

LIBRARY ECONTENT AGREEMENT

This Library eContent Agreement (this “Agreement”) is by and between Library (“Library”) and NetLibrary, a division of EBSCO Publishing, Inc., an Alabama corporation (“NetLibrary”).

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

Whereas, Library desires to purchase licenses, subscriptions, or both, to certain eContent, subject to the terms and conditions described in this Agreement.

In consideration of the mutual covenants and obligations set forth below, the parties agree as follows.

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A. Definitions.

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

1. An “Affiliate” in the case of a company, is any company that is an affiliate, a subsidiary or a division of the company in which the company controls 50% or more of the voting stock or equity interest.
2. “Audio Book(s)” mean NetLibrary’s electronic versions of certain audio books and other works in which NetLibrary has acquired certain rights.
3. “eBook(s)” mean NetLibrary’s electronic versions of certain electronic books and other works in which NetLibrary has acquired certain rights.
4. “eContent” means Audio Books, eBooks, or both, as applicable, depending on the context and the Library’s purchases.
5. “eContent Collection(s)” means a collection of eContent that NetLibrary has grouped together for purchase or Subscription sales.
6. The “eContent License” means a license to use the relevant eContent.
7. The “eContent License Fee” means a one-time-only fee for the Library’s eContent License and is based on the eContent List Price.
8. The “eContent List Price” means the price established by NetLibrary for the license to use the relevant eContent.
9. Unless otherwise specified on the Product Order Form, the “Effective Date” of this Agreement means the date on the Product Order Form or the date on which Library or any Patron may first access eContent, whichever date occurs first.
10. “Library’s NL Website” means the Website operated by NetLibrary and open to Library and Patrons in order to access and use eContent Licensed to Library.
11. A “MARC Record” means an electronic record containing metadata and other relevant information about the corresponding eContent.
12. “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.
13. “Ongoing Access Fee” means the fee Library pays to maintain Library’s NL Website and maintain and upgrade the Existing platform and bandwidth. Ongoing Access Fees include Platform Services.
14. “Patrons” mean Library’s registered faculty, members, patrons, students, and other authorized users, including both onsite users and remote users. Except in the case of a company, Patrons are individuals and may not be corporations or other entities. In the case of a company, Patrons means

Library's employees, independent contractors and other authorized users of Affiliates. For purposes of this Agreement, if the Library is a company, then Library will be responsible for the acts and omissions of its Patrons, its Affiliates and its Affiliates' Patrons as if such were employees of Library or Library itself.

15. "Platform Services" mean NetLibrary's services related to Library's ongoing access to and use of purchased eContent or eContent Collections, or both, via the Internet and Library's NL Website, as further described in Exhibit C.
16. The "Reinstatement Fee" means the fee associated with reinstating Platform Services for eContent for which Platform Services were previously terminated, as further described in Section A.5. of Exhibit C.
17. A "Subscription" means an annual license for access to the eContent Collection on the basis described in Exhibit A.
18. "Subscription Price" means the price established for the annual license for access to the eContent Collection.
19. Unless otherwise specified on the Product Order Form, the "Term" of this Agreement commences on the Effective Date and continues in effect for one year. The Term will renew on each anniversary of the Effective Date for another year unless this Agreement is terminated according to Section C.1 below.

B. Library and Patron Usage.

1. Copyrighted Works.

a. Library acknowledges and agrees that the copyright to the eContent is owned by or licensed to NetLibrary and the respective publisher thereof. All Rights Reserved. By purchasing a license to eContent, Library obtains certain rights to access and use a copy of the eContent 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 eContent. Library agrees that any use of eContent 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 eContent, or any portions thereof, except to the extent permitted by applicable copyright laws.

b. Library acknowledges and agrees that repeated violations by Library or Patrons of copyright or other intellectual property right of NetLibrary or any third party will give NetLibrary the right to terminate this Agreement for cause.

2. 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 eContent through access by Patrons ("Limiting Access Measures") within a reasonable time frame. Limiting Access Measures may change from time to time and include, but are not limited to, remote patron authentication applications, authentication through protected IP addresses, a patterned identification check and privileged user accounts. 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.

3. Terms of Use.

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, which are incorporated in this Agreement by reference. 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. Library acknowledges and agrees that, in the case of repeated or persistent violations, NetLibrary may terminate this Agreement. 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.

4. MARC Records.

NetLibrary and Library agree that for MARC Records that are the property of OCLC; Library may use these OCLC MARC Records only for its own internal purposes as further described in Exhibit E.

- a. If Library makes an eContent Subscription purchase under Exhibit A, then as part of the relevant Subscription Price; NetLibrary will provide Library with one copy of the MARC Record that corresponds to each piece of eContent included in the Subscription purchased by Library.
- b. If Library makes an eContent purchase under Exhibit B and - as part of the purchase - pays a CSS Fee, then as part of the relevant CSS Fee; NetLibrary will provide Library with one copy of the MARC Record that corresponds to each eContent license purchased by Library.

