

PIONEER CONSORTIUM
JOINT ENTITY AGREEMENT

John Doe City Library has applied for membership in the Pioneer Consortium Joint Entity, its addition to the Consortium has been approved by a unanimous vote of the Pioneer Council, and John Doe City Library hereby becomes a member library of the Pioneer Consortium Joint Entity and agrees to be bound by the Joint Entity Agreement.

DATE: _____

THE CITY OF JOHN DOE CITY, NEBRASKA,
A Municipal Corporation,

Chairman, Library Board

Mayor

ATTEST:

City Clerk

Approved as to form: _____
John Doe City Attorney

PIONEER CONSORTIUM
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This Joint Entity Agreement (“Agreement”) is entered into effective as of December ____, 2010 by and between the City of Grand Island, Nebraska; City of Holdrege, Nebraska; City of Lincoln, Nebraska; and the City of St. Paul, Nebraska and their respective library boards, pursuant to authority provided in the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801, et seq. (Reissue 2007). The parties hereto shall be collectively referred to as the “Member Libraries” and each singularly as “member library.”

RECITALS:

A. Art. XV, § 18 of the Constitution of the State of Nebraska and the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 et seq. (the “Act”) authorize two (2) or more public agencies to enter into agreements with one another for joint or cooperative action in regard to the exercise or enjoyment jointly of any power or powers, privileges, or authority exercised or capable of exercise by such public agencies and for the creation of a joint entity with the powers delegated to the joint entity by such public agencies.

B. The Member Libraries to this Agreement have the authority, among others things, to plan and implement projects and services for the purposes authorized by the Act.

C. The Member Libraries to this Agreement deem it in their mutual interests to coordinate planning and implementation of an open source integrated library system of library resources.

D. The Member Libraries desire to enter into this Agreement in order to jointly plan and implement these services.

E. The Member Libraries desire to create a joint administrative entity, known as the “Pioneer Consortium,” to act on their behalf for the purposes and upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, it is agreed by the Member Libraries hereto, as follows:

1.0 PIONEER CONSORTIUM ESTABLISHMENT AND PURPOSE:

1.1 Parties. The parties to this Agreement are the Member Libraries and are public agencies within the meaning of Neb. Rev. Stat. § 13-803.

1.2 Public Agency. The Member Libraries understand and agree that the Pioneer Consortium is a joint entity within the meaning of Neb. Rev. Stat. § 13-803. Each member library consents to the participation in this Agreement by the other Member Libraries. Each member library agrees

and acknowledges that this Agreement shall become binding upon each member library upon execution of this Agreement.

1.3 Authorization of Agreement. Each member library shall approve the creation of the Pioneer Consortium through appropriate action by ordinance, resolution, or otherwise pursuant to the governing laws of each member library to authorize execution of the Agreement. Each member library shall execute duplicate copies of this Agreement and provide one executed copy to the Pioneer Consortium. The parties agree that the separately executed copies of this Agreement which shall constitute the Pioneer Consortium Joint Entity Agreement shall be given full force and effect. Any prior agreements regarding the creation of the Pioneer Consortium are superseded by this Agreement.

1.4 Purpose. The Pioneer Consortium is a joint entity of publicly funded libraries, the “Member Libraries,” in the State of Nebraska. The Pioneer Consortium’s purpose is to enrich the collections, share the resources, enhance the services, and strengthen support for its Member Libraries. This purpose is achieved through supporting an open source integrated library system of library resources, and other activities that enable its Member Libraries to provide library services efficiently and effectively. The Pioneer Consortium is based on open source integrated library software and computer equipment located at each member library and a central site, and linked via the Internet, which in turn constitutes the automated union catalog system. Each member library's goal shall be to maintain and enhance a strong working relationship with Member Libraries. All Member Libraries shall subscribe to the goals and primary functions of the Pioneer Consortium as noted herein.

1.5 Functions. The functions of the Pioneer Consortium are listed below, not necessarily in priority order of importance:

- a. To provide access to the union catalog of the Member Libraries;
- b. To allow patrons to request needed materials from the collections of Member Libraries;
- c. To enhance cooperative electronic and physical document delivery of materials held by Member Libraries;
- d. To provide access to electronic resources other than the union catalog to Member Libraries and their patrons; and
- e. To support cooperative collection development activities by Member Libraries.

1.6 Duration. The duration of this Agreement shall be from the effective date of this Agreement to January 1, 2016, and be subject to renewal every year thereafter upon the majority vote of the Pioneer Council.

2.0 THE PIONEER COUNCIL AND GOVERNANCE STRUCTURE:

2.1 Pioneer Council. The Pioneer Consortium is to be governed by a governing board comprised of the library directors from each member library. That board, called the Pioneer Council, shall have the responsibility to cooperate to determine the most efficient and effective

methods, materials, contractual relationships, and member fees for the benefit of all Member Libraries and public agencies.

