

Electronic Content Sales Agreement Licensed Access and Perpetual Access Business Models

This Electronic Content Sales Agreement (the “Agreement”), effective as of _____ (the “Effective Date”), is entered into by and between

Gibson Library Connections Inc., a Canadian corporation with its principal place of business at 2974 Forest Road, Saint-Lazare, QC J7T 2B1 (“GLC”)

And

_____ with its principal place of business at _____ (“Publisher”)

jointly the “Parties.”

A. Definitions

The following meanings shall apply to capitalized terms used herein:

- a. “Customer Agreement” means the standard Canadian Electronic Library Order Terms and Conditions, attached as Schedule A.
- b. “Electronic Titles” consist of the Titles in digital format suitable for online viewing, printing and copying/pasting through the GLC/Ebrary site.
- c. “FTE” or “Full-Time Equivalent” is a measure of the number of people reasonably expected to be authorized by a customer to access an Electronic Title or collection of Electronic Titles. The specific method of measurement may vary from market to market (e.g., a foreign university purchasing an English-language Perpetual Access Title might estimate the number of its students and faculty proficient in English; an institution that limits access to use within a physical library might estimate anticipated users based on a multiple of the number of computers available in such library).
- d. “Hosted Service” means a secure system providing access and viewing functionality as well as secure digital rights management functions sufficient to protect the Intellectual Property Rights of the Publisher, and providing, at a minimum, the level of security set out in Section 11. A Hosted Service may be operated by or on behalf of GLC or by a Perpetual Access Customer.
- e. “License” has the meaning set forth in Section 1.
- f. “Licensed Access Titles” are Titles that Publisher intends for distribution via GLC’s Licensed Access Business Model.
- g. “Licensed Access Business Model” is a service designed to facilitate archiving, retrieving, viewing, copying/pasting and printing of Electronic Titles, also known as the Subscription Service. Through this model, Electronic Titles are posted by GLC and made accessible to its customers on a limited-term basis over the Internet through Web sites branded and/or operated by GLC or third parties. The model enables GLC to collect fees for individual transactions involving printing and copying/pasting, and/or to charge fees for limited-term online access to and use of the Electronic Titles.

- h. “Multiple-institution Consortium Sale” is an arrangement to provide access to Perpetual Access Titles to more than one legally-distinct entities or institutions which have combined to license the Titles at reduced pricing based on a volume purchase.
- i. “Perpetual Access” is a perpetual right, subject to certain terms and conditions, held by a Perpetual Access Customer, to make a Perpetual Access Title available to its authorized end-users through a Single Viewer Usage Model or a Multiple Viewer Usage Model.
- j. “Perpetual Access Business Model” is the sale of a set of rights by GLC that includes Perpetual Access to certain Perpetual Access Titles, and may also include the right to access copies of such Perpetual Access Titles from a Secure Archive, in the event that the Service through which the customer had purchased Perpetual Access becomes unavailable to the customer.
- k. “Perpetual Access Customers” are individuals or single corporations or institutions that have purchased access to Perpetual Access Titles through the Perpetual Access Business Model. Cooperative purchasing groups or consortia are not defined as customers for purposes of payment to publishers.
- l. “Perpetual Access Titles” are Titles that Publisher has designated as approved for distribution under GLC’s Perpetual Access Business Model.
- m. “Publisher Retail Book Price” is the published price of a Perpetual Access Title, as determined by Publisher and communicated to GLC from time to time as described in this Agreement.
- n. “Secure Archives” are archives maintained by GLC or a reputable third party under contract with GLC and subject to confidentiality and file-protection obligations comparable to GLC’s obligations to Publisher as set out in Section 11.
- o. “Service” means the services provided by GLC to a customer, namely the distribution of Licensed Access Titles and Perpetual Access Titles, the provision of a Hosted Service and Secure Archives, and the licensing of the Ebrary software enabling a customer to access Electronic Titles in accordance with the Customer Agreement.
- p. “Titles” means the books, serials, or other literary work(s), graphics, cover art or other images distributed therewith that are listed on the Title Schedule attached as Exhibit A, and/or subsequently submitted to GLC by Publisher or Publisher’s agent.

B. Background and Purpose

Publisher is the owner or rightful licensee of the electronic publication and distribution rights to the books, serials, or other literary work(s), graphics, cover art or other images distributed therewith that are listed on the title schedule attached hereto as Exhibit A (the “Title Schedule”), and/or subsequently submitted to GLC by Publisher or Publisher’s agent, and Publisher controls electronic publication and electronic distribution rights to the Titles.

GLC desires to acquire the right to market and license the Electronic Titles in digital format (pursuant to the terms of Exhibit B to this Agreement) suitable for online viewing, printing and copying/pasting on a Hosted Service through GLC’s Licensed Access and Perpetual Access Business Models.

Publisher desires to grant GLC a license on the terms and conditions set forth below. Therefore, in consideration of the mutual promises set forth below, GLC and Publisher hereby agree as follows:

C. Agreement

1. Grant of License

(a) General. Publisher grants to GLC a non-exclusive, worldwide, royalty-free (except as set forth herein) license (the "License") (i) to market, publish, display, reproduce, distribute, and provide single-viewer and/or multiple-viewer access (as determined by the Publisher in each case) to the Licensed Access Titles (including without limitation all cover art and other graphics and images provided therewith) through the Service to customers who have first executed and delivered a Customer Agreement, (ii) to display and reproduce brief excerpts from the Licensed Access Titles in any material of GLC used to market or promote the Service, (iii) to make such other electronic copies and electronic file modifications as may be reasonably necessary for GLC to internally process and make such Electronic Titles available through the Licensed Access Business Model, and (iv) with the prior consent of Publisher, to use and display the trademarks, trade names, service marks or logos used in or on the Titles both in the Electronic Titles and in any materials used to market or promote GLC's products and services

(b) Perpetual Access Titles. As to only those Titles that Publisher has designated as Perpetual Access Titles, the License shall include, in addition to the rights set out in subsection 1(a) and without limiting the foregoing, the right for GLC to: (a) grant its Perpetual Access Customers access to the Perpetual Access Titles on the terms and conditions set out in the Customer Agreement and the ability for such customers' authorized end users to use the Perpetual Access Titles in the manner permitted authorized end users of Licensed Access Titles, (b) place in a Secure Archive up to one electronic copy of each Perpetual Access Title per customer, and (c) grant Perpetual Access Customers the right to obtain a backup copy from the Secure Archive in the event that a Perpetual Access Title to which the customer has access is no longer available to such customer through the Service, provided that (i) Perpetual Access Customers will be obligated to take commercially reasonable steps to protect and secure such copies, and in any case must provide at least the level of protection and security as GLC is obligated to provide, and (ii) Perpetual Access Customers must have first executed and delivered the Customer Agreement before having any access to any Titles and their use of such copies will be limited to uses reasonably necessary to enable them to obtain the benefits of the Customer Agreement.

