



CONTRACT NUMBER MA-012-17011868

BETWEEN

COUNTY OF ORANGE/OC PUBLIC LIBRARIES

AND

OCLC ONLINE COMPUTER LIBRARY CENTER INC. DBA OCLC INC.

FOR THE PROVISION OF OCLC CATALOGING AND METADATA SUBSCRIPTION,

OCLC WORLDSHARE INTERLIBRARY LOAN (ILL) SUBSCRIPTION,

FIRSTSEARCH/WORLDCAT DISCOVERY

WEBDEWEY

CONTENTdm LEVEL 1 LICENSE – (10,000 ITEMS AMA),

CONTENTdm HOSTING SERVICE (40 GBS RENEWAL)

TABLE OF CONTENTS

	<u>Page(s)</u>
COVER PAGE	1
TABLE OF CONTENTS	2
I – TERMS AND CONDITIONS	3 - 4
II – COUNTY GENERAL TERMS AND CONDITIONS A-CC	5 - 11
III – SPECIAL TERMS AND CONDITIONS	12 - 19
ATTACHMENT A – SERVICE LEVEL AGREEMENT	19 - 20
IV – SCOPE OF WORK	21 - 24
V – PRICING AND PAYMENT TERMS	25 - 26
SIGNATURE PAGE	27

I – TERMS AND CONDITIONS

1. **Term of Contract:** This Contract has an effective date of August 1, 2017 through July 31, 2019 2020; renewable for up to ~~three (3)~~ two (2) additional one-year periods on the same terms and conditions except pricing, which shall be mutually agreed by the parties and subject to mutual consent of the parties. The County does not need to give reason if it elects not to renew.
2. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor:

OCLC Online Computer Library Center Inc. DBA OCLC Inc.
 6565 Kilgour Place
 Dublin, Ohio 43017-3395
 Attn: Legal Department
 Fax: (614) 764-0740

County:

OC Community Resources
 Administrative Headquarters
 1501 East St., Andrew Place, 1st Floor
 Santa Ana, CA 92705
 Attn: Bibliographic Services Manager
 Phone: (714) 566-3086
 E-mail: julie.quillman@occr.ocgov.com

Assigned DPA:

OC Community Resources
 1770 N. Broadway, 4th Floor
 Santa Ana, CA 92706
 Attn: Marijo Sio
 Phone: (714) 480-2939
 E-mail: marijo.sio@occr.ocgov.com

3. **County of Orange Child Support Enforcement Requirements:** All Contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

4. **Precedence:** The Contract documents consist of this agreement and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this agreement, i.e., those provisions set forth in the recitals and articles of this Contract and then the exhibits.
5. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

II – COUNTY GENERAL TERMS AND CONDITIONS A-CC

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.
- C. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. Delivery:** OCLC licenses cloud-based software as a service will be pursuant to Attachment A – Service Level Agreement.
- F. Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the description outlined in the Scope of Work, and 2) payment shall be made in arrears after satisfactory acceptance per the Scope of Work.
- G. Warranty:** Contractor expressly warrants that the OCLC licenses cloud-based software as a service covered by this Contract are 1) free of liens or encumbrances, 2) fit for the ordinary purposes for which they are used.
- H. Patent/Copyright Materials/Proprietary Infringement:** Intentionally Omitted
- I. Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

- K. Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 60 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

Vendor has the right to terminate this Contract pursuant to Section 5 of the Master Service Agreement.

Exercise by either Party of its right to terminate the Contract shall relieve both Parties of all further obligations except for those obligations that would normally survive the term of this Contract such as terms relating to confidentiality of information or indemnification of parties.

- L. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance:** Contractor shall warrant that all work will be performed in a professional and workman-like manner consistent with Attachment A – Service Level Agreement and III - Section 11 of the MSA - Warranty. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work that all work will be performed in a professional and workman-like manner. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance

must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of

this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- P. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

- Q. ~~Change of Ownership:~~** ~~Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.~~

~~County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.~~

“Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.”

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.”

- R. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours, or as soon as possible, of the start of the delay and Contractor avails himself of any available remedies.
- S. Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

- T. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all applicable laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. Freight:** OCLC licenses cloud-based software as a service and this Section is not applicable.
- V. Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. Indemnification Provisions:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the

governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. Audits/Inspections: Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined solely to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by California law.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.

BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

III – SPECIAL TERMS AND CONDITIONS – OCLC Master Services Agreement (MSA)

Section 1 – Intentionally Left Blank

Section 2 – Scope & Construction:

This Agreement establishes the general terms and conditions for the provision of Products and Services. Additional Product or Service-specific terms and conditions are set forth in one or more schedules (“Schedules”), and are made a part of this MSA. In case of a conflict in terms between the MSA and any applicable Schedule, the terms and conditions of the Schedule shall prevail. If Institution orders additional Products or Services after its initial order and such order includes a master services agreement with the Schedule, this initial, executed MSA controls in lieu of such attached master service agreement.

