

OXFORD

UNIVERSITY PRESS

OXFORD UNIVERSITY PRESS, INC.

CONSORTIUM AGREEMENT

This Consortium Agreement (this "Agreement") is made and entered into as of the date set forth below (the "Effective Date") by and between Oxford University Press, Inc., a Delaware not-for-profit corporation with offices at 198 Madison Avenue, New York, NY 10016 ("OUP, Inc.") and the consortium set forth below ("Consortium"), acting as an agent **acting on behalf of the California State University campuses (CSU), the Statewide California Electronic Library Consortium (SCELC), the California Digital Library campuses (CDL)**, hereinafter the member institutions (the "Members") listed on Exhibit A hereto, as such Exhibit may be amended from time to time. Each reference to Member shall be construed as a reference to each and every institution individually. This Agreement sets forth the terms and conditions whereby the Consortium may, during the term hereof, license its members ("Members") and their respective Authorized Users to permit the Members and Authorized Users access to, and use of, certain online products referenced in Exhibit B below (the "Licensed Works", as defined below). This Agreement will not be effective and the Members will not be allowed access to the Licensed Works until an original counterpart of it is signed by an authorized officer of the Consortium and OUP, Inc. receives such signed counterpart together with the payment specified below.

Effective Date: July 1, 2010

Consortium: Systemwide Electronic Information Resources (SEIR)

Address: 401 Golden Shore, 3rd Floor
Long Beach, CA 90802-4210

1. DEFINITIONS.

In this Agreement, the following terms have the following meanings:

- "**Activation Date**" means the date when the Members will first be permitted to access the Licensed Works in accordance with the terms and conditions of this Agreement.
- "**Authentication**" means the process whereby an individual establishes to a Member that he or she is an Authorized User.
- "**Authorized Users**" means individuals who are authorized by the respective Members to access the Members' respective information services available through the respective Members' Secure Networks and who are (i) affiliated with the relevant Member as current students, faculty, library patrons, employees, or in some other capacity whereby they are permitted to access such services in that Member's ordinary course of business, whether from a computer or terminal on such Secure Network or offsite via a modem link to a valid IP address on the Secure Network; or (ii) are physically present on that Member's premises.
- "**Commercial Use**" means use for the purposes of monetary reward (whether by or for the Consortium, a Member, an Authorized User, or any other person or entity) by means of sale, resale, loan, transfer, hire or other form of exploitation. Provided, however, that neither recovery of direct costs by the Consortium from a Member or by a Member from its Authorized Users in the course of research that incidentally uses Licensed Works and that is funded by a commercial organization will not be deemed to be a Commercial Use.
- "**Licensed Works**" means those product(s) (including both Subscription Products and Perpetual Access Products) set forth in the attached Exhibit B (with respect to any OSO Products licensed to a Member, the version thereof that is licensed to that Member), as such Exhibit may be amended from time to time by written agreement of the parties provided herein.
- "**Fair Use**" Means use by the Member or an Authorized User (i) conforming to Paragraphs 107 and 108 of the U.S. Copyright Law as amended from time to time and (ii) conforming to the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines).
- "**Perpetual Access Products**" means those Licensed Works designated by OUP, Inc. in Exhibit B as being available to the Consortium Members for purchase on an ongoing basis subject to the relevant terms and conditions of this Agreement including, but not limited to, payment of hosting fees in the event that such Licensed Works are, at the option of the Member, hosted by OUP, Inc.
- "**Secure Network**" means the Consortium's or the Members' secure network (whether a stand alone network or a virtual network within the Internet) that is accessible only by Authorized Users whose identities are authenticated by

the Consortium or Member, as relevant, at the time of login and periodically thereafter, the security of which is consistent with current best practices, and the Authorized Users' conduct with respect to which is subject to regulation by the Consortium or relevant Member, as applicable. A cache server or other server or network that can be accessed by unauthorized users is not a Secure Network for these purposes.

