

**STANDARD CARLI LICENSING AGREEMENT  
BETWEEN  
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS  
AND  
[VENDOR]**

This Standard CARLI Licensing Agreement (“**Agreement**”) is between **The Board of Trustees of the University of Illinois**, a public body corporate and politic of the State of Illinois, for its Consortium of Academic and Research Libraries in Illinois, having a principal place of business at 352 Henry Administration Building, MC-350, 506 S. Wright St., Urbana, Illinois 61801 (“**University**”) and [FULL LEGAL NAME OF VENDOR], a(n) [TYPE OF BUSINESS ENTITY] of [NAME OF STATE] with principal offices at [ADDRESS] (“**Vendor**”).

**1.0 DEFINITIONS**

- 1.1 “**Authorized Sites(s)**” means participating Consortium of Academic and Research Libraries in Illinois sites.
- 1.2 “**Authorized Users**” means University 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.
- 1.3 “**CARLI**” means the Consortium of Academic and Research Libraries in Illinois.
- 1.4 “**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.
- 1.5 “**Discovery Service System**” means a user interface and search system for discovering and accessing content from web-based and print resources.
- 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**” or “**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 and the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.
- 1.8 “**Licensed Materials**” means the Vendor databases as specified in Attachment 1 of this Agreement.

- 1.9 **“Permitted Use”** means the use of the Licensed Materials by Authorized Sites and Authorized Users for instruction, study, or personal research and training. These uses include: searching the Licensed Materials; viewing, retrieving and displaying data contained; printing data resulting from searches and making limited copies of such printed results; downloading data obtained from searches; and e-mailing data obtained from searches. In the case of video products, uses includes public performance rights. Authorized Sites and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of Course Packs and in a program of E-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.

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.

- 1.10 **“Subscription Year”** means January 1 through December 31.
- 1.11 **“Text and Data Mining” or “TDM”** means a machine process that derives high-quality information from text and other data without reproducing the source material, including by identifying patterns and trends using categorization, statistical pattern learning and analysis, concept or sentiment analysis, and/or associating natural language with indexing terms.

## 2.0 LICENSE

- 2.1 The University has a nonexclusive and nontransferable license to use the Licensed Materials as set forth in this Agreement.
- 2.2 **Authorized Access.** University 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 University, and who is authorized by the University to access the Licensed Materials. The University and Authorized Sites are authorized to provide remote access to the Licensed Materials to Authorized Users as long as security procedures are undertaken that will prevent remote access by institutions or individuals that are not Authorized Users.
- 2.3 **Authorized Use.** University, Authorized Sites, and Authorized Users may engage in Permitted Use of 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 reproduction; and that such copies are not made or distributed for commercial use. Copies are to be made in compliance with Section 108 of the Copyright Act of the United States, and University will generally operate consistent with the guidelines of the National Commission on New Technological Uses of Copyrighted Works (**“CONTU Guidelines”**). Authorized Users who print items must maintain all copyright and other notices on the printed items.

