

AGREEMENT
FOR
PROVISION OF SOFTWARE PRODUCTS
AND SERVICES

Agreement made this _____ day of _____
by and between Northwestern University (hereinafter "VENDOR") and
Wayne State University (hereinafter "LIBRARY") as follows:

This Agreement shall be governed by and construed in all
respects in accordance with the laws of the State of Michigan.

I. DEFINITIONS

Where used in this Agreement, unless the context other-
wise requires, the following words and phrases have the
following meaning:

"Computer Equipment" means the central processing unit
or units ("CPU") including its major peripherals such
as, but not limited to, disc drives, tape drives, and
control console which allow the CPU to perform as a
computer system.

"DALNET" means the Detroit Area Library Network, Inc.
which is the consortium of libraries in the Detroit area
which is planning for participation in the System on a
regional network basis.

"Date of Final Acceptance" means the date upon which the
LIBRARY endorses its acceptance of the System upon the
final certificate delivered by VENDOR with respect to
the achievement of acceptance standards.

"RFP" means the LIBRARY's and DALNET's Request for
Proposal dated July, 1984, and the Addendum thereto
dated August, 1984, which are annexed hereto in Schedule
_____, dated September 4, 1985.

"Software" means the software licensed to the LIBRARY by
VENDOR.

"Installation Site" or "Site" means the room or rooms within which each unit of the Equipment is to be installed on the premises of the LIBRARY.

"University Specifications" means the RFP as accepted and modified in the VENDOR's Response.

"Vendor's Response" means the proposal for a NOTIS System for LIBRARY and the Detroit Area Library Network dated September 4, 1984 as amended by the Revised Responses to Specifications which are annexed hereto in Schedule _____.

II. INCORPORATION OF RFP BY REFERENCE

A. For the purpose of this contract a commitment by the VENDOR includes any warranty or representation made by the VENDOR in its written response to LIBRARY Request for Proposal. This document (hereafter referred to as "RFP"), together with the VENDOR response, as amended, are hereby incorporated as Schedule B to this contract. In the event of any conflict, inconsistency, contradiction or lack of definition as to the meaning of the terms, conditions and specifications contained in the Agreement, including all documents attached as Schedules or incorporated herein by reference, the following documents in the order so stated shall prevail for the purpose of precedence and clarification:

1. The Agreement
2. The University Specifications

With respect to University Specifications, the Software shall comply with the terms, conditions and specifications in the RFP except as (i) the Vendor's Response clearly indicated VENDOR's intent not to offer the capabilities sought or (ii) the Agreement sets forth the parties' intent to the contrary. In case of ambiguity between the RFP and the Vendor's Response, if the parties are not able to resolve their differences about the interpretation and the amount at issue is Ten Thousand Dollars (\$10,000) or less, they shall submit the issue to binding arbitration by a

library automation specialist. The arbitrator's fees and expenses shall be shared equally by the parties. Arbitration shall be conducted in the City of Detroit, Michigan under the then prevailing rules of the American Arbitration Association. Judgment upon any award made may be entered and enforced in any court of competent jurisdiction.

III. NON-WAIVER

No term or provision of this Agreement shall be deemed waived, and no breach thereof shall be deemed excused, unless such waiver of consent shall be in writing and signed by the party claimed to have waived or consented.

IV. NON-ASSIGNMENT OF CONTRACT BY VENDOR

This Agreement may not be assigned by the VENDOR except with the prior written consent of the LIBRARY.

V. PUBLICITY

VENDOR agrees not to use advertising, sales promotions, and other publicity matters relating to any product furnished by the VENDOR wherein the LIBRARY'S name is mentioned, or language used from which the connection of libraries named therewith may, in the LIBRARY'S judgment, be inferred or implied, without the prior consent of the LIBRARY.

VI. PRODUCTS, SERVICES TO BE PROVIDED

A. Software

1. Subject to the provisions contained herein and commencing upon the date of execution of this Agreement, VENDOR grants to LIBRARY a nonexclusive, irrevocable and nontransferable license, except as herein provided, for the use of certain existing and future forms of the MVS version of the proprietary computer software product NOTIS, developed by the Northwestern University Library and copyrighted 1980 by Northwestern University (hereinafter "SOFTWARE").