Section 3 – Definitions:

- 3.1 Bibliographic Data** means all the bibliographic data (including subject data, such as local key words and subject headings), descriptive metadata, relationship metadata and other metadata of the type stored in WorldCat.
- 3.2 Holdings Data** means all the ownership and license data in relation to an institution’s collection (including electronic resources).
- 3.3 Hosted Services** means the hosted services made available by OCLC which Institution may access pursuant to this Agreement. The Hosted Services are described in detail in the applicable Product Descriptions but do not include services (including API’s and the like) provided by third parties.
- 3.4 Institution Data** means (i) the Holdings Data in relation to Institution’s collection; (ii) all the data that forms part of the library process or the internal operations of the Institution, such as circulation, patron, and acquisition data; and (iii) all other data and content that is produced, sent or reproduced through the Services by the Institution or made available to OCLC in connection with the Services.
- 3.5 Internal Data** means Institution Data intended exclusively for internal use by the Institution.
- 3.6 Product Descriptions** means the descriptions of the Products and Hosted Services as made available at www.oclc.org and as updated from time to time by OCLC.
- 3.7 Products** mean the OCLC software, hardware, and other products licensed to Institution pursuant to this Agreement. The Products are described in detail in the applicable Product Descriptions but do not include products provided by third parties.
- 3.8 Professional Services** means the services that OCLC provides to Institution under this Agreement in connection with the Products or Hosted Services, such as data migration, configuration, consultancy, support, and training.
- 3.9 Services** mean the Hosted Services and Professional Services.
- 3.10 Shared Data** means the Institution Data made available by Institution to the public or to third parties selected by the Institution (such as other participants or users) or that by its nature is intended for use outside the Institution’s organization, such as Bibliographic Data and Holdings Data.
- 3.11 Systems** mean the facilities, server(s), equipment, operating software, and connectivity used to provide the Services.
- 3.12 WorldCat** means the databases of Bibliographic Data, Holdings Data and related files maintained by OCLC.

Section 4 - Products and Services:

- 4.1 General** - OCLC will provide Institution the Products and Services subscribed to by Institution in accordance with this Agreement and OCLC's then-current published Product Descriptions for the Product or Service. Institution shall provide OCLC with the assistance and information OCLC reasonably needs to perform the Services properly or where OCLC otherwise reasonably requests. OCLC shall not be liable for any failure to perform its obligations arising from Institution's failure to provide such assistance or information.
- 4.2 License** - Subject to the terms of this Agreement and the applicable Schedule(s), Institution's license to use the Products and Services identified in the executed Schedules may be pursuant to a hosted license (for Hosted Services) or a non-hosted license (for Products). For Products paid for by Institution, OCLC grants Institution a nonexclusive, nontransferable license to install and use the Product solely for the noncommercial purposes described in the Product Description and the applicable Schedule. For Hosted Services subscribed to by Institution, OCLC will provide access to the Hosted Service, and if applicable a license to install and use any local software components of the Hosted Service, all solely for the noncommercial purposes described in the Product Description and the applicable Schedule.
- 4.3 Modifications** - OCLC may change or modify a Product or Service from time to time in its discretion. OCLC shall notify Institution of material changes to the respective Product or Service by such means as reasonably determined by OCLC. Any new Product or Service functionality made available by OCLC shall be subject to this Agreement and any additional terms and conditions including applicable fees as OCLC may require Institution to accept prior to use.
- 4.4 Support** - Support services will be provided in accordance with the support service description available at <http://www.oclc.org/support/home.en.html>. Generally email support is available at support@oclc.org and telephone support is available at 1-800-848-5800.
- 4.5 OCLC Intellectual Property** - OCLC and/or its licensors or suppliers are the exclusive owners of and retain all right, title, and interest (including all copyrights, trademarks, patents, and any other proprietary rights) to the Products, Services, WorldCat, and all other materials produced or provided by OCLC. All rights not expressly granted by OCLC are reserved.
- 4.6 Limitations** - Institution shall only use the Products and Services in accordance with the terms of this Agreement and for the purposes specified in the Product Descriptions.

Section 5 – Term and Termination:

- 5.1 Term** - This Agreement commences on the Effective Date and will remain in full force and effect until the expiration or termination of all Schedules unless terminated earlier by one of the parties in accordance with Section 5.2. Unless otherwise specified, Schedules or the agreed upon pricing document shall commence upon execution and shall continue for so long as Institution has access to the applicable Products or Services.
- 5.2 Termination** - This Agreement or individual Schedules may be terminated in one of the following ways:
- a) By either party, effective at the end of the initial subscription period or any renewal period, by providing the other party with at least 30 days prior written notice of its desire to not renew a Product or Service;
 - b) By either party if the other party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for all or a substantial part

of its property, is subject to any proceeding under any bankruptcy or insolvency law, or has wound up or liquidated, voluntarily or otherwise;

- c) By the non-breaching party if a party commits a material breach of its obligations under this Agreement and has not cured such breach or failure within 60 days of receiving written notice from the non-breaching party. OCLC reserves the right, however, to immediately suspend Institution's access to the OCLC Services in the event of Institution's material breach until such time as the material breach is cured; or
- d) As otherwise explicitly provided in this Agreement.

