

## Government of Canada Copying Licence

*NOTE: This licence is in effect for the period April 1, 2016 to March 31, 2018. The 2016-17 royalty payment is \$621,755.25.*

This agreement is effective April 1, 2016, and is between THE CANADIAN COPYRIGHT LICENSING AGENCY (“**Access Copyright**”) and SOCIÉTÉ QUÉBÉCOISE DE GESTION COLLECTIVE DES DROIT DE REPRODUCTION (“**Copibec**”) (jointly the “**Collectives**”) and HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Department of Public Works and Government Services (the “**Licensee**”).

The Collectives are non-profit organizations established to administer the reproduction and communication rights in published works and are collective societies for the purposes of section 70.1 of the *Copyright Act*, R.S.C. 1985, c. C-42.

The Collectives and the Licensee were parties to the Government of Canada Copying Licence which expired on March 31, 2016 and the Licensee wishes to enter into a new agreement for the copying of works in the Collectives’ repertoire.

The parties therefore agree as follows:

**1. Definitions.** For the purposes of this agreement, the following definitions apply:

“**Business Day**” means any working day, Monday to Friday inclusive, excluding statutory and other holidays, and any other day which the Licensee has elected to be closed for business.

“**Claim**” means any demand made or action or other proceeding brought by any person in which it is alleged that any person entitled to Copy under this Licence has infringed copyright in any Published Work, but excludes any claim based on an alleged infringement of moral rights and any claim made by one or both of the Collectives.

“**Copy**” means a reproduction of a Published Work made by any of the following processes:

- a) reprography, which includes facsimile reproduction by photocopying and xerography;
- b) reproducing onto microform (including microfilm and microfiche);
- c) typing or word-processing without adaptation;
- d) reproducing by a machine, device or computer that makes a Digital Copy;
- e) hand transcription or drawing (including tracing) onto acetate or other media;
- f) duplicating from a stencil;
- g) facsimile transmission;
- h) video telecommunication;
- i) printing a copy from a Digital Copy;
- j) scanning a Published Work to make a Digital Copy;
- k) saving a Digital Copy to a USB drive or a computer hard drive;

- l) posting a Digital Copy to a federal government shared drive or Intranet;
- m) posting a Digital Copy to an Internet site accessible only via Secure Authentication;

and includes the Digital Copy.

“**Copying**” means making a Copy.

“**Digital Copy**” means any electronic file of a Published Work.

“**FTE**” count means the total number of Full Time Equivalents as disclosed in the Treasury Board People Information Management Automated Tracker system together with the number reported by the Library of Parliament.

“**Government of Canada Institutions**” means any institution listed in Schedules I, I.1 and II of the *Financial Administration Act*, R.S., c. F-10, s.1 and for the purposes of this agreement includes First Nations Schools, the House of Commons, the Senate and the Library of Parliament.

“**Published Work**” means a literary, dramatic or artistic copyright work protected by copyright in Canada, or a part of such copyright work, of which copies have been issued to the public with the consent or acquiescence of the copyright owner, including but not limited to books, folios, magazines, newspapers, journals and other periodical publications.

“**Repertoire**” means those Published Works published in or outside of Canada by any author or publisher, estate of an author or publisher or other person with a copyright interest in the Published Works who, by assignment, grant of licence or by appointment as an agent or otherwise, has authorized Access Copyright or Copibec to collectively administer the reproduction or communication rights (as applicable) in such Published Works and those Published Works published in or outside of Canada by other copyright owners where an agreement between Access Copyright or Copibec and another reproduction rights collective society authorizes Access Copyright or Copibec to represent such other copyright owners. The Repertoire is determined by referring to the Exclusions List maintained and updated from time to time by the Collectives and available at:

[http://www.accesscopyright.ca/media/1771/access\\_copyright\\_exclusions\\_list.pdf](http://www.accesscopyright.ca/media/1771/access_copyright_exclusions_list.pdf) or by referring to the look-up tool at: <http://discovery.accesscopyright.ca/>.

“**Secure Authentication**” means a process of authentication that, at the time of login, identifies each user, whether by user name and password or by some other equally secure method.

