

# AGENDA ITEM

29 Q

10 Estes Street P.O. Box 682 Ipswich, MA 01938 USA

January 31, 2011

**Telephone:** (978) 356-6500 (800) 653-2726

January 51, 201

Facsimile: (978) 356-6565

Lorri Lessey
Coordinator of Adult Collection Development

E-mail: ep@epnet.com Fort Bend County Libraries

World Wide Web: http://www.epnet.com

1001 Golfview Drive. Richmond, TX 77469

# Dear Ms. Lessey:

Please accept this letter as confirmation that EBSCO is the sole source provider of the NoveList Plus, Small Engine Repair Reference Center, and History Reference Center online databases. No other vendor has the rights or ability to produce or sell these products.

Please feel free to contact me with any additional questions.

Sincerely, Hank Wolf Sr. Account Executive EBSCO Publishing 10 Estes St Ipswich, MA 01938

Ph. 800.653.2726 ext. 2395 Email: hwolf@ebscohost.com Ja Xo O Allin

2-24-11 copy received



# Product Order Form

Неас	iquarters:	- CONTACT NAME:		KENNY CHAO										
10 Estes Street P.O. Box 682 Ipswich,MA 01938 USA		TITLE:												
				FORT BEND CO LIBRARIES										
Phone: DEPT:														
	356-6500	como tatigas A		1001 GOLFVIEW DR /										
(800) 653-2726		STREET/F.O. BOX:							POSTAL CODE: 774			60510	00	
(978) 356-5640		COUNTRY:											-	
E-Mail:		ĺ												
information@epnet.com		FAX #:		PHONE #: 281-341-2653										
Web: www.ebscohost.com		EMAIL ADDRESS:							Δ	<del></del>		<u>.</u>	_	
		EBSCO-ID: 1122610000				CUSTOMER-ID:   ftbend							!	
SUB	SimUsers	<del></del>	have chosen EBSCO Publishing! We would like to invest in/renew the cosites   PRODUCT NAME						BEGIN EXPIR		IRE	PRICE		
5064809	UNL	11	Novelist	Plue				2/1/	2011	1/31/2012		s	10,495.00	
5109495	UNL	11		Reference Center				2/1/2011 1/31/2012			\$	13,125,00		
5109496	UNL	11	· · · · · ·	nall Engine Repair Reference Center					2/1/2011 1/31/2012			\$ 13,922.00		
payment, If p	oaying by a counted pri ed for payı	method other	than chec due upon later than	r payments received b k or electronic paymen receipt of invoice. Into 30 days after invoice	nt, please ing erest of 1 per	uire for	•		Date	Total I Curre	ney:	us Do	37,542.00 Silar 22, 2011	
Print Name: Robert Hebert									Title	e: C	ount	у Ј	udge	
		Billing Ad	dress:		7									
KENNY CHA	10	211111111111111111111111111111111111111			_									
COUNTY AUDITOR 301 JACKSON ST RICHMOND, TX 77469 USA						Customer agrees to terms and conditions of the appropriate EBSCO Publishing License Agreement for usage of electronic reference products purchased.								
PO#												P		
				Comments	(for EBSCO us	e only)								

Please sign, scan and email this form to: HANK WOLF at hwolf@ebscohost.com If unable to scan, please fax to: (978) 356-5640

## **EBSCO PUBLISHING LICENSE AGREEMENT**

By using the services available at this site or by making the services available to Authorized Users, the Authorized Users and the Licensee agree to comply with the following terms and conditions (the "Agreement"). For purposes of this Agreement, "EBSCO" is EBSCO Industries, Inc.; the "Licensee" is the entity or institution that makes available databases and services offered by EBSCO; the "Sites" are the Internet websites offered or operated by Licensee from which Authorized Users can obtain access to EBSCO's databases and services; and the "Authorized User(s)" are employees, students, registered patrons, walk-in patrons, or other persons affiliated with Licensee or otherwise permitted to use Licensee's facilities and authorized by Licensee to access Databases. "Authorized User(s)" do not include alumni of the Licensee. "Services" shall mean EBSCOhost, EBSCOhost Integrated Search, EBSCO's Discovery Service and related products to which Licensee has purchased a subscription. EBSCO disclaims any liability for the accuracy, completeness or functionality of any material contained herein, referred to, or linked to. Publication of the servicing information in this content does not imply approval of the manufacturers of the products covered. EBSCO assumes no responsibility for errors or omissions nor any liability for damages from use of the information contained herein. Persons engaging in the procedures included herein do so entirely at their own risk.

#### I. LICENSE

A. EBSCO hereby grants to the Licensee a nontransferable and non-exclusive right to use the databases and Services made available by EBSCO (the "Databases") according to the terms and conditions of this Agreement. The Databases and Services made available to Authorized Users are the subject of copyright protection, and the original copyright owner (EBSCO or its licensors) retains the ownership of the Database(s) and Services and all portions thereof. EBSCO does not transfer any ownership, and the Licensee and Sites may not reproduce, distribute, display, modify, transfer or transmit, in any form, or by any means, any Database or Service or any portion thereof without the prior written consent of EBSCO, except as specifically authorized in this Agreement.

