

## LIBRARY EBOOK AGREEMENT

THIS LIBRARY EBOOK AGREEMENT (this "Agreement") is by and between California Digital Library, ("Library") and NetLibrary, a division of OCLC Online Computer Library Center, Inc., an Ohio nonprofit corporation ("NetLibrary").

WHEREAS, NetLibrary has acquired certain rights to convert various books and other works to electronic format and to market and distribute the works as converted as eBooks, and NetLibrary operates an electronic library service for hosting and managing eBooks and other materials over the Internet.

WHEREAS, Library desires to purchase licenses to certain eBooks subject to the terms and conditions described in this Agreement, and Library, at its election, may either receive its eBooks on a securable medium or have NetLibrary host and manage Library's eBooks and provide certain other eBook Services to Library.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND OBLIGATIONS SET FORTH BELOW, the parties agree as follows.

### I. DEFINITIONS; EBOOK LICENSES

A. Definitions. Terms defined within this Agreement have the respective meanings attributed to them throughout this Agreement or in this Section I.A. Any defined term may be used in the singular and in the plural, as appropriate in the context.

1. "CSS Fee" means the Content Service and Support Fee, which is the fee Library pays NetLibrary to host and manage Library's eBooks, to maintain Library's NL Website, and to maintain and upgrade the Existing Platform and bandwidth. CSS Fees include eBook Services. Library may opt to pay the CSS Fees associated with any order of eBooks either as an "Annual CSS Fee" or as a "Prepaid CSS Fee," as further described in Exhibit B.
2. "Discount" means the percentage of the eBook List Price used in determining the eBook License Fee, as further described in Exhibit C.
3. "eBooks" mean NetLibrary's electronic copies of various books and other works in which NetLibrary has acquired certain rights.
4. The "eBook License Fee" means a one-time-only fee for Library's license to access and use the relevant eBook(s) content and is determined by subtracting the applicable Discount from the eBook List Price.
5. The "eBook List Price" means the price established by NetLibrary for the license to access and use the relevant eBook(s).
6. "eBook Services" mean NetLibrary's services related to Library's ongoing access to and use of eBooks via the Internet, as further described in Exhibit A.
7. The "Effective Date" of this Agreement means December 15, 2007.
8. "Library's NL Website" means the Website operated by NetLibrary and open to Library and Patrons in order to access and use eBooks licensed to Library.
9. A "MARC Record" means an electronic record containing metadata and other relevant information about the corresponding eBook.
10. "NL Website" means the Website operated by NetLibrary and open to the general public in order to provide information about NetLibrary's products and services.
11. "Patrons" mean Library's registered faculty, members, patrons, students, and other authorized users, including both onsite users and remote users. Patrons are individuals and may not be corporations or other entities.
12. "Branch" means the permitted Library branches under single administration of the Library, which the Library has authorized to access the eBook Services by giving NetLibrary written notice and Library will provide for NetLibrary any individual information needed to identify said Branch(es) and to provide them and their Patrons access. The Members of Library at the time this Agreement was executed are listed on Exhibit G.
13. The "Reinstatement Fee" means the fee associated with reinstating eBook Services for an eBook for which eBook Services were previously terminated, as further described in Exhibit B.

14. Subject to Section III.B below, the "Term" of this Agreement includes an "Initial Term," which commences on the Effective Date and continues in effect for five years, and any "Renewal Term(s)," which are automatic one year extensions of this Agreement that commence on each anniversary of the Effective Date unless this Agreement is terminated according to Section III.B.1 below.

### B. eBook Licenses.

#### 1. Purchase of Licenses.

a. eBooks. During the Term of the Agreement, Library may select and purchase eBook licenses from NetLibrary. Library agrees to select and purchase eBook licenses in accordance with NetLibrary's then current ordering practices. Each final order of eBook licenses is incorporated in this Agreement by reference.

b. MARC Records. As part of the relevant CSS Fee, NetLibrary will provide Library with one copy of the MARC Record that corresponds to each eBook license purchased by Library. NetLibrary may provide additional MARC Records to Library for mutually agreed upon fees and expenses. NetLibrary and Library agree that all MARC Records are the property of OCLC; Library may use MARC Records only for its own internal purposes as further described in Exhibit D. NetLibrary will replace defective MARC Records if Library notifies NetLibrary of the defect within 90 days of NetLibrary's delivery of the MARC Record and NetLibrary concurs that the MARC Record is defective.

2. Copyrighted Works. Library acknowledges and agrees that the copyright to each eBook is owned by or licensed to NetLibrary and the respective publisher thereof. All Rights Reserved. By purchasing a license to an eBook, Library obtains certain rights to access and use a copy of the eBook under this Agreement, but Library does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with the eBook. Library agrees that it is responsible for all use of eBooks by Library and its Patrons, and that any use of eBooks by Library and its Patrons is governed by and will comply with applicable laws, including without limit U.S. copyright laws. Library acknowledges that it and its Patrons have no right to make copies of any eBook, or any portions thereof, except to the extent permitted by applicable copyright laws.

3. Delivery Option. At any time during the Term (see also Section III.B below), Library may elect to receive eBooks on DVD or another securable medium (each a "Secured eBook"), which does not support all of the features and functionality associated with eBooks accessible via the Internet and is not eligible for eBook Services (the election is the "Secured eBook Option"). The fees and charges for Secured eBooks include reimbursement for NetLibrary's reasonable costs associated with the DVD or other securable medium, the loading of eBooks onto the DVD or other securable medium, any software that accompanies Secured eBooks, and shipping and handling charges. Library may make the Secured eBook Option election by executing the Secured eBook Option Delivery Election Form attached to this Agreement as Exhibit E and returning the form to NetLibrary under Section III.I.13 below. Library must return the Secured eBook Option Delivery Election Form and any other required security documents before NetLibrary will deliver to Library one or more DVDs or other securable media containing one copy of each eBook that is licensed to Library under this Agreement and is requested by Library to be delivered as a Secured eBook. NetLibrary will deliver Secured eBooks within eight weeks of the date on which NetLibrary has received Library's executed Secured eBook Option Delivery Election Form and any other required security documents. Notwithstanding anything in this Agreement to the contrary, if Library elects the Secured eBook Option, Library will not receive eBook Services as further described in Section II and Exhibit A below.

### C. Branch Access.

1. eBooks Access. NetLibrary will only permit access to and use of eBooks purchased by Library by a Branch of Library and the Branch's Patrons if: (i) Library has executed a Library Agreement with NetLibrary, (ii) the

Branch is listed in Exhibit G, and (iii) Library has given NetLibrary written notice that Library is willing to allow the Branch to access eBooks purchased by Library. Until all of these conditions have been satisfied, NetLibrary will have no obligation to permit any Branch of Library to access any eBooks purchased by Library.

2. Library may ask NetLibrary to add Branch(es) to or remove Branch(es) from Exhibit G by sending or e-mailing written notice to NetLibrary. At a minimum, the notice must include the following information:
  - a. Name of the Branch(es);
  - b. Whether the Library wants NetLibrary to add Branch(es) to or remove Branch(es) from the eBooks purchased by Library;
  - c. Contact Information for each Branch including Name, Address, Email, and phone;
  - d. IP Ranges and URLs for each Branch for authentication purposes;
  - e. A description of any and all relevant relationships between the Library, the Branch, and other Branches of the Library (e.g. Parent/Child, Peer to Peer, or Library); and
  - f. Other information reasonably required in order for NetLibrary to add Branch(es) to or remove Branch(es) from the eBooks purchased by Library.

Library can not submit this notice more often than once per month. NetLibrary will use commercially reasonable efforts to respond to the Library's request.

3. If a Branch wants to purchase eBook licenses from NetLibrary, then the Branch must execute a separate "Library eBook Agreement" by and between NetLibrary and the Branch.

## II. EBOOK SERVICES

**A. Applicability.** The provisions of this Section II do not apply if Library has elected the Secured eBook Option offered in Section I.B.3..

