

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	NUNC PRO TUNC ASSIGNMENT
EFFECTIVE DATE:	11/14/2001

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
netLibrary, Inc.		11/14/2001	CORPORATION: DELAWARE

RECEIVING PARTY DATA

Name:	OCLC Online Computer Library Center, Inc.
Street Address:	6565 Kilgour Place
City:	Dublin
State/Country:	OHIO
Postal Code:	43017-3395
Entity Type:	CORPORATION: OHIO

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	2696191	E

CORRESPONDENCE DATA

Fax Number: (614)792-5536
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 614-792-5555
 Email: cscotney@standleyllp.com
 Correspondent Name: Cheryl S. Scotney
 Address Line 1: 6300 Riverside Drive
 Address Line 4: Dublin, OHIO 43017

ATTORNEY DOCKET NUMBER:	OCL 2155-092A
NAME OF SUBMITTER:	Cheryl S. Scotney
Signature:	/Cheryl S. Scotney/

CH \$40.00 2696191

Date:

03/11/2009

Total Attachments: 26

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made to be effective as of the 14th day of November, 2001, by and between netLibrary, Inc., a Delaware corporation, both as debtor and as debtor-in-possession ("Seller") in Case No. 01-26552 DEC in the United States Bankruptcy Court for the District of Colorado (the "Court"), and OCLC Online Computer Library Center, Incorporated, an Ohio nonprofit corporation ("Buyer");

WITNESSETH:

WHEREAS, Seller wishes to transfer certain of its assets, including selected executory contracts and all of the business related to such assets, to Buyer free and clear of any lien, claim and/or interest in such assets as provided under Sections 363 and 365 of the United States Bankruptcy Code (the "Bankruptcy Code") after obtaining an order approving such transfer from the Court for the Court in Case No. 01-26552 DEC (the "Case") in consideration and exchange for cash and the assumption of certain liabilities as herein provided; and

WHEREAS, Buyer wishes to acquire such assets and business of Seller after entry of such order in the Case and the expiration of the applicable appeal period, all as hereinafter more fully set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto mutually covenant and agree as follows:

ARTICLE I

ASSETS TO BE PURCHASED

Section 1.1 Description of Purchased Assets. On the terms and subject to the conditions herein expressed, Seller agrees to sell, convey, transfer, assign, set over and deliver to Buyer on the Closing Date (as defined in Section 3.3), and Buyer agrees to purchase and accept, all of the right, title and interest in and to the assets, properties and interests (except the Retained Assets described and defined in Section 1.2) then owned or operated by Seller and used or intended for use in the operation of the Acquired Business (as defined in this Section 1.1), real, personal or mixed, tangible and intangible, of every kind, nature and description, and wheresoever situate (and whether or not carried or reflected on the books of Seller), including, but not limited to, the following:

(i) all Capitalized and In-Process eBook Production and eBook Inventory (the terms "Capitalized and In-Process eBook Production" and "eBook Inventory" mean all assets of a nature required under generally accepted accounting principles to be reflected on the balance sheet of Seller under the category of "Capitalized and In-Process eBook Production" or "eBook Inventory," respectively, whether or not such assets are presently reflected on the balance sheet of Seller);

(ii) all equipment, furniture, fixtures, computers and computer related hardware, leasehold improvements and all fixed or tangible assets of a nature required under generally accepted accounting principles to be capitalized and reflected on the balance sheet of Seller under the category of "Property, Plant and Equipment," whether or not such assets are presently reflected on the balance sheet of Seller and including, without limitation, all items listed on Exhibit 1.1(ii) attached hereto and hereby made part hereof;

(iii) all intellectual property used, embodied in or reasonably necessary to permit the satisfactory operation of the Acquired Business as presently constituted that is owned or licensed (as licensor, licensee or assignee) by Seller in which Seller has a proprietary interest (collectively, the "Intellectual Property"), including: (A) all trade names (including the name "netLibrary, Inc." and all derivations thereof) and styles, logos and designs, trademarks and service marks, together with the goodwill of the business symbolized thereby and such registrations thereof and applications for registration as may exist (collectively, "Marks"); (B) all patents, patent applications and inventions and discoveries that may be patentable (collectively, "Patents"); (C) all registered and unregistered copyrights in both published works and unpublished works (collectively, "Copyrights"); (D) all computer software and software in development and subsequent versions thereof, including source code, object, executable or binary code, objects, comments, screens, user interfaces, report formats, templates, menus, buttons and icons and all files, data, materials, manuals, design notes and other items and documentation related thereto or associated therewith (collectively, "Software"); (E) all trade secrets, confidential or proprietary information, models, ratios, instructions, patterns, drawings, blueprints, plans, designs, specifications, descriptions of data, technical information, engineering procedures, designs, know-how and process technology (collectively, "Trade Secrets"); and (F) all rights in internet web sites and internet domain names presently used by Seller (collectively, "Net Names");

(iv) the right to telephone numbers listed on Exhibit 1.1(iv) attached hereto and hereby made part hereof;

(v) all personnel records of employees of Seller whom Buyer elects to employ;

(vi) all marketing studies, customer lists, appraisals, valuations, consulting studies, manuals, dealer and distributor lists and all other books, files, records and reports relating to the Purchased Assets (as defined in this Section 1.1);

(vii) all rights and benefits of or in favor of Seller resulting or arising from the contracts, purchase orders, sales orders, product warranty and services agreements, forward commitments for goods or services, contracts of insurance, leases of personal property, licenses, permits, beneficial interests in covenants not to compete or confidentiality covenants, or other agreements whatsoever which arise out of the operation of the Acquired Business and are identified by Buyer in writing before the hearing in the Case to approve the sale of the Purchased Assets, and which are assumed by Seller and assigned to Buyer at Closing (as defined in Section 3.1) in accordance with Section 365 of the Bankruptcy Code (collectively, the "Assumed Contracts"). Identification of the Assumed Contracts as provided hereby shall be in sufficient time before the hearing to approve the sale of the Purchased Assets so as to allow Seller to

disclose the Cure Amounts (as defined in Section 2.1(i)), to provide notification of such Cure Amounts to the parties to the Assumed Contracts and to hold such hearing.

