

CONTRACT MA-012-12012186
FOR THE PROVISION OF ONLINE CATALOGING, INTERLIBRARY
LOAN, AND RELATED SERVICES; AND WORLDCAT
FIRSTSEARCH SUBSCRIPTION FOR
OC COMMUNITY RESOURCES/OC PUBLIC LIBRARIES

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SECTION 1 - TERMS AND CONDITIONS

1. **Term of Contract:** This CONTRACT has an effective date of August 1, 2012 2013 through July 31, 2013 2015; renewable for up to four (4) 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. **This Contract term shall be in effect on August 1, 2015 and continue through July 31, 2016.**
2. **Fiscal Appropriations:** This CONTRACT is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this CONTRACT. If such appropriations are not approved, the contract will be terminated without penalty to the COUNTY.
3. **Contingency of Funds:** CONTRACTOR acknowledges that funding or portions of funding for this contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to COUNTY. If such funding and/or appropriations are not forthcoming, or are otherwise limited, COUNTY may immediately terminate or modify this contract without penalty.
4. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except as provided for in Clause 2.3 & 2.5 of Section 3 – Special Terms & Conditions, or 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 calendar days after being mailed by U.S. 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

<p>For County:</p> <p>OC Community Resources Administrative Headquarters 1770 N. Broadway, 4th Floor Santa Ana, CA 92706 Attn: Director, Information Technology Fax: (714) 480-2803 E-Mail: clyde.gamboa@occr.ocgov.com</p>	<p>For Contractor:</p> <p>6565 Kilgour Place Dublin, Ohio 43017-3395 Attn: Legal Department Fax: (614) 764-0740</p>
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5. **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.
6. **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.

SECTION 2 – COUNTY GENERAL TERMS AND CONDITIONS A – FF

- A. **Governing Law and Venue:** In accordance with Article XV, C., of Exhibit A, 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 trial to another county.
- B. **Entire Contract:** This CONTRACT, along with Exhibits A, B, and C, when accepted by the CONTRACTOR either in writing or by the shipment of any article or other commencement of performance hereunder, 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.
- 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 (unless 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 in accordance with Article VI of Exhibit A.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this CONTRACT. COUNTY reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work or price agreement. Acceptance of any part of the order for goods shall not bind COUNTY to accept future shipments nor deprive it of the right to return goods already accepted at CONTRACTOR'S expense. Overshipments and undershipments of goods shall be only as agreed to in writing by COUNTY. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted by COUNTY.
- 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 satisfaction of COUNTY, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** CONTRACTOR expressly warrants that the goods/services covered by this CONTRACT are 1) free of liens or encumbrances, and 2) merchantable and good for the ordinary purposes for which they are used. Acceptance of this order shall constitute an agreement upon CONTRACTOR'S part to indemnify, defend and hold COUNTY and its indemnitees as identified in paragraph "FF" below, and as more fully described in paragraph "FF", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise specified in this CONTRACT, CONTRACTOR shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. CONTRACTOR warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, property right, or trade secret right of any third party. In the event of any claim by any third party agent of COUNTY, COUNTY shall promptly notify CONTRACTOR of such claim. CONTRACTOR agrees that, in accordance with the more specific requirement contained in paragraph "FF" below, it shall indemnify, defend and hold COUNTY AND COUNTY INDEMNITIEES harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorneys fees, costs and expenses.
- I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties.
- 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 all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

- K. **Termination:** Unless otherwise specified in this CONTRACT, in addition to any other remedies or rights it may have by law, COUNTY has the right to terminate this CONTRACT without penalty immediately with cause or after 90 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. CONTRACTOR may terminate this Contract in accordance with Section 3 – Special terms and Conditions, Clause 6.2
- 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. **Remedies Not Exclusive:** The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either party to any other remedies provided by law.
- N. **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.
- O. **Performance:** CONTRACTOR shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work in a qualified and professional manner. 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 workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; 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; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

P. Insurance:

Insurance Provisions

Prior to the provisions of services under this contract, the contractor agrees to purchase all required insurance at contractor's expenses and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore 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.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

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

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

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 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement 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.

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

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If contractor's Professional Liability policy is a "claims made" policy, contractor shall agree to maintain professional liability coverage for two years following completion of 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 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 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.

- Q. **Bills and Liens:** CONTRACTOR shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. CONTRACTOR shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, CONTRACTOR shall promptly procure its release and, in accordance with the requirements of paragraph FF" below, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. **Changes:** CONTRACTOR shall make no changes in the work or perform any additional work without the COUNTY'S specific written approval.
- S. **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, 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 COUNTY.
- T. **Confidentiality:** CONTRACTOR agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information that are identified as "confidential" 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.
- U. **Compliance with Laws:** CONTRACTOR represents and warrants that services to be provided under this CONTRACT shall fully comply, at CONTRACTOR'S expense, with all standards, 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 "FF" 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.
- V. **Freight (F.O.B. Destination):** Unless otherwise provided in the CONTRACT, CONTRACTOR assumes full responsibility for all transportation scheduling, packaging, handling, insurance, and other services associated with delivery of all products deemed necessary under this CONTRACT.
- W. ~~**Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this CONTRACT and/or any other claim of injury or damage.~~ **Intentionally left blank.**
- X. **Terms and Conditions:** CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.

- Y. **Headings:** The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- Z. **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.
- AA. **Calendar Days:** Any reference to the word "day" or "days" herein mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- BB. **Attorney Fees:** In any action or proceeding to enforce or interpret any provisions of this CONTRACT, or where any provisions hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- CC. **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. The provisions of this CONTRACT shall be interpreted in a reasonable manner to effect the purpose of the parties and this CONTRACT.
- DD. **Authority:** The parties to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- EE. **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.
- FF. **Indemnification Provisions:** Except to the extent arising from the intentional or negligent acts of the COUNTY, or its officers employees, subcontractors or agents, 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.
- GG. **Limitation of Liability.** CONTRACTOR 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 SERVICE, 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 SERVICE, COUNTY'S USE OR INABILITY TO USE THE SERVICE, ANY CHANGES TO OR INACCESSIBILITY OF THE SERVICE, ANY DELAY OR FAILURE OF THE SERVICE, OR FOR LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF CONTRACTOR TO COUNTY FOR ANY REASON AND UPON ANY CAUSE OF ACTION WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO CONTRACTOR BY COUNTY UNDER THIS AGREEMENT OVER THE PREVIOUS TWENTY-FOUR (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. THE FEES FOR THE SERVICES SET BY CONTRACTOR HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK.

HH. Notification. The indemnification obligations herein require the indemnified party (a) to promptly deliver to the indemnifying party written notice of any such suit, action, claim or proceeding, together with all notices and other papers related thereto received by the indemnified party; and (b) provide the indemnifying party all information and assistance reasonably requested, together with exclusive authority to investigate, settle and defend such claim, provided that the claim may not be settled unless the settlement unconditionally releases the indemnified party from liability. The indemnified party shall have the right to appoint an attorney to participate in such defense at the indemnified party's expense, provided that such participation does not derogate from the indemnifying party's sole control of the investigation, defense and negotiations for settlement or compromise of the claim.