(c) Customer Agreement. GLC will not make any material changes to the Customer Agreement without the prior written consent of Publisher.

(d) Territory and Formats. Publisher will not provide GLC with any Titles in which Publisher has less than worldwide distribution rights, unless Publisher notifies GLC of such limitations in writing prior to submission, in which event the rights granted hereunder will extend only to such limited territory. Publisher will notify GLC promptly in writing if it should ever suspect or determine that it does not have adequate rights in any Title to permit its worldwide distribution by GLC through the Service.

(e) Duration. The License shall be limited in duration to the term of this Agreement, except that the License shall be perpetual as to those rights reasonably required by GLC to service customers as to Electronic Titles to which such customers ordered Perpetual Access during the Term of this Agreement, including without limitation rights associated with archive maintenance and use.

(f) Acknowledgment. GLC acknowledges and agrees that nothing herein shall preclude Publisher from displaying, publishing, distributing or transmitting editions of the Titles electronically, or authorizing others to do so, through systems and media other than GLC's distribution channels.

2. Deliveries and Sale

(a) Publisher will provide to GLC all Titles listed in the Title Schedule, in the manner described in Exhibit B.

(b) Once GLC has sold a customer the right to access a Title under the Perpetual Access License, Publisher may not under any circumstances compel GLC to modify or withdraw such Title from such customer, except as set out in subsection 6(d) and subsection 9(b), and except in accordance with the Customer Agreement in the event a customer is in breach of its obligations thereunder.

3. Publisher's Proprietary Rights

(a) Subject to the rights licensed by this Agreement, as between the parties, Publisher shall retain all copyrights, trademarks and all other proprietary rights associated with the Titles, including but not limited to the text of the Title and any illustrations contained in the Title and including without limitation for performance and display (i) in any manner intended to make the Title available in visual form for reading (whether sequentially or non-sequentially and together with the accompanying sounds and images, if any), and (ii) by any electronic device or medium to include any device or medium for electronic reproduction, publication, distribution or transmission.

(b) GLC asserts and agrees that all digital files provided by Publisher under this Agreement are owned by Publisher. GLC may make modifications to the files necessary to render them compatible with its software system. However, GLC shall ensure that no changes are made to the content of the Title files during the submission process and will promptly correct any errors or omissions in its electronic versions that may result from the submission process.

(c) Publisher acknowledges that users of the Service may view less than an entire Electronic Title. GLC does not guarantee that any user of the Service will access or use any of the Titles. GLC warrants that a page limit of 5% of the Title will be placed on the printing or copying/pasting of any Electronic Title by users and that this limitation will be strictly enforced by GLC.

(d) If requested by Publisher, GLC may act as its agent specifically to deposit copies of the Titles to an escrow or legal deposit site in order to fulfill any legal or archival obligations that may arise as part of the delivery of the Service.

4. Fees and Pricing

(a) Fees Due. GLC will pay fees as set forth in Exhibit C.

(b) Publisher Retail Book Price. In the metadata submitted for each Perpetual Access Title, Publisher will specify the Publisher Retail Book Price for in Canadian Dollars. Except as otherwise agreed by GLC, Publisher may change the Publisher Retail Book Price associated with a Perpetual Access Title no more than once annually, upon sixty (60) days' prior written notice to GLC. Except as otherwise agreed by GLC, changes to a Publisher Retail Book Price will not affect GLC's payment obligations in connection with orders received by GLC from its customers before the 60 day notice period has elapsed.

(c) Competitive Prices and Fees. During the term of this Agreement, the Publisher Retail Book Price specified by Publisher for a particular Title will be equal to the lowest retail price specified by Publisher in connection with any distribution of such Title through any digital medium.

5. Reporting and Auditing

(a) GLC will provide a written statement to Publisher on a calendar quarterly basis, specifying which portion of each payment to Publisher is attributable to which Title. The statement will accompany the payment, if any, due to the Publisher pursuant to Exhibit C, but GLC will provide a statement for each calendar quarter, regardless of whether any payment is due.

(b) Once annually, upon thirty (30) days' notice, Publisher shall have the right to have certified public or chartered accountants audit GLC's accounting records necessary to calculate fees due hereunder during normal business hours. Such audit shall be at Publisher's expense unless accounting errors amounting to ten percent (10%) or more of the total sums accruing to Publisher during the year in question shall be found to Publisher's disadvantage. For each such occurrence, GLC shall bear the cost of the audit, and payment of the

amount due shall be made to Publisher within thirty (30) days' notice to GLC of the deficiency, provided there is no dispute regarding the audit.

6. Term and Termination

(a) The term of this Agreement will commence on the Effective Date of this Agreement and shall continue for three (3) years after the Effective Date (the "Initial Term"). Upon the expiration of the Initial Term, this agreement will be automatically renewed for successive one (1) year terms ("Renewal Terms") unless either party gives the other notice of termination at least ninety (90) days prior to the expiration of the Initial Term or the then-current Renewal Term.

(b) Either party may terminate this Agreement immediately upon written notice to the other in the event the other party (a) becomes insolvent, (b) files a petition in bankruptcy, (c) makes an assignment for the benefit of its creditors, or (d) breaches any of its material obligations hereunder and fails to cure the breach within 30 days after receipt of written notice of such breach.

(c) GLC shall provide at least 30 days' prior written notice to Publisher in the event of a proposed change of control of GLC, or any assignment of this Agreement by GLC pursuant to Section 13 below, and Publisher shall then have a period of 30 days after receipt of such notice within which to choose to terminate this Agreement. If Publisher chooses to terminate this Agreement pursuant to this subsection 6(c), then Publisher shall give GLC written notice of termination within such 30-day period.

(d) GLC shall remove all Titles from the GLC database within ten (10) business days after termination of this Agreement for any reason. However, subject to Section 9, GLC may continue to retain and use copies of Perpetual Access Titles as reasonably necessary to permit GLC to continue servicing Perpetual Access Customers that ordered such Perpetual Access Titles prior to termination of this Agreement, provided that GLC is in compliance with Section 11.

(e) Sections 1(b) (provided however that no new Perpetual Licenses may be granted following termination of the Agreement), 2(c) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of this Agreement will survive termination of this Agreement. Termination of this Agreement under any provision of this Section 6 shall not relieve GLC of the obligation to pay any monies then due, or that become due, from GLC to Publisher in accordance with Exhibit C.

