



Ebook Library

Technology in the service of knowledge

Library Services Agreement

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1 The Parties to this Agreement

This agreement is entered into between

Ebooks Corporation Limited
(ACN 079 960 679)
62 Bayview Terrace, Claremont
Western Australia ("We", "Us", etc)

And

a member of the Consortium that has agreed to be bound by this agreement by returning to Us a valid completed and signed Acceptance Form and its Affiliates. ("You", "Your" etc.)

Even though You are participating in an arrangement between Us and the Consortium, We are the supplier of Ebooks and related services to You.

2 Recitals (What this Agreement is about)

We specialise in aggregating and distributing published books in digital form, commonly called "Ebooks".

We offer a service which enables libraries to buy Ebooks and then allow their patrons to access the Ebooks via the Internet.

You wish to buy Ebooks from Us for the purpose of making the Ebooks accessible to your patrons.

We are willing to sell Ebooks to You for that purpose, on the terms set out in this Agreement.

3 Definitions and interpretation

For reasons of clarity, this section has to be here – ahead of the body of the Agreement. It is here so that We're able to write the rest of this Agreement in less formal language. For ease of reference, terms that have been defined in this section are capitalised throughout the rest of this Agreement.

3.1 Definitions

In this Agreement, unless the context otherwise requires:

"Acceptance Form" means an acceptance form in the form of Schedule 1 to the Framework Agreement;

"Access Codes" means any password or membership number provided to Patrons to enable them to access the Ebooks Library Server;

"Access Permissions" means the terms by which Patrons may access the Library Collection as set out in Schedule C;

"Affiliate" means any company controlling, controlled by or under common control with the relevant party where control means direct or indirect ownership of at least 50% of the voting stock or interest in a company or control of the composition of the board of directors;

"Agreement" means this library services agreement and its schedules;

"Archive Permissions" means the functions and usages that are enabled in Ebook files that You obtain from Us for archival purposes, as listed in Schedule E (see section 7.1);

"Chapter" means any chapter of an Ebook;

"Consortium" means the Statewide California Electronic Library Consortium;

"DRM" means digital rights management;

"Ebooks" means copyright protected electronic publications including but not limited to literary or other materials, whether published as books, journals or in any other form and includes a reference to a chapter of an Ebook, or separate chapters of Ebooks collected together as an ePack;

"Ebooks Library Server" means the computer or array of computers operated by Us from which Ebooks are accessible and made available for Loan to Patrons;

"ePack" means a group of Chapters from various Ebooks;

"Fees" means the fees for the Service as listed in Schedule B;

"Force Majeure" is where a party ("Affected Party") becomes unable, wholly or in part, by an event beyond its reasonable control to carry out an obligation under this Agreement (other than an obligation to pay money);

"Framework Agreement" means the framework agreement between EBL and the Consortium dated on or about **[insert]**;

"Intellectual Property" means all intellectual and industrial property or other rights (including, without limitation, applications for the grant of or registration of such property or rights) including:

- all copyrights, trademarks, design, patents, Confidential Information, trade secrets or other proprietary rights, whether registered or unregistered or rights to or in any inventions, innovations, registered design or rights to or in registrable designs;
- all technology, technical documents and know-how;
- all design, manufacture specifications and models developed;
- all goodwill and reputation; and
- all and any other rights or benefits whatsoever,

wherever existing or arising and whether created and in existence before or after the date of execution of this Agreement;

"Library Collection" means the aggregate of all Ebooks acquired by You;

"Library Management Portal" means the website to be made available by Us for You to obtain information and usage data on the Service;

"List Chapter Price" means the price for Chapters or sections of an Ebook determined by or recommended by the Ebook's publisher;

"List Price" means the price specified for an Ebook as stated from time to time in Our published price list;

"Loan" means either an on-line or off-line loan of an Ebook forming part of the Library Collection and "Lent" has a corresponding meaning;

"Loan Permissions" means the entitlements that a Patron has under a Loan as listed in Schedule D: "Loan Permissions";

"Patron" means an authorised user of Yours. An authorised user must meet minimum qualification requirements including any of the following:

- the user is enrolled in a course offered by the organisation to which You belong;
- the user is employed by You or the organisation to which You belong or your Affiliate;
- the user resides in the local municipality whose residents You serve, or
- any other method that ensures that access to the Library Collection is limited to the specific user base served by You;
- Currently registered users who maintain an official affiliation with the Institution;
- Patrons not affiliated with the Institution who are physically present at the Institution's site ("Walk-in Users") shall be allowed all Permitted Uses of this Agreement.

In any event, access will not be allowed to Patrons who simply

- apply online, or
- write in for membership;

"Reserve Collection" means Ebooks made accessible by Us on the terms contained in Clause 19.3.5;

"Service" means the service provided by Us pursuant to Clause 6;

"Short-Term Circulation" means Ebooks obtained by You and made accessible by Us on the terms contained in Clause 19.3.4;

"Term" means the period set out in Clause 13, as may be extended in accordance with Clause 16.3;

"Textbooks" means Ebooks purchased by You and made accessible by Us on the terms contained in Clauses 19.1.3 and 19.3.3; and

"We both", etc means each of the parties to this Agreement.

3.2 Rules of interpretation

Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

Unless the context otherwise requires, a word which denotes (i) the singular denotes the plural and vice versa; (ii) any gender denotes the other gender; and (iii) a person includes an individual, a body corporate and a government.

