

# MEMORANDUM OF UNDERSTANDING

Between

**New Jersey's Higher Education Network (NJEDge.Net)**

and

**The Virtual Academic Library Environment of New Jersey (VALE)**

This Memorandum of Understanding ("MOU") is entered into and effective as of the 23rd day of December, 2013 ("Effective Date") between:

- (1) NJEDge.Net, Inc., ("NJEdge.Net") a New Jersey non-profit corporation and technology consortium of academic and research institutions in New Jersey established by the New Jersey President's Council pursuant to its authority under N.J.S.A. 18A:3B-8d, to share technology resources and provides strategic IT services as well as joint procurement of resources and services on behalf of its member institutions in pursuit of their academic mission; and
- (2) The Virtual Academic Library Environment of New Jersey (VALE), an unincorporated consortium of New Jersey college and university libraries and the New Jersey State Library, also known as VALEnj, dedicated to developing inter-institutional information connectivity, collaborative library application projects, and leveraged purchasing of academic information resources throughout New Jersey.
  - WHEREAS, NJEDge.Net and VALE serve many of the same constituencies of college and university institutional members and share some common goals, including developing inter-institutional connectivity and providing shared access to resources and services in support of the academic missions of their common member institutions; and
  - WHEREAS, NJEDge.Net and VALE have identified a variety of administrative, procurement and business efficiencies attainable by more closely aligning and affiliating their respective organizations; and

- WHEREAS, NJEDge.Net has a provision in its corporate Bylaws whereby the Board of Trustees may establish, by resolution, the qualifications and requirements for subscribing partner (“Subscribing Partner”) status; and
- WHEREAS, VALE desires to join NJEDge.Net as a Subscribing Partner in order to collaborate in the provision of resources and services to higher education institutions in New Jersey, and to acquire a range of administrative and business services, specified herein, from NJEDge.Net; and
- WHEREAS, NJEDge.Net has a provision in its corporate Bylaws whereby the Board of Trustees may appoint, by resolution, such other committees as it deems advisable.

**NOW, THEREFORE,** in consideration of the provisions and mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties, intending legally to be bound, agree as follows:

A. Relationship Between VALE and NJEDge.Net

- The Board of Trustees of NJEDge.Net will appoint a VALE Partnership Review Committee (comprised of three members of the Board of Trustees of NJEDge.Net and the CEO of NJEDge.Net and three members of the Executive Committee of VALE and the Chair of the Executive Committee of VALE) as a committee of the Board of Trustees of NJEDge.Net and will permit the VALE Partnership Review Committee to establish subcommittee(s) known as the VALE Executive Committee and any other subcommittees which are duly appointed by the VALE Executive Committee.
  - The CEO of NJEDge.Net and the Chair of the VALE Executive Committee shall serve as Co-Chairs of the VALE Partnership Review Committee.
  - The VALE Partnership Review Committee will be the sole governance body charged with the oversight over all aspects of this MOU, including but not limited to, the scope of the services to be provided hereunder (including the determination of whether and when NJEDge.Net shall become the fiduciary agent for VALE), the amount of dues and charges for any services, the entering into of a more formal written fiscal sponsorship agreement and/or other agreements for Future Services, and/or the cancellation or amendment of this MOU, although the day-to-day

operations of providing the programs and services of VALE to its members shall continue to be operated by VALE.

- NJEDge.Net designates VALE as a Subscribing Partner and agrees to provide to VALE the Business Services specified herein, under the “Subscribing Partner” provision of NJEDge.Net’s By-laws. The VALE Partnership Review Committee will determine, from time to time, the annual dues and other charges for such Business Services.
- Pursuant to this MOU, NJEDge.Net also agrees to provide to VALE such other services (including fiduciary agent services) in the future (“Future Services”) as specified by the VALE Partnership Review Committee, and the VALE Partnership Review Committee will determine, from time to time, the annual dues and other charges for the Future Services.
- NJEDge.Net currently has a Host Agency Agreement (“Agreement”) with the New Jersey Institute of Technology (NJIT), a member of NJEDge.Net and VALE, for NJIT to provide certain business services and central staff to NJEDge.Net and this MOU is subject and subordinate to that Agreement.