5.3 Effect of Termination - Termination of this Agreement shall terminate all Schedules, termination of a Schedule will not terminate the Agreement or any other Schedule. Upon termination of this Agreement or any Schedule the rights granted by OCLC in the applicable Schedule or Agreement are terminated unless otherwise provided in such Schedule. After termination and upon request, OCLC will promptly return or destroy all applicable Institution Data, except however, OCLC may retain Institution Data in back-up files provided that the confidentiality and security obligations contained herein shall apply. OCLC will provide Institution access to, Institution Data for 90 days after the effective date of termination, after which, OCLC shall have no obligation to maintain any Institution Data.

Section 6 – Fees and Payment Terms:

- 6.1 Fees** - Institution shall pay the applicable charges based on their agreed upon pricing document (if applicable) or, in the absence of an agreed upon pricing document, OCLC's prevailing price for the Products and Services. Fees shall be paid in the currency on the invoice to the address stated on the invoice and the fees are exclusive of any taxes. Institution shall pay such tax to OCLC or other entity, as appropriate. Institutions exempt from taxation shall supply a valid exemption certificate upon request. Institution's failure to fully pay any fees or taxes within 60 days after the applicable due date will be deemed a material breach of this Agreement, justifying OCLC's suspension of Products and Services. Accounts in default are subject to interest on the amount outstanding equal to the maximum rate permitted by applicable law.
- 6.2 Price Changes** - Upon the expiration of any price/fee guarantee(s) mutually agreed to by the parties in writing, OCLC reserves the right to change any price/fee, provided that OCLC provides Institution written notice of the change at least 60 days prior to the date the change is to become effective.
- 6.3 Non-refundable** - Institution will not be entitled to a refund of any implementation or pre-paid fees under this Agreement unless (i) OCLC terminates the Agreement or a Schedule pursuant to Section 5.2 (a), or (ii) Institution terminates the Agreement or a Schedule pursuant to Section 5.2 (c); in which event, OCLC will refund that portion of fees pre-paid by Institution corresponding to the period after termination.

Section 7 – Disclaimer:

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND OCLC AND ITS THIRD PARTY SUPPLIERS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF THE PRODUCTS OR SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. OCLC MAKES

NO REPRESENTATIONS OR WARRANTIES THAT THE PRODUCTS AND SERVICES WILL ALWAYS BE ACCESSIBLE, FREE OF HARMFUL COMPONENTS, ACCURATE OR ERROR-FREE. IN NO EVENT WILL OCLC BE LIABLE FOR ANY LOSS ARISING OUT OF FAILURE OF THIRD PARTY PRODUCTS OR SERVICES OR OTHER EVENTS OUTSIDE OF OCLC'S REASONABLE CONTROL. THIS SECTION WILL NOT APPLY TO DAMAGES THAT CANNOT BE EXCLUDED BY LAW (IN WHICH EVENT THE LIABILITY SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED).

Section 8 – Privacy and Security:

- 8.1 Data Security** - OCLC has implemented and shall maintain commercially appropriate, reasonable and customary controls to ensure the security, confidentiality, and protection against unauthorized access to, use, or disclosure of Internal Data. Institution shall obtain and maintain all necessary consents from all users for OCLC to provide the Service and for Institution's and users' access, monitoring, use, disclosure, and transfer of Internal Data.
- 8.2 Audit.** OCLC will (i) implement administrative, physical, and technical safeguards in accordance with accepted industry practices including conducting audits in accordance with the ISO/IEC 27001 standard (or subsequent comparable standard) and (ii) as reasonably requested by Institution, provide Institution with a copy of the certificate of registration for such standard along with any relevant reported deficiencies regarding non-compliance together with corrective action plans for addressing such deficiencies identified in the report.
- 8.3 Nondisclosure of Internal Data** - OCLC shall hold all Internal Data in strict confidence and with the same standard of care it uses to protect its own information of a similar nature and shall not use Internal Data for any purpose other than to provide the Service or as may be authorized in writing by Institution. OCLC shall not disclose Internal Data to any other party except: (a) to OCLC employees, agents, subcontractors and service providers, to whom Internal Data needs to be disclosed for the purpose of providing the Service; (b) as required by law, or to respond to duly authorized information requests of police and governmental authorities or to comply with any facially valid subpoena or court order; (c) to protect the rights or property of OCLC or OCLC customers, including the enforcement of OCLC agreements or policies governing Institution's use of the Service; (d) to involve and cooperate with law enforcement or the appropriate legal authorities in investigations, and to protect Systems and OCLC's customers, or (e) as authorized by Institution in writing.
- 8.4 Prohibitions** - Institution expressly warrants that it will not enter, submit, transfer or store in the Service any of the following types of information: Social Security Numbers, financial account numbers, credit card or debit card numbers. OCLC will have no liability, and Institution expressly releases OCLC from any liability, associated with the loss, theft, transfer or misuse of such information.
- 8.5 Data Transfer** - As part of providing Services, OCLC may store and process Institution Data in the United States or any other country in which OCLC or its affiliates, subsidiaries, or agents maintain facilities. By using the Service, Institution consents to this transfer, processing, and storage of Institution Data to or by OCLC, its service providers, and affiliates subsidiaries or agents, over state and international borders as necessary to provide the Service in accordance with OCLC's standard business practices.
- 8.6 Unauthorized Disclosures** - OCLC will promptly notify Institution in the event of a verified breach of any applicable privacy laws regarding Institution Data. Institution agrees that it shall be Institution's sole responsibility to determine whether a breach is subject to state, federal or national breach notification laws and requires breach notification ("Breach Notification"). In the event that