B. The Licensee is authorized to provide on-site access through the Sites to the Databases and Services to any Authorized User. The Licensee may not post passwords to the Databases or Services on any publicly indexed websites. The Licensee and Sites are authorized to provide remote access to the Databases and Services only to their patrons as long as security procedures are undertaken that will prevent remote access by institutions, employees at non-subscribing institutions or individuals, that are not parties to this Agreement who are not expressly and specifically granted access by EBSCO. For the avoidance of doubt, if Licensee provides remote access to individuals on a broader scale than was contemplated at the inception of this Agreement then EBSCO may hold the Licensee in breach and suspend access to the Database(s) or Services. Remote access to the Databases or Services is permitted to patrons of subscribing institutions accessing from remote locations for personal, non-commercial use. However, remote access to the Databases or Services from non-subscribing institutions is not allowed if the purpose of the use is for commercial gain through cost reduction or avoidance for a non-subscribing institution. Remote access for personal use from these institutions is permissible.

C. Licensee and Authorized Users agree to abide by the Copyright Act of 1976 as well as any contractual restrictions, copyright restrictions, or other restrictions provided by publishers and specified in the Databases or Services. Pursuant to these terms and conditions, the Licensee and Authorized Users may download or print limited copies of citations, abstracts, full text or portions thereof provided the information is used solely in accordance with copyright law. Licensee and Authorized Users may not publish the information. Licensee and Authorized Users shall not use the Database or Services as a component of or the basis of any other publication prepared for sale and will neither duplicate nor alter the Databases or Services or any of the content therein in any manner nor use same for sale or distribution. Licensee and Authorized Users may create printouts of materials retrieved through the Databases or Services via on-line printing, off-line printing, facsimile or electronic mail. All reproduction and distribution of such

printouts, and all downloading and electronic storage of materials retrieved through the Products shall be for internal or personal use. Downloading all or parts of the Databases or Services in a systematic or regular manner so as to create a collection of materials comprising all or part of the Databases or Services is strictly prohibited whether or not such collection is in electronic or print form. Notwithstanding the above restrictions, this paragraph shall not restrict the use of the materials under the doctrine of "fair use" as defined under the laws of the United States. Publishers may impose their own conditions of use applicable only to their content. Such conditions of use shall be displayed on the computer screen displays associated with such content. The Licensee shall take all reasonable precautions to limit the usage of the Database(s) or Services to those specifically authorized by this Agreement.

- D. Authorized Sites may be added or deleted from this Agreement as mutually agreed upon by EBSCO and Licensee
- E. Licensee agrees to comply with the Copyright Act of 1976, and agrees to indemnify EBSCO against any actions by Licensee that are not consistent with the Copyright Act of 1976.
- F. The computer software utilized via EBSCO's service(s) is protected by copyright law and international treaties. Unauthorized reproduction or distribution of this software, or any portion of it, is not allowed. User shall not reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the software, or create derivative works from the software.
- G. The Database(s) are not intended to replace Licensee's existing subscriptions to content available in the Database(s).

# II. LIMITED WARRANTY AND LIMITATION OF LIABILITY

- A. EBSCO and its licensors disclaim all warranties, express or implied, including, but not limited to, warranties of merchantability, noninfringement, or fitness for a particular purpose. Neither EBSCO nor its licensors assume or authorize any other person to assume for EBSCO or its licensors any other liability in connection with the licensing of the Database(s) or the Services under this Agreement and/or its use thereof by the Licensee and Sites or Authorized Users.
- B. THE MAXIMUM LIABILITY OF EBSCO AND ITS LICENSORS, IF ANY, UNDER THIS AGREEMENT, OR ARISING OUT OF ANY CLAIM RELATED TO THE PRODUCTS, FOR DIRECT DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY EBSCO FROM LICENSEE HEREUNDER UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED. IN NO EVENT SHALL EBSCO OR ITS LICENSORS BE LIABLE TO LICENSEE OR ANY AUTHORIZED USER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES RELATED TO THE USE OF THE DATABASES OR SERVICES OR TO THESE TERMS AND CONDITIONS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- C. Licensee is responsible for maintaining a valid license to the third party resources configured to be used via the Services (if applicable). EBSCO disclaims any responsibility or liability for a Licensee accessing the third party resources without proper authorization.
- D. EBSCO is not responsible if the third party resources accessible via the Services fail to operate properly or if the third party resources accessible via the Services cause issues for the Licensee. While EBSCO will make best efforts to help troubleshoot problems, Licensee acknowledges that certain aspects of functionality may be dependent on third party resource providers who may need to be contacted directly for resolution.