- "Server" means either OUP, Inc.'s server or a third party server designated by OUP, Inc. on which the Licensed Works are mounted and through which the Members and their respective Authorized Users may gain access to the Licensed Works by means of the World Wide Web.
- "Subscription Product" means those Licensed Works designated by OUP, Inc. in Exhibit B as being available to Members for subscription on an annual basis subject to the relevant terms and conditions of this Agreement.
- "Subscription Period" means those periods of time during which a Member and its Authorized Users are authorized to access and use the Subscription Products pursuant to this Agreement; provided however, that no Subscription Period shall continue beyond the end of the Term.
- "Term" means the Term of this Agreement, which shall begin upon OUP, Inc.'s receipt of the original, signed copy of this Agreement with the required payment (as Subscriber will be notified by OUP, Inc. of such date), and will remain in full force and effect for one (1) year thereafter. This Agreement may be renewed for successive one (1) year periods at the end of the initial terms or any renewal term thereafter in accordance with this agreement and subject to the payment of all renewal subscription fees and any other fees required hereby

2. LICENSE

- 2.1. OUP, Inc. hereby grants the Consortium the right to provide its respective Members: (a) a non-exclusive, non transferable license to access and use, and, for those Members who have purchased Subscription Products, to allow the Members' Authorized Users (up to the maximum number of permitted concurrent Authorized Users as may be specified in this Agreement) to access and use the Subscription Products for the Subscription Periods pursuant to relevant terms and conditions of this Agreement and (b) for Members who have purchased Perpetual Access Products, a non-exclusive, non transferable perpetual license to access and use, and to allow the Member's Authorized User's (up to the maximum number of permitted concurrent Authorized Users as may be specified in this Agreement) to access and use the Perpetual Access Products pursuant to the relevant terms and conditions of this Agreement and (c) access the Licensed Works and allow Authorized User's (up to the maximum number of permitted concurrent Authorized Users as may be specified in this Agreement) access to the Licensed Works for the purpose of research, teaching and private study, but not for Commercial Use.
- 2.2. Specifically, the Member and Authorized Users may:
 - 2.2.1. Access the Licensed Works, on the Server, by means of a Secure Network in order to search the Licensed Works and to view, retrieve and display portions thereof;
 - 2.2.2. Electronically download and save short extracts from the Licensed Works;
 - 2.2.3. Print out single copies of limited portions of the Licensed Works.
 - 2.2.4. The Member may allow links from its E-Reserves system to Licensed Works, subject to the limits of the number of permitted concurrent Authorized Users who may simultaneously access the Licensed Works.
 - 2.2.5. **Deep-link to Licensed Works via course software.**
- 2.3. Using secure means, the Member may fulfill occasional so-called "interlibrary loan" requests, from other institutions for limited portions of a given Licensed Work in print format only, provided that the Member agrees to fulfill such request in compliance with Paragraph 108 of the U.S. Copyright Act and the Guidelines for the Provisio of Subsection 108(g)(2) of the CONTU Guidelines.
- 2.4. An Authorized User may transmit to a third party colleague, in print format only, minimal, insubstantial amounts of the Licensed Works for person use or scholarly, educational, or scientific research or professional use but in no case for resale or other Commercial Use and provided that the relevant copyright notices and appropriate credit information are also transmitted.

3. LIMITATIONS OF USE

- 3.1. The Member and its Authorized Users may not:
- 3.1.1. Make electronic copies of the Licensed Works (except to load the original files onto the Secure Network for Perpetual Access Products when self-hosting) except to the limit extent permitted by 2.2.2 above;
 - 3.1.2. Remove or alter the author's names or OUP, Inc.'s copyright notices or other means of identification or disclaimers as they appear in the Licensed Works;
 - 3.1.3. Systematically make printed or electronic copies of multiple extracts of the Licensed Works for any purpose, except to the limited extent expressly permitted herein;
 - 3.1.4. Display or distribute any part of the Licensed Works on any electronic network, including, without limitation, the Internet and the World Wide Web, other than a Secure Network except to the limited extent permitted by 2.4 above;
 - 3.1.5. Permit anyone other than Authorized Users to access or use the Licensed Works;
 - 3.1.6. Use all or any part of the Licensed Works for any Commercial Use;
 - 3.1.7. Publish, distribute, or make available works based upon the Licensed Works, or works which combine the Licensed Works with any other material, except to the limited extent expressly by Paragraph 2.4 above; or
 - 3.1.8. Alter, abridge, adapt, or modify Licensed Works, except to the extent necessary to make them perceptible on a computer screen to Authorized Users.
- 3.2. If OUP, Inc. is hosting or facilitating the hosting of the Licensed Work, OUP, Inc. reserves the right to withdraw access to the Licensed Works in the event of the detection of a page download rate in excess of the automatic abuse detection system in effect for the relevant Licensed Works. In such event, upon receipt and preliminary review of details from the automated system including, as relevant, the actual download rate detected, OUP, Inc. will contact the Member to investigate. Member's access will be restored only when the matter has been satisfactorily resolved.).
- 3.3. Nothing in this Agreement will limit the Subscriber's rights to make fair use of the Licensed Works, as that term is defined under Sections 107 and 108 of the Copyright Revision Act 1976.

