

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

Canadian Electronic Library., a Canadian corporation with its principal place of business at
PO Box 1029, Saint-Lazare, QC J7T 2Z7 (“CEL”)

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 CEL/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 CEL 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 CEL’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 CEL and made accessible to its customers on a limited-term basis over the Internet through Web sites branded and/or operated by CEL or third parties. The model enables CEL 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 CEL 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 CEL’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 CEL from time to time as described in this Agreement.
- n. “Secure Archives” are archives maintained by CEL or a reputable third party under contract with CEL and subject to confidentiality and file-protection obligations comparable to CEL’s obligations to Publisher as set out in Section 11.
- o. “Service” means the services provided by CEL 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 CEL 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 CEL by Publisher or Publisher’s agent , and Publisher controls electronic publication and electronic distribution rights to the Titles.

CEL 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 CEL's Licensed Access and Perpetual Access Business Models.

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

C. Agreement

1. Grant of License

(a) General. Publisher grants to CEL 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 CEL used to market or promote the Service, (iii) to make such other electronic copies and electronic file modifications as may be reasonably necessary for CEL 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 CEL’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 CEL 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 CEL 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. CEL 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 CEL with any Titles in which Publisher has less than worldwide distribution rights, unless Publisher notifies CEL 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 CEL 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 CEL 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 CEL 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. CEL 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 CEL’s distribution channels.

2. Deliveries and Sale

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

(b) Once CEL has sold a customer the right to access a Title under the Perpetual Access License, Publisher may not under any circumstances compel CEL 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) CEL asserts and agrees that all digital files provided by Publisher under this Agreement are owned by Publisher. [RPG1]CEL may make modifications to the files necessary to render them compatible with its software system. However, CEL 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. CEL does not guarantee that any user of the Service will access or use any of the Titles. CEL 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 CEL.

(d) If requested by Publisher, CEL 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. CEL 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 CEL, 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 CEL. Except as otherwise agreed by CEL, changes to a Publisher Retail Book Price will not affect CEL's payment obligations in connection with orders received by CEL 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) CEL will provide a written statement to Publisher on a calendar semi-annual 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 CEL will provide a statement for each calendar period, 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 CEL'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, CEL shall bear the cost of the audit, and payment of the

amount due shall be made to Publisher within thirty (30) days' notice to CEL 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) CEL shall provide at least 30 days' prior written notice to Publisher in the event of a proposed change of control of CEL, or any assignment of this Agreement by CEL 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 CEL written notice of termination within such 30-day period.

(d) CEL shall remove all Titles from the CEL database within ten (10) business days after termination of this Agreement for any reason. However, subject to Section 9, CEL may continue to retain and use copies of Perpetual Access Titles as reasonably necessary to permit CEL to continue servicing Perpetual Access Customers that ordered such Perpetual Access Titles prior to termination of this Agreement, provided that CEL 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 CEL of the obligation to pay any monies then due, or that become due, from CEL 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 CEL may use the Titles as contemplated under this Agreement.

(c) Publisher hereby agrees to indemnify and defend CEL 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) CEL 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 CEL'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 CEL's prior written consent.

8. Protection of Right

CEL 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. CEL 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) CEL 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 CEL 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, CEL 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 CEL 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 CEL all fees previously paid by CEL to Publisher with respect to such Title and CEL shall refund all fees to customers who previously acquired Perpetual Access to such Title.

(c) CEL 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 CEL hereunder, it may have access to certain of CEL'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 CEL, 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 CEL. Publisher will not reverse engineer, disassemble, or decompile any software or technology embodying CEL'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 CEL with written confirmation that it has done so. Upon any breach or threatened breach of this section, CEL shall be entitled to injunctive relief.

