

**AGREEMENT**  
**Agreement for the Provision of Serial Subscription Services**

Made and executed this \_\_\_ day of \_\_\_\_\_, 2013 by and between

The National Library Ltd. (CC)  
of the Edmond J. Safra Campus,  
P.O.B. 39105 Givat Ram, Jerusalem 91390  
Israel  
(the “**NLI**”)

And

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(the “**Vendor**”)

WHEREAS The NLI is interested in engaging the services of a vendor for the provision of comprehensive serials subscriptions to NLI (the “**Services**”); and

WHEREAS In order to identify and select a vendor therefore, the NLI issued a public request for proposals (the “**RFP**”) on \_\_\_\_\_, 2013; and

WHEREAS The Vendor provided the NLI with the response to the RFP attached hereto as Appendix 1 (the “**Response**”), which was selected by the NLI as the winning response; and

WHEREAS The Vendor determined to engage the Vendor for the provision of the Service on the basis of the Response and subject to the terms of the RFP;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. **PREMABLE AND APPENDICES**

1.1 The preamble and appendices to this Agreement, including, without limitation, all representations and undertakings contained therein form an integral part of this Agreement.

1.2 Without derogating from Section 1.1 above, the following documents are hereby incorporated into this Agreement:

- 1.2.1 Appendix 1 - The Response
- 1.2.2 Appendix 2 - The Payment Schedule

- 1.3 The Vendor shall provide the NLI the Services as provided in Appendix 1 and in this Agreement. In the case of any contradiction between the provisions of Appendix 1 and this Agreement, the provisions of this Agreement shall prevail.

2. **Term**

The Vendor will provide the Services for a period of three (3) years (the “**Initial Term**”), as well as for any further extensions as may be agreed between the parties (the “**Extensions**”), (together, the “**Term**”).

3. **The Services**

During the Initial Term and any Extensions, the Vendor shall provide NLI with the following Services, as further specified in Appendix 1:

- 3.1 The Vendor shall perform as an authorized Subscription Agent for NLI by serving as a liaison between NLI and publishers and/or their representatives, including obtaining quotations from publishers; it is hereby clarified that any order placed for NLI with any publisher is conditioned on final approval by NLI and the Vendor shall not be authorised to place any binding order on behalf of NLI without such approval;
- 3.2 The Vendor shall enter orders, make payments to publishers, provide invoices for subscriptions placed, provide reports of services to NLI, process claims and replacement requests, and supply credits, refunds, or pro-rated invoices when required to NLI;
- 3.3 The Vendor shall supply to NLI titles from the list specified in Appendix 1, at the best price available from the publisher;
- 3.4 The Vendor shall handle all correspondence with the publishers in regard to duplicate issues sent, cancellations, claims for missing issues or loss of e-access, address changes, IP addresses, IP address changes, and other service communications;
- 3.5 The Vendor shall provide NLI with access to the Vendor’s database containing full information on serial titles, including, but not limited to, publication status, price, ordering information, formats available and package options. This access shall be provided free of charge and without restriction on NLI’s use of the data retrieved. However, NLI shall not be committed to use the Vendor’s database for its ordering, claiming or any other Service that the Vendor should supply NLI, and NLI’s decision not to use Vendor’s database as aforesaid shall not affect any other services or payments provided by the Vendor to NLI under this Agreement.
- 3.6 The Vendor shall assist NLI in managing databases, including but not limited to receipt of MARC records for uploading, access verification and maintenance, outright purchase, installment fees, annual subscriptions and providing usage statistics.
- 3.7 The Vendor shall take all necessary steps to improve service given to NLI by the publishers, as well as to procure to the fullest extent discounts available to NLI from publishers, and shall ensure that the access levels provided by publishers are those specified by NLI.
- 3.8 The Vendor shall take all steps necessary to transfer all of NLI’s existing serial subscriptions to Vendor’s management, within eight (8) months of the

signature hereof. NLI shall provide the Vendor with any information necessary to facilitate such transfer of subscriptions.

