

FUNDING AGREEMENT

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CONSORTIUM OF EUROPEAN RESEARCH LIBRARIES

-and-

CONSORTIUM MEMBERS

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DATED.....

THIS AGREEMENT is made the day of 2001

BETWEEN

1. (See schedule 1 for list of parties)

2. Consortium of European Research Libraries, the registered office of which is at Finsbury Business Centre, Room 31, 40 Bowling Green Lane, London EC1R 0NE, a company registered in England and Wales with the number 2942632 ("the Company")

WHEREAS:

(A) The parties hereto wish to continue to co-operate for the primary purpose of developing and providing access to a bibliographic database of catalogue records drawn from the records of libraries around Europe of printed material produced before 1830, and for exploiting this for the benefit of libraries and scholarly research.

B) Using the competitive tendering procedure laid down in the Services Directive 92/50/EEC (and implemented by the Public Services Contracts Regulations 1993) the Consortium has selected RLG for the time being to be the host computer service for this database.

(C) The parties are members or special members of the Company which is a company limited by guarantee and which was established to regulate dealings between the parties and to serve as a vehicle for the members collectively to enter into an Agreement with a database host for the supply of the on-line computer service (the "Service Agreement")

(D) This Agreement establishes the funding arrangements in respect of the development and maintenance of the database, and the payment of sums due to the host under the service agreement.

NOW THE PARTIES AGREE as follows:

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1. INTERPRETATIONS

1.1 The following terms shall have the meanings set out below:

1.1.1 "Company's Bank Account" means the account held at Lloyds Bank, Victoria House, Southampton Row, London WC1B 5HR.

1.1.2 "Contingency Fund" means the fund established by the Parties hereto and held at Lloyds Bank, Victoria House, Southampton Row, London WC1B 5HR.

1.1.3 "Default" means any breach of the obligations of any party under this Agreement, including but not limited to, a failure to make any of the payments set out in Clause 2.1.

1.1.4 "Defaulting Party or Parties" means a party or parties which commits an act of Default.

1.1.5 "Director" means a director of the Company from time to time.

1.1.6 "Memorandum and Articles of Association" means the memorandum and articles of association from time to time of the company.

1.1.7 "The Database" means the catalogue records used and retrieved by researchers and the library community which is to be maintained using both batch and on-line procedures.

1.1.8 "RLG" means Research Libraries Group Inc of 1200 Villa Street, Mountain View, California 94041-1100 USA.

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2. FUNDING

2.1 In consideration of each party performing its obligations under this Agreement each party agrees to pay a maximum of €9,000 (special members €1,000) to the Company upon the signing of this Agreement ("the Commencement Date") and shall pay a maximum of €9,000, or any lesser sum which is agreed by the parties at their annual general meeting, upon the second and third anniversaries of the Commencement Date.

2.2 The payments shall be made direct by each party to the Company's Bank Account by the most expeditious means available.

2.3 The parties hereby acknowledge that the sums payable under this Agreement shall be used primarily by the Company to remunerate the database host for services rendered under the service Agreement, and also the reimbursement of parties who may second their employees to work with or for the Company to assist in developing and supporting the Database supplied to the Company by the host and also to remunerate any full or past time employee appointed by the company.

2.4 In addition, the sums paid under this Agreement shall be used by the Directors of the Company to discharge other fees, debts, liabilities and other costs and expenses (including the reimbursement of Directors' expenses but not salaries) which may become due as a result of the development of the Database and the operation and use of the on-line computer service.

2.5 In the event that any party ceases to be a member of the Company it shall not be relieved of its obligations hereunder.

3. MEMORANDUM AND ARTICLES OF ASSOCIATION

3.1 Each party agrees that, insofar as it is reasonably able to do so, it shall use its rights

as a member or special member of the Company and as a party hereto to ensure that the Memorandum and Articles of Association of the Company shall not be altered without the prior written consent of at least seventy five percent in number of the parties hereto.

3.2 Each party further agrees that it shall use its best endeavours as a member or special member of the Company and as a party hereto to ensure that the Memorandum and Articles are complied with in all respects.

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4. BREACH OF THIS AGREEMENT

4.1 Any party which commits an act of Default (the "Defaulting Party") may have its membership of the Company terminated by written notice from the Directors following a resolution of the Board of Directors of the Company.

4.2 Any party, either acting alone or jointly with other parties, shall be entitled to seek redress, damages, specific performance or any other appropriate remedy against a Defaulting Party.

4.3 Should a Defaulting Party fail to make the payments specified in Clause 2.1 the Innocent Parties shall be entitled to make good the shortfall owed to the Company by means of the Contingency Fund.

5. WARRANTY

5.1 Each party warrants that it has the authority to enter into this Agreement.

6. RELATIONSHIP OF THE PARTIES

6.1 Nothing in this Agreement shall be read and construed as creating any relationship between the parties of partnership or agency. No party shall have (and shall not represent that it has) any power, right or authority to bind the other parties or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in any other party's name.

7. TERMINATION

In the event of a Defaulting Party failing to make any of the payments specified in Clause 2.1 the Innocent Parties may, by a majority (over 50%), vote to terminate this Agreement. In such event, the Innocent Parties may have recourse to the Contingency Fund in order to ensure that the payments specified in Clause 2.1 are made to the Company.

8. TERM

This Agreement shall terminate automatically twelve months after receipt by the Company of the third payment to be made pursuant to Clause 2.1 by each party to this Agreement who is not in Default.

9. AMENDMENT TO THE AGREEMENT

This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by or on behalf of each and all the parties hereto.

10. SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal, or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the parties shall immediately commence good faith negotiations to remedy such invalidity.

11. WAIVER

11.1 The failure of any party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

11.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

11.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other parties in writing.

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12. ARBITRATION

In the event of a dispute arising between the parties in connection with this Agreement any party hereto may appoint an Arbitrator in accordance with the Rules of the London Court of Arbitration. The parties shall submit to the authority of the Arbitrator, and acknowledge that his/her decision shall be final and binding. The language of the Arbitration shall be English.

13. COMMUNICATIONS

13.1 Except as otherwise expressly provided no communication from one party to the other shall have any validity under this Agreement unless made in writing.

13.2 Any notice or other communication shall be given or made either by post in a prepaid letter, or by telex or by facsimile transmission confirmed by post in a prepaid letter, addressed as specified in Clause 13.3 and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of this Agreement to have been given or made in the usual time that business mail and electronic communications is received.

13.3 For the purposes of Clause 13.2 above the address for communications shall be:

The

Secretary

Consortium of European Research Libraries
Finsbury of Business Centre
Room 31
40 Bowling Green Lane
London EC1R 0NE
Tel: +44 (0)20 7970 5643
Fax: +44 (0)20 7970 5643

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14. LAW AND JURISDICTION

14.1 This Agreement shall be considered as a contract made in England and Wales and according to the laws of England and Wales and subject to the exclusive jurisdiction of the English Courts to which all parties hereby submit.

14.2 This Agreement is binding on each party and its successors and assignees.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto.

16. TRANSFER AND ASSIGNMENT

This Agreement is personal to each party. No party shall assign, novate, sub-contract or otherwise dispose of this Agreement or any part thereof without the prior written consent of 75% of the parties hereto.

AS WITNESS the hands of the duly authorised representatives hereto the day and year first above written.

Signed on behalf of (**name of institution**), by:

Signature: _____

Name: _____

Title: _____

Date: _____

Signed on behalf of the Consortium of European Research

Libraries by:

Signature: _____

Name: Dr Lotte Hellinga

Title: Secretary

Date: _____

SCHEDULE 1

LIST OF PARTIES as on 25 September 2001

Full Members

- Belgium
Koninklijke Bibliotheek/Bibliothèque Royale Albert 1er, Brussels
- Croatia
National and University Library, Zagreb
- Denmark
Det Kongelige Bibliotek, Copenhagen
- Finland
University of Helsinki Library, Helsinki
- France
Bibliothèque municipale de Lyon
Bibliothèque nationale de France, Paris
École nationale supérieure des sciences de l'information et des bibliothèques, Lyon
- Germany
Bayerische Staatsbibliothek, München
Niedersächsische Staats- und Universitätsbibliothek, Göttingen
Staatsbibliothek in Berlin, Preussischer Kulturbesitz, Berlin
- Hungary
National Szechenyi Library, Budapest
- Italy
Soprintendenza per i beni librari e documentari, Bologna
Biblioteca Nazionale Centrale, Florence
Dipartimento delle politiche formative e dei beni culturali, Regione Toscana, Florence
Biblioteca Nazionale, Naples
CAB - Centro di Ateneo per le Biblioteche, Università degli studi di Padova, Padua
Biblioteca Nazionale Centrale, Rome
Istituto Centrale per il Catalogo Unico, Rome
Biblioteca Nazionale Marciana, Venice
- The Netherlands
Koninklijke Bibliotheek, The Hague

- Biblioteka Nacional, Lisbon Portugal
- National Library of Russia, St Petersburg Russia
- Biblioteca Nacional de España, Madrid Spain
- Kungliga Biblioteket, Uppsala Universitetsbiblioteket, Uppsala Sweden Stockholm
- The National Library of Scotland, Edinburgh UK
National Library of Wales, Aberystwyth
University of Oxford Libraries

Group Members

- Bibliothèque interuniversitaire de Montpellier, Montpellier France
Bibliothèque de l'Institut de France, Paris
Bibliothèque Mazarine, Paris
Bibliothèque du Muséum national d'histoire naturelle, Paris
Bibliothèque Sainte-Geneviève, Paris
Bibliothèque de la Sorbonne, Paris
Service interétablissements de coopération documentaire de Toulouse, Toulouse

Special Members

- Museum Plantin Moretus, Antwerp Belgium
- Librairie Pierre Berès, Paris France
- Centro d'Ateneo per i Servizi Bibliotecari, Università degli studi di Macerata Italy
- Bernard Quaritch Ltd, London UK
Christie's Book Department, London
- Center for Bibliographical Studies and Research, University of California, Riverside, USA
Christie's Book Department, New York USA
H. P. Kraus, New York