2.2 President. The Pioneer Council shall elect a President. The term of service and obligations of office shall be published in the bylaws.

2.3 Voting. Each member library shall have one vote on the Pioneer Council. A majority vote of the quorum present at any meeting shall be necessary for any action of the Pioneer Consortium.

2.4 Bylaws. The Pioneer Council shall develop and maintain bylaws governing the Pioneer Consortium's activities and services. The bylaws shall provide for such additional offices, duties, or committees as determined necessary by the Pioneer Council.

2.5 Meetings. The Pioneer Council shall meet at least annually and shall have other meetings as provided in any bylaws, rules, or regulations adopted by the Pioneer Council.

2.6 Notice. Notice of any meeting of the Pioneer Council shall comply with the open meetings law and public notice requirements. Notice of any meeting will also be given to member library as provided in any bylaws, rules, or regulations adopted by the Pioneer Council.

2.7 Quorum. A majority of the Member Libraries shall constitute a quorum. A member library may provide for a proxy or alternative member to attend in the place of the library director as provided in any bylaws, rules, or regulations.

2.8 Budget and Expenses. The Pioneer Council shall approve the Pioneer Consortium's budgets, expenditure plans, and member fees and charges for ongoing expenses.

2.9 Policies. The Pioneer Council shall set policies for the Pioneer Consortium and its business and contractual relationship with any member library and with any third party vendors.

2.10 Other Laws. The Member Libraries of the Pioneer Council are required to follow all applicable governmental accountability, conflict of interest, property acquisition, and open meeting laws.

2.11 Central System, Connectivity, and Repository. Equipment acquired with grant funds must continue to be used for project purposes for at least five years or the life of the equipment. The Pioneer Council shall determine expenditures for hardware, software, and maintenance of the databases. The Pioneer Council shall determine the reliable central site connectivity for Pioneer Consortium-related telecommunication traffic to and from the central system to each member library, sufficient for access to the union catalog and other databases. The Pioneer Council shall determine a repository for purposes of operating and maintaining a union catalog of the collections of the Member Libraries that is accessible. The individual Member Libraries shall pay for the support and coordination of locally generated data or activities.

2.12 Termination or Withdrawal. The Pioneer Council may terminate a member library's Pioneer Consortium membership only if the member library materially breaches its duties and such duties remain breached for sixty (60) days after notification by Pioneer Consortium or if to continue participation would violate laws of the State of Nebraska. Each member library can, at its discretion, withdraw from the Pioneer Consortium. Such withdrawal will be effective upon sixty (60) days written notice to the Pioneer Council President. If a member library is terminated or withdraws from the Pioneer Consortium, the data submitted to the central system at that point must be removed from central system within one hundred and twenty (120) days at that withdrawing member library's expense.

2.13 Forfeiture of Interest. Any member library leaving the Pioneer Consortium shall forfeit any interest it may have in the property owned by the Pioneer Consortium to the remaining Member Libraries. Except as otherwise provided in this Agreement, in the event all Member Libraries shall agree to disband the Pioneer Consortium, any property owned by the Pioneer Consortium shall be distributed on a pro-rata basis to be figured as a proportion of the number of materials held in each member library compared to the overall total number of materials held by the consortium.

2.14 Insurance. The Pioneer Council shall determine the best means of insuring central site hardware, software, and system against loss by fire and other means. Any settlement paid to cover the loss of items jointly owned by the Pioneer Consortium shall be solely used to replace Pioneer Consortium property.

2.15 Committees. The Pioneer Council shall create a Technical Committee, consisting of staff designated by each member library, which shall advise the Pioneer Council on technical management issues. The Pioneer Council may establish other advisory groups or committees as needed.

3.0 BUSINESS AGENT DUTIES:

3.1 Business Agent. The Lincoln City Libraries shall serve as the initial contracting and business agent ("Business Agent") for the Pioneer Consortium. The staff of the Business Agent shall provide administrative support for the Pioneer Consortium. The Business Agent shall be the official repository for the Pioneer Consortium documentation, correspondence, and other business records.

3.2 Financial Agent. The Lincoln City Libraries shall serve as the initial budget and accounting agent ("Financial Agent"). The staff of the Financial Agent shall provide the Pioneer Council with all necessary management information including but not limited to financial reports. The Financial Agent shall draft an annual report subject to the approval of the Pioneer Council.

3.3 Designation of Business Agent and Financial Agent. By majority vote of all the Member Libraries, the Pioneer Council shall designate a Business Agent and Financial Agent of the

Pioneer Consortium. The role of Business Agent and Financial Agent to the Pioneer Consortium may be served by the same member library.