(viii) all causes of action of Seller or any successor to Seller against any party to an Assumed Contract, whether such causes of action are based upon state or federal statutory or common law, excluding, however, claims based upon Sections 544, 545, 547, 548, 549, 550 and 553(b) of the Bankruptcy Code;

(ix) any insurance proceeds, and any rights thereto, paid before the Closing Date or payable after the Closing Date to Seller pursuant to any contract of insurance as a result of damage to or loss of any of the assets owned or operated by Seller that are to be, or in the absence of loss would otherwise have been, sold to Buyer hereunder, or damage or loss with respect to, or interruption of, the operation of the Acquired Business, the purpose of this provision being to assure that Buyer receives the insurance proceeds otherwise payable to Seller on account of any damage or loss to the assets being purchased by Buyer or damage or loss to or interruption of the operations of the Acquired Business subsequent to the Closing Date;

(x) all deposits, prepaid advertising, other prepaid items including without limitation insurance premiums, refunds, deposits, lease deposits and deferred charges except for any deposits made by the debtor-in-possession after the entry of the order for relief in the Case;

(xi) all stationery and other imprinted material and office supplies, catalogs, circulars, art work, advertising material, business records (or copies thereof), the right to receive mail and other communications and shipments of merchandise addressed to Seller;

(xii) Seller's workers compensation account balance and unemployment experience in Colorado to the extent permitted under the laws of the State of Colorado;

(xiii) all cash on hand and in banks as of the Closing Date (excluding any cash delivered as part of the Purchase Price);

(xiv) all accounts, rights to receive payment and notes receivable of Seller, including, without limitation, receivables from employees of Seller, existing at or arising after the Closing Date, and the proceeds of any thereof;

(xv) all other interests to which Seller has any right by ownership, use or otherwise, or in which Seller has a conveyable or assignable interest on the Closing Date, except the Retained Assets described and defined in Section 1.2;

(xvi) proceeds and refunds of any of the above, if applicable; and

(xvii) governmental permits, registrations and licenses related to the assets being purchased to the extent transferrable.

The assets, properties and interests of Seller to be sold, conveyed, transferred, assigned, set over and delivered to Buyer at the Closing are hereinafter sometimes collectively

called the "Purchased Assets" and the business conducted by Seller with the Purchased Assets is sometimes hereinafter collectively called the "Acquired Business."

Section 1.2 Retained Assets. On the Closing Date, Seller shall retain the following assets used in the conduct of its business (herein referred to as the "Retained Assets"):

- (i) all real property leases, including but not limited to the leases for 3065 Center Green Drive and 3080, 3085 and 3090 Center Green Drive;
- (ii) all contracts, purchase orders, sales orders, leases, licenses and agreements not included in the Assumed Contracts;
- (iii) records and reports that do not relate to the Purchased Assets, the Acquired Business or the employees of Seller whom the Buyer elects to employ;
- (iv) shares of capital stock of Seller, including shares held by Seller as treasury shares;
- (v) claims based upon Sections 544, 545, 547, 548, 549, 550 and 553(b) of the Bankruptcy Code, except to the extent assigned to Buyer as collateral under that certain Term Promissory Note made by Seller as "Borrower" in favor of Buyer as "Lender" in the original principal amount of \$2.4 million (the "Note"); and
- (vi) its corporate seal, minute books and stock record books.

Section 1.3 No Assumption of Liabilities. At the Closing, Buyer shall assume only such debts, obligations and liabilities of Seller as are set forth in Section 1.4 below. Except for Assumed Liabilities, as defined in Section 1.4, it is expressly understood and agreed that Buyer shall not be liable for any of the debts, obligations or liabilities of Seller, whether known or unknown, contingent, liquidated, accrued or otherwise of any kind or nature including, without limitation, any of the following:

- (i) any liability under the Worker Adjustment and Retraining Notification Act (the "WARN Act") or any similar state or local law;
- (ii) any commitments, contracts for service and purchase orders for goods entered into or placed by Seller relating to the Acquired Business on or before the Closing Date;
- (iii) the performance of any of Seller's warranty service obligations, express or implied, arising out of the sale of goods or services by Seller on or before the Closing Date;
- (iv) any debts, liabilities and obligations of Seller under insurance, lease, rental and service contracts including, but not limited to, liabilities and obligations arising by virtue of leases, contracts of insurance and other executory contracts;

(v) any severance debts, obligations and liabilities of Seller arising as a result of Seller's and/or Buyer's termination of employment of any person, whether before or after the Closing Date;

(vi) any debts, liabilities and obligations of Seller under any collective bargaining agreements to which Seller is a party, or otherwise arising out of the employment or former employment of any employee, including obligations for any fringe benefits, vacation benefits, accrued salary, or any other accrued amounts or under any stock option, pension, retirement, profit sharing, deferred compensation, bonus or other incentive plan, any medical, vision, dental or other health plan, any life insurance plan or any other employee benefit plan (as that term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (hereinafter referred to as ("ERISA")), or with respect to which the Seller is a party as of the Closing Date or is bound and under which employees of the Seller are, as of the Closing Date, eligible to participate or derive a benefit;

(vii) any debts, liabilities and obligations for product liability claims that relate to any products manufactured, sold or shipped by the Seller, or its predecessors, prior to the Closing Date;

(viii) any debts, obligations and liabilities of the Seller arising from any claims or lawsuits;

(ix) any debts, obligations and liabilities of Seller for environmental matters, of whatever kind or nature, known or unknown, whether currently existing, or acquired or arising hereafter, as a result of or in any way connected with, based upon, or arising out of, Seller's use, maintenance, ownership and operation of the Purchased Assets or the Acquired Business, or any of them, including, but not limited to, physical and environmental conditions with respect to soil, surface waters, ground waters, stream sediments, air, and any other environmental conditions on and off site of the Purchased Assets to be conveyed as contemplated herein, whether resulting from claims and demands of Buyer or third parties, including, without limitation, governmental entities, and further including, but not limited to, all debts, obligations or liabilities arising under the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time, including regulations promulgated with respect thereto, or similar state statutes, laws or regulations now in existence or hereafter enacted;

(x) liabilities of Seller to its securityholders arising out of their relationship as such securityholders;

(xi) liabilities, if any, incurred by Seller as a result of transactions which may be entered into in violation of the terms of this Agreement;

(xii) liabilities for any federal, state or local income tax, employee income tax withholding, social security and unemployment taxes, or other tax based upon or measured by income or gain that may be asserted against Seller (A) in respect of the operations of the Acquired Business through the Closing Date; and (B) as a result of the sale and delivery of the Purchased Assets;

(xiii) any liability or obligation to maintain, protect or preserve any of Seller's records; and

(xiv) the expenses of Seller incurred in connection with the negotiation and consummation of the sale transactions contemplated by this Agreement, including, without limitation, the fees and expenses of Seller's counsel.

Section 1.4 Description of Assumed Liabilities. On the terms and subject to the conditions of this Agreement, Buyer agrees to assume as of the Closing Date, to pay and discharge in due course thereafter, and otherwise to perform in accordance with their requirements, the following, and only the following, debts, liabilities and obligations of Seller to the extent such debts, liabilities, obligations and duties to perform arise after the Closing Date (the "Assumed Liabilities"):

(i) except for the Cure Amount, obligations accruing after the Closing Date with respect to any Assumed Contracts; and

(ii) any commitments, obligations or liabilities for services yet to be performed and purchase orders for goods yet to be delivered entered into or placed by Seller in the ordinary course of business relating to the Business which are accepted by Buyer in writing at Closing.

ARTICLE II

PURCHASE PRICE AND PAYMENT

Section 2.1 Purchase Price and Payment. The term "Purchase Price" shall mean an amount equal to \$10 million less the aggregate of:

(i) any amount paid or agreed to be paid by Buyer and required to be made pursuant to Section 365(b) of the Bankruptcy Code, whether necessary to cure defaults or otherwise allow the assumption and assignment of the Assumed Contracts (the "Cure Amount");

(ii) the amount of any customer deposits and prepayments relating to Assumed Liabilities;

(iii) the amount payable under Section 10.3 of this Agreement; and

(iv) an amount equal to the Retention Pool (as defined in Section 10.4) as approved by the Court.