Unless the context otherwise requires, a reference to:

- a clause or schedule is a reference to a clause of or schedule to this Agreement;
- a group of persons includes any one or more of them; and
- a thing or amount is a reference to the whole and each part of it.

A reference to this Agreement includes the recitals of and the schedules to this Agreement and, where amended, means this Agreement as so amended.

References to "You" and "Yours" shall be taken to mean You And Your Affiliates.

Headings must be ignored in the interpretation of this Agreement.

A person includes the trustee, executor, administrator, successor in title and assign of that person.

A reference to a business day means a day other than a Saturday, Sunday or public holiday, during which banks are open for general banking business in Los Angeles, California.

A reference to \$ or dollars or currency is to US dollars unless otherwise specified.

Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.

Unless the context otherwise requires, a term of this Agreement which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

4 Buying and Renting Ebooks

You may purchase Ebooks from either Us or our authorised distributors at the List Price, to form part of Your Library Collection and You may rent Ebooks from Us for Short-Term Circulation.

Each Ebook that You buy will form part of Your Library Collection and will be held on the Ebooks Library Server by Us and made accessible to You and Your Patrons in accordance with the terms of this Agreement.

Under no circumstances shall You be obliged to purchase or rent any or a minimum number of Ebooks.

5 Uses

The uses to which You and Your Patrons can put Ebooks are defined by:

- prevailing copyright legislation,
- Nothing in this Agreement shall in any way exclude, modify, limit or affect any of the subscriber's rights under the United States Copyright Revision Act 1976, as amended, and this Agreement shall not be construed to limit in any way the fair use right granted under said federal statute and international, which legal rights we expressly reserve.
- DRM settings in the Ebooks and in Our electronic platforms, as defined in this Agreement; and
- Your undertaking which you give by signing this Agreement that You will not knowingly circumvent DRM settings and that You will not knowingly permit others to do so.

6 Services: Our Obligations to You

We agree to provide the following services to You:

6.1 Choice of Ebooks

We will provide You with online access to Our collection of titles such that You can browse Our catalogue, see metadata and browse individual books, in order to acquire Ebooks under this Agreement.

6.2 Hosting of Library Collection

We will host Your Library Collection on the Ebooks Library Server, and will allow Patrons to access Your Library Collection via the internet, and enable Loans to Patrons in accordance with this Agreement.

We are not responsible for providing the internet connection used by You or Your Patrons to access the Ebooks Library Server.

6.3 We will help you get started

We will provide assistance to You at no additional cost in setting up Your systems to enable You to access the Service.

6.4 Collection Management Portal

For the Term, you will have access to the online Library Management Portal, which gives You a range of tools for managing Your collection of Ebooks.

6.4.1 Reports on usage

For the Term You will have access to an online reporting interface which provides usage data including, without limitation:

Loan permissions remaining for the year (sorted by date range, title, the number of remaining Loan days, publisher and category); usage: by title, by category and browser (on-line) vs. download (off-line);

Short Term Loan: titles rented and dollar amount (date range); and

accounting data: total purchase costs (date range). Note that, where inconsistent or in conflict, the information provided in an invoice will prevail over any information available on-line at the Library Management Portal

In addition, for the Term You will have access to statistics in conformance with the Codes of Practice for Project COUNTER located at: http://www.projectcounter.org/code_practice.html

6.5 Technical support

For the Term, You will be able to contact Us by email and telephone during the hours of 9am to 5pm (western standard time in Australia; and Eastern Standard and Daylight Savings Time in the United States; and GMT in the United Kingdom and continental Europe), to answer and attend to support or technical queries relating to the Service. Technical support for library staff is generally available during business hours – except on public holidays.

6.6 Quality of Service

We will use Our best endeavours to ensure that the Ebooks Library Servers have sufficient capacity and rate of connectivity to provide You and Your Patrons with a quality of service comparable to current standards in the on-line information provision industry in Your locale; and provide continuous service seven (7) days a week with an average of 99% uptime per calendar year. The 1% down-time includes periodic unavailability due to server maintenance, the installation or testing of software and down-time related to the failure of equipment or services outside Our control.

We will have support personnel available by email, phone or fax during regular business hours, Monday through Friday, Pacific Time, for feedback, problem-solving, or general questions.

If Our Service fails to operate in conformance with this Agreement, You should promptly notify Us and We will use our best endeav-

ours to restore access as soon as possible. In the event that We fail to repair the problem in a reasonable time, We will subject to Clause 15.4.3 reimburse You in an amount that the failure is proportional to the total fees paid by You under this Agreement.

We will notify you in writing at least 30 days prior to any planned maintenance procedure that requires that the Ebooks Library Server be offline and unavailable for any period of time.

6.7 Quality of Ebooks

We shall use all reasonable efforts to immediately notify publishers of any errors or omissions in the Ebooks reported to Us. If a corrected Ebook is published, We shall provide the corrected Ebook to You as a no-cost replacement. If a corrected Ebook is not made available within a reasonable time, We shall refund or exchange the incorrect Ebook at Your absolute discretion.

6.8 Confidentiality of User Data

We both agree to maintain the confidentiality of any data relating to the usage of the Ebooks. Such data may be used solely for purposes directly related to the Ebooks and may only be provided to third parties in aggregate form, except where required by law. Raw usage data, including but not limited to information relating to the identity of specific Patrons and/or uses, shall not be provided to any third party.

6.9 Warranties

We warrant, represent and undertake on an ongoing basis that the Services will:

- a) be carried out using all reasonable skill, care and diligence; and
- b) comply with all applicable statutes, regulations, codes of practice, orders and guidelines.