4. FEES AND PAYMENT

- 4.1. In full consideration of the rights granted by OUP, Inc. under this Agreement and for OUP, Inc.'s performance of its obligations under this Agreement, the Consortium will pay to OUP, Inc. the fees specified in Exhibit C hereto and any applicable sales, use, ~~excise~~, or similar taxes. ~~The initial fees are due within sixty (60) days of the full execution of this Agreement, upon receipt of an invoice therefore and the hosting fees, if any, are due within sixty (60) days of invoice therefor.~~ For Subscription Products, the Member's annual subscription fee, as indicated in Exhibit C, must be fully paid **by a date mutually agreed to by the parties.** The Member will be provided initial access to the Licensed Works; and with respect to any renewal term(s) **upon the execution of any such amendment. Pursuant to the CSU general provisions attached hereto as Exhibit D and incorporated by reference, unless otherwise specified, the Consortium shall pay properly submitted invoices not more than 45 days after (i) the performance completion date of services; or (ii) receipt of an undisputed invoice, whichever is later.**
- 4.2. In the event that the Consortium fails to timely pay OUP, Inc. the fees due with respect to any Member as provided hereunder, OUP, Inc. shall deliver to the Consortium written notice of such delinquency. Except to the extent that, if any, such remedies and charges may be limited or prohibited by the laws or regulations governing contracts with the Consortium, if the delinquency is not cured within thirty (30) calendar days of the date of the notice, OUP, Inc. may, in addition to any remedies available to it in connection with Paragraph 11.1 and without further notice, terminate the access of that Member and its Authorized Users to the Licensed Works without thereby incurring any liability to the Consortium, the Member, or its Authorized Users pending such payment ~~(and the Consortium would then be liable to pay OUP, Inc. immediately for the pro rata portion of the fees due for the relevant period, e.g. if the Member had two (2) months of~~

access to a Subscription Product prior to termination of access, the Consortium would thereupon owe OUP, Inc. 2/12 of the fees for such Subscription Period) **Notwithstanding the foregoing, the availability of funds for this Agreement is contingent upon the approval by the Legislature and Governor of necessary funding of the 2010/2011 fiscal year state budget. Should there be in sufficient funds, this Agreement may be terminated or amended to reflect any reduction in funds. In the event payment is delayed due to lack of funding, late payment charges shall not accrue; and**

- 4.3. ~~Without waiving or limiting the above referenced rights and remedies, OUP, Inc. may charge interest at the rate of one and one half (1 1/2) percent per month on any annual fees or other amounts owed by the Consortium that are not paid by it within thirty sixty (60) days after receiving OUP, Inc.'s invoice therefore. [INTENTIONALLY DELETED]~~
- 4.4. The Consortium shall keep full, proper, and up-to-date books of accounts and records, sufficient and accurate enough to enable the preparation and verification of the statements of account, and all other information necessary for the determination of the sums payable under this Agreement, and in the event of a dispute allow duly authorized representatives of the Publisher during normal business hours, and not more than once a year, to have such access to the said books and records (and to take copies thereof).
- 4.5. OUP, Inc. reserves the right to electronically repossess the Licensed Works (if the Member is self hosting) or to deny Member further access to the Licensed Works (if OUP, Inc. is self hosting) in the event payment is not received by its due date.
- 4.6. For Subscription Products, the Consortium agrees to cause each Member to pay all fees and charges incurred in connection with such products including applicable taxes and communications or access charges, at the rates in effect when the charges were incurred. Fees and charges are non-refundable, except as provided herein. User fees will be billed automatically to the Consortium on behalf of the Member at the start of each renewal subscription period. OUP, Inc. may charge subscription rates in the normal course of business. In that case, the Consortium will be notified and shall in turn notify its Members of the new rates (if any) in the OUP annual renewal notice which the Member will receive sixty (60) days prior to the end of the Member's subscription term. All charges incurred in connection with the Member's account will be billed to Consortium.
- 4.7. The Consortium and its Members will be solely responsible for obtaining at their own expense all telecommunications and other equipment and software (including an Internet browser and portable document file reader) together with all relevant software licenses necessary to access the Licensed Works online via the Member's Secure Network.
- 4.8. Except as otherwise provided in this paragraph, the Subscription Products' term shall be Subscription Periods of one year's duration, beginning on July 1st and ending June 30th (in any subsequent year of the Term) and extending for one year thereafter and the Term for Perpetual Access Products shall provide for Hosting Periods of one year's duration, beginning on the date the Member's access to the Perpetual Access Products is initially activated, and continuing for successive one-year periods thereafter unless and until the Member elects to self-host pursuant to Paragraph 6. Should the Consortium enter into new subscriptions during the Term, the subscription must begin the 1st of the month following the Member's agreement with the Consortium to be bound by the terms and conditions of this Agreement and, if the Activation Date is a date other than July 1 ("add-on Members"), then the annual subscription fee shall be prorated for the initial year of the Subscription Period according to the following formula: x divided by 12 multiplied by the annual subscription fee for that Licensee, where " x " stands for the number of months between the Activation Date and the following subscription period.
- 4.9. Except with respect to Perpetual Access Products and with respect to add-on Members of Subscription Products, as provided for below in this sub-paragraph, during the Term, OUP, Inc. will invoice the Consortium annually. During the Term OUP will also invoice the Consortium promptly following the notice from the Consortium of any add-on Members (and annually

