

Voyager (Endeavor)

Endeavor Information Systems
9/6/95

Date Originated: August 16, 1995

PERMANENT AGREEMENT FOR COMPUTER SOFTWARE

Agreement made this _____ day of August, 1995 by and between Endeavor Information Systems Inc. (hereinafter "ENDEAVOR") AND California State University - Monterey Bay, Seaside, California (hereinafter "CUSTOMER"), as follows:

WHEREAS, ENDEAVOR has created or has the right to license certain software programs which CUSTOMER wishes to acquire.

THEREFORE, both ENDEAVOR and CUSTOMER agree to enter into a cooperative relationship as outlined in this Agreement.

I. GRANT OF ENDEAVOR SOFTWARE

- A. Subject to the provisions contained herein and commencing upon the date of execution of this Agreement, including payment in full of the License Fee and all other amounts due ENDEAVOR pursuant to this Agreement, ENDEAVOR grants to CUSTOMER a nonexclusive, nontransferable license for the use of certain existing and future forms of several copyrighted computer software products and the documentation for those programs, which are proprietary to ENDEAVOR, (hereinafter "SOFTWARE").

For purposes of this Agreement, SOFTWARE is defined to also include certain other computer software distributed by ENDEAVOR, not proprietary to ENDEAVOR, but licensed to ENDEAVOR.

The SOFTWARE is for the use of the CUSTOMER only, at the designated installation site set forth herein, and is not for the use of any other college, university, library or entity of any kind. Any production use of the SOFTWARE by any other entity is strictly prohibited and is considered a material breach of this Agreement.

CUSTOMER is also authorized to extend online inquiry access to users and other libraries and third party entities without restriction and to interconnect its computer system on which the SOFTWARE is mounted with library computer systems other than the CUSTOMER's computer system to permit online inquiry access.

ENDEAVOR hereby warrants that it is the sole owner or fully authorized Licensor of all the SOFTWARE to be provided under this Agreement, and that such SOFTWARE is subject to no liens, agreements, or other encumbrances which would prevent ENDEAVOR's full performance of its obligations under this Agreement, or which would prevent CUSTOMER's full use of the SOFTWARE, as set forth herein.

The term of this license shall be perpetual, unless terminated sooner under the provisions thereof, provided that the CUSTOMER keeps the SOFTWARE on maintenance with ENDEAVOR.

No title or ownership rights to the SOFTWARE are transferred to CUSTOMER by this Agreement.

- B. As part of the SOFTWARE and subject to the conditions of the LICENSE, ENDEAVOR shall furnish CUSTOMER with the computer software product, the VOYAGER LIBRARY SERIES (hereinafter "VOYAGER"), which shall be in the form of program object code and user documentation. VOYAGER enables the CUSTOMER to manage the holdings of the

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CUSTOMER's libraries and shall support those modules which are described in Appendix A, and in ENDEAVOR's user documentation.

ENDEAVOR shall also furnish sufficient documentation to facilitate use and installation of VOYAGER. Documentation is provided online with the SOFTWARE for each module of the VOYAGER. Two (2) copies of all printed documentation shall also be furnished at the time of software delivery.

1. The modules of VOYAGER for managing the library collections which are included in this Agreement are:

- Cataloging and Bibliographic Database Management
- Authority Control
- Online Catalog
- Serials Control
- Acquisitions
- Fund Accounting
- Circulation
- Course Reserve
- Transfer of Bibliographic Records from utilities
- Report Generation
- Intersystem Searching via the Z39.50 interoperability protocol

2. Subject to the terms of this LICENSE, ENDEAVOR shall grant CUSTOMER a license for VOYAGER configured in the following manner:

- a. A single production copy of the server software plus a test copy.
- b. A license for 10 simultaneous users of the staff client software.
- c. A license for up to 45 simultaneous users of the online public access clients, as described in paragraph I.D. below.

"Simultaneous users" is defined as the number of users with active sessions (either search or display) in VOYAGER at any one time. A session begins when a user connects to the VOYAGER. At the time of connection, the VOYAGER control software increments an active user count. This count of the number of simultaneous users is compared to the maximum number licensed. If the number is exceeded, the connection is refused with an appropriate message.