SECTION 3 – SPECIAL TERMS AND CONDITIONS

WORLDSHARE MANAGEMENT SERVICES TERMS AND CONDITIONS

COUNTY may order the CONTRACTOR WorldShare Management Services by completing the relevant portions of the CONTRACTOR WorldShare Management Services Proposal (the "Order Form") and agreeing to these WorldShare Management Services Terms and Conditions (this "Agreement") which includes these terms, the Service Level Agreement and Acceptable Use Policy. Use of the WorldShare Management Services is governed by this Agreement, as well as the Service Terms and Conditions for WorldCat® Local (attached hereto as Attachment 1). Should the Terms and Conditions of this Agreement conflict with any of the terms and conditions within Attachment 1, the terms and conditions of this Agreement shall prevail. CONTRACTOR reserves the right to determine whether COUNTY is eligible to subscribe to the WorldShare Management Services and to refuse access to the Service to COUNTY for any reason in CONTRACTOR's sole discretion.

1. Definitions.

1.1 "Acceptable Use Policy" means the then-current acceptable use policy for the Service as determined by CONTRACTOR in its reasonable discretion. The current version is attached hereto as Exhibit B.

1.2 "Acquisition Data" means all data related to print and licensed inventory management including, resource discovery, ordering and invoicing, receiving and item processing, budget management, license content management, Electronic Resource Management (ERM), vendor/provider management, and metadata management.

1.3 "Authorized User" means those employees, administrators, agents or Patrons of COUNTY to whom COUNTY has granted access to the Service by providing COUNTY's ID's and passwords.

1.4 "Circulation Data" means all data related to item check-in, check-out, holds, renewals, bills, and Patron self-service, including patron profiles, item types, item locations, patron management, and library/branch locations and profiles.

1.5 "Confidential Information" means COUNTY Data (but specifically excludes Patron Data), the material terms of this Agreement and any information disclosed by a party to the other party under this Agreement that is designated as confidential or would normally be considered confidential under the circumstances.

1.6 "Effective Date" is the date upon which CONTRACTOR makes the Service available to COUNTY as indicated on the Order Form.

1.7 "Emergency Security Issue" means either: (a) COUNTY's use of the Service in violation of this Agreement or the Acceptable Use Policy, which could disrupt: (i) the Service, (ii) other institution's use of the Service, or (iii) CONTRACTOR Systems used to provide the Service; or (b) unauthorized third party access to the Service.

1.8 "Group" means the consortium of Group Members identified on the Order Form ordering the Service by executing the Order Form and submitting it to CONTRACTOR.

1.9 "Group Administrator" means the lead institution in the Group as indicated on the Order Form. If receiving

CONTRACTOR Group Services hereunder, the Group Administrator shall be included within the term "Group Member" for purposes of this Agreement.

1.10 "Group Member" means any institution for which the Group Administrator has complied with Section 10 below for purposes of binding such institution to this Agreement.

1.11 "Information Security" means the reasonable techniques and procedures deployed for the protection of information systems against unauthorized access to or modification of information, whether in storage, processing or transit, and against the denial of service to authorized users or the provision of service to unauthorized users, including those measures necessary to detect, document, and counter such threats.

1.12 "COUNTY Data" means Acquisition Data, Circulation Data, Patron Data and all other information of COUNTY or any third party that is provided or permitted by COUNTY to reside on CONTRACTOR's Systems or that is provided, generated, transmitted or displayed via the Service by COUNTY or Patrons.

1.13 "COUNTY Applications" means COUNTY or third party created applications that utilize Tools and may interact directly with the Service.

1.14 "CONTRACTOR Systems" means the CONTRACTOR facilities (including third party service providers), servers, equipment, operating software and network used in providing the Service.

1.15 "Order Form" means the order form that COUNTY completes in order to sign up for the Service, and that contains: (i) the Service being ordered; (ii) fees; (iii) number of, and Initial Term for, the Service; and (iv) Group Members, if any.

1.16 "Patron" means a library patron of COUNTY.

1.17 "Patron Data" means all data related to a Patron, including a Patron's Personally Identifiable Information, item check-out, holds, profiles, and library account information. Patron Data shall not be included in the definition of Confidential Information for the purposes of this Agreement.

1.18 "Personally Identifiable Information" ("PII") means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted: (i) Social security number, (ii) Driver's license number or State Identification Card number, (iii) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account. PII does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

1.19 "Privacy Policy" means the then-current Privacy Policy of CONTRACTOR applicable to COUNTY, as modified from time to time at CONTRACTOR's reasonable discretion. The current version of the Privacy Policy is available at <http://www.oclc.org/us/en/policies/privacy/default.htm>.

1.20 "Security Breach" means an unauthorized access, use or disclosure of Personally Identifiable Information (PII) that compromises the security, confidentiality or integrity of such information, such that the use or disclosure poses a significant risk of financial, reputational, or other harm to the affected individual. The following shall not be considered a Security Breach: (i) the unintentional but unauthorized acquisition, access, or use of PII by a CONTRACTOR employee, contractor or agent acting under the authority of CONTRACTOR; or (ii) a good faith belief by CONTRACTOR that the unauthorized individual to whom the impermissible disclosure was made, would not have been able to use the PII.

1.21 "Service" means the CONTRACTOR WorldShare Management Services provided by CONTRACTOR and used by COUNTY under this Agreement, including any Tools made available by CONTRACTOR. The Service, which may be modified from time to time in CONTRACTOR's reasonable discretion, is as described at <http://www.oclc.org/webscale/>.

1.22 "SLA" means the Service Level Agreement as described in Section 4 – Scope of Work, item B.

1.23 "Third Party Request" means a facially valid and lawful request from a third party for records relating to COUNTY Data or COUNTY's use of the Service. Third Party Requests include a facially valid and lawful search warrant, court order, subpoena, other valid legal order, voluntary request for information from law enforcement officials, or written request from an authorized representative of the COUNTY granting consent to the disclosure.

1.24 "Tools" means the tools, widgets, API's, interfaces and data streams that CONTRACTOR makes available to the COUNTY and that may be incorporated into COUNTY Applications.

1.25 "WorldCat" means the CONTRACTOR online union catalog, an electronic database of bibliographic records and other information maintained by CONTRACTOR.

1.26 "WorldCat Record" means a bibliographic record and/or other information from WorldCat, WorldCat.org and/or other CONTRACTOR applications, but specifically excluding Patron Data.