- 2.4 **Holdings Report.** Vendor shall provide to University an itemized holdings report that specifies the titles included in the Licensed Materials for the next Subscription Year at least ninety (90) days prior to the beginning of the next Subscription Year. If the Licensed Materials include content covered by the Knowledge Base and Related Tools (K-BART) Recommended Practice, itemized holdings lists for University shall be reported in K-BART-compliant format <https://www.niso.org/standards-committees/kbart>. Should a significant portion of the Licensed Materials be deleted or removed from access, Vendor shall notify University immediately. Vendor shall also provide the deleted or removed titles information to Discovery Service Systems in an identical timely manner. If essential titles or more than ten (10) percent of content are removed, University shall have at least thirty (30) days from receipt of notification to request an appropriate annual subscription cost adjustment or to cancel the Agreement and request a pro-rated refund of the license fee. Vendor shall also provide University the opportunity to elect titles of equal value (fiscally and programmatically) at the same annual subscription cost.
- 2.5 **Transfer of Materials.** If any portion of the Licensed Materials is transferred to or acquired from another party, Vendor shall use best efforts to ensure that University does not lose access to content subject to this Agreement as a result of the transfer or acquisition. Any archival and perpetual access rights that have been granted shall be honored, whether the Vendor is acting as the transferring or acquiring party. If Vendor is transferring any portion of the Licensed Materials to another party, Vendor shall use best efforts to assign all rights and obligations to the assignee. If Vendor is acquiring works that become subject to this Agreement, Vendor shall use best efforts to acquire the rights to perform under this Agreement, including but not limited to perpetual access rights. Vendor agrees to communicate with the party from which it is acquiring works to exchange such relevant payment and rights information. For journal titles, Vendor shall comply with the NISO Transfer Code of Practice (<http://www.niso.org/workrooms/transfer/>).
- 2.6 **Discovery.** Vendor shall make commercially reasonable efforts to treat Discovery Service Systems equally, so Authorized Sites can contract with their preferred Discovery Service System.
- 2.7 **Text and Data Mining.** University, Authorized Sites, and Authorized Users may use the Licensed Materials to perform and engage in TDM for academic research, scholarship, and other educational purposes; utilize and share the results of TDM in their scholarly work; and to make the results available for use by others, so long as the results cannot be used as a substitute for the Licensed Materials. Vendor will cooperate with University, Authorized Sites, and Authorized Users as reasonably necessary in making the Licensed Materials available in a manner and form most useful to the Authorized Users, including, where required, local mounting, loading, and integration of the results on a server used for the Authorized User's TDM system. If University or an Authorized Site requests the Vendor to deliver or otherwise prepare copies of the Licensed Materials for TDM purposes, any fees charged by Vendor shall be solely for preparing and delivering such copies on a time and materials basis. In all cases of making Licensed Materials available for TDM, University and Authorized Sites will comply with security and technical access requirements set forth in this License.
- 2.8 **Video Products.** For video product licenses, Vendor will specify file types used to deliver video content and provide details on system, device, and software requirements to

view/play/access content. These technical specifications shall be incorporated as an attachment to this Agreement.

### **3.0 LIMITED WARRANTY AND RISKS**

- 3.1 **WARRANTIES.** 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 **LIABILITY.** 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 UNIVERSITY, AND AUTHORIZED SITES, AND AUTHORIZED USERS.
- 3.3 **RIGHT AND AUTHORITY.** 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 LICENSED MATERIALS DO NOT INFRINGE UPON ANY COPYRIGHT, PATENT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY.
- 3.4 **HOLD HARMLESS.** VENDOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS UNIVERSITY, ITS OFFICERS, EMPLOYEES, TRUSTEES, STUDENTS, AND AGENTS AGAINST ALL LOSS AND LIABILITY, INCLUDING REASONABLE ATTORNEY FEES, COSTS, AND EXPENSES, RESULTING FROM ANY THIRD-PARTY CLAIM THAT THE LICENSED MATERIALS INFRINGE ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.
- 3.5 **INTERNET AVAILABILITY.** VENDOR WILL USE ALL REASONABLE EFFORTS TO MAINTAIN ADEQUATE INTERNET CONNECTION BANDWIDTH AND SERVER CAPACITY TO PROVIDE UNIVERSITY WITH PROMPT ACCESS TO THE LICENSED MATERIALS. IF, DUE TO CAUSES WITHIN ITS REASONABLE CONTROL, VENDOR IS UNABLE TO PROVIDE UNIVERSITY 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 UNIVERSITY.

### **4.0 TERM AND TERMINATION**

- 4.1 **Term.** This Agreement shall become binding as of January 1, [YEAR]. This Agreement shall continue for five (5) years unless earlier terminated. The term covers five (5) Subscription Years, each beginning on January 1 of the relevant year.
- 4.2 **Termination for Cause.** A party that defaults in performance or commits a material breach of this Agreement (“**Defaulting Party**”) shall have 30 days to cure the default or breach after receiving notice from the non-defaulting party. The non-defaulting party may terminate this Agreement without further notice and pursue other available legal remedies if the Defaulting Party fails to cure the breach within the prescribed period, or within such other period of time that is agreed by the parties in writing. If Vendor is the Defaulting Party and University terminates this Agreement for cause in accordance with the above, Vendor shall refund the

license fee pro-rated to the unexpired term of the subscription within thirty (30) days of termination.

