

**SERIAL 05189 RFP ELECTRONIC DATA BASE PRODUCTS AND SERVICES
EBSCO - Contract**

DATE OF LAST REVISION: June 05, 2008

CONTRACT END DATE: May 31, 2016

CONTRACT PERIOD THROUGH MAY 31, 2016

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ELECTRONIC DATA BASE PRODUCTS AND SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **May 17, 2006 (Eff. 06/01/06)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

DL/mm
Attach

Copy to: Clerk of the Board
Cindy Kolaczynski, Library District
Materials Management



CONTRACT PURSUANT TO RFP

SERIAL 05189-RFP

This Contract is entered into this 17th day of May, 2006 by and between the Maricopa County Library District ("District"), a political subdivision of the State of Arizona, and EBSCO Industries, Inc., a Maryland corporation ("Contractor") for the purchase of Electronic Data Base Products and Services.

1.0 TERM:

- 1.1 This Contract is for a term of ten (10) years, beginning on the 1st day of June, 2006 and ending the 31st day of May, 2016.
- 1.2 The District may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional terms up to a maximum of fifteen (15) years. The District shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

2.0 PAYMENT:

- 2.1 As consideration for performance of the duties described herein, District shall pay Contractor the sum(s) stated in Exhibit "A."
- 2.2 Payment shall be made after the District's receipt of a properly completed invoice. Invoices shall follow the billing instructions contained in the account set-up. The District will establish the account set-up in concert with the Contractor.

3.0 DUTIES:

The Contractor shall perform all duties stated in Exhibit "B."

4.0 TERMS & CONDITIONS:

4.1 INDEMNIFICATION:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless District, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless District, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting there from, caused by any negligent acts, errors, omissions or mistakes in the performance of this Contract including any person for whose acts, errors, omissions or mistakes Contractor may be legally liable. To the

extent permitted by law, the District agrees to indemnify the Contractor against any willful or negligent actions by the District that violate the Copyright Act of 1976.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of District.

4.2 **WARRANTY AND INDEMNIFICATION – COPYRIGHT:**

Contractor warrants and represents that it has the full right, power and authority to enter into this Contract and to grant the rights granted herein and that District's use of the Material will not violate any rights of any kind or nature whatsoever of any third party, such that District's inclusion and use of the Material will not violate any rights of any kind or nature whatsoever of any third party. -Contractor shall indemnify and hold harmless District, its successors, assigns and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fee), arising out of or in any way connected with any breach of any representation or warranty made by Contractor herein. To the extent permitted by law, the District agrees to indemnify the Contractor against any willful or negligent actions by the District that violate the Copyright Act of 1976.

4.3 **WARRANTY AND INDEMNIFICATION – USE OF INTERNET:**

Contractor shall indemnify and hold District harmless from and against any claims, liabilities, damages and expenses, including, without limitation, reasonable attorney's fees relating to or arising out of Contractor's breach of any of its material obligations under this Contract. Contractor shall not be liable for any third party claims based upon or arising from District's negligent operation of the System or for any indirect, incidental or consequential damages arising from the use of or inability to use the System attributable to District's negligence, provided that Contractor is not also negligent. To the extent permitted by law, the District agrees to indemnify the Contractor against any willful or negligent actions by the District that violate the Copyright Act of 1976.

4.4 **PROCUREMENT CARD ORDERING CAPABILITY:**

It is the intent of the District to pay via purchase order or through use of a MasterCard Procurement Card as best meets the needs of the District.

4.5 **NOTICES:**

All notices given pursuant to the terms of this Contract shall be addressed to:

For District:

Maricopa County Library District
Attn: Director
17811 N. 32nd Street
Phoenix, Arizona 85032
Telephone: 602-506-5751
Fax: 602-506-4689
E-mail: harrycourtright@mcl.d.maricopa.gov

For Contractor:

~~Sam Brooks~~ **Karena Donnelly**
~~Senior Vice President of Sales & Marketing~~ **Account Executive**
10 Estes Street
Ipswich, Maryland 01938
Telephone: (800) 653-2726 **Ext. 2372**

Facsimile: (978) 356-5640
Email: information@epnet.com kdonnelly@ebshost.com

4.6 REQUIREMENTS CONTRACT:

4.6.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when District identifies a need and issues a purchase order or a written notice to proceed.

4.6.2 District reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the District agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The District will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.

4.6.3 Contractor agrees to accept oral cancellation of purchase orders.

4.7 PRICE ADJUSTMENTS:

Requests for reasonable price adjustments, if any, must be submitted sixty (60) days prior to the Contract anniversary date, beginning after Year Two of the Contract. Requests for adjustment in cost of service-related labor, copyright, licensing and/or materials must be supported by appropriate documentation. If District agrees to the adjusted price terms, District shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Consumer Price Index or by performing a market survey.

4.8 TERMINATION FOR CONVENIENCE:

The District reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the District without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the District. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

4.9 TERMINATION FOR DEFAULT:

4.9.1 Either party may terminate the Contract if the other party materially breaches any term or condition of the Contract and fails to remedy such breach within thirty (30) days after written notice of such breach; or becomes subject to any receivership, insolvency, bankruptcy, moratorium or similar proceeding for more than thirty (30) days. In addition to the rights reserved in the Contract, the District may terminate the Contract in whole or in part due to the failure of the Contractor to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

4.9.2 The District may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the District for any excess costs incurred by the District in procuring materials or services in substitution for those due from the Contractor.

4.9.3 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

4.10 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the District may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the District may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District from any other party to the contract arising as the result of the Contract.

4.11 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the District may offset from any money due to the Contractor any amounts Contractor owes to the District for damages resulting from breach or deficiencies in performance under this contract.

4.12 ADDITIONS/DELETIONS OF SERVICE:

The District reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the District.

4.13 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the District, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Contract Serial Number and identify the job project.

4.14 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.15 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The District, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse District for the services not so adequately supported and documented.

4.16 AUDIT DISALLOWANCES:

If at any time, District determines that a cost for which payment has been made is a disallowed cost, such as overpayment, District shall notify the Contractor in writing of the disallowance. District shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

4.17 ALTERNATIVE DISPUTE RESOLUTION:

4.17.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

4.17.1.1 Render a decision;

4.17.1.2 Notify the parties that the exhibits are available for retrieval; and

4.17.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

4.17.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

4.17.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

4.18 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

4.19 RIGHTS IN DATA:

The District shall have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder. Upon expiration or termination of this Contract, District will not retain any rights to the database(s) included in this Contract.

4.20 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

4.21 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona.

4.22 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, the terms of this Contract shall prevail.

4.23 INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract.

4.23.1 Exhibit A, Pricing.

4.23.2 Exhibit B, Scope of Work

4.23.3 Exhibit C, Ebsco Publishing License Agreement

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR



AUTHORIZED SIGNATURE

Gary Balentine, Vice President, Inside Sales - EBSCO Publishing

PRINTED NAME AND TITLE

10 Estes Street - Ipswich, MA 01938

ADDRESS

4/12/2006

DATE

MARICOPA COUNTY LIBRARY DISTRICT

BY: _____
DIRECTOR, LIBRARY DISTRICT

DATE

BY: 
CHAIRMAN, BOARD OF DIRECTORS

MAY 23 2006

DATE

ATTESTED:



DEPUTY CLERK OF THE BOARD 051706

MAY 23 2006

DATE

APPROVED AS TO FORM:



DEPUTY MARICOPA COUNTY ATTORNEY

5/31/06

DATE

**EXHIBIT A
PRICING**

SERIAL 05189-RFP

PRICING SHEET: NIGP 9155101, 9155102

BIDDER NAME: EBSCO Industries, Inc.
 Vendor #: 63-6014186
 BIDDER ADDRESS: 10 Estes Street Ipswich, MA 01938
 P.O. ADDRESS: P.O. Box 682
 BIDDER PHONE #: (800) 653-2726
 BIDDER FAX #: (978) 356-5640
 COMPANY WEB SITE: www.epnet.com
 COMPANY CONTACT (REP): ~~Ryan Bernier~~ **Karena Donnelly** - Account Executive
 (800) 653-2726 Ext. 372 2372
 E-MAIL ADDRESS (REP): rbernier@epnet.com kdonnelly@ebscohost.com

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: YES NO

ACCEPT PROCUREMENT CARD: YES NO

REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD: YES NO %
 REBATE (Payment shall be made within 48 hrs utilizing the Purchasing Card)

INTERNET ORDERING CAPABILITY: YES NO % DISCOUNT
 Order forms are available online

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: * YES NO

* Should government agencies have interest in taking part in database access through the Maricopa contract, EBSCO will work with applicable parties to provide appropriate pricing where needed.

- NET 10 _____
- NET 15 _____
- NET 20 _____
- NET 30 _____
- NET 45 _____
- NET 60 _____
- NET 90 _____
- 2% 10 DAYS NET 30 _____
- 1% 10 DAYS NET 30 _____
- 2% 30 DAYS NET 31 _____
- 1% 30 DAYS NET 31 _____
- 5% 30 DAYS NET 31 _____

INDICATE PERCENTAGE OF M/WBE PARTICIPATION IF ANY HERE: 0 %

PLEASE INDICATE HOW YOU HEARD ABOUT THIS SOLICITATION:

- NEWSPAPER ADVERTISEMENT
- MARICOPA COUNTY WEB SITE
- PRE-SOLICITATION NOTICE (POST CARD)
- E-MAIL
- OTHER (PLEASE SPECIFY)

1.0 PRICES FOR MARICOPA COUNTY ONLY

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON POPULATION</u>		<u>% OFF LIST</u>
	List Price	Cost	
1.1 MasterFILE Premier with Newspaper Source and NoveList	\$798,500	\$319,400	60%
1.2 A to Z List	\$1,500	\$900	40%
1.3 NoveList Plus	\$12,600	\$6,30	50%

2.0 PRICES STATEWIDE (INCLUDING MARICOPA COUNTYT)

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON POPULATION</u>		<u>% OFF LIST</u>
	List Price	Cost	
2.1 MasterFILE Premier with Newspaper Source and NoveList	\$1,197,750	\$419,213	65%
2.2 A to Z List	\$99,000	\$49,500	50%
2.3 NoveList Plus	\$64,000	\$32,000	50%

3.0 MARICOPA COUNTY LIBRARY DISTRICT LIBRARY BRANCHES ONLY

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON POPULATION</u>		<u>% OFF LIST</u>
	List Price	Cost	
Reference Centers			
3.1 <i>Home Improvement</i>	\$23,000	\$11,500	50%
3.2 <i>Small Engine Repair</i>	\$15,000	\$ 7,500	50%

EBSCO Industries, Inc.

EXHIBIT B

SCOPE OF WORK

1.0 INTENT:

- 1.1 This Contract is for electronic products and services. Products and services provided under this Contract may also become accessible for purchase by other public entities throughout the State of Arizona. Contractor's products and services shall allow for unlimited, simultaneous access for users.
- 1.2 New contractors may be added to the County's contract(s) for these services during the term of this Contract as appropriate in order to meet the continuing needs of the Library District.

2.0 SCOPE OF SERVICES:

- 2.1 Contractor shall make the following Core Subject Areas available, via the internet, to all public libraries located within Maricopa County from inside the libraries and, if applicable, via remote customer access. Maricopa County, in partnership with other government entities, has the option of extending this service to all public libraries throughout the State of Arizona. Additional Core Subject Areas may be added to this Contract as funding becomes available.

- 2.1.1 MasterFile Premier, including Newspaper Source and NoveList.

- 2.2 COPYRIGHT:

- The Contractor is responsible to legally obtain copyright to items offered in the products.

- 2.3 TAX:

- 2.3.1 Libraries in the State of Arizona are exempt from any out-of-state tax on the purchase of books, electronic information and audio/visual materials. Tax Exempt numbers are not issued by the County. A copy of the Arizona Law providing this exemption will be provided at the time of account set-up.

- 2.3.2 An in-state contractor may only charge the city sales tax for the city within which the Contractor is located. The exception to this is where the Arizona city has also exempted these taxes.

- 2.3.3 No tax on labor services:

- 2.4 SERVICE DELIVERY:

- It shall be the Contractor's responsibility to meet the service delivery requirements. Maricopa County reserves the right to obtain services on the open market in the event the Contractor fails to make delivery and any price differential will be charged against the Contractor.

- 2.5 TRAINING:

- Contractor shall provide onsite, detailed, proactive training sessions on the use of Contractor resources and *EBSCOadmin* (the administrative module for *EBSCOhost*) at no additional cost to County. The schedule will be developed in conjunction with individual library systems.

EBSCO Industries, Inc.

EXHIBIT B

SCOPE OF WORK

Training sessions will be conducted as agreed-to with individual library systems. Additional training will be conducted annually or when there is a major change to the database(s) user interface upon request at no additional cost to County.

2.6 STATISTICS:

Contractor shall provide or make available, via the *EBSCOadmin* module, usage statistics per library at no additional cost to the libraries. Minimum statistics required by County are Logons, Searches, all retrievals and full-text retrievals. Library systems may have additional statistical needs and will work in concert with Contractor concerning availability.

2.7 REMOTE ACCESS:

Contractor shall provide remote access to *EBSCOhost* databases on an unlimited basis, both on and off site, through an institution's Web page link to authenticated library users. Libraries may select the best method to meet their user-authentication needs.

2.8 SIMULTANEOUS USERS:

Contractor shall provide unlimited, simultaneous users access.

EBSCO PUBLISHING LICENSE AGREEMENT

By using the services available at this site or by making the services available to Authorized Users, the Authorized Users and the Licensee agree to comply with the following terms and conditions (the "Agreement"). For purposes of this Agreement, "EBSCO" is EBSCO Industries, Inc.; the "Licensee" is the entity or institution that makes available databases and services offered by EBSCO; the "Sites" are the Internet websites offered or operated by Licensee from which Authorized Users can obtain access to EBSCO's databases and services; and the "Authorized User(s)" are employees, students, registered patrons, walk-in patrons, or other persons affiliated with Licensee or otherwise permitted to use Licensee's facilities and authorized by Licensee to access Databases.

I. LICENSE

A. EBSCO hereby grants to the Licensee a nontransferable and non-exclusive right to use the databases made available by EBSCO (the "Databases") according to the terms and conditions of this Agreement. The Databases made available to Authorized User are the subject of copyright protection, and the original copyright owner (EBSCO or its licensors) retains the ownership of the Database(s) and all portions thereof. EBSCO does not transfer any ownership, and the Licensee and Sites may not reproduce, distribute, display, modify, transfer or transmit, in any form, or by any means, any Database or any portion thereof without the prior written consent of EBSCO, except as specifically authorized in this Agreement.

B. The Licensee is authorized to provide on-site access through the Sites to the Databases to any Authorized User. The Licensee and Sites are authorized to provide remote access to the Databases only to their patrons as long as security procedures are undertaken that will prevent remote access by institutions, employees at non-subscribing institutions or individuals, that are not parties to this Agreement who are not expressly and specifically granted access by EBSCO. **Remote access to the Databases is permitted to patrons of subscribing institutions accessing from remote locations for personal, non-commercial use. However, remote access to the Databases from non-subscribing institutions is not allowed if the purpose of the use is for commercial gain through cost reduction or avoidance for a non-subscribing institution. Remote access for personal use from these institutions is permissible.**

C. Licensee and Authorized Users agree to abide by the Copyright Act of 1976 as well as any contractual restrictions, copyright restrictions, or other restrictions provided by publishers and specified in the Databases. Pursuant to these terms and conditions, the Licensee and Authorized Users may download or print limited copies of citations, abstracts, full text or portions thereof provided the information is used solely for personal, non-commercial use. Licensee and Authorized Users may not publish the information. Licensee and Authorized Users shall not use the Database as a component of or the basis of any other publication prepared for sale and will neither duplicate nor alter the Databases or any of the content therein in any manner nor use same for sale or distribution. Licensee and Authorized Users may create printouts of materials retrieved through the Databases via on-line printing, off-line printing, facsimile or electronic mail. All reproduction and distribution of such printouts, and all downloading and electronic storage of materials retrieved through the Products shall be for internal or personal use. Downloading all or parts of the Databases in a systematic or regular manner so as to create a collection of materials comprising all or part of the Databases is strictly prohibited whether or not such collection is in electronic or print form. Notwithstanding the above restrictions, this paragraph shall not restrict the use of the materials under the doctrine of "fair use" as defined under the laws of the United States. Publishers may impose their own conditions of use applicable only to their content. Such conditions of use shall be displayed on the computer screen displays associated with such content. The Licensee shall take all reasonable precautions to limit the usage of the Databases(s) to those specifically authorized by this Agreement.

D. Authorized Sites may be added or deleted from this Agreement as mutually agreed upon by EBSCO and Licensee

E. Licensee agrees to comply with the Copyright Act of 1976, and agrees to indemnify EBSCO against any actions by Licensee that are not consistent with the Copyright Act of 1976.

F. The computer software utilized via EBSCO's service(s) is protected by copyright law and international treaties. Unauthorized reproduction or distribution of this software, or any portion of it, is not allowed. User shall not reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the software, or create derivative works from the software.

II. LIMITED WARRANTY AND LIMITATION OF LIABILITY

A. EBSCO disclaims all warranties, express or implied, including, but not limited to, warranties of merchantability, noninfringement, or fitness for a particular purpose. EBSCO neither assumes nor authorizes any other person to assume for EBSCO any other liability in connection with the licensing of the Database(s) under this Agreement and/or its use thereof by the Licensee and Sites or Authorized Users.

