



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

Department	Louisville Free Public Library	Department Contact	Benjamin Tipton
Contact Email	benjamin.tipton@lfpl.org	Contact Phone	502-574-1845

Contract Type: check one	New	Amendment		
		Additional Funds	Time Extension	Scope
Professional Service				
Sole Source (goods/services)	✓			
	Start	End		
Requested Contract Dates (MM/DD/YYYY)	07/01/2020	06/30/2021		

VENDOR INFORMATION

Vendor Legal Name	Kanopy LLC				
DBA					
Point of Contact	Chelsea Lucas	Email	chelsea.lucas@kanopy.com		
Street	781 Beach Street				
Suite/Floor/Apt	2nd Floor	Phone	415-513-1026		
City	San Francisco	State	CA	Zip Code	94109
Federal Tax ID#		SSN# (If sole proprietor)			
Louisville Revenue Commission Account #					
Human Relations Commission Certified Vendors	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business		
Select if applicable					

FINANCIAL INFORMATION

Not to Exceed Contract Amount	\$60,000	(including reimbursement expenses, if applicable)			
Fund Source: General Fund	✓				
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #	1101	730	5922	591270	52116
Payment Rate		per hour		per day	per service
		per month		Other	
Payment Frequency	✓	Monthly		Upon Completion / Delivery	
		Quarterly		Other	



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CONTRACT SCOPE and PURPOSE (Attach additional documentation if necessary)

Amendments: Describe the circumstances under which a time extension or scope change is needed.

New: Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.

Kanopy is a streaming video service marketed and sold only to libraries. Our patrons enjoy Kanopy, it has an easy to use interface (very similar in feel and design to Netflix) and it's simple to watch on a computer, mobile device, or television. Kanopy has a nice selection of what used to be called "art" films, smaller mostly independent works about serious subjects. Kanopy also offers a varied selection of older, more mainstream classics, foreign films, and documentaries.

JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE (Attach additional documentation if necessary)

Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

Kanopy has a unique interface that is easy to use and they are the only video streaming service for libraries with such a wide range of content.

AUTHORIZATIONS: Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director [Signature] Date 4-2-2020
Signature Lee Burchfield

Printed Name
DocuSigned by:
Purchasing Director [Signature] Date 4/20/2020
B8B2419F-B3A42D...
Joel Neaveill

Kanopy Price Sheet

Item	Price	Terms
Play Credit	\$2	72 hour access period for unlimited uses
Kanopy Kids	\$5	Unlimited uses for entirety of Kanopy Kids for 30 days
The Great Courses	\$5/course	Unlimited uses for pre-selected course for 30 days

From: [Benjamin Tipton](#)
To: [Friedman, Steve P](#)
Subject: FW: Kanopy LLC
Date: Friday, April 17, 2020 10:36:08 AM
Attachments: [LFPL_Kanopy_Director_Signed-APR2020.pdf](#)

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

Steve,

Kanopy is a pay-per-use set-up. LFPL had recently capped our month fee allotment to stay under \$30,000 for the year but the pandemic has increased demand so we are now targeting a budget of \$5,000 per month. This price is demand driven – the more patrons that use the on-line service the more LFPL is charged. Kanopy can and does set a monthly cap per month at our request. For example, in February we'd hit the monthly max by week three.

Does this help?

Thanks, Ben

From: Friedman, Steve P <Steve.Friedman@louisvilleky.gov>
Sent: Friday, April 17, 2020 10:29 AM
To: Benjamin Tipton <Benjamin.Tipton@lfpl.org>
Subject: Kanopy LLC

Ben

Please clarify how the maximum amount of \$60,000.00 was arrived at using the attached pricing sheet.

Thanks,

Steve Friedman
Office of Management & Budget
Division of Purchasing
Louisville Metro Government
611 West Jefferson Street
Louisville, KY 40202
502-574-3920
Steve.friedman@louisvilleky.gov

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AGREEMENT FOR SOLE SOURCE PURCHASE

THIS CONTRACT, made and entered into by and between the LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, by and through its LOUISVILLE FREE PUBLIC LIBRARY, herein referred to as "METRO GOVERNMENT", and KANOPY, INC. with offices located at 781 Beach Street, Second Floor, San Francisco, California 94109, herein referred to as "CONTRACTOR",

WITNESSETH:

WHEREAS, the Metro Government wishes to purchase streaming services for use by Library patrons; and

WHEREAS, the Contractor has been determined by the Metro Government to be a sole source to provide same as to the specific titles offered by Contractor,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. SCOPE OF WORK

A. Contractor shall, at the request of the Metro Government, provide goods and services under the terms of this Agreement.

B. Contractor shall supply, upon an order from the Metro Government and its patrons:

1. Video streaming services composed of titles from Contractor's collection as described on Attachment A attached hereto and fully incorporated herein, which Attachment A includes the Contractor's Master Agreement.

II. FEES AND COMPENSATION

A. The Metro Government shall pay Contractor for services rendered and goods supplied as agreed to in writing between the parties and as described on Attachment A. Total compensation payable to Contractor under this Agreement shall not exceed **SIXTY THOUSAND DOLLARS (\$60,000.00)**.

B. Payment shall be made pursuant to Attachment A.

C. The Metro Government shall not reimburse out of pocket expenses under this Agreement.

III. DURATION

A. This Agreement shall begin July 1, 2020 and shall continue through and including June 30, 2021.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for goods and services delivered up to and including date of termination shall be made by the Metro Government.