2 Service.

2.1 General. CONTRACTOR will provide COUNTY the Service substantially in accordance with applicable Service documentation and CONTRACTOR's then-current published product descriptions for the Service. As part of the Service, CONTRACTOR will (a) configure, install, house, maintain, monitor and operate the CONTRACTOR Systems; (b) provide access to the Service; and (c) secure and maintain connectivity with third-party telecommunication providers, all as necessary to provide the Service and host COUNTY Data via the Internet. COUNTY is responsible for securing and maintaining its own Internet connectivity to access CONTRACTOR's Systems and the Service.

2.2 COUNTY Applications. CONTRACTOR may make available to COUNTY Tools that COUNTY may utilize to create COUNTY Applications.

2.3 Passwords. COUNTY shall inform all Authorized Users of the applicable restrictions governing their use of the Service (including their obligation to safeguard the confidentiality of COUNTY's ID's and passwords, and the prohibition against sharing their ID or password with any third party). COUNTY shall exercise all commercially reasonable efforts to prevent unauthorized use of the Service and shall be solely responsible for any and all use, including unauthorized use, of the Service initiated by ID's and passwords used by the COUNTY until COUNTY has notified CONTRACTOR of any such unauthorized use or theft of ID's or passwords. COUNTY shall immediately terminate any unauthorized use if practicable. COUNTY shall notify CONTRACTOR via e-mail at webscale-legal@oclc.org, of the loss, theft or disclosure of any passwords or ID's and of any unauthorized use of the Service immediately upon identifying such loss, theft, disclosure, or unauthorized use or having reasonable grounds to suspect that such loss, theft, disclosure or unauthorized use is about to occur. Promptly following email notification, COUNTY shall send written notice to CONTRACTOR to the address and contact listed in Section 9.6. below. In the event that CONTRACTOR becomes aware of unauthorized use of ID's and/or passwords or access to the Service, CONTRACTOR will notify COUNTY's representative and may deactivate existing IDs and passwords, until the COUNTY remediates the unauthorized use (i.e. creates a new password). COUNTY will be responsible for ensuring separation of incompatible duties to prevent fraud or other system misuse.

a. Administrator Passwords. CONTRACTOR will initially provide COUNTY with administrative ID's and passwords to access and use the Service; COUNTY is responsible for assigning Administrator privileges and creating, maintaining, and terminating additional Administrator accounts. COUNTY shall be responsible for safeguarding the confidentiality of all administrative ID's and passwords. Administrator ID's and passwords may not be shared among several users.

b. Patron ("End User") Passwords. COUNTY is solely responsible for creating, managing and terminating Patron accounts and authorizing Patron access to application services. Each Patron who is a user of the Service must have an individual ID and password. Patron ID's and passwords may not be shared among several users.

2.4 Service Level. CONTRACTOR will use commercially reasonable efforts to provide the Service and operate CONTRACTOR's Systems in accordance with the SLA. CONTRACTOR's obligations under the SLA are subject to materials and services provided by equipment, telecommunications and/or other suppliers and to delays by or actions of COUNTY or third parties. COUNTY acknowledges that CONTRACTOR's Systems may be subject to temporary shutdowns due to causes beyond CONTRACTOR's reasonable control, and such temporary shutdowns will not be deemed to be a breach of any obligations under this Agreement or the SLA. COUNTY FURTHER ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OF CONTRACTOR TO PROVIDE THE SERVICES IN ACCORDANCE WITH THE SLA IS TO TERMINATE THIS AGREEMENT PURSUANT TO PARAGRAPH K IN SECTION 2 – COUNTY GENERAL TERMS AND CONDITIONS

2.5 Modifications to the Service. CONTRACTOR reserves the right to change or modify the Service and/or Service functionality and features, the SLA, or any policy or guideline applicable to the Service, from time to time in its reasonable discretion. CONTRACTOR shall notify COUNTY of material modifications, refinements and changes to the Service, the SLA, or any governing policy or guideline by e-mail, as well as online screen display, publication of revised Service descriptions, or such other means that CONTRACTOR determines is reasonably appropriate to communicate the change. Any new Service

functionality made available by CONTRACTOR shall be subject to this Agreement and such additional terms and conditions as CONTRACTOR may require. If COUNTY does not agree to any change or modification to the SLA, or any governing policy or guideline, COUNTY's sole remedy is to immediately terminate this Agreement pursuant to Section 6.2. COUNTY's continued use of the Service following notice of any changes or modifications to the SLA, or any policy or guideline will constitute COUNTY's acceptance of such changes or modifications. Portions of the Service may be a pre-release version and may not work correctly or in the way a final version is intended to work. Pre-release portions of the Service may experience interruptions or extended downtimes. CONTRACTOR may significantly change the final version or decide not to release a final version at all.

2.6 Intellectual Property Rights. CONTRACTOR and/or its licensors or suppliers are the exclusive owners of and retain all right, title and interest (including, without limitation to, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights) to the Service, WorldCat, all materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by CONTRACTOR and/ or its licensors or suppliers pursuant to this Agreement, and any know-how, methodologies, equipment, or processes used by CONTRACTOR to provide the Service to COUNTY (including, without limitation, the CONTRACTOR Systems).

2.7 WorldCat Records. If COUNTY creates WorldCat Records or provides CONTRACTOR (including through the Service) with metadata related to books or other materials, COUNTY hereby grants to CONTRACTOR, CONTRACTOR participants, non participant users and CONTRACTOR designees a nonexclusive, royalty free, sublicenseable, transferable, world wide right and license to copy, display, publish, enhance, prepare derivative works from, distribute and use such metadata for purposes of making the metadata (including individual informational elements contained therein and derivative works thereof) available (directly or through distributors or other third-parties) to CONTRACTOR participants, users and designees, library patrons and parties in search of information through WorldCat, related CONTRACTOR products and services, the Internet and selected third-party services. This license applies to metadata in any form or format now in existence or hereafter created.

2.8 Confidentiality. Each party agrees to treat as confidential all Confidential Information and to use the same degree of care as it uses in maintaining its own confidential and trade secret information of similar kind and nature, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information. Each party agrees that it will not use Confidential Information of the other for any purpose other than assistance to the other under and for its own internal purposes in the performance of this Agreement. The foregoing confidentiality obligations shall not apply to Confidential Information to the extent it (a) is in or enters the public domain other than as a result of a breach of this Section 2.8 by the receiving party, (b) is demonstrated to have been already known by the receiving party prior to disclosure, (c) is lawfully obtained by the receiving party from a third party without any violation of a duty to the disclosing party; (d) is independently developed by the receiving party without the assistance of the Confidential Information of the disclosing party; or (e) is required to be disclosed by law, valid court order or legal process. The parties' obligations under this Section 2.8 shall continue for a period of five (5) years following termination of this Agreement.

3. COUNTY Data; Acceptable Use.

3.1 Ownership of COUNTY Data. COUNTY, and/or its suppliers and affiliates, retains all right, title and interest (including, without limitation, all proprietary rights) to COUNTY Data and COUNTY Applications except for rights granted to CONTRACTOR and its affiliates under this Agreement. Except as otherwise provided herein, upon termination or cancellation of this Agreement for any reason, CONTRACTOR shall return all COUNTY Data to COUNTY in an agreed upon format, or destroy, at COUNTY's option.

