



You must submit three forms: this order form, the [profile form](#), and the [ebrary License Agreement](#).

PO must be made out to: WILS, 728 State Street, Room 464, Madison WI 53706.

Library: \_\_\_\_\_

Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Administrative contact: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Technical contact: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ IP Range: \_\_\_\_\_

**Growing Collections - new titles added monthly**

Academic Complete (22,000+ titles)	Call for quote - minimum \$6,000
Public Library Complete (7,300+ titles)	Call for quote - minimum \$5,000

**Fixed Collections**

Career & General Education Collection	\$3,700
Humanities	\$3,700
Social & Behavioral Sciences	\$3,700
Business & Economics	\$4,163
Computers, Engineering & Applied Sciences	\$4,163
Science, Medicine & Allied Health	\$4,163

**Single Publisher Collections**

Dun & Bradstreet International Business Reports	\$4,163
Datamonitor	\$4,163
Harris InfoSource Manufacturing Reports	\$4,163
Byron Hoyt Sheet Music Collection*	\$3,700
Octavo Collection*	\$3,700
*only sold bundled with another collection	
<b>Custom Collections also available</b>	Call for quote



**ebrary Technical Profile**

Institution \_\_\_\_\_

**The following information is required to set up your ebrarian service.**

**Desired Site Identifier**

The site identifier becomes part of the URL used to access ebrary books at your site. Must be 5-20 characters, all lowercase, without spaces, dashes, punctuation, or special characters (e.g., stateulibrary)

**Subsidized/Non-subsidized** \_\_\_\_\_

Subsidized libraries must prepay usage and then are provided with one master account. Non-subsidized libraries have each user create a patron account and use their own credit card as a method of payment.

**Administrative Contact**

Name \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

**Technical Contact**

Name \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

**Desired Master Account Login**

The Master Account Login is used to access usage reports for the site. Must be 4-10 characters, all lowercase, without spaces, dashes, punctuation, or special characters.

Note: you will receive a temporary password by email. (e.g., stateulibraryadmin).

**Institution Display Name and/or URL**

The display name appears at the top of each page in the ebrary site for the library. (e.g., "State University Library System"). Up to 50 characters. If you wish to create content for the top frame that appears in the header of each page of the site, please give us the URL that you wish to use in with the display name. This will allow you to include custom graphics, colors, and hyperlinks. Please give us the URL that you wish to use in with the display name. Please refer to <http://www.ebrary.com/cobrandsample> for additional technical specifications.

**Institution "Home" URL**

Main URL to return patrons to the library's home web page (e.g., <http://www.stateuniversity.edu/library/>)

**Prepaid Transaction Controls**

ebrary's print and copy text transaction fees compensate the publisher for use of the material, and are separate from any printing or paper fees the library may charge. Libraries that offer prepaid copy/print transactions on behalf of their patrons have the following options to deter usage that might deplete the prepaid usage account, (e.g., printing large numbers of pages or entire books). These options are not applicable to libraries that require patrons to pay these fees using their personal credit card.

**Print/Copy Page Limit: No Limit or (number of pages)**

The Print/Copy Page Limit option limits the number of pages from which the patron may copy text and/or print pages while viewing a given title. Specify "None" to allow unlimited print and copy subsidy.

**Single-page Printing:**

The Single-page Printing option allows users to print only one page at a time (i.e., the user cannot specify a range of pages to print, but can only print the currently-viewed page).

**Authorized IP Range(s)**

Please list the ranges of IP addresses to be authorized for access to the site below, or attach a separate sheet. (e.g., 216.200.61.192-216.200.61.254)

**OPAC Search Links from ebrary InfoTools**

ebrary can integrate with many OPAC systems that offer a web-based search interface. While the patron is viewing a title

within ebrary, he or she can select text within the book, and use that title as a basis for searching the web catalog. NOTE: OPAC systems and implementations vary widely; ebrary makes no guarantee that it will be able to integrate with your specific system.