(c) CEL 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

CEL will offer the Titles for access only through a Hosted Service, which will stream content to end users. CEL will ensure that the Hosted Service and the servers used in the Service deliver only one page at a time to users. CEL 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. CEL will also ensure that no person uses any Title in any digital format other than as provided by CEL, and that no person accesses or uses any Electronic Title other than through the CEL/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, CEL 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 CEL, 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 CEL's obligation to pay fees under Exhibit C) exceed the amount paid by CEL 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. CEL 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, CEL 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 CEL 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 CEL 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

By: _____

Print Name: _____

Title: _____

Date: _____

Address for Notices to Publisher:

Canadian Electronic Library



By:

Print Name: Robert Gibson

Title: Vice President

Date:

Address for Notices to CEL:

Canadian Electronic Library

PO Box 1029

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 CEL 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 CEL subject to the terms set forth herein.

2. Delivery Obligation

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

3. Licensing Options Granted

CEL offers several business models for Publisher consideration. Publisher may designate licensing model by title using the codes shown below in the metadata supplied. Publisher may subsequently change model designations with notice to CEL.

Code	Means
LD	Title is available only under Licensed Access model.
PA	Title is available only under Perpetual Access model.
B	Title is available under both Licensed Access and Perpetual Access models

Titles made available under both "PA" and "B" options will also be made available under the PDA, STL and CR models outlined in Exhibit E.

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 period after Publisher has met its delivery obligations under this Agreement, CEL shall pay Publisher (60) sixty days after the end of the period as follows:

1. Licensed Access (Subscription) Sales

1.1 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 Licenses

2.1 Except as set forth in Section 2.2 below, for each Title sold under the Perpetual Access Business Model, CEL 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	105% 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 CEL and Publisher. For the avoidance of doubt, (i) the Parties will attempt in good faith to negotiate a fair price, and (ii) CEL 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 CEL enters into the Consortium Sale.

3. Patron-Driven Acquisition (PDA) Licenses

3.1 Sales made under the PDA model (see Exhibit E) are compensated as Perpetual Access sales.

4. Short term Loans (STL)

4.1 Sales made under the STL model (see Exhibit E) are compensated at the rates shown in Exhibit E.

5. Corporate Rentals (CR)

5.1 Sales made under the CR model (see Exhibit E) are compensated at the rates shown in Exhibit E.

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 semi-annual basis, as of June 30 and December 31. Payments are made within 60 days of the end of the period.

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 period, given these assumptions

- Revenue from subscription sales (the Split Pool Amount) in the period is \$100,000.
- Publisher A's contracted revenue share with CEL is 50%.
- There are 4,000 titles in the Collection as of the end of the period.
- 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 period 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 period.

Reports

Semi-annual reports to publishers provide full detail on the revenue attributed to each title contributed.

Sample 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										

EXHIBIT E

Patron-Driven Acquisition and Short Term Loan Models

CEL has developed the capacity to distribute content through Patron-Driven Acquisition and Short Term Loan business models. Publisher wishes to license its content for delivery under this model under the following terms:

1. **Patron-Driven Acquisition**. In order to enable individual users to drive the acquisition of content by institutional Customers, CEL may allow institutional Customers' authorized users to access Electronic Titles hosted by CEL without charge, until a Trigger Event triggers a PDA-Qualified Commercial Transaction.

Definitions:

a. “**PDA-Qualified Commercial Transaction**” is the payment of a fee by a customer in order to receive access to an Electronic Title (s) under any of the following business models authorized by Publisher under this Agreement:

- o Perpetual Access
- o Short-Term Loan
- o Corporate Rental

b. The “**Content**” of an Electronic Title includes its main text, but may in CEL’s discretion exclude non-substantive pages (e.g., cover, front matter, and back matter). If Publisher has not properly book-marked the front matter and back matter, CEL reserves the right to programmatically treat a reasonable set of pages (i.e., up to 5% of the book or a maximum of 30 pages, whichever is fewer) as non-substantive.

c. A “**Trigger Event**” is an occurrence defined by CEL, which triggers a customer’s PDA-Qualified Commercial Transaction. If any one of the following should ever happen, it would always constitute a Trigger Event:

- i. An end user has viewed the Content of an Electronic Title for ten consecutive minutes.
- ii. An end user has viewed ten unique pages of the Content of an Electronic Title during a single session.
- iii. One page (or portion thereof) of the Content of an Electronic Title has been copied or printed.
- iv. Three (3) Short-Term Loans of any duration have been purchased by the Customer.

