LIBRARY EBOOK AGREEMENT
LYRASIS MEMBER TERMS AND CONDITIONS

THIS LIBRARY EBOOK AGREEMENT (this "Agreement") is by and between _____, a Lyrasis, ("Member") 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, NetLibrary and Lyrasis ("Lyrasis" or _____ "Consortium") have entered into a consortium eBook agreement with respect to Shared Collection(s) and a consortium library agreement with respect to Unique Collections (collectively, the "Consortium eBook Agreements"), and Consortium and Member have entered into a subscriber agreement (the "Lyrais Subscriber Agreement") pursuant to which Member has been designated a "Member" of Consortium as defined in the Consortium eBook Agreements.

WHEREAS, Consortium has given NetLibrary written notice that Consortium is willing to allow Member to access a particular Shared Collection and Member has been designated a "Member" of Consortium as defined in the Consortium eBook Agreement (for clarification, capitalized terms used herein and not defined herein will have the meanings assigned to them in the applicable Consortium eBook Agreement).

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

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. "Consortium NL Website" means the Website operated by NetLibrary and open to Members of Consortium and their Patrons in order to access and utilize eBooks licensed to Consortium in accordance with the terms of the Consortium eBook Agreements and the terms of purchase of the applicable Shared Collections.

2. "CSS Fee" means the Content Service and Support Fee, which is the fee associated with Member's ongoing access to its eBooks via the Internet, NetLibrary's maintenance of Member's NL Website and NetLibrary's maintenance and upgrade to the Existing Platform and bandwidth. CSS Fees include eBook Services. Member 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 C hereto.

3. "Discount" means the percentage of the eBook List Price used in determining the eBook License Fee, as further described in Exhibit C.

4. "eBooks" mean NetLibrary's electronic copies of various books and other works in which NetLibrary has acquired certain rights.

5. The "eBook License Fee" means a one-time-only fee for Member's license to access and use the relevant eBook(s) content and is determined by subtracting the applicable Discount from the eBook List Price.

6. The "eBook List Price" means the price established by NetLibrary for the license to access and use the relevant eBook(s).

7. "eBook Services" mean NetLibrary's services related to Member's ongoing access to and use of eBooks via the Internet, as further described in Exhibit A.

8. The "Effective Date" of this Agreement means the latest execution date set forth on the signature block below or the date on which Member or any Patron may first access eBooks, whichever date occurs first.

9. A "MARC Record" means an electronic record containing metadata and other relevant information about the corresponding eBook.

10. "Member's NL Website" means the Website operated by NetLibrary and open to Member and Patrons in order to access and use eBooks licensed to Member.

11. "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.

12. "Patrons" mean Member'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.

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. The "Shared Collection(s)" means a collection(s) of eBooks licensed to Consortium for access and use by Consortium and its participating Members and Patrons (as such terms are defined in the applicable Consortium eBook Agreement) under the terms and conditions of the Consortium eBook Agreement with respect to Shared Collection(s) and this Agreement; nothing in this Agreement is intended to grant Member any rights in the Shared Collection(s) without completion of appropriate paperwork and payment of related fees.

15. 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 one year, 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.

16. A "Unique Collection" means a collection of eBooks chosen by a Member and licensed to the Member under the terms and conditions of this Agreement. The Unique Collection remains separate from the Shared Collection(s). The Unique Collection is only accessible by Member and its Patrons; the Unique Collection is not accessible by Consortium or by nonpurchasing Members and Patrons (as such terms are defined in the applicable Consortium eBook Agreement).

B. eBook Licenses.

1. Purchase of Licenses.

a. eBooks. During the Term of the Agreement, Member may select and purchase eBook licenses from NetLibrary. Member agrees to comply with and be bound by all the provisions of the Consortium eBook Agreement applicable to "Members" as defined in the Consortium eBook Agreement. Member 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 Member with one copy of the MARC Record that corresponds to each eBook license purchased by Member for the Unique Collection. NetLibrary may provide additional MARC Records to Member for mutually agreed upon fees and expenses. NetLibrary and Member agree that all MARC Records are the property of OCLC; Member may use MARC Records only for its own internal purposes as further described in Exhibit D. NetLibrary will replace defective MARC Records if Member 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.

a. Member 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, Member obtains certain rights to access and use a copy of the eBook under this Agreement, but Member does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with the eBook. Member agrees that any use of eBooks by Member and its Patrons is governed by and will comply with applicable laws, including without limit U.S. copyright laws. Member 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 and neither it nor Patrons have any right to grant any third parties

the right to use any eBook (for purposes of this sentence, third parties does not include Patrons).

b. Member will not, and will not attempt to, register any trademarks, company names, domain names, trade names, product names or other similar names ("Marks") that are owned or used by NetLibrary without NetLibrary's written permission, and any rights Member may acquire in such Marks are hereby assigned by Member to NetLibrary. Member will not, and will not attempt to, develop any products or services that contain the 'look and feel' of any of NetLibrary's products and services. Member acknowledges and agrees that repeated violations by it 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.

