



MASTER AGREEMENT

|                          |  |                             |                |
|--------------------------|--|-----------------------------|----------------|
| <b>Institution Name:</b> | <b>University of California, San Diego</b>   | <b>Institution Contact:</b> | [Text deleted] |
| <b>Address:</b>          | CARS E-Resources, UC San Diego Library<br>9500 Gilman Dr. 0175A<br>La Jolla, CA 92093-0175 | <b>Phone:</b>               | [Text deleted] |
|                          |  | <b>Email:</b>               | [Text deleted] |

This Master Agreement is made and entered into as of the Effective Date set forth below by and between Kanopy INC, a Delaware limited liability company with a place of business [Text deleted] ("Kanopy"), and the institution identified above ("Institution").

Overview

Kanopy streams and makes available digital video content, including associated audio, graphics, text, images and other data and content, to universities, colleges, schools, public libraries, corporations and other institutions for access and use pursuant to applicable access and license terms. As permitted by an order between Kanopy and an institution, Kanopy may also host and stream digital video content uploaded by the institution where such institution holds all necessary rights and permissions to enable Kanopy to host and stream such content. Kanopy streams and makes digital video content available through various platforms, including its website at www.kanopy.com, the Kanopy iOS and Android mobile apps, the Kanopy channel on Roku, and other modes of access that are available now or may become available in the future.

Structure of Agreement and Order of Precedence

Kanopy and Institution may enter into one or more order forms under this Agreement (as defined below) for access to and use of digital content hosted or streamed by Kanopy. As appropriate, each order form will specify the title(s), product(s), fees, period or term of access, and any special usage rights and/or restrictions and other terms relevant to the order. Each such order form will be governed by the terms and conditions of this Agreement.

This Master Agreement consists of: (a) the attached Terms and Conditions; (b) any order forms entered into hereunder between Kanopy and Institution; and (c) this signature page (collectively, the "Agreement"). In the event of any conflict between or among the various components of this Agreement, the terms and conditions of each component shall take precedence in the order listed above; provided, however, that any conflict with respect to restrictions on access to or use of materials provided by Kanopy shall be resolved in the manner that gives broadest effect to such restrictions.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed as of the 9/1/22 by its duly authorized representative.

KANOPY INC

INSTITUTION

By:

By: \_\_\_\_\_

Name: [Text deleted]  
Title: General Manager

Name: [Text deleted]

Title: AUL Scholarly Resources and Services

Effective Date: 8/26/2022



## TERMS AND CONDITIONS

### 1. Definitions

(a) “Access Term” means the period of time set forth in each Order Form during which the Offerings or, as applicable, Institution Content covered by such Order Form will be hosted and streamed by Kanopy pursuant to this Agreement.

(b) “Credentials” means any user accounts, passwords and other authentication credentials associated with access to or use of the Service by Institution or End Users.

(c) “End User” means: (i) any student, teacher, professor, patron, employee or staff member affiliated with Institution; (ii) any authorized visitor physically present at the facilities of Institution; and (iii) with respect to any Institution that is a library established for use by the general public and maintained primarily through public funds, any individual who is a member of such Institution.

(d) “Institution Content” means any content provided by Institution pursuant to this Agreement for hosting and streaming by Kanopy.

(e) “Institution Facilities” means Credentials and any account, hardware, system or other facility within Institution’s custody or control.

(f) “Offering” means any Product or Title.

(g) “Order Form” means an order form, invoice or other ordering document entered into between the parties pursuant to this Agreement specifying the Offerings, Institution Content, fees and payment terms, special usage rights and restrictions and other terms relevant to the order.

(h) “Product” means each product identified in an Order Form that Kanopy will make accessible to Institution pursuant to this Agreement, including: (i) any package or collection of titles or other content made accessible to Institution via subscription, patron-driven acquisition (PDA), pay-per-use (PPU) or other such models; and (ii) any other product that Kanopy may offer.