#### 4. **Reporting**

4.1 Upon NLI's request, and no less frequently than once a year, the Vendor shall provide NLI with an electronic account statement reflecting orders, payments, credits, and balances in electronic format (as agreed in writing between the parties) accessible to the NLI for twelve (12) months from the date of each report.

4.2 For renewal purposes, the Vendor shall provide report(s) detailing all titles previously on order, indicating current status, current price, and renewal date of each title. Report(s) must be provided approximately three (3) to six (6) months prior to the Publisher's annual renewal date or dates and must be in an electronic format agreed to by the parties in advance.

4.3 All reports provided by the Vendor that can be imported into a spreadsheet must be submitted to NLI in a format easily imported into Microsoft Excel.

4.4 Vendor shall provide NLI with written confirmation from any publisher to the effect that the Vendor has made full payment for NLI's subscriptions within seventy-two (72) business hours of request.

#### 5. **Vendor's Representations and Warranties**

5.1 The obligations expressed to be assumed by the Vendor in this Agreement are legal and valid obligations binding on the Vendor and enforceable in accordance with their terms.

5.2 The execution of this Agreement by the Vendor and the exercise of the Vendor's rights and performance of the Vendor's obligations hereunder do not and will not: (i) conflict with any agreement, mortgage, pledge, bank loan or credit agreement, charge or other instrument or document to which it is a party or which is binding upon it or any of its assets, (ii) conflict with its articles of amalgamation, continuance or incorporation, its by-laws or any other organisational documents, or (iii) conflict with any applicable law, regulation or order.

5.3 As of the date of this Agreement, no receiver, receiver manager, liquidator or similar officer has been appointed with respect to the Vendor or any part of its assets nor is it aware of any petition or proceedings for such appointment pending.

5.4 Vendor declares that it is not in any discussions or negotiations for merger with another entity or acquisition by another entity, and shall disclose to NLI if it shall enter into such discussions or negotiations during the term of this Agreement.

5.5 The Vendor hereby declares and undertakes that for the duration of the Term, it shall have all the licenses, permits and permissions required by law for the performance of the Services as provided in this Agreement.

5.6 The Vendor hereby declares that all representations and warranties made by it in the Response are correct, complete and accurate as of the date of signature hereof and that meets all of the qualifications stipulated in the RFP in their entirety. The Vendor hereby declares that it understands that the NLI's willingness to enter into

this Agreement with the Vendor is based on the correctness, completeness and accuracy of the abovementioned representations and warranties and that the NLI would not have agreed to enter into this Agreement if it knew that these representations or warranties or any of them were not correct.

- 5.7 The Vendor hereby declares that it has the manpower, equipment, materials, knowledge, experience and other means necessary for the provision of the Services as described in its Response at its disposal, and that these will continue to be so available for the Term of this Agreement.
- 5.8 The Vendor hereby declares that its undertakings to the NLI in this Agreement or the performance thereof do not in any way breach the rights of any third party, including, without limitation, their intellectual property rights of any kind (copyrights, patents, trade secrets, etc.).
- 5.9 The Vendor hereby declares that it is aware of and versed in the laws regarding conflicts of interests in the State of Israel and that its interests do not conflict in any way with those of the NLI. In the event that, as a result of a change of circumstances or otherwise, it becomes aware of any such conflict or of any situation which could potentially raise the suspicion of such conflict during the Term, it will immediately inform the NLI thereof.
- 5.10 The Vendor hereby declares and undertakes the following:
  - 5.10.1 It examined this Agreement and all documents related to the RFP, including any clarifications published by the NLI (if so published) carefully prior to signing this Agreement, it has thoroughly understood them and it shall have no claims with respect thereto.
  - 5.10.2 All actions with respect to the fulfillment of its obligations hereunder, whether directly or by any of its employees or agents, shall be performed in an expert manner, at the highest professional standards in Israel and abroad.
  - 5.10.3 The personnel for the performance by it of its obligations hereunder, including the project manager, shall be appointed by the Vendor. Any change in such personnel shall be subject to the prior consent of the NLI. Furthermore, the NLI shall have the right to demand the removal of any of the Vendor's personnel from the team providing the Services.