thereafter with respect to any Perpetual Access Product hosted by OUP, Inc.). Such invoices will be issued in accordance with the price list and discount schedule set forth in Exhibit C to this Agreement (as modified with respect to add-on Members according to Paragraph 4.8 above and as may be amended during the Term). The Consortium will remit payment within sixty (60) days of the invoice date.

5. RESPONSIBILITIES OF THE CONSORTIUM

- 5.1. The Consortium agrees to notify OUP of changes to the access control records and billing or contact details in respect of the Members and upon OUP, Inc.'s request, the Consortium will cause the Members to provide OUP, Inc. with all identifying information, including IP address ranges, relating to the Member and its Authorized Users as necessary to enable OUP, Inc. to set up and to activate the Member's access to the Licensed Works.
- 5.2. The Consortium agrees to the following terms:
 - 5.2.1. to use reasonable efforts to ensure that Members and Authorized Users comply with the terms of this Agreement;
 - 5.2.2. to use reasonable efforts to ensure that Members shall restrict and control unauthorized access to the Licensed Works;
 - 5.2.3. to notify OUP of any breach that the Consortium becomes aware of by a Member or an Authorized User of the terms of this Agreement upon becoming aware of any such breach;
 - 5.2.4. Upon becoming aware of any breach of the terms of this Agreement by a Member or an Authorized User, the Consortium shall work with OUP to correct such breach.
- 5.3. The Consortium agrees to use reasonable efforts to ensure that Members shall notify both the Consortium and OUP, Inc. as soon as practicable if the Member should become aware of any of the following:
 - 5.3.1. any loss or theft of the Member's or any Authorized User's password.
 - 5.3.2. any unauthorized use of any of the Member's or any Authorized User's password.
- 5.4. The Consortium further agrees to cooperate with OUP, Inc. and to cause its Members to cooperate with OUP, Inc. to correct such practices and acknowledges that OUP, Inc. will have the right to terminate access to the Licensed Works, and/or require that, as applicable, the relevant Member terminates access of the persons making such unauthorized use of the Licensed Works.
- 5.5. Any failure on behalf of the Consortium to fulfill its obligations under this Paragraph shall be considered to be a material breach of this Agreement.

6. HOSTING

- 6.1. Licensed Works referred to in this Paragraph 6 means only Perpetual Access Products.
- 6.2. The Licensed Works are, at the option of each Member, either (a) purchased with hosting services provided by OUP, Inc., or (b) to be hosted by the Member, as will be specified by notice in the form of Exhibit B as to each Member. If a Member opts to self-host, the Consortium shall cause the Licensed Works to be delivered to that Member in the form of an electronic file in XML format or other standard format as determined by OUP, Inc. for that Member to self-host. The provisions of this Agreement apply whether or not any or all of the Members self-host, unless expressly stated otherwise.
- 6.3. If and then to the extent that OUP, Inc. is hosting the Licensed Works, then:
 - 6.3.1. The Consortium will, on request, provide OUP, Inc. with respect to that Member with all identifying information, including IP address ranges, relating to the

Member and its Authorized Users necessary to enable OUP, Inc. to set up and activate the Member's and its Authorized Users' access to the Licensed Works. Promptly following initial receipt of the foregoing information, OUP, Inc. will set up and activate the Member's access to the Licensed Works.