2. The MVS version of the NOTIS software supplied shall conform to all University Specifications, ~~at the date of delivery~~, for the VSE version in the VENDOR's RFP response, as modified. The on-line portion of said software will be provided by VENDOR by December 1, 1985, and the Batch system portion of said software will be provided by March 1, 1986.
3. VENDOR shall furnish LIBRARY with the following software related materials:
 - a) the SOFTWARE for the system as well as conversion software, which shall be in the form of a magnetic tape containing program source and documentation, except as to BRS software, and
 - b) two sets of printed documentation to facilitate use and installation of the SOFTWARE, including

(list volumes)

in conformance with the University Specifications.
 - c) LIBRARY may purchase terminal operator manuals at a cost of \$100 each set, and full sets of documentation at a cost of \$150 per set, which prices shall remain firm until November 1, 1987, from VENDOR.
4. Such software and materials will be provided by VENDOR to LIBRARY by December 1, 1985. Such provision shall include delivery, installation and initial testing of the SOFTWARE and delivery of the documentation. Such provision is contingent upon prior successful installation of hardware and operating system software by the LIBRARY or its hardware suppliers. If hardware and operating system software installations are not complete, the parties shall agree upon as early an alternative date as possible.

5. The SOFTWARE shall be used by LIBRARY on a single computer system located at LIBRARY. The term "single computer system" encompasses a multiprocessor system wherein the processors are located on the same site and includes remote terminals which are linked to the processor(s). LIBRARY is also authorized to use the SOFTWARE on the backup processor provided the SOFTWARE is not run concurrently thereon.
6. The term of this license shall be perpetual, unless terminated sooner under the provisions hereof.
7. No title or ownership rights to the SOFTWARE are transferred to LIBRARY by this Agreement.

B. Conversion Software

1. VENDOR shall supply, at an extra cost of \$225 per day of programmer time not to exceed \$5,000, the conversion SOFTWARE to take Wayne State University's machine readable OCLC bibliographic database to be supplied by the LIBRARY and load it onto the system for the purpose of creating a bibliographic database with copy holdings and item level records in a format accessible by the system. SOFTWARE shall be delivered by February 1, 1986 or 90 days from the date of receipt of LIBRARY specifications and tape. The LIBRARY shall provide the VENDOR with the database format specifications and a sample tape of at least 5000 records by November 1, 1985.

The conversion SOFTWARE shall then be modified to enable item level records to be constructed from OCLC records with a 949 field having a Codabar barcode in the subfield b. at an extra charge calculated on the basis of \$225 per day of programmer time which VENDOR devotes to the task. The modified conversion software shall be delivered within 90 days after the VENDOR receives the specifications and a sample tape from the LIBRARY.

2. VENDOR shall supply the SOFTWARE to take each DALNET cataloging agency's machine readable OCLC bibliographic database and load it onto the system on a mutually agreeable schedule at an extra cost of \$225 per day of programmer time, not to exceed \$5,000 each. The rate of \$225 per day is guaranteed until November 1, 1987. The SOFTWARE shall be delivered and tested within 90 days after the VENDOR receives the database format specifications and a sample tape of at least 5,000 records for each cataloging agency. A list of cataloging agencies is annexed hereto in Schedule _____.
3. VENDOR shall supply the SOFTWARE to load serials bibliographic and summary holdings data for Wayne State University Libraries into the system from an OCLC serials "snapshot" tape to be supplied by the LIBRARY at an extra cost of \$225 per day of programmer time not to exceed \$7,500. The conversion SOFTWARE shall be delivered by April 30, 1986, or 120 days from date of receipt of LIBRARY specifications and tape. The LIBRARY shall supply the VENDOR with the database format specifications and a sample snapshot tape from the LIBRARY by January 1, 1986.
4. VENDOR shall supply the conversion SOFTWARE to load serials bibliographic and summary holdings data for each DALNET cataloging agency into the system from an OCLC serials "snapshot" tape to be supplied by the cataloging agency on a mutually agreeable schedule at an extra cost not to exceed \$7,500, which charge will be calculated on the basis of \$225 per day of programmer time which VENDOR devotes to the task. The rate of \$225 per day is guaranteed until November 1, 1987. The SOFTWARE shall be delivered and tested within 120 days after the VENDOR receives the database format specifications and a sample snapshot tape from the processing center.