## 6. **Intellectual Property**

- 6.1 The Vendor hereby undertakes that in the event that its provision of the Services under this Agreement breaches the intellectual property or other rights of any third party, the Vendor shall immediately either secure proper rights to use such serial in accordance with the provisions of this Agreement or remove it and replace it with a component acceptable to the NLI in which it has secured proper usage rights, all at the Vendor's sole cost.
- 6.2 The provisions of this Section 6 shall not derogate from any other remedy available to the NLI by law or contract with respect to the breaching components, including, *inter alia*, the right to compensation for breach of this Agreement and indemnification as provided herein. Furthermore, in the event the Vendor has available to it similar, equivalent, alternative or other rights, the NLI may, at its sole discretion, choose to bring its claims against any or all of the Vendor or such parties, jointly and severally, without derogating from its remedies with respect to the Vendor under law.

## 7. **Confidentiality**

- 7.1 The Vendor hereby undertakes to keep confidential every document, program, sketch, program, work order, implementation procedure or any other information or data which it receives, to which it is exposed, or which it creates in the course of or in connection with the performance of its Services hereunder, directly or indirectly (the “**Confidential Information**”).
- 7.2 The Vendor undertakes to comply with the NLI’s instructions with respect to the Confidential Information, including, without limitation, arrangements for the protection of the Confidential Information and procedures for collecting and accessing such Confidential Information and marking it as confidential.
- 7.3 The Vendor hereby declares that it is familiar with the provisions of Israel’s Protection of Privacy Law, 1981 and all regulations promulgated thereunder and that the Vendor, its employees and agents, will comply with its provisions and the provisions of any other law with respect to the protection and confidentiality of the information available to the Vendor, its employees and its agents.
- 7.4 The Vendor undertakes to return all Confidential Information to the NLI within two weeks of the termination of this Agreement. With respect to information imbedded in computer memory or which cannot be returned to the NLI for any other reason, the Vendor undertakes to erase such information or delete it in a manner that will not allow it to be reconstructed or reproduced.
- 7.5 Without derogating from the above, the Vendor undertakes that it will take all reasonable measures to secure the Confidential Information and to provide the NLI with information regarding such measures upon its request. Furthermore, the Vendor undertakes to ensure that all of its employees and agents will protect the Confidential Information to which they have access that is subject to Israel’s Computerized Data Bases Regulations and the Protection of Privacy Law, 1981 in accordance with their terms.

## 8. **Payment**

- 8.1 The full and final compensation to the Vendor for the performance of its obligations in this Agreement shall be as provided in Appendix 2 (the “**Payment Schedule**”). The Vendor shall adjust the prices specified in the Payment Schedule solely upon receipt of notification from any publisher of an increase in prices for any title, and only commensurate with said increase, provided that NLI shall have the option of discontinuing its subscription for said title. For the avoidance of doubt, it is hereby declared and agreed that Vendor’s handling fee shall remain unchanged for the term of this Agreement the payment listed in the Payment Schedule is the full compensation to which the Vendor is entitled for all of the Services to be provided by the Vendor in accordance with this Agreement.
- 8.2 Payments shall be made in accordance with fulfillment by Vendor of the milestones specified in the Payment Schedule to the full satisfaction of the NLI, against provision by Vendor of formal VAT invoices and shall be made on a current month + sixty (60) days basis.
- 8.3 All payments will be made in the Vendor’s local currency. Payments pursuant to the Payment Schedule shall only be made after provision by the Vendor of the following documents upon execution of this Agreement and at the beginning of

each financial year thereafter and which the Vendor agrees constitute a condition precedent for each payment:

8.3.1 Valid recent certification that the Vendor conducts proper books as required by law, is an authorized dealer as required pursuant to the Value Added Tax Law, 5736-1975; and

8.3.2 Valid recent certification required pursuant to the Public Bodies (Transaction)(Enforcement of Booking) Law, 5736-1976 indicating that the Vendor conducts its books as required by Israel's income tax and value added tax laws or certification that it is exempt from such requirements, and that it reports its income and transactions to the tax authorities as required by law.

