

R.R. BOWKER LICENSE AGREEMENT

This Agreement, including Appendix A referred to herein, attached hereto, and made a part hereof (collectively, this "Agreement") is between R.R. Bowker LLC, a Delaware limited liability company ("Bowker") and the Open Learning Agency - BC Electronic Library Network ("ELN Consortium").

RECITALS

WHEREAS Bowker has developed valuable and proprietary Databases (as defined herein) containing information regarding bibliographic and other reference materials; and

WHEREAS Bowker has designed and developed valuable and proprietary computer programs, including search and retrieval Software (as defined herein); and

WHEREAS Bowker makes such Databases and Software available as Booksinprint.com™ (as defined herein), Globalbooksinprint.com™ (as defined herein), Ulrichsweb.com™ (as defined herein) and Ulrich's™ Serials Analysis System (as defined herein) (collectively, the "Online Databases") to its customers; and

WHEREAS ELN Consortium, acting on behalf of its Subscribing Members (as defined herein) desires to obtain rights under this Agreement to use the Online Databases under the terms and conditions of this Agreement; and

WHEREAS Bowker desires to make the Online Databases available to Subscribing Members under this Agreement.

NOW, THEREFORE, in consideration of the above premises, and the mutual covenants set forth below and for other good and valuable consideration, Bowker and ELN Consortium agree as follows:

1. **DEFINITIONS.** As used in this Agreement, these terms shall have the following meanings.
 - a) "Appendix A" means the order form customized by Bowker for ELN Consortium and used for subscribing to the Online Databases which is attached hereto as Appendix A and incorporated herein by this reference.
 - b) "Authorized Users" means employees, students, faculty, staff, and patrons (including any individuals who make use of library facilities while on library premises) of the Subscribing Members who are authorized by ELN Consortium and its Subscribing Members in accordance with this Agreement to use any or all of Booksinprint.com, Globalbooksinprint.com and Ulrichsweb.com either from the Licensed Locations (as defined herein) or remotely via a protected referral URL and/or a protected proxy server of a Subscribing Member.
 - c) "USAS Users" means those librarians and library employees and staff of the Subscribing Members who are authorized by ELN Consortium and its Subscribing Members in accordance with this Agreement to use Ulrich's Serials Analysis System via password protected access.
 - d) "Databases" means the valuable and proprietary data products developed by Bowker, its licensors, or both, known as (i) Books In Print® that includes without limitation information on bibliographic reference sources, (ii) Global Books In Print™ that includes without limitation information on bibliographic reference sources and (iii) Ulrich's™ Periodicals Directory that includes without limitation information on serials reference sources.
 - e) "Booksinprint.com™" means the Database known as Books In Print®, Software, and any other materials, including any documentation, delivered or displayed to ELN Consortium by Bowker under this Agreement.
 - f) "Globalbooksinprint.com™" means the Database known as Global Books In Print™, Software, and any other materials, including any documentation, delivered or displayed to ELN Consortium by Bowker under this Agreement.
 - g) "Ulrichsweb.com™" means the Database known as Ulrich's™ Periodicals Directory, Software, and any other materials, including any documentation, delivered or displayed to ELN Consortium by Bowker under this Agreement.

- h) "Ulrich's™ Serials Analysis System" means the valuable and proprietary electronic research product developed by Bowker that allows its users to compare the scope of their library holdings against the periodicals information available from the Ulrich's™ Periodicals Directory Database and Ulrichsweb.com
 - i) "Licensed Locations" means the sites and/or Internet server addresses specified by ELN Consortium in Appendix A and any subsequent renewals, additions or deletions to the Licensed Locations as agreed to by Bowker and ELN Consortium.
 - j) "License Fees" means the fees payable by ELN Consortium to Bowker for use by the Subscribing Members of the Online Databases as specified in Appendix A and any fees payable for subsequent renewals of the License granted herein.
 - k) "Software" means the valuable and proprietary computer instruction set developed or licensed by Bowker to access and display the Databases in the Online Databases.
 - l) "Subscribing Members" means those member institutions of ELN Consortium listed in Appendix A who have subscribed to one or more of the Online Databases, subject to the terms and conditions of this Agreement, and any other member institutions of ELN Consortium who subsequently subscribe to one or more of the Online Databases, subject to the terms and conditions of this Agreement, by written authorization between Bowker and ELN Consortium.
2. **LICENSE.** Upon ELN Consortium's acceptance of this Agreement and payment to Bowker of the License Fees shown in Appendix A, Bowker grants to ELN Consortium and its Subscribing Members a limited, non-exclusive, non-transferable license ("License") to use the Online Databases solely as specified herein during the Term of this Agreement. Bowker expressly reserves all rights not expressly granted herein to ELN Consortium or its Subscribing Members.
3. **PERMITTED USES.** Subscribing Members may:
- a) allow Authorized Users to: (i) access the Online Databases from the IP Addresses of the Licensed Locations specified in Appendix A, or (ii) access the Online Databases remotely via a protected referral URL and/or a protected proxy server of ELN Consortium or a Subscribing Member; or (iii) access the Online Databases remotely through other secure access procedures as agreed between Bowker and ELN Consortium or its Subscribing Members.
 - b) allow Authorized Users to perform discrete searches of the Databases;
 - c) allow Authorized Users to print or download limited portions of the Databases which are the results of discrete searches for Authorized Users' and Subscribing Members' research purposes only, provided that the Subscribing Members do not remove from any hardcopy or electronic copies created or distributed as a result of such printing or downloading any proprietary notice(s) placed upon the Databases by Bowker.
 - d) allow USAS Users to display, download, reformat, distribute, print, and otherwise use and save the lists and reports generated from the Ulrich's Serials Analysis System for their own internal library research and analysis purposes only. Subscribing Members and USAS Users may not use the Ulrich's Serials Analysis System to create derivative or competitive works or use or provide access to Ulrich's Serials Analysis System for commercial purposes. Notwithstanding the foregoing, Bowker acknowledges that the Subscribing Members own and retain all right, title and interest in and to Subscribing Members' library serials holdings information.
4. **PROHIBITED USES.** Without the prior express written permission of Bowker, ELN Consortium and its Subscribing Members may not:
- a) copy, reproduce, modify, download, distribute or otherwise make the Online Databases, their individual components, or data retrieved by using the Online Databases available in any medium or in any way, in whole or in part, to anyone except as specifically authorized herein;
 - b) sell, license or otherwise distribute the Online Databases, their component parts, or data retrieved by using the Online Databases, in any form whatsoever, to third parties, including ELN Consortium's subsidiaries or affiliates, if any;

- c) provide access to any part or parts of the Online Databases to any person other than Authorized Users;
 - d) use or provide access to any part or parts of the Online Databases: (i) via other than the IP Addresses specified in Appendix A; or (ii) by more than the number of simultaneous Authorized Users specified in Appendix A;
 - e) use or provide access to any part or parts of the Online Databases at any location other than at the Licensed Locations specified in Appendix A with the exception of Authorized Users who are accessing the Online Databases remotely via a protected referral URL and/or a protected proxy server of ELN Consortium or the Subscribing Members;
 - f) transfer the Online Databases or any of their component parts from the Licensed Locations to any other location without the prior written consent of Bowker;
 - g) alter, modify, or adapt the Databases in any way;
 - h) decompile, disassemble, or reverse engineer the Software;
 - i) use the Online Databases to create derivative or competitive works;
 - j) use or provide access to the Online Databases for commercial purposes.
5. **SUBSCRIBING MEMBERS' RESPONSIBILITIES.** Subscribing Members agree to use reasonable efforts to inform Authorized Users and USAS Users of their rights and responsibilities under this Agreement and to ensure that Authorized Users and USAS Users adhere to the terms and conditions of this Agreement.
6. **TERM AND RENEWAL.** This Agreement will remain in effect during the Subscription Period specified in Appendix A, provided the License Fees specified in Appendix A are paid in full. This Agreement may then be renewed with written authorization by both parties for successive one (1) year terms at the License Fees in effect as of the Renewal date.
7. **PAYMENT.** ELN Consortium agrees to make payment of the License Fees specified in Appendix A to Bowker no later than thirty (30) days following delivery to ELN Consortium of Bowker's invoice. Bowker reserves the right to suspend Subscribing Members' access to the Online Databases if payment in full is not received from ELN Consortium within forty-five (45) days following delivery of Bowker's initial invoice to ELN Consortium .
8. **OWNERSHIP.** ELN Consortium acknowledges that the Online Databases are proprietary to Bowker and/or its affiliates, suppliers, and licensors, who retain exclusive title to and ownership of the copyrights, trademarks, trade secrets and other intellectual property rights in the Online Databases. ELN Consortium further acknowledges that this Agreement grants no right of ownership to ELN Consortium or its Subscribing Members. ELN Consortium and its Subscribing Members may not alter, remove, obscure or obstruct the display of any copyright, trademark or other proprietary notice placed upon the Online Databases by Bowker.
9. **WARRANTIES AND DISCLAIMERS.** BOWKER REPRESENTS AND WARRANTS THAT IT HAS THE FULL RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND GRANT ALL RIGHTS AND INTERESTS AS CONTEMPLATED HEREUNDER, AND THAT THE ONLINE DATABASES, THE DATABASES (WITH THE EXCEPTION OF THE BOOK REVIEWS PUBLISHED BY PUBLISHERS WEEKLY, LIBRARY JOURNAL, SCHOOL LIBRARY JOURNAL, AND CRITICAS), AND THE SOFTWARE AND THEIR USE IN ACCORDANCE WITH THE TERMS HEREIN DO NOT AND WILL NOT INFRINGE UPON, VIOLATE OR MISAPPROPRIATE ANY U.S. PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, OR ANY OTHER PROPRIETARY RIGHT, CONTRACT OR OTHER RIGHT OR INTEREST OF ANY THIRD PARTY. ELN CONSORTIUM UNDERSTANDS THAT BOWKER, ITS AFFILIATES, LICENSORS, SUPPLIERS AND AGENTS, MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE ONLINE DATABASES, INCLUDING WITHOUT LIMITATION THE SOFTWARE AND THE DATABASES, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER BOWKER NOR ITS LICENSORS MAKES ANY REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY, ADEQUACY, OR COMPLETENESS OF THE INFORMATION CONTAINED WITHIN THE DATABASES, OR THAT THE INFORMATION CONTAINED IN THE ONLINE DATABASES IS COMPLETE OR FREE FROM ERROR. NEITHER BOWKER NOR ITS LICENSORS ASSUME, AND ALL EXPRESSLY DISCLAIM, ANY LIABILITY TO ANY PERSON FOR ANY LOSS OR DAMAGE CAUSED BY ERRORS OR OMISSIONS IN THE DATABASES, WHETHER SUCH ERRORS OR OMISSIONS RESULT FROM

NEGLIGENCE, ACCIDENT, OR ANY OTHER CAUSE. NEITHER BOWKER NOR ITS LICENSORS MAKE ANY REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE PERFORMANCE OF ELN CONSORTIUM'S OR ITS SUBSCRIBING MEMBERS' NETWORKS OR COMPUTER SYSTEMS WHEN USED IN CONJUNCTION WITH THE ONLINE DATABASES. IN NO EVENT WILL BOWKER, ITS AFFILIATES, LICENSORS, SUPPLIERS OR AGENTS, BE LIABLE TO ELN CONSORTIUM OR ANY OF ITS SUBSCRIBING MEMBERS FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF ELN CONSORTIUM'S OR ITS SUBSCRIBING MEMBERS' USE OR INABILITY TO USE THE ONLINE DATABASES REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE OR WHETHER SUCH DAMAGES ARE DEEMED TO RESULT FROM THE FAILURE OR INADEQUACY OF ANY EXCLUSIVE OR OTHER REMEDY. EXCEPT WITH RESPECT TO THE COMPUTATION OF DAMAGES FOR THE UNAUTHORIZED USE, DISCLOSURE, MISAPPROPRIATION OR INFRINGEMENT OF INTANGIBLE PROPERTY SUBJECT TO COPYRIGHT, PATENT RIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHTS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE OR WHETHER SUCH DAMAGES ARE DEEMED TO RESULT FROM THE FAILURE OR INADEQUACY OF ANY EXCLUSIVE OR OTHER REMEDY.

ELN CONSORTIUM AND ITS SUBSCRIBING MEMBERS UNDERSTAND AND ACKNOWLEDGE THAT THEY ARE SOLELY RESPONSIBLE FOR LOADING, USING, DOWNLOADING INTO OR DELETING FROM THEIR COMPUTER SYSTEMS ANY LISTS OR REPORTS PROVIDED BY THE ULRICH'S SERIALS ANALYSIS SYSTEM, AND ELN CONSORTIUM AND ITS SUBSCRIBING MEMBERS ASSUME ALL RISK AND RESPONSIBILITY RELATED TO SAME. IN NO EVENT SHALL BOWKER BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING FROM ELN CONSORTIUM OR ITS SUBSCRIBING MEMBERS' LOADING, USE, DOWNLOADING OR DELETION OF SUCH REPORTS.

10. **INDEMNIFICATION.** Each party shall defend and indemnify the other, its directors, members, officers, agents, and employees from any liability and expense (including, without limitation, reasonable attorney's fees) imposed upon the indemnified party as a result of any claim arising out of the acts or omissions of, or breach of any representation or warranty hereunder by the indemnitor under this Agreement and including all costs, expenses and damages reasonably incurred or suffered by the indemnified party in connection therewith, subject, however, to the limited liability provisions of Section 9 hereof; provided that the party seeking indemnification shall promptly notify the other of any such claim, and permit such other party to control the defense or resolution thereof, and the party seeking indemnification shall fully cooperate with the other in connection therewith.
11. **ENFORCEABILITY.** In the event that any part of this Agreement shall be held unenforceable or invalid under the laws of an applicable jurisdiction, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the offending portions had not been a part hereof. In addition, if the limitations of Warranty or Liability hereunder are held to be unenforceable under the law of an applicable jurisdiction, such limitations shall, for purposes of this Agreement, be adjusted such that the liability of Bowker shall not exceed the amount of License Fees for the Online Databases paid or owed to Bowker by ELN Consortium for the twelve months preceding the filing of the relevant claim.
12. **TERMINATION.** This Agreement may be terminated by either party if either of the following events shall occur: (i) by the terminating party if the other party shall breach any material term or covenant of this Agreement, and such material breach shall continue uncured for thirty (30) days after written notice thereof from the non-breaching party detailing such material breach; or (ii) by the terminating party if a petition in bankruptcy shall be filed either voluntarily or involuntarily in connection with the other party, or if the other party shall be adjudicated insolvent by any court, or if a trustee or a receiver of a substantial portion of any property of the other party shall be appointed in any suit or proceeding by or against such party, or if the other party shall make an assignment for the benefit of creditors or shall seek or obtain the benefit of any bankruptcy or insolvency act. In addition, Bowker may terminate this Agreement upon sixty (60) days' prior written notice to ELN Consortium if Bowker discontinues commercial production of any of the Databases and/or the Online Databases, and in such case, ELN Consortium shall be entitled to a prompt pro-rata refund of any License Fees paid for the Online Databases for the remainder of the Subscription Period, computed from the date of termination.
13. **MISCELLANEOUS.**
 - a) **Notices.** All notices and other communications under this Agreement, including without limitation any amendments, shall be in writing and shall be addressed to such party at the address or applicable facsimile number set forth below or such other address or facsimile number as may hereafter be designated in writing by

the addressee to the addressor, and shall be deemed sufficient if sent by United States Registered Mail, postage prepaid return receipt requested, generally recognized overnight courier service or by facsimile transmission with confirmed answerback to the facsimile numbers as set forth below.

If to ELN Consortium: BC Electronic Library Network
4355 Mathissi Place
Burnaby, British Columbia, V5G 4S8
Canada
Attention: Anita Cocchia, Manager
Fax: (604) 431-3381

If to Bowker: R.R. Bowker
630 Central Avenue
New Providence, NJ 07974
Attention: Associate General Counsel
Fax: (908) 219-0187

- b) **FORCE MAJEURE.** Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach (other than the payment of License Fees due hereunder) are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, labor difficulty, sabotage, failure of suppliers or subcontractors or unavailability of material or supplies or any other cause beyond the control of such party ("Force Majeure"), provided that such party gives the other party written notice thereof promptly and in any event, within fifteen (15) business days of discovery thereof. In the event of such a Force Majeure, the time for performance or cure shall be extended for the duration of the Force Majeure. Notwithstanding the foregoing, should any extension of the period of performance exceed ninety (90) days, either party may, upon notice to the other, terminate this Agreement, and such termination shall not constitute a breach herein.
- c) **ASSIGNMENT.** This Agreement is binding upon and shall inure to the benefit of the parties and their respective permitted successors, trustees, and assigns. Neither party shall have the right to assign, transfer or sublicense any right, interest or obligation in or under this Agreement without the prior written consent of the other, except that either party may assign this Agreement in whole or in part to any entity under the common control of its ultimate parent company or to any entity which shall succeed to all or substantially all of the assets, liabilities and goodwill of that party. Notwithstanding the foregoing, this Agreement may be terminated by either party in the event that the other party either merges, transfers, or sells more than fifty percent (50%) of its assets or the assets of any successor entity or affiliate to any entity which such terminating party reasonably deems to be its competitor.
- d) **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, negotiations and understandings, oral or written. Only an instrument in writing duly executed by both parties may modify this Agreement.
- e) **WAIVER.** Any waiver of any right or default hereunder shall be effective only if in writing and only in the instance given and shall not operate as or imply a waiver of any similar right or default on any subsequent occasion.
- f) **GOVERNING LAW.** This Agreement shall be governed by using the laws of British Columbia, Canada (on issues brought forth by Bowker) and the laws of the State of New Jersey of the United States of America (on issues brought forth by ELN Consortium), without giving effect to either British Columbia or New Jersey conflict of law provisions or to constructive presumptions favoring either party, except for intellectual property matters, which shall be governed by the intellectual property laws of the United States of America. The parties consent to venue and the exclusive jurisdiction of the state/provincial and federal courts located in Burnaby, British Columbia and Newark, New Jersey.

If the parties disagree over an interpretation of this Agreement or whether a party or a Subscribing Member is in breach of any part of this Agreement, the parties and any such Subscribing Member shall in good faith enter into negotiations to resolve the disagreement and discuss the feasibility of resolving the disagreement by mediation or other means short of litigation. The parties shall cooperate in good faith in pursuing mediation or such other means.

If, however, all mediation efforts fail to resolve the disagreement within thirty (30) days of entering into a mediation, then either party may break off negotiations by written notice to the other and may commence an action in a court of law.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the last date written below.

R.R. Bowker LLC

BC Electronic Library Network

By: Boe Horton
Title: Vice President, Sales

By:
Title:

Date

Date