- 6.4. OUP, Inc. undertakes to use all reasonable efforts to:
- 6.4.1. Make the Licensed Works available to the Members by means of the World Wide Web;
 - 6.4.2. Ensure that the Server has sufficient capacity and rate of connectivity to provide the Members with a quality of service comparable to current standards in the World Wide Web online information provision industry; and
 - 6.4.3. Restore access to the Licensed Works as soon as possible in the event of an interruption or suspension of the service.
- 6.5. OUP, Inc. will itself provide, or arrange for the provision by a third party of, customer support services to the Members via email, which services will include answering email inquiries from the Members and their respective Authorized Users relating to the use and/or functionality (but not the content) of the Licensed Works.
- 6.6. OUP, Inc. will make available to the Consortium an aggregated monthly usage report detailing the level of use of the Licensed Works by the Members' Authorized Users per month. This report will not identify individual Authorized User usage, but will be provided in respect of the IP address range(s) given to OUP, Inc. hereunder as a whole. OUP, Inc. will not be able to provide accurate usage reports if a Member stores the Licensed Works on any cache or proxy server.
- 6.7. If, having opted to purchase hosting services provided by OUP, Inc. a Member wishes to self-host, it may, by written notice via the Consortium received by OUP, Inc. no later than 90 days prior to the expiration of the then-current hosting period, elect to terminate hosting services at the end of the then-current hosting period. If no such notice is received with respect to a given Member, OUP, Inc. will send the Consortium an invoice for fees for renewal of the hosting services including each such Member for a further twelve-month period, which will be payable prior to the commencement of the renewal period. As to any Member with respect to which such the invoice has not been paid prior to commencement of the renewal period, that Member will be deemed to have elected to self-host.
- 6.8. If OUP, Inc. does not wish to continue hosting the Licensed Works for the Members (including, without limitation, if it discontinues hosting the relevant platform), it will give the Consortium no less than 90 days notice thereof; provided that it will credit any affected Member all hosting fees applicable to the unexpired term of the then current hosting period on a pro rata basis.
- 6.9. If a Member elects to self-host pursuant to Paragraph 6.7 or if OUP, Inc. gives notice pursuant to Paragraph 6.8, OUP, Inc. will, prior to the end of the then current hosting period, or within 90 days the relevant Member's deemed election to self-host, whichever is the later, provide the Consortium for delivery to the relevant Members the electronic files (in XML format or other standard format as determined by OUP, Inc.) for all Licensed Works purchased to the extent permitted under OUP, Inc.'s agreements with Third Party Suppliers.

7. WITHDRAWAL OF MATERIAL

- 7.1. OUP, Inc. reserves the right at any time to (i) withdraw from the Licensed Works any item or part of an item that OUP, Inc. no longer retains the right to publish; or (ii) withdraw from the Licensed Works, or cease providing online hosting services hereunder for any Licensed Work or part thereof, any material that OUP, Inc. determines may be defamatory, obscene, unlawful, a violation of copyright or otherwise objectionable. OUP, Inc. may at any time (without prejudice to its other rights or remedies) suspend the provision of some or all of the Licensed Works obtained by OUP, Inc. from any Third Party Supplier, upon request of such Third Party Supplier or immediately upon termination of OUP, Inc.'s agreement with such Third Party Supplier. For Perpetual Access

Products, with respect to any such item(s) or part(s) thereof for which OUP, Inc. determines not to provide hosting services pursuant to the foregoing, OUP, Inc. will, to the extent permitted under applicable law and any agreements to which OUP, Inc. in a party, provide the Members with an electronic copy of any such item(s) or part(s) thereof in XML format for use by the Members on their respective self-hosted Secure Networks in accordance with and subject to all of the conditions and restrictions set forth in this Agreement. For the avoidance of doubt, OUP, Inc. will not be obligated to provide the Consortium or any Member with any Licensed Work or part(s) thereof that OUP, Inc. no longer has the right to publish, license or otherwise distribute.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. The Member acknowledges that OUP, Inc. does not own the copyright with respect to certain of the Licensed Works or portions thereof and that OUP, Inc. has licensed or otherwise obtained the right to publish or distribute such Licensed Works or parts thereof from third parties ("Third Party Suppliers"). As between OUP, Inc., on the one hand, and the Consortium and the Members, on the other, the Consortium acknowledges that the copyright and other intellectual property rights in the Licensed Works and any related documentation are owned or controlled by OUP, Inc. or the Third Party Supplier thereof, and no transfer of copyright or any other right, title or interest therein is made by this License, except for the right to access and use the Licensed Works in accordance with the terms and conditions of this Agreement.
- 8.2. The Member will notify OUP, Inc. promptly if it becomes aware of any claim by any third party that the Licensed Works infringe an intellectual property or other right of any third party.
- 8.3. The Member acknowledges and agrees that a Third Party Supplier may provide additional terms and conditions affecting the Consortium's and the Members' respective uses of the Licensed Works, which will be appended to this Agreement **and shall be subject to the Member's approval**. Such terms and conditions will prevail **only in as much as they relate to the control** use of the relevant Licensed Works over any conflicting terms contained herein. The Consortium agrees that this Agreement, to the extent it pertains to any Licensed Work or part thereof, copyright of which is owned by a Third Party Supplier, may be enforced by such Third Party Supplier.
- 8.4. The Consortium and OUP, Inc. shall notify each other promptly of the facts and circumstances surrounding any unauthorized possession or use of the Licensed Works, Confidential Information, or OUP Intellectual Property, or any portion thereof, by anyone other than persons authorized or contemplated by this Agreement to possess and use such material.
- 8.5. The provisions of this Paragraph 8 will survive the termination of this Agreement for any reason.

