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CARLI Electronic Resource Licensing Principles

Consortium of Academic and Research Libraries in Illinois

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CARLI Electronic Resource Licensing Principles

This document provides both the philosophical assumptions which are the foundation of the CARLI E-Resources program and the principles which guide our licensing efforts. As such it is hoped that it will be helpful to CARLI member libraries, the vendor community and the larger library community. The development of these materials benefitted from the similar efforts by our consortial colleagues, specifically the [California Digital Library](#), the [Committee on Institutional Cooperation](#), the [Northeast Research Libraries](#) and [Yale University Library](#), as well as the [American Society for Engineering Education](#). We are grateful for both their wisdom and their words.

These principles represent the work of the CARLI Electronic Resources Working Group:

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PHILOSOPHY

The goals of the e-resource program include:

- reducing e-resource costs for members
- increasing the breadth and coverage of collections
- purchasing materials of lasting value for our members

The approach of the CARLI e-resources program is flexible and responsive to the changing needs of our members and to the e-resource marketplace. This flexibility insures that the program delivers important electronic resources meeting a wide range of programmatic needs as expressed by members, whether in the group as a whole or in smaller subgroups.

The CARLI e-resources program realizes that decisions made today have potentially long-ranging implications so our approach to all decisions should take the future results into consideration.

The e-resources program strives to be a responsible and deliberate steward of consortial resources. As a part of this program CARLI obtains content both through subscriptions and purchases. Whenever possible both options should be available.

The CARLI e-resources program strives to work proactively with the consortial and vendor community to shape e-resource offers and agreements. Proposals should include provisions for incorporating new, additional content in a planned and fiscally responsible way.

CARLI anticipates that electronic content being licensed or purchased should be at least as complete as its print counterpart. It should also be available for use at the same time as, or prior to, the publication of the equivalent content in print.

The availability of high quality metadata and linking resources are integral parts of the CARLI e-resources program as they allow member libraries to utilize content in a coordinated, coherent fashion.

Intermediaries, such as subscription agents, aggregators and software providers, are an important part of the e-resource community and should continue to play a role in this process.

CARLI expects that all publishing partners will comply with the Americans with Disabilities Act (ADA), by supporting assistive software or devices such as large print interfaces, voice-activated input, and alternate keyboard or pointer interfaces in a manner consistent with the Web Accessibility Initiative Web Content Accessibility Guidelines, which may be found at <http://www.w3.org/WAI/GL>.

LICENSING PRINCIPLES

USERS

- 1) Authorized users are defined as full and part-time students and employees (which include faculty, staff, affiliated researchers and independent contractors) of Licensee, who are authorized by Licensee to access the Product regardless of the physical locations of such persons. Any provisions limiting access based on geographic locations are not acceptable.
- 2) Patrons not affiliated with Licensee who are physically present at Licensee's site(s), "walk-ins," are to be considered authorized users. Many CARLI members are required by State of Illinois law to permit such access. This would apply only to members who normally permit walk-in access to their libraries.
- 3) Remote access is also permitted, based on authentication by the participating CARLI member institution.

USE

- 1) Use - authorized users may make all use of the Licensed Materials as is consistent with the Fair Use Provision of the United States and international copyright laws. The

Licensed Materials may be used for the purposes of research, education or other non-commercial use. This includes:

- making print or digital copies of a reasonable portion of the Licensed Materials;
 - displaying Licensed Materials electronically;
 - transmitting to a third party in hard copy or electronic form, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research but in no case for resale or commercial use.
- 2) Interlibrary Loan – Licensee may use the Product for the purpose of supplying Interlibrary Loan requests in accordance with the Interlibrary Loan Provisions of section 108 of the US Copyright Law and the CONTU guidelines. The lending library should be permitted to post an electronic version of the article to the ILL web site for an ILL patron to view, whether or not the borrowing library licenses or subscribes to the materials. There should be no additional record keeping beyond that required for copyright compliance by the borrowing/lending libraries.
 - 3) Classroom use - classroom use should also be permitted. This may include the creation of multiple copies in print or electronic form for classroom instruction to the extent permitted by the classroom use provision of the copyright law.
 - 4) Course packs - Licensee may use a reasonable portion (in hard copy or digital form) of the Licensed Materials in the preparation of Course Packs or other educational materials for sale and/or distribution to Authorized Users for their use in connection with classroom instruction.
 - 5) Course Reserves - Licensee may use a reasonable portion (in hard copy or digital form) of the Licensed Materials in the preparation of course reserves for access by Authorized Users in connection with specific courses offered by Licensee.

ADMINISTRATION

- 1) Authentication - Strong preference is given to content providers who are willing to provide IP-based access, or more robust future solutions. Further, authorized users must never be challenged with a login/password prompt when non-personalized access is controlled by IP or other means. A login/password requirement for the purpose of allowing personalization of the interaction with the licensed content (e.g., saving favorite documents, an individual profile, etc.) is acceptable, but must not be a requirement for an authorized user to have access to the licensed content. Licensor's system must accommodate the use of proxy servers for authentication of remote users.
- 2) Product availability - Licensor should use all reasonable efforts to provide reliable access 24 hours a day, 7 days a week. This may include providing adequate servers,

technical support, bandwidth and disaster planning. If, due to causes within its reasonable control, licensor's product is not available for more than 24 consecutive hours the agreement should be extended for commensurate periods of 24 hours at no additional cost to the CARLI participants.