7. Warranties and Indemnity

(a) Each party represents and warrants that it has all rights and corporate or other powers necessary to enter into this Agreement.

(b) Publisher represents and warrants that it has all rights necessary to grant all licenses granted under this Agreement including all rights to the electronic distribution of the Titles and that GLC may use the Titles as contemplated under this Agreement.

(c) Publisher hereby agrees to indemnify and defend GLC from and against third-party damages, expenses, and all costs arising from any claims (including reasonable attorneys' fees) relating to Publisher's warranties hereunder, including without limitation, copyright, trademark, or trade name infringement, defamation, libel, infringement of a proprietary right or a right of publicity, invasion of privacy or Publisher's failure to have sufficient rights to grant the licenses hereunder, provided that same is reduced to the status of a non-appealable judgment of a court of competent jurisdiction or settled with Publisher's prior written consent.

(d) GLC hereby agrees to indemnify and defend Publisher from and against third-party damages, expenses, and all costs arising from any claims (including reasonable attorneys' fees) relating to GLC's representations, warranties, covenants and agreements hereunder, provided that same is reduced to the status of a non-appealable judgment of a court of competent jurisdiction or settled with GLC's prior written consent.

8. Protection of Right

GLC agrees that it will not use the content of any Title without crediting the Title by referring to the name and publisher of the Title, and the name(s) of author(s) or editor(s) of the Title. GLC will not, and will require that its customer and their authorized users do not, tamper with or remove the copyright notice for each Title that appears in the printed version of the Title.

9. Content of Titles and Termination of Access

(a) GLC is under no obligation to review or edit the Titles or any other licensed materials, whether for accuracy of content or the presence of any infringing or libelous material, but GLC will promptly inform Publisher upon learning of any inaccuracy or infringing or libelous material.

(b) If Publisher discovers that any Title, portion thereof or other licensed material contains material errors, or is (or could be subject to a claim that it is) defamatory, obscene, invades the right of privacy, or infringes any right of any person or entity, Publisher may request that such Title, portion thereof or other licensed material be deleted, corrected or made inaccessible. In such event, GLC will use reasonable efforts to comply with Publisher's request within two (2) business days. In the event such Title is a Perpetual Access Title to which a customer has been previously granted a Perpetual License, then, at the option of Publisher, either Publisher must at its own cost provide a replacement copy of the Perpetual Access Title which GLC shall then provide to each such Perpetual Access Customer who acquired such Title, or each Perpetual License for such Title shall be terminated and Publisher shall pay to GLC all fees previously paid by GLC to Publisher with respect to such Title and GLC shall refund all fees to customers who previously acquired Perpetual Access to such Title.

(c) GLC shall immediately withdraw access to all Titles from, and demand return of all copies of Perpetual Access Titles (including without limitation those in Secure Archives) by, any customer who is in breach of the Customer Agreement,

10. Confidentiality

(a) In the event that the Parties have entered into a Non-Disclosure Agreement ("NDA"), the Parties agree that their obligations under the NDA will apply to information related to this Agreement.

(b) If the Parties have not entered into a Non-Disclosure Agreement ("NDA"), Publisher acknowledges that by reason of its relationship with GLC hereunder, it may have access to certain of GLC's information and materials (including but not limited to business plans, customer information, technology, and marketing strategies) that is confidential and of substantial value to GLC, which value would be impaired if such information were disclosed to third parties. Publisher agrees that it will not use in any way for its own account nor for the account of any third party, nor disclose to any third party, any such information revealed to it by GLC. Publisher will not reverse engineer, disassemble, or decompile any software or technology embodying GLC's confidential information. Publisher further agrees that it will take every reasonable precaution to protect the confidentiality of such information. In the event of termination Publisher promptly will return or destroy all confidential information, and will provide GLC with written confirmation that it has done so. Upon any breach or threatened breach of this section, GLC shall be entitled to injunctive relief.

(c) GLC will not disclose to any third party the fees paid by it to Publisher, without Publisher's prior written consent.

(d) Each party may disclose the existence of this Agreement, but each party agrees not disclose the terms and conditions of this Agreement to any third party except (i) as required by any court or other governmental body; (ii) as otherwise required by law; (iii) to legal counsel of the Parties; (iv) in confidence, to authors, agents, accountants, banks, and financing sources and their advisors; (v) in connection with the enforcement of this Agreement or rights under this Agreement; or (vi) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction.

11. Security

GLC will offer the Titles for access only through a Hosted Service, which will stream content to end users. GLC will ensure that the Hosted Service and the servers used in the Service deliver only one page at a time to users. GLC will also at all time use software which (i) effectively and accurately monitors and regulates printing, copying and other functions, as well as how many users are permitted to access and are accessing a particular Title at once, and (ii) authenticates users, to make sure that unauthorized users (people from outside the licensed institution) cannot access the Title. GLC will also ensure that no person uses any Title in any digital format other than as provided by GLC, and that no person accesses or uses any Electronic Title other than through the GLC/Ebrary site, including, without limitation, any use on any e-book device or personal electronic device. Electronic Titles as discrete files will never be provided to end users. Electronic Titles as discrete files will be provided to institutional Perpetual Access licensees for archival purposes only. Where these are provided, they will be subject to a license agreement which requires the licensee to maintain the files only in a secure Hosted Service environment which provides commercially-acceptable security and detection capabilities to prevent unauthorized access to and reproduction of Titles. In the event its security or detection systems become violated to such an extent that Publisher's copyrights in the Titles are being infringed, GLC shall take immediate steps to correct this problem, and shall terminate such customers' rights to maintain the files if the problem is not immediately corrected. Nothing in this Agreement will be construed to prevent Publisher from pursuing any recourse or remedy available to it in the event of any infringement of its copyright in the Titles.

12. Limitation of Liability

Except for third-party damages arising out of Section 7, damages arising out of breach of Section 11 and damages arising out of any deliberate breach of this Agreement by GLC, neither Party shall be liable to the other Party for any incidental, consequential, indirect or special damages or lost or imputed profits or royalties arising out of this Agreement or its termination, whether liability is asserted in contract or tort (including negligence) and irrespective of whether the Party has been advised of the possibility of any such loss or damage. In no event will either Party's cumulative liability under this Agreement (excluding GLC's obligation to pay fees under Exhibit C) exceed the amount paid by GLC to Publisher during the Initial Term. This limitation is an essential element of this Agreement, on which the fees agreed to herein are predicated.