(i) “Service” means the service through which Kanopy hosts and makes accessible Offerings and, as applicable, Institution Content.

(j) “Territory” means the geographical area designated as the Territory in an Order Form or, if no such area is designated in an Order Form, the country in which Institution is domiciled.

(k) “Title” means each film, video or other content (excluding Institution Content) identified in an Order Form that Kanopy will make accessible to Institution pursuant to this Agreement.

### 2. Grant of Rights and Restrictions

(a) Grant of Rights. During the applicable Access Term and subject to Institution’s compliance in all material respects with the terms and conditions of this Agreement, Kanopy hereby grants Institution a limited, non-exclusive, non-sublicensable right and license to allow End Users within the designated Territory to view Offerings and, as applicable, Institution Content in real-time within the Service.

(b) Restrictions. All rights granted under this Agreement may only be exercised for non-commercial personal or educational use. Institution shall not: (i) use, archive, capture, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights to the Service or any Offering, except as expressly permitted under this Agreement; (ii) translate or reverse engineer, decompile, decode or otherwise attempt to derive the source code, architectural framework or data records of any software within or associated with the Service; (iii) frame or utilize any framing technique to enclose any content within the Service; (iv) access the Service for the purpose of benchmarking or developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the Service or any products or services offered by Kanopy; (v) rent, lease, lend or sell the Service, or otherwise provide access to the Service as part of a service bureau or similar fee-for-service purpose; (vi) make the Service or any Offering accessible to anyone who is not an End User; (vii) remove or

obscure any proprietary notice that appears within the Service or any Offering; or (viii) use the Service in any way that does not comply in all material respect with the terms and conditions of this Agreement and all applicable laws and regulations.

(c) Technical Requirements. Institution and End Users shall be solely responsible for obtaining, configuring and maintaining any hardware, network connectivity and third-party software required to access the Service, including computers, operating systems, web browsers and storage devices.

(d) Protection. Institution shall be solely responsible for protecting the confidentiality of Credentials and all activities undertaken using Institution Facilities. In the event that Institution becomes aware of any unauthorized use of the Service through Institution Facilities, Institution shall promptly give written notice to Kanopy of such unauthorized use and make reasonable efforts to eliminate such unauthorized use. Institution shall implement and maintain appropriate security policies and procedures and access control methodologies to safeguard access to the Service through Institution Facilities and to limit access to the Service to End Users.

### 3. Institution Content

(a) Grant of Rights. Upon written request by Institution, and approval by Kanopy, Institution may upload Institution Content to the Service for hosting and streaming by Kanopy pursuant to this Agreement. If the parties agree to such an arrangement, during the applicable Access Term, Institution hereby grants Kanopy a limited, non-exclusive, non-sublicensable, royalty-free right and license to host, stream, exhibit, transmit, reproduce, publicly perform, publicly display and project Institution Content as necessary to make Institution Content available for viewing by End Users within the Service. For the avoidance of doubt, Kanopy will have complete discretion in regard to whether or not it will host content on behalf of Institution, and may choose to reject a request for any reason, including but not limited to, internal Kanopy policies relating to hosting Institution Content.

(b) Assurances. In the event that Kanopy agrees to host content on behalf of Institution, Institution represents and warrants that: (i) it holds all necessary rights (including all intellectual property rights) and permissions to grant the rights under this Section 3 to Kanopy; and (ii) Institution Content does not violate any applicable laws or any rights of another party, including any laws relating to defamation or indecency and any intellectual property or right of privacy or publicity.

(c) Institution Ownership. In the event that Kanopy agrees to host content on behalf of Institution, Kanopy acknowledges and agrees that, as between Institution and Kanopy, Institution (or its licensors) owns all rights, title and interest (including all intellectual property) in and to Institution Content.