5. If DALNET Cataloging agencies obtain authority records from another source, VENDOR shall supply the conversion SOFTWARE to load name and subject authority records from a BLACKWELL NORTH AMERICA machine readable tape into the system by February 1986 at no additional charge. VENDOR commits to developing authority record conversion software for MARC formatted authority records that match existing headings in the bibliographic database within 120 days after receipt of the specifications and a sample tape, at a cost not to exceed \$5,000, which charge will be calculated on the basis of \$225 per day of programmer time which VENDOR devotes to the task. The rate of \$225 per day is guaranteed until November 1, 1987.
6. VENDOR shall supply the formats of file layouts and instructions to enable the LIBRARY to put student and staff patron data on the magnetic tape for loading onto the system. VENDOR shall provide detailed instructions and formats of file layouts for this task at the time of installation of the system at no additional charge.

C. Support Services

1. VENDOR shall provide up to fifteen (15) dedicated, on-site training days free of charge. Reasonable and actual travel expenses for VENDOR personnel are to be paid by LIBRARY.
2. VENDOR shall provide library staff training (on site) as follows:
 - a) VENDOR shall train up to ten (10) key LIBRARY staff to use each component of the system, including the ability to use the equipment and software supporting the component.

- b) Training in each component shall be as follows:
 - (1) Cataloging/bibliographic module (2 days)
 - (2) Online public catalog (1 day)
 - (3) Circulation (4 days)
 - (4) Acquisitions/Serials (4 days)
 - (5) Advanced cataloging (2 days)
- 2. VENDOR shall provide additional days of on-site training to the LIBRARY at a cost of \$400 per day, plus reasonable and actual travel expenses; the per day rate is guaranteed until November 1, 1987, after which time it may be increased up to 10% per year, but not to exceed the lowest rate charged other customers of VENDOR.
- 3. VENDOR shall provide support for installation as follows:
 - a) Installation of SOFTWARE on the LIBRARY's hardware for an extra charge of \$1,200, plus reasonable and actual travel expenses.
 - b) Pre-installation consulting for an extra charge of \$300 per day, plus reasonable and actual travel expenses.
- 4. VENDOR shall provide reasonably necessary additional days of on-site training to the DALNET cataloging agencies at a cost of \$400 per day, plus reasonable and actual travel expenses. Nothing in this Agreement shall be construed as imposing on VENDOR the duty for training the staff of DALNET member branch libraries on an individual basis.
- 5. The VENDOR and the LIBRARY shall each designate a Project Manager who shall have full responsibility for implementing this Agreement.

6. VENDOR shall provide a port so that the LIBRARY can dial into a sample NOTIS system and conduct its own demonstrations. The LIBRARY will give reasonable prior notice for its use of the demonstration port. The VENDOR shall provide dial-up instructions to the LIBRARY to enable such demonstrations.

D. Maintenance

1. VENDOR agrees, at no additional cost, to provide maintenance for the SOFTWARE for a period of one (1) year, commencing on the date of successful installation of the SOFTWARE. Maintenance includes the following services and materials:

- a) All enhancements, updates, and improvements to the applications modules of the SOFTWARE as bid, including new general releases made available to other users, when developed.

- b) Reasonable written or telephone consultations with all telephone charges to be paid by the calling party. The VENDOR shall maintain these hours for telephone consultations:

Monday through Friday, 9:00 a.m. to 5:00 p.m. Central Time, except on these holidays _____.

- c) Correction of errors and defects in the SOFTWARE. VENDOR shall correct errors and defects which cause a function to cease operation or be lost, within 24 hours of notification and the receipt of any necessary supporting documentation.

- d) Modifications which may be necessary to enable the SOFTWARE to operate under later releases of the software products listed in paragraph XI. A. Such modifications will be provided within six (6) months of the general availability of the later releases, subject to provisions of XI. A.