13. Miscellaneous

(a) Assignment. The Parties may not assign this Agreement without the express written consent of the other party, not to be unreasonably withheld or delayed, except as follows:

(i) Publisher may assign its rights and obligations hereunder as to any Title(s) to any assignee ("Assignee") that acquires from Publisher sufficient rights to grant the licenses and make the representations and warranties made by Publisher hereunder. GLC will begin sending payments and reports regarding such Title(s) to such Assignee within a commercially reasonable time after receiving written notice of the assignment and the affected Title(s); and

(ii) Subject to subsection 6(c) above, GLC may assign this Agreement to a successor in interest (or its equivalent) of all or substantially all of its relevant assets, whether by sale, merger, or otherwise, except to an entity whose principal business competes with Publisher.

Any attempted assignment contrary to the provisions of this paragraph shall be null and void. This Agreement shall be binding upon and inure to the benefit of the Parties' permitted successors and assigns

(b) Notices. Any notices or communications regarding breach or termination of this Agreement shall be in writing, delivered by hand, courier, or prepaid mail with return receipt requested, to the Address for Notices set forth below, or such other address as either party may from time to time designate in writing. Notices shall be deemed effective when delivered.

(c) Governing Law; Disputes. This Agreement shall be governed by the laws of the Province of Ontario, without reference to conflicts of laws principles. All disputes arising under or related to this Agreement will be adjudicated exclusively in the Province of Ontario, and each party consents to personal jurisdiction and service of process in Ontario in connection with such disputes.

(d) Waiver. No waiver of any right under this Agreement will be valid unless in writing and signed by the waiving party. Neither party's failure to exercise any right or hereunder will operate or be construed as a continuing waiver.

(e) Severability. If any provision of this Agreement is unenforceable under applicable law, such term or condition shall be modified to the minimum extent necessary to conform to the law. The modified provision and all other provisions of the Agreement shall remain in full force and effect.

(f) Independent Contractors. It is expressly agreed that GLC and Publisher are and shall be independent contractors and that the relationship between the Parties shall not constitute a partnership or agency of any kind. Neither GLC nor Publisher shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other, without the other party's prior written authorization.

(g) Entire Agreement: This Agreement and the Non-Disclosure Agreement (if any) referred to in Section 10 set forth the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior agreements and understandings between the Parties, whether written or oral. This Agreement may not be modified except in writing signed by the party against which its enforcement is sought.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Publisher

Gibson Library Connections Inc.

By: _____



By: 

Print Name: _____

Print Name: Robert Gibson

Title: _____

Title: Vice President

Date: _____

Date:

Address for Notices to Publisher:

Address for Notices to GLC:

Gibson Library Connections
PO Box 629
Saint-Lazare, QC J7T 2Z7

EXHIBIT A

Publisher Information, Title and Delivery Schedule

PUBLISHER NAME:
ADDRESS:
PHONE:
FAX:

LEGAL CONTACT:
PHONE:
EMAIL:

BUSINESS CONTACT:
PHONE :
EMAIL :

PRODUCTION CONTACT:
PHONE:
EMAIL:

ATTACH AND AMEND TITLE AND DELIVERY SCHEDULE HERE (ELECTRONIC VERSION MAY BE CONVEYED UNDER SEPARATE COVER). ANY TITLES SUBMITTED TO GLC BY PUBLISHER OR PUBLISHER'S AGENT SHALL BE AUTOMATICALLY DEEMED ADDED TO THIS EXHIBIT A.

ISBN	Title	Author	Imprint	List Price	Pub Date	Delivery Date

EXHIBIT B

Pricing/File Delivery Conditions and Licensing Options

1. Customer Pricing

Pricing for access to Publisher's Electronic Titles will be set by GLC.

2. Delivery Obligation

Publisher will provide GLC with one (1) digital file for each Title, in PDF electronic format acceptable to GLC.

3. Licensed Access with Perpetual Access Election

All Titles submitted by Publisher may be distributed by GLC under the Licensed Access Business Model. Where Publisher desires to make a Title available to GLC for distribution under the Perpetual Access Business Model, Publisher will include a designation to this effect in the metadata submitted for that Title. Subsequent to the submission, Publisher may also inform GLC by e-mail or in writing that GLC may make designated Titles available for Perpetual Access distribution.

4. Single-viewer and Multiple-viewer Access

The Perpetual Access Business Model has the capacity to restrict the number of viewers who may view a Title simultaneously. Where a Title is offered for Perpetual Access distribution, the default option will be multiple-viewer access. But Publisher may designate certain Titles as "to be made available under single-viewer access only." The single and multiple-user access designation may be changed by Publisher from time to time at its option, although this may not be changed retroactively for customers who have previously purchased titles under a particular option.

EXHIBIT C

Publisher Compensation

For each calendar quarter after Publisher has met its delivery obligations under this Agreement, GLC shall pay Publisher (60) sixty days after the end of the quarter as follows:

1. Licensed Access Sales

1.1. For each calendar quarter after Publisher has met its delivery obligations under this Agreement, GLC shall pay Publisher no more than sixty days after the end of the quarter as follows:

All revenues from sales of the Service (net of any refunds) are deposited into a Split Pool. The Publisher will receive 50% of the portion of this Pool attributed to the value of the Publisher's titles. Attribution of value is calculated by a weighting formula which takes into account both the number of Publisher's Titles expressed as a percentage of the number of titles in the Service as well as the usage of the Publisher's Titles (views, copies and prints) expressed as a percentage of the total usage made of the Service. Full details of this calculation are provided in Exhibit D.

2. Perpetual Access Transactions

2.1 Except as set forth in Section 2.2 below, for each Title sold under the Perpetual Access Business Model, GLC will pay Publisher a percentage of the Published Retail Price for such Title, based on the usage model chosen by the customer as follows:

Usage Model	Compensation Due to Publisher
Single Viewer	70% of Published Retail Price
Multiple Viewers	120% of Published Retail Price

A "Customer" in the above table is defined as an institution.

2.2. Multiple-institution Consortium Sale: The compensation due Publisher for any Consortium Sale will be determined by mutual agreement between GLC and Publisher. For the avoidance of doubt, (i) the Parties will attempt in good faith to negotiate a fair price, and (ii) GLC may not include the Perpetual Access Titles in a Consortium Sale unless the compensation due Publisher for such form of arrangement has been specifically agreed to in writing (including facsimile or e-mail) by Publisher before GLC enters into the Consortium Sale.

EXHIBIT D

Split Pool Calculation Detail for Licensed Access Sales

Collections in the Canadian Electronic Library are sold to libraries, corporations, and other institutions for simultaneous online access to, copying/pasting of, and printing of electronic content in these collections for a defined period. Publishers contributing titles to CEL Collections are paid a share of revenue.

