

**INTERGOVERNMENTAL AGREEMENT  
FOR LIBRARY COMPUTER SERVICES**

WHEREAS, each of the entities listed on Exhibit A to this Agreement is either a local library established pursuant to the Local Library Act, 75 ILCS 5/ 1-0.1, *et seq.*, a public library district established pursuant to the Public Library District Act, 75 ILCS 16/ 1-1 *et seq.*, a school district established pursuant to state statute or another entity with a library; and

WHEREAS, pursuant to Article VII, Sec. 10 of the Illinois Constitution of 1970 and to the Intergovernmental Agreement Act, 5 ILCS 220/ 1 *et seq.*, and to the respective statutes pursuant to which each of the public libraries, library districts and school districts are established, the Governing Body of each of the said entities is empowered and authorized to enter into intergovernmental contracts and agreements for library services and the other entities with a library have the authority to contract for library services; and

WHEREAS, the entities which are signatories to this Agreement wish to cooperate jointly and mutually among themselves to provide cost-effective and efficient sharing of library materials among member libraries through an integrated, multi-functional library automation system.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and in further consideration of the execution of this Agreement by any one or more of the other entities listed on Exhibit A, the entity whose signature is set forth below hereby agrees as follows:

1. *Incorporation of Preambles.* The above and foregoing preambles are incorporated herein and constitute a part of this Agreement.

2. *Establishment of MAGIC.* There is hereby created and established an intergovernmental entity to be known as the Multitype Automation Group in Cooperation ("MAGIC") which shall be the administrative entity formed to carry out the joint and cooperative undertakings of this Agreement.

3. *Members.* MAGIC shall be composed of each of the entities which are signatories to this Agreement, each of which shall be designated a "Member" of MAGIC.

4. *Governing Board.* The affairs of MAGIC shall be conducted by a Governing Board, which shall be composed of one representative from each of its Members. Each representative to the Governing Board of MAGIC shall be the chief administrator of the Member, or his/her designee. The bylaws contain information on the Governing Board officers elections, meetings, duties, operating and voting of the Governing Board.

5. *Powers and Duties of MAGIC.* MAGIC may exercise any power, privilege, or authority, consistent with this Agreement, including but not limited to the following:

- A. To administer the integrated library automation system ("ILS").
- B. To adopt bylaws consistent with law and with this Agreement to govern its operation, which bylaws may include, among other things, provisions dealing with election of officers, meetings, voting, operational services, budgeting and other policies.
- C. To employ or contract with agents, employees, vendors, independent contractors or other entities, including legal counsel, accountants and such other persons as may be necessary to provide any services required for the ILS or its implementation, to store any of the equipment required to carry out

the services outlined in this Agreement and to accomplish the purposes of MAGIC.

D. To purchase or lease equipment, machinery, or personal property necessary for the carrying out of the purpose of the ILS.

E. To carry out such other activities as are necessarily implied or required to carry out the purposes of this Agreement and the ILS.

6. *Bylaws.* The Governing Board of MAGIC shall adopt bylaws consistent with law and with this Agreement to govern its operation, which bylaws may include, among other things, provisions dealing with election of officers, meetings, voting, contracts, budgeting, receipt and expenditure funds, ownership of real and personal property, operational services, employment of staff, assessment of fees, establishment and termination of membership, and dissolution.

7. *Obligations/Duties of Members.* The obligations and duties of Members are as follows:

A. To comply with such other reasonable rules and regulations as may be established by MAGIC for the administration of the Agreement as well as all policies of MAGIC, as amended.

B. To appropriate or budget annually its liabilities for participation in MAGIC and to meet its obligations hereunder.

C. To cooperate fully with any agent, employee, officer or independent contractor of MAGIC in any matter relating to the purpose and powers of MAGIC.