Buyer shall be entitled to credit against the Purchase Price the aggregate unpaid principal amount of all advances made by the Buyer to Seller under the Note, together with interest thereon, in accordance with the terms of the Note. Buyer shall pay the Purchase Price at Closing as provided in Section 3.5.

Section 2.2 Assumption of Assumed Liabilities. At Closing, Buyer shall assume the Assumed Liabilities.

Section 2.3 Allocation of Purchase Price. The Parties to this Agreement hereby agree to allocate the Purchase Price among the Purchased Assets in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder. The parties will each complete and file Form 8594, Asset Acquisition Statement under Section 1060 (the "Form"), in a manner that is consistent with the foregoing allocation, and cooperate in providing information necessary to complete the Form. If the Purchase Price is adjusted subsequent to the filing of the Form, the adjustment will be allocated in the manner required by applicable regulations and the Parties will file a supplemental statement to the Form in accordance with the instructions thereto. In addition: (i) all federal, state and local tax returns, including any schedules or exhibits thereto, will reflect, and in all respects be consistent with, the agreed upon allocation, and (ii) no Party will take any action or maintain any position inconsistent with such agreed upon allocation.

ARTICLE III

THE CLOSING

Section 3.1 The Closing. The closing ("Closing") shall take place at the offices of Buyer's counsel, Sherman & Howard L.L.C., 633 Seventeenth Street, Suite 3000, Denver, Colorado, or at such other place designated by the Buyer at 9:00 a.m., local time, on the next business day after the expiration of the appeal time of the Order, provided there has been no appeal filed to the Order (or, if filed, such appeal has been dismissed), unless the parties mutually agree upon some other date in writing.

Section 3.2 Changes. Agreements to change or extend times and places permitted by Section 3.1 may be made by an instrument or instruments in writing signed by an officer of Buyer and by an officer of Seller.

Section 3.3 Closing Date. For purposes of this Agreement, the term "Closing Date" shall mean the date and time on which the Closing shall occur which shall be deemed to be the later of (i) 12:01 a.m. on the day of Closing or (ii) the time the Order is executed by the Judge in the Case.

Section 3.4 Deliveries by Seller. At the Closing, Seller shall deliver to Buyer, in addition to all other items specified elsewhere in this Agreement, the following:

(i) such instruments of sale, conveyance, transfer, assignment, endorsement, direction or authorization as will be required or as may be desirable, in the opinion of Buyer and its counsel, to vest in Buyer, its successors and assigns, all right, title and interest (which title and interest shall be good and marketable except to the extent disclosed in Section 4.2 and ` 4.2 hereof), in and to the Purchased Assets (including but not limited to, each agreement identified by Buyer in writing in accordance with Section 1.1(vii) to be included in the Assumed Contracts), free and clear of all liabilities, mortgages, pledges, liens, encumbrances, equities, charges, conditional sale or other title retention agreements, assessments, covenants,

restrictions, reservations, commitments, obligations, or other burdens or encumbrances of any nature whatsoever except as disclosed in Section 4.2 or Exhibit 4.2 or in any exhibit hereto;

(ii) all of the files, documents, papers, agreements, formulae, books of account and records pertaining to the Purchased Assets and the Acquired Business;

(iii) a certificate executed by the President of Seller to the effect that the conditions set forth in Sections 9.1 and 9.2 hereof have been satisfied and reaffirming the correctness of the warranties and representations as of the Closing Date;

(iv) actual possession and operating control of the Purchased Assets;

(v) assignments for all funds on deposit with banks or other persons;

(vi) certificates of change of name of Seller duly signed in form sufficient to be accepted for filing in the office of the Secretary of State of the State of Delaware;

(vii) copies of the Seller's certificate of incorporation, as amended, certified by the Delaware Secretary of State, good standing certificates from the States of Delaware, Colorado and all other jurisdictions where the Seller is required to qualify to do business, and the Seller's by-laws, as amended, certified by the Secretary of the Seller;

(viii) certified copies of resolutions constituting the corporate actions referenced in Section 4.7(ii) below; and

(ix) all agreements, documents, consents, approvals, orders and other instruments referenced in Article IX below.

Section 3.5 Deliveries by Buyer. At Closing, Buyer shall deliver to Seller, or to such other person or persons as shall be designated in the Order (as defined in Section 5.11), by wire transfer in immediately available funds, the Purchase Price less the aggregate unpaid principal amount of all advances made by the Buyer to Seller under the Note, together with interest thereon, as specified in Section 2.1.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby warrants and represents to, and covenants with, Buyer and its successors and assigns (which warranties, representations and covenants of Seller set forth in this Agreement or contained in any exhibit hereto, or in any certificate or other document required to be delivered to Buyer by Seller pursuant to this Agreement shall survive the Closing Date until the expiration of the applicable statute of limitations) as follows:

Section 4.1 Transfer of Essential Assets. Except for the Retained Assets, there is no material asset other than the Purchased Assets used by Seller in the conduct of the Acquired Business.

Section 4.2 Good Title. Except as disclosed on Exhibit 4.2 attached hereto and hereby made part hereof, at the Closing the Purchased Assets shall be transferred, conveyed and assigned to Buyer free and clear and shall be subject to no mortgage, pledge, lien, security interest, lease, conditional sale or other title retention agreement, encumbrance or other charge of any kind whatsoever.

Section 4.3 No Adverse Change. Except as otherwise disclosed in this Agreement, since November 12, 2001, no event or action has occurred which would materially interfere with the value of the Purchased Assets or Buyer's ability to continue to use the Purchased Assets for the operation of the Acquired Business as it is currently conducted (an "Adverse Change").

Section 4.4 No Litigation. Except for the Case and as set forth in Exhibit 4.4, to Seller's knowledge there is no litigation at law or in equity, no arbitration proceeding, no proceeding before any commission or other administrative or regulatory authority and no pending or threatened governmental investigation or change in the environmental, zoning or building laws, regulations or ordinances by or against the Seller, the Purchased Assets or the Acquired Business which would materially and adversely affect the Seller, the Purchased Assets or the Acquired Business. Seller shall provide notice of this Agreement and the transactions contemplated hereby to all parties listed on Exhibit 4.4 and/or on any entity that may claim an interest in the Purchased Assets.

Section 4.5 Labor Law Matters. Seller has complied in all respects with all federal and state legal requirements relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining and other requirements under , the payment of social security and similar taxes and occupational safety and health.

Section 4.6 No Violation. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not:

(i) violate, conflict with, result in a breach of or default under any of the terms, provisions or conditions of the certificate of incorporation or by-laws of the Seller or any statute, rule, regulation or court or administrative order or process, except for terms, provisions or conditions that are superceded by the provisions and procedures of the Bankruptcy Code;

(ii) result in the creation of any lien, charge or encumbrance upon any of the Purchased Assets, except in connection with the Note; or

(iii) to Seller's knowledge, violate, conflict with, result in a breach of or default under any of the terms, provisions or conditions of any contract which violation or conflict could cause Buyer to incur liability as a result thereof.

Section 4.7 Authority, Approval, Enforceability.