Institution determines that a breach requires Breach Notification, OCLC agrees that it will reasonably cooperate with Institution in regards to Institution's Breach Notification obligations as specified in the applicable law, including Institution's investigation, enforcement, monitoring, document preparation, Breach Notification requirements, and reporting. Institution shall be solely responsible for notifying all individuals subject to Breach Notification, however OCLC reserves the right to first review all notifications before they are sent.

Section 9 - Limitation of Liability:

OCLC WILL HAVE NO LIABILITY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT, LOSS, INACCURACY, OR DESTRUCTION OF INFORMATION OR DATA COLLECTED, STORED, DISTRIBUTED, OR MADE AVAILABLE VIA THE PRODUCTS AND SERVICES, INSTITUTION'S USE OR INABILITY TO USE THE PRODUCTS AND SERVICES, ANY CHANGES TO OR INACCESSIBILITY OF THE PRODUCTS AND SERVICES, ANY DELAY OR FAILURE OF THE SERVICES, OR FOR LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, EVEN IF OCLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, OCLC'S LIABILITY TO INSTITUTION FOR ANY REASON AND UPON ANY CAUSE OF ACTION WILL BE LIMITED TO THE AMOUNT INSTITUTION ACTUALLY PAID OCLC FOR THE INDIVIDUAL IMPLICATED OCLC PRODUCTS OR SERVICES COVERED UNDER THIS AGREEMENT OVER THE 24 MONTHS PRIOR TO WHICH SUCH CLAIM AROSE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. FEES UNDER THIS AGREEMENT ARE BASED UPON THIS ALLOCATION OF RISK. THIS SECTION WILL NOT APPLY TO DAMAGES THAT CANNOT BE LIMITED OR EXCLUDED BY LAW (IN WHICH EVENT THE LIABILITY SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED).

Section 10 - Use of Products and Services:

10.1 Institution Data

- a) **Ownership** - Institution, and/or its suppliers and affiliates, retains all right, title and interest (including, without limitation, all proprietary rights) to Institution Data, except for rights granted to OCLC and its affiliates under this Agreement. Institution is solely responsible for the accuracy, completeness, and legality of Institution Data. Institution is responsible for obtaining all permission and other rights necessary to provide Institution Data to OCLC. Institution will not provide OCLC with Institution Data that Institution does not have the right to provide for use in connection with the Products or Services.
- b) **License Rights** - Institution grants OCLC a global, non-exclusive, royalty-free, transferable and sub-licensable right to use the Internal Data to the extent necessary for the provision of the Products and Services. Institution grants OCLC, OCLC participants, non-participant users, and OCLC designees a global, perpetual, non-exclusive, royalty-free, transferable, and sub-licensable right to host, reproduce, transmit, store, publish, distribute, modify, create derivative works from, and otherwise use Shared Data. Institution Data shall be supplied to OCLC in a format compatible for use with the Products and Services.

10.2 Confidentiality - Institution agrees to maintain the confidentiality of OCLC's pricing information for 3 years from receipt by Institution. It shall not be a violation of this section to disclose information as required by applicable law (including public records acts), valid court order, or legal process.

