration to its Affiliates, provided that:

- (a) The results of any sampling conducted pursuant to this Article 8 shall not be used by any Party or Licensee to estimate the amount or volume of Copying occurring pursuant to this Licence, and for greater certainty (but without limitation) no Party or Licensee shall refer to or otherwise use the results of any such sampling activity in any proceeding before the Copyright Board or any similar tribunal or agency unless it is compelled to do so in order to provide evidence to such Board, tribunal or agency in response to questions or interrogatories, and no such questions or interrogatories shall be posed by a Party or Licensee; and
- (b) None of the information obtained in such sampling may be used directly or indirectly in or in relation to any action or claim for copyright infringement or for breach of any other right, either during or after the term of this Licence.

**8.2 Agreement to a Sampling Protocol:** Sampling will be conducted only in accordance with a protocol that has been agreed to between CANCOPY and the Minister that has jurisdiction over the Educational Institutions or other entities called upon to participate in sampling, and (in the case of Ontario) between CANCOPY and the Ontario School Board Associations. For greater certainty, Party School Boards located in Nova Scotia agree to be bound by any such sampling protocol agreed to pursuant to this Licence 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 pursuant to this Licence on their behalf by the Ontario School Board Associations.

**8.3 National Sampling:** It is contemplated that sampling protocols agreed upon under Article 8.2 may include agreements to participate in or accept the results of national sampling and may include an agreement not to sample.

**8.4 Design and Conduct of Samples:** Sampling may be designed and conducted by CANCOPY in accordance with the protocols which are entered into under this Article 8.

**8.5 Co-operation with Sampling:** The Ministers, the Ontario School Board Associations and the School Boards shall use reasonable efforts to ensure that any Educational Institution, School Board or other entity permitted to Copy under this Licence selected for sampling cooperates fully with CANCOPY in furnishing information and in using sampling methods pursuant to any agreed protocol.

## **ARTICLE 9: INDEMNITY**

9.1 CANCOPY will indemnify and save harmless the Licensees, all employees and agents of the Licensees and all persons permitted by this Licence to make Copies of any Published Work from and against all Claims, provided that:

- (a) the Copying has been for Authorized Purposes, done during this Licence and within the terms and conditions of this Licence; and
- (b) the Licensee gives notice of any Claim to CANCOPY as promptly as reasonably possible after such Licensee becomes aware of the Claim,

and further provided that CANCOPY shall not be relieved of its obligation to indemnify pursuant to this Article 9.1:

- (c) by reason of a failure of a Licensee to give notice in accordance with Article 9.1(b) unless such failure actually prejudices CANCOPY's ability to defend the Claim; and
- (d) merely by reason of the fact that the Claim is in respect of Copies of Published Works which are not in the Repertoire, if such Published Works do not appear on the Exclusions List.

Notwithstanding Article 9.1(c), if the Licensee fails to give notice in accordance with Article 9.1(b), the Licensee shall be solely responsible for any and all costs associated with putting

CANCOPY and the Licensee in the position they would have been in had the Licensee complied with Article 9.1(b).

**9.2 Indemnity for Alternate Format Copies:** CANCOPY will indemnify and save harmless the Licensees, all employees and agents of the Licensees and all persons permitted by this Licence to make Alternate Format Copies of any Published Works from and against all Claims, provided that:

- (a) the Copying has been for Authorized Purposes, done during this Licence and within the terms and conditions of this Licence including those applicable to Alternate Format Copies set out in Articles 4 and 6; and
- (b) the Licensee gives notice of any Claim to CANCOPY as promptly as reasonably possible after such Licensee becomes aware of the Claim,

and further provided that CANCOPY shall not be relieved of its obligation to indemnify pursuant to this Article 9.2:

- (c) by reason of a failure of the Licensee to give notice in accordance with Article 9.2(b) unless such failure actually prejudices CANCOPY's ability to defend the Claim; and
- (d) merely by reason of the fact that the Claim is in respect of Copies of Published Works which are not in the Repertoire, if such Published Works do not appear on the Exclusions List.

Notwithstanding Article 9.2(c), if the Licensee fails to give notice in accordance with Article 9.2(b), the Licensee shall be solely responsible for any and all costs associated with putting CANCOPY and the Licensee in the position they would have been in had the Licensee complied with Article 9.1(b).

