



## MASTER AGREEMENT

<b>Institution Name:</b>	Santa Fe Public Library	<b>Institution Contact:</b>	Maria Tucker
<b>Address:</b>	145 Washington Ave Santa Fe, New Mexico 87501 United States	<b>Phone:</b>	505-955-6781
		<b>Email:</b>	metucker@santafenm.gov

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 781 Beach Street, Suite 200, 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](http://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 INC

INSTITUTION

By:

Name: Alper Tuken \_\_\_\_\_

Title: CFO \_\_\_\_\_

By:

Jarel LaPan Hill  
Jarel LaPan Hill (Oct 15, 2021 14:42 MDT)

Name: Jarel Lapan Hill \_\_\_\_\_

Title: City Manager \_\_\_\_\_

Effective Date: \_\_\_\_\_



## 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.** Within sixty (60) days of the Effective Date of this Agreement, Institution will pay Kanopy \$45,000 for the rights granted in the Order Form during the twelve (12) month period beginning on October 1, 2021 and ending on September 31, 2022 (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. Kanopy and Institution shall negotiate new payment terms for the rights granted in the Order Form within the sixty (60) days prior to September 31, 2022. Kanopy reserves the right in instances of high usage 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.

(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.

(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 Effective Date and continue in effect until September 31, 2022. Notwithstanding the foregoing, in no event will the Term for this Agreement exceed the limitations set in NMSA 1978 13-1-50.

(a) 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.

(b) 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).

(c) 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(c) (Survival); 7 (Representations and Warranties); ~~Error! Reference source not found.~~ (Indemnification); 10 (Disclaimer of Warranties); 11 (Limitation of Liability); and 12 (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.

#### 10. 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.

#### 11. LIMITATION OF LIABILITY

OTHER THAN WITH RESPECT TO KANOPY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION ~~Error! Reference source not found.~~: (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.

#### 12. 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) 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.
- (j) 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.
- (k) 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.
- (l) 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.
- (m) 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.

**City of Santa Fe (City) and Kanopy, INC (Kanopy)**  
**ADDENDUM**

**NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the CITY in connection with Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. Seq. NMSA 1978, as amended. The CITY and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**APPLICABLE LAW; CHOICE OF LAW; VENUE**

KANOPY shall abide by all applicable federal and state laws and refutations, and all ordinances, rules and regulations of the CITY of Santa Fe. In any action, suit or legal dispute arising from this Agreement, KANOPY agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

**APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the CITY for the performance of this Agreement. If sufficient appropriations and authorization are not made by the CITY, this Agreement shall terminate upon written notice being given by the CITY to KANOPY. CITY

**RELEASE**

KANOPY, upon the one (1) year anniversary of acceptance of final payment of the amount due under this Agreement, releases the CITY, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. KANOPY agrees not to purport to bind the CITY to any obligation not assumed herein by the CITY unless KANOPY has express written authority to do so, and then only within the strict limits of that authority.

**INSURANCE**

KANOPY shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort

Claims Act. KANOPY shall furnish the CITY with proof of insurance of KANOPY's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

**THIRD PARTY BENEFICIARIES**

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the CITY and KANOPY. No person shall claim any right, title, or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

**SEVERABILITY**

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

City of Santa Fe:

Jarel LaPan Hill

Jarel LaPan Hill (Oct 15, 2021 14:42 MDT)

Jarel Lapan Hill, City Manager

Date: Oct 15, 2021

KANOPY:

Alper Tuken

Alper Tuken, CFO

Name & Title

Date: 10/6/21

Attest:

Kristine Bustos Mihelcic

Kristine Bustos Mihelcic, City Clerk

XIV  
XIV

City Attorney's Office:

Marcos Martinez

Marcos Martinez (Oct 7, 2021 10:03 MDT)

Senior Assistant City Attorney

Approved for Finances:

Mary McCoy

Mary McCoy, Finance Director