- D. To make payments promptly to MAGIC as established in the Bylaws, Fee Structure and this Agreement.
- E. To execute any agreement or other documents with Vendors, such as a confidentiality agreement, required for operation of or participation in MAGIC.
- F. To act promptly on all matters requiring approval by the Members and to not withhold such approval unreasonably or arbitrarily.
- G. To make its library materials available for interlibrary loan in accordance with the ILLINET Interlibrary Loan Policy.
- H. To take responsibility for purchasing and maintaining all equipment and telecommunication services necessary for access/connectivity to the MAGIC system. All such equipment must be compatible with MAGIC's system following the vendor and MAGIC guidelines.
- I. To make all reasonable efforts to use the integrated library system responsibly by adhering to procedures and standards of MAGIC.
- J. To acknowledge that the vendors of the ILS have or may have certain proprietary rights in connection with the ILS and to assume and accept responsibilities/liabilities related to any violation of said proprietary rights by its patrons or users.
- K. To take no action inconsistent with this Agreement as originally written or hereafter amended.

8. *LIMITATION OF LIABILITY/DAMAGES.*

A. ANY SPECIFICATION, DESCRIPTION, OR OBJECTIVE IN THIS AGREEMENT CONCERNING THE OPERATION OF THE ILS IS A STATEMENT OF THE UNDERSTANDING OF THE PARTIES AS TO THE DESIGN AND SERVICE OBJECTIVES OF THE ILS, AND DOES NOT CREATE AN EXPRESS OR IMPLIED WARRANTY THAT THE ILS DOES OR WILL ALWAYS CONTINUE TO OPERATE AS DESCRIBED.

B. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER MAGIC NOR ITS OFFICERS, GOVERNING BOARD MEMBERS, EMPLOYEES OR AGENTS SHALL BE LIABLE TO OR THROUGH THE MEMBER FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO DIRECT (WITH THE EXCEPTION OF PERSONAL INJURY AND PROPERTY DAMAGE DIRECTLY CAUSED BY WILLFUL AND WANTON CONDUCT), INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUES OR FAILURE TO REALIZE EXPECTED SAVINGS) SUSTAINED OR INCURRED IN CONNECTION WITH THE PERFORMANCE OR NONPERFORMANCE OF SERVICES UNDER THIS AGREEMENT, AND ANY AMENDMENTS THERETO, OR THE PROVISION, USE OR OPERATION OF THE ILS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT AND ANY AMENDMENTS THERETO, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

C. NEITHER PARTY TO THIS AGREEMENT, INCLUDING THEIR OFFICERS, GOVERNING BOARD MEMBERS, EMPLOYEES AND AGENTS, SHALL BE LIABLE IN ANY WAY FOR DELAYS, FAILURE IN PERFORMANCE, LOSS OR DAMAGE DUE TO FORCE MAJEURE CONDITIONS OR CAUSES BEYOND SUCH PARTY'S REASONABLE CONTROL.

D. ANY ACTION IN LAW OR IN EQUITY ARISING FROM OR IN CONNECTION WITH ANY MATTER UNDER THIS AGREEMENT MUST BE BROUGHT WITHIN TWO YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED. ANY SUCH ACTION SHALL BE LITIGATED IN THE CIRCUIT COURT OF KANE COUNTY OR THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS (AND IN NO OTHER STATE OR FEDERAL COURT) AND THE PARTIES HERETO CONSENT TO THE JURISDICTION OF THE SAID CIRCUIT COURT OF DUPAGE COUNTY OR KANE COUNTY.

E. EXCEPT AS SET FORTH EXPRESSLY IN THIS AGREEMENT, NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY MAGIC.

F. THE TERMS AND CONDITIONS IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

9. *Amendments.* The Governing Board may propose amendments to this Agreement at any time. The proposed amendment must be approved by a vote of at least two-thirds (2/3) of MAGIC Members.

10. *Termination.* This Agreement shall continue unless and until either MAGIC or the Member terminates the Agreement by providing six (6) months prior written notice or until the parties agree in writing to terminate this Agreement. In addition, MAGIC may terminate this Agreement if a Member breaches the Agreement, upon three months prior written notice.

11. *Withdrawal from MAGIC.*

A. Following written notice of intent to withdraw from MAGIC, MAGIC Member shall remain entitled to vote on all issues affecting MAGIC before its

official withdrawal date. MAGIC Member agrees to abstain from voting on issues that will affect MAGIC's future beyond the withdrawal date, as determined by MAGIC.