3.2 License Rights to CONTRACTOR. COUNTY hereby grants CONTRACTOR a worldwide, non-exclusive, royalty-free, non-sublicensable license to host, reproduce, transmit, cache, store, display, publish, distribute, perform, edit, adapt, modify, create derivative works from, and otherwise use COUNTY Data (a) as reasonably necessary to provide the Service for COUNTY; (b) to analyze and use COUNTY Data to evaluate the Service; (c) to disclose and distribute COUNTY Data in aggregated form from which all COUNTY specific and personally identifiable information has been removed for the purposes of analyzing Service performance, preparing statistics and metrics, creating marketing materials and other services; (d) making COUNTY Data available to COUNTY and to those members of the public to whom COUNTY has granted access or to the general public (for content posted on public areas of the service); and (e) conforming to connecting networks' technical requirements.

3.3 Sharing of COUNTY Data. The Service includes shared areas available to others you have selected and personal areas where you have not granted access to others. If you share COUNTY Data with others on the Service, COUNTY understands and agrees that others with whom COUNTY has shared COUNTY Data may use COUNTY Data. COUNTY grants to those to whom COUNTY has permitted access free, nonexclusive permission to use, copy, distribute and display COUNTY Data solely in connection with the Service.

3.4 COUNTY's Sole Responsibility. COUNTY is solely responsible for all COUNTY Data, including creating, posting, updating, reviewing, managing, maintaining, deleting, editing and otherwise controlling the editorial content thereof (including all content provided by third parties). CONTRACTOR will not be responsible for reviewing COUNTY Data at any time.

3.5 Acceptable Use Policy. COUNTY will at all times adhere to all applicable laws, rules, regulations and other requirements of any governmental authority having jurisdiction over COUNTY's use of the Service and to CONTRACTOR's then-current CONTRACTOR Acceptable Use Policy, a current version of which is attached as Exhibit B. CONTRACTOR may, but is not obligated to, inspect COUNTY Data or investigate any alleged violation of this Agreement, CONTRACTOR's policies or any third-party complaints. In the event that CONTRACTOR determines in its sole and reasonable discretion that any COUNTY Data or conduct or actions of COUNTY (including its employees and users) are objectionable, unlawful, potentially infringing or otherwise violate this Agreement, the Acceptable Use Policy or any other applicable policy, CONTRACTOR may take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, COUNTY's and/or third parties. Such corrective action includes, but is not limited to: (a) issuing a warning; (b) immediately suspending or terminating COUNTY's access to the Service; (c) restricting or prohibiting access to any COUNTY Data that is objectionable or otherwise violates this Agreement or applicable policy; and/or (d) disabling or removing COUNTY Data or the content of any third party from CONTRACTOR's Systems. COUNTY will not be entitled to a refund of any fees paid or reimbursed on account of any such action by CONTRACTOR.

3.6 Privacy. In using the Service, COUNTY may collect Patron Data. At all times, COUNTY shall protect the privacy rights of Patrons and the Patron Data under all applicable laws and regulations. COUNTY shall obtain and maintain all necessary consents from all Patrons for COUNTY's and Authorized Users' access to, monitoring, use, disclosure and transfer of Patron Data. COUNTY is responsible for obtaining any necessary authorizations from Patrons to enable CONTRACTOR to provide the Service. In addition, COUNTY shall post a privacy policy on COUNTY's web site that, at a minimum, discloses any and all uses of personal information that COUNTY collects from Patrons, including specifically that Patron Data may be disclosed to CONTRACTOR and stored by CONTRACTOR.

3.7 Prohibitions. COUNTY 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. CONTRACTOR will have no liability, and COUNTY expressly releases CONTRACTOR from any liability, associated with the loss, theft, transfer or misuse of such information.

3.8 Warranties. CONTRACTOR represents, warrants and covenants to COUNTY that it possesses all rights necessary to provide the Service as described in this Agreement and any other terms and conditions applicable to the Service. COUNTY represents, warrants and covenants to CONTRACTOR that (a) COUNTY Data and COUNTY contributed WorldCat Records and their use will not violate, misappropriate or infringe any proprietary rights or any other personal or privacy right arising under the laws of any jurisdiction of any person or entity; (b) COUNTY has secured all necessary rights and permissions necessary to grant the rights therein granted by this Agreement and to collect and use Patron Data as described in Section 3.6; (c) COUNTY will not transmit or allow the transmission of any harmful data or components, including, but not limited to, viruses, worms, trap doors, hidden sequences, Trojan horses, hot keys, time bombs or other malicious code, files, scripts, agents or programs into or through the Service; (d) at all times during the Term of this Agreement, COUNTY will comply with all applicable laws, rules and regulations (including, but not limited to, export control, decency, privacy and intellectual property laws); (e) it has the rights necessary to enter into this Agreement and to grant the rights granted herein; (f) CONTRACTOR's and its subsidiaries' and affiliates' exercise of the rights granted hereunder will not infringe upon or otherwise violate the rights of any third party; and (g) its execution of this Agreement does not violate any previous agreement, oral or written, to which COUNTY is a party.

4. Data Security and Disclosure

4.1 Data Security. CONTRACTOR has implemented and shall maintain at least industry acceptable standard systems and procedures to ensure the security, confidentiality and integrity of Patron Data and to reasonably protect against anticipated threats or hazards to the security or integrity of Patron Data, and against unauthorized access to, use or disclosure of Patron Data.

4.2 Data Transfer. As part of providing the Service, CONTRACTOR may store and process COUNTY Data in the United States or any other country in which CONTRACTOR or its affiliates, subsidiaries or agents maintain facilities. By using the Service, COUNTY consents to this transfer, processing and storage of COUNTY Data to or by CONTRACTOR, and its service providers, affiliates subsidiaries or agents, over state and international borders as necessary to provide the Service in accordance with CONTRACTOR's standard business practices.

4.3 Nondisclosure of Patron Data. CONTRACTOR shall hold all Patron 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 Patron Data for any purpose other than to provide the Service or as may be authorized in writing by COUNTY. CONTRACTOR shall not disclose Patron Data to any other party except: (a) to CONTRACTOR employees, agents, subcontractors and service providers, to whom Patron 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) protect the rights or property of CONTRACTOR or CONTRACTOR customers, including the enforcement of CONTRACTOR agreements or policies governing COUNTY's use of the Service; or (d) as authorized by COUNTY in writing. CONTRACTOR shall undertake efforts reasonably calculated to ensure that CONTRACTOR employees, agents, and subcontractors with access to Patron Data are aware of CONTRACTOR's obligations under this Agreement and are placed under an obligation of confidentiality with respect thereto.

