

AGREEMENT BETWEEN
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS
AND
VENDOR

Agreement made this _____ day of 20__, by and between VENDOR, having offices at VENDOR ADDRESS, (hereinafter referred to as "Vendor") and the Board of Trustees of the University of Illinois, on behalf of the Consortium of Academic and Research Libraries in Illinois (CARLI), having a principal place of business at University Office for Planning and Budgeting, 616 E. Green St., Suite 213, Champaign, Illinois 61820 (hereinafter referred to as "Licensee"; collectively with Vendor, referred to as the "Parties") provides for use by Licensee of the Licensed Materials, as defined below, subject to the terms and conditions set forth in this "Agreement."

1.0 DEFINITIONS

- 1.1 "Licensed Materials"** means the Vendor databases as specified in Attachment 1 of this Agreement.
- 1.2 "Authorized Sites(s)"** means participating Consortium of Academic and Research Libraries in Illinois (see Attachment 2 of this Agreement) Sites. Licensee may add or eliminate Authorized Sites beyond those set forth at time of Agreement as mutually agreed to by written consent and will be incorporated into and become part of this Agreement.
- 1.3 "Authorized Users"** means Licensee and Authorized Sites authorized to provide on-site access to the Licensed Materials to employees, students, registered and walk-in patrons, and other persons affiliated with, or permitted to use the facilities of any Authorized Site. Any Authorized Site is authorized to provide remote access to the Licensed Materials under security conditions adequate to ensure that only users specifically granted access under this Agreement will be authenticated and authorized, and that individuals that are not parties to this Agreement are excluded.
- 1.4 "Permitted Use"** means the use of the Licensed Materials by Authorized Users for instruction, study, or personal research and training. Authorized Users may search the Licensed Materials; view, retrieve and display data contained therein; print data resulting from searches and make limited copies of such printed results; download data obtained from searches; and e-mail data obtained from searches. Authorized Sites may use a reasonable portion of the Licensed Materials in the preparation of Course Packs and in a program of electronic reserves. Authorized Sites may supply through interlibrary loan a copy of an individual document being part of the Licensed Materials by post, fax or electronic transmission, for the purposes of research or private study and not for commercial use. Such copies are to be made in compliance with Section 108 of the Copyright Act of the United States and within all CONTU guidelines.

Permitted Use expressly precludes uploading, downloading, copying or redistributing the Licensed Materials in its entirety or any substantial portion thereof; copying, duplication, redistribution, retransmission, publication, or transfer of information from the Licensed Materials for commercial purposes or other exploitation of the contents of the Licensed Materials; or the preparation of derivative works or the incorporation of the Licensed Materials in whole or in part, in any other work or system.

- 1.5** “**Course Pack**” means a collection or compilation of materials (e.g., book chapters, journal articles) assembled by members of staff of an Authorized Site for use by students in a class for the purposes of instruction.
- 1.6** “**E-reserve**” means electronic copies of materials (e.g., book chapters, journal articles) made by the staff of an Authorized Site for use by students in connection with specific courses of instruction, with access to said copies offered through the library of the Authorized Site and limited to students registered in said courses.
- 1.7** “**Interlibrary Loan (ILL)**” means the library to library transmission of a single copy of a specified document for the purposes defined under the terms of Section 108 of the Copyright Act of the United States. It is the responsibility of the library requesting the document to ensure compliance with the copyright laws. Authorized Users who do print items must maintain all copyright and other notices on the printed items.
- 2.0** **LICENSE**
- 2.1** The Licensee has a nonexclusive and nontransferable license to use the Licensed Materials as set forth in Section 4.0 of this Agreement.
- 2.2** Licensee and Authorized Sites are authorized to provide on-site access to the Licensed Materials to any employee, student, registered or walk-in patron or other person affiliated with, or permitted to use the facilities of the Licensee and who is authorized by the Licensee to access the Licensed Materials. The Licensee and Authorized Sites are authorized to provide remote access to the Licensed Materials only to their patrons as long as security procedures are undertaken that will prevent remote access by institutions or individuals that are not parties to this Agreement who are not expressly and specifically granted access by Vendor.
- 2.3** Any Authorized User may search, download, and save electronic material included in Licensed Materials and make single printed copies of individual writings for private use or research. Multiple copies may be made for classroom use, provided: that no charge is made for such copies, other than a nominal charge to cover the cost of reprography; and that such copies are not made or distributed for commercial advantage. Specifically, copies must be made in compliance with Section 108 of the Copyright Act of the U.S. and with guidelines developed by the National Commission on New Technological Uses of Copyrighted Works