The simultaneous user count is decremented when a user disconnects from VOYAGER. Disconnection occurs when a Disconnect is issued from the client. In addition, sessions will disconnect after a period of inactivity. These "time out" values may be set independently for both client software and server software. Time-out values allow sites to recycle active user "slots" when patrons have abandoned their searches.

II. MAINTENANCE OF ENDEAVOR SOFTWARE

- A. ENDEAVOR agrees, at no additional cost, to provide warranty maintenance for the SOFTWARE for the first twelve (12) months following successful installation of the SOFTWARE. Successful installation is defined as installation of the SOFTWARE and test files on CUSTOMER's hardware configuration and successful execution of ENDEAVOR's test scripts.

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B. Maintenance includes the following services and materials:

1. Enhancements and updates to the SOFTWARE, including new releases, when and if developed, plus updates to the documentation.

Enhancements are defined as changes in one or more of the modules of the SOFTWARE, including but not limited to "bug fixes", performance improvements, and new capabilities not marketed as separate modules or products. Ownership of all enhancements and updates shall remain with ENDEAVOR. Enhancements and updates shall be subject to the provisions of the LICENSE.

2. Reasonable support provided by telephone, electronic mail, telefacsimile or in writing.
3. Best efforts to correct errors and deficiencies in the SOFTWARE.

ENDEAVOR shall use reasonable efforts to correct any reproducible material error in the SOFTWARE which causes the SOFTWARE not to operate substantially in accordance with the then most current version of the documentation provided by ENDEAVOR. Options for correcting such reproducible error includes:

- a. ENDEAVOR shall exercise reasonable efforts to effect a prompt remedy in the event a reproducible error in the SOFTWARE affects Customer's day-to-day operations.
- b. Include the correction for a reproducible error in the next general release of the SOFTWARE.
- c. If ENDEAVOR determines that such reproducible error is due to an error or errors in the SOFTWARE Documentation, ENDEAVOR may issue corrections to the SOFTWARE Documentation and shall not be required to correct the SOFTWARE.

- C. Maintenance shall be provided only for the then current release and the release immediately preceding the current release of the SOFTWARE, and will not be provided if CUSTOMER has, without the prior written consent of ENDEAVOR, modified or changed the SOFTWARE.

- D. At the expiration of the twelve (12) month period, ENDEAVOR will provide further maintenance for successive periods at the maintenance fees determined by ENDEAVOR. Maintenance shall automatically extend for successive renewal terms of twelve (12) months. ENDEAVOR shall provide such maintenance for a minimum of five (5) years following that date. Execution of this Agreement and payment of subsequent invoices for maintenance shall constitute acceptance of this service by CUSTOMER. In order for the perpetual license to continue to be valid, CUSTOMER must subscribe to maintenance.

The maintenance rate for the first year following expiration of the initial twelve (12) month maintenance warranty period shall be as follows:

VOYAGER Library Management System	\$14,438
Total	\$14,438

Maintenance fees will be billed quarterly and are due and payable within thirty (30) days of receipt of invoice.

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III. RESTRICTED USE

- A. CUSTOMER acknowledges that the SOFTWARE and all enhancements thereof provided by ENDEAVOR to CUSTOMER are the exclusive and proprietary property of ENDEAVOR and are valuable proprietary trade secrets of ENDEAVOR. CUSTOMER agrees that it shall maintain the SOFTWARE, including documentation, in confidence and shall use the SOFTWARE only as permitted under this LICENSE.
- B. Distribution or disclosure by CUSTOMER in whole or in part, externally or internally, to other computer systems or sites, or to third parties, of the SOFTWARE or any derivative thereof is prohibited, except as permitted by the LICENSE.
- C. CUSTOMER shall not modify, reverse engineer or decompile the SOFTWARE.
- D. CUSTOMER may copy, in whole or in part, the SOFTWARE as necessary to its use in compliance with this Agreement, such as for archival and back-up purposes, provided that each such copy shall remain subject to all terms of this Agreement and must include the proprietary notice of ENDEAVOR, stated as follows:

Endeavor VOYAGER is a proprietary product of Endeavor Information Systems Inc., Rosemont, Illinois 60018 U.S.A., copyright 1995 by Endeavor Information Systems Inc. All rights reserved. Distribution or use in whole or part except as licensed, is prohibited.