We warrant, represent and undertake that all persons involved in the provision and execution of the Services (or any part thereof) are appropriately skilled, qualified, competent, experienced, trained, licensed and/or approved in the country where the Services are carried out.

6.10 Data Protection

We shall ensure that, in the performance of our obligations under this Agreement, we shall comply at all times with applicable data protection laws, including those that derive from the Data Protection Directive (Directive 95/46/EC).

We acknowledge that We may be required to process personal data (as such term is defined in the Data Protection Directive) in the course of providing the Services. Accordingly We shall, and shall procure that Our employees, and representatives shall:

- a) only process personal data in accordance with Your instructions and only for the purpose of providing the Services;
- b) take appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of or access to personal data and against accidental loss, alteration or destruction of, or damage to personal data, and ensure that such measures are no less rigorous than those maintained by Us for Our own personal data;
- c) include in any contract with a subcontractor who shall process personal data directly or indirectly on behalf of Us provisions in favour of You which are equivalent to those in this Clause 6.10;
- d) cooperate with any inquiries from a regulatory authority and abide by any advice from such regulatory authority with regard to the processing of personal data; and
- e) promptly notify you about any accidental or unauthorised access which may affect personal data.

7 What You get when You buy an Ebook

When You buy an Ebook from Us, You

- a) get permanent access to the Ebook (except in exceptional cases described in Clause 11),
- b) can display metadata relating to that title in Your catalogue; and
- c) can enable Your Patrons to access the Ebook from the Ebook Library Servers.

The levels of access We provide to Your Patrons are set out in Schedule C.

7.1 Preservation

You can download a permanent archive copy of any Ebook You buy. Archival Ebooks, once downloaded, may be held on Your own equipment and will be accessible and usable in accordance with the Permissions set out in Schedule E, "Archive Permissions". You may print out one full archival copy of an Ebook but this may only be circulated in the event that the Service is no longer available and in any event at the end of the Term. We do not make archival copies available for Ebooks rented on Short Term Circulation.

We will ensure that, at the time of obtaining an Archival Ebook, You are also able to obtain a reader or client program that is suitable for reading the Archival Ebooks that you have obtained.

If You identify errors or omissions in the downloaded archival copy of the Ebooks, You may either download a corrected copy of the Ebooks when available as a no-cost replacement or, if a corrected copy is not made available, receive a full refund.

7.2 Add chapters to Your Reserve Collection

Where allowed by publishers, You can hold one Chapter of each Ebook forming part of Your Library Collection in Your Reserve Collection. Chapters held in the Reserve Collection are subject to special lending restrictions, as described in Schedule C.

7.3 Buy additional Chapters of Ebooks

For each Ebook already part of Your Library Collection, You can buy an additional Chapter of that Ebook, to be held in Your Reserve Collection.

8 Software to be Installed on Patrons' Computers

We both agree that, in order for Patrons to open and read Ebooks, third-party software may first have to be installed on the computers and other reading devices of Patrons and Library Terminals, and that such software requirements may change from time to time. These software requirements are set out in Schedule F: "Software Requirements for Patrons".

We will notify You in writing at least 30 days in advance of any necessary software installations or upgrades.

9 Who may use the Ebooks?

Use of Your Library Collection is limited to Your Patrons. Patrons may only access Ebooks via an authentication protocol agreed upon by the parties, whose purpose is to ensure that only Your properly registered Patrons have such access.

10 What can Your Patrons do with the Ebooks?

Your Patrons can access Ebooks via the Internet, using their own computers or using terminals in Your premises. Exactly what a Patron can do with an Ebook is set out in Schedule C, "Access Permissions" and Schedule D, "Loan Permissions".

Patrons can:

- a) browse an Ebook before checking it out;
- b) search through Your collection of Ebooks and search individual Ebooks;
- c) read an Ebook for check-out periods set by You;
- d) copy and paste limited amounts of text from Ebooks; and
- e) print a limited number of pages from Ebooks.

The limits of these permissions are set out in Schedules C and D.

11 We may have to remove some Ebooks

We reserve the right, in Our absolute discretion and upon written notice to You, to immediately remove an Ebook from the Library Collection and cease the Service with respect to that Ebook if:

- a) removal is requested by the publisher of that Ebook because of reasonable concern on the part of that publisher that the continued hosting of that Ebook by Us might lay the publisher open to liability or damage;
- b) We receive a bona fide request from a government authority to remove that Ebook;
- c) We reasonably believe that the continued hosting of the Ebook would cause liability or damage to Us, Our related companies, directors, officers, employees or agents; or
- d) We reasonably suspect the Loan Permissions in respect of that Ebook are being or have been breached by You or a Patron.

We will notify you of any such removal pursuant to this Clause and We will refund to You the full purchase price paid for that Ebook.

You acknowledge that, in the event that We remove an Ebook from the Library Collection pursuant to this Clause, the refund of the purchase price is sufficient to satisfy Our obligations to You with respect to that Ebook under this Agreement.

12 Costs and Payment

12.1 Costs

You will pay Us:

- a) for Ebooks and other electronic content materials that You acquire in accordance with Schedule A; and
- b) an annual Maintenance Fee as defined in Schedule B.

At any time after the initial term of this Agreement, EBL may revise the ebook pricing and other fees payable by You by 2 weeks' notice to the Consortium under the Framework Agreement.

12.2 Payment

We have appointed the Consortium as our billing agent for the purposes of this Agreement. You must pay Us for services and electronic content within 30 days of the date after we issue a billing statement to the Consortium. It is the Consortium's responsibility to issue you an invoice for the same.