**B. Provision of eBook Services.** During the Term, NetLibrary will establish, host, and administer Library's NL Website using NetLibrary's existing electronic bookshelf technology and NL Website. Library and Patrons will access Library's eBook collection through Library's NL Website, and Library will receive eBook Services for eBooks for which Library has purchased licenses and paid the applicable CSS Fee. Library and Patrons will access Library's eBook collection and eBook Services via Library's Internet connection, which will be Library's expense and responsibility.

### C. Library and Patron Usage.

1. **Limiting Access Measures.** Library will be solely responsible for determining which Patrons will have access to Library's NL Website under this Agreement. Library agrees to implement appropriate measures to limit the use of eBooks through access by Patrons ("Limiting Access Measures"). Limiting Access Measures are to comply with NetLibrary's reasonable application requirements which may change from time to time and may include, but are not limited to, remote patron authentication applications, authentication through protected IP addresses, a patterned identification check and privileged user accounts. NetLibrary will consider other Limiting Access Measures on a case-by-case basis, but may reject the proposed methods if, in NetLibrary's opinion, access will not be sufficiently controlled. Library agrees to implement Limiting Access Measures within a reasonable time frame. NetLibrary, in its sole discretion, may discontinue Library's access to Library's NL Website if Library fails to implement Limiting Access Measures within a reasonable timeframe. Except for standard fees charged by Library to Patrons, Library will not charge any Patron for use of Library's NL Website.

### 2. Terms of Use.

a. The use of Library's NL Website by Library and Patrons will be governed by the "Terms of Use" currently available at <http://www.netlibrary.com/TermsOfUse.aspx>, as they may be amended from time to time. A copy of the currently available

Terms of Use is incorporated in this Agreement as Exhibit F. As between NetLibrary and Library, the terms of this Agreement will prevail over any inconsistent provision of the Terms of Use, and no change in the Terms of Use will be applied to materially adversely affect Library's rights under this Agreement.

b. If a Library or a Patron violates the Terms of Use, NetLibrary reserves the right, in its sole discretion, to suspend Library's or the Patron's access to and use of Library's NL Website. At its sole option, NetLibrary may notify Library of any violation by a Patron of the Terms of Use, and in the event, also at its sole option, NetLibrary may grant Library three business days to attempt to correct the violation by a Patron and NetLibrary will not suspend the Patron's access to and use of Library's NL Website if the violation is corrected within the three business day period. Library acknowledges and agrees that, in the case of repeated or persistent violations, NetLibrary may not provide the aforementioned notice and correction period to Library. Repeated or persistent violations of the Terms of Use by Library or Patrons may be cause for termination of this Agreement by NetLibrary.

3. **Tools.** Library will not use, implement or authorize use of any computerized or automated tool or application to search, index, test or otherwise obtain information from Library's NL Website, including without limit any "spidering" or web crawler application (collectively, "Tools"), without obtaining the prior written approval of NetLibrary. NetLibrary will not unreasonably withhold this approval, provided that the proposed use of Tools does not (i) present a risk of interfering with use of NL Website by Patrons or other NetLibrary end-users; (ii) degrade or impair the performance of NL Website; (iii) cause NetLibrary to violate its agreements with its other end-users, its publishers or other third parties; or (iv) constitute a violation of applicable law, including without limit U.S. copyright law. Library acknowledges and agrees that NetLibrary may from time to time implement controls on Library's NL Website to regulate or restrict the use of Tools.

## III. GENERAL PROVISIONS

**A. Applicability.** The provisions of this Section III apply whether Library is receiving eBook Services or has made the Secured eBook Option election.

### B. Termination.

1. **Termination Without Cause.** Either party may terminate this Agreement without cause effective upon the conclusion of the then current Initial Term or Renewal Term, as applicable, by providing the other party with at least 60 days prior written notice of its intent to do so.

2. **Termination for Cause.** Either party may terminate this Agreement for cause at any time by providing the other party with prior written notice of the occurrence of any of the following events:

- a. a party fails to timely pay any amounts due and payable, provided that the nonpayment is not cured within 10 days of the notice; or
- b. a party violates any material provision of this Agreement, including without limit a material failure to provide required services, a breach by Library or Patrons of copyrights laws, failure to comply with any security documents or a breach of the confidentiality provisions of this Agreement, or otherwise has committed breaches of this Agreement that, in the aggregate, are material, provided that the breach(es) cannot be, or is(are) not, cured within 60 days of the notice.

3. **Termination of eBook License Purchases.** If this Agreement is terminated as described in Article III.B.1., with respect to any eBook for which Library is receiving eBook Services and subject to the limitations set forth on Exhibit A, NetLibrary will continue to provide the eBook Services to Library unless and until Library elects to remove the eBook from Library's NL Website or to cease paying the CSS Fee associated with the eBook, even though this Agreement is terminated as to future purchases of other eBook licenses. Notwithstanding any other provision of this Agreement, if NetLibrary terminates this Agreement for cause under Article III.B.2., then NetLibrary's obligation to provide eBooks and eBook Services will expire.

**4. Termination of eBook Services.** Effective upon any anniversary of the Effective Date, Library may terminate this Agreement as it relates to eBook Services upon at least 60 days prior written notice of its intent to do so. In this event, Library may invoke the Secured eBook Option with respect to any eBook(s) licensed to Library under this Agreement by executing the Secured eBook Option Delivery Election Form attached to this Agreement as Exhibit E. (see also Section I.B.3 above).

a. If Library has paid Annual CSS Fees and desires to terminate eBook Services as described above, then no further fees related to the access of eBooks are due.

b. If Library has paid Prepaid CSS Fees and desires to terminate eBook Services as described above effective on the first, second, third or fourth anniversary of the Effective Date, then Library will be automatically converted to Annual CSS Fees and a settlement amount (the "Settlement") will be paid. The Settlement will be calculated as follows. The sum of Annual CSS Fees for all eBooks for the period of time for which eBook Services were provided to Library will be calculated and deducted from the amount of Prepaid CSS Fees for all eBooks that was paid to NetLibrary for the eBook Services that are being terminated. The Settlement will be paid within 30 days of the date of NetLibrary's invoice.

c. If Library has paid Prepaid CSS Fees, or has been automatically converted to Prepaid CSS Fees under Paragraph 1 of Exhibit B below, and desires to terminate eBook Services as described above effective on the fifth or a later anniversary of the Effective Date, then no further fees related to the access of eBooks are due to NetLibrary.

d. Library will reimburse NetLibrary for its reasonable costs associated with the medium on which Secured eBooks are loaded, the loading of Secured eBooks onto the medium, any software that accompanies Secured eBooks and shipping and handling charges, based upon the total number of Secured eBooks requested by Library.

**5. Survival.** All terms of this Agreement that are intended to survive termination for any reason of this Agreement will so survive, including without limit Section I, Paragraph B.2, Section II, Paragraph C and Section III, Paragraphs B.3, B.4, C, D, E, F, G, H, I.5 and I.13.

**C. Limited Warranty.** NetLibrary warrants that, as to any eBooks licensed to Library under this Agreement, NetLibrary has the necessary authority to license the eBooks to Library and, if applicable, to provide eBook Services to Library. If applicable, NetLibrary warrants that it will use its commercially reasonable efforts to provide eBook Services as described in this Agreement.

**D. Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION III.C ABOVE, LIBRARY'S NL WEBSITE, EBOOK SERVICES, AND EBOOKS LICENSED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND NL AND ITS CONTENT PROVIDERS EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMIT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER NL NOR ITS CONTENT PROVIDERS WARRANTS, GUARANTEES OR MAKES ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF LIBRARY'S NL WEBSITE OR EBOOKS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NL OR ITS EMPLOYEES WILL CREATE A REPRESENTATION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF NL'S OBLIGATIONS, AND LIBRARY MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

**E. Indemnity.** [Deleted by Agreement of the Parties.]

**F. Limitation on Liability.** Neither party will claim special, incidental, indirect, or consequential damages; including without limit lost profits, for breach of this Agreement. This limitation will also apply to any claims brought against NetLibrary's content providers. Remedies are limited to claims for amounts due, for injunctive relief only as provided, or for direct damages. A party's aggregate liability for any and all claims, losses, liabilities, and demands arising, whether for breach of contract, in tort or otherwise, are limited to the total amount

of eBook License Fees, CSS Fees and Reinstatement Fees (collectively, "Fees") paid by Library to NetLibrary, during the 12 month period immediately preceding the date on which the claim first arose. Notwithstanding any other provision of this Agreement, the nonbreaching party may seek injunctive relief in any court of competent jurisdiction to enjoin or restrain the breaching party from continuing to do any act or commit any violation or threatened violation of this Agreement, and the prevailing party, if any, on a claim for injunctive relief is entitled to recover its reasonable attorney fees incurred in connection with that proceeding. Injunctive relief will be without prejudice to the nonbreaching party's right to also seek money damages for breach of this Agreement.