In the event the Vendor is organized in a foreign jurisdiction, in must provide certification that it conducts proper books, complies with the applicable value added tax legislation and otherwise complies with the requirements in its home jurisdiction for contracting with public entities.

## 9. **Compliance with Laws**

9.1 Its performance of this Agreement, the Vendor will comply with all applicable laws, including without limitation all applicable copyright laws. The Vendor agrees to take the required steps necessary, if any, to satisfy any laws or requirements to declare, file, record or otherwise render this Agreement valid.

9.2 The Vendor will be responsible for obtaining all applicable government regulatory approvals and/or licenses required to perform its obligations under this Agreement.

## 10. **Indemnification**

10.1 The Vendor shall bear sole liability for any direct or indirect damage caused to the NLI or any third party, caused by any act or omission of the Vendor, its employees or agents.

10.2 The Vendor shall, at its own expense, indemnify, defend, and hold the NLI, and its partners, including, distributors, affiliates, officers, directors or employees (the "**Vendor Indemnitees**") harmless from and against any liabilities, damages, costs or expenses (including attorney's fees and expert witness fees) suffered or incurred by any Vendor Indemnitee from or in connection with any claim, action, demand, suit, or proceeding ("**Claim**") against such Vendor Indemnitee brought by a third party to the extent the Claim arises out of or resulting from or in connection with this Agreement or the performance hereof by Vendor, its employees or agents.

10.3 Without derogating from the above, the Vendor shall, at its expense, indemnify, defend and hold the Vendor Indemnitees harmless from and against any liabilities, damages, costs or expenses (including attorney's fees and expert witness fees) suffered or incurred by any Vendor Indemnitee from or in connection with any Claim brought in connection with the breach of any third party's intellectual property rights by the Vendor, its employees or agents. Furthermore, the Vendor shall defend the NLI, at its own expense, with respect to any Claim that the subscriptions or any component thereof breach a third-party patent, copyright or other intellectual property right, and shall bear all expenses, including damages, costs or expenses (including attorney's fees and expert witness fees) it is ordered to pay with respect to such proceedings. The Vendor shall cease any serial

subscription procured for NLI that is determined to breach any intellectual property rights with another non-breaching serial, at its sole expense and, in the event that no such serial exists, it shall compensate the NLI by reimbursing the full cost of the of the breaching serial.

- 10.4 The Vendor shall full insure itself, its employees and agents against its liability to the NLI and the Vendor Indemnitees as provided in this Section 10 and shall provide the NLI with valid certification from its insurance company such it has such sufficient insurance upon execution hereof.

11. **No Employee-Employer Relations**

- 11.1 The Vendor hereby declares and represents to the NLI that it is performing its obligations hereunder as an independent contractor. Nothing in this Agreement, including but not limited to the location of Services provided hereunder shall render any of the Vendor, its employees or agents, an employee, agent or partner of the NLI.
- 11.2 The Vendor hereby declares and represents that it shall make its employees or agents aware that no employee-employer relations shall be created by virtue of the provision of the Services under this Agreement.

12. **Assignment**

- 12.1 The rights, interests and obligations of the Vendor hereunder shall not be assigned or transferred, in whole or in part, without the prior written approval of the NLI. Assignment in violation of this Section 12.1 shall be null and void from the beginning, and shall be deemed a material breach of this Agreement and shall not release the Vendor from his obligations hereunder.
- 12.2 The rights, interests and obligations of the NLI hereunder may be assigned or transferred, in whole or in part, without the prior written approval of the Vendor.

13. **Waiver**

Failure or neglect by the NLI to enforce any of the provisions hereof at any time shall not be construed nor shall be deemed to be a waiver of its rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice such Party's rights to take subsequent action.

