**NorthEast Research Libraries Consortium**

**Generic License Agreement**

**For Electronic Resources**

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In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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Licensee shall make payment to Licensor for use of the Licensed Materials pursuant to the terms set forth in Appendix A, attached hereto.

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# **V. Licensor Performance Obligations**

Availability of Licensed Materials. Within two (2) weeksof the Effective Date of this Agreement, Licensor shall make the Licensed Materials available to Licensee and Authorized Users.

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Quality of Service. Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and Authorized Users with a quality of service comparable to current standards in the scholarly information provision industry in the Licensee's locale.

Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and their Authorized Users. Licensor shall notify Licensee in a timely manner of all instances of system unavailability that occur outside the Licensor's normal maintenance window and use reasonable effort to provide advance notice of hardware or software changes that may affect system performance.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.

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## **VI. Licensee Performance Obligations**

Provision of Notice of License Terms to Authorized Users. Licensee shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement.

Protection from Unauthorized Use. Licensee shall implement reasonable procedures to restrict access to the Licensed Materials to Authorized Users.

Maintaining Confidentiality of Access Passwords. Licensee shall maintain the confidentiality of any institutional passwords provided by Licensor.

## **VII. Mutual Performance Obligations**

Cure Activities. In the event of any unauthorized use of the Licensed Materials by an Authorized User, Participating Member Institution shall cooperate with Licensor in the investigation of any unauthorized use of the Licensed Materials of which it is made aware if requested to do so by Licensor and shall use reasonable efforts to remedy such unauthorized use and prevent its recurrence. Licensor may terminate such Authorized User's access to the Licensed Materials after first providing reasonable notice to Participating Member Institution (in no event less than two (2) weeks) and cooperating with the Participating Member Institution to avoid recurrence of any unauthorized use. In the case of unauthorized use which in the Licensor’s judgment is causing serious material harm, Licensor may temporarily suspend an individual Authorized User's access to the Licensed Materials (e.g. by blocking an individual user’s ip address), provided that Licensor immediately notifies Participating Member Institution of any such suspension, including the reason for the block and any supporting details. Such temporary suspensions will be of the shortest duration possible sufficient to terminate the alleged unauthorized activity and prevent its resumption.

Confidentiality of User Data. Licensor agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by any Participating Member Institution and its Authorized Users. Participating Member Institution agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by individual 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.

## **VIII. Term**

This Agreement shall continue in effect for one (1) year- commencing on the Effective Date.

## **IX. Renewal**

This agreement shall be renewable at the end of the current term for a successive term unless either party gives written notice of its intention not to renew forty-five (45) days before expiration of the current term.

## **X. Early Termination**

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that any Participating Member Institution has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

Upon Termination of this Agreement for cause online access to the Licensed Materials by Participating Member Institution and Authorized Users shall be terminated. Authorized copies of Licensed Materials may be retained by Participating Member Institution or Authorized Users and used subject to the terms of this Agreement.

In the event of early termination permitted by this Agreement, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee on their behalf for any remaining period of the Agreement from the date of termination.

## **XI. Perpetual License**

Licensor hereby grants to Participating Member Institutions a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were accessible during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. Except in the case of termination for cause, Licensor shall provide the Participating Member Institutions with access to the Licensed Materials in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

# **XII. Warranties**

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party. The Licensor shall indemnify and hold Licensee, its Participating Member Institutions and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Participating Member Institutions or any Authorized User in accordance with the terms of this Agreement. This indemnity shall survive the termination of this Agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

# **XIII. Limitations on Warranties**

Notwithstanding anything else in this Agreement:

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# **XIV. Force Majeure**

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

# **XV. Entire Agreement**

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

# **XVI. Amendment**

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

# **XVII. Severability**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

# **XVIII. Waiver of Contractual Right**

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

# **XIX. Notices**

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) daysafter mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by U.S. Mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

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*[Licensor*

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*City of Licensor*

*State of Licensor*

*Country of Licensor*

*Postal Code of Licensor]*

**If to Licensee:**

NorthEast Research Libraries Consortium

130 Wall Street

P.O. Box 208240

New Haven, CT

06520-8240

USA

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**IN WITNESS WHEREOF,** the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

**LICENSOR:**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Authorized Signatory of Licensor

Print Name:

Title:

Address:

Telephone No.:

Facsimile:

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**NorthEast Research Libraries Consortium:**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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