## B. Definitions

- “Business Services” that NJEDge.Net will provide to VALE, as a Subscribing Partner, include the following:
  - Process RFPs, including legal review, by NJEDge.Net and issue such RFPs through NJIT.
  - Purchasing and procurement services by NJEDge.Net as are currently provided to NJEDge.Net members, pursuant to NJIT procurement protocols.
  - Ability to enter in contractual relationships with outside Consultants or vendors on behalf of VALE by NJEDge.Net.
  - Add VALE Partnership Review Committee and its subcommittees, including the VALE Executive Committee, as named insured’s to the general comprehensive liability and directors’ and officers’ liability policies, if any, maintained by NJEDge.Net.

- Acting as the contracting party for VALE in all respects, whether executing contracts with private consultants, vendors or other parties for goods or services or applying for or executing agreements for private or public funding.
- “Future Services” that NJEDge.Net shall provide to VALE upon the written request of VALE Partnership Review Committee after determination by such VALE Partnership Review Committee of appropriate dues and charges therefor:
  - Act as the VALE Fiduciary Agent. This includes maintenance through NJIT of various VALE business accounts, such as salary, non-salary, restricted funds, segregated grant funds and reserves. The fiduciary agent also provides such services as tax/external reporting and external audits as required by law. VALE business would be conducted under the EIN of NJEDge.Net, as fiduciary agent.  
  
At the present time, William Paterson University acts as the VALE fiduciary agent, maintaining VALE business accounts, employing VALE’s part-time staff, and extending its EIN to VALE transactions as needed. If, in the future, the VALE Partnership Review Committee determines that NJEDge.Net should serve as the VALE fiduciary agent, it shall direct VALE to have William Paterson University transfer all of the VALE assets in its possession to NJEDge.Net, including all relevant documents related to any VALE part-time employees.
  - Billing and collection of payments from VALE members to VALE through NJIT. VALE shall retain the right to establish all dues and fees owed to VALE.
  - If VALE should require personnel to staff any of its programs or activities, it shall first notify NJEDge.Net, which, at its option, may enter into an agreement with an independent contractor/consultant for such services, may seek to reallocate the time of one or more of the NJEDge.Net staff, or may request that NJIT hire new P/T or F/T employees to staff such VALE programs and activities. NJEDge.Net agrees that it shall not employ any staff, or engage as an independent contractor/consultant, for VALE’s programs and activities until after the VALE Partnership Review Committee determines that NJEDge.Net should arrange for, as a Future Service under this provision, personnel to staff VALE’s programs and activities.

NJEDge.Net also agrees with VALE that the current P/T staff person employed by William Paterson University on behalf of VALE shall become a new P/T employee

physically located at the NJEDge.Net offices and shall staff VALE programs and activities. Such P/T employee, along with all other employees staffing VALE's programs and activities, shall be NJIT employees, subject to day-to-day supervision by the VALE Executive Committee, or their designee, after consultation with NJEDge.Net's CEO and COO. Any employees staffing VALE's programs and activities, whether Full-Time or Part-Time, shall follow the NJIT human resource policies and practices and payroll services that have been established for NJEDge.Net and authorized by NJIT. Any F/T or P/T staff shall be subject to and comply with all applicable federal and/or State of New Jersey conflict of interest rules, including but not limited to the New Jersey Uniform Ethics Code (N.J.S.A. 52:13D-23 et seq.)

- Office support provided by an administrative assistant of NJEDge.Net for the P/T or F/T staff for VALE's programs and activities under the terms above, as well as access to and use of all office equipment owned or leased by NJEDge.Net in its office at 281 Central Avenue, Suite 3902, Newark, New Jersey 07102.
- Provide such other written agreements setting forth the business structure of VALE under NJEDge.Net as may be agreed by the VALE Partnership Review Committee for the future needs and longer term goals of VALE, which may include:
  - a) The licensing of electronic resources on a state-wide basis
  - b) The development of state-wide programs to further open access scholarly communication initiatives
  - c) The implementation of a shared reference service or shared cataloging operation
  - d) The implementation of a shared, state-wide integrated library system
  - e) The ability to share a remote storage facility.