10.3 Acceptable Use Policy ("AUP")

- a) **General** - Institution agrees not to use, and not to allow third parties including users to use the Products or Services: (a) to distribute viruses, worms, Trojan horses, corrupted files, or other items of a destructive or deceptive nature; (b) to engage in or promote any unlawful, invasive, infringing, defamatory, or fraudulent activity; (c) to violate, or encourage the violation of, the legal rights of others; (d) to interfere with the use of a Product or Service, or the equipment used to provide Products or Services; (e) to use the Products or Services, or any part thereof, in a manner that violates the terms of service of any other Products or Services; (f) to generate, distribute, publish or facilitate unsolicited mass email, promotions, advertisements or other solicitations ("spam"); (g) to alter, reverse-engineer, interfere with, circumvent, copy, or create a derivative work of, any aspect of the Product or Service (except with the express, written consent of OCLC or applicable law specifically prohibits this restriction); (h) to omit, obscure or hide from any user any notice of a limitation of warranty, disclaimer, copyright, patent, trademark, trade secret or usage limitation or any splash screen or any other terms or conditions intended to be displayed to a user by OCLC or OCLC supplier; or (i) to post, send, or make available software or technical information in violation of applicable export controls laws, including, without limitation, the Export Administration Regulations maintained by the Department of Commerce. Institution agrees that OCLC is authorized to monitor communications into and out of the System to prevent the introduction of viruses or other hostile code, to prevent intrusions, and to otherwise enforce the terms of this Agreement. Institution agrees to reimburse OCLC for all reasonable and verifiable costs associated with OCLC's compliance with governmental requests relating to Institution or Institution Data, including, but not limited to, warrants, subpoenas, and judicial orders. Notwithstanding the foregoing and to the extent permitted by law and law enforcement, OCLC will make reasonable efforts to notify Institution when a disclosure of Institution Data has or is to be made.
- b) **Credentials** - Institution shall exercise all commercially reasonable efforts to prevent unauthorized use of the Products and Services and is solely responsible for any and all use, including unauthorized use, of the Products and Services initiated using Institution Credentials. Institution shall immediately notify OCLC of a suspected or actual loss, theft or disclosure of any Credentials and of any unauthorized use of a Product or Service. Should OCLC become aware of unauthorized use of Institution Credentials or unauthorized access to a Product or Service, OCLC will notify Institution and may deactivate affected Credentials. OCLC will provide Institution with administrative Credentials to access and use the applicable Product or Service. Institution is responsible for authorizing user access to the Products or Services, assigning privileges, and creating, maintaining, and terminating accounts.
- c) **Enforcement by OCLC** - OCLC reserves the right to: (a) investigate any violation of this AUP or misuse of Products or Services; (b) enforce this AUP; and (c) remove or disable access, screen or edit any Institution Data that violates these provisions. Without limitation, OCLC also reserves the right to report any activity (including the disclosure of appropriate Institution Data) that it suspects violates any law or regulation to appropriate law enforcement, regulators, or other appropriate third parties. OCLC may cooperate with appropriate law enforcement by providing network and systems information related to allegedly illegal or harmful content. VIOLATION OF THIS AUP MAY RESULT IN THE SUSPENSION OF OCLC SERVICES AND SUCH OTHER ACTION AS OCLC REASONABLY DEEMS APPROPRIATE. REPEATED OR WILLFUL VIOLATION

OF THIS AUP MAY, IN OCLC'S SOLE DISCRETION RESULT IN THE TERMINATION OF THE AGREEMENT, ANY SCHEDULE, OR OCLC SERVICE.

Section 11 - Warranties:

OCLC warrants that any Professional Services will be performed in a professional and workman-like manner and that, when operated in accordance with the Product Description, the Products and Hosted Services will be capable of performing substantially in accordance with the functional specifications set forth in such Product Description. If any Products or Services fail to comply with the warranty set forth above, OCLC will make reasonable efforts to correct the noncompliance provided that OCLC is given notice of the noncompliance within 30 days and OCLC is able to reproduce the noncompliance. If OCLC is unable to correct the noncompliance, Institution may terminate the Schedule for the relevant Product or Hosted Service in accordance with Section 5.2(c) and, as its sole remedy, will be entitled to a refund of an equitable portion of fees paid for the relevant Product or Hosted Service after such noncompliance was reported. OCLC and Institution each warrant that its entry into this Agreement does not violate any other agreement to which it is a party, and that its performance under this Agreement will be in conformance with all applicable laws and government rules and regulations. Institution warrants that it possesses all rights necessary to enter into this Agreement and grants the rights described in this Agreement such that OCLC will not infringe upon or otherwise violate any intellectual property rights or other rights of a third party or violate any laws by exercising the rights and licenses granted under this Agreement. To the extent permitted by law, Institution hereby indemnifies OCLC from any such claims in this respect.

Section 12 - General:

- 12.1 OCLC Membership** - Institution and each library owned or operated by Institution meeting the requirements for OCLC membership established by OCLC in accordance with OCLC's then-current governance structure and as set forth in the then-current version of OCLC's Membership and Governance Protocols shall become an OCLC member. The current version of OCLC's Membership and Governance Protocols is located at http://www.oclc.org/us/en/membership/membership_protocols.pdf. As a condition of obtaining and retaining status as an OCLC member, each shall comply on an ongoing basis with all requirements and policies applicable to OCLC members.
- 12.2 Export Laws** - Services may be used only in full compliance with U.S. export regulations. OCLC's obligations hereunder are contingent upon necessary export licenses being obtained from federal agencies of the U.S.
- 12.3 No Assignment** - Institution may not assign, without the prior written consent of OCLC, any rights, duties, or obligations under this Agreement to any person or entity, in whole or in part.
- 12.4 Independent Contractors** - The relationship of the parties is that of independent contractors, and no agency, employment, partnership, joint venture, or any other relationship is created by this Agreement.
- 12.5 Force Majeure** - Neither party shall be responsible for losses or damages to the other occasioned by delays in the performance or the non-performance of any of said party's obligations (other than the obligation to make payments when due) when caused by acts of God, acts of the other party or any other cause beyond the control of said party and without its fault or negligence.
- 12.6 Non-Waiver** - A failure or delay in enforcing an obligation under this Agreement does not prevent enforcement of the provision at a later date. A waiver of a breach of one obligation does not amount

to a waiver of any other obligation, and it will not prevent a party from subsequently requiring compliance with that obligation.