9. REPRESENTATIONS, WARRANTIES AND INDEMNITIES; FORCE MAJEURE

- 9.1. OUP, Inc. represents and warrants that it has the power to enter into this Agreement and to grant the rights conferred herein to the Consortium and the Members and that the Licensed Works do not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary right or contract right of any third party. Except as provided in the foregoing sentence, OUP, Inc. gives no warranty, express or implied, regarding any information or materials contained in or produced by the Licensed Works, nor regarding the accuracy, completeness, or reliability of the Licensed Works. OUP, Inc. PROVIDES THE LICENSED WORKS ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND EXCEPT AS EXPRESSLY PROVIDED ABOVE. EXCEPT TO THE EXTENT, IF ANY, THAT AGREEMENT TO THE FOLLOWING IS PROHIBITED BY THE LAWS OR REGULATIONS GOVERNING CONTRACTS WITH AN ENTITY SUCH AS THE CONSORTIUM, OUP, INC. DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES THAT THE MATERIAL IN THE LICENSED WORKS IS COMPLETE OR ACCURATE AND IN NO EVENT WILL OUP, INC. BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE OR

CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF, OR INABILITY TO USE THE LICENSED WORKS OR FOR THE LOSS OR DAMAGE OR CORRUPTION OF DATA, LOSS OF PROGRAMS, A LOSS OF BUSINESS OF GOODWILL OR OTHER DAMAGES OR LOSSES OF ANY NATURE ARISING OUT OF THE USE OF, OR INABILITY TO USE THE LICENSED WORKS, INCLUDING WITHOUT LIMITATION: LOSSES ARISING FROM ANY ERRORS, OMISSIONS OR OTHER INACCURACIES IN, OR CORRUPTION CAUSED BY, THE LICENSED WORKS, WHETHER BY TRANSMISSION PROCESSING OR OTHERWISE; OR CLAIM FOR LOST PROFITS, LOST DATA, OR OTHERWISE. ~~WITHOUT LIMITING THE FOREGOING, IN NO EVENT WILL OUP, INC.'S LIABILITY HEREUNDER, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID HEREUNDER FOR THE LICENSE OF THE LICENSED WORKS.~~ Notwithstanding the foregoing, OUP, Inc. represents and warrants that it shall use commercially reasonable efforts to ensure consistency with industry standards regarding uptime. Specifically, OUP, Inc. shall undertake to provide continuous service within an average of 95% up-time per month, with 5% down-time including scheduled maintenance and repairs performed at a time to minimize inconvenience to the Subscriber and its Authorized Users, and to restore service as soon as possible in the event of an interruption or suspension of service.

9.2. The signatory for the Consortium of this Agreement represents and warrants to OUP, Inc. that s/he has the power and authority to execute this Agreement on behalf of the Consortium and each Member referenced in Exhibit A and that the liability the Consortium and of each Member shall be joint and several. The Consortium agrees to be bound, and each Member agrees to be bound through the agency of the Consortium by all terms contained herein. ~~Notwithstanding the limitations of Paragraph 9.1, except to the extent, if any, that agreement to the following is prohibited by the laws or regulations governing contracts with an entity such as the Consortium: the Consortium will defend, indemnify and hold OUP, Inc. harmless from and against all claims, suits and proceedings, losses, liabilities and damages (including costs, expenses and reasonable attorneys' fees) arising from: (a) any unauthorized use or dissemination of the Licensed Works by the Consortium, any Member(s) or Authorized User(s); and (ii) any violation of this Agreement or of any third party's rights by the Consortium, any Member(s) or Authorized user(s), including but not limited to infringement of any copyright or other proprietary right or invasion of any privacy rights.~~

9.3. The obligations of Paragraphs 9.1 and 9.2 will survive the termination of this Agreement.

9.4. Neither party will be responsible to the other for any failure to perform any obligation under this Agreement caused by an Act of God, war, riot, embargo, acts of civil or military authority, fire, flood, typhoon, wind storm, snow storm, blizzard hurricane or other cause outside the control of the party that could not be avoided by the exercise of due care (a "force majeure event"). In the event of any delay in performance arising out of a force majeure event, the delayed party's obligations will be extended accordingly, provided that the parties will at all times use reasonable efforts to perform their respective obligations under this Agreement in a timely manner, taking into account such circumstances.