(CONTU Guidelines), the text of which is available as part of U.S. Copyright Office Circular 21.

2.4 Should a significant portion of the Licensed Materials be deleted or removed from access, Vendor shall notify Licensee immediately. Licensee shall have at least thirty (30) days from receipt of notification to cancel the Agreement and request a pro-rated refund of the license fee.

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

3.0 LIMITED WARRANTY AND RISKS

3.1 VENDOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND EXCEPT AS SET FORTH HEREIN, WHICH ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3.2 VENDOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR VENDOR ANY OTHER LIABILITY IN CONNECTION WITH THE LICENSING OF THE MATERIALS UNDER THIS AGREEMENT AND/OR ITS USE THEREOF BY THE LICENSEE AND AUTHORIZED SITES OR THEIR RESPECTIVE PATRONS.

3.3 VENDOR REPRESENTS AND WARRANTS THAT IT HAS THE RIGHT AND AUTHORITY TO MAKE THE LICENSED MATERIALS AVAILABLE PURSUANT TO THESE TERMS AND CONDITIONS AND THAT THE MATERIALS, WHICH CONSTITUTE THE LICENSED MATERIALS NOT INFRINGE UPON ANY COPYRIGHT, PATENT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PERSON OR PARTY.

3.4 VENDOR AGREES TO DEFEND AND INDEMNIFY THE LICENSEE IN THE CASE OF A THIRD PARTY CLAIM OF INFRINGEMENT.

3.5 VENDOR WILL USE ALL REASONABLE EFFORTS TO MAINTAIN ADEQUATE INTERNET CONNECTION BANDWIDTH AND SERVER CAPACITY TO PROVIDE LICENSEE WITH PROMPT ACCESS TO THE LICENSED MATERIALS. IF, DUE TO CAUSES WITHIN ITS REASONABLE CONTROL, VENDOR IS UNABLE TO PROVIDE LICENSEE WITH ACCESS TO THE LICENSED MATERIALS FOR A PERIOD EXCEEDING TWENTY-FOUR (24) CONSECUTIVE HOURS, VENDOR AGREES TO EXTEND THE LICENSE PERIOD FOR CORRESPONDING TWENTY-FOUR (24) HOUR INCREMENTS AT NO ADDITIONAL COST TO LICENSEE.