4.0 MEMBER LIBRARIES' DUTIES:

4.1 Individual Library Member Expenses. Travel costs and other costs to participate in the Pioneer Consortium are the responsibility of each member library. Each member library shall be responsible for purchasing and maintaining its own local system hardware and software. Each member library shall provide, at its expense, all costs to link and ensure reliable access from the member library's local system to the Pioneer Consortium central system.

4.2 Pro-rata Contribution for Services. The ongoing expenses associated with the delivery of services by the Pioneer Consortium shall be assessed to each member library quarterly based on a pro-rata amount for maintenance, supplies, development, and associated costs. The pro-rata costs will be apportioned as determined by the Pioneer Council. The payment amount for the coming Consortium fiscal year shall be determined by the Pioneer Council by March 31st of each year or more frequently as necessary in re-assessing costs upon approval of additional members.

4.3 Sharing information and services. Each member library shall provide to the Pioneer Consortium automation third party service provider a copy of its bibliographic, patron, authority, transactions and holdings databases for loading into the central system. Each member library shall be responsible for all expenses associated with the profiling and migration of its database. Each member library shall provide to Pioneer Consortium additional records to be added to the above mentioned databases using mutually acceptable catalog rules and procedures. Data obtained by the central site from each member library shall hereby be contributed to Pioneer Consortium for use in achievement of Pioneer Consortium's goals, subject to any third-party license restrictions attached to such data.

4.4 Participation in committees. Each member library shall actively participate in the Pioneer Consortium by maintaining active participation in the Pioneer Council and in additional groups established by the Pioneer Council including but not limited to standing committees, ad-hoc committees, task forces, and advisory bodies.

4.5 Copyright. Each member library shall be responsible for verifying copyright and/or fair use status and/or obtaining copyright permission prior to its placing or introducing any information, text, graphics or data into the Pioneer Consortium database(s). Member Libraries agree they shall be solely responsible and shall indemnify the other parties to this Agreement and hold them harmless from for any claim, loss, liability or expense due to loading of copyrighted materials in the Pioneer Consortium database(s) by the employees or agents of the member library where such loading or subsequent use, viewing, printing, downloading, or recopying is alleged to be infringing.

4.6 Appropriation of Funds and Supply of Personnel. Pursuant to Neb. Rev. Stat. § 13-806, any member library may appropriate funds and sell, lease, give, or otherwise supply the Pioneer Consortium with personnel or services.

4.7 Additional Powers. In addition to other powers, the Pioneer Consortium shall also have the following powers as provided by Neb. Rev. Stat. §§ 13-804(6): (a) to sue and be sued; (b) to have a seal and alter the same at pleasure or to dispense with its necessity; (c) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; (d) from time to time, to make, amend, and repeal bylaws, rules, and regulations, not inconsistent with the provisions of the Act and this Agreement

5.0 MISCELLANEOUS:

5.1 Indemnification. Except as otherwise limited by Nebraska law, to the fullest extent permitted by law, each member library shall mutually indemnify, defend, and hold harmless the Member Libraries, their officers, agents, and employees from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of the member library, or anyone for whose acts any of them may be liable. The Member Libraries do not waive their governmental immunity by entering into this Agreement and fully retain all immunities and defenses provided by law. This section survives any termination of this Agreement.

5.2 Fair Employment. The Pioneer Consortium shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status.

5.3 Fair Labor Standards. The Pioneer Consortium shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

5.4 No Mutual Employment Relationship. It is the express intent of the Member Libraries that this Agreement shall not create an employer-employee relationship. Employees of any member library shall not be deemed to be employees of the other Member Libraries nor entitled to any salary, wages, or benefits, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave of said Member Libraries. The Member Libraries shall be responsible to their respective employees for all salary and benefits.

5.5 Integration, Amendment, and Assignment. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No amendment, consent, or waiver of

terms of this Agreement shall bind either party, unless in writing and signed by all parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given. This Agreement may not be assigned without the prior written consent of the other Member Libraries.

5.6 Nebraska Law. This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

5.7 Severability and Savings. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section thereof.

5.8 E-Verify. In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Pioneer Consortium agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Pioneer Consortium shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. § 1324b. The Pioneer Consortium shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

5.9 Additional Member Libraries. Additional political subdivisions or governmental entities may apply to become members of the Pioneer Consortium by providing a letter of application, which shall be considered by the Pioneer Council at its next regular or special meeting following the receipt of the application. Upon receiving the approval of two-thirds (2/3) of the Pioneer Council and the subsequent execution of this Agreement by the applicant member, including any addendum, amendment, or modification thereto, the applicant shall become a member library of the Pioneer Consortium.

5.10 Capacity. The undersigned person on behalf of each member library does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the member library and its associated public agency to this Agreement.