“**Year**” means the 12-month period from April 1 to March 31.

## **2. Application**

The scope of this licence agreement permits Government of Canada Institutions to make and distribute Copies of Published Works in the Repertoire, for the non-profit purposes of conducting business within their mandates and for purposes of the delivery of government programs and services including, but not limited to their professional, research, archival, communication and administrative activities as follows:

- a) Copy up to ten (10%) of a Published Work , provided that such limit may be exceeded in respect of the following portions:
  - i. an entire newspaper article or page;
  - ii. an entire short story, play, essay or article;
  - iii. an entire poem;
  - iv. an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work;
  - v. an entire reproduction of an artistic work (including drawings, paintings, prints, photographs and reproductions of works of sculpture, architectural works of art and works of artistic craftsmanship); and
  - vi. one entire chapter, provided it is no more than twenty per cent (20%) of a book.
- b) make a Copy to be used to project, display or interact with an image for presentation using, but not limited to, an overhead projector, LCD or plasma monitor, or interactive whiteboard.
- c) make a Copy to replace any damaged or missing pages in the Licensee's holdings. If the total number of replacement pages is more than twenty per cent (20%) of a Published Work, then the Licensee shall make reasonable efforts to secure a new replacement of the Published Work within a reasonable period of time.
- d) subject to sections 2(a), 3, 4, 5, and 6, distribute Copies, including by email or forwarding Copies.

### **3. Persons Entitled to Copy**

The rights granted under section 2 of this agreement may be exercised by employees of Government of Canada Institutions, contractors and other third parties, provided such persons are doing so solely for the purposes of authorized Copying for Government of Canada Institutions.

### **4. Multiple Copies**

This licence authorizes the making of that number of Copies required for carrying out the mandates of the Government of Canada Institutions and delivery of their programs and services.

### **5. General Limitations**

- a) Copies may only be made from Published Works that are lawfully obtained by the Licensee.
- b) There shall be no intentional cumulative Copying from the same Published Work beyond the limits set out in section 2(a) hereof.
- c) Copies shall not be made as a substitute for Published Works that would ordinarily be purchased.

- d) Copies shall not be made of a Published Work that contains a visibly perceptible notice prohibiting reproduction under a licence from a collective society.
- e) Licensee may recover the cost of making and distributing Copies but may not otherwise charge a fee that exceeds such costs.
- f) Copies shall not be used in advertising products or services. For greater certainty, the making of Copies by Government of Canada Institutions for promoting their respective programs and services is a permitted use under this licence.
- g) Copies shall be faithful and accurate reproductions of the original Published Work.
- h) Copies shall not be made or used in a manner that would infringe the moral rights of any author.

**6. Rights and Limitations Regarding Digital Copies.**

- a) Digital Copies shall not be placed on any computer or computer network on the publicly accessible Internet in such a way as to be made publicly available or accessible otherwise than by Secure Authentication that identifies the user's status as persons entitled to copy under section 3.
- b) Digital Copies shall not be stored, or systematically indexed, with the intention or result of creating an electronic database of Published Works.
- c) Digital Copies shall not be shared, emailed or otherwise distributed other than in accordance with this agreement.
- d) Where the Licensee is no longer covered by this licence and good faith negotiations are not underway, the Licensee shall immediately cease to use Digital Copies of Published Works in the Repertoire.

**7. Exclusions List**

Published Works listed in the Exclusions List are not covered by this licence. Upon execution of this licence, the Collectives shall deliver an electronic copy of the Exclusions List to the Licensee. If the Collectives subsequently make changes to the Exclusions List during the term of this licence they shall immediately deliver a date-stamped electronic copy matching the date the Collectives changed the Exclusion List on Access Copyright's website. The updated Exclusions List will be emailed to the Licensee. If in the reasonable view of either party, changes to the Exclusions List materially increase or lessen the value of the licence, either party may notify the other. The parties will use their best efforts to resolve any dispute concerning the change in value and neither party shall commence an application to the Copyright Board or commence any other legal proceeding until first having engaged in good faith negotiation.