(i) Seller has, or will have after obtaining the Order, all necessary authority to execute and deliver this Agreement and all other documents and instruments

contemplated herein to which it will be a party and to perform its obligations hereunder and thereunder.

(ii) Seller has taken, or by the Closing Date will have taken, all requisite corporate and other action to approve this Agreement and each of the other agreements, documents and instruments to be executed by Seller on or before the Closing Date, and the transactions contemplated hereby and thereby, and there shall have been delivered at Closing to Buyer certified copies of the resolutions duly adopted in connection therewith.

(iii) This Agreement and each of the other agreements, documents and instruments to be executed by Seller on or before the Closing Date, have been or will be duly executed and delivered by Seller and, subject to obtaining the Order, will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with their respective terms.

Section 4.8 Confidential Material. Seller will deliver to Buyer at the Closing all documents and other materials and all copies thereof owned or used by Seller reasonably believed by Seller to be both confidential and reasonably appropriate for the operation of the Acquired Business conducted by Seller through use of the Purchased Assets.

Section 4.9 Organization. Seller is a corporation, duly organized, validly existing and in good standing under the laws of Delaware and has all necessary corporate power and authority to enter into this Agreement and the transactions contemplated hereby. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification Exhibit 4.9 contains a complete and accurate list of each jurisdiction in which Seller is qualified to do business as a foreign corporation.

Section 4.10 No Broker. No broker or finder has acted for Seller in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on agreements, arrangements, or understandings made by or on behalf of Seller.

Section 4.11 No Default. Seller is not in default with respect to any order, writ, injunction or decree of any federal, state, local or foreign court, department, agency or instrumentality. Seller possesses all permits, licenses, orders and approvals of all federal, state or local governmental or regulatory bodies required in order to conduct its business as currently conducted. Except as set forth on Exhibit 4.11, all such permits, licenses, orders and approvals are held by Seller and are in full force and effect, and no cancellation of any of them is threatened and none of such permits, licenses, orders or approvals will be adversely affected by the consummation of the transactions herein contemplated.

Section 4.12 Intellectual Property.

(i) Exhibit 4.12(i) contains a complete and accurate list and summary description, including any royalties paid or received by Seller, and Seller has delivered to Buyer accurate and complete copies, of all Assumed Contracts relating to the Intellectual Property,

except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available software programs with a value of less than \$100 under which Seller is the licensee.

(ii) Except as set forth on Exhibit 4.12(ii), the Intellectual Property is sufficient for the operation of the Acquired Business as it is currently conducted. Seller is the sole and exclusive owner or licensee of all right, title and interest in and to all of the Intellectual Property, free and clear of all liens or encumbrances (other than liens and encumbrances described on Exhibit 4.2) and has the right to use without payment to any person all of the Intellectual Property, other than in respect of licenses listed on Exhibit 4.12(i).

(iii) Except as set forth on Exhibit 4.12(iii), all former and current employees of Seller have executed written contracts with Seller that assign to Seller all rights to any inventions, improvements, discoveries or information relating to the business of Seller.

(iv) Exhibit 4.12(iv) contains a complete and accurate list and summary description of all Patents. All of the issued Patents are currently in compliance with formal legal requirements (including payment of filing, examination and maintenance fees and proofs of working or use), are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date. No Patent has been or is now involved in any interference, reissue, reexamination, or opposition proceeding. To Seller's knowledge, there is no potentially interfering patent or patent application of any other person. Except as set forth in 4.12 (iv), (A) no Patent is infringed or, to Seller's knowledge, has been challenged or threatened in any way and (B) none of the products produced or sold, nor any process or know-how used, by Seller infringes or is alleged to infringe any patent or other proprietary right of any other person.

(v) Exhibit 4.12(v) contains a complete and accurate list and summary description of all Marks. Except as set forth on Exhibit 4.12(v), all Marks have been registered with the United States Patent and Trademark Office, are currently in compliance with all formal legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date. No Mark has been or is now involved in any opposition, invalidation or cancellation proceeding and, to Seller's knowledge, no such action is threatened with respect to any of the Marks. To Seller's knowledge, except as set forth on Exhibit 4.12(v), there is no potentially interfering trademark or trademark application of any other person and no Mark is infringed, challenged or threatened in any way. None of the Marks used by Seller infringes or is alleged to infringe any trade name, trademark or service mark of any other person. All products and materials containing a Mark bear the proper federal registration notice where permitted by law.

(vi) Exhibit 4.12(vi) contains a complete and accurate list and summary description of all Copyrights. All of the registered Copyrights are currently in compliance with formal legal requirements, are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date. No Copyright is infringed or, to Seller's knowledge, has been challenged or threatened in any way. None of the subject matter of any of the Copyrights infringes or is alleged to infringe any copyright of any

other person or is a derivative work based upon the work of any other person. All works encompassed by the Copyrights have been marked with the proper copyright notice.

(vii) With respect to each Trade Secret, the documentation relating to such Trade Secret is, consistent with industry standards, current, accurate and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual. Seller has taken all reasonable precautions to protect the secrecy, confidentiality and value of all Trade Secrets (including the enforcement by Seller of a policy requiring each employee or contractor to execute proprietary information and confidentiality agreements substantially in Seller's standard form, and all current and former employees and contractors of Seller have executed such an agreement). Seller has good title to and an absolute right to use the Trade Secrets. The Trade Secrets are not part of the public knowledge or literature and, to Seller's knowledge, have not been used, divulged or appropriated either for the benefit of any Person (other than Seller) or to the detriment of Seller. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way or infringes any intellectual property right of any other person.

(viii) Exhibit 4.12(viii) contains a complete and accurate list and summary description of all Net Names. All Net Names have been registered in the name of Seller and are in compliance with all formal legal requirements. No Net Name has been or is now involved in any dispute, opposition, invalidation or cancellation proceeding and, to Seller's knowledge, no such action is threatened with respect to any Net Name. To Seller's knowledge, there is no domain name application pending of any other person which would or would potentially interfere with or infringe any Net Name. No Net Name is infringed or, to Seller's knowledge, has been challenged, interfered with or threatened in any way. No Net Name infringes, interferes with or is alleged to interfere with or infringe the trademark, copyright or domain name of any other person.

(ix) There are no significant programming errors or material defects in the Software. Except as set forth on Exhibit 4.12 (ix), there has been no disclosure of the source code of the Software to any person other than employees of Seller. Seller is not under any obligation to disclose source code or other proprietary information included in or related to the Software to any person. Seller has not deposited the source code into any source code escrows or similar arrangements.

Section 4.13 Subsidiaries. Seller has no subsidiary and, except as disclosed in Exhibit 4.13, does not own any shares of capital stock or other securities of any other person.

Section 4.14 Environmental Matters.