**9.3 Defensive Action:** CANCOPY shall defend and/or settle, at its own expense, any Claim covered by the indemnity in Articles 9.1 and 9.2 and shall accordingly conduct negotiations relating to the settlement of the Claim and shall conduct the defence of any legal action relating to the Claim. However, no settlement of any Claim shall be entered into without the permission of both the relevant Minister and the Licensee against whom the Claim has been made, which permissions shall not unreasonably be withheld or delayed. CANCOPY shall keep the Minister and the Licensee informed and shall consult with them, in advance where possible, concerning all proceedings and negotiations relating to any Claim. The Minister and the Licensee, or either of them, shall have the right to intervene in or assume control of any action or negotiation relating to a Claim if they believe, acting reasonably, that the defence or negotiations are not being handled in their best interests. Notwithstanding Articles 9.1 and 9.2, any such intervention or assumption of control shall be at the expense of the Minister or the Licensee (as the case may be), but CANCOPY shall remain, subject to Article 9.4, responsible for any damages awarded or settlement agreed to by CANCOPY.

**9.4 Refusal to Settle:** If either of the Minister or the Licensee (or both of them) declines or fails to permit a settlement, and damages are subsequently awarded which are in excess of such

proposed settlement, the Minister or the Licensee (or both the Minister and the Licensee jointly, if both have declined or failed to permit the settlement) shall be responsible for all losses, costs and damages subsequently incurred or suffered by CANCOPY in excess of the amount of such proposed settlement.

**9.5 Reasonable Co-operation:** The Minister and the Licensee shall co-operate in the defence of any Claim (but not including financial contribution) in such ways as CANCOPY may reasonably require.

#### **ARTICLE 10: USER COMPLIANCE**

**10.1 Informing Users about Copying:** All Ministers and Party School Boards shall use reasonable efforts to inform Educational Institutions and all those entitled to make or use Copies under this Licence of the terms and conditions of Copying under this Licence and of their obligation to comply with them.

**10.2 Informing Users about the Indemnity:** All Licensees shall require Educational Institutions under their authority to notify them of any Claim made against them as soon as reasonably possible after they become aware of such Claim.

**10.3 Assisting CANCOPY:** All Licensees shall cooperate with and provide such reasonable assistance as CANCOPY may request for the purpose of investigating any allegations of infringement of the terms of this Licence, provided that any such obligation on the part of the Licensees shall be dependent upon CANCOPY providing to the relevant Minister and School Board evidence to the reasonable satisfaction of the Minister that the Licence is being infringed.

**10.4 Review of Information Material:** When a Licensee believes it appropriate, the Licensee may submit to CANCOPY, for its review and comment, any informational material concerning this Licence that it intends to circulate.

**10.5 Posting of Notice beside Photocopiers:** All Licensees shall use reasonable efforts to ensure that a notice is affixed to, or within the immediate vicinity of, every Copying machine in a place and manner that is readily visible and legible to persons using such a machine, containing information about the terms and conditions of Copying under this Licence.

**10.6 Obligations in Article 10 are ongoing:** The parties agree that the obligations described in Article 10 hereof are ongoing obligations.

#### **ARTICLE 11: REPRESENTATIONS AND WARRANTIES**

**11.1 Representations and Warranties:** CANCOPY represents and warrants to the Licensees that it has the authority to grant the rights provided for in this Licence and to fulfil or cause to be fulfilled all of its obligations arising pursuant to this Licence.

## **ARTICLE 12: ASSIGNMENT AND SUB-CONTRACT**

12.1 **No Assignment:** Neither this Licence nor any interest herein may be assigned by CANCOPY without the consent of the Licensees nor by any of the Licensees without the consent of CANCOPY, all consents to be in writing.

12.2 **Sub-Contracting:** The Licensees may subcontract the rights granted to them pursuant to this License to a third party, but only for purposes of making Copies authorized pursuant to this Licence for such Licensee and not for the purpose of offering for sale or distributing such Copies by the third party to any person.

## **ARTICLE 13: AMENDMENT OF LICENCE**

13.1 **Amendments:** Subject only to:

- (a) Articles 2.1(z), 4.4 and 14.1 hereof; and
- (b) any list of Educational Institutions which may be amended from time to time in accordance with Schedule "D",

this Licence may be amended only by an agreement signed by or on behalf of all of the Parties hereto.

## **ARTICLE 14: NOTICES**

14.1 **Address for Notice:** Any notice, report or other communication to be given by any Party to another Party pursuant to this Licence shall be in writing and shall be sent or delivered, in accordance with Article 14.2 hereof, to the addressee at the address and, if specified, to the attention of the officer of the addressee as set out in Schedule "C" attached hereto. Should any Party wish to amend its address for notice or the name or designation of any person to whom such notice is to be addressed, it shall do so by notice given, in accordance with Article 14.2, as follows:

- (a) in the case of a change of address for a notice by CANCOPY, to each of the other Parties; and
- (b) in the case of a change of address for notice of any Party other than CANCOPY, to CANCOPY and to each of the Licensees described in Article 15.3(a).