### III. PRICE AND PAYMENT

A. License fees have been agreed upon by EBSCO and the Licensee, and includes all retrospective issues of the Product(s) as well as updates furnished during the term of this Agreement. The Licensee's obligations of payment shall be to EBSCO or its assignee. Payments are due upon receipt of invoice(s) and will be deemed delinquent if not received within 30 days. Delinquent invoices are subject to interest charges of 12% per annum on the unpaid

balance (or the maximum rate allowed by law if such rate is less than 12%). The Licensee will be liable for all costs of collection. Failure or delay in rendering payments due EBSCO under this Agreement will, at EBSCO's option, constitute material breach of this Agreement. If changes are made resulting in amendments to the Listing of Authorized Sites, Product(s) and Pricing Identified in this Agreement pro rate adjustments of the contracted price will be calculated by EBSCO and invoiced to the Licensee and/or Sites accordingly as of the date of any such changes. Payment will be due upon receipt of any additional pro rate invoices and will be deemed delinquent if not received within thirty days of the invoice dates.

B. Taxes, if any, are not included in the agreed upon price and may be invoiced separately. Any taxes applicable to the Database(s) under this Agreement, whether or not such taxes are invoiced by EBSCO, will be the exclusive responsibility of the Licensee and/or Sites.

## IV. TERMINATION

A. In the event of a breach of any of its obligations under this Agreement, Licensee shall have the right to remedy the breach within thirty (30) days upon receipt of written notice from EBSCO. Within the period of such notice Licensee shall make every reasonable effort and document said effort to remedy such a breach and shall institute any reasonable procedures to prevent future occurrences of such breaches. If the Licensee fails to remedy such a breach within the period of thirty (30) days, EBSCO may (at its option) terminate this Agreement upon written notice to the Licensee.

B. If EBSCO becomes aware of a material breach of Licensee's obligations under this Agreement or a breach by Licensee or Authorized Users of the rights of EBSCO or its licensors or an infringement on the rights of EBSCO or its licensors, then EBSCO will notify the Licensee immediately in writing and shall have the right to temporarily suspend the Licensee's access to the Product(s). Licensee shall be given the opportunity to remedy the breach or infringement within thirty (30) days following receipt of written notice from EBSCO. Once the breach or infringement has been remedied or the offending activity halted, EBSCO shall reinstate access to the Databases. If the Licensee does not satisfactorily remedy the offending activity within thirty (30) days, EBSCO may terminate this Agreement upon written notice to the Licensee.

C. The provisions set forth in Sections I, II and V of this Agreement shall survive the term of this Agreement and shall continue in force into perpetuity.

## V. NOTICES OF CLAIMED COPYRIGHT INFRINGEMENT

EBSCO has appointed an agent to receive notifications of claims of copyright infringement regarding materials available or accessible on, through, or in connection with our services. Any person authorized to act for a copyright owner may notify us of such claims by contacting the following agent: Kim Stam, EBSCO Publishing, 10 Estes Street, Ipswich, MA 01938, phone: 978-356-6500, fax: 978-356-5191, email: kstam@epnet.com. In contacting this agent, the contacting person must provide all relevant information, including the elements of notification set forth in 17 U.S.C. 512.

# VI. GENERAL

A. Neither EBSCO nor its licensors will be liable or deemed to be in default for any delays or failure in performance resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authority, rain, fire, flood, accidents, earthquake(s), strikes or labor shortages, transportation facilities shortages or failures of equipment, or failures of the Internet.

B. This Agreement and the license granted herein may not be assigned by the Licensee to any third party without written consent of EBSCO.

- C. If any term or condition of this Agreement is found by a court of competent jurisdiction or administrative agency to be invalid or unenforceable, the remaining terms and conditions thereof shall remain in full force and effect so long as a valid Agreement is in effect.
- D. If the Licensee and/or Sites use purchase orders in conjunction with this Agreement, then the Licensee and/or Sites agree that the following statement is hereby automatically made part of such purchase orders: "The terms and conditions set forth in the EBSCO Publishing EBSCOhost LICENSE Agreement are made part of this purchase order and are in lieu of all terms and conditions, express or implied, in this purchase order, including any renewals hereof."
- E. This Agreement represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, written and/or oral. There are no representations, warranties, promises, covenants or undertakings, except as described here.
- F, EBSCO grants to the Licensee a non-transferable right to utilize any IP addresses provided by EBSCO to Licensee to be used with the Services. EBSCO does not transfer any ownership of the IP addresses it provides to Licensee. In the event of termination of the Licensee's license to the Services, the Licensee's right to utilize such IP addresses will cease.

From:

Mary Reveles

To:

Cheryl Krejci

CC:

Angela Rincon; Laura Johnson; pperez@fortbend.lib.tx.us

Date: Subject:

2/10/2011 9:50 AM Re: EBSCO for Library

Cheryl,

This license agreement is approved as to legal form.

Thanks!

-Mary

>>> Cheryl Krejci 2/9/2011 3:12 PM >>>

Mary,

Please review the attached license agreement.

Cheryl Krejci, Senior Buyer Fort Bend County Purchasing Dept. 281-341-3759 (office) 281-341-8642 (fax)