- 4.3 **Termination for Convenience.** University may terminate this Agreement for convenience and without any cause with termination to take effect at the end of the then-current Subscription Year by providing Vendor with written notice no less than 90 days prior to the end of the then-current Subscription Year.
- 4.4 **Termination for Non-Appropriation.** This Agreement is subject to termination by University in any year for which the General Assembly fails to make an appropriation to make payments under the Agreement. If a termination for non-appropriation occurs, Authorized Sites may cancel Licensed Materials up to ninety (90) days after the beginning of the Subscription Year. University will be invoiced for the pro-rated subscription period for the Authorized Site. In the event that payment has been made to Vendor for the 12-month Subscription Year, Vendor will refund the license fee pro-rated to the unexpired term of the subscription.
- 4.5 **Termination Access.** Upon termination of this Agreement, Vendor shall provide continued access to the Licensed Materials for which perpetual access was granted in this Agreement (“**Perpetual Materials**”). The means by which Authorized Users shall have access to Perpetual Materials shall be in a manner and form substantially equivalent to the means by which access is provided during the term of this Agreement, with provisions for ensuring forward compatibility with new technologies. Vendor shall:
- (a) provide continuing online access to archival copies of Perpetual Materials on the Vendor’s Platform without supplementary fees to University or Authorized Sites;
  - (b) provide to University, Authorized Site, or third-party archiving service, upon request and within ninety (90) days, one copy of the entire set of Perpetual Materials and associated metadata to be maintained as an archival copy for the purpose of delivering continuing online access to Authorized Users. The cost of electronic delivery of Perpetual Materials and associated metadata to University, Authorized Site or a third-party archiving service shall be borne by Vendor, unless otherwise agreed upon by the parties. The Perpetual Materials shall be provided without Digital Rights Management Technology in a mutually agreeable medium suitable to the content but may not contain all the links and other features and functionality associated with the Licensed Materials pursuant to this Agreement.

## 5.0 COMPENSATION

- 5.1 **Subscription Changes.** Subscriptions to the Licensed Materials are subject to change and may be updated annually, prior to each Subscription Year, upon mutual agreement by both parties.
- 5.2 **Opt In or Out.** Authorized Sites may opt in or out of this Agreement annually, at least thirty (30) days before the beginning of each Subscription Year. Total fees due to Vendor will be adjusted as agreed by the parties based on annual subscriptions of the Licensed Materials.
- 5.3 **Pricing.** The price to University for the Licensed Materials shall reflect the lowest price available in Illinois from Vendor. Vendor agrees to provide to University the pricing model that will be used to establish pricing for the first Subscription Year of this Agreement. Pricing

in all subsequent Subscription Years shall not increase more than the percentage increase cap listed in Attachment 1 of this Agreement. Vendor agrees to enter prices for the Licensed Materials listed in Attachment 1 of this Agreement into the CARLI Selection System on an annual basis. Vendor will be given credentials to access the system prior to each request from University to enter pricing, along with documentation to assist with the pricing entry. Vendor agrees that all pricing discrepancies will be remedied in a timely manner but no later than sixty (60) days after becoming aware of the discrepancy.