14.2 **Delivery of Notice:** Any notice or communication delivered pursuant to this Licence shall be deemed to have been given and received:

- (a) if delivered personally or by courier, upon receipt;
- (b) if mailed, postage prepaid, registered or certified mail, on the fifth day following the mailing thereof; and
- (c) if delivered by facsimile transmission, on the first business day following the day of transmission.

## **ARTICLE 15: DISPUTES**

15.1 **Negotiated Resolution:** The Parties shall endeavour to resolve any disputes between them regarding the interpretation of this Licence through discussion and may agree to resolve such disputes by arbitration. It is agreed that no Party shall commence an application to any court or tribunal having jurisdiction until it has endeavoured to discuss with the other Party or Parties with whom there is a dispute whether they can agree to submit the dispute to arbitration as set forth in Article 15.2, and has advised all Parties involved in the dispute in writing, at least ten (10) business days prior to the commencement of proceedings before any such court or tribunal, that it is unwilling to proceed by arbitration.

15.2 **Arbitration:** All matters in dispute under this Licence may, with the concurrence of the Party concerned and CANCOPY, be submitted to arbitration. One arbitrator shall be chosen by CANCOPY and one arbitrator shall be chosen by the other Party, and those arbitrators shall select a third arbitrator, and failing agreement on the third arbitrator or agreement on procedure, any such arbitration shall be in accordance with the rules of arbitration specified in respect of the particular other Party in Schedule “D”. In the event that a dispute arises as between CANCOPY and more than one other Party in respect of the same or substantially the same issue or issues, any resulting arbitration shall be conducted between CANCOPY and all such other Parties in accordance with the rules of arbitration specified in Schedule “D” for the first such other Party to give notice to CANCOPY of its willingness to proceed to arbitration in respect of the dispute. The majority decision of the arbitrators shall be final and binding upon the parties.

15.3 **Parties to Dispute Resolution:** In the event of a dispute which is subject to arbitration or other proceedings (referred to in this Article 15.3 as a “proceeding”) as contemplated in Articles 15.1 or 15.2, the Party commencing the proceeding shall give notice of the intended proceeding as follows:

- (a) in the case of a proceeding commenced by CANCOPY, notice shall be given by CANCOPY to each of the Ministers and the Ontario School Board Associations; and
- (b) in the case of a proceeding commenced by a Party other than CANCOPY, notice shall be given by that Party to CANCOPY and to each of the other Parties described in Article 15.3(a).

Each of the Parties to whom notice is given shall have a period of thirty (30) days within which to give notice to the Party commencing the proceeding (and, in the case of a proceeding commenced by a Party other than CANCOPY, to CANCOPY) that it intends to participate in the proceeding (provided, for greater certainty, that CANCOPY and the Party with whom the dispute arose shall be entitled to participate in the proceeding without the delivery of such a notice). Any Party which gives notice of its intention to participate in the proceeding shall become a party to, and have standing to participate in, such proceeding. The decision of the arbitrator, court or other tribunal with respect to the dispute shall be binding upon, and shall govern the interpretation of this Licence with respect to, all of the Parties, whether or not such Party elects

to participate in the proceeding, subject only to any right of appeal which may exist with respect to the proceeding.

#### **ARTICLE 16: RIGHTS OF RENEGOTIATION AND TERMINATION FOR DEFAULT**

**16.1 Termination for Default:** Should a Party commit any breach of its obligations hereunder and remain in breach thirty (30) days after receiving notice to rectify the breach, the party giving notice may terminate this Licence forthwith by notice of termination delivered to the party in breach, provided that:

- (a) there is no related dispute which the Parties have agreed in writing to submit to arbitration; and
- (b) the Party wishing to terminate is not in breach of its obligations hereunder.

If any such party in breach is a Licensee, termination will only be with respect to the Licence's coverage of that particular Licensee.

For the purpose of this Article 16.1, a breach of terms and conditions of Copying by an Educational Institution will be deemed not to be a breach of this Licence if the relevant Minister and the relevant School Board have complied with the Licence.

