



Dated

2013

Framework Agreement

Parties

Ebooks Corporation Limited
ACN 079 960 679

Statewide California Electronic Library Consortium

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Agreement dated

2013

Parties **Ebooks Corporation Limited** ACN 079 960 679
of Level 1, 62 Bayview Terrace, Claremont, WA
(EBL)

Statewide California Electronic Library Consortium
(Consortium)

Introduction

- A** EBL has licensed a broad range of Ebooks for distribution to libraries, and has developed proprietary solutions to enable access to collections of Ebooks by library patrons.
- B** EBL has agreed to provide special terms and discounts to those Member Libraries that accept the terms and conditions of the Library Services Agreement, including a discount of 10% on purchases and loans of Ebooks and a conditional waiver of the 'platform fees' (which would ordinarily be payable by EBL's library customers), subject to annual review. Discounts will only apply to orders placed by Member Libraries direct with EBL, and will not apply to orders placed with intermediary third parties such as vendors or wholesalers.
- C** The Consortium has agreed to market the services provided and the discounts available to Member Libraries by EBL under the Library Services Agreement and inform each member Library that they may take advantage of the 'package deal' by returning a signed Acceptance Form to EBL and the Consortium.

It is agreed

1 **Definitions and interpretation**

1.1 **Definitions**

In this agreement, the following words have these meanings unless the contrary intention appears:

Acceptance Form means the form set out in Schedule 1;

Library Services Agreement means the agreement set out in the Attachment; and

Member Library means a library in California that is a member of the Consortium.

1.2 **Interpretation**

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) any thing includes the whole and each part of it separately;
 - (d) a person includes a body corporate;

- (e) a party includes the party's executors, administrators, successors and permitted assigns;
 - (f) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - (i) that Statutory Provision as amended or re-enacted;
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - (iii) another regulation or other statutory instrument made or issued under that Statutory Provision; and
 - (g) money is to US dollars, unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
 - (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - (4) Headings and any table of contents or index are for convenience only and do not form part of this agreement or affect its interpretation.
 - (5) A provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

2 Consortium to encourage Member Libraries to participate

- 2.1 The Consortium must encourage each Member Library to accept the 'package deal' EBL is offering under this agreement by returning a signed Acceptance Form to EBL and the Consortium.
- 2.2 Upon receipt of a valid completed Acceptance Form executed by a Member Library, EBL must comply with the Library Services Agreement accepted by the Member Library by that form.

3 Term, extension and review of discounts

- 3.1 The term of this agreement is 1 year from the date of this agreement unless terminated earlier by either party by 3 months' notice to the other.
- 3.2 The term of this agreement will be extended by successive 1 year periods, unless either party gives the other party notice prior to the end of the term (or any extended term) that it does not wish to extend the term of this agreement.
- 3.3 At any time after the initial term of this agreement, EBL may revise the ebook pricing and other fees payable by Member Libraries by giving 2 weeks' notice to the Consortium.

4 Changes to Library Services Agreements with Member Libraries

- 4.1 In accordance with clause 12 of EBL's Library Services Agreements with Member Libraries, EBL and the Consortium may agree changes to the terms of those Library Services Agreements.

- 4.2 If the parties agree any changes to EBL's Library Services Agreements with Member Libraries under clause 4.1, the Consortium must notify each Member Library of the changes and the date on which they take effect.

5 Consortium to act as billing agent

- 5.1 From time to time EBL must prepare billing statements detailing the fees payable by each Member Library to EBL under a Library Services Agreement for a particular period and provide those statements to the Consortium.
- 5.2 The Consortium must invoice each Member Library on behalf of EBL for its respective fees as stated on a billing statement and must pay those fees to EBL, or arrange for each Member Library to pay those fees to EBL, by wire transfer or other direct electronic means agreed by the parties within 30 days of that billing statement being issued.

6 Matching limitation

- 6.1 The limitation of liability set out in clause 15.4.3 of the Library Services Agreement will apply between EBL and the Consortium as if references to:
- (1) 'You' were references to the Consortium and the Member Libraries; and
 - (2) 'this Agreement' were references to this agreement and all Library Services Agreements with Member Libraries.

7 General

- 7.1 A party may not assign or otherwise deal with this agreement without the prior written consent of the other party.
- 7.2 This agreement does not create or evidence a partnership, joint venture, or the relationship of employer and employee.
- 7.3 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this agreement.
- 7.4 This agreement:
- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this agreement; and
 - (2) supersedes any prior agreement or understanding on anything connected with that subject matter.
- 7.5 Each party has entered into this agreement without relying on any information or advice given or statement made (whether negligently or not) by any other party or any person purporting to represent that party.
- 7.6 An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.
- 7.7 This agreement is governed by the laws of California.
- 7.8 This agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

Executed as an agreement.

Executed by **Ebooks Corporation Limited** ACN 079 960 679 in accordance with section 127 of the *Corporations Act 2001*:

.....
Director/company secretary

.....
Director

.....
Name of director/company secretary
(BLOCK LETTERS)

.....
Name of director
(BLOCK LETTERS)

Signed for and on behalf of **Statewide California Electronic Library Consortium** by its authorised representative in the presence of:

.....
Signature of witness

.....
Signature of authorised representative

.....
Name of witness
(BLOCK LETTERS)

.....
Name of authorised representative
(BLOCK LETTERS)

.....
Address of witness

Schedule 1 – Acceptance Form

SCELC Acceptance Form

Please complete the form below to participate in the package deal offered to members of the Statewide California Electronic Library Consortium.

Entity name:

Address:

(SCELC Library)

The SCELC Library is a member or affiliate of the Statewide California Electronic Library Consortium (**SCELC**) and wishes to participate in the package deal offered by Ebooks Corporation Limited (**EBL**).

The SCELC Library has been provided with a copy of the Library Services Agreement (in the form attached to the Framework Agreement between SCELC and EBL) and agrees to be bound by it.

The SCELC Library nominates the following person as its 'Primary Contact' for the purposes of the Library Services Agreement:

Name:

Email address:

Telephone:

Executed as a deed poll in favour of EBL.

Signed for and on behalf of the Member Library by its authorised representative in the presence of:

.....
Signature of witness

.....
Signature of authorised representative

.....
Name of witness
(BLOCK LETTERS)

.....
Name of authorised representative
(BLOCK LETTERS)

.....
Address of witness

Date:

Please return a PDF copy of this completed form by email to both:

Ebooks Corporation Ltd	Statewide California Electronic Library Consortium
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Name: Sadie Williams

Name: [insert]

Email address: sadie.williams@eplib.com

Email address: [insert]

Attachment – Library Services Agreement