Subject always to the above, CEL reserves the right to impose additional Trigger Events on customers (e.g., CEL may establish a Trigger Event when Content is viewed for only three minutes, but could not in any event extend the free viewing period past ten minutes.)

Exceptions to the above restrictions and exclusions may be permitted by Publisher on a case-by-case basis.

2. **Short-Term Loan.** Institutional or individual Customers may license the use of Electronic Titles for a period of time (a “Short Term Loan”). Based on the duration of the license, a “Published Retail Short-Term-Loan Price” will be calculated as a percentage (see tables below) of the Published Retail Ebook Price of the book, for the purpose of determining Publisher’s fee. For each Short Term Loan, CEL will pay Publisher the same portion of the Published Retail Short-Term-Loan Price as was agreed in the Prior Agreement for Perpetual Access sales of the same title.

Published Retail Short-Term-Loan Price	
Institutions and Individuals	
<i>(Not for use in the Corporate Market, as defined in Section 3.)</i>	
Loan Period	Percentage of Published Retail Ebook Price
1 day	10%
7 days	15%
14 days	20%
28 days	25%

Example:

- *The Published Retail Ebook Price of a hypothetical title is \$100.*
- *Under the Prior Agreement, if CEL had sold one copy of the title to a university for use by a single person at a time, CEL would have paid Publisher a specified portion (P%) of the Published Retail Ebook Price. The fee for such sale would have been P% of \$100.*
- *If CEL instead makes a Short Term Loan of the title to the university for 28 days for use by a single person at a time, CEL calculates a Published Retail Short-Term-Loan Price (based on the chart above) of 25% of \$100 = \$25.*
- *For this loan, CEL pays Publisher its previously-agreed portion of the Published Retail Short-Term-Loan Price. The fee CEL pays Publisher for this loan would be P% of \$25..*

3. **Corporate Rental.** “Corporate Market” means business organizations worldwide, regardless of form of ownership (including without limitation corporations, associations, partnerships, sole proprietors, for-profit and nonprofit organizations), subject to the following restrictions and exclusions:

- Includes governments, government agencies, quasi-governmental organizations, international governing bodies (such as the EU or UN) and their agencies, NGOs, and the like, provided however that such entities may only license the Titles for use by their own staff, and not for dissemination to third parties, unless permitted by Publisher on a case-by-case basis;
- Excludes universities, colleges, technical schools, grade schools, and public and community libraries;
- Excludes professional societies and associations;

Institutions in the Corporate Market may license the use of Electronic Titles for a period of time (a “Rental”). Based on the duration of the license, a “Published Retail Rental Price” will be calculated as a percentage (see tables below) of the Published Retail Ebook Price of the book, for the purpose of determining Publisher’s fee. For each Rental, CEL will pay Publisher the same portion of the Published Retail Rental Price as was agreed in the Prior Agreement for Perpetual Access sales of the same title.

Published Retail Rental Price	
Corporate Market	
Loan Period	Percentage of Published Retail eBook Price
180 days	30%
365 days	35%

3. Payment Schedule. Payments due hereunder will be made on the regular payment schedule set forth in the Prior Agreement.
4. Discounts and Promotions. For the avoidance of doubt, if Publisher offers promotional pricing, Publisher’s fee shall be calculated from that price. If CEL offers a discount, CEL shall bear the cost of the discount. The Parties may also from time to time agree in writing to joint special offers with shared costs.

Canadian Electronic Library
ORDER TERMS AND CONDITIONS
(version 112010)