(i) To Seller's knowledge, there is not now, nor has there ever been, any disposal, release or threatened release of any Hazardous Material (as defined below) on, from or under properties now or ever owned or leased by or to Seller (the "Properties"). To Seller's knowledge, there has not been generated by or on behalf of Seller or any former subsidiary (while owned by Seller) any Hazardous Material. To Seller's knowledge, no Hazardous Material has been disposed of or allowed to be disposed of on or off any of the Properties which may give rise to a clean-up responsibility, personal injury liability or property

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damage claim against Seller being named a potentially responsible party for any such clean-up costs, personal injuries or property damage or create any cause of action by any third party against Seller. For purposes of this subsection, the terms “disposal,” “release,” and “threatened release” shall have the definitions assigned thereto by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), and the term “Hazardous Material” means any hazardous or toxic substance, material or waste or pollutants, contaminants, petroleum or petroleum products, or asbestos containing material which is or becomes regulated by any authority in any jurisdiction in which any of the Properties is located. The term “Hazardous Material” includes without limitation any material or substance which is (i) defined as a “hazardous waste” or a “hazardous substance” under applicable Law, (ii) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act, (iii) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, or (iv) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

(ii) To Seller’s knowledge, none of the Properties is (or, with respect to past Properties was at the time of disposition) in violation of any law, ordinance, rule or regulation (with respect to past Properties, laws in effect at the time of disposition) relating to industrial hygiene, pollution or to the environmental conditions on, under or about such Properties, including without limitation soil and ground water condition and there are (or at the time of disposition were) no underground tanks, or related piping, conduits or related structures. To Seller’s knowledge, neither Seller nor any third party used, generated, manufactured or stored on, under or about such Properties or transported to or from such Properties any Hazardous Material and there has been no litigation brought or threatened against Seller or any settlements reached by Seller with any third party or third parties alleging, or investigations by Seller, nor any third party concerning, the presence, disposal, release or threatened release of any Hazardous Material on, from or under any of such Properties.

ARTICLE V

PRE-CLOSING COVENANTS OF SELLER

Seller covenants and agrees with Buyer that between the date hereof and the Closing Date:

Section 5.1 Inspection. At all reasonable times Seller shall make its facilities, inventories, books of account and records, and all market studies and reports, consultant studies and reports, manufacturer representatives agreements, customer lists, appraisals, valuations, and other material or information in the possession of Seller relating to the Acquired Business available for examination and inspection by Buyer and its agents. No such examination, inspection or audit by Buyer or its agents shall in any way affect, diminish or terminate any of the representations, warranties or covenants of Seller herein expressed. Seller shall immediately inform Buyer of any Adverse Change of which Seller becomes aware at any time prior to Closing.

Section 5.2 Preservation of Business. With respect to the Acquired Business, Seller will, except as otherwise permitted herein, use its commercially reasonable best efforts (taking into account the financial resources available to Seller) to preserve its business organization intact, to keep available to Buyer the services of its present employees, sales representatives and agents and to preserve its respective relationships with suppliers, customers and others having business relationships with it.

Section 5.3 Defaults; Consents; Etc.

(i) Within three business days after Seller has received from Buyer the list of Assumed Contracts contemplated by Section 1.1(vii), Seller shall disclose to Buyer in writing (A) all defaults under, or breaches of the terms or conditions of, any Assumed Contract, (B) whether or not any event has occurred, or as of the Closing Date will have occurred, which, after the giving of notice, or the lapse of time, or both would constitute a material default under or breach of any of such Assumed Contract, (C) whether or not there are any outstanding or, to Seller's knowledge, any threatened disputes or disagreements with respect to any such Assumed Contract, (D) all third party consents required to assign the Assumed Contracts to Buyer and (E) the Cure Amount. Promptly thereafter, Seller shall provide notification to the other party or parties to each Assumed Contract as to the Cure Amount relative to such party's contract and, prior to the Closing, shall furnish to Buyer written verification from each such third party concurring with such Cure Amount.

(ii) In each case where any Purchased Assets are not transferable or assignable to Buyer, or cannot be purchased or assumed by Buyer pursuant to this Agreement, without the consent of another party, Seller will, to the extent reasonable, cooperate and assist the Buyer in obtaining, prior to the Closing Date, all such consents of such other party.

(iii) In each case in which Buyer identifies issues that must be resolved as a condition precedent to Closing or to any contract, purchase order, sales order, lease, license or other agreement being included in the Assumed Contracts, Seller will, to the extent reasonable, cooperate and assist the Buyer in eliminating or resolving those issues prior to the Closing Date.

Section 5.4 Ordinary Course of Business. The business of Seller will be conducted only in the ordinary course as reasonably expected of a Chapter 11 debtor. No assets of Seller shall be transferred or sold without the consent of Buyer and required approvals of the Court, other than inventory sold in the ordinary course of business. All utility suppliers shall be paid in full through the Closing Date.

Section 5.5 Insurance. Seller will continue to maintain in full force and effect all policies of insurance now in effect, or renewals thereof or equivalent policies. Seller will promptly notify Buyer in writing of any changes in such insurance coverage occurring prior to the Closing Date.

Section 5.6 Acquisition. Seller will not merge or consolidate with any other corporation or acquire all or substantially all of the business or assets of any other person, firm, association, or corporation.

Section 5.7 Existing Agreements. Seller will not knowingly do or omit to do any act which will cause a breach of any contract, agreement, obligation, lease, license or commitment of Seller.

Section 5.8 Cooperation of Agents. Seller will instruct its auditors, employees, and agents to allow Buyer and its agents full access to any and all workpapers and to confer with any and all persons in connection with Buyer's investigation of Seller and the Acquired Business.

Section 5.9 Notification of Buyer. Seller will promptly notify Buyer in writing of any threatened lawsuit, claim or any adverse change or any projected or threatened adverse change in its financial position.

Section 5.10 Maintenance of Books; Compliance with Law. The Seller will maintain its books, accounts, and records in the usual manner on a basis consistent with prior years. The Seller will duly comply in all material respects with all laws and decrees applicable to it and to the conduct of its business.

Section 5.11 Bankruptcy Court Approval. Seller shall use its best efforts to obtain a final order or orders of the Court, (i) approving the sale of the Purchased Assets to Buyer in accordance with the terms and conditions of this Agreement, including but not limited to, the Purchased Assets being free and clear of all liens, claims and encumbrances and a finding that Buyer has proceeded in good faith and is entitled to the protections afforded by Section 363(m) of the Bankruptcy Code (the "Sale Order"), (ii) authorizing the Seller to assume and assign to Buyer the Assumed Contracts (the "Assumption/Assignment Order") and (iii) authorizing Seller to reject any executory contracts identified by Buyer that are not Assumed Contracts (the "Rejection Order") as soon as practicable. The Sale Order, Assumption/Assignment Order and Rejection Order (sometimes, collectively, the "Order") shall be in form and substance reasonably satisfactory to Buyer. In addition, Seller will use its best efforts to obtain a final order or orders of the Court approving the Note and the Agreement on Breakup Fees, Expense Reimbursement, Non-Solicitation and Bidding Procedures (the "Bid Procedures Agreement") entered into between Buyer and Seller in form and substance reasonably satisfactory to Buyer.

Section 5.12 Notice. Seller shall provide such notices of the transaction contemplated by this Agreement as are required by the Bankruptcy Code or applicable Rules of Bankruptcy Procedure to all creditors and equity security holders of Seller.