4.4 Cooperation with Law Enforcement. To the extent permitted by law, CONTRACTOR reserves the right to involve and cooperate with law enforcement or the appropriate legal authorities in investigations of claims of illegal or unauthorized activity involving the Service or any users thereof, violations of applicable laws, to protect CONTRACTOR Systems and CONTRACTOR's customers and to respond to any violations of this Agreement. COUNTY agrees that CONTRACTOR is authorized to monitor communications into, and out of, CONTRACTOR Systems to prevent the introduction of viruses or other hostile code, to prevent intrusions, and to otherwise enforce the terms of this Agreement. COUNTY further agrees that CONTRACTOR may, in its sole discretion, disclose any and all COUNTY Data including, without limitation, assigned IP numbers, Service history, and Service use to any law enforcement agent for the purposes specified herein or where CONTRACTOR receives a facially valid and lawful search warrant, court order, subpoena or other valid legal order from law enforcement officials, without further consent or notification to COUNTY or Patrons. COUNTY agrees to reimburse CONTRACTOR for all reasonable and verifiable costs associated with CONTRACTOR's compliance with all lawful governmental requests relating to COUNTY or COUNTY Data, including, but not limited to, warrants, subpoenas and judicial orders. Notwithstanding the foregoing and to the extent permitted by law and law enforcement, CONTRACTOR will make reasonable efforts to notify COUNTY when a disclosure of COUNTY's Data has or is to be made.

4.5 Third Party Requests. If CONTRACTOR receives a Third Party Request, CONTRACTOR will, unless it is prohibited by law or by the terms of the Third Party Request: (a) promptly notify COUNTY of its receipt of a Third Party Request in a manner permitted by law; and (b) comply with COUNTY's reasonable requests regarding its efforts to oppose a Third Party Request.

4.6 Security Breach. CONTRACTOR will notify COUNTY of a Security Breach within seven (7) days of CONTRACTOR's verification of a Security Breach. The notification shall include, to the extent possible (a) the identification of each Patron whose data has been, or is reasonably believed to have been accessed, acquired, used, or disclosed; (b) the nature of the Security Breach; (c) the date of, and the date of discovery of, the Security Breach; (d) a brief description of the types of data that were involved; (e) any steps that Patrons should take to protect themselves from potential harm resulting from the Security Breach; and (f) a brief description of CONTRACTOR's efforts to investigate the Security Breach, mitigate harm to Patrons, and protect against further Security Breaches. In addition, CONTRACTOR shall immediately conduct a reasonable investigation of the reasons for and circumstances surrounding such Security Breach; use best efforts and take all necessary actions to prevent, contain, and mitigate the impact of, such Security Breach; collect and preserve all evidence concerning the discovery, cause, vulnerability, remedial actions and impact related to such Security Breach, which shall meet reasonable expectations of forensic admissibility. Any information CONTRACTOR provides to COUNTY regarding a Security Breach shall be treated as Confidential Information and subject to the requirements of Section 2.8.

4.7 Breach Notification. COUNTY agrees that it shall be COUNTY's sole responsibility to determine whether a Security Breach is subject to state, federal or national breach notification laws and requires breach notification ("Breach Notification"). In the event that COUNTY determines that a Security Breach requires Breach Notification, CONTRACTOR agrees that it will reasonably cooperate with COUNTY in regards to COUNTY's Breach Notification obligations as specified in state, federal or national breach notification laws, including COUNTY's investigation, enforcement, monitoring, document preparation, Breach Notification requirements and reporting. COUNTY shall be solely responsible for notifying all individuals subject to Breach Notification, however CONTRACTOR reserves the right to first review all notifications before they are sent.

4.8 Audit. CONTRACTOR will comply with all reasonable requests and inquiries by COUNTY to enable COUNTY to verify that CONTRACTOR is in full compliance with its obligations under this Agreement and to allow COUNTY to meet its obligations under applicable laws. CONTRACTOR will conduct a security assessment, network scan, forensic investigation and/or audit of CONTRACTOR's data security (as described in Section 4.1) on an annual basis and disclose the results as requested in writing by the COUNTY. If the Audit reveals that CONTRACTOR's data security failed to meet the terms of this Agreement, and any such failure is not promptly remediated, COUNTY may immediately terminate this Agreement.

5. Fees and Payment Terms.

5.1 Intentionally Left Blank.

5.2 Intentionally Left Blank

5.3 Intentionally Left Blank. .

5.4 Intentionally Left Blank.

6. Term of Service.

6.1 Term. This Agreement shall be for an initial term of one (1) year and shall begin on the Effective Date. Thereafter, this Agreement shall renew on an annual basis, upon written request by COUNTY, unless terminated by one of the parties in accordance with Provision K under Section 2 – County General Terms and Conditions, or this Section 6.

6.2 Termination. This Agreement may be terminated in one of the following ways:

- (a) By County pursuant to Section 1, paragraph 3. Contingency of Funds;
- (b) By CONTRACTOR for any reason and without cause by providing COUNTY one hundred eighty (180) days prior written notice;
- (c) By CONTRACTOR in the event COUNTY does not pay the fees due hereunder within ninety (90) days of the due date;
- (d) Intentionally Left Blank
- (e) By the non-breaching party, if a party commits a material breach of or fails to perform any obligations under this Agreement and has not cured such breach or failure within ninety (90) days of receiving written notice from the non-breaching party specifying such breach or failure. CONTRACTOR reserves the right however to immediately suspend COUNTY's access to the Service in the event of COUNTY's material breach to protect CONTRACTOR Systems; or
- (f) As otherwise provided in this Agreement, the SLA or the Acceptable Use Policy.

6.3 Refund. Upon any termination of this Agreement, COUNTY will not be entitled to a refund of any fees paid or reimbursed under this Agreement unless (a) CONTRACTOR terminates this Agreement pursuant to 6.2(b); or (b) COUNTY terminates this Agreement pursuant to a breach by CONTRACTOR in which event, CONTRACTOR will promptly refund that portion of any fees pre-paid by COUNTY for the period after the effective date of termination.

6.4 Effect of Termination. Should this Agreement be terminated for any reason, CONTRACTOR will not be liable to COUNTY because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with COUNTY's business, or for any other reason whatsoever due to such termination. COUNTY is solely responsible for procuring any new or replacement service upon termination. Any termination of this Agreement will not relieve COUNTY of any obligations to pay any fees and costs accrued prior to the termination date and any other amounts owed by COUNTY to CONTRACTOR as provided in this Agreement. Upon termination of this Agreement, the following sections will survive and remain in effect in accordance with their terms: Section(s) 2.7, 2.8, 3.1, 3.2, 4.1, 4.3 & 7.

6.5 Access to Service. Upon termination of this Agreement, COUNTY's rights to access and use the Service shall terminate and COUNTY shall cease accessing and using the Service and CONTRACTOR shall deactivate all COUNTY ID's and passwords. COUNTY shall remove all Tools from any COUNTY Applications that have incorporated Tools.