- 12.7 Severability** - If any provisions of this Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement.
- 12.8 Entire Agreement** - The Agreement and any Schedules constitute the complete agreement between the parties and supersedes and replaces all prior agreements, oral and written, between the parties relating to the subject matter of this Agreement. No purchase orders submitted by Institution shall modify or supplement this Agreement. Except as otherwise provided herein, this Agreement may not be amended or supplemented except in writing signed by both parties.
- 12.9 Notice** - Except as stated elsewhere in the Agreement all notices shall be in writing and shall be deemed sufficient if (a) received by a party via e-mail to the e-mail address for such party set forth in Section 1, (b) delivered by hand, or (c) sent by certified or registered mail, return receipt requested, to the address for such party set forth in Section 1, or to such other address as has been furnished by means of a notice given in accordance with this Section.
- 12.10 Counterparts** - This Agreement may be executed in counterparts and/or via facsimile transmission or electronic copy, any one or form of which will be deemed to constitute an original, but all of which will constitute one instrument.

ATTACHMENT A - SERVICE LEVEL AGREEMENT

This Service Level Agreement sets forth the service level and performance objectives of OCLC in providing the Hosted Services (as listed in Section 1 of this SLA) to Institution (the "Systems"). OCLC will use commercially reasonable efforts to meet the following service level and performance objectives to support the operation of the Systems.

1. Covered OCLC Services

This SLA applies only to Hosted Services that are: (1) listed below; and (2) subscribed to by Institution.

WorldShare Acquisitions
WorldShare Circulation

WorldCat Discovery Services
Hosted CONTENTdm
Hosted EZproxy
WorldShare Interlibrary Loan
WorldShare License Manager
WorldShare Collection Manager
WorldShare Record Manager
WebDewey

2. Uptime Commitment

OCLC will use commercially reasonable efforts to ensure that the WorldShare Acquisitions and Circulation are available 99.8% of the time, and all other Hosted Services are available 99.5% of the time (the "Uptime Commitment"). Availability will be measured as follows:

- Availability = (T-D)/(T) * 100%

- T = the total number of minutes in the respective month.
- D = the total number of minutes of downtime in the month excluding planned outages for scheduled maintenance, telecommunications or power disruptions caused by third parties, any other causes beyond OCLC's reasonable control, and excluding other times described herein.

OCLC will notify Institution promptly of any factor, occurrence, or event coming to its attention likely to affect OCLC's ability to meet the Uptime Commitment, or that is likely to cause any material interruption or disruption in the Hosted Services.

Scheduled maintenance may occur any Sunday during a 4-hour window and may occasionally be extended. Notice of scheduled maintenance shall occur 3 days prior to scheduled downtime. In the event planned emergency maintenance is required, OCLC will make commercially reasonable efforts to notify Institution in advance.

3. Systems Management

- 3.1 Monitoring** - OCLC will monitor and maintain the Systems in working order each day (24 x 7). OCLC will proactively manage and monitor all application server hardware devices and software to ensure optimal performance and reliability as well as to detect abnormal events or exceeded utilization or performance thresholds.
- 3.2 Maintenance** - OCLC will operate, monitor and administer all servers, applications and networks supporting the OCLC Services. In order to provide such coverage, OCLC may utilize a mixture of on-site and on-call support staff, automated server monitoring and automated paging technology.
- 3.3 Change Control** - OCLC will install new equipment, software, releases, upgrades, fixes, patches and other items necessary to maintain the Systems to industry standards. OCLC will proactively gather information from appropriate server, peripheral, operating system or database vendors regarding upgrades, defect patches or fixes.

IV – SCOPE OF WORK

A. Cataloging and Metadata Subscription (Schedule 2)

Description: OCLC's cataloging and metadata services give Institution the tools needed to effectively manage the metadata for Institution's collection.

Definitions:

1. "Guidelines" means the "Guidelines for Contributions to WorldCat" as modified from time to time. A current copy of the Guidelines is available at:
<http://www.oclc.org/worldcat/community/guidelines.en.html>
2. "Policy" means the "WorldCat Rights and Responsibilities for the OCLC Cooperative" as modified from time to time as a result of the policy review process described therein. A current copy of the Policy is available at: <https://www.oclc.org/worldcat/community/record-use/policy.en.html>.
3. "Principles" means the WorldCat Principles of Cooperation as modified from time to time. A current copy of the Principles is available at:
<http://www.oclc.org/worldcat/community/principles.en.html>
4. "WorldCat Data" is defined as set forth in the Policy.

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Master Services Agreement.