3. Delivery Option. At any time during the Term (see also Section III.B below), and only with respect to eBooks purchased as part of Unique Collections, Member 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. Member 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. Member must return the Secured eBook Option Delivery Election Form and any other required security documents before NetLibrary will deliver to Member one or more DVDs or other securable media containing one copy of each eBook that is licensed to Member under this Agreement and is requested by Member to be delivered as a Secured eBook. NetLibrary will deliver Secured eBooks within eight weeks of the date on which NetLibrary has received Member's executed Secured eBook Option Delivery Election Form and any other required security documents. Notwithstanding anything in this Agreement to the contrary, if Member elects the Secured eBook Option, Member will not receive eBook Services as further described in Section II and Exhibit A below.

II. EBOOK SERVICES

A. Applicability. The provisions of this Section II do not apply if Member 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 Member's NL Website using NetLibrary's existing electronic bookshelf technology and NL Website. Member and Patrons will access the Shared Collection(s) and the Unique Collection through Member's NL Website and Consortium's NL Website, as applicable, and Member will receive eBook Services for eBooks for which Member has purchased licenses and paid the applicable CSS Fee. Member and Patrons will access the Shared Collection(s) and the Unique Collection and eBook Services via Member's Internet connection, which will be Member's expense and responsibility.

C. Member and Patron Usage.

1. Limiting Access Measures. Member will be solely responsible for determining which Patrons will have access to Member's NL Website and Consortium's NL Website, as applicable, under this Agreement. Member 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. Member agrees to implement Limiting Access Measures within a reasonable time frame. NetLibrary, in its sole discretion, may discontinue Member's access to Member's NL Website and Consortium's NL Website, as applicable, if Member fails to implement Limiting Access Measures within a reasonable timeframe. Except for standard fees charged by Member to Patrons, Member will not charge any Patron for use of Member's NL Website.

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

3. Tools. Member will not use, implement or authorize use of any computerized or automated tool or application to search, index, test or otherwise obtain information from Member's NL Website and Consortium's NL Website, as applicable, 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. Member acknowledges and agrees that NetLibrary may from time to time implement controls on Member's NL Website to regulate or restrict the use of Tools.

4. Shared Collections.

a. Shared Collection(s) Access. NetLibrary will only permit access to and use of Consortium's Shared Collection(s) by a Consortium Member and the Member's Patrons if: (i) Consortium has executed a Consortium Agreement with NetLibrary, (ii) Consortium has given NetLibrary written notice that Consortium is willing to allow the Member to access a particular Shared Collection, and (iii) the Consortium Member has executed an Agreement. Until all of these conditions have been satisfied, NetLibrary will have no obligation to permit any Member of Consortium to access any Shared Collection of Consortium.

b. Shared Collection(s) Parameters. At the time of purchase the Shared Collection closes. NetLibrary will provide access to a Consortium Shared Collection to a Consortium Member that Consortium has authorized to access the Consortium Shared Collection by giving NetLibrary written notice within 30 days after the Consortium Shared Collection closes. NetLibrary will not provide access to a Consortium Shared Collection to any Members that Consortium has not authorized to access the Shared Collection by giving NetLibrary written notice within 30 days after the Shared Collection closes.

III. GENERAL PROVISIONS

A. Applicability. The provisions of this Section III apply whether Member 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 Member 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 Member is receiving eBook Services as to its Unique Collection(s) and subject to the limitations set forth on Exhibit A, NetLibrary will continue to provide the eBook Services to Member for the Unique Collection(s) purchased by Member unless and until Member elects to remove the eBook from Member'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, Member may terminate this Agreement as it relates to eBook Services for its Unique Collection(s) upon at least 60 days prior written notice of its intent to do so. In this event, Member may invoke the Secured eBook Option with respect to any eBook(s) licensed to Member as part of one or more Unique Collections 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 Member 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 Member 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 Member 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 Member 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 Member 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. Member 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 Member.

6. 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 Member under this Agreement, NetLibrary has the necessary authority to license the eBooks to Member and, if applicable, to provide eBook Services to Member. 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, MEMBER'S NL WEBSITE, EBOOK SERVICES, AND EBOOKS LICENSED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND NL, ITS CONTENT PROVIDERS, AND CONSORTIUM EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMIT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER NL, ITS CONTENT PROVIDERS, NOR CONSORTIUM WARRANTS, GUARANTEES OR MAKES ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF MEMBER'S NL WEBSITE OR EBOOKS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NL OR CONSORTIUM OR EMPLOYEES OF EITHER PARTY WILL CREATE A REPRESENTATION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF NL'S OBLIGATIONS, AND MEMBER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

E. Indemnity. NetLibrary will defend, indemnify, and hold Member harmless from any action based solely on a claim that eBooks furnished and used within the scope of this Agreement infringe any copyright of any third party, except that this indemnity will not apply to copyright claims arising from content that has been provided to NetLibrary by publishers and is provided by NetLibrary without substantive modification (except for conversion to digital format). Member will defend, indemnify, and hold NetLibrary harmless from any action based on a claim that the use by Member or its Patrons of Member's NL Website or Consortium's NL Website or eBooks in violation of the terms of this Agreement infringes any copyrights or trade secrets of any third party.