C. Termination.

1. Termination Without Cause.

Either party may terminate this Agreement without cause effective upon the conclusion of the then current Term, by giving the other party 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 breaches any material provision of this Agreement provided that the breach cannot be, or is not, cured within 60 days of the notice.

3. 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(s) B.1., B.2., B.3., D., E., F., H.4., and H.8.

D. Limited Warranty.

NetLibrary warrants that NetLibrary has the necessary authority to license the eContent to Library and, if applicable, to provide Platform Services to Library. NetLibrary warrants that it will use its commercially reasonable efforts to provide Platform Services as described in Exhibit C. of this Agreement.

E. Warranty Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN SECTION D. ABOVE, LIBRARY'S NL WEBSITE, PLATFORM SERVICES, AND ECONTENT LICENSED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND NETLIBRARY AND ITS CONTENT PROVIDERS EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMIT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER NETLIBRARY 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 ECONTENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NETLIBRARY OR ITS EMPLOYEES WILL CREATE A REPRESENTATION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF NETLIBRARY'S OBLIGATIONS, AND LIBRARY MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

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 eContent License Fees paid by Library to NetLibrary, during the 12 month period immediately preceding the date on which the claim first arose.

G. Payment Terms.

All fees and charges are due and payable 30 days from the date of the related invoice unless otherwise specified on the Product Order Form and agreed to by NetLibrary. NetLibrary may deny Library and Patrons access to Library's NL Website until the unpaid invoice is paid in full.

H. Other Provisions.

1. Entire Agreement.

All exhibits referred to in this Agreement are 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. This Agreement governs all orders for purchases of eContent, Subscriptions to eContent Collections, or both placed by Library during the Term.

2. Modification or Amendment

Any 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 be binding on the parties.

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. But, NetLibrary may 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. Governing Law. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, U.S.A. without regard to any conflict of laws provisions contained in this Agreement, except as to copyright, trademark and other intellectual property matters, which are exclusively governed

by the laws of the United States and any applicable international conventions. The parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods, however designated, will not apply to 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 Commonwealth of Massachusetts, U.S.A. Library hereby consents to jurisdiction and venue in the state and federal courts in Commonwealth of Massachusetts, U.S.A.

5. 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.

6. Force Majeure.

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.

7. 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.

8. 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. The parties acknowledge and agree that a Notice might not be deemed effective if receipt is not confirmed. Notices will be sent to Library at the Mailing Address specified on the Product Order Form. Notices will be sent to NetLibrary at the following address:

	NetLibrary, a division of EBSCO Publishing, Inc.
Address:	10 Estes Street
Address:	Ipswich, MA 01938
Attention:	Sales Management
Telephone:	(978) 356-6500
Facsimile:	(978) 356-6565

EXHIBIT A TO LIBRARY ECONTENT AGREEMENT – ECONTENT SUBSCRIPTION PURCHASE

A. Subscriptions to eContent Collection(s).

1. Purchase of Subscriptions to eContent Collection(s).
 - a. During the Term of the Agreement, Library may select and purchase Subscriptions to eContent Collection(s) in accordance with NetLibrary's then current ordering practices. Each final order of Subscriptions to eContent Collection(s), as evidenced by a Product Order Form, is incorporated in this Agreement by reference.
 - b. As NetLibrary adds additional eContent Collection(s) or changes the terms and/or prices for existing eContent Collection(s), the NetLibrary Subscription Prices are subject to change. However, in no case will changes to the NetLibrary Subscription Prices be applied retroactively to existing Subscriptions.

B. Purchase of Platform Services for Subscriptions.

1. Payment of the Subscription Fee allows Library to access the eContent Collection on Library's NL Web-

site and receive Platform Services for such eContent for the term of the subscription.

C. Additional Subscription Terms for eContent Collection(s).

1. All purchases of Subscriptions are final.
2. A library or other organization that purchases a Subscription will receive a license to access the eContent Collection. The library or other organization will not own any other rights in the eContent Collection.
3. Except as specified in the Agreement and the Product Order Form, there are no other Subscription Terms for eContent Collection(s). In the event of a conflict between the Agreement and the Product Order Form, the Product Order Form will control.

EXHIBIT B TO LIBRARY ECONTENT AGREEMENT – ECONTENT PURCHASE

A. eContent Purchases.

1. Purchase of eContent Licenses.

During the Term of the Agreement, Library may select and purchase eContent Licenses in accordance with NetLibrary's then current ordering practices. NetLibrary will make the eContent Licenses available to Library according to NetLibrary's agreements with its content providers, and partners. Each final order of eContent Licenses, as evidenced by a Product Order Form, is incorporated in this Agreement by reference.

