

MNLINK SERVER SITE AGREEMENT
July 1, 2017 through June 30, 2022

Contractor:

Regents of the University of Minnesota DBA Minitex
15 Andersen Library, 222 21st Avenue South
Minneapolis, MN 55455-0439
Federal Employer I.D. No. 416007513
Minnesota Tax I.D. No. 8029894
Department: University Libraries
Contact: Valerie Horton
Phone Number: (612) 624-2839

This MNLINK Server Site Agreement is made by and between Regents of the University of Minnesota, through its University Libraries ("University"), a Minnesota constitutional corporation with a principal place of business at 15 Andersen Library, 222 21st Avenue South, Minneapolis, MN 55455-0439 and City of Duluth ("Organization") through its Duluth Public Library with a principal place of business at 520 West Superior Street, Duluth, MN 55802. This Agreement is effective July 1, 2017 through June 30, 2022. Organization and University are collectively referred to herein as "Parties" in singular or plural usage, as required by context.

Definitions:

Minitex means an information and Resource Sharing program of the State of Minnesota acting through its Minnesota Office of Higher Education and the University of Minnesota Libraries.

MNLINK means a statewide discovery and interlibrary loan system that links Minnesota's rich library resources. It allows patrons to place interlibrary loans for materials and to access electronic content.

MNLINK Server Site means Organization's automation systems, which meet established criteria and allow their materials to be accessible for interlibrary loan.

Organization means the library organization, city, county or other entity that is a party to this Agreement and operates the designated MNLINK Server Site, which is the subject of this Agreement.

1) Organization Obligations upon designation as MNLINK Server Site:

- a) Conformance to MNLINK Server Site requirements and other requirements that may be adopted by MNLINK.
- b) Operate and manage a designated MNLINK Server Site.
- c) Allow searches of its resources via MNLINK.
- d) Manage the workflow for Interlibrary Loan borrowing and lending requests. Includes lending of materials included on the Organization's online catalog by patrons authenticated by MNLINK subject to:
 - i) Statewide interlibrary loan policies and procedures established by Minitex and the Department of Education, Library Services and School Technology; and
 - ii) Such restrictions as the Organization or its members may place on the loan of materials consistent with established policies and procedures.

- e) Appointment of a member to the MNLINK Operations Committee and any similar groups that may be established.

2) Minitex obligations:

- a) Administer the MNLINK discovery and interlibrary loan system for the benefit of all participating libraries.
- b) Contract with vendor for hosting of the MNLINK discovery and interlibrary loan system following university purchasing procedures.
- c) Management of location information to reflect current status of Organization via MNLINK.
- d) Management of authenticated patron search of identified electronic resources via MNLINK.
- e) Management of authenticated patron placement of Interlibrary Loan request via MNLINK for materials of other MNLINK participating libraries subject to :
 - i) Statewide interlibrary loan policies and procedures established by Minitex and/or the Department of Education.
 - ii) Such restrictions as the Organization or its members may place on the loan of materials consistent with established policies and procedures.
- f) Establishment of the MNLINK Operations Committee and any similar groups that may be required.
- g) Consultation with the MNLINK Operations Committee prior to adopting any new requirements.

3) Payment

Annual payments will be made to Organization by the beginning of the calendar year subject to the availability of funds and the allocation formula utilized by Minitex and approved by the MNLINK Operations Committee. The established process for distribution of MNLINK Server Site payments includes a review period during which comments and questions on the distribution are solicited. This is followed by a vote by MNLINK Server Sites Committee to approve the payments. The funds are distributed following this approval process.

4) Default

If Organization fails to maintain its MNLINK Server Site or fails to fulfill any of its obligations under this Agreement, University may consider Organization to be in default, unless such failure has been caused by an unforeseeable event, outside of Organization's reasonable control. University agrees to give Organization written notice of such default. Organization will have ten (10) days from the receipt of such notice to provide a plan of action that is acceptable to University to cure the default.

If Organization fails to cure the default, University may terminate any unfulfilled portion of this Agreement. In the event Organization fails to cure the default, Organization will refund to Minitex all amounts previously paid during the fiscal year in which the Agreement is terminated. Minitex will redistribute any refunded amounts to remaining MNLINK Server Sites based on the established formula.