**16.2 Termination by Minister:** If a Minister, acting reasonably, is of the opinion that an amendment to the Exclusions Lists made by CANCOPY in accordance with Article 4.4 hereof has the effect of substantially reducing the benefits granted to the Licensees under this Licence, the Minister may, by notice in writing delivered to CANCOPY, terminate this Licence insofar as it applies to School Boards and Educational Institutions under the jurisdiction of the Minister by thirty (30) days' written notice to CANCOPY without prejudice to CANCOPY's right to receive any unpaid amounts for copying done prior to termination, provided that any such termination by a Minister shall not in any way affect the continuing application of this Licence as between CANCOPY and the other Licensees.

**16.3 Renegotiation:** If the Parliament of Canada passes new legislation which in the opinion of either CANCOPY or the other Parties substantially changes the legal conditions relevant to this Licence, either CANCOPY or all of the other Parties collectively may give the other notice of intent to renegotiate this Licence. In the event that CANCOPY and the other Parties are unable to agree on amendments to this Licence, either will have the right to terminate this Licence by giving the other notice of termination, which shall take effect thirty (30) days following such notice or two (2) months following the giving of the notice of intent, whichever is later.

**16.4 Pro-Rated Fees:** In the event that this Licence is terminated insofar as it applies to a particular Paying Licensee, the Paying Licensee shall be required to pay a fraction only of the licence fee for the current term and shall not be required to pay for any subsequent term. The fraction shall have as its denominator the number of days in the current term and the numerator of such fraction shall be the number of days that have expired in the current term as at the date of termination. Upon termination CANCOPY shall immediately repay to the Paying Licensee any



overpayment or the Paying Licensee shall pay to CANCOPY any shortfall as the case may require.

**ARTICLE 17: MISCELLANEOUS**

**17.1 Severability:**

- (a) Should any provision of this Licence, in whole or in part, be or become invalid, illegal or not capable of enforcement or performance, such provision (or portion thereof, as the case may be) shall be disregarded for the purpose of interpreting and applying the remainder of this Licence, and validity or legality of the remaining provisions of this Licence shall not be thereby affected.
- (b) The effectiveness, validity and legality of this Licence as between CANCOPY and any particular Party is not affected by the failure of any other intended Party to this Licence to execute this Licence as contemplated herein.

**17.2 Counterparts:** This Agreement may be executed in one or more counterparts, and the execution of such counterparts by all Parties hereto shall constitute a binding agreement amongst all of the Parties.

**17.3 Time of the Essence:** Time will be of the essence of this Licence.

**IN WITNESS WHEREOF** the Parties listed below and in Schedule “A” have executed this Licence, which comes into effect as of the 1st day of September, 1999.

<p>_____</p> <p>Date:</p>	<p><b>CANADIAN COPYRIGHT LICENSING AGENCY</b></p> <p><b>Per:</b></p> <p>_____</p> <p>Title _____</p> <p>_____</p> <p>Title _____</p>
<p>_____</p> <p>Date:</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA as represented by the Minister of Learning</b></p> <p>_____</p>
<p>_____</p> <p>Date:</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Education</b></p> <p>_____</p>
<p>_____</p> <p>Date:</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA as represented by the Minister of Education and Training</b></p> <p>_____</p>
	<p><b>HER MAJESTY THE QUEEN IN</b></p>

<p>_____</p> <p>Date:</p>	<p><b>RIGHT OF THE PROVINCE OF NEW BRUNSWICK as represented by the Minister of Education</b></p> <p>_____</p>
<p>_____</p> <p>Date:</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND as represented by the Minister of Education</b></p> <p>_____</p>
<p>_____</p> <p>Date:</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NORTHWEST TERRITORIES as represented by the Minister of Education, Culture and Employment</b></p> <p>_____</p>
<p>_____</p> <p>Date:</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA as represented by the Minister of Education</b></p> <p>_____</p>

<p>_____</p> <p>Date:</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE TERRITORY OF NUNAVUT as represented by the Minister of Education</b></p> <p>_____</p>
<p>_____</p> <p>Date:</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND as represented by the Minister of Education</b></p> <p>_____</p>
<p>_____</p> <p>Date:</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN as represented by the Minister of Education</b></p> <p>_____</p>
<p>_____</p> <p>Date:</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF YUKON as represented by the Minister of Education</b></p> <p>_____</p>

<hr/> Date:	<b>THE ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION</b> <hr/>
<hr/> Date:	<b>THE ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION</b> <hr/>
<hr/> Date:	<b>L'ASSOCIATION DES CONSEILS D'EDUCATION PUBLIQUE DE L'ONTARIO</b> <hr/>
<hr/> Date:	<b>L'ASSOCIATION FRANCO- ONTARIENNE DES CONSEILS SCOLAIRES CATHOLIQUES</b> <hr/>