4.0 TERM AND FEES

- 4.1** The initial term of this Agreement shall be for one (1) year, beginning July 1, 20__ through June 30, 20___. Licensee may, for a period not to exceed five (5) contract years (July 1, 20__ through June 30, 20__), exercise the annual renewal of this Agreement.
- 4.2** The price to Licensee for use of the Licensed Materials as set forth in Attachment 2 of this Agreement shall be based on the selection of Licensed Materials by Authorized Sites at the beginning of each fiscal year period ending June 30.
- 4.3** From the information provided by Licensee, Vendor shall invoice Licensee at the beginning of each fiscal period for selected Licensed Materials. Payment will be due 30 days after receipt of invoice. If changes are made to the subscribed Licensed Materials, pro rata adjustments of the contracted price will be calculated by Vendor and invoiced to Licensee or Authorized Sites accordingly as of the date of any changes. Payment will be due 30 days after receipt of invoice for any additional pro rata adjustments.
- 4.4** In accordance with the State Prompt Payment Act (30 Illinois Compiled Statutes 540), Licensee shall deny or approve an invoice for payment within 30 days after physical receipt of the invoice. A payment is late if the date of payment is not within 60 days after the date of approval of the invoice. Interest is calculated at the rate of 1% per month, or a daily interest factor of .00033. Interest amounting to \$5 or less will not be paid by Licensee.
- 5.0** **TERMINATION**
- 5.1** In the event of a breach of any of its obligations under this Agreement, Licensee shall have the right to remedy the breach within thirty (30) days upon receipt of written notice from Vendor. Within the period of such notice Licensee shall make every reasonable effort and document said effort to remedy such a breach and shall institute any reasonable procedures to prevent future occurrences of such breaches. If the Licensee fails to remedy such a breach within the period of thirty (30) days, Vendor may (at its option) terminate this Agreement upon written notice to the Licensee.
- 5.2** If Vendor becomes aware of a material breach of the rights of the Licensee under this Agreement that Vendor reasonably believes will cause immediate and severe economic injury, Vendor will notify the Licensee immediately in writing and shall have the right to temporarily suspend the access to the Databases for the Authorized Site(s) involved in said breach. Licensee shall have the right to remedy the breach within thirty (30) days, upon receipt of written notice from Vendor. Once the breach has been remedied or the breaching activity halted, Vendor shall immediately reinstate the Authorized Site's access to the Database(s). If the Licensee does not satisfactorily remedy the breaching activity within thirty (30) days, Vendor may terminate this Agreement upon written notice to the Licensee.

5.3 In the event of a breach of any of its obligations under this Agreement, Vendor shall have the right to remedy the breach within thirty (30) days upon receipt of written notice from Licensee that such breach has occurred. Within the period of such notice Vendor shall make every reasonable effort and document said effort to remedy such a breach and shall institute any reasonable procedures to prevent future occurrences of such breaches. If Vendor fails to remedy such a breach within the period of thirty (30) days, Licensee may (at its option) terminate this Agreement upon written notice to the Vendor. At that time, Vendor shall immediately refund the license fee pro-rated to the unexpired term of the subscription.

6.0 NOTICES

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within three (3) days after posting if sent certified mail to the following parties or their delegates:

VENDOR
RESPONSIBLE PERSON
VENDOR ADDRESS

Customer Contract Issues:
Natalie Crook
Purchasing Officer
University of Illinois Purchasing Division
Tech Plaza, Suite 212
616 E. Green St.
Champaign, IL 61820

Customer Technical Issues:
Cindy Clennon
Director, Electronic Resources
616 E. Green, Suite 213
Champaign, IL 61820
University Office for Planning & Budgeting

Customer Billing Contact:
Connie Walsh
Director, Business & Financial Services
University Office for Planning & Budgeting
616 E. Green, Suite 213
Champaign, IL 61820

7.0 MISCELLANEOUS

7.1 This Agreement represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, written and/or oral. This Agreement may not be

modified or amended except by written consent of the Parties or in accordance with the provisions set forth in Section 2.5 of this Agreement. In negotiating this agreement, the Licensee has relied upon the written responses provided by Vendor in RFP _____, issued on _____, 20____, and the information and responses provided therein are expressly incorporated in the Agreement as Attachment 3, except those modified by mutual agreement of the parties. There are no representations, warranties, promises, covenants or undertakings, except as described herein.