2. Maintenance shall be provided only for the then current release of the SOFTWARE, and may, but need not be provided if LIBRARY has, in whole or in part, modified or changed the SOFTWARE except as provided for in D. 3. below.
3. In order for the Warranty of VENDOR to be extended to modifications to the SOFTWARE proposed by LIBRARY, the LIBRARY shall provide to VENDOR sufficient information and documentation for VENDOR to fully evaluate the effect of said modifications upon the SOFTWARE; VENDOR may, within a reasonable time, deny in writing, the extension of its warranty to the modifications proposed by LIBRARY; such modifications shall belong to LIBRARY in any event. VENDOR's denial of maintenance to modifications by LIBRARY must be supported by showing the modifications have a substantial adverse impact on VENDOR's ability to maintain the Software. In such an instance, VENDOR's release from maintenance responsibility extends on to the source of the adverse impact identified by VENDOR.
4. At its discretion, VENDOR may provide maintenance when the SOFTWARE is used in conjunction with releases of IBM software products for which maintenance is no longer provided by IBM.
5. At the expiration of the agreed one year period, VENDOR shall provide further maintenance for successive periods with the maintenance fees to be set at the then current rates of the VENDOR. Such maintenance shall be provided for a minimum of five (5) years. If the LIBRARY does accept such maintenance, payment shall be made quarterly in advance. Maintenance charges shall be subject to an increase not to exceed ten percent (10%) in each of the first two (2) such years, and fifteen (15%) percent in each of the following three (3) years, or the lowest amount given to any NOTIS customer that year, whichever is lower. Acceptance of such offer of maintenance will be at LIBRARY'S option.

6. If LIBRARY chooses not to accept maintenance for any one or more periods, maintenance may be reinstated only with the written consent of VENDOR and the payment by LIBRARY of all maintenance fees in arrears; or at LIBRARY'S option, payment of the then current License Fee.
7. The LIBRARY will provide a telephone line and modem for use by the VENDOR in diagnostic and maintenance activities.
8. The VENDOR shall continue to enhance and keep up-to-date the MVS version of the NOTIS software on the same schedule as the VSE version, with no more than a sixty (60) day lag in delivery of the MVS enhancements.

VII. RESTRICTED USE

- A. LIBRARY agrees that it shall maintain the SOFTWARE in confidence.
- B. Distribution by LIBRARY in whole or in part, externally or internally, to other computer systems or sites, of the SOFTWARE or any derivative thereof is prohibited. All Software supplied by VENDOR shall be available to LIBRARY, DALNET and to DALNET Members for use on their computer equipment without restriction, in any combination of central processing units in one location. LIBRARY may transfer its license to a successor organization or extend the System to include additional DALNET Members without additional charges or fees, provided that the number of software copies permitted hereunder shall not be increased.
- C. LIBRARY may copy, in whole or in part, the SOFTWARE as necessary and incidental to its use in compliance with this Agreement, such as for archival and backup purposes, provided that each such copy shall remain subject to all terms of this Agreement and must include the proprietary notice of VENDOR, stated as follows:

NOTIS is a proprietary product of the Northwestern University Library, Evanston, Illinois 60201, U.S.A., copyright 1980 by Northwestern University, all rights reserved. Distribution or use in whole or part except as licensed, is prohibited.

- D. LIBRARY shall have the right to disclose the SOFTWARE, or part thereof, to consultants or agents who are assisting the LIBRARY in the implementation, use and/or enhancement of the SOFTWARE or any part thereof. Such consultants or agents shall be required to agree not to disclose the SOFTWARE, or part thereof, to third persons.
- E. LIBRARY may copy printed documentation in reasonable quantities to aid its employees in using the SOFTWARE.

VIII. ACCEPTANCE AND PAYMENT

- A. This Agreement shall be effective upon the date of the last signator of this Agreement.
- B. LIBRARY agrees to pay VENDOR the License Fee of \$95,000 according to the following schedule and conditions of payment.

1.	Receipt and successful installation SOFTWARE	\$45,000
2.	Successful completion of functional acceptance testing of the Online Public Catalog subsystem, including the cataloging and authority control modules	10,000
3.	Successful completion of functional acceptance testing of the Acquisi- tions/Serials Control subsystem	10,000
4.	Successful completion of functional acceptance testing of the Circula- tion subsystem, including the financial component (IX, A, 2)	10,000
5.	Successful completion of functional acceptance testing of the index redesign enhancements (IX, A, 1)	10,000
6.	Successful completion of functional acceptance testing of the Harvard enhancements to the Acquisitions subsystem (IX, A, 3).	10,000
		\$95,000

- C. LIBRARY agrees to complete functional acceptance testing of the Online Public Catalog and Acquisitions/Serials Control subsystems by July 31, 1986, and of the Circulation Subsystem by January 1, 1987. However, in no event shall LIBRARY have fewer than 60 days from the time of installation to perform its functional acceptance testing of any component or subsystem.

The testing of the Software will include full functiona; tests as set forth in the RFP. The format of each test shall be designed by or subject to approval of LIBRARY and the data utilized shall be selected by LIBRARY. Acceptance of applications software shall be module by module.