ARTICLE VI

POST-CLOSING COVENANTS OF SELLER

Seller covenants and agrees as follows:

Section 6.1 Change of Name. On the Closing Date, Seller will amend its certificate of incorporation so as to change its corporate name and will thereafter cooperate with Buyer in making its present corporate name available to Buyer in each state in which Seller

transacts, or has transacted, business, and Seller shall cease to use the name netLibrary, Inc. and all derivations thereof except as necessary to reference the former name of the debtor in the style of the Case and will thereafter cooperate with Buyer in making such name available to Buyer.

Section 6.2 Further Assurances. Upon the reasonable request of Buyer at any time and from time to time after the Closing, Seller will forthwith execute and deliver such further instruments of assignment, transfer, conveyance, endorsement, direction or authorization and do all things necessary or proper, as Buyer or its counsel may reasonably request, in order to vest, perfect or confirm, of record or otherwise, the right, title and interest of Buyer, its successors and assigns, in and to the Purchased Assets or otherwise to carry out the purposes of this Agreement.

Section 6.3 Collection of Accounts Receivable. After the Closing Date, Seller will promptly remit and deliver to Buyer all mail and payments addressed to Seller pertaining to accounts receivable purchased by Buyer.

Section 6.4 Customer And Other Business Relationships. After the Closing, Seller will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Seller existing prior to the Closing and relating to the business to be operated by Buyer after the Closing, including relationships with lessors, employees, regulatory authorities, licensors, customers, suppliers and others, and Seller will satisfy the liabilities not assumed by Buyer in a manner that is not detrimental to any of such relationships. Seller will refer to Buyer all inquiries relating to such business. Neither Seller nor any of its officers, employees, agents or shareholders shall take any action that would tend to diminish the value of the Purchased Assets after the Closing or that would interfere with the business of Buyer to be engaged in after the Closing, including disparaging the name or business of Buyer.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer warrants and represents to and covenants with Seller as follows:

Section 7.1 Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of Ohio and has all necessary corporate power and authority to perform this Agreement and the transactions contemplated hereby.

Section 7.2 Approvals. On or before the Closing Date, Buyer will have taken all requisite corporate action to approve the execution and delivery of this Agreement and the performance of the transactions contemplated by this Agreement, and there shall have been delivered at the Closing to Seller certified copies of the resolutions duly adopted in connection therewith. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not violate, conflict with or result in a breach of or default under any of the terms, provisions or conditions of the articles of incorporation or code of regulations of Buyer or any statute, regulation or any court or administrative order or process, or any agreement or instrument to which Buyer is a party or by which it, or its properties

or assets is bound or result in the creation of any lien, charge or encumbrance upon any of the assets of Buyer under any of the foregoing.

ARTICLE VIII

COVENANTS OF BUYER

Section 8.1 Consummation of Transaction. Buyer agrees that prior to the Closing Date, it shall use its best efforts to cause the sale contemplated by this Agreement to be consummated

Section 8.2 Access to Records. After the Closing, Buyer will afford to Seller, its counsel and accountants, during normal business hours, reasonable access to the books and records relating to the Acquired Business in Buyer's possession with respect to periods prior to Closing to the extent reasonably required by Seller. If Buyer elects to discard any of such records Buyer shall give notice to Seller of its election to do so (a "Records Notice") and Buyer may discard such records unless Seller, within thirty (30) days of receipt of a Records Notice, gives Buyer notice of Seller's election to obtain such records, which, in such case, shall be delivered to Seller.

ARTICLE IX

CONDITIONS TO CLOSING APPLICABLE TO BUYER

The obligations of Buyer hereunder (including the obligation of Buyer to close the transactions and consummate the purchase herein contemplated) are subject to the following conditions precedent, any of which may be waived in whole or in part by Buyer:

Section 9.1 Correctness of Warranties. The warranties and representations made by Seller herein or in any exhibit or list or information required to be delivered pursuant hereto shall be true and correct in all material respects on and as of the Closing Date with the same effect as if such warranties and representations had been made on and as of the Closing Date and Seller shall have, in all material respects, performed and complied with all agreements, covenants and conditions on its part required to be performed or complied with on or prior to the Closing Date and Seller shall have tendered delivery of all documents, instruments and other things on its part required to be delivered at the Closing.

Section 9.2 No Proceedings. No proceeding or formal investigation shall have been commenced or threatened by any governmental or regulatory agency or by any other person or entity which questions the validity or legality of any of the transactions contemplated by this Agreement.

Section 9.3 Satisfaction of Buyer and its Counsel. All proceedings to be taken in connection with the consummation of the transactions contemplated by this Agreement, and all documents incident thereto, shall be reasonably satisfactory in form and substance to Buyer and its counsel, and Buyer and its counsel shall have received copies of such documents as its

counsel may reasonably request in connection with said transactions. Buyer shall have received, at its own expense, such legal opinions or other evidence, in form and substance satisfactory to it and its counsel, as it may deem necessary to establish that:

(i) as of the Closing Date, the title of Seller to all Purchased Assets that it respectively purports to own is as represented in Section 4.2, subject only to the exceptions set forth herein; and

(ii) the instruments of conveyance, transfer, and assignment delivered to Buyer at the Closing are valid in accordance with their terms, proper in form and substance to accomplish their intended purpose, and effectively vest in Buyer good, indefeasible, and marketable title to the Purchased Assets, subject only to the exceptions set forth in Exhibit 4.2.

Section 9.4 Consents. For each Assumed Contract, property or other material right or commitment of Seller which is to be purchased by Buyer which is not transferable or assignable to Buyer or cannot be purchased without the written consent of another party to such transfer and assignment to the Buyer, Buyer shall have obtained the written consent of such other party.

Section 9.5 Receipt of Documents. All documents to be delivered by or on behalf of Seller to Buyer under this Agreement shall have been so delivered within the times specified herein, if any, prior to or at Closing.

Section 9.6 Bankruptcy Court Approval. Seller shall have obtained, upon hearing after appropriate notice, a Sale Order, in form and substance reasonably satisfactory to Buyer, approving the execution, delivery and performance of this Agreement, and the applicable appeal time shall have expired without the filing of any appeal (or, if filed, such appeal has been dismissed) of the Sale Order.

Section 9.7 No Successor Liability. Buyer shall have satisfied itself that it will have no material liability as a successor in interest to Seller with respect to any actions or inaction or agreements of Seller undertaken prior to Closing.

Section 9.8 Completion and Satisfaction of Due Diligence Investigation. Buyer shall not have given notice on or before the date set for Closing, that Buyer is not reasonably satisfied, as determined by Buyer in its sole discretion, with the results of its investigation of the business and affairs of Seller.

Section 9.9 Repayment of Loans and Advances. At Closing, Buyer shall have received repayment in full (or credit against the Purchase Price) of one hundred percent (100%) of the then outstanding unpaid balance on any post-petition loans or advances made by Buyer to Seller as debtor-in-possession (or made to third parties on behalf of Seller) after the entry of the order for relief in the Case.

Section 9.10 No Losses. After September 30, 2001, Seller shall not have sustained any loss on account of fire, flood, accident or other calamity of such character as to interfere materially with the continued operation of the Acquired Business, regardless of whether or not such loss was insured against, nor any losses in excess of \$10,000 in the aggregate (with

the exception of operating losses incurred in the ordinary course of business) not covered by insurance.