Publishers are paid on a quarterly basis, as of March 31, June 30, September 30 and December 31. Payments are made within 60 days of the end of the quarter.

All revenues from Licensed Access Sales are deposited in the Split Pool. Each publisher's share of the Pool is based in part on the number of titles contributed to the collection expressed as a percentage of the total number of titles (the "Title Inclusion Pool"), and in larger part on the frequency with which users view, copy/paste, or print pages from the publisher's titles expressed as a percentage of the total number of uses (the "Usage Pool").

Example

This example shows how "Publisher A" would be paid in one quarter, given these assumptions

- Revenue from subscription sales (the Split Pool Amount) in the quarter is \$100,000.
- Publisher A's contracted revenue share with GLC is 50%.
- There are 4,000 titles in the Collection as of the end of the quarter.
- Publisher A has contributed 400 titles to the Collection.
- The title inclusion factor is 25% and the usage factor is 75%.

a. Title inclusion portion. Publisher A's share of the title inclusion portion of the Pool is determined as follows:

$((400 \text{ [titles contributed]} / 4,000 \text{ [total titles in Collection]}) \times ((\$100,000 \text{ [Pool Amount]} \times 25\% \text{ [Inclusion Factor]}) \times 50\% \text{ [Royalty percentage]})$

b. Title Usage portion. Assuming that there are 30,000 pages printed or copied during the quarter and 5,000 of these uses are attributed to Publisher A's titles, Publisher A earns the following Usage payment:

$((5000 \text{ [Publisher A pages used]} / 30,000 \text{ [total pages used]}) \times ((\$100,000 \text{ [Pool Amount]} \times 75\% \text{ [Inclusion Factor]}) \times 50\% \text{ [Royalty percentage]})$

Total Payment. Publisher A receives a total payment of \$7500 (\$1250 for Title Inclusion and \$6250 for Title Usage) for this quarter.

Reports

Quarterly reports to publishers provide full detail on the revenue attributed to each title contributed.

Sample Quarterly Royalty Report

ISBN	Author	Title	PubYear	Page Views	Prints	Copies	Usage Units	Inclusion Revenue	Usage Revenue	Total
1551112310	Author	Title	2005	189	1	20	21	\$ 1.15	\$ 12.65	\$ 13.81
1551115492	Author	Title	2003	180	0	10	10	\$ 1.15	\$ 6.03	\$ 7.18
1551115360	Author	Title	2005	17	0	0	0	\$ 1.15	\$ -	\$ 1.15
1551115263	Author	Title	2003	487	0	0	0	\$ 1.15	\$ -	\$ 1.15
1551113635	Author	Title	2003				0	\$ 1.15	\$ -	\$ 1.15
1551112361	Author	Title	2003				0	\$ 1.15	\$ -	\$ 1.15
1551113503	Author	Title	2003	55	0	0	0	\$ 1.15	\$ -	\$ 1.15
155111562X	Author	Title	2003	1959	58	86	144	\$ 1.15	\$ 86.77	\$ 87.93
1551113643	Author	Title	2005				0	\$ 1.15	\$ -	\$ 1.15
1551115697	Author	Title	2003	4	0	0	0	\$ 1.15	\$ -	\$ 1.15
155111383X	Author	Title	2004				0	\$ 1.15	\$ -	\$ 1.15
1551116057	Author	Title	2004	17	0	0	0	\$ 1.15	\$ -	\$ 1.15
1551113511	Author	Title	2003	35	10	0	10	\$ 1.15	\$ 6.03	\$ 7.18
1551115956	Author	Title	2004	1676	42	244	286	\$ 1.15	\$ 172.34	\$ 173.50
Etc										

Schedule A to Electronic Content Sales Agreement

Canadian Electronic Library
Canadian Publishers Collection
ORDER TERMS AND CONDITIONS
(version 082507)

The order form that references this document (“Order Form”), together with the terms herein, shall upon execution by Institution and acceptance by Gibson Library Connections (“GLC”) constitute a contract (the “Agreement”) between the Institution and GLC, a Canadian corporation with its principal place of business at 2974 Forest Road, Saint Lazare, Quebec J7T 2B1. The Institution and GLC are referred to herein as “the parties.”

1. **Definitions.** Capitalized terms will have the meaning ascribed to them in the Section in which they first appear.
- 1.1. “**Authorized Users**” are individuals authorized by Institution to use the GLC/Ebrary site, which may include both (i) temporary or walk-in users of Institution’s facilities and services, and (ii) users included in Institution’s calculation of its FTE or among its regular or visiting faculty or staff, regardless of whether they access the GLC/Ebrary site from Institution’s premises or remotely.
 - 1.2. “**Brand Features**” of a party means such party’s trademarks, trade names, service marks, service names, logos and other distinct brand elements or presentation that appear from time to time in such party’s properties, ventures and services worldwide, together with any modifications to the foregoing made by such party during the term of this Agreement.
 - 1.3. “**Collections**” are collections of electronic versions of books, journals, or other works selected by GLC, with a shared characteristic such as subject or language. GLC updates and revises its collections from time to time, and reserves the right to add or remove any title in its sole discretion.
 - 1.4. “**Copy or Print Transactions**” means transactions involving the printing or copying and pasting of the Electronic Titles.
 - 1.5. “**Electronic Titles**” means the electronic versions of books, journals, and other works licensed by GLC and made available to Institution through the GLC/Ebrary site. Electronic versions may differ from print versions of the same title.
 - 1.6. “**FTEs**” are to be determined as follows, unless otherwise specified on the Order Form: A school, college, or university’s FTEs include all full-time students or the equivalent; A public library’s FTEs include all cardholders; and a special library’s FTEs include the number of desktops from which Authorized Users are expected to access the GLC/Ebrary site.
 - 1.7. “**GLC/Ebrary site**” means the web site hosted by GLC as a licensor of Ebrary Inc. as specified in Section 2.2, through which GLC/Ebrary will provide the tools necessary to access a primary collection of Electronic Titles.
 - 1.8. “**GLC Content**” means the materials, graphics, HTML, XML and other browser-based content, data and information made available by GLC through the GLC/Ebrary site, excluding the Electronic Titles.
 - 1.9. “**GLC Corporate Site**” means the web site owned and operated by GLC, and located primarily at <http://www.gibsonlibraryconnections.ca>, and any successor web site thereto.
 - 1.10. “**Hosting**” and “**Hosting Services**” consists of GLC/Ebrary’s services, for a fixed period of time, hosting and providing access to Purchased Books, and providing associated customer service and technical support. Hosting fees are distinct from the Purchase Price.
 - 1.11. “**Intellectual Property Rights**” means all rights in and to trade secrets, patents, copyrights, trademarks, know-how, as well as moral rights and similar rights of any type under the laws of any governmental authority, domestic or foreign, including rights in and to all applications and registrations relating to any of the foregoing.
 - 1.12. “**Institution Website**” means a Web site owned and operated by Institution or its agent.
 - 1.13. “**Institution**” means the purchasing entity, as set forth in the Order Form.
 - 1.14. “**Launch Date**” means the date on which the GLC/Ebrary site is made available to Institution’s end-users.
 - 1.15. “**Link**” means a URL hidden behind a formatting option that may take the form of a colored item of text (such as a URL description), logo or image, “button” or graphic box, and which allows an end-user to automatically move to or between web pages, web sites or within a web page.
 - 1.16. “**Locally Hosted Service**” means a secure system providing access and viewing functionality as well as secure digital rights management functions sufficient to protect the Intellectual Property Rights of the copyright holders of the Materials. A Locally Hosted Service may be operated by the Institution or remotely managed.
 - 1.17. “**Materials**” is the collective term given to the text, images, and other materials available on the GLC/Ebrary Site.
 - 1.18. “**Perpetual License**” is a license of unlimited duration, to access and use a Purchased Book(s), subject to all of the end user terms and security requirements set forth herein.
 - 1.19. “**Purchased Books**” refers to Electronic Titles for which the Institution pays a one-time, non-refundable fee in exchange for a Perpetual License to access and use such Titles.