The functional acceptance test shall be carried out separately for each of the software modules. Upon completion of the installation of Software for each module, VENDOR shall notify LIBRARY to carry-out the performance test and shall certify in writing the module specified is operational. LIBRARY shall then test the availability and performance of each feature or function. Upon completion of such performance test and after LIBRARY is satisfied that the Software meets the specifications for all the modules, LIBRARY shall endorse a copy of a certificate for each of the modules so stating the compliance and shall return said copy of the certificate to VENDOR.

- D. LIBRARY shall pay any and all state and local sales or use taxes with respect to the acquisition by it of the Software or any part thereof. The University shall not be obligated to pay any other taxes or government duty of any kind with respect to this Agreement.
- E. Payment will be made for the conversion SOFTWARE supplied by the VENDOR upon successful installation, testing, and acceptance.

Upon completion of the conversion SOFTWARE for the LIBRARY's machine-readable database for each module, VENDOR will notify LIBRARY to carry-out the conversion test. LIBRARY will begin such testing within thirty (30) days of receiving such notice. Upon completion of such conversion test and after LIBRARY is satisfied that the conversion meets University Specifications, LIBRARY will endorse a copy of a certificate so stating the compliance and will return said copy of the certificate to VENDOR.

- F. Training charges set forth in this Agreement will be payable upon completion of the services identified after receipt of an invoice.
- G. LIBRARY shall make all payments required to be made hereunder to VENDOR within forty-five (45) days of receipt of an invoice. LIBRARY shall not be liable to VENDOR for any costs, fees, payments or charges of any kind which are not specifically set forth in this Agreement, concerning the services and material agreed to be provided hereunder.

IX. ADDITIONAL DEVELOPMENT BY VENDOR

- A. VENDOR agrees to develop and provide to LIBRARY the following capabilities, which were not available at the time of VENDOR response to the LIBRARY RFP. Capabilities shall be provided to LIBRARY by the date shown with each capability.
 - 1. Index Redesign enhancements be available by March 1986.
 - 2. Circulation financial component, including fines and payment history linked to patron records, be delivered for the circulation functions including Reserve Room, by July 1986.
 - 3. The Harvard enhancements to the acquisitions system be available, including the ability to handle and store multiple fiscal years, to handle fiscal year change-over, and currency control, by January, 1987.
 - 4. BRS/Search software for Boolean and keyword searching be available for the online public catalog by March 1986, and for staff by March 1987.
 - 5. Fuzzy matching be provided in the online public catalog for call numbers, and author, title and subject searches by July 1987.
 - 6. Status display in the online public catalog for all materials in circulation, including both monographs and serials, by July 1986.
 - 7. Reserve Room component of circulation be delivered by June 1986.
 - 8. Capability to validate a borrower at more than one institution using the same barcode ID number be developed by January 1987.

9. Microcomputer backup capability be developed for the circulation component ~~by~~ January, 1987.
10. Serials control subsystem be modified with automatic check-in based on a predictive system, with a binding component, automatic claiming, and a routing component by July, 1988..
11. Software support for OCLC M300 terminal to allow use as both an OCLC and a NOTIS terminal in a single workstation be provided by January 1987.
12. The online public catalog subject searching disregard dashes and other punctuation by July 1987.
13. Stop word list capability for BRS Software be developed by July, 1986.
14. Inventory control software be developed together with WSUL and DALNET to allow inventory of the collection in the stacks as well as software support for portable data collection devices by July, 1987.
15. Online transmission of orders according to standards be developed by December, 1987.
16. The MARC holdings format be supported by December, 1988.

If the VENDOR fails to provide the above numbered 4, 5, 6, 7, 8, 9, and 10 features, LIBRARY may at its discretion, reduce the quarterly SOFTWARE maintenance payment by 30% for each of the above features which is not installed within ninety (90) days of the date for which it is committed. This reduction shall continue until the feature has been delivered to LIBRARY by VENDOR. Further, with respect to items numbered 1, 7, and 13 above, and in the event that any of them is not provided within ninety (90) days of the provision date indicated, each such item is valued at ten thousand (\$10,000) dollars, which sum may be withheld until such time as each such item is accepted by LIBRARY.

- B. VENDOR agrees to provide to the LIBRARY a booking module, integrated with the patron and bibliographic records, when it is developed at an extra cost of \$20,000.