6.6 Emergency Security Issues. In the event that there is an Emergency Security Issue, CONTRACTOR reserves the right to automatically suspend the offending use. Suspension will be to the minimum extent required, and of the minimum duration, to prevent or terminate the Emergency Security Issue. If CONTRACTOR suspends Service access for any reason without prior notice to COUNTY, at COUNTY's request, CONTRACTOR will provide COUNTY the reason for the suspension as soon as is reasonably possible. These service suspensions are excluded from service availability calculations.

6.7 Data Disposal. CONTRACTOR will provide COUNTY access to, and the ability to export, COUNTY Data for ninety (90) days after the effective date of termination, after which, CONTRACTOR shall have no obligation to maintain or provide any COUNTY Data and shall thereafter, unless legally prohibited, retain the right to delete all COUNTY Data from the Service and CONTRACTOR Systems, or otherwise in its possession or under its control. Upon termination and upon request, CONTRACTOR will promptly return or destroy all applicable COUNTY Data, except however, CONTRACTOR may retain

COUNTY Data in back-up files provided that the confidentiality and security obligations contained herein shall apply.

7. Indemnification.

7.1 Intentionally Left Blank

7.2 Intentionally Left Blank

7.3 Intentionally Left Blank.

8. Disclaimers and Limitations.

8.1 Intentionally Left Blank

8.2 Disclaimer. COUNTY ACKNOWLEDGES THAT THE SERVICE AND CONTRACTOR'S SYSTEMS ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CONTRACTOR DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF THE SERVICE OR CONTRACTOR'S SYSTEMS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OR ANY IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER THAT THE SERVICES AND CONTRACTOR'S SYSTEMS WILL BE UNINTERRUPTED, ALWAYS ACCESSIBLE, FREE OF HARMFUL COMPONENTS, ACCURATE OR ERROR-FREE.

8.3 Limitation of Liability. CONTRACTOR 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 SERVICE, 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 SERVICE, COUNTY'S USE OR INABILITY TO USE THE SERVICE, ANY CHANGES TO OR INACCESSIBILITY OF THE SERVICE, ANY DELAY OR FAILURE OF THE SERVICE, OR FOR LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF CONTRACTOR TO COUNTY FOR ANY REASON AND UPON ANY CAUSE OF ACTION WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO CONTRACTOR BY COUNTY UNDER THIS AGREEMENT OVER THE PREVIOUS TWENTY-FOUR (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. THE FEES FOR THE SERVICES SET BY CONTRACTOR HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK.

9. General.

9.1 Independent Contractors. Intentionally Left Blank

9.2 Waiver. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights.

9.3 No Assignment. COUNTY may not assign, without the prior written consent of CONTRACTOR, any rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so will be void.

9.4 Force Majeure. Neither party shall be liable for any failure or delay in performance hereunder (other than of an obligation to pay money) due to or resulting from any cause beyond its reasonable control including, but not limited to acts of God, acts of the other party, strikes, shortage or materials, actions of government, fire, adverse weather conditions, disruption of telecommunications or power, or operational failure, provided that the party so affected notifies the other promptly of the commencement and nature of the cause, the corrective steps to be taken and the estimated duration of the delay.

9.5 Headings. Intentionally Left Blank

9.6 Notice. Intentionally left Blank

9.7 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 and the same instrument. Facsimile or copied signatures will be deemed originals.

9.8 Severability. Intentionally Left Blank

9.9 Entire Agreement. Intentionally Left Blank

10. Special Terms for Group Orders Only

Where a Group Administrator is ordering the Service on behalf of itself and Group Members, the below paragraphs apply:

10.1 Ordering. Group Administrator may order the Service on behalf of Group Members by completing the relevant portions of the Order Form and agreeing to this Agreement. By placing a group order hereunder (and completing the Order Form), Group Administrator orders authorizations and passwords for the Service, in which case Group Administrator shall be licensed itself to use the Service, subject to this Agreement. Group Administrator also orders and allocates authorizations and passwords for the Service on behalf of Group Members listed on the Order Form.

10.2 Group Member's Agreement. Group Administrator hereby agrees as agent for each Group Member that each Group Member shall comply with this Agreement. Group Administrator warrants that it is authorized to bind Group Members thereto, and Group Administrator shall provide each Group Member with a copy of this Agreement prior to CONTRACTOR activation of an authorization therefor. Group Administrator shall take all reasonable measures to ensure that Group Members comply with this Agreement.

10.3 Group Member Addition. Where a Group Member is added to the Group subsequent to the Group Administrator's assent to this Agreement, Group Administrator hereby agrees that as agent for the Group Member, Group Member shall comply with this Agreement and Group Administrator will provide a copy of this Agreement to Group Member upon becoming a Group Member.

10.4 Direct Contract. Subject to CONTRACTOR acceptance, each order for Group Members shall constitute a direct contract between CONTRACTOR and the Group Member.

10.5 Payment by Group Administrator. Intentionally Left Blank

10.6 Resale. Group Administrator is not a buyer of the Service for resale.

10.7 Relationship. The relationship of the parties hereunder is that of independent contractors, and not employee/employer, agent/principal, partners, joint venturers or franchisor/franchisee. Group Administrator is not authorized to make any representations or contract commitments on behalf of CONTRACTOR, nor to sign or negotiate any changes to any CONTRACTOR terms. Any modifications proposed by any Group Member to this Agreement shall be submitted in writing to CONTRACTOR in advance for CONTRACTOR's prior written approval.

10.8 Non-exclusivity. CONTRACTOR's retention of Group Administrator's assistance in making the Service available hereunder shall be on a non-exclusive basis, and nothing herein shall limit CONTRACTOR's right to distribute the Service independent of Group Administrator, including to Group Members.

10.9 Other Terms. CONTRACTOR shall have the rights and the benefit of all terms set forth in this Agreement, as amended by CONTRACTOR from time to time, with respect to this order as a whole and for Group Administrator and each Group Member individually.

SECTION 4 – SCOPE OF WORK

A. CATALOGING, INTERLIBRARY LOAN AND RELATED SERVICES:

All Online Cataloging, Interlibrary loan and related services shall be provided by CONTRACTOR in accordance with Exhibit A, CLSA Shared Cataloging Agreement attached hereto and incorporated hereto.

C. OCLC WORLDCAT LOCAL TERMS AND CONDITIONS

1. DEFINITIONS

A. "Service" means the CONTRACTOR WorldCat Local Service as made available by CONTRACTOR, including, without limitation, WorldCat.org Services, Connector Builder and Connectors to the extent made available by CONTRACTOR.

B. "WorldCat.org" means CONTRACTOR's Web portal to WorldCat currently located as www.worldcat.org

C. "WorldCat.org Services" means the Data, services and features from WorldCat.org made available by CONTRACTOR through the Service. The term "WorldCat.org Services" does not include Connector Builder or Connectors, each of which is addressed by these Terms separately.

D. "End-User" means: (i) an employee of Subscriber; and (ii) a user to whom Subscriber makes its library services available.