### 4. Fees and Taxes

(a) KBASE Fees. Institution will pay Kanopy the applicable fees related to Institution’s purchase of a subscription to KBASE, as set forth in the Order Form, and pursuant to the payment terms therein.

(b) Non-Subscription Fees. Within sixty (60) days of the Effective Date of this Agreement, Institution will pay Kanopy \$85,000 for the rights granted in the Order Form related to all non-subscription based licensing of Titles on the Kanopy platform, during the twelve (12) month period beginning on 9/1/22 and ending on 8/31/23 (The “Twelve-Month Fee”). During the aforementioned twelve (12) month period, Institution shall have no additional payment obligations to Kanopy, beyond the Twelve-Month Fee, pertaining to Institution’s licensing of Titles outside of the KBASE subscription product offering. Kanopy and Institution shall negotiate new payment terms for the rights granted in the Order Form related to the licensing of Titles outside of the KBASE subscription product offering within the sixty (60) days prior to 8/31/23. In the event that Institution’s non-subscription based usage of the Kanopy Platform

over performs the Twelve-Month Fee by twenty percent (20%), Kanopy reserves the right to take actions that will curtail excessive triggers. Kanopy will review past usage, curricular alignment, and where necessary, grey list low-use content. Furthermore, Kanopy agrees that when action is taken to curtail excessive triggers, it will implement best practices to minimize effects to Institution's End Users.

(c) Taxes. Any and all amounts payable hereunder by Institution are exclusive of any sales, use, value-added, excise or other similar taxes (collectively, "Taxes"). Institution shall be solely responsible for paying all applicable Taxes. If Kanopy has the legal obligation to collect any Taxes, Institution shall reimburse Kanopy upon invoice by Kanopy. If Institution is required by law to withhold any taxes from its payments to Kanopy, Institution shall provide Kanopy with an official tax receipt or other appropriate documentation to support such payments and take reasonable steps to minimize such payments.

## 5. Intellectual Property

(a) Kanopy Ownership. Institution acknowledges and agrees that, as between Kanopy and Institution, Kanopy (or its licensors) owns all rights, title and interest (including all intellectual property) in and to the Service and Offerings. Kanopy reserves all rights not expressly granted under this Agreement.

(b) Suggestions. If Institution elects to provide or make available to Kanopy any suggestions, comments, ideas, improvements or other feedback relating to the Service or Offerings ("Suggestions"), Kanopy shall be free to use, disclose, reproduce, have made, modify, license, transfer and otherwise utilize and distribute Suggestions in any manner, without credit or compensation to Institution.

## 6. Term and Termination

(a) Term. The term for this Agreement shall commence on the 9/1/22 and continue in effect until 8/31/23.

(b) Suspension. Kanopy reserves the right to suspend Institution's and any End User's access to and use of the Service and Offerings in the event of any: (i) actual or reasonably suspected breach of Section 2 by Institution or any End User; provided, however, that Kanopy, where applicable, will use commercially reasonable efforts to limit suspension to each End User in breach of Section 2 or 3(b) and restore access upon elimination of the relevant breach; or (ii) failure by Institution to make any payment when due under this Agreement; provided, however, that Kanopy will restore access upon Institution's payment of all outstanding fees.

(c) Termination. Notwithstanding anything to the contrary, this Agreement may be terminated as follows: (i) upon a material breach of this Agreement by a party, which breach is not cured within thirty (30) days after receipt of written notice from the other party; or (ii) by either party in the event the other party becomes insolvent or bankrupt; becomes the subject of any proceedings under bankruptcy, insolvency or debtor's relief law; has a receiver or manager appointed; makes an assignment for the benefit of creditors; or takes the benefit of any applicable law or statute in force for the winding up or liquidation of such party's business. For the avoidance of doubt, Institution shall not terminate this agreement prior to the end of the Term for any purpose other than those established as permissible in this Clause 6(c).