X. DEFAULTS AND REMEDIES

A. By LIBRARY

1. Failure or refusal of the LIBRARY to perform or do any act herein required by the VENDOR shall constitute a breach of this Agreement. Whenever VENDOR becomes aware of such breach, its representative shall notify the LIBRARY thereof in writing. If such breach be not cured in thirty (30) days following such notice, this Agreement may be terminated immediately upon written notice of termination being given to the LIBRARY by VENDOR. In such event, VENDOR shall refund to LIBRARY the amounts paid by LIBRARY to it hereunder, less an amount reasonably calculated to measure the benefit received by the LIBRARY. Such termination shall not prejudice any rights VENDOR may have at law or in equity.

B. By VENDOR

1. Failure or refusal by VENDOR to perform or do any act herein required to be done shall constitute a breach of this Agreement. Whenever the LIBRARY becomes aware of such breach, the Director of Libraries shall notify VENDOR thereof in writing. If such breach be not cured within thirty (30) days following such notice, this Agreement may be terminated immediately upon written notice of termination being given to VENDOR by the LIBRARY.
2. (i) If VENDOR does not fulfill its obligations to deliver, install and test the SOFTWARE in accordance with the provisions of this Agreement, or
(ii) If the SOFTWARE when installed does not meet with specifications or otherwise comply with the terms and conditions set forth in this Agreement, or
(iii) If VENDOR is in default of any covenant, representation, warranty and/or agreement provided herein, or

- (iv) If any proceeding in bankruptcy, receivership, liquidation or insolvency is commenced against VENDOR or its property, and the same not dismissed within 30 days, or
- (v) If VENDOR makes any assignment for the benefit of its creditors, becomes insolvent, commits any act of bankruptcy, ceases to do business as a going concern, or seeks any arrangement or compromise with its creditors under any statute or otherwise,

then the same shall constitute an event of default by VENDOR hereunder, and upon the happening of any of the aforesaid events, LIBRARY may upon 30 days notice to VENDOR specifying the default, terminate this Agreement and return the Software at VENDOR's expense, and VENDOR shall thereupon promptly refund all amounts paid by LIBRARY to it hereunder, less an amount reasonably calculated to measure the net benefit received by LIBRARY for the use thereof. Such termination shall be without prejudice to any right LIBRARY may have at law or in equity; provided that if VENDOR remedies its default within the said 30 day period, this Agreement shall remain in full force and effect. In any event, no consequential damages are available for any breach hereunder.

Upon termination of this Agreement, LIBRARY shall, at the option of VENDOR, either destroy all copies, including partial copies, of the SOFTWARE, or shall return the SOFTWARE to VENDOR. In either event, LIBRARY shall promptly forward written notice to VENDOR that all programs and materials containing the SOFTWARE have been destroyed or deleted from any computer libraries or storage and memory devices and are no longer in use or useable by LIBRARY.

- D. LIBRARY shall have the right to terminate maintenance after the first year on thirty (30) days notice, with a pro rata refund of the maintenance fee, if VEMDPR is unable to provide the modifications specified under paragraph VI. D. 1. d. Such termination of maintenance shall not terminate this Agreement.

XI. WARRANTIES

A. VENDOR represents and warrants that the SOFTWARE, when delivered and installed, shall operate in conformance with all specifications contained in this Agreement when used in conjunction with the following software products:

MVS/SP VIR3.4	5740-XYS
DFP R1.1	5665-295
ISPF V2R1.0	5665-319
SMP/E R2.0	5668-949
CICS/VS R1.6.1	5740-XX1
GPAR R2.1	5798-DAB
CICS/PARS R2.4	5798-CPR
RMF V2R4.1	5740-XY4
PL/1 R5	5734-PL3
ACF-VIAM V2R1.0	5665-280
ACF-NCP V2R1	5735-XX9
ACF/SSP V2R1.1	5735-XXA
JES/32BX	5785-BAB
ACF2	
Synch/Sort	

The Software initially installed, and as modified by subsequent enhancements provided by VENDOR, will be installed and implemented in a worker-like manner, will be and will remain fit for all purposes set forth in this Agreement, will have all features and be capable of performing all functions described in this Agreement, and will meet the reliability and response time standards set forth herein.

LIBRARY agrees to assume full responsibility for modifications to the SOFTWARE which may be necessary to operate in a different environment, and understands that such modifications may prevent VENDOR from supplying maintenance for the SOFTWARE.