14. **Breach of Contract**

- 14.1 If (a) the Vendor's breach of this agreement constitutes a material breach, as such term is defined in the Contract Law (Remedies for Breach of Contract), 1970 or as provided in Section 14.2 below or (b) otherwise breaches this Agreement in a manner than may be remedied within seven (7) days, but does not so remedy the breach, the NLI may terminate this Agreement or perform, directly or using the services of any third party, any obligation which the Vendor undertook to perform hereunder, all at the Vendor's sole expense and in addition to any other remedy available to the NLI in law or contract.
- 14.2 For the purposes of this Section 14, the breach of the following shall be deemed a material breach:

- 14.2.1 The Vendor's failure to meet, or anticipated failure to meet, any of the timetables of deadlines specified by the Vendor in the Response.
- 14.2.2 The Vendor's failure to perform any of its obligations as provided in Sections 3, 4, 5, 6, 7, 10.2 and 10.3 of this Agreement.

15. **Termination**

- 15.1 The NLI may terminate this Agreement without any prior notice in any of the following:
  - 15.1.1 A receiver, receiver manager, liquidator or similar officer has been appointed with respect to the Vendor or any part of its assets any petition or proceedings for such appointment are pending;
  - 15.1.2 The Vendor ceases to conduct its operations substantially as conducted on the date hereof for more than thirty (30) days.
  - 15.1.3 If the Vendor assigns or transfer is obligations hereunder, in whole or in part, other than as provided in this Agreement.
  - 15.1.4 The Vendor has abandoned its obligations hereunder.
- 15.2 Notwithstanding the other provisions of this Section 3, the NLI may terminate this Agreement at any time with ninety (90) days' prior written notice to the Vendor at its sole discretion and without to obligation to provide any cause for such termination. The Vendor hereby declares that it shall not have the right to any financial or other claim against the NLI in relation to such termination of this Agreement.

16. **Miscellaneous**

- 16.1 This Agreement, including the appendices and schedules and any addendum attached hereto, constitutes the final and entire agreement between the parties regarding the subject matter hereof and all other prior or contemporaneous negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.
- 16.2 The headings to the clauses, sub-clauses and parts of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Any ambiguity in this Agreement shall be interpreted equitably without regard to which party drafted the Agreement or any provision thereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement.
- 16.3 In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and, in such event, any such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or intended provision within the limits of applicable law or applicable court decisions.
- 16.4 This Agreement and the parties' rights and obligations thereunder shall for all purposes be solely and exclusive governed by, and construed and enforced under,



the laws of the State of Israel and all disputes between the parties shall be heard exclusively by the competent courts of the District of Jerusalem.

16.5 Notices shall be deemed received at the parties' addresses as provided herein within seven (7) days, other than notices delivered by hand or sent by fax or e-mail, which shall be deemed received the first business day following such delivery or sending.

In witness whereof, the parties have affixed their signatures:

On behalf of

\_\_\_\_\_ (Date)  
The National Library of Israel Ltd. (CC)

\_\_\_\_\_ (Date)  
The Vendor

## Appendix 1 - The Response

## **Appendix 2 – Payment Schedule**

1. Payments to Vendor shall be made by NLI within 60 days after receipt of the Vendor's invoices.
  
2. The Vendor's invoices should include the following breakdown:
  - a. List price for each title, and the applicable discount from the publisher's list price;
  - b. Handling fees (\_\_\_ percent of the list price); and
  - c. Shipping charges (where applicable)
  
3. All invoice prices are final unless adjustments are required, which adjustments shall be detailed on supplemental invoices. If NLI accepts the explanation for said supplemental invoice, it shall pay any difference between the amended amount and the originally invoiced amount within 60 days of its acceptance as aforesaid. Supplemental invoices shall not be permitted after six (6) months from the initial invoice.
  
4. Invoicing requirements detailed herein are in addition to any requirements stipulated in Appendix 1 to the Agreement.