- 1.20. "Purchase Price" is the one-time fee paid by Institution for a Perpetual License to use the Purchased Books. It does not include Hosting Services, which are available for a separate Hosting fee.
 - 1.21. "Service Term" refers to the requested time period during which GLC will service a Subscription and/or host a Purchased Book(s), as set forth in an Order Form.
 - 1.22. "Subscription" refers to the payment of fees in exchange for the right to access certain Titles for a limited period of time which is defined in the Order Form.
 - 1.23. "User Data" means personally identifiable information provided by users of the GLC/Ebrary site to gain access to or use the GLC/Ebrary site.
2. Subscriptions and Hosting. This Section 2 applies for the duration of the applicable service period, if Institution has purchased a Subscription and/or Hosting services.
 - 2.1. Site Construction. Using technical profile information provided by Institution or its agent, GLC will construct a standard GLC/Ebrary site for use by Institution's patrons and will generate custom MARC record sets for Institution's use of the GLC/Ebrary site. At Institution's option, Institution or its agent may design and host a customized banner, subject to GLC's technical specifications, which will appear on Institution's GLC/Ebrary site.
 - 2.2. Site Specifications. The site will be accessible from Internet-enabled computers running supported platforms, using reader software that can be pre-installed on patrons' terminals or installed on demand as needed. The site will include the use of Ebrary's InfoTools™ technology, which enables end users to interact with content at the word level, and to link to knowledge resources such as definitions, biographical information, maps and translations, as well as other digital resources within the library.
 - 2.3. Updates and Enhancements. GLC will provide to Institution such free updates, enhancements, and future releases as GLC may choose to make available to its library customer base as a whole.
 - 2.4. Operation and Maintenance. GLC will, at its own expense, provide and manage all servers, telecommunications, facilities maintenance, and operations related to the hosting of the GLC/Ebrary site on a cluster of high-availability, redundant servers in a secure, high-performance data center. In the event problems arise materially affecting the operation of the GLC/Ebrary site, GLC will use commercially reasonable efforts to correct such problems as soon as reasonably practicable.
 - 2.5. Launch Date. GLC will endeavor to make the GLC/Ebrary site available to Institution's patrons within five (5) business days of receiving complete and accurate technical profile information from Institution or its agent, or on the first day of the Service Term (whichever is later). If GLC fails to do so, the Initial Term will be extended by the same number of days as the number of days by which the Launch Date has been delayed, at no additional charge to Institution.
 - 2.6. Access and Simultaneous Use. The GLC/Ebrary site will permit multiple users to view, print, and copy and paste the Purchased Books and the Electronic Titles contained in the Collections to which the Institution has a Subscription, as specified in the Order Form(s) and as permitted under section 5 below. Titles obtained through a Subscription may be accessed by multiple users simultaneously, unless otherwise indicated in the Order Form. Purchased Books may be accessed by multiple users simultaneously or may have access limited to a single user at a time, as indicated in the Order Form.
 3. Purchased Books. This Section 3 applies to Purchased Books.
 - 3.1. Hosting Required. Purchased Books in raw digital format may not be re-distributed to end users. Rather, Purchased Books must be provided to end users through the use of content hosting software as outlined in Section 6.1. Hosting is not included with Purchased Books, but is instead listed in the Order Form as a distinct product with a separate fee.
 - 3.2. Correction of Purchased Books. Should GLC learn that a Purchased Book contains significant error(s), or should GLC become aware of copyright infringement or other legal issues that may result in the imposition of liability on GLC or its suppliers, GLC reserves the right to stop hosting such Purchased Book, provided that GLC will: (i) replace the Purchased Book with a corrected version or with a replacement of comparable value acceptable to the Institution, or (ii) refund the Purchase Price within sixty (60) days.
 - 3.3. Secure Archives. GLC will deposit a digital copy of each Purchased Book in a secure archive protected and maintained by GLC or a reputable third party. Institution will be given password-controlled access to this site, and will have rights to transfer copies of each Purchased Book to its own facilities for use subject to the provisions this Agreement. Archived digital copies are stored in PDF form; each file is designated by ISBN or other unique access number. This archive contains only the digital copies; no search or viewing facilities or other utilities provided by GLC through its Hosting services are included in this service.
 4. Fees and Payments.
 - 4.1. Payments, Taxes, and Late Fees. Unless otherwise specified in the Order Form: (i) All payments shall be made to GLC in Canadian Dollars within thirty (30) days of invoice; (ii) All fees are subject to adjustment by GLC under Section 4.2; (iii) Institution is responsible for all related taxes and withholding except for taxes based on GLC's income; (iv) GLC reserves the right to charge a late fee of the lesser of one percent (1%) monthly or the maximum amount allowed by law on overdue amounts, and to discontinue services if any fees are more than thirty (30) days overdue.