IV. RECORDS-AUDIT

Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Contractor's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Contractor's stores stock or capital

items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

V. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

The Contractor shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

VI. INSURANCE REQUIREMENTS

A. Prior to commencing work, Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. The Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to Metro Government and approved by the Metro Government's Risk Management Division. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Metro Government. Metro Government may require Contractor to supply proof of subcontractor's insurance via Certificates of Insurance, or at Metro Government's option, actual copies of policies.

B. The following clause shall be added to the Contractor's (and approved subcontractors) Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."

C. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on the contractors or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. COMMERCIAL GENERAL LIABILITY: via the Occurrence Form, primary and non-contributory, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage and Products/Completed Operations, including:
 - a. Premises - Operations Coverage
 - b. Products and Completed Operations
 - c. Contractual Liability
 - d. Broad Form Property Damage
 - e. Independent Contractors Protective Liability
 - f. Personal Injury
2. WORKERS' COMPENSATION (if applicable): insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and EMPLOYERS' LIABILITY - \$100,000 Each Accident/\$500,000 Disease - Policy Limit/\$100,000 Disease - Each Employee.

D. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro Government's Risk Management Division.

E. MISCELLANEOUS

1. The Contractor shall procure and maintain insurance policies and shall furnish Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro Government at least fifteen (15) days prior to the expiration of any policy(s).
2. Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Louisville Fire Department
611 West Jefferson Street, 3rd Floor
Louisville, Kentucky 40202

3. Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

4. CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Contractor shall notify Metro Government's Risk Management Division of any policy cancellation within two business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro Government's Risk Management Division within two business days. If Contractor fails to notify Metro Government as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro Government reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro Government's Risk Management Division.
5. Approval of the insurance by Metro Government shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that Metro Government does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Contractor.

VII. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Contractor agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Contractor further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

VIII. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

IX. AUTHORITY

The Contractor, by execution of this Agreement, does hereby warrant and represent that it is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

X. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein;

or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any

inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto. In the event of a conflict between the terms of this Agreement and the terms in any of the Attachments, including the Master Agreement, this Agreement shall govern.

XII. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XIII. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

XIV. COUNTERPARTS

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

XV. CALCULATION OF TIME Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Contractor is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

XVI. CAPTIONS The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

XVII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS The Contractor shall reveal any final determination of a violation by the Contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor. The Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of the contract.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND LEGALITY CONTINGENT UPON METRO COUNCIL APPROVAL OF THE APPROPRIATION FOR THIS AGREEMENT:

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

DocuSigned by:

Paul Rutherford

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

DocuSigned by:

Joel Neaveill

JOEL NEAVEILL, DIRECTOR, PURCHASING DEPARTMENT

Date: 6/2/2020

Date: 6/2/2020

LOUISVILLE FREE PUBLIC LIBRARY

Lee Burchfield
LEE BURCHFIELD, DIRECTOR

Date: 6-1-2020

KANOPY, INC.

By: *Shandouk*

Title: Sales Director

Date: 5/26/2020

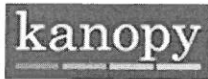
Taxpayer Identification No. (TIN): 99 - 0377373

Louisville/Jefferson County Revenue Commission Account No.: _____

ATTACHMENT A

Kanopy Price Sheet

Item	Price	Terms
Play Credit	\$2	72 hour access period for unlimited uses
Kanopy Kids	\$5	Unlimited uses for entirety of Kanopy Kids for 30 days
The Great Courses	\$5/course	Unlimited uses for pre-selected course for 30 days



MASTER AGREEMENT

Institution Name:	Lou/Jeff Co Metro Govt. by and through its Louisville Free Public Library	Institution Contact:	Jody Hampton
Address:	301 York Street Louisville, KY 40203	Phone:	502-574-1647
		Email:	Jody.hampton@lfpl.org

This **Master Agreement** is made and entered into as of the Effective Date set forth below by and between **Kanopy LLC**, a Delaware limited liability company with a place of business Level 4, 781 Beach Street, San Francisco, CA 94109 ("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 Effective Date by its duly authorized representative.

KANOPY LLC

INSTITUTION

By:

By:

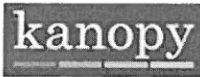
Name: OLIVIA HUMPHREY _____

Name: Lee Burchfield

Title: CEO _____

Title: Interim Director

Date: 12/6/2018



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) Policies. In addition to the terms and conditions of this Agreement, access to and use of the Service shall comply with and be subject to any terms of service, acceptable use policy, privacy policy, end user license agreement and other guidelines instituted by Kanopy or its licensors or service providers.

(d) 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.

(e) 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. As specified in an applicable Order Form, Institution may upload Institution Content to the Service for hosting and streaming by Kanopy pursuant to this Agreement. 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.

(b) Assurances. 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. 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) Fees. Institution shall pay Kanopy the applicable fees set forth in each Order Form pursuant to the payment terms therein. If an Order Form does not specify payment terms, then payments thereunder shall be due net thirty (30) days after invoice. Amounts not paid when due shall be subject to interest at the rate of one and a half percent (1.5%) per month or the maximum rate permitted by law, whichever is less.

(b) 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. 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 Effective Date and continue in effect until terminated by Kanopy or Institution in accordance with this Agreement.

(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) by either party upon written notice to the other party; provided, however, that no Order Form is then in effect; (ii) 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 (iii) 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.

(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); 4 (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. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(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 4, 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. 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.