

**NELCO STANDARD LICENSE AGREEMENT  
BETWEEN**

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**AND**

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This License Agreement (this "Agreement") is made effective as of \_\_\_\_\_ (the "Effective Date") between: \_\_\_\_\_ (publisher),  
\_\_\_\_\_ (address), \_\_\_\_\_ (city), \_\_\_\_\_ (state), \_\_\_\_\_ (postcode) ("Licensor").

and

\_\_\_\_\_ (NELCO or institution), a \_\_\_\_\_ (type of institution) with its principal offices at  
\_\_\_\_\_ (address), \_\_\_\_\_ (city), \_\_\_\_\_ (state), \_\_\_\_\_ (postcode) on behalf of  
the member libraries listed in Appendix A ("Licensees").

**I. CONTENT OF LICENSED MATERIALS; GRANT OF LICENSE**

The materials that are the subject of this Agreement shall consist of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(hereinafter referred to as the "Licensed Materials").

Licensee and its Authorized Users acknowledge that the copyright and title to the Licensed Materials and any trademarks or service marks relating thereto remain with Licensor. Neither Licensee nor its Authorized Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement.

Licensor hereby grants to Licensee non-exclusive use of the Licensed Materials and to provide the Licensed Materials to Authorized Users in accordance with this Agreement.

**II. DELIVERY/ACCESS OF LICENSED MATERIALS TO LICENSEE**

Licensor will provide the Licensed Materials to the Licensee in the following manner:

Network Access. The Licensed Materials will be stored in digital form accessible at

authorized locations of Licensee.

### **III. FEES**

Licensee shall make payment to Licensor for use of the Licensed Materials as follows:

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All fees are due and payable by Licensee sixty (60) days after the date of invoice from Licensor.

### **IV. AUTHORIZED USE OF LICENSED MATERIALS**

**Authorized Users.** "Authorized Users" are:

Persons Affiliated with Licensee. Current members of the bench, faculty and staff of Members' Institution (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently affiliated with a Member's institution, who are permitted to access the Secure Network from within the Library Premises or from such other places where Authorized Users work or study (including but not limited to Authorized Users' offices and homes, halls of residence and student dormitories) and who have been issued by a Member with a password or other authentication together with other persons who are permitted to use a Member's library or other information service and permitted to access the Secure Network, but only from computer terminals within the Member's Library Premises.

Walk-ins. Patrons not affiliated with Licensee who are physically present at Licensee's site(s) ("walk-ins").

Authorized users may not be a party to the license.

**Authentication of Authorized Users.** This license should not require the use of an authentication system that creates an unnecessary barrier to authorized access by users. Licensor agrees to cooperate with NELLCO member institutions to implement access control mechanisms as they are developed.

Authentication. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by Licensee to Licensor, unless subscribers choose another means. The use of proxy servers is permitted as long as it limits use to Authorized Users.

**Authorized Uses.** Nothing in this license shall abrogate any rights of authorized users under the Fair Use provisions of United States and international copyright laws. In

addition, the Licensed Materials may be used for purposes of research, education or other non-commercial use as follows:

Display. Licensee and Authorized Users shall have the right to electronically display the Licensed Materials.

Digitally Copy. Licensee and Authorized Users may download and digitally copy a reasonable portion of the Licensed Materials.

Print Copy. Licensee and Authorized Users may print a reasonable portion of the Licensed Materials.

Archival/Backup Copy. Upon request of Licensee, Licensee may receive from Licensor and/or create one (1) copy of the entire set of Licensed Materials to be maintained as a backup or archival copy during the term of this Agreement, or as required to exercise Licensee's rights under section XII, 'Perpetual License', of this Agreement.

Caching. Licensee and Authorized Users may make local digital copies of the Licensed materials in order to ensure efficient use by Authorized Users by appropriate browser or other software.

Collections of Information. Licensee and Authorized Users shall be permitted to extract or use information contained in the Licensed Materials for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.

Course Packs. Licensee and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of Course Packs or other educational materials.

Course Reserves (Print and Electronic). Licensee and Authorized Users may use a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by Licensee.

Improvements to functionality. Licensee expects continuing improvements and updates to the interface and functionality, at no additional cost.

Scholarly Sharing. Authorized Users may transmit to a third party in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or use but in no case for resale or commercial purposes.

Interlibrary Loan. Licensee may fulfill occasional requests from other institutions (by mail, fax or electronic transmissions), a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by

libraries and archives”) and the Guidelines for the Proviso of Subsection 108(2g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

**Amount of Authorized Use.**

Unlimited Access. Subject to the terms of this Agreement, Licensee and its Authorized Users shall have unlimited access to the Licensed Materials.

**V. SPECIFIC RESTRICTIONS ON USE OF LICENSED MATERIALS**

Unauthorized Use. Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

Modification of Licensed Materials. Licensee shall not modify, manipulate, or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

Removal of Copyright Notice. Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

Commercial Purposes. Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials, fee-for-service use of the Licensed Materials, or bulk reproduction or distribution of the Licensed Materials in any form; nor may Licensee impose special charges on Authorized Users for use of the Licensed Materials beyond reasonable printing or administrative costs.

**VI. MUTUAL PERFORMANCE OBLIGATIONS**

Implementation of Developing Security Protocols. Licensee and Licensor shall cooperate in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

**VII. LICENSOR PERFORMANCE OBLIGATIONS**

Confidentiality of User Data. Licensor agrees to maintain the confidentiality of any personal identification data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

Usage Statistics. Licensor will provide composite use data on a monthly basis. Use data should be at the level of detail required for objective evaluation of both product

performance and satisfaction of user needs, including title-by-title use of journals. Providers should refer to guidelines established by either the International Coalition of Library Consortia (ICOLC) or COUNTER with respect to statistical measures of usage of web-based information resources.