10. PRIVACY POLICIES

10.1. OUP, Inc. will adhere to the privacy policies posted on the websites for each of the Licensed Works. Without limiting the foregoing, it is acknowledged that OUP, Inc. may use the personal data the Consortium and/or the Members provide online to send the Members information about offers that OUP, Inc. feels may be of interest to the the Members and OUP, Inc. may provide aggregated data about use of the Licensed Works to other persons.

11. TERMINATION

11.1. If either party materially breaches any covenant or provision of this Agreement, then, in addition to any rights and remedies that may be available in law or equity, the non-breaching party may terminate this Agreement by written notice to the breaching party unless, in the case of a breach

capable of cure, such breach will have been cured within thirty (30) days after delivery of written notice of such breach to the breaching party. Without limitation, breach by the Subscriber of the provisions of Paragraph 5 would constitute a material breach.

- 11.2. For Subscription Products, in addition to the foregoing, OUP, Inc. reserves the right at any time on thirty (30) day's notice to the Consortium and relevant Member(s) to terminate this Agreement in whole or in part due to cessation of publication of all or part of the Licensed Works; in the event of such termination, OUP, Inc. will refund to the Consortium the pro rata portion of any subscription fees the Consortium on behalf of such Member(s) has paid for the balance of the subscription period outstanding at the date of such termination.
- 11.3. Upon termination of this Agreement, the Consortium agrees to use reasonable efforts to ensure that Members continue to adhere to the provisions of this Agreement relating to any OUP intellectual property.

12. GENERAL

- ~~12.1. Except to the extent, if any, that agreement to the following is prohibited by the laws or regulations governing contracts with an entity such as the Consortium (including but not limited to any law or regulation governing contracts with public libraries or state or local government-supported educational institutions): this Agreement will be interpreted and construed according to, and governed by, the laws of the State of New York without regard to conflict of law principles that would result in the application of any law other than the law of the State of New York; and the Consortium irrevocably agrees that any dispute arising out of or in connection with this Agreement will be subject to and exclusively within the jurisdiction of the United States District Court for the Southern District of New York or the Supreme Court of the State of New York for New York County.~~
- 12.2. This Agreement **and the CSU provisions attached as Exhibit D** constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement may be amended by: (i) OUP, Inc., in its sole discretion, provided that OUP, Inc. will use good faith efforts to give the Consortium thirty (30) days' prior written notice of any such proposed amendment and the Consortium will have the option to terminate this Agreement by delivery to OUP, Inc. of a written notice of the Consortium's election to terminate this Agreement received by OUP, Inc. within such thirty (30) day period; or (ii) a writing executed by both parties. Notice of any proposed amendments to this Agreement may be delivered to the Consortium by OUP, Inc. electronically through OUP, Inc.'s online customer support account management system.
- 12.3. This Agreement may not be assigned by the Consortium or by any Member without the prior written consent of OUP, Inc. OUP, Inc. may freely assign this Agreement to an affiliate, a successor to its business or a transferee of OUP, Inc.'s right to publish and distribute the Licensed Works. The rights and obligations of this Agreement will bind and benefit any successors and permitted assigns of the parties. Any attempted assignment in violation of this Paragraph will be null and void and of no force or effect.
- 12.4. Any notice or other communication required by this Agreement will be in writing addressed to the individuals named at the signature page of this Agreement at the addresses shown for the respective parties at the first page of this Agreement (or such other person and/or address as the relevant party may from time to time designate by notice pursuant to this Paragraph). Any such notice will be deemed to have been duly given on the day of service if served personally; three (3) days after mailing if mailed by First Class mail, registered or certified, postage prepaid; or two days after mailing if mailed by commercial overnight courier.
- 12.5. If any provision of this Agreement is invalid, illegal, or unenforceable under any applicable statute or rule of law, the provision will be deemed omitted to the extent that it is invalid, illegal, or

unenforceable. In such a case, the remainder of the Agreement will be construed in a manner as to give greatest effect to the original intention of the parties hereto.