B. Purchase of Platform Services for Purchased eContent.

Payment of the Ongoing Access Fee allows Library to receive Platform Services for the eContent for which the Library purchases an eContent License.

2. Ongoing Access Fee.

- a. Upon payment of the Ongoing Access Fee, NetLibrary will host and provide Platform Services for the effected

eContent for the greater of: (a) five years from the purchase date or (b) for as long as NetLibrary continues to support the Existing Platform.

- b. If Library pays the Ongoing Access Fee 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 eContent for which Library has paid the Ongoing Access Fee to a replacement platform.

3. Archive Services. NetLibrary shall maintain a digital archive of all eBooks purchased by a Library. In the event that NetLibrary is no longer able to provide access to the eBooks as contemplated under this Agreement, Library may be provided copies or access the eBooks via this archive.

EXHIBIT C TO LIBRARY ECONTENT AGREEMENT – PLATFORM SERVICES

A. Provision and Delivery of Platform Services.

1. If Library has paid the Ongoing Access Fee for eContent or purchased an eContent Subscription; then, subject to the terms of this Agreement, Library will receive Platform Services.
2. Platform Services include:
 - a. establishing and administering Library's NL Website,
 - b. hosting the purchased eContent or eContent Collection(s), as applicable, on Library's NL Website, and
 - c. providing access - to Library and Patrons - to Library's purchased eContent or eContent Collection(s), as applicable, through Library's NL Website.
3. Library and Patrons will access Platform Services via Library's Internet connection, which will be Library's expense and responsibility.
4. NetLibrary will provide Platform Services for as long as Library continues to pay the Ongoing Access Fee or the Subscription Price, as applicable; NetLibrary continues to support the Existing Platform, and Library has not notified NetLibrary to remove the eContent from Library's NL Website.
5. Removing and Reinstating purchased eContent
 - a. Library may elect to have any purchased eContent removed from Library's NL Website, by providing NetLibrary with written notice of the election within 60 days of the annualized date on which Ongoing Access

Fees are calculated and invoiced.

- b. Library may elect to have any purchased eContent reinstated to Library's NL Website, by providing NetLibrary with written notice of the election within 60 days of the annualized date on which Ongoing Access Fees are calculated and invoiced and by paying the applicable Reinstatement Fee as further described in this Agreement. Ongoing Access Fees for reinstated eContent are due and payable on the reinstatement date.
6. Notwithstanding any other provision of this Agreement, if NetLibrary terminates this Agreement for cause under Section C.2. of the Agreement, then NetLibrary's obligation to provide eContent and Platform Services will expire.

B. Support for NL Website and Library's NL Website.

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 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.
2. Platform Commitment Date. Initially, the "Platform Commitment" Date will be five years from the date of each applicable purchase of eContent 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 eContent Licenses made after the date of the publication or announcement.

3. 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 eContent 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 eContent to a replacement platform.

C. 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.

D. Reports.

Payment of the Ongoing Access Fees entitles Library to the standard reports offered by NetLibrary.

EXHIBIT D TO LIBRARY ECONTENT AGREEMENT – ADDITIONAL TERMS APPLICABLE TO LIBRARIES THAT PARTICIPATE IN CONSORTIUM SHARED COLLECTION PURCHASES

For Libraries that participate in Consortium Shared Collection purchases, the following provisions shall apply in addition to those set forth above.

A. Definitions.

1. "Consortium" is an institution that desires to purchase and market eContent and Platform Services to and for Libraries via a Shared Collection.
2. "Consortium NL Website" means the Website operated by NetLibrary and open to Libraries and their Patrons in order to access and use Shared Collections.
3. The "Shared Collection(s)" means a collection(s) of eContent licensed to Consortium for access and use by Consortium, participating Libraries, and their Patrons under the terms and conditions of this Agreement; nothing in this Agreement is intended to grant Library any rights in the Shared Collection(s) without completion of appropriate paperwork and payment of related fees.

B. Shared Collections.

1. Shared Collection(s) Access. If a Consortium is purchasing Shared Collection(s) the following shall apply: NetLibrary will only permit access to and use of Consortium's Shared Collection(s) by a Library and the Library's Patrons if:

- a. Consortium has agreed to this Agreement,
- b. Consortium has given NetLibrary written notice that Consortium is willing to allow the Library to access a particular Shared Collection, and
- c. the Library has agreed to be bound by this Agreement.

Until all of these conditions have been satisfied, NetLibrary will have no obligation to permit the Library to access any Shared Collection of Consortium.

2. Provision of Platform Services. In the case of a Consortium, Library and Patrons will access the Shared Collection(s) through Library's NL Website and Consortium's NL Website, as applicable.

EXHIBIT E TO LIBRARY ECONTENT 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.