Any Ebook You order will not belong to You until We (or Our authorised distributor) have received full payment for the Ebook. We shall make the Ebooks You order immediately available; any use made of Ebooks prior to the receipt of payment will count against available permissions, as described in Schedule C.

13 Initial Term: 1 year

The Initial Term of this Agreement commences on the date that We receive a valid completed and signed Acceptance Form from You and continues for a period of 1 (one) year unless this

Agreement is terminated earlier in accordance with Clause 16.3.

14 Things will probably change

We both agree that business models for digital distribution services are changing, and the future is uncertain. Accordingly, and in order that We can remain competitive, We both agree that, after consulting with publishers and libraries, We may amend or vary the Access Permissions, Loan Permissions and other usage rules set out in this Agreement and its schedules. Such amendments or variations will not be retrospectively applied to Ebooks that You have already purchased, unless provided otherwise in this Agreement.

We will notify You 90 days in advance of any such changes.

You agree that under the Framework Agreement We and the Consortium may agree changes to this Agreement. Any changes will be notified to You in writing by the Consortium. If You do not accept the changes, You may terminate this Agreement in accordance with Clause 16.3.2 within 90 days after notice of the changes is given.

15 Obligations, Liabilities and Indemnities

15.1 Our obligations to You

See Clause 6.0, "Our Obligations"

15.2 Your obligations to Us

15.2.1 Compliance with restrictions

You undertake not to knowingly circumvent DRM settings, nor to knowingly permit others to do so.

You undertake to:

- a) use reasonable endeavours to ensure that Your Patrons are aware of the Loan Permissions that pertain to the use of Ebooks; and
- b) notify Us promptly if You suspect that a Patron may be in breach of the Loan Permissions and remove or terminate that Patron's access to the Service.

15.2.2 Dealing with Patrons who try to breach security

We both acknowledge that We reserve the right to terminate access to the Library Collection by any Patron that We reasonably suspect is in breach of, or has been attempting to breach or circumvent, the Loan Permissions, and You agree to do what is reasonably necessary to prevent access by that Patron where requested by Us.

You acknowledge that, after notification by Us, You are solely responsible for informing the Patron that the Patron's access to the Library Collection has been suspended, and dealing with any disputes with the Patron. In no circumstances will We be responsible or liable to the Patron for the termination of the Patron's access to the Library Collection pursuant to this Clause 15.2.2.

15.2.3 Access Codes

You will use reasonable efforts to ensure that Access Codes provided to Patrons are kept secure and confidential, and You will notify Us if You become aware of any unauthorised use of an Access Code.

You will be responsible for updating Your database of Patrons, providing Access Codes to new Patrons and terminating the Access Codes of persons that are no longer Patrons of Yours.

15.2.4 Personal data

If You provide personal data of Your Patrons to Us, You warrant and represent that such personal data has been legally and validly obtained from the owners of that personal data and that We will be entitled to use that personal data, subject to Clause 6.10, solely to provide the Service and comply with Our obligations under this Agreement.

15.3 Mutual Obligations

We both agree that it is necessary to continually maintain and upgrade security systems in order to inhibit unauthorised access, copying and re-distribution. Accordingly, We will both cooperate in the implementation of security and control protocols and procedures as they are developed during the Term.

15.4 Liabilities and indemnities

15.4.1 We indemnify You

We indemnify You from and against all loss, damage, costs and expenses (including reasonable legal expenses) arising out of or in connection with:

- a) Our breach of any obligation under this Agreement;
- b) a breach of any of Our representations, warranties or undertakings contained in this Agreement; or
- c) Our gross negligence or wilful misconduct.

15.4.2 You Indemnify Us

You indemnify Us from and against all loss, damage, costs and expenses (including reasonable legal expenses) arising out of or in connection with:

- a) any deliberate and intentional use of Ebooks by You in breach of this Agreement including but not limited to breaches of the Access Permissions, Loan Permissions and Archive Permissions;
- b) Your deliberate and intentional breach of any of Your obligations under this Agreement;
- c) a deliberate and intentional breach of any of Your representations, warranties or undertakings contained in this Agreement; or
- d) Your gross negligence or wilful misconduct.

15.4.3 Limits to Our Liability

We will use commercially reasonable endeavours to ensure that the Service is free from viruses and similar afflictions but You acknowledge that We do not warrant that the Service or Ebooks will be virus or error free. Upon becoming aware of a virus, worm or similar malicious code, We will take immediate action to remedy the matter.

Other than in respect of any implied terms not permitted to be excluded by law:

- a) We exclude all warranties, express or implied in respect of any Ebooks, the Service or this Agreement, except for those set out herein;
- b) Our maximum aggregate liability in connection with the performance or non-performance of Our obligations under this Agreement (whether for breach of contract, negligence, misrepresentation or otherwise), will not in any circumstances exceed the aggregate amounts paid under this Agreement; and
- c) We will not be liable to You or Patrons for any indirect or consequential damage of any character regardless of the form in which any legal or equitable action may be brought, in respect of the Service or in any way arising out of the circumstances contemplated under this Agreement.

In respect of those implied terms that cannot be excluded by law, Our liability shall be limited, at Our option, to any one or more of the following:

if the breach relates to Ebooks:

- a) the replacement of the Ebooks or the supply of equivalent Ebooks;
- b) the repair of such Ebooks;
- c) the payment of the cost of replacing the Ebooks or of acquiring equivalent Ebooks; or
- d) the payment of the cost of having the Ebooks repaired; and

if the breach relates to Services:

- a) the supplying of the Services again; or

- b) the payment of the cost of having the Services supplied again.