(d) Survival. Any provision that, by its terms, is intended to survive the expiration or termination of this Agreement shall survive such expiration or termination, including Sections: 3(b)(Assurances); 3 (Fees and Taxes); 5 (Intellectual Property); 6(d) (Survival); 7 (Representations and Warranties); 8 (Indemnification); 9 (Disclaimer of Warranties); 10 (Limitation of Liability); and 11 (Miscellaneous).

## 7. Representations and Warranties

Kanopy and Institution each represents and warrants to the other that: (a) it has the necessary power and authority to enter into this Agreement; (b) the execution and performance of this Agreement have been authorized by all necessary corporate or institutional action; (c) entry into and performance of this Agreement will not conflict with any provision of law or the certificate of incorporation, bylaws or comparable

organizational documents of such party; (d) no action by any governmental entity is necessary to make this Agreement valid and binding upon such party; and (e) it possesses all governmental licenses and approvals necessary to perform its obligations under this Agreement.

## 8. Indemnification

(a) Indemnification. To the extent permitted by applicable law, each party agrees that the other party and its affiliates and licensors (collectively, "Indemnified Parties") shall have no liability for, and each party shall indemnify, defend and hold the other party's Indemnified Parties harmless against, any loss, damage, cost, liability and expense (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction or paid in settlement to the extent arising from any action or claim of a third party based upon a party's breach of Section 2(b) or 3(b) or infringement of such third party's copyright attributable to any materials provided by the party under this Agreement; provided, however, that Kanopy shall have no obligation to indemnify Institution from any loss, damage, cost, liability or expense to the extent it arises from: (i) access to or use of the Service or any Offering in a manner that does not comply in all material respects with the terms and conditions of this Agreement or applicable laws or regulations; (ii) use of the Service or any Offering in combination with any materials not provided or approved by Kanopy; or (iii) Institution Content. In the event that the Service or any Offering becomes the subject of an indemnified claim or Kanopy reasonably determines that any Offering is likely to become the subject of an indemnified claim, Kanopy may, at its sole discretion: (1) procure for Institution a license as necessary for Institution to exercise the rights granted by Kanopy under this Agreement; (2) modify or replace the Service or Offering to avoid infringement, provided, however, that the Service or Offering as modified or replaced remains materially the same; or (3) issue to Institution a pro-rata refund of fees paid by Institution for the Service or Offering based upon the remainder of the Access Term.

(b) Procedure. The indemnified party shall: (i) give the indemnifying party prompt written notice of any indemnified claim; provided, however, that failure of the indemnified party to give such prompt written notice shall not relieve the indemnifying party of any obligation to indemnify pursuant to this Section 8, except to the extent the indemnifying party has been prejudiced thereby; (ii) cooperate fully with the indemnifying party, at the indemnifying party's expense, in the defense or settlement of any indemnified claim; and (iii) give the indemnifying party sole and complete control over the defense or settlement of any indemnified claim; provided, however, that any settlement must include a complete release of the indemnified party without requiring the indemnified party to make any payment or bear any obligation.

## 9. DISCLAIMER OF WARRANTIES

THE SERVICE, OFFERINGS AND ALL OTHER MATERIALS PROVIDED BY KANOPY UNDER THIS AGREEMENT (COLLECTIVELY, "KANOPY MATERIALS") ARE PROVIDED "AS IS," "AS AVAILABLE" AND "WITH ALL FAULTS." KANOPY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS (EXCEPT AS SET FORTH IN SECTION 7), EXPRESS OR IMPLIED, INCLUDING: (A) THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (B) ANY WARRANTY WITH RESPECT TO THE QUALITY, ACCURACY, CURRENCY OR COMPLETENESS OF THE KANOPY MATERIALS, OR THAT USE OF THE KANOPY MATERIALS WILL BE ERROR-FREE, UNINTERRUPTED, FREE FROM OTHER FAILURES OR WILL MEET INSTITUTION'S OR END USERS' REQUIREMENTS.