- 7.2** This Agreement and the license granted herein may not be assigned by either party to any third party (ies) without written consent of the other party. In the event of assignment by the Vendor, Licensee reserves the right to require performance security from the assignee in the form of a bond or letter of credit.
- 7.3** Governing Law/Jurisdiction. This Agreement, including any executed modifications thereto, shall be governed by, interpreted, and adjudicated under the applicable laws of the State of Illinois.
- 7.4** If any term or condition of this Agreement is found by a court of competent jurisdiction or administrative agency to be invalid or unenforceable, the remaining terms and conditions thereof shall remain in full force and effect so long as a valid Agreement is in effect.
- 7.5** Vendor will not be liable or deemed to be in default for any delays or failure in reasonable control, including but not limited to acts of god, war, riot, embargoes, and acts of civil or military authority, rain, fire, flood, accidents, earthquake, strikes or labor shortages, transportation facilities shortages or failures of equipment, or failures of the internet.
- 7.6** The headings for each section are stated for convenience only and are not construed as limited.
- 7.7** Collection and analysis of data on usage of the Licensed Materials will assist both Vendor and the Licensee to understand the impact of this Agreement. Any such usage data compiled by Vendor will be collected by a method consistent with applicable privacy laws and written confidentiality requirements of this Agreement. The anonymity of individual users and the confidentiality of their searches shall be fully protected by Vendor. All usage data, such as number of searches or articles downloaded, will be used for private, internal use only and reported at least quarterly by Vendor to the Licensee. Statistical usage data will be summarized for the institutions as a whole, and also sorted and listed by individual server access.
- 7.8** Vendor agrees not to use advertising, sales promotions, and other publicity matters relating to any product furnished by the Vendor wherein the name of the Licensee or any Authorized Site is mentioned or language is used from which the

connection to institutions named therein may, in the Licensee's judgment, be inferred or implied, without prior written consent of the Licensee and/or the Authorized Site.

7.9 All routine service-related communications should be directed to support@carli.illinois.edu.

7.10 Membership in CARLI will be based on individual participation by institutions, and will be subject to change periodically. Licensee shall maintain a current list of libraries for each level of membership in the organization at the following website location: <http://www.carli.illinois.edu/mem-lib.html>.

8.0 ADDITIONAL TERMS AND CONDITIONS

The following provisions are added to the Terms and Conditions of the Agreement:

Taxes: The University is exempt (unless otherwise stated) from payment of state and local Retailers' Occupation Tax, state and local Service Occupation Tax, state Use Tax, and state Service Use Tax, as required by Illinois law. The University's tax exemption identification number issued by the Illinois Department of Revenue is E9989-9779-06. Certificates of exemption will be provided upon written request.

This transaction is subject to the Procurement Rules of the Chief Procurement Officer for Public Institutions of Higher Education.

Audits: 30 Illinois Compiled Statutes (ILCS) 500/20-65 requires the contractor (and any subcontractors) to maintain, for a period of 3 years after the later of the date of completion of this order or the date of final payment under the order, all books and records relating to the performance of the order and necessary to support amounts charged to the University under the order. The order and all books and records related to the order shall be available for review and audit by the University and the Illinois Auditor General. If this order is funded from contract/grant funds provided by the U.S. Government, the order, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency. The contractor agrees to cooperate fully with any audit and to provide full access to all relevant materials. Failure to maintain the required books and records shall establish a presumption in favor of the University for the recovery of any funds paid by the University under this order for which adequate books and records are not available.

Non-discrimination and equal employment opportunity: The Contractor agrees to comply with applicable provisions of the Illinois Human Rights Act (775 ILCS 5), the U.S. Civil Rights Act, the Americans with Disabilities Act, Section 504 of the U.S. Rehabilitation Act, and the rules applicable to each. The equal opportunity clause of Section 750.10 of the Illinois Department of Human Rights Rules is specifically incorporated herein. The Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by U.S.

Department of Labor regulations (41 C.F.R. Chapter 60). The Contractor agrees to incorporate this clause into all subcontracts under this order.