We are not liable for any act by You or Your Patron that is not authorised by Us.

15.4.4 Limits to Your Liability

You will use reasonable endeavours to ensure that Your network is free from viruses and similar afflictions but We acknowledge that You do not warrant that Your network will be virus or error free. Upon becoming aware of a virus, worm or similar malicious code, You undertake to take immediate action to remedy the matter.

Other than in respect of any implied terms not permitted to be excluded by law:

- a) You exclude all warranties, express or implied including (without limitation) those in respect of Your network and Patrons and the ways in which they interact with the Service and Ebooks;
- b) Your maximum aggregate liability in connection with the performance or non-performance of Your obligations under this Agreement (whether for breach of contract, negligence, misrepresentation or otherwise), will not in any circumstances exceed the aggregate amounts paid under this Agreement; and
- c) You will not be liable to Us for any indirect or consequential damage of any character regardless of the form in which any legal or equitable action may be brought, in respect of the Service or in any way arising out of the circumstances contemplated under this Agreement.

You are not liable for any act by Us that is not authorised by You.

15.4.5 Limitation Generally

Nothing in this Agreement excludes or limits either Your or Our liability:

- a) for fraud;
- b) for death or personal injury caused by negligence; or

to the extent that any applicable laws or regulations preclude or prohibit any exclusion or limitation of liability.

16 Other things

16.1 Publisher retains copyright, trademarks, etc

You acknowledge that the copyright and title to the Ebooks and any trademarks or service marks relating to them remain with the publisher of the Ebooks. Neither the Library nor Your Patrons shall have right, title or interest in the Ebooks, except as expressly set out in this Agreement.

16.2 Our Intellectual Property

You do not have and will not acquire pursuant to this Agreement, any right, title or interest in or to Our trade names, trademarks, copyrights, trade secrets, patents or any other of Our Intellectual Property.

16.3 Automatic Renewal and Termination

After the Initial Term, the Agreement will renew automatically for successive one year periods, subject to termination any time by either of Us on three months' notice in writing to the other party. This Agreement will continue according to its terms despite any termination of the Framework Agreement.

16.3.1 Default

A party ("Innocent Party"), may by notice to the other, ("Defaulting Party") terminate this Agreement if:

- a) the Defaulting Party commits a material breach of any obligation under this Agreement which is not capable of remedy or continues to breach any material obligation under this Agreement for 60 days after receiving notice from the Innocent Party of that breach;
- b) an order is made for the winding up or dissolution of the Defaulting Party;

- c) an administrator, a receiver or receiver and manager, official manager, trustee, provisional liquidator or similar officer is appointed for all or any part of the assets or undertaking of the Defaulting Party;
- d) the Defaulting Party enters into, or resolves to enter into, an arrangement, composition or compromise with, or assignment for, the benefit of its creditors generally, or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise;
- e) the Defaulting Party stops payment of or is unable to pay its debts; or
- f) the Defaulting Party ceases to carry on its normal day to day operations.

16.3.2 *Either of us can terminate early*

During The Term, either party may terminate this Agreement on three months' notice in writing to the other party, without having to show cause. If this Agreement is terminated by either party at any time, You will receive a pro-rata reimbursement of the maintenance fees already paid.

16.3.3 *We may terminate if you are inactive*

We may terminate this Agreement on one month's notice in the event that You have not purchased an Ebook for more than 6 months and you have not fully paid the annual Maintenance Fee (see Schedule B: "Fees and Terms for Services").

If the Agreement is terminated pursuant to this Clause 16.3.3 parties may agree to the re-commencement of this Agreement upon You making a new addition to Your Library Collection, but We reserve the right to charge You a new set of Fees and not allow the carry forward of any Fees paid previously by You.

To avoid termination of this agreement under this Clause 16.3.3, You may pay the annual Maintenance Fee, even if you have not bought a book for six months. In that case, You and Your Patrons will retain full access to the Services.

16.3.4 *You will still have Access to your Ebooks after termination*

After termination of this Agreement (for whatever reason), subject to the terms of this Clause, We will continue to host, and allow Your Patrons to access, Ebooks forming part of Your Library Collection as at the date of termination, in accordance with the Access Permissions, and grant Loans in accordance with the Loan Permissions.

After termination You will be responsible for:

- a) maintaining and upgrading Your equipment to enable You to continue to access Our Library Service; and
- b) making any necessary additions or removals of Access Codes for Your Patrons.

For the avoidance of doubt, after termination, You will not be entitled to receive the following Services:

- a) Access to Our online catalogue, as described in Clause 6.1;
- b) Access to Our Collection Management Portal, as described in Clause 6.4, and
- c) Technical support in managing your Ebook collection;

but We will continue to provide direct email support to your patrons as set out in Clause 6.5.

16.4 Force Majeure

In the event of a Force Majeure, the Affected Party must give to the other party prompt written notice of:

- a) reasonable particulars of the Force Majeure; and
- b) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.

The relevant obligation, so far as it is affected by the Force Majeure, will be suspended during but no longer than the term of the Force Majeure.

16.5 Sending notices to each other

16.5.1 *In writing*

All notices, requests and other communications to any party under this Agreement must be in writing and must be given to such party at its address as set out in Clause 1, facsimile number or e-mail address specified by the party for that purpose.