Section 9.11 No Untrue Statements. Neither this Agreement, nor any certificate, exhibit, or other instrument or list or information required to be furnished by Seller pursuant to this Agreement, shall have contained any untrue statement of a material fact or shall have omitted to state any material fact necessary in order to make the statements contained herein or therein not misleading.

Section 9.12 Claims. Seller will have, on or before the Closing, given Buyer notice of all actual or threatened claims against Seller of which Seller has knowledge and Seller shall have given notice to all known claimants including without limitation all potential tax claimants of the transactions contemplated in this Agreement.

Section 9.13 Condition of Assets. All property, plant, equipment, and other property of Seller which is material to the operation of the business of Seller, shall be, as of the Closing Date, in good operating condition, repair, and working order.

Section 9.14 Necessary Authorizations. All corporate action required to approve the execution and delivery of this Agreement by Buyer and its performance of the transactions contemplated by this Agreement shall have been taken.

Section 9.15 Environmental Matters.

(i) There shall not have been any disposal, release or threatened release of any Hazardous Material (as defined below) on, from or under properties now or ever owned or leased by or to Seller (the "Properties"). There shall not have been generated by or on behalf of Seller or any former subsidiary (while owned by Seller) any Hazardous Material. No Hazardous Material shall have been disposed of or allowed to have been disposed of on or off any of the Properties which may give rise to a clean-up responsibility, personal injury liability or property damage claim against Seller being named a potentially responsible party for any such clean-up costs, personal injuries or property damage or create any cause of action by any third party against Seller. For purposes of this subsection, the terms "disposal," "release," and "threatened release" shall have the definitions assigned thereto by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the term "Hazardous Material" means any hazardous or toxic substance, material or waste or pollutants, contaminants, petroleum or petroleum products, or asbestos containing material which is or becomes regulated by any authority in any jurisdiction in which any of the Properties is located. The term "Hazardous Material" includes without limitation any material or substance which is (i) defined as a "hazardous waste" or a "hazardous substance" under applicable Law, (ii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, (iii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, or (iv) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

(ii) None of the Properties shall be or have been (or, with respect to past Properties have been at the time of disposition) in violation of any law, ordinance, rule or regulation (with respect to past Properties, laws in effect at the time of disposition) relating to industrial hygiene, pollution or to the environmental conditions on, under or about such Properties, including without limitation soil and ground water condition and there shall be (or at the time of disposition shall have been) no underground tanks, or related piping, conduits or related structures. Neither Seller nor any third party shall have used, generated, manufactured or stored on, under or about such Properties or transported to or from such Properties any Hazardous Material and there shall have been no litigation brought or threatened against Seller or any settlements reached by Seller with any third party or third parties alleging, or investigations by Seller, nor any third party concerning, the presence, disposal, release or threatened release of any Hazardous Material on, from or under any of such Properties.

ARTICLE X

EMPLOYEES

Section 10.1 Offer to Employ. Buyer will offer employment, in good faith, effective from the Closing Date, to all employees of the Acquired Business listed on Exhibit 10.1 attached hereto and made a part hereof ("Offered Employees"). Buyer shall exercise reasonable efforts to persuade the Offered Employees to accept its offers of employment. Offered Employees who accept Buyer's offer of employment shall become "Accepting Employees."

Section 10.2 Wages and Benefits.

(i) Except as provided in Section 10.3 hereof, Seller shall be responsible for all wages and other remuneration due and payable or accrued for services performed up to and including the Closing Date and for all pensions and benefits accruing up to and including the Closing Date for all employees including the Offered Employees.

(ii) Buyer shall be responsible, conditioned upon Closing, for all such benefits of the Accepting Employees for services performed or rendered after the Closing Date.

Section 10.3 Voluntary Salary Reductions. Subject to receipt of required Court approvals, not later than the fifth (5th) business day after the Closing Date, Buyer shall pay to each Eligible Employee (as defined in this Section 10.3) an amount equal to the difference between (i) the amount actually received by such Eligible Employee for services performed during the period from October 15, 2001 through November 9, 2001 and (ii) the amount such employee would have received for services attributable to such period at his or her base salary in effect on October 11, 2001. For this purpose, an Eligible Employee shall mean a person who (A) was employed by Seller on November 2, 2001, and (B) who remained continuously employed by Seller from that date through the Closing Date or who was terminated by Seller other than for cause prior to the Closing Date. Buyer shall incur no liability under this Section 10.3 if required Court approvals are not received.

Section 10.4 The Retention Pool. Subject to receipt of required Court approvals, a retention plan for employees of Seller shall be established on substantially the terms set forth on Exhibit 10.4 attached hereto and made a part hereof (the "Retention Plan"). The amount allocated to the Retention Plan (the "Retention Pool") shall be credited against the Purchase Price. Buyer shall be responsible, conditioned upon Closing, to make any payment or payments due under the Retention Plan. The creation of the Retention Pool is subject the receipt of all required Court approvals, and Buyer shall incur no liability under this Section 10.4 if such Court approvals are not received. If created, the Retention Pool will not be segregated from Buyer's general accounts, no earnings will accrue or be credited to the Retention Pool and any amounts not disbursed from the Retention Pool after payment of all amounts earned under the Retention Plan shall inure to the sole benefit of Buyer.

Section 10.5 Employees Refusing Offer. Except as provided in Sections 10.3 and 10.4, Buyer shall not be liable for any legal obligations relating to the termination of employment of any employee of Seller who is not offered employment by Buyer or any Offered Employee who does not accept Buyer's offer of employment within two weeks after the Closing Date. Any employee who works on or after the Closing Date is deemed an Accepting Employee.

Section 10.6 Employees Accepting Offer. Buyer shall be liable for all obligations (excluding those obligations of Seller under Section 10.2) relating to the termination of employment after the Closing Date of any Accepting Employee due to Buyer's actions after the Closing Date.

Section 10.7 Limitations. It is understood and agreed that (i) Buyer's expressed intention to extend offers of employment and pay salary and bonuses as set forth in this Article X shall not constitute any commitment, contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post-Closing employment relationship of any fixed term or duration or upon any terms or conditions other than those that Buyer may establish pursuant to individual offers of employment, and (ii) employment offered by Buyer is "at will" and may be terminated by Buyer or by an employee at any time for any reason (subject to any written commitments to the contrary made by Buyer or an employee and legal requirements). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any of the Accepting Employees after the Closing Date or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

ARTICLE XI

TERMINATION

Section 11.1 Termination of Agreement. This Agreement may be terminated under any of the following circumstances by notice given on or before the Closing:

(i) Buyer shall have the right to terminate if, during the period from the date hereof to the Closing Date, Buyer shall learn of any fact or condition which is materially at variance with one or more of the warranties or representations of Seller set forth in this

Agreement, or Seller shall fail in any material respect to perform the covenants set forth in this Agreement to be performed by Seller.

(ii) Seller shall have the right to terminate if, during the period from the date hereof to the Closing Date, Seller shall learn of any fact or condition which is materially at variance with one or more of the warranties or representations of Buyer set forth in this Agreement.