## **8. Attribution**

The Licensee shall notify all persons entitled to make Copies under this licence that, where reasonable under the circumstances, Copies made and/or distributed shall include, on at least one page:

- a) a credit to the author (including writer, artist, illustrator and photographer) and to the source; and
- b) a notice stating, "Copied under licence from Access Copyright and Copibec. Further reproduction or distribution is prohibited, except as otherwise permitted by law."

## **9. Notification of the Terms and Conditions of Copying.**

- a) The Licensee will use reasonable efforts to ensure that persons entitled to make or use Copies under this Licence are informed of the terms and conditions of Copying authorized by this Licence.
- b) If requested by the Licensee, the Collectives will:
  - (i) Provide the Licensee with written material which will assist the Licensee in preparing information to be distributed, disseminated, or posted for the information of such persons; and
  - (ii) Review and comment on any informational material concerning this Licence which the Licensee intends to post, disseminate or distribute for the use of such persons.

## **10. Royalties**

- a) For each Year of the Initial Term, the Licensee shall pay to the Collectives an annual royalty rate of CAD \$2.50 multiplied by the FTE count.
- b) For each subsequent Year of the licence, the Licensee shall pay an annual royalty rate calculated as the royalty rate for the previous Year increased by the annual percentage change in the January Core Consumer Price Index (CPI) for Canada as published at:  
[http://www.bankofcanada.ca/rates/price-indexes/cpi/?page\\_moved=1](http://www.bankofcanada.ca/rates/price-indexes/cpi/?page_moved=1).
- c) The royalty payable under this licence is exclusive of any federal or provincial taxes.

## **11. Reporting and Payment**

- a) The royalty set out in section 10 shall be payable in two equal installments.
- b) For 2016 the Licensee shall provide to the Collectives the FTE count as of February 1, 2016 within five (5) Business Days of the execution of this licence. For 2017 and each subsequent Year of this licence the Licensee shall provide to the Collectives the FTE count as of February 1 by no later than March 1. The Collectives will invoice the Licensee twice yearly based on the FTE count and shall deliver the invoices by March 31 and September 30 of each applicable Year.
- c) The first royalty installment shall be paid by the Licensee to the Collectives no later than April 30 of each applicable Year. The second installment shall be paid by the Licensee to the Collectives no later than October 31 of each applicable Year.

**12. Indemnity**

- a) The Collectives shall indemnify and save the Licensee, its employees and agents harmless from any losses, costs (including solicitor and client costs), expenses and damages relating to any Claim against the Licensee arising from the exercise of rights granted under this licence, provided that the Licensee:
  - i) is not in breach of the terms of this agreement;
  - ii) provides notice to the Collectives of any Claim within five (5) Business Days after the Licensee has been notified of any Claim; and
  - iii) co-operates in the defence of any Claim (but not including financial contribution) in such ways as the Collectives may reasonably require.
- b) The Collectives shall defend and/or settle any Claim referred to in section 12(a) at their own expense and shall accordingly conduct negotiations relating to the settlement of the Claim and the defence of any legal action relating to the Claim. However, no settlement of any such Claim shall be entered into without the permission of the Licensee, which permission shall not unreasonably be withheld or delayed. The Collectives shall keep the Licensee informed and shall consult with the Licensee, in advance where possible, concerning all proceedings and negotiations relating to the Claim. For greater clarity, pursuant to the *Department of Justice Act*, the Attorney General of Canada has the regulation and conduct of all litigation against the Crown but the Attorney General may request that the Collectives defend the Licensee or Government of Canada Institution, as the case may be, and the Collectives shall pay all costs, damages and any settlement amount.

**13. Interest**

Any amount not received by the due date shall bear interest from that date until the date the amount is received. Interest shall be calculated daily, at a rate equal to one per cent (1%) above the Bank of Canada Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

**14. Surveying**

- a) The Collectives consider that surveying during the term of the Licence may be necessary and such surveys will be paid for and carried out by the Collectives. The sampling protocols, and frequency and scheduling of sampling will be established by the Collectives, subject to the approval of the Licensee, acting reasonably. The Licensee will support and facilitate the execution of such samplings by taking whatever steps are reasonably required.
- b) None of the information obtained as a result of sampling under 14(a) may be used in or in relation to any action or claim for copyright infringement or demand for royalties by the Collectives.