- 4.2. Updated FTEs. Institution represents that the FTE count specified in the Order Form is reasonably accurate, and agrees to provide updated figures annually upon GLC's request. If Institution's FTEs change, GLC reserves the right to charge or credit Institution, no more than once annually, to reflect the changed FTEs.
5. Additional Obligations of the Parties.
- 5.1. Usage Conditions.
- 5.1.1. Authorized Users. Institution will use commercially reasonable means to ensure that only Authorized Users obtain access to the GLC/Ebrary site through Institution's systems. Institution will offer access to the GLC/Ebrary site to Authorized Users through IP authentication and will provide GLC with all information necessary to implement such IP authentication. GLC may also, in its sole discretion and subject to review by its security team, permit Institution to offer access to its patrons through other secure mechanisms (such as certain proxy servers behind firewalls) that meet GLC's technical and security requirements, provided that Institution shall be solely responsible for their configuration and support, and for the maintenance and administration of end user passwords or other security mechanisms reasonably required by GLC.
- 5.1.2. Abuse of Site. GLC reserves the right to temporarily or permanently disable access from an IP address or range of IP addresses to stop unauthorized use of the GLC/Ebrary site in violation of this Agreement or the applicable Terms of Service, or any other hostile action including port scanning, denial of service or intrusion attempts originating from or routed through Institution's computers or network (all of the foregoing, collectively, "Abuse"). The parties will work together in good faith to promptly identify the source of suspected or confirmed Abuse, including by investigating their own respective user logs and other electronic records. Institution will diligently investigate suspected or confirmed cases of Abuse, and will make commercially reasonable efforts to identify the individual(s) responsible, and ensure the appropriate disposal of any improperly obtained files or materials. Upon receiving adequate assurances from Institution that Abuse has been resolved to GLC's satisfaction and will not resume, GLC will restore service without unnecessary delay.
- 5.2. Permitted Uses of the Materials. The Materials are protected by the Canada Copyright Act. Subject to the restrictions set out in Section 5.3, Authorized Users may make limited noncommercial use of portions of the Materials; may copy and print portions of the Materials using the copy and print features provided on the GLC/Ebrary site to the extent permitted under Canadian law pursuant to the doctrine of fair dealing; and may create links to the URLs of the Materials for access by any Authorized User. Any other use requires written permission from the copyright holder.
- 5.3. Restrictions on Use of Materials. Institution and its Authorized Users may not: modify or create a derivative work from the Materials; remove, obscure, or modify copyright notices; sell, distribute or commercially exploit the Materials; make electronic copies of the Materials for the purpose of any form of electronic redistribution, including coursepacks, reserve or interlibrary loan systems; or access or use, or attempt to access or use, any Material on any stand-alone device or in any manner other than through the GLC/Ebrary site .
- 5.4. Customer Support. Institution will designate two (2) qualified customer service contacts. GLC will provide Institution's designated customer service contacts with ongoing support consistent with GLC's standard support policies. In the event that Institution receives a complaint about the GLC/Ebrary site that needs to be redressed by GLC, Institution will notify GLC and GLC will make its best efforts to respond and resolve the problem within 24 hours.
- 5.5. Usage Data. GLC will provide Institution with monthly reports summarizing the usage of its GLC/Ebrary site.
6. Grant of Licenses by GLC.
- 6.1. Purchased Books. Subject to any further restrictions set forth in the Order Form, GLC grants to Institution a perpetual, irrevocable, worldwide, non-exclusive, royalty-free license to make each Purchased Book available to Institution's Authorized Users, subject to the following restrictions:
- 6.1.1. Access will be limited as set forth in the Order Form (e.g., single viewer titles may be viewed by only one person at a time); and
- 6.1.2. Purchased Books may only be made available to end users in electronic format via a Locally Hosted Service with digital rights management (DRM) technology designed to protect valuable digital content. The minimum DRM and security features for a Locally Hosted Service are outlined in Schedule A, which may be revised from time to time by GLC with notice in writing; and
- 6.1.3. Prior to delivering archived copies of Purchased Book(s), or a copy thereof, and at any time or from time to time during the term of this Agreement, GLC reserves the right to make inspection and satisfy itself that (i) Institution has taken commercially reasonable steps to protect and secure such copy; (ii) Institution will only make such copy available to end users through a Locally Hosted Service with commercially reasonable digital rights management (DRM) and security features; and (iii) Institution's access to and use of such copy will be strictly limited to access and use that are necessary to enable the Institution to obtain the benefit of its Perpetual License of the Purchased Book under this Agreement. Institution may not otherwise use or permit the Purchased Book to be used without permission of the copyright holder(s), except as permitted under the "fair dealing" provisions of Canadian copyright law.

- 6.1.4. Should Institution obtain a replacement Title under Section 3.2, Institution's license to the replaced Title shall be deemed void upon Institution's acceptance of the replacement Title. All terms and conditions herein that applied to the replaced Title shall be deemed to apply to the replacement Title.
- 6.2. Subscriptions. Subject to any further restriction set forth in the Order Form, GLC grants to Institution a revocable, worldwide, non-exclusive, royalty-free, limited-duration license to permit its Authorized Users to access and use the Collections and/or individual Electronic Titles specified in the Order Form during the Service Term.
- 6.3. Brand Features. GLC hereby grants to Institution a nonexclusive, royalty-free, worldwide license with no right to sublicense to use, reproduce, publicly display, publicly perform, distribute and transmit the GLC Brand Features on the Institution Website solely for the purposes of complying with its promotional and other obligations set forth in the Agreement. Any display of GLC's Brand Features will comply with GLC's brand usage guidelines, as made available to Institution from time to time.
7. Confidentiality. GLC and Institution hereby acknowledge that in the course of activities under this Agreement each of them may have access to non-public and proprietary information which relates to the other party's marketing, business, and technology (the "Confidential Information"). Each party agrees to: (a) preserve and protect the confidentiality of the other party's Confidential Information with the same degree of care it uses to protect its own Confidential Information of like nature, but in no event less than reasonable care; (b) refrain from using the other party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except to employees as is reasonably required in connection with the exercise of its rights and obligations under this Agreement. Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is: (i) already publicly known through no fault of the receiving party; (ii) discovered or created by the receiving party without reference to the Confidential Information of the disclosing party, as shown in records of the receiving party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party, or (d) required to be disclosed by law or court order. Moreover, any party hereto may disclose any Confidential Information hereunder to such party's agents, attorneys and other representatives or any court of competent jurisdiction or any other party empowered hereunder as reasonably required to resolve any dispute between the parties hereto. Each party will treat the terms of this Agreement as "Confidential Information."
8. Ownership.
- 8.1. By Institution. Institution will have and retain full and exclusive right, title and ownership interest in and to: (i) the Institution Brand Features, (ii) the Institution Website and (iv) any and all Intellectual Property Rights to each and all of the foregoing.
- 8.2. By GLC. GLC, its licensors and suppliers will have and retain full and exclusive right, title and ownership interest in and to: (i) the GLC Brand Features, (ii) the GLC Content (iii) the GLC/Ebrary site and GLC Corporate Site, and (vi) any and all Intellectual Property Rights to each and all of the foregoing.
- 8.3. Usage Data Associated With The GLC/Ebrary site. Each party will comply with the terms of its own privacy policy with respect to the use of the GLC/Ebrary site. Except as reasonably necessary to perform its obligations under this Agreement or to comply with applicable laws, neither party will disclose, transfer, sell or rent any User Data which could reasonably be used to identify a specific named individual to any third party nor will either party use such User Data on behalf of any third party except as expressly disclosed to users in such party's privacy policy. Each Party will comply with all applicable laws in using or releasing the User Data.
9. Term and Termination.
- 9.1. Term. This Agreement will be effective during an "Initial Term" to begin on the date the Order Form is approved by GLC ("Effective Date") and to end on the last day of the Service Term specified in the Order Form, unless sooner terminated as provided below. Thereafter, this Agreement will renew automatically for successive one (1) year renewal terms ("Renewal Terms") unless either party notifies the other in writing at least sixty (60) days prior to the end of a given Initial or Renewal Term of its intent not to renew the Agreement.
- 9.2. Termination. This Agreement may be terminated at any time by a party, effective immediately if the other party: (a) becomes insolvent; (b) files a petition in bankruptcy, (c) makes an assignment for the benefit of its creditors, or (d) breaches any of its material responsibilities or obligations under the Agreement which breach is not remedied within thirty (30) days from receipt of written notice of such breach.
- 9.3. Effect of Termination. Upon expiration or termination of this Agreement: (a) each party will return or, at the disclosing party's request destroy, the Confidential Information of the other party, (b) all licenses granted herein will terminate, except irrevocable Purchased Book licenses, (c) each party will within 15 days return all assets (digital, proprietary or otherwise) belonging to the other, (d) without limiting the foregoing, Institution will immediately and permanently terminate use of the GLC/Ebrary site and all Links which reference "GLC" or any derivations thereof, and (e) the following Sections will survive: 6.1-6.1.3 (but only as to Purchased Books), 7 (for a period of two years from termination), 8.3 (only as to User Data), 9.3, 10 and 11.
10. Representation and Warranties.

