

**INTERGOVERNMENTAL AGREEMENT ESTABLISHING THE SYSTEM WIDE
AUTOMATED NETWORK ("SWAN") AND AUTHORIZING MEMBERSHIP IN SWAN**

WHEREAS, the Libraries that have signed this agreement are units of local government and the Constitution of the State of Illinois, 1970, Article VII, Section 10, authorizes units of local government to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance or are entities with libraries that have the authority to contract for library services; and

WHEREAS, Chapter 5, Illinois Compiled Statutes, Act 220, Section 1, et seq., entitled the "Intergovernmental Cooperation Act," provides that any power or powers, privileges or authority exercised or which may be exercised by a unit of local government may be exercised jointly with another unit of local government; and

WHEREAS, the Libraries that have signed this Agreement have determined that it is in their best interest to join together to provide the services outlined in this Agreement and have decided to create an intergovernmental entity called "System Wide Automated Network" (hereinafter referred to as "SWAN"), voluntarily established by contracting Public Libraries, Library Districts and other entities with libraries to provide the services and integrated library system described and set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements hereinafter provided, and in further consideration of the execution of this Agreement by two-thirds of the libraries listed on Exhibit A, the Board of Trustees of the _____, (hereinafter referred to as "Library" or "Member") agree as follows:

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

2. Establishment of SWAN. The Libraries that have signed this Agreement hereby establish an intergovernmental entity, as contemplated by the Intergovernmental Cooperation Act, which shall be known as the System Wide Automated Network ("SWAN") for the purpose set forth in the next section. SWAN shall commence operations on September 1, 2010.

3. Purpose. The purpose of SWAN is to improve patron service by sharing resources, technology and a planned process of individual and collective growth. SWAN seeks to accomplish this purpose by automating tasks involved in library functions, including but not limited to circulation activities, interlibrary loans, the maintenance of patron files including delinquencies, the maintenance of library catalogs, the acquisition of library materials and serials control. The Members will jointly finance the acquisition and use of an integrated library system for automation of library functions.

4. Definitions.

"Enhanced Access Participant" - Those libraries or library districts that have dedicated access to the ILS for purposes of bibliographic searching, holds processing and patron maintenance, using their own telecommunications equipment. Bibliographic access is available to both the Participant's Library staff and patrons. Conditions and costs are defined in a separate Agreement for Enhanced Access to the SWAN Bibliographic Database, approved by a majority vote of Members and adopted by the SWAN CouncilBoard.

"Equipment" - The server site hardware components including, but not limited to, the servers, disk drives, user access licenses, and all telecommunications equipment installed both at the server site and remotely at Member's libraries.

"Internet Access Participant" - Those libraries or library districts that access the ILS for purposes of bibliographic searching and holds processing, using their own equipment, shared SWAN support units, and SWAN's web-based catalogue. If shared SWAN support units and telecommunications equipment are used, access is limited to the Participant's Library staff only. Conditions and costs are defined in a separate Agreement for SWAN Internet Access approved by a majority vote of Members and adopted by the SWAN CouncilBoard.

"Materials" - Print, non-print, electronic materials, and other items held by the Members for use.

"Member" - Any Library, Library District or other entity with a library which has executed an agreement which is accepted by SWAN on substantially the same terms as this Agreement as long as the Member uses the ILS as the primary means of recording circulation and all bibliographic records within two (2) years from the time this Agreement is executed.

"Software" - The computer instructions and programs used by SWAN.

"Integrated Library System" or "ILS"- The integrated library system used by SWAN including all equipment and software that is used for automation of library functions.

"Telecommunications" - The equipment and software needed to transmit data over telecommunications lines between the SWAN server site and Members.

"User Access License" - One non-transferable license for a single access for library staff to the SWAN equipment and software.

"Vendor" - Any vendor or vendors who provide and maintain the ILS pursuant to a contract with SWAN.

5. Swan ~~Administrators' Council Board~~. There is hereby established a board of directors which shall be called the SWAN ~~Administrators' Council Board~~ ("~~Council Board~~"). The By-laws contain the details regarding membership on the ~~Council Board~~, elections, meetings, duties, operation and voting of the ~~Council Board~~.