16.5.2 *When is a notice deemed to have been sent or received?*

Each notice, request or other communication shall be effective:

if given by facsimile, when the facsimile is transmitted to the facsimile number provided by You, as evidenced by the transmission report; or

if given by any other means, when received at the address provided by you or e-mail server of the addressee.

16.6 Primary contact

Our primary contact with You shall be Your employee, whose name and contact details are set out in your Acceptance Form.

You may change the primary contact at any time upon notice to Us.

16.7 Taxes and duties

Any amounts payable by You as stated in this Agreement are stated exclusive of any goods and services tax, value added tax or import duties and You agree to pay such duties and taxes at the rate prescribed by law.

16.8 We can each sign this agreement on separate printed copies

This Agreement may be executed in a number of counterparts and, if so executed, the counterparts taken together constitute one agreement.

16.9 This is the whole agreement

This Agreement embodies the entire understanding and Agreement between Us as to the subject matter of this Agreement.

All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement.

16.10 If any of this is illegal or unenforceable

Any provision of this Agreement which is illegal, void or unenforceable is to be severed without prejudice to the balance of the provisions of this Agreement.

16.11 Assignment

Neither Party may assign their interest in this Agreement without the express written consent of the other, which consent shall not be unreasonably withheld, delayed or conditioned. However, either party may assign this Agreement to its Affiliate or otherwise in connection with the sale of all or substantially all of the assignor's assets in connection with an acquisition or merger or other similar transaction.

16.12 We each cover our own legal costs

The parties must each pay their own legal and other expenses relating directly or indirectly to the negotiation, preparation and execution of this Agreement and all documents incidental to it.

16.13 How this agreement might be amended

This Agreement may only be amended or added to in writing signed by both parties or by Us and the Consortium under the Framework Agreement, as described in clause 14.

16.14 This Agreement is only between Us

This Agreement is between You and Us, and does not confer any rights to Patrons or any other third party referred to in this Agreement.

16.15 Waivers must be in writing

No waiver of any term of this Agreement is binding on a party unless it is in writing and executed by or on behalf of that party. Any such waiver is not a waiver of any other term.

16.16 Governing Law

This agreement shall be governed by and construed in accordance with the laws of California. Without regard to principals governing conflict of laws. Any dispute, if not amicably settled, shall be submitted to the courts of California.

17 Schedule A: Fees and Terms for Materials

We sell materials in three forms; namely, Ebook purchase, Short Term Loan and Chapters.

17.1 Ebook Pricing

The publisher sets Ebook prices. For pricing purposes, We distinguish between three classes of book:

- a) Monograph (Non-Linear Lending)
- b) Reference (Unlimited Multiple Concurrent Use)
- c) Text books (Limited Multiple Concurrent Use)

Monographs are available to Patrons on a “non-linear lending” basis. This means that the Ebooks are for limited multiple concurrent use. We recommend that publishers price monographs the same as the print version.

Reference books are available to Patrons for unlimited multiple concurrent use. Publishers typically charge more than the print price for reference Ebooks.

Text books can be lent to three concurrent Patrons. Publishers typically charge more than the print price for online text Ebooks.

For a detailed explanation of the way each of these lending models works, see Schedule C: “Access Permissions”.

Prices are published in Our online catalogue. As a participating member of the Consortium, a discount of 10% will be applied to these prices in respect of any orders placed by you directly with EBL during the initial term. For the avoidance of doubt, no discount will be granted in respect of orders placed with any organization other than EBL including but not limited to any distributor, vendor, agent or wholesaler.

At any time after the initial term of this agreement, EBL may revise this discount by 30 days notice to the Consortium under the Framework Agreement.

17.2 Chapter Pricing

The publisher sets the price at which Chapters are sold.

17.3 Short Term Loan

The publisher sets the price at which Ebooks can be “rented” by a library for a short period for a single patron.

Prices are published in Our online catalogue. As a participating member of the Consortium, a discount of 10% will be applied to these prices during the initial term.

At any time after the initial term of this agreement, EBL may revise this discount by 30 days’ notice to the Consortium under the Framework Agreement.

18 Schedule B: Fees and Terms for Services

The Service Fees are comprised of the Maintenance Fees.

18.1 [Not used]

18.2 Annual Hosting/Maintenance Fees: \$750

Commencing one year after the payment of the date of this Agreement, You will be charged an annual maintenance fee (“Maintenance Fee”). The Maintenance Fee is \$750 and is payable for each year of the Term. The Maintenance Fee shall be paid within 30 days of the date of receipt of the invoice for the same. Such invoice to be issued on the anniversary of the date of this Agreement.

The Maintenance Fee will be waived if SCEL C invoices \$30,000 or more in a calendar year or if You invoice \$3,000 or more in a calendar year. This will be assessed annually in January, starting one year after the date of this Agreement.

18.3 Ceasing payment of Platform or Maintenance Fees

If You stop buying Ebooks and stop paying the Fees, you will NOT lose access to the Ebooks You have already purchased.

If You stop buying Ebooks and stop paying the Fees, You WILL LOSE ACCESS to Our Library Management Portal. This means that Patrons will still be able to access the Ebook titles purchased by You but that librarians will no longer be able to provide e-reserve functionality, access system settings or see usage statistics.

To avoid termination of this agreement under Clause 16.3.3 for inactivity, You may pay the annual Maintenance Fee, even if you have not bought a book for six months. In that case, You and Your Patrons will retain full access to the Services.