5.4 **Invoice and Payment.** In order to be paid by University, Vendor must submit a proper invoice at the beginning of each Subscription Year for Licensed Materials. A proper bill must include: itemized detail, invoice number, invoice date, invoice amount, remittance address and the University purchase order number. University will either approve the bill for payment, or deny a bill with defects, in accordance with the State Prompt Payment Act (30 ILCS 540) (the “Act”). University will assign a new date of receipt to a bill resubmitted in proper form. University will pay interest on approved bills that are not paid within the time period prescribed by the Act. The rate of interest shall be the rate established in the Act on the date that payment becomes late within the meaning of the Act. University will not pay interest of \$5 or less and may subtract any applicable discounts before payment. If changes are made to the subscribed Licensed Materials, pro rata adjustments of the contracted price will be calculated by Vendor and invoiced to University accordingly as of the date of any changes.

5.5 **Withholdings.** University may withhold or may void any invoice to the extent University deems necessary to protect University from loss due to Vendor's: (a) unsatisfactory performance; (b) failure to pay subcontractors; (c) damage to University or Authorized Site property; or (d) incomplete, inaccurate or unauthorized billing. University may withhold final payment until Vendor has delivered all Licensed Materials to University's reasonable satisfaction in accordance with the specification and/or requirements as set forth in this Agreement.

5.6 **Proration of Subscriptions.** Any new subscription after the January 1 renewal date for subscriptions will be prorated from the effective date of the new subscription to December 31 for that year. Upon renewal of the subscription, the Subscription Year will be effective from January 1 through December 31.

5.7 **Additional Licensed Materials.** On an annual Subscription Year basis, University may request Vendor to submit pricing for additional Licensed Materials beyond those listed in Attachment 1. If varying price caps are offered for different Licensed Materials in Attachment 1, all additional Licensed Materials offered as selections to Authorized Sites are bound by the lowest percentage increase cap stated in Attachment 1.

## 6.0 NOTICES

6.1 **Delivery.** To be enforceable, all notices must be in writing and delivered to the party's representative(s) named below, appropriate to the nature of the notice, by either certified mail, return receipt requested, or commercial carrier with delivery receipt. Notices are effective upon receipt by the designated representative. A party may change its representative at any time by written notice to the other party.

6.2 **Directing Notices.** Vendor shall direct all general notices or matters of contract interpretation to University's Contract Representative and notices involving technical or scheduling issues to University's Technical Representative. Vendor must include University's contract number or relevant purchase order number in any notice. Vendor shall direct all formal legal notices to the Board of Trustees.

<b>University Contract Representative</b>	<b>Vendor Contract Representative</b>
University of Illinois System System Purchasing & Support Services 507 E. Green St., Suite 501 Champaign, IL 61820 (217) 333-9289 procurement@uillinois.edu	[Vendor Name] [Representative's name] [Representative's title] [Address] [City, State Zip] Phone: Email:
<b>University Technical Representative</b>	<b>University Legal Notices</b>
Jennifer Taylor Asst. Director, Electronic Resources CARLI 100 Trade Centre Drive, Suite 303 Champaign, IL 61820 Phone: (217) 265-8437 Email: emanuelj@uillinois.edu	The Board of Trustees of the University of Illinois Attn: Secretary of the Board 352 Henry Administration Building, MC-350 506 S. Wright Street Urbana, IL 61801
<b>University Billing Contact</b>	<b>University Routine Service-Related Contact</b>
Diane Day Fiscal Officer CARLI 100 Trade Centre Drive, Suite 303 Champaign, IL 61820 Phone: (217) 333-7632 Email: deday@uillinois.edu	All routine service-related communications should be directed to <a href="mailto:support@carli.illinois.edu">support@carli.illinois.edu</a>

**7.0 INSURANCE**

Vendor shall maintain for the duration of this Agreement, general liability insurance, whether through a commercial policy or through a program of self-insurance, with minimum limits of \$1 million per claim or occurrence and \$2 million aggregate; and, if applicable, professional liability with minimum limits of \$1 million per claim and \$3 million aggregate.

**8.0 INDEMNIFICATION**

Vendor shall indemnify University, its officers, employees, trustees, students, and agents against all demands, claims, damages, liabilities, expenses and reasonable attorney fees and costs arising out of the performance of this Agreement by Vendor, its employees, subcontractors, and agents. This indemnification obligation shall survive the termination or the expiration of the Agreement and any order made under it.