Availability of Licensed Materials. Upon the Effective Date of this Agreement, Licensor shall make the Licensed Materials available to Licensee and Authorized Users.

Documentation. Licensor will provide and maintain help files and other appropriate user documentation.

Training and Support. Licensor will offer installation support, including assisting with the implementation of any Licensor software. Licensor will provide appropriate training to Licensee staff relating to the use of the Licensed Materials and any Licensor software. Licensor will offer continuing support to assist Licensee and Authorized Users in use of the Licensed Materials. Licensor will make its personnel available by email, phone or fax during regular business hours, Monday through Friday for feedback, problem-solving, or general questions. Licensor will provide additional training to Licensee staff made necessary by any updates or modifications to the Licensed Materials or any Licensor software.

Quality of Service. Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee's locale.

Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.

Modification of Licensed Materials. Licensee understands that from time to time the Licensed Materials may be added to, modified, or deleted from by Licensor and/or that portions of the Licensed Materials may migrate to other formats. Licensor shall give a thirty (30) day advance notice of any modifications or deletions to Licensee. Failure by

Licensors to provide such notice shall be grounds for immediate termination of the Agreement by Licensee.

If the withdrawal represents more than 10% of the originally-licensed content, the Licensor shall refund to Licensee that part of the fee that is in proportion to the amount of material withdrawn and to the remaining unexpired portion of the subscription period.

If the withdrawal materially diminishes the usefulness of the Licensed Materials, Licensee may treat such changes as a breach of this License.

Notification of Renewal Terms. Licensor will provide 90-day renewal notices.

Completeness of Content. Where applicable, Licensor shall provide online content that is at least equivalent online content is at least equivalent to print versions of the Licensed Materials, or disclose all variations. Licensor shall use reasonable efforts to ensure that the online content represents complete, faithful and timely updates of the Materials, and will cooperate with Licensee to identify and correct errors or omissions.

“Click-Through” Licenses. Licensor shall not require Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as “click-through” licenses). However, Licensor may provide notification of the terms of this license to Authorized Users prior to access. Licensor shall provide Licensee with notice of and an opportunity to review the language of any “click-through” prior to its implementation. In no event shall the terms of such “click-through” notices differ from the provisions of this Agreement. In the event of any conflict between the terms of such “click-through” notices and this Agreement, the terms of this Agreement shall prevail.

Accessibility Standards. Licensor shall make reasonable efforts to comply with current accessibility standards for electronic resources.

## **VIII. LICENSEE PERFORMANCE OBLIGATIONS**

Provision of Notice of License Terms to Authorized Users. Licensee shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement including, in particular, any limitations on access or use of the Licensed Materials as set forth in this Agreement.

Protection from Unauthorized Use. Licensee shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement.

Should Licensor become aware of a suspected unauthorized use of the material, Licensor will immediately notify Licensee of the suspected violation, and will consult with Licensee as to how such unauthorized use can be stopped and its reoccurrence prevented. In no case will unauthorized use entitle the Licensor to terminate this license prior to 15 days after the date of notice to Licensee described in the preceding sentence.

#### **IX. TERM**

This Agreement shall continue in effect for one year, commencing on the Effective Date.

#### **X. RENEWABILITY**

This agreement shall be renewed at the end of the current term for a successive one-year term unless either party gives written notice of its intention either to renegotiate the terms of this agreement or to terminate this agreement thirty (30) days before expiration of the current term.

#### **XI. EARLY TERMINATION**

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice, subject to the provisions of section XVII.

In the event of early termination permitted by this Agreement, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

#### **XII. PERPETUAL LICENSE**

Notwithstanding anything else in this Agreement, Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were accessible during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Licensee shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

### **XIII. WARRANTIES**

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

### **XIV. LIMITATIONS ON WARRANTIES**

Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials.

### **XV. ASSIGNMENT AND TRANSFER**

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

### **XVI. GOVERNING LAW**

This Agreement shall be interpreted and construed according to, and governed by, the laws of the state of the subscribing institution, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in the state of the subscribing institution shall have jurisdiction to hear any dispute under this Agreement.

### **XVII. DISPUTE RESOLUTION**

In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

Mediation. In the event that the parties can not by exercise of their best efforts resolve the dispute, they shall submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated

representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within thirty (30) calendar days after such meeting, the dispute shall be submitted to binding arbitration in accordance with the Arbitration provision of this Agreement.

Arbitration. Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties.

All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than sixty (60) days after the notice of arbitration is served.

The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

#### **XVIII. FORCE MAJEURE**

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected.

#### **XIX. ENTIRE AGREEMENT**

This Agreement, including addenda \_\_\_\_\_, constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

#### **XX. AMENDMENT**

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

**XXI. SEVERABILITY**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**XXII. WAIVER OF CONTRACTUAL RIGHT**

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

**XXIII. NOTICES**

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by U.S. Mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

**If to Licensor:**

Licensor Name  
Address  
City, State Postal Code

**If to Licensee:**

Institution  
Address of Institution  
City, State Postal Code  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

**LICENSOR:**

BY: \_\_\_\_\_  
Signature of Authorized Signatory of Licensor

DATE: \_\_\_\_\_

Print Name:  
Title:  
Address:  
Telephone No.:  
E-mail:

**LICENSEE:**

BY: \_\_\_\_\_  
Signature of Authorized Signatory of Licensee

DATE: \_\_\_\_\_

Print Name:  
Title:  
Address:  
Telephone No.:  
E-mail: