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## **VALE ELECTRONIC RESOURCE LICENSING AGREEMENTS PREFERRED TERMS**

This document describes the preferred licensing terms and stipulations for negotiating licensing terms as well as on-site and remote access for participating VALE member libraries. These terms are broken down into several categories. Each category describes the consortial practices that best meet the needs of VALE member libraries and the institutional users of the electronic resources licensed on their behalf. In the terms that follow, we recognize some basic distinctions between commercial/non-profit vendors and publishers of electronic information products, particularly the differences between publishers of general and subject indexes and related products, and publishers of journals, books, and non-index reference works in electronic format. Effective October 2004 and in all future revisions, VALE endorses and ascribes to the principles that appear in the “Statement of Current Perspective and Preferred Practices for Selection and Purchase of Electronic Information,” International Coalition of Library Consortia (ICOLC) <http://icolc.net/statements> which are not inconsistent with the other terms listed below.

(1) Authorized Users shall be defined as all faculty, students and staff of the subscribing VALE member institutions as well as library walk-in patrons physically present in a subscribing library. New Jersey State Library authorized users include, in addition, state employees who are registered borrowers.

(2) Remote Access may be extended to all Authorized Users defined above except walk-in patrons without direct affiliation to the subscribing institution. Subscribing libraries will ensure that remote access is restricted to Authorized Users by implementing a secure authentication process such as a proxy server or virtual private network.

(3) Interlibrary Loan service, defined as the sharing of print or electronic copies of articles and other documents between libraries upon request by a specific patron, is permissible and consistent with fair use subject to the same limitations that apply to paper copies made for that purpose from print publications. Subscribing libraries will observe all standard interlibrary loan copyright limitations and protections.

(4) VALE member libraries may link to electronic full-text articles from databases their library licenses through VALE in their electronic reserve systems provided that access is restricted to Authorized Users as described above. No separate copyright permissions need to be obtained if the above guideline is followed. All items linked in electronic reserve systems will be accessible on-site and remotely using a secure authentication system as described in Section 2 above.

(5) The VALE consortium endorses the TRANSFER Code of Practice released by the Knowledge Bases and Related Tools (KBART) working group as a desirable framework for ensuring the continuity

of library access to purchased or subscribed journals whenever they are transferred to another publisher, and it will give preference to publishers who have publicly endorsed the Code in the negotiation of licensing and purchase agreements.

(6) VALE member libraries concur with the members of the International Coalition of Library Consortia (ICOLC) and agree with the authors of the Digital Library Federation's October 2005 document known as "Urgent Action Needed to Preserve Scholarly Electronic Journals" that the issue of long-term archiving needs to be brought into sharper focus by the library community and its partners in the domain of scholarly communication. VALE will work with other library consortia, publishers and with electronic archiving services such as Portico to insist on contract language that assures electronic access into perpetuity.

(7) Automatic License Renewals will not apply to any VALE database license agreement. There will be no automatic roll-over licenses.

(8) The VALE consortium recognizes its member institutions require the broadest possible discretion in allocating budgetary resources for the proper management of their collections consistent with their institutional missions. The consortium also recognizes that one of the most attractive license arrangements for member libraries takes the form of multi-product shared access contracts, whereby participating member institutions maximize the purchasing power of their collective budgets through negotiated access to large content collections (e.g., shared access to a publisher's journal collection based on the individual title subscriptions held by each member). To ensure the necessary freedom of action for libraries, the VALE consortium will avoid contracts that bind members to inflexible terms, including the following:

- non-disclosure language as a requirement for any license
- no-cancellation clauses for individual titles in a collection
- minimum spending requirements for participation in a shared access agreement, either as an initial condition of participation or as a condition for renewal

(9) In cases of electronic products which are aggregated collections of content, where the Licensor is either the publisher of said content or a company licensing it from other publishers, the VALE consortium recognizes these collections may occasionally be modified through a publisher's decision (e.g., to sell selected titles to another publisher, to remove selected titles from an aggregated product, etc.) or through the Licensor's loss of rights to distribute titles due to the termination of agreements with publishers. To protect the interests of its member libraries, VALE will require licenses for aggregated collection products to include the following provisions:

(a) Notification of Removal of Content - Licensor shall give written notice to the Licensee of the withdrawal of content from an aggregated collection product no later than 30 days following the removal of any title and preferably at least 30 days prior to its removal.

(b) Compensation for Removal of Content - If a Licensor modifies an aggregated collection product through the withdrawal of significant content (e.g., the removal of several important titles, the reduction of total product content by ten percent or more, etc.) during the period when it is licensed to VALE, the consortium will seek reasonable compensation for this loss. VALE will also seek to include in licenses the withdrawal of significant content from an aggregated product without compensation as sufficient grounds for an early termination of the license by member libraries.

(10) Database Price Changes will be communicated to the VALE consortium at least 120 days prior to the end of term of the license agreement. To ensure that this becomes a standard practice in relations with vendors, it is recommended this notification deadline be written into all vendor contracts.

(11) Usage Data shall be provided by the vendor to both the VALE consortium and to the individual subscribing member libraries on a periodic basis (at least quarterly and preferably on demand through vendor provision of an online administrative module to library customers). The data reported shall conform as closely as possible to the standards published by Project COUNTER [<http://www.projectcounter.org/>] in its Codes of Practice currently in place for journals, databases, books, and reference works. Usage data provided to the VALE consortium will itemize usage data by institution as well as an aggregated summary of all participants. The data provided to the individual subscribers will report usage for that institution only.

(12) All VALE licensing agreements assume that each participating institution assumes fiscal responsibility for the payment of its portion of any fees assessed by the vendor. All vendor payments by individual institutions are made to William Paterson University, the current fiduciary agent for VALE.

(13) Each of the participating libraries covered by a VALE electronic licensing agreement shall take reasonable measures to insure compliance with its terms and conditions. Reasonable measures may include appropriate signage delineating particular restrictions located at or near workstations, announcement on the library's Web page or on login pages to a particular resource. Each participating library may use the method that best insures compliance within its unique environment.

(14) VALE member libraries comply with the New Jersey Confidentiality of Library Records Law. Library records that contain the names or other personally identifying details regarding the users of the libraries are confidential under NJSA 18A:73-43.1 – 43.2, the New Jersey's Confidentiality of Library Records Law. New Jersey law continues to protect the confidentiality of library records, and remains unchanged since Congress enacted the USA Patriot Act. Library records can only be disclosed if the person making the request presents a subpoena issued by a court or court order.

(15) The electronic resource vendor agrees to indemnify, defend and hold the VALE Consortium and its participating members harmless in performing its obligations in relation to the relevant license. This statement applies as long as the licensee (the VALE Consortium and its participating member libraries) did not cause, knowingly assist or condone the continuation of any known breach after becoming aware of an actual breach having occurred.

(16) All vendor licensing agreements shall be governed by and construed in accordance with the laws of the State of New Jersey.

## **VALE ELECTRONIC RESOURCE LICENSING PROTOCOLS**

(1) The Official Consortium Representative is the Chair of the Executive Committee, who is authorized by each of the consortium members to enter into a licensing agreement including its amendments in their names and on their behalf, and to represent the consortium members on all matters relating to the license.

(2) Authorized Signature for VALE consortial licensing agreements will be that of the Chair of the Executive Committee as the official representative of VALE. The current chair is Taras Pavlovsky, Dean of the Library, The College of New Jersey, P.O. Box 7718, 2000 Pennington Road, Ewing, NJ 08628, email: [pavlovsk@tcnj.edu](mailto:pavlovsk@tcnj.edu) or voice: (609)771-2332.

(3) The Fiduciary Agent for VALE will remain William Paterson University and all invoices and payments will be processed at the David and Lorraine Cheng Library at William Paterson University, c/o Anne Ciliberti, Library Director, 300 Pompton Road, Wayne, NJ 07470, voice: (973)720-2113. William Paterson University is not, however, the official representative of VALE nor empowered to sign contracts/licenses on VALE's behalf.

(4) The official Licensing Party for all contracts, licenses and agreements should clearly state that the contract is between the vendor and the VALE consortium and include a complete list of the institutions licensed for database access.