## 9.0 SUBCONTRACTS

Vendor shall provide an attachment listing all known or anticipated subcontracts with an annual value of \$50,000 or more. The attachment shall include the proposed value of each subcontract and the name and address of the subcontractor. Vendor shall not subcontract any portion of the products and/or services without University's prior written permission and shall promptly notify University of any proposed change in subcontractors, together with all relevant information requested by University.

## 10.0 CONFIDENTIALITY

Vendor must treat all information relating to this Agreement ("University Information") as confidential. Unless required by law, or authorized by University in writing, Vendor shall not disclose University Information to third parties or use University Information for any purpose other than in delivering the Licensed Materials.

## 11.0 RECORDS RETENTION AND AUDIT

- 11.1 **Maintenance of Books and Records.** Vendor shall maintain, and shall cause any subcontractors to maintain, books and records that relate to performance of this Agreement, including subcontracts, and that support amounts charged, and shall maintain such books and records for three years from the date of final payment or for such longer period of time as is necessary to complete ongoing or announced audits or to comply with any applicable federal requirements. All such books and records shall be available for review and audit by the Auditor General, chief procurement officer for higher education (CPO-HE), internal auditor, or University. Vendor and any of Vendor's subcontractors shall cooperate fully with any audit or request for information from the Auditor General, CPO-HE, internal auditor, or University pursuant to 30 ILCS 500/20-65 and shall not impose any charge for audit or examination.
- 11.2 **Right of Inspection.** University may reasonably inspect Vendor's premises, facilities, equipment, and investigate the business reputation and other qualifications of Vendor and any of Vendor's subcontractors throughout the term of this Agreement.
- 11.3 **Litigation Hold Order Compliance.** Vendor shall, and shall cause Vendor's employees and subcontractors to, fully comply with any litigation hold order issued by University in anticipation of third-party litigation relating to this Agreement. Vendor shall promptly retrieve, recover, preserve, retain and, subject to legal privileges, deliver any information and documents, in any format, covered by a litigation hold order.

## 12.0 ADDITIONAL STATUTORY AND REGULATORY TERMS

- 12.1 **Excluded Parties.** Vendor certifies that neither Vendor nor any of Vendor's directors, officers, employees, agents, and subcontractors who may provide services pursuant to this Agreement (individually an "**Agent**") is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from transactions with the U.S. government or by any federal government agency. Vendor shall provide University immediate written notice if Vendor learns that this certification was erroneous when made or if Vendor or any Agent hereafter becomes debarred, suspended, proposed for debarment, declared ineligible, or



otherwise excluded from transactions with the U.S. government or by any federal agency. Vendor further certifies that neither Vendor nor any Agent is presently subject to an investigation or proceeding to exclude either as a provider under Medicare or Medicaid or under any other federal or state health care program or under any third-party insurance program, nor is currently excluded or debarred from submitting claims to Medicare or Medicaid or to any other federal or state health care program or to any third-party insurer. University may terminate this Agreement immediately without any penalty to University if either of these certifications was erroneous when made or becomes no longer valid during the term of this Agreement.

12.2 **Equal Employment Opportunity.** The clause at Ill. Adm. Code tit. 44, § 750.10, Appx. A is incorporated into this Agreement by reference. If this Agreement is federally funded and exceeds \$10,000, the following clause applies: Vendor shall abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. Vendor will include this clause in every subcontract awarded under this Agreement so that the provision is binding upon the subcontractor.

12.3 **Export Control.** Vendor shall comply with all relevant laws, whether United States or foreign, governing the exports and re-exports of items and information made under this Agreement. Prior to providing University with any items subject to the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130, Vendor will notify University and identify the items at issue and the applicable categories and subcategories of the United States Munitions List. University may decline to accept any items or information controlled under ITAR. Vendor will direct all notices under this section to the University Contract Representative.