C. Obligations and responsibilities of the Parties:

- Obligations of NJEDge.Net for Business Services
  - NJEDge.Net will provide the Business Services set forth in this MOU to VALE for the Term (as defined below) of this Agreement in exchange for VALE's payment

of annual dues as a “Subscribing Partner” of NJEDge.Net as determined from time to time by the VALE Partnership Review Committee.

- Obligations of NJEDge.Net for Future Services
  - Upon at least thirty (30) days advance written notice from the VALE Partnership Review Committee that it has determined that NJEDge.Net should provide the Future Services to VALE and the appropriate annual dues and charges for such services, NJEDge.Net shall begin to perform for VALE the Future Services.
  - As fiduciary agent, NJEDge.Net will establish through NJIT and will operate on behalf of VALE, a designated non-interest bearing subledger or ledger account(s) (collectively, “Account”) separate from NJEDge.Net’s own accounts and books for any fees and/or funds collected on behalf of VALE (e.g., membership fees, grants and/or sponsorships) and for payment of VALE expenses.
  - The VALE Partnership Review Committee shall designate a VALE staff person (or persons) and/or an officer of the VALE Executive Committee working on VALE’s programs and activities to be given access to the Account.
  - Upon termination of this MOU, VALE shall issue instructions to NJEDge.Net in writing regarding transfer of any remaining Account funds and NJEDge.Net shall promptly transfer such funds, after deducting from the remaining Account funds, any outstanding dues owed to NJEDge.Net by VALE.
  - NJEDge.Net shall serve as VALE’s fiduciary agent in a manner consistent with NJEDge.Net’s Section 501(c)(3) federal tax-exempt status and no material changes in the purposes of this MOU shall be made without prior written approval from NJEDge.Net.
  - NJEDge.Net will provide general supervision of the Account only. NJEDge.Net shall not be responsible for investments and/or evaluation of the Account or access to the same by the staff designated by the VALE Partnership Review Committee.
  - The VALE Partnership Review Committee shall determine from time to time the annual dues to be paid by VALE to NJEDge.Net for those fiduciary agent services to be performed by NJEDge.Net.

- Obligations of VALE:

- VALE is not authorized or empowered to act as an agent for NJEDge.Net for any purpose and shall not, on behalf of NJEDge.Net, enter into any contract, warranty or representation as to any matter without the prior written permission of NJEDge.Net. As NJEDge.Net and VALE have agreed that NJEDge.Net shall henceforth be the contracting party for VALE in all matters, then VALE shall not enter into any contract, funding agreement, purchase order or obligations on its own behalf.

D. Indemnification

- VALE shall defend, indemnify, protect, and save harmless NJIT and NJEDge.Net, and their respective trustees, directors, officers, members, employees and agents, from and against all suits, claims, losses, demands or damages, including reasonable attorney fees and court costs, arising out of or in connection with the negligent and/or willful misconduct, acts, errors or omissions of the VALE Executive Committee and/or, any VALE staff members, and/or VALE's fiduciary agent during the Term of this Agreement.
- NJEDge.Net shall defend, indemnify, protect, and save harmless VALE, and their respective trustees, directors, officers, members, employees and agents, from and against all suits, claims, losses, demands or damages, including reasonable attorney fees and court costs, arising out of or in connection with the negligent and/or willful misconduct, acts, errors or omissions of NJEDge.Net and and/or any NJEDge.Net staff members, and/or NJIT during the Term of this Agreement.
- VALE releases, and agrees and covenants not to bring, any suit, join in any claim or assert any claim whatsoever, including, but not limited to any complaint, third party complaint, cross-claim, or counterclaim, against NJIT, NJEDge.Net, and/or its respective trustees, directors, officers, employees, agents and/or its insurers ("Released Parties"), with respect to any suits, claims, losses, demands or damages arising out of or claimed to arise out of, whether in whole or in part, any of the acts, errors or omissions of any person, including without limitation, any of the Released Parties defined in this provision except for any grossly

negligent or willful acts, errors or omissions by such Released Parties, in connection with this MOU.