**G. Confidential Information.** To the extent allowed by applicable law, Library agrees that it will not use or disclose information relating to (i) the terms of this Agreement, (ii) the content of reports delivered under this Agreement, (iii) pricing terms and other business arrangements governed by this Agreement and (iv) any other documents provided by NetLibrary that have a confidential, proprietary or other similar designation or should reasonably be believed to be the confidential or proprietary information of NetLibrary or its content providers. Notwithstanding the foregoing, Library may disclose the aggregated content of reports delivered under Ex.A.2.c to other library professionals.

**H. Payment Terms.** All fees and charges are due and payable 30 days from the date of the related invoice. NetLibrary may deny Library and Patrons access to Library's NL Website until the unpaid invoice is paid in full.

**I. Other Provisions.**

**1. Entire Agreement.** All exhibits referred to in this Agreement are incorporated in this Agreement by reference. Any exhibit amended under Section III.1.2 below will also be incorporated in this Agreement by reference. This Agreement sets forth the entire agreement between the parties with respect to the subject matter of the Agreement, merges all discussions between them and supersedes and replaces any and every other prior or contemporaneous agreement, understanding or negotiation that may have existed between NetLibrary and Library to the extent that any such agreement relates to the subject matter of the Agreement. This Agreement governs all orders for eBooks and eBook Services placed by Library during the Term.

**2. Modification or Amendment.** Notwithstanding any other provision in this Agreement, NetLibrary will have the right to modify and amend Exhibits B and C and the business terms referenced in these Exhibits provided that NetLibrary provides Library with at least 30 days prior written notice; in the event the modified or amended Exhibit B and/or Exhibit C will not be effective before the end of the 30 day notice period. Any other modification or amendment of this Agreement must be in writing and signed by a duly authorized representative of each party. For clarification, no term contained in a purchase order or other similar document submitted to NetLibrary by Library will become binding on the parties unless and until the term is mutually agreed upon in a written modification or amendment to this Agreement as described above.

**3. Assignment.** Neither party may sell, assign, transfer or convey this Agreement or any rights and obligations without the prior written consent of the other party, which will not be unreasonably withheld. Notwithstanding the foregoing, NetLibrary reserves the right to assign or transfer this Agreement to an affiliated company or to a third party that acquires substantially all of its assets upon written notice to the Library.

**4. Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

**5. Governing Law, Jurisdiction and Venue.** This Agreement will be governed by the laws of the State of California, U.S.A. without regard to any conflict of laws provisions contained in this Agreement. NetLibrary and Library agree that any action arising from or out of the negotiations, execution, interpretation or enforcement of this Agreement may be brought in the state or federal courts located in the State of California, U.S.A. Library

hereby consents to jurisdiction and venue in the state and federal courts in California, U.S.A.

6. Interpretation. The use of headings in this Agreement is solely for the mutual convenience of the parties and will not affect the construction.

7. Severability. If any provision of this Agreement proves to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision of this Agreement that is illegal, invalid or unenforceable, there will be added as a part of this Agreement a provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

8. Further Assurances. Library and NetLibrary agree to take the further actions and to execute the further documents as may be necessary or appropriate to effectuate this Agreement and the transactions contemplated in this Agreement.

9. Force Majeure. Library acknowledges that the Internet is an unsecure, unstable, unregulated, unorganized and unreliable environment, and that the ability of NetLibrary to deliver eBook Services may depend upon the Internet and equipment, software, systems, data and services provided by various telecommunications carriers, equipment manufacturers, firewall providers, encryption system developers and other vendors and third parties. Neither party will be liable for, or have the right to terminate this Agreement as a result of, any delays or failures to perform any of its obligations under the Agreement to the extent that the delays or failures are due to circumstances beyond its reasonable control, including without limit acts of God; strikes; riots; acts of war; power failures; and functions or malfunctions of the Internet, telecommunications services, firewalls, encryption systems, and security devices; or governmental regulations imposed after the Effective Date.

10. Waiver. The waiver by either party of any right granted under this Agreement will not be deemed a waiver of any other right granted under this Agreement, or a precedent for any subsequent waiver.

11. No Partnership. As to one another the parties are considered independent contractors. It is not the intention of the parties to create, nor will this Agreement be construed as creating, a partnership, joint venture, agency relationship, or other association; or render the parties liable as partners, co-venturers, agents, or principals.

12. No Third Party Beneficiaries. This Agreement is not intended to confer any benefit on any person or entity not a party to this Agreement.

13. Notices. Any notice, demand, request, consent, approval or other communication (collectively, "Notices") required or permitted to be given under this Agreement will be in writing and sent by hand delivery, special courier capable of confirming receipt, United States Mail (certified mail, return receipt requested), or facsimile or e-mail to a non-individual-specific e-mail address if receipt is confirmed. The parties acknowledge and agree that a Notice might not be deemed effective if receipt is not confirmed. Notices will be deemed given under the following rules: if hand delivered, at the time of delivery; if sent by special courier, on the third day after delivery to the courier; if mailed, on the seventh day after deposit in the United States Mail; and if sent by facsimile or e-mail to a non-individual-specific e-mail address, on the date transmitted if the sender receives confirmation that the transmission was received during the notified party's normal business hours, otherwise on the notified party's next normal business day. Notices will be sent to the following addresses:

	If to NL:	If to Library:
	NetLibrary, a division of OCLC Online Computer Library Center, Inc.	California Digital Library
Address:	4888 Pearl East Circle, Suite 103	University of California Office of the President 415 20th Street, 4th Floor
Address:	Boulder, Colorado	Oakland, CA 94612-2901

	80301	
Attention:	Sales Management	
Telephone:	(303) 415-2548	
Facsimile:	(303) 381-8800	
e-mail address:	sales@netlibrary.com	

14. Facsimile Copies. A copy of the signed original of this Agreement transmitted by facsimile machine will be binding on both parties and have the same force and effect as the signed original.

15. Funding Contingency. The Library reasonably believes that funds can be obtained sufficient to pay all monies due during the term of this Agreement and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which payments for this transaction may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative review and appeals in the event such portion of the budget is not approved. It is the Library's intent to make payments for the full term of this transaction. The Library represents that the use of the materials under this transaction are essential to its proper, efficient and economic operation.

In the event no funds or insufficient funds are appropriated and budgeted and are not otherwise legally available by any means whatsoever in any fiscal period for payments due under this transaction, the Library will immediately notify Licensor of such occurrence and this transaction shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the Library of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available. In the event of such termination the Library shall maintain its perpetual right to materials licensed under the subscription periods for which it has fully paid.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, to be effective as of the Effective Date, as set forth below.

NetLibrary: NetLibrary, a division of OCLC Online  
Computer Library Center, Inc.

