

CONSORTIUM OF EUROPEAN RESEARCH LIBRARIES

-and-

CONSORTIUM MEMBERS

FUNDING AGREEMENT

1 October 2012

Gardner & Croft
2 Castle Street
Canterbury
Kent CT1 2QH

Tel. 01227 813400
Ref. HDB/gar.S2607/2

THIS AGREEMENT sets out the conditions and terms of the Funding Agreement

B E T W E E N

1. (See the Consortium website www.cerl.org for the list of parties)
2. Consortium of European Research Libraries, a Company Limited by Guarantee under English law and registered under the Company number 2942632 whose registered office is at 40 Bowling Green Lane, Clerkenwell , London (“the Company”)

WHEREAS

- (a) This funding agreement supersedes a funding agreement (the “First Funding Agreement”) between the Consortium and the founder Members which under Clause 8 of that Agreement is no longer extant and the purpose of this Agreement is to set out the relationship between the parties hereto which wish to cooperate for the purposes of forming a Consortium which selects from time to time suppliers of on-line computer services to support a bibliographic database of catalogue records drawn from the records of libraries around Europe of printed material produced before 1830 and other service providers for dealing with projects (without limitation) including the CERL Thesaurus and a project for a distributed database of manuscripts catalogues and other electronic resources (which all shall be called hereinafter “electronic resources”)
- (b) The parties are all 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 any Agreement with a supplier of on-line computer services and other electronic resources and such Agreement should be called the “Service Agreement”

- (c) This Agreement establishes the funding arrangements in respect of the payment of sums due from the Company under any Service Agreement.

NOW THE PARTIES AGREE as follows

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 from time to time at a clearing bank

1.1.2 “Contingency Fund” means the fund established by the parties hereto and held at the Company’s Bank

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 commit 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 and other electronic resources

2. FUNDING

- 2.1 In consideration of each party performing its obligations under this Agreement each party agrees to pay the appropriate annual membership fee for that period of three years in accordance with the payment provisions set out on the website to the Consortium.
- 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 sums payable under this Agreement should be used primarily by the Company to remunerate employees of the Company and services rendered under any 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 and other electronic resources to the Company under any Service Agreement
- 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 in accordance with the Membership Rules set out on the Consortium Website agrees that insofar as it is reasonably able to do so it shall use its rights as a 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 75% in number of the votes of the members with a voting right(s)

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

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 to the Company from a majority of the parties hereto in their capacity as members 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 the Defaulting Party

4.3 Should a Defaulting Party fail to make the payment specified in Clause 2.1 the innocent party 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 and 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 in any other party’s name(s).

7. TERMINATION

7.1 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 being over 50% vote to terminate this Agreement and in such event the innocent parties may have recourse to the Contingency Fund in order to ensure that the payment specified in Clause 2.1 are made to the Company.

8. TERM

8.1 This Agreement shall endure subject to Clause 7 above

9. AMENDMENTS TO THE AGREEMENT

9.1 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 and it shall be sufficient for this Agreement to be executed and or varied or amended by written confirmation of the same by a member on a renewal or new membership application form (which can be viewed on the CERL website).

10. SEVERABILITY

10.1 If any provision of this Agreement is held invalid illegal or unenforceable for any reason by any court of competent jurisdiction such provision or provisions shall be severed and the remainder of the provisions hereafter shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated and in the event that the Agreement is so fundamentally invalid so as to prevent the accomplishment of the purpose of the 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 and a waiver of any Default shall not constitute a waiver of any subsequent Default and further 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 as such.

12. ARBITRATION

12.1 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 Arbitration Act 1996 and the parties shall submit to the authority of the Arbitrator and acknowledge that his or her decision shall be final and binding and the language of the Arbitration shall be in 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 and this 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 on the website to the Company and if that letter is not returned as being undelivered that notice of 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 communication is received.

13.2 For the avoidance of doubt at the time that this Agreement was entered into the address for service is:

40 Bowling Green Lane

Clerkenwell

London

EC1R 0NE

Tel: 020 7415 7134

Fax: 020 7970 5643

Website: www.cerl.org

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 English courts to which all parties hereby submit and this Agreement is binding on each party and its successors and assignees.

15. ENTIRE AGREEMENT

15.1 This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and save as made by expressly referred to or referenced herein supersedes all prior representations writings negotiations or understandings with respect hereto and in particular supersedes the first funding Agreement.

16. TRANSFER AND ASSIGNMENT

16.1 This Agreement is personal to each party and no party shall assign novate subcontract or otherwise dispose of this Agreement or any part thereof without the prior written consent of 75% of the votes of the members of the Consortium with a voting right(s).