E. "WorldCat" means the CONTRACTOR online union catalog, an electronic database of bibliographic records and other information maintained by CONTRACTOR

F. "WorldCat.org Terms" means the CONTRACTOR WorldCat.org Services Terms and Conditions which are available to End-Users via a link appearing on the WorldCat.org web pages made available through the Service.

G. "Schedule" means a mutually agreed upon schedule for Subscriber's performance of the responsibilities set forth in Section 3.A below.

H. "Specifications" means applicable Service documentation or, in the absence of such documentation, CONTRACTOR's then-current, published service descriptions for the Service.

I. "Data" means bibliographic data and other information (including, without limitation, text, images and other content contributed to WorldCat.org by users) made available by CONTRACTOR or its suppliers through WorldCat.org services and features.

J. "Major Functionality" means the Service's ability to perform the following functions with a local library system which is compatible with and supported by the Service: (i) retrieve real-time availability from Subscriber's catalog; (ii) place holds in Subscriber's catalog; (iii) link to Subscriber's resource sharing solution; and (iv) link to Subscriber's full-text OpenURL resolver.

K. "Acceptance Test Period" means the period beginning on the date that CONTRACTOR makes the Service available to Subscriber and ending forty-five (45) days thereafter.

L. "Connector Builder" means, to the extent made available by CONTRACTOR, an application that enables Subscriber to create Connectors.

M. "Connector" means a data file created by Subscriber using the Connector Builder or obtained by Subscriber from CONTRACTOR which controls an End-User's interaction with the web-based search interface utilized by a Subscriber Resource.

N. "Subscriber Resource" means a licensed or other electronic resource that Subscriber is making available to its users as part of its noncommercial library services.

2. AVAILABILITY AND USE OF THE SERVICE

A. CONTRACTOR agrees to use its reasonable efforts to provide the Service substantially in accordance with Specifications. Access to certain Data supplied by CONTRACTOR's third-party suppliers requires that Subscriber first comply with certain requirements established by such suppliers. CONTRACTOR will inform Subscriber of these requirements as necessary.

B. CONTRACTOR may, within its sole discretion, determine, add to, delete from or change at any time the Specifications, features and/or functionality of the Service. In the event any such determination, addition, deletion or change materially reduces Subscriber's rights with respect to the Service, CONTRACTOR will provide Subscriber with a refund of that portion of the subscription fee paid by Subscriber which is proportionate to the degree which Subscriber's rights have been reduced; provided Subscriber requests such a refund in writing within thirty (30) days after the effective date of such determination, addition, deletion or change and provides reasonable justification for such request. In the event any such determination, addition, deletion or change results in Subscriber's local library system no longer being compatible with or supported by the Service and such incompatibility or lack of support cannot be resolved through CONTRACTOR's commercially reasonable efforts, Subscriber shall have the termination rights set forth in Section 4.C below.

C. CONTRACTOR grants Subscriber a nonexclusive, nontransferable right to provide End-Users with access to WorldCat.org Services through the Service interface. Use of WorldCat.org Services by End-Users is governed by the WorldCat.org Terms.

D. Subscriber shall provide CONTRACTOR with prompt written notice of any unauthorized use of the Service of which Subscriber becomes aware and provide CONTRACTOR with such assistance as is reasonably requested by CONTRACTOR to halt such unauthorized use.

3. SUBSCRIBER'S RESPONSIBILITIES

A. In preparation for activation of the Service and in support of the use of the Service during the term of this Agreement, Subscriber agrees to perform the following tasks in accordance with the Schedule:

- (i) load Subscriber's records for its collections into WorldCat, including as applicable:
 - o OPAC/reclamation
 - o eSerials holdings
 - o Standalone special collections
- (ii) regularly synchronize Subscriber's online, offline and Cataloging Partners Program cataloging with WorldCat during the term of the Agreement no less frequently than is necessary to accurately represent Subscriber's holdings;
- (iii) index CONTRACTOR numbers in Subscriber's local system to support links back to Subscriber's local system;
- (iv) work with CONTRACTOR staff to configure and test interoperability with Subscriber's local delivery infrastructure, including but not limited to:
 - o Circulation
 - o Resource Sharing/Interlibrary Loan
 - o Open URL
- (v) work with CONTRACTOR staff to identify groups as part of the ranking algorithm, as applicable; and
- (vi) Acquire and maintain Internet and other telecommunications connections, services, equipment and facilities necessary to exercise Subscriber's rights hereunder.

B. Subscriber may configure and test the Major Functionality during the Acceptance Test Period. If, during the Acceptance Test Period, CONTRACTOR receives notice from Subscriber of any failure of Major Functionality to conform with the Specifications in any material respect, CONTRACTOR shall use its reasonable efforts to resolve the non-conforming Major Functionality. Upon CONTRACTOR communicating to Subscriber that the nonconforming Major Functionality has been corrected, Subscriber shall have the remainder of the Acceptance Test Period to configure and test the revised Service, and to notify CONTRACTOR of any remaining nonconforming Major Functionality. (For example, if CONTRACTOR receives notice from Subscriber of nonconforming Major Functionality on the twentieth (20th) day of the Acceptance Test Period, Subscriber would have twenty-five (25) days after CONTRACTOR communicates to Subscriber that the nonconforming Major Functionality has been corrected to configure and test the revised Service and notify CONTRACTOR of any remaining nonconforming Major Functionality.) If CONTRACTOR does not receive notice from Subscriber of nonconforming Major Functionality during the Acceptance Test Period or during the remainder of the Acceptance Test Period after CONTRACTOR has provided the revised Service in response to Subscriber's notice of nonconforming Major Functionality, then Subscriber shall be deemed to have accepted the Service and Major Functionality as of the expiration of the Acceptance Test Period. **CONTRACTOR'S OBLIGATION TO EXERT ITS REASONABLE EFFORTS OVER A REASONABLE PERIOD OF TIME TO CORRECT NONCONFORMING MAJOR FUNCTIONALITY SHALL BE CONTRACTOR'S SOLE LIABILITY AND SUBSCRIBER'S SOLE REMEDY FOR FAILURE OF THE SERVICE AND/OR MAJOR FUNCTIONALITY TO PASS ACCEPTANCE TESTING.**

C. Subscriber shall provide CONTRACTOR with such assistance and access to Subscriber's computer systems (by attaching to web services and/or screen scraping access to the OPAC) as is reasonably requested by CONTRACTOR to support the proper functioning of the Service, including, without limitation, permitting CONTRACTOR to run regular, automated scripts against Subscriber's local library system for purposes of determining that the Service is functioning properly. Subscriber is responsible for backing-up all existing data, software, and programs before receiving such support from CONTRACTOR.