19 Schedule C: Access Permissions For Ebooks

19.1 Description of Three Lending Models

Because not all Ebooks are the same, We offer three different lending models for Ebooks. The publisher chooses which lending model to apply to any given Ebook. Alternatively, if You don’t want to buy a particular Ebook outright, You might just rent it for a short term. This section summarises the different ways that You can add Ebooks to Your collection.

19.1.1 *Non-Linear Lending applies to most monographs.*

The vast majority of Our books are available on this basis. Non-linear lending (“NLL”) allows a number of Patrons to use the same Ebook simultaneously. In this way, You and Your Patrons have flexible access that makes sense in the digital age.

Each NLL Ebook copy is sold with a “bundle” of 325 loan instances per year. A loan instance is any period of Patron access that is more than the permitted free browsing period and up to 24 hours. Patron usage of Ebooks is monitored by Us. The number of available Loan instances for an Ebook renews to 325 at the beginning of each year of ownership. If the number of Loan instances used for an Ebook in any given year reaches 325 its limit, the book “turns off” unless You buy another copy of that Ebook. If You don’t buy another copy of that Ebook, it will “turn on” again at the commencement of that Ebook’s next year of ownership.

The standard bundle of Loan Instances is 325 per year. This may change in time, or from one publisher to another. At this time, only one publisher, Oxford University Press, offers different rules; they allow 200 loan instances on some books and 400 on others. We will advise You of any future variations in Loan Instance bundle amounts.

Examples (Assume that You buy an Ebook on 1 July with 325 Loan Instances)

To start with, You have 325 loan instances available. If, a year later, only 35 loan instances have been used, then You will still have 290 unused Loan instances. On 1st July, the number of available loan instances for that Ebook will re-set to 325.

If instead, six months after buying the Ebook, you see that 310 Loan instances have been used, You may consider buying a second copy of the Ebook, to ensure continuous availability to Your Patrons.

You would then have two copies of the same book, one of which has 15 remaining Loan instances and the other has 325. Having bought the second copy, You will then have a total of 650 available Loan instances per year for that title.

Confidential: EBL Library Service Agreement

Q. Where did the number 325 come from?

A. It's the best We could negotiate with Ebook publishers.

No-one is certain how business models or technical capabilities for digital book distribution will evolve, and We're determined to be flexible and responsive to the needs of readers and authors, and to emerging technical developments. One of the uncertain factors is *that* number. We don't know if 325 is too restrictive or too wide open – it's unlikely to be just right. In Our contract with You (Clause 14: "Things will probably change") We highlight the possibility of changing this number.

If it's possible to increase the number, We certainly will. Conversely, if it becomes apparent that authors are being impoverished by a model that is so wide open, We may have to tighten it.

In any event, We will not change this or any other access or usage rule without considerable consultation with stakeholders. And no future changes will affect the functioning of Ebooks that You've bought already.

19.1.2 ***Unlimited Multiple Concurrent Use*** is suitable for some reference works.

Any number of Patrons can access reference works simultaneously. There is no limit on the annual number of Loan instances for reference works.

19.1.3 ***Limited Multiple Concurrent Use*** is suitable for course text books.

In this case, usage is limited to three concurrent Patrons. Text books typically come with 325 annual Loan instances.

19.2 Short-Term Circulation

Rent Ebooks as an alternative to inter-library loan

The three models described above relate to Ebooks that You buy and own in perpetuity. However, there are times when You need to satisfy a request without buying a copy of the requested Ebook.

Normally You might execute an inter-library loan to fulfil that request. With Our Short-Term Circulation system, you can rent a copy of an Ebook for a fraction of the price – and supply it immediately to the Patron who needs it. Short Term Loan is faster, easier and often cheaper than executing an inter library loan.

The following pages explain the access and usage permissions available to You and Your Patrons

19.3 Summary of access and usage permissions available to You and Your Patrons

19.3.1 **1** *Non-Linear Lending (The lending model that applies to most of our titles)*

An Ebook supplied with NLL access permissions can be used by You under the following terms:

| | |
|------------------------------|---|
| Typically 325 Loan Instances | Patrons may borrow the Ebook for an equivalent total of 325 Loan instances per year. The Ebook may be lent to more than one Patron at a time but the total combined number of loan instances used cannot exceed 325 per year. Where usage reaches 325 instances, You will be denied the ability to lend that Ebook until the end of that year, at which point You will be entitled to another 325 instances for the new year. At any time, You may purchase another copy of the same Ebook and will be entitled to an additional 325 Loan instances per year. |
| HTML Preview | Patrons may review metadata, summary and table of contents of an Ebook on-line for an unlimited period. |
| Free online browsing | Ebook may be viewed on-line by an unlimited number of Patrons for a maximum of 10 minutes once every 24 hours for each Patron. In cases where You have catalogued titles that your library has not yet bought from EBL, Your patrons may view those Ebooks for 5 minutes. |
| On-line Loans | Any on-line viewing that exceeds the browse period by the same Patron will be deemed to be an on-line Loan ("Loan Instance"). |
| Off-line Loans | A Patron may download an Ebook to their computer for nominated Loan periods. Once downloaded, the Ebook may be transferred by the Patron to two authenticated devices within the allotted Loan period. Unless the Patron has logged in and renewed the Loan, the Ebook will be disabled on their machine(s) once the Loan period has expired. |
| Reserve collection | Where permitted by the publisher, You will be entitled to place, as a separate holding in Your Reserve Collection, either an entire Ebook or one Chapter of any Ebook. Entire Ebook Placing an entire Ebook into the Reserve Collection removes it from general circulation and makes it available under Reserve Collection permissions (see below). Chapters (Chapters) as a separate holding; or, (ePacks) as part of a group of Chapters, known as an ePack. An ePack is a group of Chapters from various Ebooks that form part of the Library Collection. A limit of 1 Chapter may be included from any one Ebook in an ePack. You may also pay for additional Chapters to be used in an ePack for titles held in their catalogue. Placing Chapter(s) into the Reserve Collection does not remove the Ebook from general circulation. *Note – the above permissions apply per holding per title. If You have 2 copies of the same title, then You have the above reserve permissions for each title. (Two holdings of an Ebook gives You the right to use 1 Chapter from each book or 2 Chapters from that title (either separately or as part of an ePack), each title without removing the book from general circulation). |