- 3) Technical assistance – technical assistance should be available during standard working hours, 8:00 AM to 5:00 PM Central Time.
- 4) Access to products licensed by CARLI should not contain secondary user (click-through) licenses which would bind authorized users based on different access terms than the CARLI agreement.
- 5) Breach - in the event of a suspected breach, Licensor should notify Licensee as specified in the contract. This notification should contain as much information as possible about the breach and the perceived source, including IP number or range. Licensee should be given 30 days from the notification to cure the breach before action is taken to terminate the license agreement.
- 6) Failure to Appropriate Funds - participating CARLI member libraries may terminate their participation in an agreement in the event sufficient funds are not made available by their institutional budget processes for the purpose of this agreement. Participating libraries will make good faith efforts to obtain the requisite funding for their participation but in the event this is not possible they will be allowed to terminate their participation without penalty.
- 7) Archival provisions - archival provisions must be addressed in all license agreements but are particularly important in licenses for e-book or journal content. These provisions should allow participants to create an archival copy of digital content or for the provision of an archival copy by the Licensor to be provided in a medium agreed upon by the parties. Agreements should insure that participating CARLI libraries will continue to have access to subscribed content even beyond the period of the agreement.

Electronic journal and e-book vendors must have provisions for the use of third party trusted repositories such as LOCKSS, CLOCKSS or Portico, for permanent archiving of their content.

- 8) Usage statistics – on a monthly basis Licensor should provide usage statistics at both the individual participating library level, as well as the consortial level. This data should be at the level of detail required for objective evaluation of both product performance and satisfaction of user needs, including title-by-title use of journals. Usage statistics should be COUNTER compliant, and will be consistent with [*Guidelines for the Statistical Measures of Usage of Web-Based Indexed, Abstracted, and Full Text Resources*](#) (November 1998), adopted and approved by the International Consortium of Library Consortia.

- 9) Confidentiality of User Data - Consistent with the [CARLI Privacy Policy](#) approved by the Board of Directors on 9/29/06 and the International Coalition of Library Consortia (ICOLC) [Privacy Guidelines For Electronic Resources Vendors, Licensor and Licensee](#) agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.
- 10) Removal of Content – all agreements should include provisions for notifying Licensee in advance of the removal of content from a licensed product. Such notification should be made as far in advance as possible but no less than 10 days before the content change. If important titles or more than 10% of content are removed, the cost should be adjusted accordingly or Licensee should be allowed to elect to substitute titles of equal value (fiscally and programmatically) or terminate the agreement for cause with a prorated refund of the license fee.
- 11) Cancellations – Agreements which are based on print subscription holdings should provide participating libraries the ability to do all of the following without penalty:
 - convert print subscriptions to electronic only subscriptions
 - cancel a percentage of the print base titles each year
 - cancel duplicate print subscriptions

BUSINESS

- 1) Availability of Agreement Documents - CARLI will post copies of all licenses in a password protected area of the CARLI web site. This is to ensure that all participating libraries have full access to terms and conditions to which their compliance is required by the agreement. Because these agreements will be available only to those with password access information related to pricing or business terms will not be redacted from the agreements.
- 2) Indemnification – The State of Illinois statute prohibits CARLI from entering into agreements that contain clauses requiring that CARLI indemnify anyone. Any such language will have to be removed from agreements to which CARLI will be a party.
- 3) Governing Law – due to State of Illinois requirements all agreements must include the following Governing Law language:
 - “This agreement will be construed under and pursuant to the laws of the State of Illinois.”

- 4) Invoicing – for CARLI to process invoices they must be received in a timely manner. Lists of subscriptions or holdings information should be reconciled through the CARLI office before final invoices are issued.
- 5) Renewal pricing - renewal pricing should be received no less than 120 days prior to the expiration of the current agreement. In the event that CARLI elects to not move forward with a renewal, notification will be provided 60 days prior to the end of the current agreement.
- 6) Non-disclosure Language - as an agent of the University of Illinois and as such subject to the Freedom of Information Act, CARLI cannot accept language which does not permit disclosure of agreement terms.
- 7) Assignment - neither party may assign this agreement to a third party without the advance notification and approval of the other party.
- 8) Standard Agreement Language – CARLI has created a boilerplate for agreements which codifies these principles and incorporates other important licensing terms. This document is attached as Exhibit A. Licensors are encouraged to utilize this document whenever possible.
- 9) Procurement Issues - All CARLI purchases are made in accordance with the provisions of the Illinois Procurement Code and the Procurement Rules of the Chief Procurement Officer for Public Institutions of Higher Education and other applicable state and federal regulations. Licensor will be required by the State of Illinois Procurement Code to incorporate the certifications which appear in Articles 7 and 8 of the CARLI standard license agreement (attached) as a part of any agreement. In addition, these certifications are attached to all Purchase Orders issued by the University of Illinois.