The order form that references this document (“Order Form”), together with the terms herein, shall upon execution by Institution and acceptance by Canadian Electronic Library (“CEL”) constitute a contract (the “Agreement”) between the Institution and CEL, a Canadian corporation with its principal place of business at PO Box 1029, Saint Lazare, Quebec J7T 2Z7. The Institution and CEL 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 CEL/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 CEL/Ebrary site from Institution’s premises or remotely.
 - 1.2. “**CEL/Ebrary site**” means the web site hosted by CEL as a licensor of Ebrary Inc. as specified in Section 2.2, through which CEL/Ebrary will provide the tools necessary to access a primary collection of Electronic Titles and Electronic Documents.
 - 1.3. “**CEL Content**” means the materials, graphics, HTML, XML and other browser-based content, data and information made available by CEL through the CEL/Ebrary site, excluding the Electronic Titles.
 - 1.4. “**CELArc**” is the archive of PDF source files provided by CEL to support Institutions subscribing to Electronic Documents services.
 - 1.5. “**Collections**” are collections of electronic versions of books, journals, or other works selected by CEL, with a shared characteristic such as subject or language. CEL updates and revises its collections from time to time, and reserves the right to add or remove any title in its sole discretion.
 - 1.6. “**Copy or Print Transactions**” means transactions involving the printing or copying and pasting of the Electronic Titles.
 - 1.7. “**Electronic Documents**” are subset collections of Electronic Titles which contain monographs issued by public agencies and made available to Institution through the CEL/Ebrary site. Because these are documents made available without charge on agency websites, Electronic Documents are provided to Institution under a Perpetual Access license. These Materials are supplied on a Subscription basis to the extent that an annual fee applies to the supply of monthly updates, but they are licensed under Perpetual License terms. When and if Institution ceases to pay the annual update fee, the PDF source files already purchased may be downloaded from the CELArc site and hosted locally.
 - 1.8. “**Electronic Titles**” are the electronic versions of books, journals, and other works licensed from publishers by CEL and made available to Institution through the CEL/Ebrary site. Electronic versions may differ from print versions of the same title.
 - 1.9. “**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 CEL/Ebrary site.
 - 1.10. “**Hosting**” and “**Hosting Services**” consists of CEL/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 CEL/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 CEL/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 CEL will service a Subscription and/or 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 through the CEL/Ebrary site 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 CEL/Ebrary site to gain access to or use the CEL/Ebrary site.
- 1.24. **“Vendor”** means the reseller, regional network, consortium, or other entity, if any, through which Institution places its order. If the Institution is not ordering through a Vendor, this Section 1.22 does not apply. If the Institution orders through a Vendor, the following terms apply:
 - 1.24.1. Payment, taxes, and late fees shall be as agreed between Institution and Vendor. The provisions of Section 4.1 (“Payment, Taxes, and Late Fees”) shall only apply to the extent that Institution and Vendor have not agreed to different terms regarding payment, taxes, and late fees. In that case, Vendor shall have the rights otherwise reserved to Ebrary under that Section.
 - 1.24.2. Based on CEL’s arrangement with the Vendor, the Vendor, rather than CEL, may perform the second level customer support described in Section 5.3, in which case Institution should inform Vendor, rather than CEL, regarding support issues as described in that Section. Please confirm support details with your Vendor.
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, CEL will construct a standard CEL/Ebrary site for use by Institution’s patrons and will generate custom MARC record sets for Institution’s use of the CEL/Ebrary site. At Institution’s option, Institution or its agent may design and host a customized banner, subject to CEL’s technical specifications, which will appear on Institution’s CEL/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.** CEL will provide to Institution such free updates, enhancements, and future releases as CEL may choose to make available to its library customer base as a whole.