19.3.2 **2** *Unlimited Access (Reference Books)*

Ebooks that are purchased with Unlimited Access permissions can be used by You on the same terms as NLL Ebooks, with the following exceptions:

| | |
|---------------|---|
| Usage | Unlimited number of Loan Instances and concurrent Patrons permitted. |
| Offline Loans | Length of download Loan period is limited to a maximum of 6 weeks per Patron. |

19.3.3 **3** *Limited Multiple Concurrent Use (Textbooks)*

Ebooks that are purchased with limited multiple concurrent use access permissions can be used by You on the same terms as NLL Ebooks, with the following exception:

| | |
|-------|--|
| Usage | Maximum of 3 concurrent Loans (whether on-line or off-line) at any one time. |
|-------|--|

19.3.4 Short Term Loan (Rental, or "STL")

Ebooks that are supplied on a Short Term Loan basis have very different permissions from those that apply to Ebooks that You purchase outright:

You can acquire an Ebook to lend to a single Patron for one limited-term Loan only. STL Ebooks can be made available to Patrons on either a mediated or non-mediated access basis. STL Ebooks are available for the Patron to either read online or download to their computer. STL Ebooks cannot be made available to more than one Patron.

Once downloaded, the Ebook may be transferred by the Patron to two authenticated devices within the allotted Loan period. Unless the Patron has logged in and renewed the Loan, the Ebook will be disabled on their machine(s) once the Loan period has expired.

19.3.5 Reserve Collection

| | |
|----------------------|--|
| Usage | Only one Patron at a time may access reserve items. |
| Printing | A Reserve Chapter may be printed one time per Patron. |
| Loan Period | A maximum Loan period of 24 hours and a minimum Loan period of 1 hour. |
| Preview and Browsing | Reserve items can be browsed/previewed for up to 10 minutes. If copy/paste or print happens then a Loan will be activated. |

20 Schedule D: Loan Permissions

This schedule describes what Your Patrons can do with the Ebooks

20.1 Patron Permissions

In addition to those entitlements set out in the Agreement, Authorised Patrons have the following entitlements in respect of any Ebooks borrowed (whether on-line or off-line), subject to any restrictions specified by publishers of the Ebooks from time to time. These entitlements apply per Patron, per Ebook:

20.1.1 Printing

Print up to 20% of the total pages of the Ebook or Chapter (if Loan is of a Chapter only) for the Patron's personal use.

20.1.2 Copy / Paste

Utilise copying and pasting functionality for up to 5% of the total pages of the Ebook or Chapter (if Loan is of a Chapter only).

Note: Our system tracks Loans and the printing and copy-paste allowances for each Patron.

In the case of access within the online reader, We monitor actual Patron usage per title and this reduces copy and pasting allowance according to actual usage.

If a Patron attempts to print or copy-paste beyond the specified allowance for any title, they will receive a message stating that they have used all of their permissions for the Ebook (and, where allowed, direct them to pay for pages or chapters of the Ebook).

In the case of offline access (downloaded Ebooks), the allowance is reduced to half on a second download by the same Patron within a 6 week period and to zero allowance on subsequent downloads.

20.1.3 Ebook Functions

Utilise functional capabilities in the Ebook, including searching, hyperlinking, bookmarking, note-taking, annotation and highlighting parts of the Ebook for personal use where the format permits.

20.1.4 Read Aloud

Use the "read aloud" function in the Ebook provided the format of the Ebook permits.

20.2 Prohibitions

The Patron may not:

- a) disseminate, distribute or otherwise provide access to an Ebook to other persons or any part of the Ebook in any format, except to the extent that such provision is permissible under the doctrine of Fair Use;
- b) change, adapt or animate any part of an Ebook;
- c) translate any part of an Ebook for publication or public distribution or performance;
- d) reproduce an Ebook in the form of a film or video;
- e) use the Ebook in an interactive multimedia format;
- f) do anything not allowed in Clause 20.1 of this Schedule D; or
- g) do anything with the Ebook that is not for personal use.

21 Schedule E: Archive Permissions

An Ebook that is obtained as an archival copy is for use by one Patron at a time and is not subject to any loan instance restrictions. You can print one copy of an Archival Ebook and store it on a single computer on Your premises. Patrons can only read an Archival Ebook on the computer on which it is stored. Archival Ebooks cannot be networked or accessed remotely. In the event that We can no longer provide access to a title via the EBL system, You have the right to:

- a) print and bind a copy of that Ebook for circulation;
- b) reprint that Ebook when the circulation copy wears out; and
- c) store and display a copy of that Ebook on a single computer terminal.

22 Schedule F: Software Requirements for Patrons

22.1 Adobe Digital Editions

In order to download an Ebook, Patrons must have the latest version of Adobe Digital Editions installed on their computer.