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

Name: \_\_\_\_\_

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

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

Library: California State Library of the University of California

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

Name: \_\_\_\_\_

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

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

#### EXHIBIT A TO LIBRARY EBOOK AGREEMENT eBook Services

##### 1. Support for NL Website and Library's NL Website.

a. Existing Platform. At the time this Agreement is executed, the NL Website and Library's NL Website are supported by NetLibrary's existing electronic bookshelf technology, which includes a third party operating system, third party database management software, and proprietary NetLibrary software (collectively, the "Existing Platform"). NetLibrary will not charge any fees to continue to support the operation of the Existing Platform, except as may be provided in this Agreement.

b. Platform Commitment Date. The "Platform Commitment Date" means a date determined for each purchase of eBook licenses. Initially, the Platform Commitment Date will be five years from the date of each applicable purchase of eBook licenses. However, NetLibrary may publish or announce a specific date as the Platform Commitment Date or a change in the practice of determining the Platform Commitment Date, provided that the publication or announcement will only be applicable to purchases of eBook licenses made after the date of the publication or announcement. Thereafter, at NetLibrary's discretion, the Platform Commitment Date for any purchase of eBook licenses may be as stated in the related documentation.

c. Migration. If the Existing Platform becomes technologically obsolete and/or third party vendors cease to support third party components of the Existing Platform before the Platform Commitment Date; then, except as may be provided in this Agreement, NetLibrary will not charge Library any additional fees to support the Existing Platform until the Platform Commitment Date or to migrate Library's eBook content to a replacement platform before the Platform Commitment Date. If the Existing Platform becomes technologically obsolete and/or third party vendors cease to support third party components of the Existing Platform after the Platform Commitment Date, then NetLibrary may charge fees to support a replacement platform or to migrate Library's eBooks to a replacement platform.

##### 2. Specific eBook Services.

a. Accessing eBooks. Subject to the terms of this Agreement, NetLibrary will allow Library to access the eBooks that are available to NetLibrary under NetLibrary's agreements with publishers and other content providers in formats suitable for NetLibrary's electronic publication process and that are licensed to Library.

i. Hosting of eBooks. Absent other mutually agreeable arrangements, and except as provided below, NetLibrary will host each eBook licensed by Library on Library's NL Website for as long as Library elects to receive and pay for the corresponding eBook Services and NetLibrary continues to provide this Service.

ii. Removing eBooks. If Library chooses the Annual CSS Fee payment option, Library may elect to have any eBook removed from Library's NL Website, thereby suspending Library's obligation to pay the Annual CSS Fee for the eBook, by providing NetLibrary with written notice of the election within 60 days of the anniversary of the licensure of the eBook (or, if applicable, the reinstatement date for the eBook). CSS Fees for removed eBooks will cease on the anniversary date or the removal date, whichever date occurs first.

iii. Reinstating eBooks. Effective as of the first day of any month, Library may elect to reinstate any removed eBook by providing NetLibrary with at least 30 days prior written notice of the election and by paying the applicable Reinstatement Fee as further described in Exhibit B. CSS Fees for reinstated eBooks are due and payable on the reinstatement date.

b. Patron Access. Library will implement and maintain Limiting Access Measures, based on NetLibrary's standard systems, which will control Patrons' access to Library's NL Website.

c. Reports. CSS Fees entitle Library to the standard reports offered by NetLibrary. These reports may be modified by NetLibrary from time to time and may include without limit: owned eBooks, popular eBooks, eBooks not owned, all eBooks, new eBooks, activity by subject area and activity by title. Nonstandard reports may be developed for a fee on a case-by-case basis.

#### EXHIBIT B TO LIBRARY EBOOK AGREEMENT NL Website and CSS Fees

1. CSS Fee Payment Options. Unless Library elects to purchase eBooks via the Secured eBook Option, Library will choose one of the two CSS Fee payment options described below on each purchase order. If Library does not make an election on a purchase order, then Library will be deemed to have selected the Annual CSS Fee for the corresponding order. In addition, if Library selects or is deemed to have selected an Annual CSS Fee for an order of eBooks, Library may, at any time during the Term, elect to convert to the Prepaid CSS Fee for the order of eBooks. This election will be made by written notice to NetLibrary and payment of the Prepaid CSS Fee in an amount equal to \_\_\_\_\_ of the sum of each eBook List Price for all eBooks in the order at the time of initial licensing, less a credit equal to \_\_\_\_\_ of the sum of all Annual CSS Fees paid for the eBooks. If Library pays five Annual CSS Fees to NetLibrary for any eBook(s), then no further CSS Fees will be due to NetLibrary for such eBook(s) and Library will be automatically converted to Prepaid CSS Fee(s) for the eBooks, which will be deemed to have been paid in full.

##### a. Annual CSS Fee.

i. The Annual CSS Fee for an order will equal \_\_\_\_\_ of the sum of the eBook List Prices for all the eBooks in the order at the time of initial licensing.

ii. Upon payment of an Annual CSS Fee, NetLibrary will host and provide eBook Services for the effected eBooks for 1 year from the purchase date.

iii. The first payment of the Annual CSS Fee for an order will be due and payable at the time the Library purchases the eBook licenses, and will be included on the invoice for the corresponding eBook License Fees.

iv. Annual CSS Fees for the second and subsequent years for all orders will be calculated and invoiced in the month in which the anniversary of the order date occurs, or at NetLibrary's election, on an annualized basis on a single date each year for Library's entire eBook collection.

v. The Annual CSS Fee in the second and subsequent years will be reduced by the portion of the first year Annual CSS Fee attributable to any eBook removed from, and not reinstated to, Library's eBook collection as further described in this Exhibit.

vi. For the Annual CSS Fee option only, the Reinstatement Fee for an eBook will equal 15% of the eBook List Price.

vii. If NetLibrary elects not to continue to support the Existing Platform at any time due to technological obsolescence or cessation of third party vendor support, NetLibrary may charge Library (if Library selected the Annual CSS Fee option) additional fees for migrating the eBooks for which Library is paying the Annual CSS Fee to a replacement platform, subject to any applicable limitations as set out on Exhibit A.

b. **Prepaid CSS Fee.**

i. Library may prepay CSS Fees for an order by making a one-time-only nonrefundable payment equivalent to 55% of the sum of the eBook List Prices for all eBooks in the order at the time of initial licensing.

ii. Upon payment of the Prepaid CSS Fee, NetLibrary will host and provide eBook Services for the effected eBooks for the greater of: (a) five years from the purchase date or (b) for as long as NetLibrary continues to support the Existing Platform.

iii. If Library selects the Prepaid CSS Fee payment option and NetLibrary ceases to support the Existing Platform due to technological obsolescence or cessation of third party vendor support at any time before the Platform Commitment Date, NetLibrary will not charge Library any additional fees to migrate Library's licensed eBooks for which Library has paid the Prepaid CSS Fee to a replacement platform.

2. **Delivery of eBook Services.** Payment of the CSS Fee allows Library to access the eBooks licensed to it on Library's NL Website and receive eBook Services for such eBooks for so long as:

a. Library continues to pay, or has prepaid, as the case may be, such CSS Fee,

b. NetLibrary continues to support the Existing Platform as provided in Exhibit A and

c. Library has not removed the eBook from Library's NL Website.

**EXHIBIT C TO LIBRARY EBOOK AGREEMENT**

**eBook License Fees and Discounts**

1. **Purchases Made Through a Partner of NetLibrary.** The Discounts will be determined by a consortium, distributor or other partner of NetLibrary if Library purchases through the consortium, distributor or other partner of NetLibrary.

2. **Purchases Made Through NetLibrary.** At the time this Agreement is executed, NetLibrary's Discount structure applicable to each order of eBook License Fees placed directly with NetLibrary is calculated as follows:

Library's Purchases During the Preceding 12 Month Period in U.S. Dollars	Maximum Discount off eBook List Price
\$750,000 and above	.%
\$500,000 - 749,000	%
\$200,000 - 499,000	%
\$75,000 - 199,000	..%

3. The NetLibrary Discount structure provided above is subject to the following conditions:

a. The Discount is based on one contract and one billing address.

b. The Discount is a guideline and will vary by title.

c. The Discount as applied to each specific purchase of eBook licenses is based on the aggregate amount of Library's purchases of eBook licenses during the preceding rolling 12 month period.

**EXHIBIT D TO LIBRARY EBOOK AGREEMENT**

**Guidelines for the Use and Transfer of OCLC-Derived Records**

Revision of November 16, 1987

**I. GUIDELINES**

(See Definitions in Part II below)

1. Each member and nonmember library may use records without restriction, and may transfer records of its own holdings without restriction to other libraries.