- NJEDge.Net releases, and agrees and covenants not to bring, any suit, join in any claim or assert any claim whatsoever, including, but not limited to any complaint, third party complaint, cross-claim, or counterclaim, against VALE and/or its trustees, directors, officers, employees, agents and/or its insurers (“Released Parties”), with respect to any suits, claims, losses, demands or damages arising out of or claimed to arise out of, whether in whole or in part, any of the acts, errors or omissions of any person, including without limitation, any of the Released Parties defined in this provision except for any grossly negligent or willful acts, errors or omissions by such Released Parties, in connection with this MOU.

#### E. Miscellaneous Provisions

- The term (“Term”) of this MOU shall be for the initial period commencing on the Effective Date and expiring on June 30, 2015, and shall then automatically renew for the following fiscal year commencing July 1, 2015 and ending June 30, 2016, and so on from fiscal year to fiscal year, unless either VALE or NJEDge.Net sends at least ninety (90) days prior written notice to the other before the end of the then-current fiscal year that the sending party desires to terminate the MOU. In addition, the Term of the MOU may be terminated upon the execution of a more definitive fiscal sponsor agreement between VALE and NJEDge.Net.
- All notices to terminate the MOU between the parties shall be in writing and sent by either registered or certified mail, postage prepaid, return receipt requested or by reputable overnight courier service with written evidence of receipt. Notices to NJEDge.Net should be sent to Executive Director, NJEDge.Net, Inc., 218 Central Avenue, Suite 3902, Newark, New Jersey 07102. Notices to VALE should be sent to VALE Coordinator, c/o William Paterson University Library, 300 Pompton Road, Wayne, NJ 07470 or to any other address if a party notifies the other of a change in address.





- If any provision of this MOU is determined by a court of final jurisdiction to be invalid or unenforceable, such provisions shall be stricken and the remainder of the terms of this MOU shall remain valid and in full effect.
- This MOU may be executed in counterparts and when each party has delivered at least one counterpart, this MOU shall become binding on the parties and such counterparts shall constitute one and the same instrument.
- This MOU represents the entire agreement between the parties and there are no other oral or written agreements between them.
- This MOU may only be modified by a writing executed by both parties.
- In performing under this MOU, each of the parties agrees to comply with all applicable federal, state and local laws, rules and regulations and executive orders.
- Nothing in this MOU shall be construed as to create or imply a legal partnership, joint venture or other such other legal relationship between the parties other than the relationship created by this MOU.
- This MOU shall be governed by and construed in accordance with the applicable laws of the State of New Jersey.
- In the event of a dispute between the parties or a disagreement as to the obligations of the parties under this MOU, said dispute or disagreement shall first be submitted to VALE Partnership Review Committee, for review and determination for a period of thirty (30) days. In the event the parties continue to disagree, then they may seek all available legal or equitable remedies.
- No party shall have any liability to the other for special, consequential, incidental or punitive damages, even if advised of the possibility of such damages, including lost profits and opportunity.
- No party or any of its employees or agents shall use the name or logo of the other party, without the express advance written consent of an authorized representative of the other party, except as specifically described in this MOU.

INTENDING TO BE LEGALLY BOUND BY THE TERMS OF THIS MOU, THE UNDERSIGNED DULY AUTHORIZED OFFICER OR AGENT OF EACH OF THE PARTIES BELOW HAS AGREED TO AND ACCEPTED THIS MOU:

**VIRTUAL ACADEMIC LIBRARY  
ENVIRONMENT of NJ (VALE)**

**NJEDGE.NET, INC.**

BY:   
Taras Pavlovsky  
Chair, VALE Exec. Comm.

BY:   
George Laskaris  
CEO, NJEDge.Net, Inc.