CUSTOMER shall not remove or destroy any copyrights, trade secrets, proprietary or confidential legends or markings placed upon or contained or embedded within any SOFTWARE.

- E. All documentation is subject to U.S. copyright protection. CUSTOMER may copy the printed documentation only in reasonable quantities to aid the employees in their use of the SOFTWARE. Limited portions of documentation, relating only to the public access catalog, may be copied for use in patron instruction.

IV. ACCEPTANCE AND PAYMENT

- A. This Agreement shall be effective upon the date of the last signatory of this Agreement.
- B. Acceptance of the SOFTWARE is defined as the following:

CUSTOMER shall have a period of thirty (30) days following successful installation of VOYAGER to validate that the SOFTWARE provides the functions described in Appendix A and complies with ENDEAVOR's published documentation and that such functions are successfully operating in the CUSTOMER's environment. At the end of this thirty (30) day period, the CUSTOMER shall submit in writing a letter accepting the system or a list denoting any discrepancy between the operation of that feature and the product documentation. If written notice is not received by ENDEAVOR within ten business days of the end of the thirty (30) day period, CUSTOMER will be deemed to have accepted the SOFTWARE.

ENDEAVOR shall have sixty (60) days to correct any reported discrepancy or to reach agreement with CUSTOMER on the functionality. CUSTOMER shall have thirty (30) days to test corrections. If the discrepancy has not been corrected, at the mutual agreement of both parties, the

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sixty (60) day period to correct and the thirty (30) day period to verify the correction may be repeated until the discrepancy is corrected and the system is accepted in writing.

If ENDEAVOR is unable to satisfactorily make such corrections, and if any uncorrected discrepancy shall materially inhibit the CUSTOMER's production usage of the SOFTWARE as defined in Appendix A and in ENDEAVOR's published documentation, then CUSTOMER shall have the option to terminate this Agreement, return the SOFTWARE and related documentation to ENDEAVOR, and receive a prompt and full refund of any SOFTWARE license fees paid hereunder.

- C. CUSTOMER agrees to pay License Fees for the SOFTWARE products described in Appendix B-1.
- D. Both parties agree that CUSTOMER is a tax exempt institution. If, for any reason, CUSTOMER should cease to be a tax exempt institution, CUSTOMER shall be liable for payment of all taxes levied on the end user or CUSTOMER, however designated, levied or based on the SOFTWARE, its use, or on this Agreement, including without limitation, state or local sales, use, and personal property taxes, excluding taxes on ENDEAVOR's revenue or income or other taxes specifically levied on ENDEAVOR.

V. HARDWARE

- A. ENDEAVOR is responsible for acquiring and installing the hardware and operating system software necessary to operate the SOFTWARE for the CUSTOMER. The hardware configuration and pricing is shown in Appendix B-2.
- B. The payment schedule for the Hardware is located in Appendix B-2.

VI. TERMINATION

- A. Either party to this Agreement shall have the right to terminate this Agreement only upon material breach by the other party of any of the provisions of this Agreement, and upon thirty (30) days written notice. The breaching party shall have thirty (30) days from the date of notice to remedy the breach and, if accomplished, this Agreement shall continue in full force and effect.
- B. Except as stated in paragraph IV.B., upon termination of this Agreement, the License Fee shall not be refunded, in whole or in part. ENDEAVOR or CUSTOMER may pursue any and all other remedies each may have, at law or in equity.
- C. Upon termination of this Agreement, CUSTOMER shall, at the option of ENDEAVOR, either destroy all copies, including partial copies, of the SOFTWARE, or return the SOFTWARE to ENDEAVOR. In either event CUSTOMER shall promptly forward written notice to ENDEAVOR 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 usable by CUSTOMER.
- D. Upon termination of this Agreement, CUSTOMER shall continue to maintain the SOFTWARE in confidence and shall not thereafter use the SOFTWARE, as specified in this Agreement. This paragraph shall survive the termination of this Agreement.
- E. CUSTOMER shall have the right to terminate this Agreement at the end of any fiscal year of CUSTOMER if sufficient monies to fund this Agreement are not appropriated to CUSTOMER.