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 Member 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, Member 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, Member may disclose the aggregated content of reports delivered under Ex.A.2.c to other library professionals.

H. Payment Terms. At NetLibrary's discretion, either NetLibrary or Consortium may invoice Member for any fees and other charges due for the purchase of Member's Unique Collection(s) under this Agreement. Consortium will bill Member for amounts due with respect to Shared Collections. All fees and charges are due and payable 30 days from the date of the related invoice. NetLibrary or Consortium has the right to charge 1.5% interest per month on any invoice that remains unpaid longer than 30 days from the date of the invoice; in addition, NetLibrary may deny Member and Patrons access to Member's NL Website or Consortium'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.I.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 Member to the extent that any such agreement relates to the subject matter of the Agreement. For clarification, the subject matter of this Agreement relates to the business relationships by and among NetLibrary, Consortium and Member from and after July 1, 2002. This Agreement governs all orders for eBooks and eBook Services placed by Member 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 Member 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 Member 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 Member.

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 Colorado, U.S.A. without regard to any conflict of laws provisions contained in this Agreement. NetLibrary and Member 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 Colorado, U.S.A. Member hereby consents to jurisdiction and venue in the state and federal courts in Colorado, 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. Member 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. Member 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 Member:
	NetLibrary, a division of OCLC Online Computer Library Center, Inc.	
Address:	4888 Pearl East Circle, Suite 103	
Address:	Boulder, Colorado 80301	
Attention:	Sales Management	
Telephone:	(303) 415-2548	
Facsimile:	(303) 381-8600	
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.

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.

By: _____

Name: Richard L. Rosy

Title: Vice President, Content Management

Date: _____

Member: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A TO LIBRARY EBOOK AGREEMENT

eBook Services

1. Support for NL Website and Member's NL Website.

a. Existing Platform. At the time this Agreement is executed, the NL Website, the Consortium's NL Website and Member'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 Member any additional fees to support the Existing Platform until the Platform Commitment Date or to migrate Member'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 Member's eBooks to a replacement platform.

2. Specific eBook Services.

a. Accessing eBooks. Subject to the terms of this Agreement, NetLibrary will allow Member 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 Member.

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

ii. Removing eBooks. If Member chooses the Annual CSS Fee payment option, Member may elect to have any eBook removed from Member's NL Website, thereby suspending Member'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, Member 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. Member will implement and maintain Limiting Access Measures, based on NetLibrary's standard systems, which will control Patrons' access to Member's NL Website.

c. Reports. CSS Fees entitle Member 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 Member elects to purchase eBooks via the Secured eBook Option, Member will choose one of the two CSS Fee payment options described below on each purchase order. If Member does not make an election on a purchase order, then Member will be deemed to have selected the Annual CSS Fee for the corresponding order. In addition, if Member selects or is deemed to have selected an Annual CSS Fee for an order of eBooks, Member 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 55% 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 80% of the sum of all Annual CSS Fees paid for the eBooks. If Member 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 Member 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 15% 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 Member 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 Member'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, Member'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 Member (if Member selected the Annual CSS Fee option) additional fees for migrating the eBooks for which Member 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. Member 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 Member 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 Member any additional fees to migrate Member's licensed eBooks for which Member has paid the Prepaid CSS Fee to a replacement platform.

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

a. Member 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. Member has not removed the eBook from Member's NL Website.

EXHIBIT C TO LIBRARY EBOOK AGREEMENT

eBook License Fees and Discounts

1. Purchases Made Through a Consortium. For all purchases made through Consortium, the Discounts will be determined by Consortium.

2. Purchases Made Through NetLibrary. For purchases for the Unique Collection made directly through NetLibrary, the Discounts are calculated as follows:

Member's Purchases During the Preceding 12 Month Period in U.S. Dollars	Maximum Discount off eBook List Price
$750,000 and above	8%
$500,000 – 749,000	6%
$200,000 – 499,000	4%
$75,000 – 199,000	2%

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 Member'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.

EXHIBIT E TO LIBRARY EBOOK AGREEMENT

Secured eBook Option Delivery Election Form

1. If Member wants to exercise the Secured Media Option with respect to eBooks purchased as part of Unique Collections, then Member 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 Member 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 the eBook files and reader software provided on a DVD or other securable medium;

(11) the rights provided to Member 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 Member'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. Member 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 Member technology and eBook Services.

Member: _____

By: _____

Name: _____

Title: _____

Date: _____