 - 2.4. **Operation and Maintenance.** CEL will, at its own expense, provide and manage all servers, telecommunications, facilities maintenance, and operations related to the hosting of the CEL/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 CEL/Ebrary site, CEL will use commercially reasonable efforts to correct such problems as soon as reasonably practicable.
 - 2.5. **Launch Date.** CEL will endeavor to make the CEL/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 CEL 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 CEL/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). 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 CEL learn that a Purchased Book contains significant error(s), or should CEL become aware of copyright infringement or other legal issues that may result in the imposition of liability on CEL or its suppliers, CEL reserves the right to stop hosting such Purchased Book, provided that CEL 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. CEL will deposit a digital copy of each Purchased Book in a secure archive protected and maintained by CEL or a reputable third party. This archive contains only the digital copies; no search or viewing facilities or other utilities provided by CEL through its Hosting services are included in this service.
4. Fees and Payments.
 - 4.1. Payments, Taxes, and Late Fees. Institutions ordering through a Vendor should refer to Section 1.22. Unless otherwise specified in the Order Form: (i) All payments shall be made to CEL in Canadian Dollars within thirty (30) days of invoice; (ii) All fees are subject to adjustment by CEL under Section 4.2; (iii) Institution is responsible for all related taxes. (iv) CEL 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 CEL's request. If Institution's FTEs change, CEL reserves the right to charge or credit Institution, no more than once annually, to reflect the changed FTEs.
 - 4.3. Fee Allocations. Unless otherwise specified on the Order Form, all fees associated with content collections aggregated by CEL/Ebrary are allocated as follows: (i) One half of the combined fees represents a "Technology License Fee," which entitles Institution to receive the Institution-specific standard Ebrary Site set-up, use of proprietary Ebrary software as made available by Ebrary through the Ebrary Site, Institution-specific MARC records, customer service and other benefits, as specified in this Agreement, and to use the Ebrary Site (exclusive of Electronic Titles) and InfoTools, subject to the terms and conditions of this Agreement and the notices that appear on the Ebrary Site and any software that Ebrary may provide. (ii) The other half of the combined fees represents a "Content Usage Fee," which entitles Institution and its patrons to use the Electronic Titles, subject to the terms and conditions herein and the terms of use and copyright, privacy, and other legal notices that appear on the CEL/Ebrary Site and/or are embedded in the Electronic Titles.
5. Additional Obligations of the Parties.
 - 5.1. Linking and Marketing Obligations. Institution or its agent will display Ebrary's graphic Brand Features in a mutually agreeable manner and location on the Institution Website. This display will include a Link to the Ebrary Site. The parties may issue joint press releases and mutual endorsements of the Ebrary Site. However, neither party will issue any separate press release related to the Ebrary Site without obtaining the other party's prior written approval. Institution agrees to make a good faith effort to promote the Ebrary Site to Institution's user base, by means Institution deems appropriate.
 - 5.2. Usage Conditions.
 - 5.2.1. Authorized Users. Institution will use commercially reasonable means to ensure that only Authorized Users obtain access to the CEL/Ebrary site through Institution's systems. Institution will offer access to the CEL/Ebrary site to Authorized Users through IP authentication and will provide CEL with all information necessary to implement such IP authentication. CEL 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 CEL'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 CEL.
 - 5.2.2. Site Access.
 - 5.2.2.1. IP Authentication. Ebrary supports patron authentication based on the Institution's fixed IP address range(s) controlled by or assigned to the Institution's physical location(s). If the Institution selects this option, it will provide CEL/Ebrary with all information necessary for implementation. There are no fees for IP authentication.
 - 5.2.2.2. Other Access Options. CEL/Ebrary also supports several other access options (e.g., remote authentication, single sign-on, secure referring url), subject to the terms of the Channel Site Access Options policy, a current copy of which is attached as Exhibit A. Institution shall be