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VII. SUPPORT SERVICES

- A. Support services provided by ENDEAVOR for the installation and implementation of VOYAGER are described in Appendix B-3, Schedule of Services.
- B. ENDEAVOR shall load the bibliographic data files of CUSTOMER to VOYAGER. CUSTOMER is responsible for extraction of these files from any previous library system and for formatting these files to the interface formats of ENDEAVOR.
- C. Additional days of on-site support will be provided by ENDEAVOR upon request of the CUSTOMER. The cost of such additional days shall be \$1,500 per day, including travel, lodging and meal expenses and shall be billed upon completion.
- D. ENDEAVOR provides additional cost programs and customization for the loading of bibliographic data, manipulation and interpretation of local holdings information, creation and linking of item records, and consulting services for project management. Services to be provided for CUSTOMER are listed in Appendix B-3.
- E. Payment schedule for all Additional Services is located in Appendix B-3.

VIII. WARRANTIES

- A. ENDEAVOR warrants that ENDEAVOR has carefully developed the SOFTWARE, that the SOFTWARE has been tested for accuracy and proper functioning, and that the SOFTWARE will perform according to the specifications of this Agreement and its Appendices. ENDEAVOR disclaims, except as to such performance, any responsibility for the accuracy or correctness of the SOFTWARE. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND/OR ANY OTHER TYPE WHETHER EXPRESSED OR IMPLIED, WRITTEN OR ORAL. In no event shall ENDEAVOR become liable to CUSTOMER, for loss or damages, consequential, incidental or otherwise, including but not limited to time, money, or goodwill, arising from the use, operation, or modification of the SOFTWARE by CUSTOMER.
- B. ENDEAVOR warrants that the SOFTWARE does not infringe upon or violate any patent, copyright, trade secret or any other proprietary right of any third party. In the event of any claim by any third party against CUSTOMER, CUSTOMER shall promptly notify ENDEAVOR, and ENDEAVOR shall defend such claim, in CUSTOMER's name, but at ENDEAVOR's expense and shall indemnify CUSTOMER against any loss, cost (including, but not limited to attorney's fees), expense or liability arising out of such claim, whether or not such claim is successful. THIS PARAGRAPH STATES ENDEAVOR'S SOLE LIABILITY TO CUSTOMER WITH RESPECT TO INFRINGEMENT BY THE SOFTWARE.
- C. CUSTOMER agrees that ENDEAVOR's entire liability hereunder for damages, regardless of the form of the action, shall not exceed the charges paid by CUSTOMER hereunder. CUSTOMER acknowledges that this limitation of liability is a reflection and allocation of the risks assumed by the parties in order to use the SOFTWARE for the charges specified herein.

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IX. 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.

X. NON-SUBCONTRACTING OF CONTRACT BY ENDEAVOR

ENDEAVOR's performance under this Agreement may not be subcontracted by ENDEAVOR except with the prior written consent of the CUSTOMER, which consent shall not be unreasonably withheld.

XI. PUBLICITY

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

XII. FUTURE ACQUISITIONS

The CUSTOMER may make future acquisitions from ENDEAVOR's product line under the terms and conditions of this Agreement. The CUSTOMER may purchase, lease or license product, software or services, from ENDEAVOR by executing and delivering a written purchase order to ENDEAVOR. Each such purchase order, when accepted by ENDEAVOR, shall constitute a contract consisting of the terms of this Agreement and the terms of the purchase order.

XIII. ESCROW AGREEMENT

- A. At CUSTOMER's option, within thirty (30) days following the signing of this Agreement, ENDEAVOR shall add CUSTOMER as a party to its already existing escrow account for the SOFTWARE. Such escrow account contains a current source version of all ENDEAVOR's application software and all associated materials.

The escrow company's obligation to the CUSTOMER is separate and independent from any obligation to ENDEAVOR so that, in the event of the occurrence of a release condition, it could not be interfered with by a bankruptcy trustee.