- 12.6. The waiver of failure of either party to exercise in any respect any right provided in this Agreement in any instance will not be deemed to be a waiver of such right in the future or a waiver of any other right under this Agreement.
- 12.7. The relationship of the parties hereto will be that of independent contractors. Nothing herein will be construed to create any partnership, joint venture, or similar relationship or to subject the parties to any implied duties or obligations respecting the conduct of their affairs, which are not expressly stated herein. Neither party will have any right or authority to assume or create any obligation or responsibility, either expressed or implied, on behalf of or in the name of the other party, or to bind the other party in any matter or thing whatsoever.



Exhibit A: Consortium Members

California State University campuses

California State University Bakersfield
California State University Channel Islands
California State University Chico
California State University Dominguez Hills
California State University East Bay
California State University Fresno
California State University Fullerton
Humboldt State University
California State University Long Beach
California State University Los Angeles
California Maritime Academy
California State University Monterey Bay
California State University Northridge
California State Polytechnic University, Pomona
California State University Sacramento
California State University San Bernardino
San Diego State University
San Francisco State University
San Jose State University
California Polytechnic State University, San Luis Obispo
California State University San Marcos
Sonoma State University
California State University Stanislaus

California Digital Library campuses

University of California, Berkeley
University of California, Davis
University of California, Irvine
University of California, Los Angeles
University of California, Merced
University of California, Riverside
University of California, San Diego
University of California, San Francisco
University of California, Santa Barbara
University of California, Santa Cruz

Statewide California Electronic Library Consortium members

Aerospace Corporation
Alliant International University
American Conservatory Theater
American Film Institute
American Jewish University
Antioch University Santa Barbara
Art Center College of Design
Azusa Pacific University
Bethany University
Biola University
Burnham Institute for Medical Research
California Academy of Sciences
California Baptist University
California College of the Arts
California Institute of Integral Studies
California Institute of Technology
California Institute of the Arts

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Exhibit A (Consortium Members) continued

California Lutheran University
Chapman University
Charles Drew University of Medicine and Science
City of Hope National Medical Center
Claremont School of Theology
Claremont University Consortium
Concordia University
Dominican University of California
Fielding Graduate University
Fresno Pacific University
Fuller Theological Seminary
Getty Research Institute
Golden Gate Baptist Theological Seminary
Golden Gate University
Graduate Theological Union
Hastings College of the Law
Hastings Law Library
Holy Names University
Hope International University
Humphreys College
Huntington Library and Art Gallery
Institute of Transpersonal Psychology
Jerry L. Pettis Medical Hospital
La Sierra University
Life Pacific College
Logos Evangelical Seminary
Loma Linda University
Los Angeles County Museum of Art
Loyola Marymount University
Marymount College
McGeorge School of Law
Menlo College
Mills College
Monterey Institute of International Studies
Mount St. Mary's College
National Hispanic University
National University
Natural History Museum of Los Angeles County
Notre Dame de Namur University
Occidental College
Otis College of Art & Design
Pacific Graduate School of Psychology
Pacific Oaks College
Pacific Union College
Patten University
Pepperdine University
Phillips Graduate Institute
Point Loma Nazarene University
RAND Corporation
Saint Mary's College of California
Salk Institute
Samuel Merritt University

Exhibit A (Consortium Members) continued

San Diego Christian College
San Francisco Conservatory of Music
Santa Clara University
Saybrook Graduate School and Research Center
Scripps Green Hospital
Scripps Research Institute
Simpson University
Soka University of America
Southern California Institute of Architecture
Southern California University of Health Sciences
SRI International
St. John's Seminary
St. Patrick's Seminary
The Master's College
University of LaVerne
University of Redlands
University of San Diego
University of San Francisco
University of Southern California
University of Southern California Libraries
University of Southern California, Norris
University of the Pacific
University of the West
Vanguard University of Southern California
Western University of Health Sciences
Westminster Seminary California
Westmont College
Whittier College
William Jessup University
Woodbury University
Wright Institute



Exhibit B: Licensed Works
Subscription Products

Products:

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Oxford Reference Online
Oxford Reference Online: Western Civilization Collection
Oxford Reference Online: Literature Collection
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Grove Art Online
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Oxford Dictionary of National Biography Online
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Oxford Language Dictionaries Online
Oxford Islamic Studies Online
Encyclopedia of Popular Music
Electronic Enlightenment
Oxford Biblical Studies Online
AMA Manual of Style Online
Oxford Handbooks Online
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BBC College of Journalism
Berg Fashion Library
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AMA Manual of Style Online
Oxford Handbooks Online
Oxford Bibliographies Online
Oxford Islamic Studies Online

Exhibit C: Fees

See attached Rider C for schedule of fees

**Updates to the Licensed Works published
after the version Licensed are not included in
these charges**