10.1. By Each Party. Each party represents and warrants to the other that: (a) such party has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (b) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate any agreement to which such party is a party or by which it is otherwise bound; (c) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (d) to its knowledge, such party possesses all Intellectual Property Rights necessary to fulfill its obligations under this Agreement. Each signator hereto represents that he or she is a duly authorized officer or representative of the party on whose behalf he or she purports to enter into this Agreement.

11. Miscellaneous.

11.1. Notices. Any notice or other communication regarding termination or breach of this Agreement will be in writing and given either (a) by postpaid registered or certified mail return receipt requested, (b) by courier service, (c) by hand, or (d) by facsimile or electronic mail with a copy concurrently sent by one of the above methods. All other communication to be given hereunder may be by electronic mail or in writing given by any commercially reasonable method. Notices will be deemed effective on the date actually received. Notices will be directed to Institution at the address specified in the Order Form and to GLC as follows, or to such other address as either party may specify in writing from time to time:

Address:	Gibson Library Connections 2974 Forest Road Saint-Lazare, QC J7T 2B1
Phone:	(450) 458-0677
Fax:	(450) 458-0400
E-mail:	gary@gibsonlibraryconnections.ca

11.2. No Joint Venture or Agency. Nothing in this Agreement will constitute or create a joint venture, partnership, or any other similar arrangement between GLC and Institution. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement.

11.3. Assignment. Neither party will transfer or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without the written consent of the other party, not to be unreasonably withheld or delayed. Notwithstanding the foregoing, however, either party may assign this Agreement to a successor in interest (or its equivalent) of all or substantially all of its relevant assets, whether by sale, merger, or otherwise.

11.4. Headings: Construction. Sections, titles or captions in no way define, limit, extend or describe the scope of this Agreement nor the intent of any of its provisions. The parties agree that this Agreement will not be construed against a party by reason of the drafting or preparation of such Agreement.

11.5. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction to the fullest extent consistent with the intent of this Agreement.

11.6. Entire Agreement. This Agreement together with the Order Form (which is expressly incorporated herein) contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior and/or contemporaneous agreements or understandings, written or oral, between the parties with respect to the subject matter hereof. All of the parties' respective obligations in connection with Electronic Titles previously licensed to Institution by GLC, including Purchased Books and those obtained by Subscription, shall henceforth be governed by these Terms and Conditions.

11.7. Dispute Resolution. In the unlikely event that a dispute arises between the parties that cannot be quickly and informally resolved, each party will elevate the matter to an appropriate individual within its organization who is authorized and capable of resolving the dispute. Such individuals will meet and confer promptly to determine whether the matter can be resolved informally or through voluntary mediation. Notwithstanding the foregoing, if either party requires immediate injunctive relief to protect against imminent irreparable harm (e.g., from threatened disclosure of Confidential Information or intellectual property infringement), it may seek judicial intervention, without first attempting mediation.

11.8. Amendment. This Agreement may not be amended or modified by the parties in any manner, except by an instrument in writing signed on behalf of each of the parties to which such amendment or modification applies by a duly authorized officer or representative.

11.9. Waiver. Neither party will be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event will not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

- 11.10. Recovery of Costs and Expenses. If either party brings an action against the other party to enforce its rights under this Agreement, the prevailing party will be entitled to recover its costs and expenses, including, without limitation, attorneys' fees and costs incurred in connection with such action, including any appeal thereof.
- 11.11. Force Majeure. No party will be responsible for any failure to perform due to causes beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, shortages of transportation facilities, fuel, energy, or materials or failures of telecommunications or electrical power supplies. A party whose performance is affected by a force majeure condition will be excused from such performance to the extent required by the force majeure condition so long as such party takes all reasonable steps to avoid or remove such causes of nonperformance and immediately continues performance whenever and to the extent such causes are removed.
- 11.12. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts which taken together will be regarded as one and the same Agreement. Either party's facsimile signature will be deemed a binding acceptance of this Agreement by such party.

Canadian Electronic Library
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ORDER TERMS AND CONDITIONS
Schedule A

Minimum Security Requirements for Locally Hosted Services

1. Titles will be delivered only to Authorized Users as determined by IP Authentication.
2. Under no circumstances will complete digital copies of Titles be delivered or made available to users.
3. Print, copy and viewing functions will be managed by the system. Print and copy limits or restrictions must be placed on printing and copying to insure that copyrights are protected.
4. The system will be capable of managing and controlling the simultaneous-use restrictions applicable to each Title according to the conditions of the purchase of the title set forth in the Order Form.