If you would like to provide this service to your patrons, please provide us with the following information:

**OPAC Software in Use** \_\_\_\_\_

### **Main URL for searching web catalog**

#### **Example URLs to conduct specific searches**

Please provide examples of the URLs generated by your web catalog when submitting a search form. The ISBN option is particularly important, as it allow patrons to search the catalog for the currently viewed title.

#### **For a specific ISBN (excluding hyphens):**

(e.g., <http://catalog.statelibrary.edu/field=ISBN&searchdata=037570518X>)

#### **By Title:**

(e.g., <http://catalog.statelibrary.edu/field=TITLE&searchdata=Thomas+Jefferson>)

#### **By Author:**

(e.g., <http://catalog.statelibrary.edu/field=AUTHOR&searchdata=Thomas+Jefferson>)

#### **By Subject:**

(e.g., <http://catalog.statelibrary.edu/field=SUBJECT&searchdata=Thomas+Jefferson>)

#### **All Fields:**

(e.g., <http://catalog.statelibrary.edu/field=ALL&searchdata=Thomas+Jefferson>) Please provide a description for any additional "quick search" options you would like to provide your patrons below, along with an example URL for each. Questions or concerns regarding this form?...Please contact [support@ebrary.com](mailto:support@ebrary.com) or call 650-230-0739/408-891-0184

**EBRARIAN® PURCHASE ORDER # \_\_\_\_\_**  
**CONSORTIUM: \_\_\_\_\_ WILS \_\_\_\_\_**

**PURCHASING INSTITUTION INFORMATION:**

Institution:		FTE:
Address:		
Library Type: <input type="checkbox"/> Academic <input type="checkbox"/> Public <input type="checkbox"/> Community College <input type="checkbox"/> Career College <input type="checkbox"/> K-12 <input type="checkbox"/> Special		
Primary Business Contact:		Primary Technical Contact:
Name:	Name:	
E-mail:	E-mail:	
Phone:	Phone:	
Fax:		
Primary Customer Support Contact		Secondary Customer Support Contact:
Name:	Name:	
E-mail:	E-mail:	
Phone:	Phone:	

**PRODUCT ORDER INFORMATION:**

Product: <u>ebrarian®</u>	Content Usage Price per FTE per year: \$ _____
Subscription Term: [month/day/year] ___/___/___ to ___/___/___	License Price per FTE per year: + \$ _____
	Total Price per FTE per year: \$ _____
\$ _____ [x] _____ FTEs [=] \$ _____	Annualized FTE-Based Fees
Total Price per FTE per year	Institution's FTE count
\$ _____ [x] _____ Years [=] \$ _____	TOTAL SUBSCRIPTION TERM FEES
Annualized FTE-Based Fees	Years in Subscription Term

I am a duly authorized agent or representative of the Institution. On its behalf, I have read, understood, and agreed to the ebrarian Order Terms and Conditions (version 110502) below, each term of which is incorporated herein by reference, INCLUDING THE LIMITATIONS OF LIABILITY therein. I understand that this order will not become a contract binding on ebrary until approved below by an officer or authorized employee of ebrary.

Signature:	Date:
Print Name:	
Title:	

<i>For ebrary use only:</i> Approved by: _____ Title: _____ Effective Date: _____
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## EBRARIAN® ORDER TERMS AND CONDITIONS

(version 110502)