- B. VENDOR agrees to defend or settle any action at law or equity against LIBRARY arising from a claim that the SOFTWARE infringes any patent or proprietary right; provided that VENDOR is promptly notified of such action and is given control over the defense or settlement thereof, and further provided that the SOFTWARE has not been modified by LIBRARY, except as provided for under the terms described in VI. D. 3. of this Agreement, and that the charge or infringement does not result from the use of the SOFTWARE in combination with other components, whether hardware or software, where such infringement would not have occurred if the SOFTWARE had not been used in such combination.

If the Software becomes or in VENDOR's opinion is likely to become the subject of a claim based on an alleged infringement or breach as aforesaid, VENDOR may, at its expense and option but without interruption of LIBRARY's ordinary operations, do one of the following:

- i) Modify the Software so that there is no longer any infringement or breach without adversely affecting any functional capabilities of the Software, provided that the Software shall continue to conform to this Agreement;
- ii) Procure for LIBRARY the right to continue to use the System; or
- iii) Substitute for the offending Software other equipment or software having a capability equal to the replaced Software, provided the Software shall continue to conform to this Agreement.

In the event that VENDOR is unable to do one of the above options for reasons beyond its control, with the consent of the LIBRARY, VENDOR may take back such Software and refund any sums LIBRARY has paid VENDOR pursuant to this Agreement. If LIBRARY does not consent to such removal, it shall notify VENDOR

thereof in writing and may continue using same provided LIBRARY agrees to undertake, at its expense, the defense of any action against it and to indemnify VENDOR in respect of any costs or damages attributable to such continued use, and LIBRARY may participate, at its expense, in the defense of any such action if such claim is against it.

XII. PERFORMANCE GUARANTEE

- A. VENDOR warrants normal response time of system, using direct-connected terminals, will be:

Circulation check-out	2 seconds
Renewal	2 seconds
Holds	2 seconds
Check-in	2 seconds
Serial check-in	2 seconds
Patron database update	3 seconds
File inquiry by item or borrow ID	3 seconds
File inquiry by name of borrower	3 seconds
File inquiry by author or title	3 seconds
File inquiry by subject or keyword	8 seconds
Keyword file inquiry	10 seconds
Item data creation or maintenance	6 seconds
Bibliographic record creation or maintenance	6 seconds
Order record entry, or maintenance	5 seconds
Acquisitions financial transaction	8 seconds

- B. VENDOR warrants peak load response time of system will be:

Checkout	2 seconds
Renewal	2 seconds
Holds	2 seconds
Checkin	2 seconds
Serial checkin	4 seconds
Patron database update	5 seconds
File inquiry by item or borrower ID	5 seconds
File inquiry by name of borrower	5 seconds
File inquiry by author or title	5 seconds
File inquiry by subject	7 seconds
Item data creation or maintenance	10 seconds
Bibliographic record creation or maintenance	20 seconds
Order, record entry or maintenance	8 seconds
Acquisitions financial transaction	20 seconds

Peak load shall be defined as simultaneous operation of 85% of the terminal devices listed in the hardware description (Schedule A) or which may be later added, up to 350 devices, logged simultaneously onto the NOTIS SOFTWARE.

- C. This guarantee is in effect provided that the system is operated in accordance with instructions provided by VENDOR and absent any negligence or misuse by LIBRARY and provided LIBRARY has on its site the required hardware and other computer resources as specified in Schedule A. LIBRARY agrees to provide VENDOR a complete description and inventory of the available computer resources and to allow VENDOR to inspect such items. VENDOR agrees to inform LIBRARY within twenty (20) days after receipt of the inventory, or inspection, whichever is later, as to any condition which VENDOR claims constitutes LIBRARY's failure to comply with the terms of this Agreement.
- D. In the event that the VENDOR shall notify LIBRARY of any claimed nonconforming conditions, VENDOR shall provide with this notification to the LIBRARY a detailed description of the deficiencies and a precise description of the alterations LIBRARY needs to make to the system. Upon completion of the aforesaid alterations, LIBRARY agrees to notify VENDOR in writing as to the alterations made and provide a revised inventory. VENDOR agrees to inform LIBRARY within fourteen (14) days after receipt of the alteration notification as to whether an inspection is required or whether the warranty is reinstated. If an inspection is required, VENDOR agrees to perform said inspection within fourteen (14) days after notification of LIBRARY by VENDOR.
- E. If VENDOR fails to respond to the alteration notification or to perform the inspection within the specified time period, all warranties shall be considered to be in effect from the date of the alteration notification.
- F. In the event the system does not perform substantially as described herein, and following pursuit of the steps set forth above, the VENDOR may be regarded by LIBRARY as having materially breached this Agreement, leaving LIBRARY the option to exercise its remedies according to Section X (B) herein.