solely responsible for configuring and supporting its systems, and for maintaining and administering end user passwords or other security mechanisms reasonably required by CEL/Ebrary. Please refer to CEL/Ebrary's Channel Site Access Options policy for additional details. For the duration of this Agreement, CEL/Ebrary will waive all standard fees associated with each Pre-Approved Custom Access Option specified in the policy.

- 5.2.3. Portals/Distributed Access. The Institution may not use the CEL/Ebrary Site to provide access to remote users who are not its direct students, faculty, staff or employees, unless (i) the CEL/Ebrary security team has reviewed and approved the proposed access method, and (ii) a Partner Portal Server Deployment exhibit is attached hereto, specifying the applicable implementation and security requirements.
- 5.2.4. Terms of Service Binding on End Users. Institution and its Authorized Users must at all times comply with the current Terms of Service and other legal notices then posted on the Site. A copy of the currently-posted Terms of Service is attached as Exhibit B.
- 5.2.5. Abuse of Site. CEL/Ebrary reserves the right to temporarily or permanently disable access from an individual user account or system, IP address, or range of IP addresses to stop unauthorized use of the CEL/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, secure for CEL/Ebrary's inspection any software tools used to effect the Abuse and any electronic files or other materials obtained through Abuse, and ensure the appropriate disposal of any improperly obtained files or materials. Upon receiving adequate assurances from Institution that Abuse has been resolved to CEL/Ebrary's satisfaction and will not resume, CEL/Ebrary will restore service without unnecessary delay.
- 5.2.7 Changes to Access Options and Terms of Service. CEL/Ebrary reserves the right to update its Channel Site Access Options and Terms of Service from time to time without prior notice. Should the Institution object, the Parties will make a good faith effort to resolve the objection in a mutually acceptable manner. If no resolution is reached, Institution's sole remedy is to terminate this Agreement upon written notice, whereupon CEL/Ebrary will promptly refund a pro-rata share of paid subscription and hosting fees.
- 5.3. Customer Support. Institutions ordering through a Vendor should refer to Section 1.22. Institution will designate two (2) qualified customer service contacts, who will provide first level customer support to its patrons regarding the use and functionality of the CEL/Ebrary Site, including but not limited to questions about the plugin, viewing, searching, sorting, browsing, navigation and content. CEL/Ebrary will provide Institution's designated customer service contacts with ongoing support consistent with CEL/Ebrary's standard support policies. In the event that Institution receives any complaint about the CEL/Ebrary Site, Institution will forward it to CEL/Ebrary customer support within 24 hours, and will inform CEL/Ebrary of any action taken or response made by Institution.
- 5.4. Usage Data. CEL/Ebrary will provide Institution with monthly reports summarizing the usage of its CEL/Ebrary Site.
- 5.5. 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 CEL/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 owner.
- 5.6. 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. Access or use of the Materials on a web-enabled portable device is permitted
- 5.7. Customer Support. Institutions ordering through a Vendor should refer to Section 1.22. Institution will designate two (2) qualified customer service contacts, who will provide first level customer support to its patrons regarding the use and functionality of the CEL/Ebrary Site, including but not limited to questions about the plugin, viewing, searching, sorting, browsing, navigation and content. CEL/Ebrary will provide

Institution's designated customer service contacts with ongoing support consistent with CEL/Ebrary's standard support policies. In the event that Institution receives any complaint about the CEL/Ebrary Site, Institution will forward it to CEL/Ebrary customer support within 24 hours, and will inform CEL/Ebrary of any action taken or response made by Institution.

- 5.8. Usage Data. CEL will provide Institution with monthly reports summarizing the usage of its CEL/Ebrary site.

6. Grant of Licenses by CEL.

- 6.1. Purchased Books. Subject to any further restrictions set forth in the Order Form, CEL 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 CEL 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, CEL 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, CEL 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.

7. Ownership.

- 7.1. By Institution. Institution will have and retain full and exclusive right, title and ownership interest in and to: (i) the Institution Brand Features, (iii), the Institution Website and (iv) any and all Intellectual Property Rights to each and all of the foregoing.
- 7.2. By CEL. CEL, its licensors and suppliers will have and retain full and exclusive right, title and ownership interest in and to: (i) the CEL Brand Features, (ii) the CEL Content (iii) the CEL/Ebrary site and CEL Corporate Site, and (vi) any and all Intellectual Property Rights to each and all of the foregoing.
- 7.3. Usage Data Associated With The CEL/Ebrary site. Each party will comply with the terms of its own privacy policy with respect to the use of the CEL/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.

8. Term and Termination.

- 8.1. Term. This Agreement will be effective during an "Initial Term" to begin on the date the Order Form is approved by CEL ("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.
- 8.2. 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.

- 8.3. 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 Electronic Title 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 CEL/Ebrary site and all Links which reference "CEL" or any derivations thereof, and (e) the following Sections will survive: 6.1-6.1.3, 7 (for a period of two years from termination), 7.3 (only as to User Data), 8.3, 9 and 10.

9. Miscellaneous.

- 9.1. 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 CEL as follows, or to such other address as either party may specify in writing from time to time:

Address: Canadian Electronic Library
PO Box 1029
Saint-Lazare, QC J7T 2Z7
Phone & Fax (450) 458-0677
E-mail: gary@gibsonlibraryconnections.ca

Canadian Electronic Library
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.

EXHIBIT A



Channel Site Access Options

(Last updated: 07/24/07)

1. Standard, Fixed IP-Range Site Access:

Fee: None (included)

There will be no charge to establish or modify standard Channel Sites that support patron authentication based only on the Institution's fixed IP address range(s) controlled by or assigned to the Institution's physical location(s).

2. Pre-Approved Custom Access Options:

Fee: Standard fees apply

The following access options have been pre-approved by CEL/Ebrary's operations and security team:

For methods (a) through (e) below, the Institution shall be solely responsible for configuring and supporting its access systems, and for maintaining and administering end user passwords or other security mechanisms reasonably required by CEL/Ebrary, including (i) never establishing shared passwords that enable CEL/Ebrary access, (ii) never posting CEL/Ebrary access passwords on internal or public internet sites, and (iii) maintaining user access logs for a period of at least 30 days to support investigation of Channel Site mis-use by end users.

- a) Remote Authentication. Secure remote user authentication systems that validate individual usernames and passwords, providing the remote user with access to CEL/Ebrary from within the Institution IP range. May include URL rewriting proxy servers (which may be included in CMS or OPAC systems) or Virtual Private Network (VPN) systems.
- b) Single-Sign-On Products. CEL/Ebrary integrated single-sign-on systems, operating within the Institution IP range. These systems have been developed and tested by the software vendors to use ebrary APIs to provide secure authentication of users to CEL/Ebrary. This option is currently available with EZproxy and Blackboard, and may be developed for other products.
- c) Single-Sign-On Module. Single-sign-on using integration with Institution secure user authentication system using a compatible CEL/Ebrary API authentication module. Institution must have web software development expertise and meet CEL/Ebrary qualification requirements to integrate the CEL/Ebrary API authentication module. Modules may not be available for all web server software platforms. Integration will be at Institution's expense. API integration support will be provided by CEL/Ebrary at its then-current time and materials rates.
- d) Access Management Providers. Subscription access management systems (such as Eduserv Athens) as supported by ebrary. The Institution shall be responsible for its relationship with the access management service provider, and for all account administration.
- e) Referring URL. Secure remote user authentication systems that validate individual assigned usernames and passwords, providing a secure referring URL link to CEL/Ebrary. This method is disfavored, but may be allowed on an exception basis for specific Channel Sites based on CEL/Ebrary review of the Institution's implementation, CEL/Ebrary's assessment of the Institution's web development capabilities and resources.

By requesting Referring URL access, the Institution will be deemed to accept the following terms: Remote access to CEL/Ebrary must be individually authenticated and secure. Any unauthorized access or abuse detected on a referring URL Channel Site

may result in immediate disabling of the referring URL path. CEL/Ebrary may use geographic IP verification to limit each referring URL channel to access only by IPs assigned to the Institution's country or countries. The Institution must integrate an CEL/Ebrary API authentication module compatible with its system at Institution's expense when/if the module becomes available.

Note that the Institution must have web software development expertise and meet CEL/Ebrary qualification requirements to integrate the CEL/Ebrary API authentication module. API integration support will be provided by CEL/Ebrary at its then-current time and materials rates.

- f) Other Commercial Systems. Any other standard commercially-available authentication system that provides commercially reasonable authentication and security, and that is supported by CEL/Ebrary for other customers as a standard product feature.
- g) Ebrary RPA. Ebrary remote patron authentication service (RPA), an Ebrary hosted service using an Institution-supplied list of individual usernames and passwords.

3. Other Access Options (Ebrary Pre-Approval Required):

Fee: To be agreed in writing before implementation

Requests for other access options may be submitted to Operations for evaluation.

- a) Custom Systems. Custom developed or proprietary secure user authentication systems that meet Ebrary's technical and security requirements, permitted at Ebrary discretion subject to review by Ebrary security team.
- b) Ebrary APIs. Customized Ebrary API single-sign-on integration (not utilizing a standard Ebrary API authentication module). Institution must have web software development expertise and meet Ebrary qualification requirements to integrate the Ebrary APIs. Integration will be at Institution expense. API Integration support will be provided by Ebrary at its then-current time and materials rates.