The EBRARIAN PURCHASE ORDER (the “EBRARIAN ORDER FORM”) that references this document, together with the terms herein, shall upon execution by Institution and acceptance by ebrary constitute a contract (the “Agreement”) between the Institution and ebrary®, Inc., a California corporation with its principal place of business at 318 Cambridge Avenue, Palo Alto, CA 94306-1505 (“ebrary”). The Institution and ebrary 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. “Brand Features” of a party means such party’s trademarks, trade names, service marks, service names, logos and other distinct brand elements or presentation that appear from time to time in such party’s properties, ventures and services worldwide, together with any modifications to the foregoing made by such party during the term of this Agreement.
  - 1.2. “Copy or Print Transactions” means transactions involving the printing or copying and pasting of the Electronic Titles.
  - 1.3. “Ebrarian Site” means the web site hosted by ebrary, as specified in Section 2.2, through which ebrary will provide the tools necessary to access a primary collection of Electronic Titles.
  - 1.4. “ebrary Content” means the materials, graphics, HTML, XML and other browser-based content, data and information made available by ebrary through the Ebrarian Site, excluding the Electronic Titles.
  - 1.5. “ebrary Site” means the web site owned and operated by ebrary, and located primarily at <http://www.ebrary.com>, and any successor web site thereto.
  - 1.6. “Electronic Titles” means the electronic versions of books, journals, and other works licensed by ebrary and made available to Institution through the Ebrarian Site.
  - 1.7. “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.
  - 1.8. “Launch Date” means the date on which the Ebrarian Site is made publicly available to Institution’s end-users via the Internet.
  - 1.9. “Institution Website” means a web site owned and operated by Institution or its agent.
  - 1.10. “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.
  - 1.11. “Special Library” means a library that is maintained by a parent organization to serve a specialized clientele; or an independent library that may provide specialized materials or services, or both, in a specific subject to the public, a segment of the public, or other libraries. It is maintained by an association, business or corporation, government agency, research institution, learned society, not-for-profit organization, professional association, museum, industrial enterprise, chamber of commerce, or other organized group and is characterized by its depth of subject coverage.
  - 1.12. “User Data” means personally identifiable information provided by users of the Ebrarian Site to gain access to or use the Ebrarian Site.
2. Ebrarian Site.
  - 2.1. Site Construction. Using technical profile information provided by Institution or its agent, ebrary will construct a standard Ebrarian Site for use by Institution’s patrons and generate custom MARC record sets for Institution’s use of the Ebrarian Site. At Institution’s option, Institution or its agent may design and host a customized banner, subject to ebrary’s technical specifications, which will appear on Institution’s Ebrarian Site.
  - 2.2. Site Specifications. The Ebrarian Site will permit multiple users to simultaneously access and search through books and other documents. 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. Site Content. The Ebrarian Site will allow Institution and its patrons to access, view, print, and/or copy and paste from a primary collection of Electronic Titles as defined by ebrary.