B. THE MAXIMUM LIABILITY OF EBSCO AND ITS LICENSORS, IF ANY, UNDER THIS AGREEMENT, OR ARISING OUT OF ANY CLAIM RELATED TO THE PRODUCTS, FOR DIRECT DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY EBSCO FROM LICENSEE HEREUNDER UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED. IN NO EVENT SHALL EBSCO OR ITS LICENSORS BE LIABLE TO LICENSEE OR ANY AUTHORIZED USER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES RELATED TO THE USE OF THE DATABASES OR SERVICES OR TO THESE TERMS AND CONDITIONS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

III. PRICE AND PAYMENT

A. License fees have been agreed upon by EBSCO and the Licensee, and includes all retrospective issues of the Product(s) as well as updates furnished during the term of this Agreement. The Licensee's obligations of payment shall be to EBSCO or its assignee. Payments are due upon receipt of invoice(s) and will be deemed delinquent if not received within thirty days of the invoice date(s). Delinquent invoices are subject to interest charges of eighteen percent per annum on the unpaid balance (or the maximum rate allowed by law if such rate is less than eighteen percent). The Licensee will be liable for all costs of collection. Failure or delay in rendering payments due EBSCO under this Agreement will, at EBSCO's option, constitute material breach of this Agreement. If changes are made resulting in amendments to the Listing of Authorized Sites, Product(s) and Pricing identified in this Agreement pro rata adjustments of the contracted price will be calculated by EBSCO and invoiced to the Licensee and/or Sites accordingly as of the date of any such changes. Payment will be due upon receipt of any additional pro rata invoices and will be deemed delinquent if not received within thirty days of the invoice dates.

B. Taxes, if any, are not included in the agreed upon price and may be invoiced separately. Any taxes applicable to the Database(s) under this Agreement, whether or not such taxes are invoiced by EBSCO, will be the exclusive responsibility of the Licensee and/or Sites.

IV. TERMINATION

A. 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 EBSCO. 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, EBSCO may (at its option) terminate this Agreement upon written notice to the Licensee.

B. If EBSCO becomes aware of a material breach of Licensee's obligations under this Agreement or a breach by Licensee or Authorized Users of the rights of EBSCO or its licensors or an infringement on the rights of EBSCO or its licensors, then EBSCO will notify the Licensee immediately in writing and shall have the right to temporarily suspend the Licensee's access to the Product(s). Licensee shall be given the opportunity to remedy the breach or infringement within thirty (30) days following receipt of written notice from EBSCO. Once the breach or infringement has been remedied or the offending activity halted, EBSCO shall reinstate access to the Databases. If the Licensee does not satisfactorily remedy the offending activity within thirty (30) days, EBSCO may terminate this Agreement upon written notice to the Licensee.

C. The provisions set forth in Sections I, II and V of this Agreement shall survive the term of this Agreement and shall continue in force into perpetuity.

V. NOTICES OF CLAIMED COPYRIGHT INFRINGEMENT

EBSCO has appointed an agent to receive notifications of claims of copyright infringement regarding materials available or accessible on, through, or in connection with our services. Any person authorized to act for a copyright owner may notify us of such claims by contacting the following agent: Kim Stam, EBSCO Publishing, 10 Estes Street, Ipswich, MA 01938, phone: 978-356-6500, fax: 978-356-5191, email: kstam@epnet.com. In contacting this agent, the contacting person must provide all relevant information, including the elements of notification set forth in 17 U.S.C. 512.

VI. GENERAL

A. Neither EBSCO nor its licensors will be liable or deemed to be in default for any delays or failure in performance resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authority, rain, fire, flood, accidents, earthquake(s), strikes or labor shortages, transportation facilities shortages or failures of equipment, or failures of the Internet.

B. This Agreement and the license granted herein may not be assigned by the Licensee to any third party without written consent of EBSCO.

C. 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.

D. If the Licensee and/or Sites use purchase orders in conjunction with this Agreement, then the Licensee and/or Sites agree that the following statement is hereby automatically made part of such purchase orders: "The terms and conditions set forth in the EBSCO Publishing EBSCOhost LICENSE Agreement are made part of this purchase order and are in lieu of all terms and conditions, express or implied, in this purchase order, including any renewals hereof."

E. 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. There are no representations, warranties, promises, covenants or undertakings, except as described here.

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