



**Beneficent Technology, Inc.
Publisher's Letter of Consent for Bookshare ®**

Beneficent Technology, Inc. is the nonprofit developer and the operator of its Bookshare service, an Internet-based book and document access service (the "Bookshare Service") which operates under the provisions of copyright exceptions such as 17 U.S.C. §121. These national copyright exceptions permit Bookshare to acquire, process and distribute otherwise copyrighted works, when distributed in accessible formats, for use only by persons with qualifying disabilities who are members of Bookshare, its participating customers or organizations who have qualifying disabilities ("Members").

Beneficent Technology (hereafter called "Bookshare") represents that it is an IRC §501(c)(3) California charitable nonprofit organization that qualifies as an authorized entity under 17 U.S.C. §121 of the U.S. copyright law and under the Marrakesh Treaty. Bookshare will immediately advise the undersigned publisher should it cease to be such. Copyrighted materials are made available to Members under a digital rights management plan intended to restrict the use of such materials only to qualified persons, and to discourage abuse of the copyright owner's rights.

Under copyright law exceptions, Bookshare does not need permission from copyright owners to make copyrighted materials available to persons with qualifying disabilities in the United States and in other countries with comparable copyright exceptions (such as those implemented under the provisions of the Marrakesh Treaty). Members and volunteers provide books and documents to the Bookshare Service, which Bookshare then makes available to Members. However, Bookshare needs permission and assistance from publishers and owners of copyrighted works to fully realize its mission of providing high-quality accessible content to persons with qualifying disabilities.

The undersigned publisher or holder of relevant intellectual property rights (herein called "Publisher") is hereby voluntarily agreeing to assist Bookshare in its mission of enabling access to Publisher's copyrighted works, including books, magazines and other materials (collectively called "Works"). Bookshare wishes to cooperate with the Publisher in order to add accessible digital versions of the Works from Publisher to the Bookshare collection.

To serve these goals, Publisher hereby grants permission to Bookshare to:

1. Provide accessible Works directly to qualifying persons, either directly or in conjunction with other nonprofit or government agencies that serve such persons, all over the world (excepting from this grant the right to use those Works in any country other than the U.S. as to which Publisher advises Bookshare that it does not control rights and where Bookshare does not have this ability under the provisions of the Marrakesh Treaty); and provided, however, that if Bookshare does make Works accessible in conjunction with other agencies, such Works will be made accessible only from the Bookshare Service and subject always to the terms and conditions of use posted on the Bookshare website.
2. Utilize Publisher's Works in digital form available from whatever legitimate sources they can be obtained, in addition to any files provided directly to Bookshare by Publisher.
3. Improve and adapt the format and presentation of the Works, for example by adding structure markup, figure descriptions, Braille formatting and correcting transcription errors, in order to make the accessible reading experience more like the print reading experience; it being agreed that Bookshare shall not in the process intentionally change the content of any Work except as to the format of presentation.

Publisher represents and warrants that Publisher is acting within the scope of its rights to provide the permissions herein concerning the Works to Bookshare. Works of Publisher that are copyrighted shall be made available only to Members, using the definition of "beneficiary persons" as set forth in the Marrakesh Treaty, and only to Members who have agreed to terms of use substantially the same as the terms currently included in the Membership Agreements posted on the Bookshare website or similar agreement with a participating customer or organization. The Works will be protected by Bookshare with the same or better

digital rights management system as other copyrighted Works that are now accessible through the Bookshare Service.

Publisher may, at its option, provide files for these digital Works directly to Bookshare, at no cost to Bookshare, and agrees that the costs (if any) incurred by Publisher in providing such digital Works to Bookshare will be paid by Publisher, unless compensation for these costs is agreed upon in writing by both parties prior to the expenditure. Similarly, Bookshare shall receive no compensation from Publisher for processing and making Publisher's digital Works available for download from the Bookshare Service. All rights not expressly granted herein to Bookshare are reserved to Publisher.

Bookshare represents and warrants that it has full power and authority to enter into and perform this Agreement; it shall perform in compliance with all applicable laws and regulations; and it shall use the Works solely as expressly authorized herein.

Bookshare will, at its own expense, make accessible versions of the Works available through the Bookshare Service. Prior to making them available, Bookshare will insert a "boilerplate" section in the front of the Works which outlines the legal limitations of the use of the digital Work, and states the copyright status of the Work as being available from the Bookshare Service only to persons with bona fide qualifying disabilities as defined above.

Bookshare reserves the right to include all, some, or none of the digital Works from Publisher in the Bookshare Service, depending on the technical challenges of converting these files and the perceived needs of its users.

Each party agrees to indemnify and hold harmless the other from and against any damages arising in connection with a claim concerning a breach by a party of its respective representations and/or performance hereunder. No award for damages shall include anything for other than actual damages and costs incurred by the prevailing party, and in no event shall punitive damages be awarded. Said indemnity shall include reasonable attorney fees incurred, plus costs. This indemnity, however, shall not apply to third party infringement claims unless arising from an express warranty or representation made by a party for the benefit of the other party under the provisions of this Agreement.

This Agreement will remain in effect until terminated by either party on sixty (60) days prior written notice; however, notwithstanding termination of this Agreement, Bookshare shall continue to have the right to utilize Works if supplied by Publisher during the term of the Agreement, to the extent that utilization is permitted by the national copyright law exceptions such as section 17 U.S.C. §121 of the U.S. Copyright Act.

Neither party shall be liable to the other, under any circumstances, for any indirect incidental or consequential damages nor for loss of profits. Except for Publisher's right to authorize the use and distribution of the Works as the copyright owner or authorized distributor, the Works and files to be supplied by Publisher will be supplied "As Is", and Publisher makes no warranty with respect to the condition or accuracy of such Works and associated digital files provided to Bookshare. Bookshare shall have no responsibility for errors that might inadvertently be introduced during reformatting or processing the digital files for authorized Member users.

Once this Agreement is signed, Bookshare may include Publisher as one of its publishing partners when it provides lists of publishing partners in its literature or information materials. No press release concerning execution of this Agreement will be sent out without the mutual consent of Publisher and Bookshare.

This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that either party may assign this Agreement without the other's consent in the event of a merger of such Party with a third party or a sale of substantially all of such party's assets to a qualifying third party (either of which is referred to as a "Major Transaction"), whereupon the assigning party shall deliver written notice to the other party within ten (10) business days after the closing of such Major Transaction. An effective assignment of this Agreement will not result in the loss, impairment, or alteration of the rights and/or obligations of the parties pursuant to this Agreement; however, any assignment in violation of the foregoing conditions shall be void and of no effect.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. Any manual signature upon this Agreement that is transmitted by facsimile, scanned or photocopied, and any electronic signature valid under the *Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et. seq.* shall for all purposes have the

same validity, legal effect and admissibility in evidence as an original signature and the parties hereby waive any objection to the contrary.

By executing this Agreement below, the individual signing for an entity hereby certifies and personally warrants (i) that he or she is a duly appointed signatory for such corporate entity, and (ii) that he or she is authorized to legally bind such entity with respect to all the obligations and covenants set forth above.

Signature Page to Follow

Signature Page
Publisher's Letter of Consent for Bookshare

In Witness Whereof, the duly authorized representatives of the parties have executed this Agreement as of the date first written above

Publisher:

Signature:

Print name:

Print title:

Date:

Email contact:

Mailing Address:

Phone:

Beneficent Technology, Inc.

Signature:

Print name: Michael Johnson

Print title: Vice President of Content

Date:

Email contact: michaelj@benetech.org

Mailing Address:

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