Responsibilities of Institution:

1. Institution shall create bibliographic records and related data for entering information into WorldCat consistent with the Guidelines maintained by OCLC and its advisory groups.
2. Institution using the Systems for cataloging agrees to abide by the Principles and the Guidelines.
3. Institution agrees that the use and transfer by the Institution of WorldCat Data is subject to the Policy.
4. If, during the term hereof, an Institution informs OCLC that bibliographic records it furnishes to OCLC for addition to WorldCat will be subject to usage or transfer restrictions beyond or in addition to those applicable under this Schedule, and if OCLC nevertheless elects to accept such records for addition to WorldCat, OCLC will so notify Institution, after which Institution's rights to access, use and transfer such records will be subject to said usage and transfer restrictions.

B. WorldShare Interlibrary Loan (ILL) Subscription (Schedule 14)

Description: WorldShare Interlibrary Loan is a resource sharing network to lend and borrow resources which allows users to quickly obtain global library content located in Institution's collections and the collections of other ILL libraries around the world. WorldShare Interlibrary Loan simplifies tasks such as sharing of e- resources, automating request and entry processes, managing ILL fees, analyzing borrowing and lending patterns, and delivering documents easily and securely through Article Exchange.

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Master Services Agreement.

Subject to this Schedule and the MSA, OCLC will provide Institution with the Products and Services as specified in the ILL agreed upon pricing document.

C. First Search/WorldCat Discovery (Schedule 3)

Description: WorldCat Discovery Services is a suite of cloud-based applications that enable people to search WorldCat® and discover more than 2 billion electronic, digital and physical holdings in a single search.

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Master Services Agreement.

1. Discovery Service:

- a. The Bibliographic Data, Holdings Data, OCLC and/or 3rd party databases and other content available through the Service may change from time to time and are subject to OCLC and/or third-party claims of copyright and other rights and may be subject to supplemental terms and conditions. The Product Description, documentation, features and/or functionality of the Service, and/or the WorldCat.org service may also change from time to time. In the event any such change materially reduces Institution's rights with respect to the Service or the WorldCat.org services Institution may terminate this Schedule by providing written notice to OCLC. Certain databases may only be accessed if Institution subscribes to that database through a third party.
- b. Bibliographic Data may not be stored other than temporarily as required for use authorized by the Agreement and shall not be otherwise transferred, or accessed by any other person not an Authorized User.
- c. Use of the Service for cataloging purposes is expressly prohibited. Institution may not resell the Service or the Bibliographic Data or other content accessible through the Service.
- d. Certain parts of the Service function properly only when interacting with a local library system which is compatible with and supported by the Service. A list of local library systems which are compatible with and supported by the Service is available from OCLC. Prior to placing its order, Institution should verify that its local library system is compatible with and supported by the Service.
- e. In the event Institution's local library system is or becomes incompatible with or unsupported by the Service at any time during the term of this Agreement OCLC may if requested by Institution make reasonable efforts to resolve the issue at OCLC's then current rates. If such efforts are unsuccessful OCLC or Institution may terminate this Schedule upon written notice to the other party.

2. Third Party Database Terms:

- a. **British Library Database** - Bibliographic Data made available from the British Library is licensed solely for non-commercial use. For the purpose of this Section "Non-Commercial Use" means internal or personal use solely for the purpose of resource discovery, learning, teaching, academic, or scientific research, private study, verification of bibliographic information, and/or the identification of materials to be ordered via interlibrary loan, from document vendors, or from other sources from which materials may be acquired, and specifically excludes transmission, selling on, redistribution or circulation of any form outside of Institution's organization or use in violation of the Agreement.
- b. **National Library of Medicine (NLM Database)** - Organizations or institutions may download NLM-produced citations and reuse these records within their organization or institution. NLM suggests that organizations limit the number of records to 1,000 per month. Since NLM makes corrections and enhancements to and performs maintenance on these records at least annually,

you should plan to replace or correct the records once a year to ensure that they are still correct and searchable as a group.

NLM databases are produced by a U.S. government agency and as such the contents are not covered by copyright domestically. They may be copyrighted outside the U.S. Some NLM produced data is from copyrighted publications of the respective copyright claimants. Users of the NLM databases are solely responsible for compliance with any copyright restrictions and are referred to the publication data appearing in the bibliographic citations, as well as to the copyright notices appearing in the original publications, all of which are incorporated by reference. Users should consult legal counsel before using NLM-produced records to be certain that their plans are in compliance with appropriate laws.

D. CONTENTdm (Schedule 6)

Description: CONTENTdm is used by an Institution to build and publish their unique collections on the Web.

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Master Services Agreement.

1. Subject to this Schedule and the Agreement, OCLC will provide Institution the Products and Services as specified in the CONTENTdm Order Form.
2. **Adobe** - Institution acknowledges that Adobe is the owner of certain proprietary information and intellectual property rights included in the Adobe products and the documentation. Adobe is a third party beneficiary entitled to enforce OCLC's rights and Institution's obligations hereunder and to seek appropriate legal and equitable remedies, including but not limited to, damages and injunctive relief, for Institution's breach of such obligations. In any dispute in which Adobe is a properly named party, this Schedule will be governed by and construed in accordance with the substantive laws in force in the state of California and the courts of Santa Clara County, California shall have non-exclusive jurisdiction over any such dispute.