## 13.0 MISCELLANEOUS

13.1 **Usage Data.** Collection and analysis of data on usage of the Licensed Materials will assist both Vendor and University to understand the operation of this Agreement. Vendor shall collect Usage Data which meet or exceed the most recent release of the Project COUNTER Code of Practice, including its provisions on customer confidentiality. When a release of a new COUNTER Code of Practice is issued, Vendor shall comply with the implementation time frame specified by COUNTER to provide use statistics in the new standard format.

Any such usage data compiled by Vendor will be collected by a method consistent with applicable privacy laws, including those applicable to University and/or Authorized Sites, 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. On a monthly basis, Vendor will provide usage statistics at both the individual Authorized Site level, as well as aggregated total across all Authorized Sites. These 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.

- 13.2 **Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.** Unless authorized by law or by written permission of each affected student, Vendor shall not disclose to any third party information concerning students of Authorized Sites. Vendor shall protect all records containing student information in accordance with FERPA, its implementing regulations, and Authorized Site policy. In addition to other remedies, University may terminate this Agreement immediately upon information that Vendor may have violated this provision.
- 13.3 **Backup and Archiving.** Vendor cooperates with CLOCKSS/LOCKSS and/or Portico to deliver digitized print and electronic current content for titles for which it may have the right to do so; the intention is to maintain the availability of that content in case of catastrophic failure of Vendor's ability to serve it from its own servers. The use of CLOCKSS/LOCKSS technology and/or Portico technology for backup and archival purposes is therefore expressly permitted for all Licensed Materials.
- 13.4 **MARC Records for Ebooks/Journals.** When applicable to the Licensed Materials, at University's request, Vendor shall provide full OCLC-quality batched sets of MARC (MACHINE-Readable Cataloging) records incorporating University specifications at no additional cost by the date of the execution of this Agreement. Updates to existing records and new title records, matching the schedule of release and delivery of new publications, will be provided on a mutually agreed-upon schedule and in a format that renders them useful to the University.
- 13.5 **Open Access Journal Content.** In the event that Vendor offers an open access option within the Licensed Materials to its authors, Vendor will report to University annually: 1) the number of works (such as articles) published under the open access option by all authors; and 2) the number and list of the works by title with full citation by authors at University's institution.

If the ratio of the number of open access articles to articles published under the traditional subscription model increases in comparison to the previous year, Vendor will reflect such increase by way of a proportional reduction in the subscription price for the current Subscription Year.

- 13.6 **Disabilities Compliance.** Vendor must ensure that products and services provided under this Agreement conform to the W3C Web Content Accessibility Guidelines, version 2.1 (WCAG 2.1) at conformance levels A and AA. If the products and services do not fully conform to WCAG 2.1 A and AA, Vendor must notify University in writing of the nonconformance and provide detailed information regarding the plans to achieve conformance, including but not limited to an intended timeline. Vendor shall promptly respond to and resolve any University complaint regarding accessibility of its products or services. If the Licensed Materials do not comply, the University has the right to adapt the Licensed Materials to comply with federal and state law. Vendor will hold University harmless from all demands, claims, damages, liabilities, and expenses arising out of Vendor's failure to comply with WCAG 2.1.
- 13.7 **Membership.** Only members of CARLI can be Authorized Sites. Membership in CARLI will be based on individual participation by institutions and will be subject to change periodically.

University shall maintain a current list of libraries for each level of membership in the organization at the following website: <http://www.carli.illinois.edu/membership/mem-lib>.