6. 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 SWAN for the administration of the Agreement and ILS as well as all policies of SWAN, as amended.
- B. To appropriate or budget annually its liabilities for participation in SWAN and the ILS and to meet its obligations hereunder.
- C. To cooperate fully with any agent, employee, officer or independent contractor of SWAN in any matter relating to the purpose and powers of SWAN.
- D. To make payments promptly to SWAN as established in the By-Laws, Annual Fee Chart 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 the ILS.
- 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 no action inconsistent with this Agreement as originally written or hereafter amended.

7. Powers and Duties of SWAN. The powers and duties of SWAN to perform and accomplish the purposes set forth in this Agreement are as follows and shall be exercised through the SWAN ~~Administrators' Council~~Board:

- A. To administer the ILS.
- B. To adopt by-laws consistent with law and with this Agreement to govern its operation, which by-laws shall include, among other things, provisions dealing with election of officers, meetings, voting, operational services, committees, 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 SWAN.

- D. To purchase or lease equipment, machinery, or personal property necessary for the carrying out of the purpose of the ILS.
- E. To collect payments and assessments from Members.
- F. To procure insurance for the ILS that covers the Equipment and Telecommunications against risks of loss or damage for an amount equal to the replacement cost of the equipment, subject to the usual conditions, stipulations and exceptions.
- G. To hold title to the ILS.
- H. To pass an annual budget and present a financial plan.
- I. To carry out such other activities as are necessarily implied or required to carry out the purposes of the ILS.

8. Use of ILS. The Members will jointly determine the use of the ILS. SWAN does not warrant or guarantee the ILS, nor shall SWAN be liable for any damages resulting from the malfunction of the ILS.

9. 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 SWAN NOR ITS OFFICERS, ~~ADMINISTRATORS' COUNCILBOARD~~ 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, ~~ADMINISTRATORS' COUNCILBOARD~~ 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 COOK COUNTY, ILLINOIS (AND IN NO OTHER STATE OR FEDERAL COURT) AND THE PARTIES HERETO CONSENT TO THE JURISDICTION OF THE SAID CIRCUIT COURT OF COOK 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 SWAN.

F. THE TERMS AND CONDITIONS IN THIS SECTION 9 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10. Liability of SWAN, Its Employees and SWAN ~~Administrators' CouncilBoard~~ Members.

A. The members of the SWAN ~~Administrators' CouncilBoard~~ and employees of SWAN shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties hereunder. They shall not be liable for any mistake of judgment or other action made, taken or omitted by them in good faith; nor for any action taken or omitted by any agent, employee or independent contractor; nor for any loss incurred through investment of SWAN funds or failure to invest. They may participate in indemnification and self insurance programs. No ~~Administrators' CouncilBoard~~ member or employee shall be liable for any action taken or omitted by any other ~~Administrators' CouncilBoard~~ member or employee. No member of the SWAN ~~Administrators' CouncilBoard~~ shall be required to give a bond or other security to guarantee the faithful performance of the ~~CouncilBoard~~ member's duties hereunder, except as required by this Agreement or by law.

B. The liability of SWAN, its employees and SWAN ~~Administrators' CouncilBoard~~ members is limited solely to the proceeds of payments of Members.

C. If any claim or action not covered by insurance is instituted against a SWAN ~~Administrators' CouncilBoard~~ member or employee of SWAN allegedly arising out of an act or omission occurring within the scope of his or her duties or authority, SWAN shall at the request of them:

1. appear and defend against the claim or action; and

2. pay or indemnify the SWAN ~~Administrators' CouncilBoard~~ member or employee for a judgment and court costs based on such claim or action, provided there shall be no indemnification for any portion of a judgment representing an award of punitive or exemplary damages; and
3. pay or indemnify the SWAN ~~Administrators' CouncilBoard~~ member or employee for a compromise or settlement of such claim or action providing the settlement is approved by the SWAN ~~Administrators' CouncilBoard~~.