- 2.4. Updates and Enhancements. ebrary will provide to Institution such free updates, enhancements, and future releases as ebrary may choose to make available to its library customer base as a whole.
  - 2.5. Operation and Maintenance. ebrary will, at its own expense, provide and manage all servers, telecommunications, facilities maintenance, and operations related to the hosting of the Ebrarian 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 Ebrarian Site, ebrary will use commercially reasonable efforts to correct such problems as soon as reasonably practicable.
  - 2.6. Launch Date. Ebrary will endeavor to make the Ebrarian Site available to Institution's patrons within five (5) business days of receiving complete and accurate technical profile information from Institution or its agent. If ebrary 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.
3. Fees and Payments.
    - 3.1. FTEs. FTE-Based Fees are based on the total number of individuals expected to have access to Institution's Ebrarian Site (e.g., Institution's full-time students, faculty and staff members or other employees, population served, card holders, or the like, or the equivalent of any of the foregoing) (collectively, "FTEs"). Institution represents that the FTE count it has specified in the Ebrarian Order Form is reasonably accurate, and agrees to provide updated figures annually upon ebrary's request. If Institution's FTEs change, ebrary reserves the right to charge or credit Institution proportionally, no more than once annually, to reflect the changed FTEs.
    - 3.2. Fee Allocations. License fees paid ("License Fees") shall entitle Institution and its patrons to use the Ebrarian Site (exclusive of Electronic Titles) and to receive the Institution-specific standard Ebrarian Site set-up, Institution-specific MARC records, customer service and other benefits specified herein, subject to the terms and conditions herein and the notices that appear on the Ebrarian Site and any software that Ebrary may provide. Fees paid for printing, copying, and the like ("Content Usage Fees") shall entitle 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 Ebrarian Site and/or are embedded in the Electronic Titles.
    - 3.3. Payments. Subscription Term Fees are due thirty (30) days after the beginning of the Initial Term. For each Renewal Term, if any, the Total Annualized FTE-Based Fees (as adjusted by ebrary under Section 3.1) are due on the first day of the Renewal Term. Institution is responsible for all related taxes and withholding except for taxes based on ebrary's income. Ebrary reserves the right to charge a late fee of 1% monthly on overdue amounts. All payments shall be made to Vendor in U.S. Dollars within thirty (30) days of invoice.
4. Additional Obligations of the Parties.
    - 4.1. 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 Ebrarian Site. The parties may issue joint press releases and mutual endorsements of the Ebrarian Site. However, neither party will issue any separate press release related to the Ebrarian Site without obtaining the other party's prior written approval. Institution agrees to make a good faith effort to promote the Ebrarian Site to Institution's user base, by means Institution deems appropriate.
    - 4.2. Usage Restrictions.
      - 4.2.1. IP Authentication. Customer will offer access to the Ebrarian Site to Customer's patrons through IP authentication and will provide ebrary with all information necessary to implement such IP authentication. Customer may also be permitted to offer access to its patrons through other secure mechanisms (such as certain proxy servers or referring URLs) that meet ebrary's technical and security requirements, provided that Customer shall be solely responsible for their configuration and support.
      - 4.2.2. Terms of Service Binding on End Users. Customer and its patrons using the Ebrarian Site must at all times comply with the current Terms of Service and other legal notices then posted on the Site. Ebrary reserves the right to update such notices from time to time.
    - 4.3. Customer Support. 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 Ebrarian Site, including but not limited to questions about the plugin, viewing, searching, sorting, browsing, navigation and content. Vendor will provide Institution's designated customer service contacts with ongoing support consistent with ebrary's standard support policies. In the event that Institution receives any complaint about the Ebrarian Site, Institution will forward it to Vendor customer support within 24 hours, and will inform Vendor of any action taken or response made by Institution.
    - 4.4. Usage Data. ebrary will provide Institution with monthly usage reports summarizing the usage for the Ebrarian Site for the last one month reporting period.
5. Grant of License by ebrary. Subject to the terms and conditions of this Agreement, ebrary hereby grants to Institution a nonexclusive, royalty-free, worldwide license with no right to sublicense to use, reproduce, publicly display, publicly

perform, distribute and transmit the ebrary Brand Features on the Institution Website solely for the purposes of complying with its promotional and other obligations set forth in the Agreement. Any display of ebrary's Brand Features will comply with the brand usage guidelines communicated by ebrary in writing to Institution from time to time.