2. In addition to transfers to libraries, each member and nonmember library may transfer records of its own holdings without restriction, to (a) member networks, (b) state and multi-state library agencies and (c) all other noncommercial firms.

a. Member networks may produce and transfer to any member library, copies on magnetic tape of records used or inserted into the OCLC database by the library. Each member network also may process records of the holdings of any member or nonmember library which has employed and agreed to pay it for that service, provided the member network has first signed either an individual agreement with the library, or a general agreement with OCLC, containing measures agreed upon by OCLC and the member network for protection of the records it has been employed to process. Any other use and transfer of records by member networks will be as provided in separate understandings with OCLC.

b. The use and transfer of records by library systems or projects operated by or under the aegis of one or more state or national library agencies will be as provided in separate understandings with OCLC. Such understandings may include (i) arrangements to incorporate state or national bibliographic databases into the OCLC system, (ii) paid-up licenses to use records in state or national programs (e.g., by means of payments for OCLC multi-institution tapes) and/or (iii) any other understandings that will facilitate state or national programs as well as the maintenance and enhancement of the OCLC database.

c. The use and transfer of records by any other organizations to which transfers are made under this Guideline 2 will be as provided in separate understandings with OCLC.

3. In addition, each member and nonmember library may transfer records of its own holdings to commercial firms which the library has employed and agreed to pay to process such records, provided that each commercial firm has first signed an individual agreement with the library, or OCLC has advised the library that the commercial firm has signed a general agreement with OCLC, in either case containing measures agreed upon by OCLC and the commercial firm for protection of the records it has been employed to process. In addition, each member and nonmember library may make any other transfers of records to commercial firms, subject to prior written agreements with OCLC. However, there is no requirement for prior written agreements (a) for transfers made under Guideline 1 above to libraries operated by commercial firms or (b) for transfers to commercial firms by former OCLC member libraries of records of their holdings, so long as the libraries maintain no continuing user status with OCLC.

4. When a nonmember organization makes bibliographic information available to OCLC which is subject to usage or transfer restrictions imposed by such nonmember organization, and OCLC nevertheless elects to accept the information for addition to the OCLC database, OCLC will notify libraries to which it makes the information available, and rights to use and transfer records based on such information will be subject to the same restrictions.

5. When transfers under Guideline 1 above are made to machine-readable union catalogs accessible by nonmember libraries, it is requested that machine-readable copies of the records of such union catalogs be submitted to OCLC. OCLC, at its own expense, will have the right to add such records to its database for all uses consistent with its chartered purposes.

6. The Guidelines above apply to all uses and transfers of records except where a mutually acceptable agreement establishing broader or narrower rights is made with OCLC relating to a specific product or service.

**II. DEFINITIONS**

1. The term "member library" means a general member of OCLC as defined in its Code of Regulations.

2. The term "nonmember library" means any library other than a member library.

3. A "member network" is an OCLC-affiliated regional, state or multi-state library network organization which is in contract with OCLC to provide OCLC services and products, or to assist OCLC to provide such services and products, to general members of OCLC.

4. A "commercial firm" is any organization permitted, under applicable law, to operate on a for-profit basis.

5. The term "records" means bibliographic records and holdings data (including copies thereof) derived from the OCLC database, including derivative works made from such records, and either received in machine-readable form or converted by the transferee into machine-readable form. The term also includes such records when held only in eye-readable form, in the case of proposed transfers to commercial firms. However, records do not include, as to any member or nonmember library (a) bibliographic records designated in the OCLC database as original cataloging by such member or nonmember library and (b) bibliographic records derived by such member or nonmember library from sources other than the OCLC database and to copies of which in the OCLC database its holdings symbol has been attached by tapeloading. Such excluded records are freely transferable and are not dealt with in these Guidelines. OCLC-derived records held only in eye-readable form are freely transferable except to commercial firms.

6. The terms "transfer" and "transfer of records" refer to all sales, exchanges, gifts, sharing and other transfers, and all online access except online access provided to end-user patrons of a library in authorized possession of the records.

the eBook files and reader software provided on a DVD or other securable medium;

(11) the rights provided to Library under the Secured Media Option will not have the same or comparable functionality as NetLibrary's on-line eBook reader; and

(12) it will not receive any further eBook Services for any eBooks for which it elects the Secured eBook Option;

(c) pay a fee to reimburse NetLibrary for its reasonable costs attributable to Library's participation in the Secured Media Option. These costs may include, but are not limited to, the cost of the DVD or other securable medium, the cost of loading of eBooks onto the DVD or other securable medium, the cost of any software that accompanies Secured eBooks, and shipping and handling charges.

2. Library should execute this Secured eBook Option delivery election form only if and when it does not wish to have access to its eBooks through NetLibrary's Internet library technology and eBook Services.

Library: \_\_\_\_\_

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

Name: \_\_\_\_\_

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

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

#### EXHIBIT E TO LIBRARY EBOOK AGREEMENT

##### Secured eBook Option Delivery Election Form

1. If Library wants to exercise the Secured Media Option, then Library must:

(a) notify NetLibrary that it desires to take delivery of eBooks for which licenses are purchased under this Agreement on DVD or another securable medium;

(b) sign this Secured eBooks Option Delivery Form by which Library acknowledges, agrees, and confirms that it understands that:

- (1) the copyrights for all eBooks acquired through the Secured eBooks Option are and will be owned by the respective publishers and NetLibrary;
- (2) it is only permitted to allow a single user at any time to view a single copy of any eBook;
- (3) it and its Patrons will adhere to the terms of use that apply to eBooks (currently available at <http://www.netlibrary.com/TermsOfUse.aspx>);
- (4) it employs, and will continue to employ, certain required security features applicable to Secured eBooks;
- (5) it will not permit access or use of eBooks by patrons that it has not authorized to access or use eBooks or by any other third party users;
- (6) it will be accountable to the eBooks publisher and NetLibrary for any violation of the eBooks' copyright;
- (7) it is only permitted to install one copy of the eBook files and reader software, provided on a DVD or other securable medium, on a server so that it can make the eBooks that it has purchased available for viewing by it and its authorized patrons;
- (8) it will not (and will not permit a third party to): copy, in whole or in part, the eBook files and reader software provided on a DVD or other securable medium for any purpose other than the purpose specified in Article 1.(b)(7) of this form;
- (9) it will not use the eBook files and reader software provided on a DVD or other securable medium on unauthorized equipment; or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of the eBook files and reader software provided on a DVD or other securable medium;
- (10) it will not (and will not permit a third party to): transfer, sublicense, rent, lease, distribute, sell, or create derivative of

#### EXHIBIT F TO LIBRARY EBOOK AGREEMENT

##### Terms of Use

We ask that you read our terms of use agreement so that you fully understand NetLibrary policies.

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THIS SITE. BY ACCESSING OR USING THIS SITE IN ANY WAY, YOU AGREE TO THESE TERMS OF USE. IF YOU DO NOT AGREE TO THESE TERMS OF USE, PLEASE DO NOT USE THIS SITE.

1. **General.** This site is owned and operated by NetLibrary, a division of OCLC Online Computer Library Center, Inc., an Ohio nonprofit corporation. NetLibrary has the right at any time to change or discontinue any aspect or feature of the site, including, without limitation, the content, hours of availability, and equipment needed for access or use of the site. These terms of use apply to all users of NetLibrary, including patrons of institutions or other libraries.

2. **Equipment.** You are responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed for access to and use of the site and all charges related thereto.

##### **3. Restrictions on Use.**

A. You agree to use the site for lawful purposes only. You will not post or transmit through the site any material that: (i) violates infringes, disrupts, or interferes in any way upon the rights of others; (ii) transmits, contains, or communicates viruses or other harmful, disruptive, or destructive files; (iii) disrupts or interferes with the security of, or otherwise causes harm to, the site, or any services, materials, system resources, accounts, passwords, servers, or networks connected to or accessible through the site; (iv) is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane, or otherwise objectionable; or (v) encourages conduct that would constitute a criminal offense, gives rise to civil liability or otherwise violates any law. Without NetLibrary's express prior approval, you will not post or transmit through the site any material that contains advertising or any solicitation with respect to products or services. You will not use the site to advertise or perform any commercial solicitation, including, without limitation, the solicitation of users to become subscribers of other on-line information services. Any conduct by you that in NetLibrary's discretion restricts or inhibits any other user from using or enjoying the site will not be permitted.

B. Furthermore, you agree not to: (i) use or attempt to use another's account, password, service, or system without authorization from NetLibrary; (ii) access or attempt to access any Content which you are



not authorized to access; or (iii) try to reverse engineer, reverse assemble, reverse compile, decompile, disassemble, or otherwise alter any executable code, contents, or materials on or received via this site. You understand that such actions are likely to subject you to serious civil and criminal legal penalties and that NetLibrary will act to protect its rights and the rights of publishers, authors, and its other licensors. Without the express written permission of NetLibrary, you agree not to use any automated data or content gathering and extraction methods, including data mining and robots, in connection with the site.

C. The site contains copyrighted material, trademarks and other proprietary information, including, without limitation, text, software, photos, video, graphics, music and sound ("Copyrighted Material"), and the contents of the site are copyrighted under the United States copyright laws. You may not modify, alter, publish, transmit, distribute, display, participate in the transfer or sale, create derivative works, or in any way exploit, any of the Copyrighted Material, in whole or in part. You may not copy the Copyrighted Material or engage in any other acts inconsistent with the principles of copyright protection and fair use, as codified in 17 U.S.C. Sections 106-110, without obtaining the express written permission of NetLibrary and the copyright owner. In the event of any permitted copying, redistribution or publication of copyrighted material, no changes in or deletion of author attribution, trademark legend or copyright notice will be made. You acknowledge that you do not acquire any ownership rights to copyrighted material. Any unauthorized use of the site or materials or services on the site may violate applicable copyright, trademark, patent, and/or other intellectual property laws and the Terms of Use.

D. You will not upload, post or otherwise make available on the site any material protected by copyright, trademark, or other proprietary right without the express permission of the owner of the copyright, trademark, or other proprietary right and the burden of determining that any material is not protected by copyright rests with you. You will be solely liable for any damage resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from such a submission. By submitting material to the site, you automatically grant, or warrant that the owner of such material has expressly granted NetLibrary the royalty-free, worldwide, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, display, translate, and distribute such material (in whole or in part) and/or to incorporate it in other works in any form, media or technology now known or hereafter developed. You also permit any other user of the site to access, view, store, or reproduce the material for that user's personal use. You grant NetLibrary the right to edit, copy, display, publish, and distribute any material made available on the site by you.

E. The foregoing provisions of Section 3 are for the benefit NetLibrary, its subsidiaries, affiliates and its third party content providers and licensors and each will have the right to assert and enforce such provisions directly or on its own behalf.

#### 4. Password and Security

If you choose to register for a NetLibrary account, you will receive a username and password. You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities that occur under your password or account. You may not share your password with anyone else or permit your password to be used to provide anyone else with access to the site. You agree to immediately notify NetLibrary of any unauthorized use of your password or account or any other breach of security.

#### 5. Disclaimer of Warranty; Limitation of Liability.

A. YOU EXPRESSLY AGREE THAT USE OF THE SITE IS AT YOUR SOLE RISK. NEITHER NetLibrary, ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTENT PROVIDERS OR LICENSORS WARRANT THAT THE SITE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SITE, OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION, SERVICE OR MERCHANDISE PROVIDED THROUGH THE SITE.

B. Legal, medical, and health-related information located, identified or obtained through the use of the Service, is provided for informational purposes only and is not a substitute for qualified advice from a professional.

C. THE SITE IS PROVIDED ON AN "AS IS"; BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, THERE ARE NO WARRANTIES AS TO THE RESULTS OBTAINED FROM THE USE OF THE SITE.

D. IN NO EVENT WILL NetLibrary, OR ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING THE SITE OR THE CONTENT INCLUDED THEREIN, BE LIABLE IN CONTRACT, IN TORT (INCLUDING FOR ITS OWN NEGLIGENCE) OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY) FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES, LOSS OF USE OR SIMILAR ECONOMIC LOSS, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SITE. YOU HEREBY ACKNOWLEDGE THAT THE PROVISIONS OF THIS SECTION WILL APPLY TO ALL USE OF AND CONTENT ON THE SITE. **APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT WILL NetLibrary's TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING ITS OWN NEGLIGENCE) OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY) EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THIS SITE.**

E. THE ABOVE DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INACCURACY, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF THIS SITE, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR (INCLUDING STRICT LIABILITY), NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION. YOU SPECIFICALLY ACKNOWLEDGE THAT NetLibrary IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD-PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

6. **Monitoring.** NetLibrary will have the right, but not the obligation, to monitor the content of the site to determine compliance with these Terms of Use and any operating rules established by NetLibrary and to satisfy any law, regulation or authorized government request. NetLibrary will have the right in its sole discretion to edit, refuse to post or remove any material submitted to or posted on the site. Without limiting the foregoing, NetLibrary will have the right to remove any material that NetLibrary in its sole discretion, finds to be in violation of the provisions hereof or otherwise objectionable.

7. **Indemnification.** You agree to defend, indemnify and hold harmless NetLibrary and its affiliates and their respective directors, officers, employees and agents from and against any and all claims, actions, demands, damages, costs, liabilities, losses and expenses (including reasonable attorneys' fees) arising out of your use of the site.

8. **Trademarks.** NetLibrary, NetLibrary.com, NetLibrary.org, and all page headers, custom graphics and button icons are service marks, trademarks, and/or trade dress of NetLibrary. All rights reserved. All other trademarks appearing on the site are the property of their respective owners.

9. **Third Party Content.** NetLibrary is a distributor (and not a publisher) of content supplied by third parties and users of the site. Accordingly, NetLibrary has no more editorial control over such content than does a public library, bookstore, or newsstand. Any opinions, advice, statements, services, offers, or other information or content expressed or made available by third parties, including information providers and users, are those of the respective author(s) or distributor(s) and not of NetLibrary. In many instances, the content available through the site represents the opinions and judgments of the respective information provider or user. NetLibrary neither endorses

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nor is responsible for the accuracy or reliability of any opinion, advice or statement made on the site by anyone other than authorized NetLibrary employee spokespersons while acting in their official capacities.

**10. Termination.** You agree that NetLibrary may, under certain circumstances, in its sole discretion, and without prior notice, immediately terminate your NetLibrary account and access to the site. Cause for such termination will include, but not be limited to, (a) breaches or violations of these Terms of Use or other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) a request by you (self-initiated account deletions), (d) a request by a Library or Consortium, and (e) extended periods of inactivity.

**11. Changed Terms.** NetLibrary has the right at any time to change or modify these Terms of Use applicable to use of the site, or any part thereof, or to impose new conditions. Such changes, modifications, additions or deletions will be effective immediately upon notice thereof, which may be given by any means including, without limitation, posting on the site, or by electronic or conventional mail, or by any other means. If you use the site after such notice, then you will be deemed to have accepted such changes, modifications, additions or deletions. If you don't agree to the changes, modifications, additions or deletions, then you must stop using the site.

**12. International Users.** The site is controlled, operated, and administered by NetLibrary from its offices in the United States of America. If you access the site, then you are responsible for compliance with applicable laws including United States export laws. Furthermore, if you access the site from a location outside the United States, you are responsible for compliance with all local laws.

**13. Procedure For Making Claims Of Copyright Infringement.** If you believe that your work has been copied and is accessible on this site in a way that constitutes copyright infringement, you may notify NetLibrary.

**14. Miscellaneous.** These Terms of Use will be construed in accordance with the laws of the State of Colorado, without regard to its conflict of laws rules. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and will not be given any legal import.

**EXHIBIT G TO LIBRARY EBOOK AGREEMENT**  
**List of Branches**

#	Institution
1	UC Berkeley
2	UC Davis
3	UC Irvine
4	UC Los Angeles
5	UC Merced
6	UC Riverside
7	UC San Diego
8	UC Santa Barbara

## Addendum to Library eBook Agreement

This Addendum (this "Addendum") to the Library eBook Agreement dated December 15, 2007 (the "Agreement") is effective December 17, 2007 (the "Addendum Effective Date") and is by and between NetLibrary, a division of OCLC Online Computer Library Center, Inc., an Ohio nonprofit corporation ("NetLibrary"), and California Digital Library, a California nonprofit organization ("Library").

For and in consideration of the mutual agreements contained herein, the sufficiency of which is acknowledged, the parties agree as follows.

1. Any capitalized term appearing in this Addendum without a definition will have the meaning attached to it in the Agreement.
2. For purposes of this Addendum, Section(s) 1.A.1., 2., 3., 4., 5., 6., 13., and 14. (Definitions) of the Agreement will be deleted in their entirety and Terms defined within this Addendum will have the respective meanings attributed to them throughout this Addendum or in this Section 2:
  1. "Licensed Materials" means the data included in a Database, as applicable.
  2. "Database(s)" means an organized collection of Licensed Material(s) that is either hosted on the NL System or on a Third-Party System.
  3. "NetLibrary Database Services" mean NetLibrary's services related to Library's ongoing access to and use of Database(s) via the Internet, as further described in Exhibit A.
  4. "Third-Party Database Services" mean a Third-Party's services related to Library's ongoing access to and use of Database(s) via the Internet, as further described in Exhibit A.
  5. the "NL System" means the certain online website, comprised of computer equipment, software programs, database systems, NetLibrary's on-line database reader, and related technical processes, know-how, and documentation
  6. the "Third-Party System" means the certain online website, comprised of computer equipment, software programs, database systems, the Third-Party's on-line database reader, and related technical processes, know-how, and documentation.
  7. A "Subscription" means an annual license for access to one or more Database(s) on the basis described in Exhibit B.
  8. "Subscription Price" means the price established for the annual license for access to one or more Database(s).
  9. The "Term" of this Agreement commences on the Effective Date and continues in effect for 5 years. At the expiration of the Initial Term, this Agreement will automatically renew for successive terms of one (1) year subject to Section III.A.
  10. "Third-Party" means a database provider that hosts, distributes, markets, and sells Third-Party Database Services on a Third-Party System.
3. Sections I.B.1. (Purchase of Licenses) and 2. (Copyrighted Works) of the Agreement will not apply to this Addendum. The following Sections will apply to this Addendum:
  1. Purchase of Subscriptions to Database(s). During the Term of the Agreement, Library may select and purchase Subscriptions to Database(s) in accordance with NetLibrary's then current ordering practices. Each final order of Subscriptions to Database(s), as evidenced by a Database(s) Order Confirmation Form, is incorporated in this Agreement by reference.
  2. Copyrighted Works. Library acknowledges and agrees that the copyright to the Licensed Materials in each Database is owned by or licensed to NetLibrary and/or the respective publisher thereof. All Rights Reserved. By purchasing a Subscription to a Database, Library obtains certain rights to access and use the Licensed Materials in the Database, but Library does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with the Licensed Materials or the Database. Library agrees that any access or use of the Licensed Materials in the Database(s) by Library and its Patrons is governed by and will comply with applicable laws, including without limit U.S. copyright laws. Library acknowledges that it and its Patrons have no right to make copies of any Database, any Licensed Materials or any portions thereof, except to the extent permitted by applicable copyright laws.
  4. Section I.B.3. (Delivery Option) of the Agreement – and Exhibit E to the Agreement (Secured eBook Option Delivery Election Form) – will not apply to this Addendum.
  5. Section II.B. (Provision of eBooks) of the Agreement will be deleted in their entirety and replaced with the following:
    - B. Provision of Database Services.
      1. During the Term, NetLibrary will establish, host, and administer Library's NL Website using NetLibrary's existing electronic content technology and NL Website. Library and Patrons will access Database(s) through Library's NL Website.
      2. Database Services. Library will receive NetLibrary Database Services for Database(s) hosted on the NL System and Third-Party Database Services for Database(s) hosted on a Third-Party System. NetLibrary will be responsible for providing NetLibrary Database Services to Library via the NL System. The Third-Party will be responsible for providing Third-Party Database Services to Library via the Third-Party System.
      3. Library and Patrons will access Library's Database(s) and NetLibrary and Third-Party Database Service(s), as applicable, via Library's Internet connection, which will be Library's expense and responsibility.
  6. Section II.C (Library and Patron Usage) and Section III.C. (Limited Warranty) of the Agreement will apply to the Addendum, but all references to the term "eBook" in these provisions will be deleted and replaced with the term "Database".
  7. Section III. D. (Warranty Disclaimer) will be deleted in its entirety and replaced with the following:
    - D. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION III.C ABOVE, LIBRARY'S NL WEBSITE, DATABASE SERVICES, AND NETLIBRARY OR THIRD-PARTY DATABASE(S) LICENSED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND NL AND ITS CONTENT PROVIDERS EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMIT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER NL NOR ITS CONTENT PROVIDERS WARRANTS, GUARANTEES OR MAKES ANY REPRESENTATIONS REGARDING THE USE, THE RESULTS OF THE USE, THE ACCURACY, COMPLETENESS, OR CURRENTNESS OF LIBRARY'S NL WEBSITE OR NETLIBRARY OR THIRD-PARTY DATABASE(S) OR THE INFORMATION THEREIN OR ANY MATERIAL WHICH CAN BE ACCESSED (VIA A

DIRECT OR INDIRECT HYPERLINK OR OTHERWISE) THROUGH ANY SUCH DATABASE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NL OR ITS EMPLOYEES WILL CREATE A REPRESENTATION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF NL'S OBLIGATIONS, AND LIBRARY MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

8. The following sentence will be added to Section III.B.1. (Termination Without Cause) of the Agreement:

Unless notice of non-renewal is given by one party to the other party at least thirty (30) days before the Subscription term expires, a Subscription to a Database will renew annually.

9. Section III.E. (Indemnity) of the Agreement will not apply to this Addendum. The following Section will apply to this Addendum:

E. Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

10. Section(s) III. F. (Limitation of Liability), and G. (Confidential Information) of the Agreement will apply to the Addendum. Notwithstanding the previous sentence, the 4<sup>th</sup> sentence of Section III. F. will be deleted in its entirety and replaced with the following sentence:

A party's aggregate liability for any and all claims, losses, liabilities, and demands arising, whether for breach of contract, in tort or otherwise, are limited to the total amount of Database Subscription Prices paid by Library to NetLibrary, during the 12 month period immediately preceding the date on which the claim first arose, excluding claims for copyright infringement and patent violations.

11. Section III. H. (Payment Terms) will be deleted in its entirety and replaced with the following:

#### H. Payment Terms.

1. Invoicing. At NetLibrary's discretion, either NetLibrary or a Third-Party may invoice Library for any fees and other charges due hereunder. If NetLibrary invoices Library for payment, then Library may remit payment to NetLibrary via wire transfer or electronic funds transfer pursuant to the instructions on Exhibit C. If a Third-Party invoices Library for payment, then Library will remit payment to the Third-Party in accordance with the Third-Party's reasonable instructions.

2. US Dollars. All fees and other charges hereunder are in U.S. dollars, and all payments hereunder will be made in U.S. dollars without any deduction or offset.

3. Taxes. All fees and other charges hereunder are net of any taxes or other governmental charges or levies ("Taxes") that may be imposed by any government or governmental entity having jurisdiction over the Third-Party, Library, or any transaction or payment hereunder, other than U.S. taxes imposed on NetLibrary's net income. Third-Party or Library, as applicable, will bear and pay all Taxes; to the extent NetLibrary is required to pay any Taxes, or Third-Party or Library, as applicable, is required to withhold the amount of any Taxes, Third-Party or Library, as applicable, will promptly remit to NetLibrary funds in the amount that will allow NetLibrary to recover the net fees due hereunder and neither

Third-Party nor Library, as applicable, will receive any credit for funds so remitted. Third-Party or Library, as applicable, will notify NetLibrary of any such Taxes imposed or claimed after such action is brought to Third-Party's or Library's attention.

4. Late Payments. All fees and charges are due and payable 30 days from the date of the related invoice. NetLibrary may deny Library and Patrons access to Library's NL Website until the unpaid invoice is paid in full.