D. The term "SWAN ~~Administrators' CouncilBoard~~ member or employee" shall include former SWAN ~~Administrators' CouncilBoard~~ members and employees. This indemnification resolution shall not apply if the SWAN ~~Administrators' CouncilBoard~~ finds that the claim or action is based on malicious, willful or criminal claim or action is based on malicious, willful or criminal misconduct. In such case the action to be taken by the SWAN ~~Administrators' CouncilBoard~~ will be determined after an investigation of the facts.

E. Moreover, all Members shall indemnify and hold harmless SWAN, SWAN ~~Administrators' CouncilBoard~~ members, employees and agents for any actions that it may take or fail to take, and such indemnity shall include, to the extent not indemnified under the provisions of this Section 10, all losses, costs, expenses, damages and claims of whatever kind and nature.

11. 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:

SWAN
125 Tower Drive
Burr Ridge, Illinois 60527

Attention: SWAN Executive Director

And to: Insert address and contact for Member

12. Payments by Members – Assessments. Each Member shall pay all fees set forth on the SWAN Annual Fees Schedule, or any other costs and fees determined by the Members. Any Library joining SWAN whose records must be migrated or entered into SWAN must pay impact fees for joining SWAN.

13. Rights of Members. Rights of each Member of SWAN shall include the following:

- A. To enforce the obligations of SWAN as set forth herein as a contractual obligation. This contract may be enforced in a court of law either by SWAN itself or by any of its Members. The consideration for the obligations imposed herewith shall be based upon the mutual promises and agreements of the Members set forth herein.
- B. To participate on uniform and nondiscriminatory terms.

14. Amendments. The SWAN ~~Administrators' Council~~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 SWAN Members.

Field Code Changed

15. Patron Information. Patron information in the SWAN database remains the property of the Member that entered it. Use of such information shall be restricted to official use by members and Enhanced Access Participants in conformity with all applicable federal and state laws.

16. Waiver. The waiver by any Library signing this Agreement or by SWAN 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.

17. Authority/Rights. Each of the Parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its respective obligations hereunder and that such obligations shall be binding upon such Party without the requirement of the approval or consent of any other person or entity in connection herewith. This Agreement creates no rights, title or interest in any person or entity whatsoever (whether under a third party beneficiary thereof or otherwise) other than the Parties.

18. 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.

19. 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.

20. Term and Termination. This Agreement shall continue unless and until either SWAN or the Member terminates the Agreement by providing six (6) months' prior written notice. In addition, SWAN may terminate this Agreement if a Member breaches the Agreement, upon three months' prior written notice. If the Agreement is terminated, the Member must pay all unpaid costs incurred up to and including the time of termination. The obligation to pay all such costs survives the termination of this Agreement. If the Member terminates the Agreement, the Member shall pay all costs incurred by SWAN due to the Member's decision to leave SWAN, including

any work performed by SWAN employees or agents after the termination of the Agreement.

21. Dissolution. If SWAN dissolves, all Members shall have the right of first refusal regarding the purchase of all equipment, property and other assets of SWAN and shall share in the proceeds, if any, of any such sales in the ratios/percentages represented in the then-current (at the time of the sale) SWAN Annual Fees Schedule. Surplus funds, if any, shall be distributed in the ratios/percentages represented in the then-current (at the time of the sale) SWAN Annual Fees Schedule.

22. 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.

23. 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.

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

25. Effective Date. For any Member who executes the Agreement before August 31, 2010, the Effective Date shall be September 1, 2010. For any Member who executes the Agreement after August 31, 2010, the Effective Date shall be the first day of the calendar month next following the month in which the Member has duly approved and executed this Agreement or a substantially similar agreement.

IN WITNESS WHEREOF, the Library whose signature is set forth below, acting under the authority of its Board of Trustees, has caused this Agreement to be executed by its duly authorized officers as of the date written on the first page.

|
BOARD OF LIBRARY TRUSTEES OF

By: _____
Its President

Attest:

By: _____
Its Secretary