6. Confidentiality. ebrary and Institution hereby acknowledge that in the course of activities under this Agreement each of them may have access to non-public and proprietary information which relates to the other party's marketing, business, and technology (the "Confidential Information"). Each party agrees to: (a) preserve and protect the confidentiality of the other party's Confidential Information with the same degree of care it uses to protect its own Confidential Information of like nature, but in no event less than reasonable care; (b) refrain from using the other party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except to employees as is reasonably required in connection with the exercise of its rights and obligations under this Agreement. Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is: (i) already publicly known through no fault of the receiving party; (ii) discovered or created by the receiving party without reference to the Confidential Information of the disclosing party, as shown in records of the receiving party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party, or (d) required to be disclosed by law or court order. Moreover, any party hereto may disclose any Confidential Information hereunder to such party's agents, attorneys and other representatives or any court of competent jurisdiction or any other party empowered hereunder as reasonably required to resolve any dispute between the parties hereto. Each party will treat the terms of this Agreement as "Confidential Information."
7. Ownership.
  - 7.1. By Institution. As between Institution and ebrary, Institution will have and retain full and exclusive right, title and ownership interest in and to: (i) the Institution Brand Features, (ii), the Institution Website and (iv) any and all Intellectual Property Rights to each and all of the foregoing.
  - 7.2. By ebrary. As between ebrary and Institution, ebrary will have and retain full and exclusive right, title and ownership interest in and to: (i) the ebrary Brand Features, (ii) the ebrary Content (iii) the ebrary Site, (vi) any and all Intellectual Property Rights to each and all of the foregoing.
  - 7.3. Usage Data Associated With The Ebrarian Site. Each party will comply with the terms of its own privacy policy with respect to the use of the Ebrarian 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 Supplemental Order Form is approved by ebrary ("Effective Date") and to end on the last of the Subscription Dates specified in the Ebrarian 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, (c) each party will within 15 days return all assets (digital, proprietary or otherwise) belonging to the other, (d) without limiting the foregoing, both parties will immediately and permanently terminate their use of the Ebrarian Site and Institution will immediately and permanently terminate its use of all Links which reference "ebrary" or any derivations thereof, and (e) sections 6, 7, 8, 10, and 11 will survive.

9. Representation and Warranties.

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

9.2. No Additional Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1 ABOVE, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE FRAMED CO-BRANDED SITE, THE PARTIES' RESPECTIVE WEB SITES, OR RESPECTIVE CONTENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF ANY THIRD PARTY RIGHT.

10. Limitation of Liability. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM ANY PROVISION OF THIS AGREEMENT, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS. IN NO EVENT WILL EBRARY'S CUMULATIVE LIABILITY UNDER THIS AGREEMENT DURING ANY CALENDAR YEAR EXCEED THE FEES RECEIVED BY EBRARY UNDER THIS AGREEMENT DURING THAT CALENDAR YEAR. THESE LIMITATIONS ARE ESSENTIAL TO THIS AGREEMENT, ARE REFLECTED IN THE PRICING OF THE SERVICES PROVIDED, AND WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

11. Miscellaneous.

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

Address: 318 Cambridge Avenue  
Palo Alto, CA 94306-1505  
USA  
Phone:  
Fax:  
E-mail: salesnotice.ebrarian@ebrary.com

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

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

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

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

11.6. Entire Agreement. This Agreement together with its Exhibits (which are expressly incorporated herein) contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior and/or

contemporaneous agreements or understandings, written or oral, between the parties with respect to the subject matter hereof.

- 11.7. Dispute Resolution. In the unlikely event that a claim or dispute arises out of this agreement, or any of its provisions, the parties hereto agree to settle it by a mediator to be mutually agreed upon by the parties.
- 11.8. Amendment. This Agreement may not be amended or modified by the parties in any manner, except by an instrument in writing signed on behalf of each of the parties to which such amendment or modification applies by a duly authorized officer or representative.
- 11.9. Waiver. Neither party will be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event will not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.
- 11.10. Recovery of Costs and Expenses. If either party brings an action against the other party to enforce its rights under this Agreement, the prevailing party will be entitled to recover its costs and expenses, including, without limitation, attorneys' fees and costs incurred in connection with such action, including any appeal of such action.
- 11.11. Force Majeure. No party will be responsible for any failure to perform due to causes beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, shortages of transportation facilities, fuel, energy, or materials or failures of telecommunications or electrical power supplies. A party whose performance is affected by a force majeure condition will be excused from such performance to the extent required by the force majeure condition so long as such party takes all reasonable steps to avoid or remove such causes of nonperformance and immediately continues performance whenever and to the extent such causes are removed.
- 11.12. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts which taken together will be regarded as one and the same Agreement. Either party's facsimile signature will be deemed a binding acceptance of this Agreement by such party.