

# TRI-COLLEGE LIBRARY CONSORTIUM<sup>1</sup>

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#### **V. LICENSOR PERFORMANCE OBLIGATIONS**

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

Documentation. Licensor will provide and maintain help files and other appropriate user documentation.

Support. Licensor will offer activation or installation support, including assisting with the implementation of any Licensor software. Licensor will offer reasonable levels of continuing support to assist Licensee in use of the Licensed Materials. Licensor will make its personnel available by email, phone or fax for feedback, problem-solving, or general questions.

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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 should be performed at a time to minimize inconvenience to Licensee and its 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.

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

## **VIII. TERM**

This Agreement shall continue in effect for the specified period 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 at any time prior to expiration of the current term. The Licensor shall specify the fees for the successive term in writing in a renewal authorization that will supersede those contained in Appendix for the length of the successive term.

#### **X. EARLY TERMINATION**

Either party shall be permitted to terminate this Agreement at any time and for any reason, provided that such party shall so notify the other party in writing thirty (30) days prior to termination.

In the event of early termination by either party permitted by this Agreement, Licensor shall reimburse Licensee for any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

Upon Termination of this Agreement, online access to the Licensed Materials by Licensee and Authorized Users shall be terminated. Authorized copies of Licensed Materials may be retained by Licensee or Authorized Users and used subject to the terms of this Agreement.

#### **XI. PERPETUAL LICENSE**

Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were accessible during the term of this Agreement. Such access is defined as the Licensed Materials created and provided electronically contemporaneous with the agreement period, and shall include all retrospective and current content specified in Appendix and subsequent amending authorizations. 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 Licensee with access to the Licensed Materials through the Licensor's standard interface by which access is provided under this Agreement. Both parties shall endeavor to agree to reasonable cost-recovery fees on an annual basis to render such means of access feasible.

#### **XII. WARRANTIES**

Subject to the Limitations set forth elsewhere 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. If Licensor cannot perform, Licensor shall refund any fees or pro-rata portion thereof paid by Licensee for that period of the Agreement.

### **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**

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 shall be deemed received within five (5) days after 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 to the specified address. Either party may from time to time change its Notice Address by written notice to the other party. Email shall meet the definition of written notice and mail.

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City of Licensor  
State of Licensor  
Country of Licensor  
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#### **If to Licensee:**

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Bryn Mawr College  
101 N. Merion Avenue  
Bryn Mawr, Pennsylvania 19010-2899

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Licensor's use of the name "Tri-College Library Consortium," or variants including but not limited to "TriCo" or "Tri-Colleges," or the names any of its subscribing members (alone or as part of another name) in advertising or promotional materials shall be permitted only upon the prior written approval of, and in accordance with restrictions agreed to by Tri-College Library Consortium.

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

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