XIII. MISCELLANEOUS

- A. The headings for each section are stated for convenience only and are not to be construed as limiting.
- B. If a part of this Agreement is held unenforceable or invalid or prohibited under law, it shall be struck from the Agreement and shall not affect the enforceability of the other parts of this Agreement.
- C. If licensed SOFTWARE materials are lost or damaged during shipment from VENDOR, VENDOR will replace such licensed program materials and program storage media at no additional charge to LIBRARY.
If licensed program materials are lost or damaged while in possession of the LIBRARY, LIBRARY will replace such licensed program materials at the applicable charges, if any, for processing, distribution, and production of program storage media.
- D. The parties agree that in the performance of this Agreement they will not discriminate against any person on the basis of race, sex, age, religion, sexual preference, national origin or handicap protected by law.
- E. The LIBRARY agrees to hold VENDOR harmless in the event that GEAC Computers Limited brings suit against the VENDOR in relation to this contract.

XIV. COMMUNICATIONS

All notices must be sent by certified mail to the following parties or their delegates:

VENDOR John P. McGowan
 University Librarian
 Northwestern University Library
 1935 Sheridan Road
 Evanston, Illinois 60201

LIBRARY Peter Spyers-Duran
 Director of Libraries
 Wayne State University
 130 Purdy Library
 Detroit, Michigan 48202

The parties have caused this instrument to be executed by their duly authorized representatives.

VENDOR By _____

Date: _____

LIBRARY By _____

Date: _____

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Revised 10/4/85

SCHEDULE A

Hardware Description

For Wayne State University Libraries:

- 1 IBM 4381 Model P02 16 MB Central Processing Unit, dedicated to NOTIS Software, operating with MVS/SP, CICS/VS, and related system software, including
 - 1 IBM 3278 A02 display console,
 - 2 IBM 3380 AA4 disc drives,
 - 1 IBM 3880 disc controller,
 - 2 IBM 3420 tape drives,
 - 1 IBM 4248 and Xerox 9700 system printers,
 - 1 3725-002 communication controller, with at least 12 communication lines,
 - 1 3727 console,
 - 59 Terminals initially, with 80 more added in the next two years.

The system described above will store the following:

- 1,051,000 bibliographic records in MARC format, averaging 2,700 characters each, including indexes,
- 4,000,000 item level records, averaging 100 characters each,
- 887,000 authority records in MARC format, averaging 700 characters each,
- 400,000 circulation records, averaging 100 characters each,
- 50,000 patron records, averaging 700 characters each,
- 40,500 order records, averaging 500 characters each,
- 3,200 vendor records, averaging 300 characters each,
- 2,000 fund records, averaging 300 characters each.

with enough space for the NOTIS, SAS, and operating system software, and work files, including those needed for the BRS/Search capability.

For the DALNET Libraries:

In addition to the hardware already listed for the Wayne State University Libraries, there will be:

3 IBM 3380-B04 disc drives,
1 IBM 4245-012 line printer,
additional 28 lines on the 3725-002 communications controller, as a minimum.

183 terminals initially, with an anticipated maximum in the first three years of 350 terminals for WSU and the rest of DALNET.

The system described above will store the following:

1,662,000 bibliographic records in MARC format,
averaging 2,700 characters each, including indexes,

5,374,000 item level records, averaging 100 characters each,

1,663,000 authority records in MARC format, averaging 700 characters each,

1,900,000 circulation records, averaging 100 characters each,

411,000 patron records, averaging 700 characters each,

83,000 order records, averaging 500 characters each,

3,700 vendor records, averaging 300 characters each,

1,700 fund records, averaging 300 characters each,

with enough space for the necessary work files, including those needed for the BRS/Search capability.

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SCHEDULE _____

Potential DALNET Cataloging Agencies

1. Detroit Associated Libraries
2. Detroit Cooperative Cataloging Center
3. Oakland University Libraries
4. University of Detroit Libraries
5. Wayne County Community College Learning Resource Centers

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