B. Withdrawing MAGIC Member shall continue to pay all usual and customary MAGIC charges until its withdrawal date.

C. Withdrawing MAGIC Member shall not receive a refund from the MAGIC reserve fund.

D. Withdrawing MAGIC Member is responsible for any and all vendor charges related to withdrawal from MAGIC. Withdrawing MAGIC Member shall reimburse MAGIC for all such costs incurred by MAGIC.

E. MAGIC shall provide withdrawing MAGIC Member with the services and data needed for withdrawal. MAGIC shall not charge for its services related to withdrawal unless staff overtime is required. If possible, MAGIC will provide withdrawing MAGIC Member with advance notice of the need for such overtime and an estimate of such charges.

F. Within 30 days after its withdrawal date, the former MAGIC Member will provide MAGIC with written certification that it has uninstalled all local ILS software provided by MAGIC and needed for the MAGIC system and destroyed or returned all related documentation and software media.

12. *Waiver.* The waiver by any Library signing this Agreement or by MAGIC of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

13. *Execution of Agreement.* This Agreement may be executed in counterparts, each of which will be signed by one Member Library, and each separate Agreement and all such collectively constitute one original. Facsimile signatures shall be sufficient.

14. *Assignment.* Under no circumstances shall this Agreement be assigned by any party or be construed as one of agency, partnership, joint venture or employment between the Parties. The Parties shall each be solely responsible for the conduct of their respective officers, employees and agents in connection with the performance of their obligations under this Agreement.

15. *Notices.* All notices of claims or any other notice required to be given pursuant to this Agreement, shall be in writing, shall be sent by certified mail and shall be addressed to:

MAGIC  
c/o DuPage Library System  
127 S. First Street  
Geneva, Illinois 60134-2771  
Attention: MAGIC Director

And to: Insert address and contact for Member

16. *Dissolution.* If MAGIC dissolves, all Members shall have the right of first refusal regarding the purchase of all equipment, property and other assets of MAGIC and shall share in the proceeds, if any, of any such sales in the proportionate share of total monthly fees over the previous 36 months. Surplus funds, if any, shall be distributed in the ratios/percentages of total monthly fees over the previous 36 months.



17. *Section Headings.* The section headings inserted in this Agreement are for convenience only and are not intended to and shall not be construed to limit, enlarge or affect the scope or intent of this Agreement or the meaning of any provision hereof.

18. *Validity and Savings Clause.* In the event that any provision of this Agreement shall be declared by a final judgment of a court of competent jurisdiction to be unlawful or unconstitutional or invalid as applied to any Member, the lawfulness, constitutionality or validity of the remainder of this Agreement shall not be deemed affected thereby.

19. *Governing Law.* This Agreement shall be construed in accordance with the Constitution and laws of the State of Illinois.

20. *Effective Date.* This Agreement shall become effective and binding upon and inure to the benefit of the Libraries signing this Agreement, and their respective successors and assigns, as of the date of execution by any ten (10) or more of the Libraries listed on Exhibit A.

IN WITNESS WHEREOF, the Library whose signature is set forth below, acting under authority of its Governing Body, has caused this Agreement to be duly executed. This Agreement shall be executed in several counterparts, each of which shall be signed by one Member Library, and each separate Agreement and all such collectively constitute one original.

Name of Member: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_

(Print name and title of representative authorized to execute this Agreement)

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

(Print name and title)

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

## **EXHIBIT A**

### **MAGIC LIBRARIES AS OF JULY 26, 2010**

Bensenville Community Public Library District

Bensenville Elementary School District #2

Carol Stream Public Library

Kaneville Public Library District

Messenger Public Library of North Aurora

National University of Health Sciences

Oak Brook Public Library

Poplar Creek Public Library District

St. Patrick Catholic School

Sugar Grove Public Library District

Theosophical Society in America

Town and Country Public Library District

Wheaton Academy

Wood Dale Public Library District