**15. Records**

The Licensee shall keep and preserve, for a period of six (6) years, records from which the royalties due to the Collectives under this licence can be readily ascertained.

**16. Term and Termination**

- a) The initial term of this agreement is from April 1, 2016 to March 31, 2018 (the “**Initial Term**”).
- b) Following expiry of the Initial Term, this agreement will automatically renew for consecutive one (1) year terms unless and until it is terminated in accordance with section 16(c) of this agreement.
- c) This agreement may be terminated:
  - i. Following expiry of the Initial Term, by any party by providing written notice of the party’s intention not to renew the agreement at least three (3) months before the end of the current term of this agreement; or
  - ii. at any time by any party upon any breach of this agreement that is not cured within thirty (30) days of the breaching party receiving written notice from the other parties of such breach.

**17. Addresses for Notices and Payment**

- a) Notices to the Collectives shall be served on both Access Copyright and Copibec as follows:

Executive Director  
Access Copyright, The Canadian Copyright Licensing Agency

320 – 56 Wellesley Street West  
Toronto, Ontario M5S 2S3  
Tel: (416) 868-1620  
Fax: (416) 868-1621  
Email: [info@accesscopyright.ca](mailto:info@accesscopyright.ca)

Directrice générale  
Société québécoise de gestion collective des droits de reproduction  
606, Cathcart, Suite 810  
Montréal, Québec H2X 3J7  
Tel: (514) 288-1664  
Fax: (514) 288-1669  
Email: [info@copibec.gc.ca](mailto:info@copibec.gc.ca)

- b) Notices to the Licensee shall be served as follows:

Senior Director  
Communication Procurement Directorate  
Public Works and Government Services Canada  
360 Albert, 12<sup>th</sup> Floor  
Ottawa, Ontario K1A 0S5  
Tel: (613) 998-0440  
Fax: (613) 991-5870  
Email: [paul.rolland@pwgsc-tpsgc.gc.ca](mailto:paul.rolland@pwgsc-tpsgc.gc.ca)

- c) The parties shall inform each other of any changes in the addresses, telephone and fax numbers, or email addresses given above.

**18. Delivery of Notices and Payment**

- a) A notice may be delivered by hand, postage paid mail, fax or email. Payments shall be delivered by hand, postage paid mail or electronic bank transfer.
- b) A notice or payment mailed in Canada shall be deemed to have been received three (3) Business Days after the day it was mailed.
- c) A notice sent by fax or email shall be presumed to have been received on the first Business Day following the day it was transmitted.



## **19. Copyright Act**

This agreement does not alter or restrict in any way the Licensee's or the Collectives' rights under the *Copyright Act*.

## **20. Assignment, Restrictions, Entire Agreement and Amendments**

- a) This agreement enures to the benefit of and binds the parties' respective successors and permitted assigns. This agreement may not be assigned without the written consent of the other parties.
- b) The invalidity or unenforceability of any particular provision of this agreement will not affect or limit the validity or enforceability of the remaining provisions.
- c) This agreement may only be amended by a written document signed by each of the parties.
- d) This agreement constitutes the entire agreement between the parties relating to the subject matter of the agreement. There are no representations, covenants or other terms other than those set forth in this agreement.

## **21. Governing Law**

This agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of Ontario and the laws of Canada as applicable in Ontario.

## **22. Counterparts**

This agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. Counterparts may be transmitted by fax or in electronically scanned form. Parties transmitting by fax or electronically will also deliver the original counterpart to the other parties, but failure to do so does not invalidate this agreement.

This agreement has been executed by the parties.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
(as represented by the Department of Public Works and Government Services)

Original signed by:  
Paul Rolland  
Acting Senior Director, Communication Procurement Directorate  
Acquisitions Branch, PWGSC  
Date: March 31, 2016

Access Copyright, The Canadian copyright licensing agency

Original signed by:  
Roanie Levy  
Executive Director  
Date: March 30, 2016

Société québécoise de gestion collective des droits de reproduction

Original signed by:  
Frédérique Couette  
Directrice générale par intérim  
Date: March 30, 2016