## 10. LIMITATION OF LIABILITY

OTHER THAN WITH RESPECT TO KANOPY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8(a): (A) IN NO EVENT SHALL KANOPY OR ITS AFFILIATES AND LICENSORS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS OR COST OF COVER, ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS OCCASIONED

BY OR RESULTING FROM ANY ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE KANOPY MATERIALS, SUCH AS ANY MALFUNCTION, DEFECT OR FAILURE OF ANY KANOPY MATERIALS, EVEN IF KANOPY HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE; AND (B) IN NO EVENT SHALL KANOPY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES RECEIVED BY KANOPY FROM INSTITUTION UNDER THIS AGREEMENT IN THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENTS GIVING RISE TO LIABILITY AROSE.

#### **11. Miscellaneous**

(a) Independent Contractors. The relationship between Kanopy and Institution established by this Agreement is solely that of independent contractors. Neither party is in any way the partner or agent of the other, nor is either party authorized or empowered to create or assume any obligation of any kind, implied or expressed, on behalf of the other party, without the express prior written consent of such other party.

(b) Notice. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and sent to the parties as follows: (i) if to Kanopy, at the address set forth for Kanopy in the signature page herein, Attn: Legal Department, or, if different, in the most recent Order Form; (ii) if to Institution, at the address set forth for Institution in the signature page herein or, if different, in the most recent Order Form.

(c) Assignment. Institution may not assign this Agreement, or assign or delegate any right or obligation hereunder, by operation of law or otherwise without the prior written consent of Kanopy. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) No Third-Party Beneficiaries. Nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto and their respective successors and permitted assigns.

(e) Interpretation. For the purposes of this Agreement: (i) the words "such as," "include," "includes" and "including" shall be deemed to be followed by the words "without limitation;" (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole.

(f) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all previous or contemporaneous oral or written negotiations or agreements with respect to such subject matter.

(g) Amendment. This Agreement may not be amended except in a writing executed by an authorized representative of each party.

(h) Severability. If any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this Agreement.

(i) Governing Law. This Agreement shall be governed by and construed and enforced, without regard to conflict of laws principles, in accordance with: (i) if Institution is domiciled in the United States or Canada, the laws of the state or province in which Institution is domiciled; or (ii) if Institution is domiciled outside the United States and Canada, the laws of the country in which Institution is domiciled. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

(j) No Waiver. The failure of either party to require strict performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Any waiver of the provisions of this Agreement, or of any breach or default hereunder, must be set forth in a written instrument signed by the party against which such waiver is to be enforced.

(k) U.S. Government Entities. This section applies to access to or use of the Service by a branch or agency of the United States Government ("U.S. Government"). The Service includes "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and qualifies as "commercial items" as defined in 48 C.F.R. 2.101. Such items are provided to the United States Government: (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The U.S. Government shall acquire only those rights set forth in this Agreement with respect to the such items, and any access to or use of the Service by the U.S. Government constitutes: (1) agreement by the U.S. Government that that such items are "commercial computer software" and "commercial computer software documentation" as defined in this section; and (2) acceptance of the rights and obligations herein.

(l) Force Majeure. Except with respect to payment obligations under Section 3, neither party shall be liable for any failure to perform under this Agreement to the extent due to any act of God, fire, casualty, flood, war, strike, lock out, failure of public utilities, injunction or any act, exercise, assertion or requirement of any governmental authority, epidemic, destruction of production facilities, insurrection or any other cause beyond the reasonable control of the party invoking this provision.

(m) Confidentiality. Each party acknowledges and agrees that it shall treat the terms and conditions of this Agreement, including any pricing information, as confidential information and not disclose such information to any third party except to the extent required by applicable law or regulation. For the avoidance of doubt, the parties acknowledge and agree that Kanopy may identify Customer as a Kanopy customer, and Customer may identify Kanopy as a provider of content to Customer.

(n) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.