Certifications: By acceptance of this order, the contractor certifies that it, or any affiliate: has not been barred from contracting as a result of a conviction for bid-rigging or bid rotating under 720 ILCS 5/33E or a similar law of another state; is not participating or shall not participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act (this certification applies only to purchase orders which exceed \$10,000); is not barred under 30 ILCS 500/50-5(a) from contracting as a result of a conviction for or admission of bribery or attempted bribery of an officer or employee of the State of Illinois or any other state; is not barred pursuant to 30 ILCS 500/50-10 from conducting business with the State of Illinois as a result of being convicted of a felony. The contractor further certifies in accordance with 30 ILCS 500/50-10.5 that no officer, director, partner or other managerial agent of the contracting business has been convicted of a felony under the Sarbanes-Oxley Act of 2002 or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 for a period of five years prior to the date of the bid or contract. The contractor certifies that, if the contractor or any affiliate is an individual, he/she is not in default for a period of six months or more and in the amount of \$600 or more on the repayment of any educational loan guaranteed by the State Scholarship Commission or made by an Illinois institution of higher education or any other loan made from public funds for the purpose of financing higher education (5ILCS 385/3). The contractor certifies that it, or any affiliate, is not barred from being awarded a contract under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract with a State agency if it knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the State as defined by the Debt Collection Board. Section 50-12 prohibits a person from entering into a contract with a State agency if it, or any affiliate, has failed to collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act. The contractor further acknowledges that the University may declare the contract void if the contractor, or any affiliate, is determined to be delinquent in the payment of any debt to the State during the term of the contract. The contractor certifies in accordance with 30 ILCS 583/10 that no foreign made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. The contractor certifies in accordance with 30 ILCS 500/50-14 that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Civil Penalties of the Environmental Protection Act for a period of five years prior to the date of the bid or contract. The contractor acknowledges that the University shall declare the contract void if any of the above certifications is false.

The Illinois Drug Free Workplace Act (30 ILCS 580) requires, in part, that contractors with 25 or more employees take steps to ensure a drug free workplace by informing employees of the dangers of drug abuse, of the availability of any treatment or assistance programs, of prohibited activities and of sanctions that will be imposed for violation; and that individuals with contracts not engage in the manufacture, distribution, dispensation,

possession or use of a controlled substance in the performance of the order. These requirements apply to orders of \$5,000.00 or more. By acceptance of this order, the contractor certifies that it is in compliance with the Act.

Prices for commodities and/or services furnished on this order shall not exceed those charged to your most favored customer for like commodities and/or services under similar circumstances.

This contract is subject to termination and cancellation in any year for which the General Assembly fails to make an appropriation to make payments under the terms of the contract.

The parties have caused this instrument to be executed by their duly authorized representatives.

VENDOR NAME
VENDOR TITLE
VENDOR ADDRESS

LICENSEE:
Consortium of Academic and Research Libraries in Illinois
616 E. Green Street
Suite 213
Champaign, IL 61820

LICENSEE:
The Board of Trustees
of the University of Illinois
on behalf of the Consortium of Academic
and Research Libraries in Illinois

Name: University Office for Planning & Budgeting
CARLI
616 East Green Street
Suite 213
Champaign, IL 61820

This AGREEMENT is hereby agreed to:

LICENSEE:

**THE BOARD OF TRUSTEES OF
THE UNIVERSITY OF ILLINOIS
ON BEHALF OF THE CONSORTIUM
OF ACADEMIC AND RESEARCH
LIBRARIES IN ILLINOIS**

LICENSOR:

VENDOR NAME

By: _____
V. P. & Comptroller

By: _____
(insert name, title)

Date: _____

Date: _____

Attest: _____
Secretary of the Board

Date: _____

APPROVED:

University Legal Counsel

Date: _____

Purchasing Officer

Date: _____

Susan Singleton, Univ. Office for Planning & Budgeting

Date: _____

ATTACHMENT 1

List of Licensed Materials

The following list of Databases comprises the complete offer of the Vendor as specified in this Agreement.

ATTACHMENT 2

List of Subscribing Institutions

July 1, 20__ – June 30, 20__

(to be incorporated)

ATTACHMENT 3

This attachment comprises the complete text of the Vendor's response to the University's RFP _____, issued on _____, 20__, and any clarifications and revisions to that response specified and/or requested by the Licensee. Included in this attachment are the correct and final prices for each Database(s) listed in Attachment 1 of this Agreement that are to be offered to each Authorized Site as defined in this Agreement. No changes or modifications to the prices stated herein may be made without the express written consent of the Parties.