5) Term and Termination

This Agreement shall be effective on July 1, 2017 and shall expire on June 30, 2022, unless earlier terminated. Either Party may terminate this Agreement upon sixty (60) calendar day's written notice to the other Party. In the event that the Organization terminates the Agreement, it shall refund to University a prorated amount of the funds paid during the fiscal year in which the Agreement is terminated. Minitex will redistribute any refunded amounts to remaining MNLINK Server Sites based on the established formula.

The University is not authorized to incur additional financial obligations pursuant to this Agreement upon receipt of notice of termination or giving notice of termination. Other than the refund, as set out above, neither Party shall be entitled to damages on account of termination.

6) Audit Rights

As required by Minn. Statutes Section 16.05, Subd. 5, the Organization shall maintain books, records, and documents that are relevant to the performance of this Agreement. Such books, records and documents of Organization as well as its accounting procedures and practices that are relevant to the performance of this Agreement, shall be subject to the examination and audit of the University and either the Legislative Auditor or the State Auditor as appropriate, for a minimum of six (6) years from the end of this contract.

7) Government Data Practices Act

Each party will comply with the Minnesota Government Data Practices Act as it applies to all data provided by the University and as it applies to all data created, gathered, generated or acquired in accordance with this Agreement.

8) Assignability

This Agreement may not be assigned by either party without the prior written consent of the other party.

9) Disputes

- a) **Dispute Resolution.** The parties will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of cooperation. If those attempts fail, the dispute will be mediated by a mediator chosen jointly by Organization and University within thirty (30) calendar days after notice by one of the parties demanding non-binding mediation. Neither party may unreasonably withhold consent to the selection of a mediator. Subject to available funding, Organization and University will share the cost of mediation equally. The parties may by mutual agreement complete some specified but limited discovery about the dispute. The parties may also replace mediation with some other form of non-binding Alternate Dispute Resolution (ADR) procedure. Nothing in this section shall prevent University from terminating this Agreement for a material breach or for convenience.
- b) **Unresolved Disputes.** Any dispute that cannot be resolved between the parties through negotiation or mediation within two (2) months after the date of the initial demand for non-binding mediation may then be submitted by either party to Minnesota District Court in the Fourth judicial district or to the United States District Court for the District of Minnesota for matters otherwise within its jurisdiction. Each party consents to jurisdiction over it by such a court. The use of any ADR procedures will not be considered under the doctrine of laches, waiver, or estoppels to affect adversely the rights of either party. Either party may resort to the judicial proceedings described in this paragraph prior to the expiration of the two-month ADR period if: (a) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful or (b) interim relief from the court is necessary to prevent serious and irreparable injury to such party or any of its affiliates, agents, employees, customers, suppliers, or subcontractors.
- c) **Performance While Dispute is Pending.** Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement, which are not affected

by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional costs incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

10) Indemnification

Subject to the Minnesota Tort Claims Act, in the performance of this Agreement each party will be solely responsible for any claims or causes of action to the extent caused by the responsible party's:

- i) Intentional, willful, or negligent acts or omissions; or
- ii) Actions that give rise to strict liability; or
- iii) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the other party's sole negligence. Each party will notify the other promptly upon having reason to believe a claim or cause of action has been, or is likely to be made, against the responsible party. The responsible party will defend or settle the claim or action at its expense, and the non-responsible party will fully cooperate in such defense or settlement. The responsible party will make no settlement that may affect the non-responsible party's operations without the non-responsible party's express, written permission.

11) Entire Agreement

This Agreement constitutes the entire agreement of the parties regarding the subject matter of this Agreement and supersedes all previous negotiations, representations, agreements and understandings, whether written or oral, between the parties relating to such subject matter. This Agreement between the parties shall be independent of and have no effect upon any other contracts of either party.

Organization:

The Organization certifies that the appropriate person(s) has/(have) executed the Agreement on behalf of the Organization as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____
Title: _____ Date: _____

By: _____
Title: _____ Date: _____

By: _____
Title: _____ Date: _____

By: _____
Title: _____ Date: _____

Regents of the University of Minnesota

By:  _____
(Wendy Lougee, University Librarian, authorized authority)

Title: _____ Date: _____