E. WebDewey – (Schedule 9)

Description: WebDewey 2.0 is an online version of the complete Dewey Decimal Classification ("DDC") system. Using a standard Web browser, Institution has unlimited access to an enhanced version of the DDC 23 database.

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Master Service Agreement.

- 1) Subject to the terms of this Schedule, OCLC hereby grants to Institution a nonexclusive, nontransferable and nonassignable license to: (i) access WebDewey; (ii) use WebDewey in accordance with this Schedule solely for the internal, noncommercial purpose of creating bibliographic records and metadata for materials (e.g., books, sound recordings) and electronic resources offered by Institution to its patrons, and (iii) post the DDC23 Summaries (i.e., the first three levels of the DDC – for example, 500 Science is Level 1, 510 Mathematics is Level 2, 513 Arithmetic is Level 3) on Institution's website solely for the internal, noncommercial purpose of organizing the resources made available to its patrons via such website. Such bibliographic records and metadata may display DDC numbers, but shall not display DDC captions. Such use of the DDC23 Summaries shall be accompanied by the following information, verbatim, on the initial screen:

The Dewey Decimal Classification is © 2003-2014*

OCLC Online Computer Library Center, Inc.

Used with Permission.

DDC, Dewey, Dewey Decimal Classification and WebDewey are registered trademarks/service marks of OCLC Online Computer Library Center, Inc.

[*Institution shall update the second year in this date range as appropriate.]

- 2) Institution may make copies of screen displays of the data accessible via WebDewey only as reasonably required for Institution's use of WebDewey as authorized hereunder; provided that such copying shall be no more extensive than is permitted by U.S. copyright law.
- 3) Termination of this Schedule shall not require the removal of DDC numbers added while this Schedule is effective in accordance with its terms.
- 4) The Sears List of Subject Headings is © EBSCO Industries, Inc. All rights reserved. Sears Subject Headings; Sears List; and Sears List of Subject Headings are trademarks of EBSCO Industries, Inc.

V – PRICING AND PAYMENT TERMS

A. PRICING

OCLC Annual Subscription Price for Subscription Term ~~8/1/2018 – 7/31/2019~~ **8/1/2019 – 7/31/2020**

1. OCLC Cataloging and Metadata Subscription	\$78,053.07	\$80,980.06
2. OCLC WorldShare Interlibrary Loan (ILL) Subscription	\$27,468.93	\$28,499.01
3. FirstSearch/WorldCat Discovery	\$30,510.00	\$31,654.00
4. CONTENTdm Level 1 License (10,000 Items AMA)	\$ 2,462.69	\$ 2,567.35
5. CONTENTdm Hosting Service (40 GBS Renewal)	\$ 1,520.14	\$ 1,584.75
6. WebDewey Cataloging 2-9 Users	\$ 817.90	\$ 749.45
	\$140,733.73	\$146,034.62
ILL Fee Management (IFM)		\$ 3,000.00
		\$149,034.62

B. PAYMENT TERMS

Payment in advance is authorized for all of the services listed above, and will be net thirty (30) days after receipt of an invoice in a format acceptable to the County, verified and approved by the agency, and subject to routine processing requirements of the County. The responsibility for providing an acceptable invoice rests with the Contractor.

Contractor reserves the right to suspend County's access to the Service and terminate this Contract to an account in delinquent status sixty (60) days or more. Any termination by Contractor for County's failure to pay will not relieve County from paying past due fees. In the event of collection enforcement, County will be liable for any costs associated with such collection, including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees.

Billing(s) shall cover services and/or goods not previously invoiced. Invoice will be billed on a Quarterly basis. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for any paid subscription that the Contractor fails to provide under this Contract. Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this contract and shall not be construed as acceptance of any part of the goods or services.

The County will not be responsible for any dollar overruns and will not pay for work or products exceeding the stated dollar limit on the Contract unless a modification has been issued authorizing an increase in the stated monetary limit of the Contract.

Invoicing Instructions:

The Contractor will provide an invoice on the contractor's letterhead for goods delivered and/or services rendered. Each invoice will have a unique number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address, if different from 1, above
3. Name of County agency/department (OCPL Acquisitions Department)
4. County Contract Number: **MA-012-17011868**

5. Date of order
6. Product/service description, quantity, and prices
7. Sales tax, if applicable
8. Total

Mail Invoices to:

OC Community Resources
Attn: Accounts Payable
1770 North Broadway, 4th Floor
Santa Ana, CA 92706-2606

RE: MA-012-17011868

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below:

OCLC ONLINE COMPUTER LIBRARY CENTER INC DBA OCLC INC.*

Print Name	Title
------------	-------

Signature	Date
-----------	------

Print Name	Title
------------	-------

Signature	Date
-----------	------

*** If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.**

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

County of Orange, a political subdivision of the State of California

Print Name	Title
------------	-------

Signature	Date
-----------	------

**Approved as to form, County Counsel
County of Orange, California**

By: _____

Date: _____