(iii) Buyer or Seller shall each have the right to terminate if a proceeding or formal investigation shall have been commenced by any governmental or regulatory agency or by any other person or entity with respect to any of the transactions contemplated in this Agreement.

(iv) Buyer shall have the right to terminate if Seller shall have suffered a material loss or damage to any of the Purchased Assets or to the Acquired Business, which change, loss or damage would materially interfere with the ability of Buyer to conduct the Acquired Business upon consummation of this Agreement.

(v) Buyer shall have the right to terminate if the Order in the Case required by Section 9.6 approving the transactions contemplated hereby is not entered on or before January 15, 2002, or if an appeal of the Order is timely filed and not dismissed with prejudice prior to Closing.

(vi) Buyer shall have the right to terminate if (A) a hearing on the approval of the Bid Procedures Agreement is not held within twenty (20) days after the effective date of this Agreement or (B) if such hearing is commenced within twenty (20) days after the effective date of this Agreement but is subsequently continued by the Court for more than ten (10) days.

(vii) Buyer shall have the right to terminate if any of the contingencies listed on Exhibit 11.1(vii) attached hereto and made a part hereof is not resolved to Buyer's satisfaction or waived by Buyer prior to the Closing Date.

(viii) Either Buyer or Seller may, at its election, waive any of its rights to terminate this Agreement under the provisions of this Article XI, and shall be deemed to have waived such rights upon completion of the Closing under this Agreement.

Section 11.2 No Right to Terminate Under Certain Conditions. Seller shall have no right to terminate this Agreement or to refuse to close the transactions contemplated hereby solely because the Court refuses to approve any payments contemplated by Section 10.3 or Section 10.4 hereof.

Section 11.3 No Liability. Upon any such termination of this Agreement, neither Buyer nor Seller shall have any liability one to the other, except that:

(i) Buyer agrees not to disclose to any third party any confidential information relating to Seller which is provided by Seller pursuant to this Agreement; and

(ii) if this Agreement is subject to termination by Buyer under the provisions of Section 11.1(i), (iv), (v), (vi) or (vii) for any reason, Buyer shall be entitled to recover from Seller its documented actual costs, fees and expenses (including but not limited to, legal and accounting fees and expenses and the allocable salary and benefits of Buyer's employees) incurred in connection with the transactions contemplated by this Agreement (the "Expense Reimbursement"). Except for the obligations of Seller under the Note and the Bid Procedures Agreement, the remedy set forth in this Section 11.3(ii) shall be the sole and exclusive remedy for Buyer in the event that this Agreement is subject to termination under the provisions of Sections 11.1(i), (iv), (v), (vi) or (vii). Buyer and Seller acknowledge and agree that in the event of such a default by Seller, Buyer's actual damages would be difficult if not impossible to calculate and as a result, the parties have agreed upon the liquidated damages set forth herein as a fair and reasonable estimate of such damages.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Survival of Representations and Warranties. All representations and warranties of Seller and Buyer contained in this Agreement or in any exhibit hereto shall be deemed to be made again as of the Closing Date and shall be true and accurate in all respects at that time. All such representations and warranties shall survive and continue to be in full force and effect and shall never expire. Notwithstanding the foregoing, any claim by Buyer for breach of a representation or warranty must be made, if at all, within ninety (90) days after the Closing Date. Subject to the foregoing, all representations, warranties, covenants or certificates of either party shall survive any investigation made by or on behalf of the party or parties in whose favor such representation, warranty, covenant or certificate has been granted in accordance with their terms. The fact that either party may have knowledge indicating that any representation or warranty contained herein and made in its favor is untrue or inaccurate or that any other condition precedent contained herein has not been fulfilled and such party shall nevertheless proceed to close the transaction notwithstanding such knowledge shall not affect such party's right to damages for breach of warranty or contract unless such breach is expressly waived in writing by the party on whose behalf such warranty or representation was made.

Section 12.2 Modifications. At any time prior to the Closing, any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Buyer and Seller or, in the case of a waiver, by the party against whom the waiver is to be effective;

Section 12.3 Assignment.

(i) Buyer may assign its rights or obligations under this Agreement, or any part thereof, without the prior written consent of Seller to (A) a direct or indirectly wholly-owned subsidiary of Buyer or (B) a nonprofit corporation the sole member of which is Buyer.

(ii) Except as otherwise set forth in (i) of this Section 12.3, neither party hereto shall have the authority to assign its rights or obligations under this Agreement

without the prior written consent of the other party which consent shall not be unreasonably withheld.

Section 12.4 Burden and Benefit

(i) This Agreement shall be binding upon, and to the extent permitted in this Agreement, shall inure to the benefit of, the parties and their respective permitted successors and assigns;

(ii) It is the intent of the parties hereto that no third party beneficiary rights be created or deemed to exist in favor of any person not a party to this Agreement, unless otherwise expressly agreed in writing by the parties.

Section 12.5 Governing Law. This Agreement is made pursuant to, and shall be construed and enforced in accordance with, the laws of the State of Ohio (except as preempted by United States federal and bankruptcy law, to the extent applicable), irrespective of the principal place of business, residence or domicile of the parties hereto, and without giving effect to otherwise applicable principles of conflicts of law.

Section 12.6. Authority of Bankruptcy Court. The Court shall have exclusive jurisdiction to resolve any disputes with respect to this Agreement and the transactions contemplated hereby, including, but not limited to, any claims against the Purchased Assets.

Section 12.7 Notices. All notices, requests or demands under this Agreement must be in writing and sent (a) in person, (b) by certified or registered mail, (c) by overnight delivery carrier for next day delivery, or (d) by telecopier (fax) or telegram, in each case to the address listed below (or if notice of a new address is given, the new address). Notice given in any other manner will not be considered delivered or given. A notice period will start or be treated as being given (i) if mailed, two business days after notice was sent by certified or registered mail, (ii) the next business day after sent by overnight delivery, and (iii) the day the notice was delivered in person, sent by fax or telegram.

If to Seller:

netLibrary, Inc.
3080 Center Green Drive
Boulder, CO 80301
Attn: General Counsel

If to Buyer:

OCLC Online Computer Library Center, Incorporated
6565 Franz Road
Dublin, Ohio 43017
Attn: General Counsel

With a copy to:

Vorys, Sater, Seymour and Pease LLP
P.O. Box 1008
52 East Gay Street
Columbus, OH 43216
Attn: Susan E. Brown


Section 12.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute but one Agreement.

Section 12.9 Severability. In the event any provision of this Agreement or any part thereof is determined to be invalid or illegal, the validity of any other provision or part thereof shall not be effected adversely and this Agreement shall continue to be binding on the parties hereto as if said invalid or illegal provision or part thereof had not been included herein.

IN WITNESS WHEREOF, Seller and Buyer have each caused this Agreement to be duly executed on their respective behalves by their duly authorized officers, to be effective as of the day and year first above written.


BUYER:

OCLC Online Computer Library Center,
Incorporated

By 
Vice President

SELLER:

netLibrary, Inc.,
debtor-in-possession

By 
President

netLibrary, Inc.,
debtor

By 
President