The escrow agreement shall authorize the escrow agent to release the source code to the CUSTOMER in the event a petition in bankruptcy is filed by or against ENDEAVOR, or, if for any reason (except for a material breach by the CUSTOMER) ENDEAVOR terminates the Agreement.

- B. ENDEAVOR shall pay all basic costs of maintaining the source code in escrow, including the fees of the Escrow Agent. CUSTOMER shall pay the initial cost of \$250.00 for adding CUSTOMER as a party to the escrow account and the annual incremental cost for remaining as a party to the escrow account. CUSTOMER may, at any time during the term of this Agreement, have access to and review deposited software and associated manuals.
- C. ENDEAVOR shall replace the deposited software and related documentation with an updated version at least once every twelve (12) months or upon ENDEAVOR's distribution of new release software to its customers.

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- D. If CUSTOMER chooses to enter into an Escrow Agreement, ENDEAVOR agrees that upon the occurrence of any of the events listed below (the "Triggering Events"), ENDEAVOR will deliver or cause to be delivered to CUSTOMER, as promptly as possible upon the occurrence of such event, the then current version of source code (in both machine readable and eye readable form) for the SOFTWARE, together with any specifications, flow-charts, compiler, programmers' notes and other related materials and documentation in ENDEAVOR's possession or under its control, including without limitation, all future correction, repairs, releases, modifications and enhancements relating thereto.

The Triggering Events shall be as follows: (a) ENDEAVOR's insolvency or inability to pay its debts as they become due; (b) ENDEAVOR's making of an assignment for the benefit of its creditors; (c) the initiation of voluntary or involuntary proceedings in bankruptcy not discharged within 30 days; (d) the initiation of any other proceedings for reorganization or for readjustment of any of its debts under the Bankruptcy Code, as amended, or any chapter or part thereof, or under any act or law, whether state or federal, for the relief of debtors, now or hereafter existing; (e) the appointment of a receiver or trustee for ENDEAVOR or for any substantial part of its assets; (f) the institution of any proceedings for the dissolution or full or partial liquidation of ENDEAVOR; and or (g) ENDEAVOR's failure to continue to provide maintenance service with respect to the SOFTWARE, or, if ENDEAVOR no longer desires to provide such service, ENDEAVOR's failure to provide a substitute provider thereof reasonably acceptable to CUSTOMER. (Each reference to ENDEAVOR in this Section shall also include any trustee in bankruptcy, as appropriate.)

XIV. MISCELLANEOUS

- A. This Agreement supersedes all prior agreements, proposals, representations, and communications between the parties hereto with respect to the subject matter of this Agreement.
- B. The headings for each section are stated for convenience only and are not to be construed as limited.
- C. 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.
- D. The appendices that accompany this agreement are:
- A. VOYAGER Product Brochure
 - B. Software and Services Pricing Recap
 - B-1. Pricing for VOYAGER Library Series Software
 - B-2. Hardware Configuration
 - B-3. Schedule of Services
- E. No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of both Parties.
- F. Notwithstanding anything to the contrary contained herein, neither party shall be held responsible for any delay or failure in performance of this Agreement placed hereunder caused by fires, strikes, embargoes, requirements imposed by Government regulation, civil or military authorities, acts of God or by the public enemy, acts or omissions of carriers or other causes beyond the control of ENDEAVOR or CUSTOMER.

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G. This Agreement shall be governed by the laws of the State of Illinois.

H. All communications or notices shall be deemed duly given upon delivery, if delivered by hand, or three (3) days after posting if sent by certified mail to the following parties or their delegates:

ENDEAVOR: President
Endeavor Information Systems Inc.
Rosemont, Illinois 60018

CUSTOMER: Director
California State University - Monterey Bay
Seaside, CA 93955-8009

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

CUSTOMER:

Name: California State University -
Monterey Bay
Address: Center for Science, Technology &
Information Resources
100 Campus Center
Seaside, CA 93955-8009

ENDEAVOR

9700 West Higgins, Ste. 100

Rosemont, IL 60018

ATTN: James H. May, Dean of Instruction

ATTN: President

By: _____
Authorized Representative

By: _____
Authorized Representative

Name: _____

Name: C. Patrick Franklin

Title: _____

Title: Chief Operating Officer

Date: _____

Date: August 16, 1995