#### **14.0 GENERAL TERMS**

- 14.1. **Ambiguities.** Any rule of construction that would resolve ambiguities against the drafting party shall not apply in interpreting this Agreement.
- 14.2. **Amendments.** No modification of this Agreement shall be effective unless made by a written amendment signed by each party's authorized signatory.
- 14.3. **Assignment.** Neither party may assign its obligations under this Agreement without the prior written consent of the other party.
- 14.4. **Authorized Signatories.** The individuals signing this Agreement on a party's behalf represent that they have the requisite authority and intent to bind that party to this Agreement.
- 14.5. **Choice of Law.** This Agreement and all claims arising out of or relating to this Agreement shall be governed and construed by application of the laws of the State of Illinois without regard to its conflict of law provisions.
- 14.6. **Compliance with Laws.** Vendor shall perform all obligations under this Agreement in compliance with all applicable laws governing the performance. Breach of this provision constitutes a material breach of this Agreement.
- 14.7. **Counterparts/Facsimile Signatures.** This Agreement may be signed in counterparts. Facsimile signatures constitute original signatures for all purposes.
- 14.8. **Force Majeure.** A party is excused from performing its obligations under this Agreement when conditions beyond its control and unforeseen by the parties make its performance commercially impractical, illegal, or impossible. Conditions of excuse include, but are not limited to: natural disasters, strikes, fires, war, terrorism and threats of terrorism, government actions, and acts or omissions of third parties. So long as the conditions continue, the party whose performance is affected shall keep the other party fully informed about the conditions and the prospects of their ending.
- 14.9. **Headings.** Headings in this Agreement are intended only to assist with readability and are not substantive.
- 14.10. **Independent Contractor.** The parties are independent contractors with respect to each other. Nothing in this Agreement is intended to create any employment, association, partnership, joint venture, or agency relationship between them.
- 14.11. **Integration.** This Agreement with its attachments, amendments and incorporated references constitutes the parties' entire agreement regarding the subject matter.

**Attachments include:**

**Exhibit A - State Clauses and Certifications (Included below)**

Optional Attachments:

- Exhibit B - Financial Disclosures & Conflicts of Interest
- Other:

- 14.12. **Jurisdiction.** Any claims against University must be filed in accordance with the Illinois Court of Claims Act.
- 14.13. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the provision shall be severed from this Agreement so long as severance does not affect the enforceability or essential purpose of the remainder of the Agreement.
- 14.14. **Sovereign Immunity.** By entering into this Agreement, University does not waive the sovereign immunity or any other defenses and immunities afforded to it by Illinois and federal law.
- 14.15. **Use of Name/Vendor Marketing.** Vendor shall not use University's name or protected marks for any commercial purpose without University's advance written consent. Vendor agrees not to use advertising, sales promotions, and other publicity matters relating to any product furnished by the Vendor wherein the name or mark of University or any Authorized Site is mentioned or language is used from which the connection to institutions named therein may, in the University's judgment, be inferred or implied, without prior written consent of the University and/or the Authorized Site.
- 14.16. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not waive the party's right to later enforce the provision or the Agreement.

**UNIVERSITY:**  
THE BOARD OF TRUSTEES OF  
THE UNIVERSITY OF ILLINOIS

**VENDOR:**  
[FULL LEGAL NAME OF VENDOR]

By: \_\_\_\_\_  
Paul N. Ellinger, Interim Comptroller

By: \_\_\_\_\_  
[NAME, TITLE]

\_\_\_\_\_  
Signature of Comptroller Delegate

Date: \_\_\_\_\_

\_\_\_\_\_  
Name and Title of Comptroller Delegate

Date: \_\_\_\_\_

Approved as to legal form by Office of University Counsel MS/08-29-2022 System Purchasing

**ATTACHMENT 1**  
**List of Licensed Materials and Not-to-Exceed Annual Percentage Cap Increases**  
**By Subscription Year**

Subscription Year 2: [Month Day, Year] – [Month Day, Year]

Subscription Year 3: [Month Day, Year] – [Month Day, Year]

Subscription Year 4: [Month Day, Year] – [Month Day, Year]

Subscription Year 5: [Month Day, Year] – [Month Day, Year]

Price cap increases have been negotiated for Subscription Years 2 – 5

Vendor Database	Subscription Year 2	Subscription Year 3	Subscription Year 4	Subscription Year 5
[Database 1]	[#]%	[#]%	[#]%	[#]%
[Database 2]	[#]%	[#]%	[#]%	[#]%
[Database 3]	[#]%	[#]%	[#]%	[#]%