12. Section III.I. of the Agreement will apply to the Addendum.

13. Exhibits A (eBook Services), B (NL Website and CSS Fees), and C (eBook License Fees and Discounts) to the Agreement will be deleted in their entirety and will be replaced by the Exhibits Attached to this Addendum.

14. This Addendum is an addition to the Agreement; all unmodified terms and conditions of the Agreement remain in full force and effect.

15. The parties agree that a facsimile transmission of this executed Addendum will be binding upon the parties and have the same force and effect as the executed original of this Addendum.

In witness whereof, the parties have caused this Addendum to be executed by their authorized representatives to be effective as of the Addendum Effective Date:

The Regents of the University of California

Library: California Digital Library

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

Name: \_\_\_\_\_

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

Material Management

3/13/08

NetLibrary: NetLibrary, a division of OCLC Online Computer Library Center, Inc.

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

Name: \_\_\_\_\_

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

Vice President, Business Development



#### EXHIBIT A TO ADDENDUM TO LIBRARY EBOOK AGREEMENT Database Services

1. Existing Platform. At the time this Agreement is executed, the NL Website and Library's NL Website are supported by NetLibrary's existing electronic content technology, which includes a third-party operating system, third-party database management software, and proprietary NetLibrary software.
2. Delivery of Database Services. Payment of the Subscription Price for a Database allows Library to access the Database on Library's NL Website and receive NetLibrary Database Services or Third-Party Database Services, as applicable, for such Database(s) for 1 year.
3. Accessing Database(s). Subject to the terms of this Agreement, NetLibrary will allow Library to access the Database(s), as applicable.
4. Patron Access. Library will implement and maintain Limiting Access Measures, based on NetLibrary's standard systems, which will control Patrons' access to Library's NL Website.
5. Reports. Payment of the Subscription Price entitles Library to the standard reports offered by NetLibrary.
6. Special Terms that apply to Other Content

- a. If any Database offered by NetLibrary and/or the Content Providers allows the Library, Patrons, or others to post Other Content, including messages or information in the Database, then NetLibrary and/or the Content Providers, as applicable, shall have a perpetual, non-exclusive right to use all Other Content entered into the applicable NetLibrary or Third-Party Database(s) subscribed to hereunder by Library or by any Patron (other than third party material transmitted through private electronic mail) in any of NetLibrary and/or the Content Providers print or electronic publications, services or sites or any promotional or marketing materials related thereto.
- b. Neither NetLibrary and/or the Content Providers have any responsibility for Other Content, including the content of any messages or information posted by Library, Patrons or others or for the content of information accessible via direct or indirect hyperlinks from the applicable NetLibrary or Third-Party Database(s). However, NetLibrary and its Content Providers retain the respective rights, which they may or may not exercise in their sole discretion, to review, edit or delete Other Content which NetLibrary or the Content Provider(s) deem to be illegal, offensive, or otherwise inappropriate from the NetLibrary and Third-Party Database(s), as applicable.
7. Special Terms and Conditions that Apply to Databases Containing Medical and/or Drug Information. MEDICINE IS AN EVER-CHANGING SCIENCE. AS NEW RESEARCH AND CLINICAL EXPERIENCE BROADEN OUT KNOWLEDGE, CHANGES IN TREATMENT AND DRUG THERAPY ARE REQUIRED. THE CONTENT PROVIDERS AND NETLIBRARY HAVE CHECKED WITH SOURCES BELIEVED TO BE RELIABLE IN THEIR EFFORTS TO PROVIDE INFORMATION THAT IS COMPLETE AND GENERALLY IN ACCORD WITH THE STANDARDS ACCEPTED AT THE TIME OF PUBLICATION. HOWEVER, IN VIEW OF THE POSSIBILITY OF HUMAN ERROR OR CHANGES IN MEDICAL SCIENCES, NEITHER THE CONTENT PROVIDERS NOR NETLIBRARY WARRANTS THAT THE INFORMATION CONTAINED ON ANY OF THE DATABASES IS IN EVERY RESPECT ACCURATE OR COMPLETE, AND THEY ARE NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS OR THE RESULTS OBTAINED FROM THE USE OF SUCH INFORMATION. USERS ARE ENCOURAGED TO CONFIRM THE INFORMATION CONTAINED ON ANY OF THE DATABASES WITH OTHER SOURCES. NEITHER THE CONTENT PROVIDERS NOR NETLIBRARY SHALL BE LIABLE TO LIBRARY OR TO ANY USER OR ANYONE ELSE FOR ANY INACCURACY, DELAY, INTERRUPTION IN ACCESS TO NETLIBRARY OR THIRD-PARTY DATABASE(S), ERROR OR OMISSION, REGARDLESS OF CAUSE, OR FOR ANY DAMAGES RESULTING THEREFROM.

EXHIBIT B TO ADDENDUM TO LIBRARY eBook AGREEMENT

Description and Prices of Database(s).

1. Database Subscription Prices.

- (a) The List of Database(s) covered by this Agreement and the Subscription Prices for Database(s) covered by this Agreement will be listed on the applicable Database(s) Order Confirmation Form.
- (b) As NetLibrary adds additional Database(s) or changes the terms and/or prices for existing Database(s), the NetLibrary Subscription Prices for Database(s) is subject to change. However, in no case will changes to the Subscription Prices for Database(s) be applied retroactively to existing Subscriptions.

2. Additional Subscription Terms for Database(s)

- (a) A library or other organization that purchases a Subscription to a Database will receive an annual license to access the Database. The library or other organization will not own any other rights in the Database or in data included in the Database.
- (b) All purchases of Database(s) are final.
- (c) Except as specified in the Agreement, this Addendum, and the Database(s) Order Confirmation Form, there are no other Subscription Terms for Database(s). In the event of a conflict between the Agreement, this Addendum, and/or the Database(s) Order Confirmation Form, the documents will be given the following order of precedence: the Database(s) Order Confirmation Form, the Addendum, and the Agreement.



## Order Confirmation Form

4888 Pearl East Circle, Suite 103, Boulder, CO 80301 USA  
Phone: (303) 381-8899 Fax: (303) 379-5906 www.netlibrary.com

OCLC Representative: 12/13/2007

### Database Collections by Airiti

**Bill To** Library ID: \_\_\_\_\_  
Organization University of California  
Department California Digital Library  
Contact / CDL Acquisitions Coordinator  
Address Geisel Library, 9500 Gilman Drive, #0175-A  
City La Jolla  
State/Prov CA 92093-0175-A  
Country USA  
Phone  
Email

**Ship To** Library ID: \_\_\_\_\_  
Organization University of California  
Department California Digital Library  
Contact Office of President  
Address 415, 20th Street, 4th Floor  
City Oakland  
State/Prov California 94612-2901  
Country USA  
Phone  
Email

Library Purchase Order #: \_\_\_\_\_  
Subscription Start Date: March 31, 2008

Library Type: Academic  
Circulation or FTE: \_\_\_\_\_  
Price Category: None

Quantity	Subscription Service	Annual Fee	TOTAL
5.1	Tawainese Electronic Periodical Service (TEPS) Product ID 152082	\$	\$
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5.1	National Palace Museum (NPM) Online Product ID 152081	\$	\$
Select...	Access via NetLibrary Platform	N/C	
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Signature: \_\_\_\_\_

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See addendum

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#### Comments

This order confirmation indicates the first year subscription of a 5-year contract between Airiti/OCLC and 8 UC Institutions. See attachment for details.

Instructions: OCLC Representative to complete form with the purchasing organization (buyer). After buyer signs the completed form, fax to +1 (303) 379-5906. An authorized representative of the purchasing organization must sign the required legal documents (typically a Library eBook Agreement and a Database Addendum) before NetLibrary will fulfill this order. After order is fulfilled, subscriber will be invoiced by Airiti, Inc with a request for payment by bank wire to E. Sun Commercial Bank Panchiao Branch, No.188 SEC2, San Min Rd, Panchiao City, Taiwan City, ROC; SWIFT CODE ESUNTWTP; Airiti account #0174441006149.



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