D. Subscriber agrees that CONTRACTOR's obligations to provide the Service hereunder are expressly conditioned upon: (i) Subscriber's full performance of the responsibilities set forth in Section 3.A above in accordance with the Schedule; and (ii) Subscriber's timely cooperation and assistance as described in Section 3.C above. Subscriber's failure to so perform these responsibilities and/or provide this cooperation and assistance may result in CONTRACTOR's inability to provide the Service. CONTRACTOR shall have no liability as a result of its inability to provide the Service as a result of Subscriber's failure to perform its responsibilities in accordance with the Schedule or provide timely cooperation and assistance as required above.

4. SUPPORT

A. During preparation for implementation of the Service and for thirty (30) days after activation of the Service (i.e., the date on which the Service is first made available to End-Users), CONTRACTOR will provide Subscriber with reasonable levels of assistance to configure the Service. Thereafter, changes to Service configuration are limited to those that can be made by

Subscriber using the administrative module provided by the Service. Subscriber may contact CONTRACTOR's Help Desk for assistance using the administrative module. Except to the extent Subscriber's employees are the recipients of the support described in this Section 4, CONTRACTOR has no obligation to provide support services to End-Users.

5. DISCLAIMERS AND LIMITATIONS OF LIABILITY

A. EXCEPT AS PROVIDED IN SECTION 2.A ABOVE, THE SERVICE IS PROVIDED "AS IS". CONTRACTOR AND ITS SUPPLIERS DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, CONCERNING THE SERVICE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. DATA (IF ANY) RELATED TO THE COPYRIGHT STATUS OF A PUBLICATION OR OTHER ITEM FOR WHICH A RECORD IS AVAILABLE THROUGH THE SERVICE: (i) IS COMPILED BY CONTRACTOR OR ITS SUPPLIERS USING REASONABLE EFFORTS; (ii) IS PRESENTED SOLELY FOR INFORMATIONAL PURPOSES; (iii) DOES NOT CONSTITUTE LEGAL ADVICE; AND (iv) IS NOT TO BE CONSIDERED OR RELIED UPON AS A SUBSTITUTE FOR INDEPENDENT VERIFICATION OF COPYRIGHT STATUS.

B. IN NO EVENT, EVEN IF THE FOREGOING LIMITATIONS ARE HELD TO BE UNENFORCEABLE, SHALL CONTRACTOR'S LIABILITY HEREUNDER EXCEED THE REFUND OF THE ANNUAL SUBSCRIPTION FEE PAID BY SUBSCRIBER HEREUNDER PRORATED FROM THE DATE OF THE EVENTS RESULTING IN SUCH LIABILITY.

C. NEITHER PARTY SHALL HAVE ANY LIABILITY OR OBLIGATION TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF BUSINESS) WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY AND REGARDLESS OF WHETHER A PARTY FORESAW OR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. MISCELLANEOUS

A. "CONTRACTOR", "WorldCat", "WorldCat.org" and the WorldCat logo are trademarks/service marks of CONTRACTOR Online Computer Library Center, Inc. Third-party product, service and business names are trademarks/service marks of their respective owners. Subscriber shall not alter or obscure any trademark/service mark appearing in the Service, and shall do nothing to damage the goodwill embodied therein. CONTRACTOR and/or its suppliers own all rights, title and interest, including, without limitation, all intellectual property rights, in and to the Service. Except as expressly provided for in these Terms, Subscriber and End-Users acquire no rights in or to the Service.

B. These Terms (including any Attachments hereto) constitute the complete, final and exclusive statement of the parties' agreement with respect to the subject matter hereof and are not intended to confer upon any person other than the parties hereto any rights or remedies. No purchase orders or other forms Subscriber submits shall apply to modify or supplement this Agreement. These Terms may be modified only by means of a written document executed by each of the parties.

C. Subscriber may not assign or otherwise transfer its rights or obligations under this Agreement without CONTRACTOR's prior written consent, which will not be unreasonably withheld. CONTRACTOR may assign its rights and/or delegate its obligations under this Agreement by providing Subscriber with written notice at least thirty (30) days prior to the effective date thereof.

D. CONTRACTOR and its suppliers shall not be liable for any failure or delay in performance hereunder due to any cause beyond its/their reasonable control including, but not limited to, acts of God or public enemy, fire, explosion, accident, strikes, governmental actions, delay or failure of suppliers, or delay, failure or other difficulties with telecommunications networks.

E. The Service may not be accessed or used by entities or individuals who are or become subject to United States trade restrictions. The Service may be used only in full compliance with U.S. export regulations. Subscriber shall be the exporter and importer of record in connection with the Service as delivered by CONTRACTOR to Subscriber outside the United States, and Subscriber shall pay and/or comply with all applicable export and import laws, customs, regulations tariffs, duties and fees, and procurement, data and technology transfer laws. CONTRACTOR's obligations hereunder are contingent upon necessary export licenses being obtained from federal agencies of the United States.

F. Unless another method is expressly permitted by these Terms, any notices required to be given by either party pursuant to these Terms shall be in writing and shall be deemed sufficient if delivered by hand or sent by certified mail, return receipt requested, to the address of the other party as set forth on the Order Form.

G. Subscriber shall not omit, obscure or hide from any End User any notice of a limitation of warranty, disclaimer, copyright, patent, trademark, trade secret, usage limitation or any logo, splash screen or any other terms and/or conditions intended to be displayed to an End User by CONTRACTOR.

H. Any waiver of any provision of this Agreement must be in writing and signed by the party against whom the waiver is to be enforced.

I. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be deemed superseded by a valid enforceable provision that most closely matches the intent of the original provision and the remaining provisions shall be enforced.

J. CONTRACTOR's collection and use of any personal information submitted via the Service (if any) is governed by CONTRACTOR's Privacy Policy, which can be accessed at <http://www.oclc.org/worldcat/policies/privacy/>.

SECTION 5 – PRICING & DISCOUNT PROGRAM AND PAYMENT TERMS

I. PRICING

A. PRICING FOR ONLINE CATALOGING, INTERLIBRARY LOAN & RELATED SERVICES:

OCLC Online Computer Library Center, Inc. subscription based pricing for Fiscal Year 13/14:

1. Unlimited access to OCLC resource sharing:	<u>\$20,414.66/per year</u>
2. Internet access and support fees:	<u>\$16,289.38/per year</u>
3. Cataloging costs:	<u>\$62,094.87/per year</u>
Total.....	<u>\$98,798.91/per year</u>

OCLC Online Computer Library Center, Inc. subscription based pricing for Fiscal Year 14/15:

1. Unlimited access to OCLC resource sharing:	<u>\$ 21,435.39/per year</u>
2. Internet access and support fees:	<u>\$ 17,103.85/per year</u>
3. Cataloging costs:	<u>\$ 65,199.61/per year</u>
Total.....	<u>\$103,738.85/per year</u>

***Subscription based pricing is for Fiscal Year 13/14 and Fiscal Year 14/15** and is subject to up to a 5% escalation and the additional pricing for services in Exhibit B may vary per each renewable period. However, the maximum obligation of \$130,000 per year shall not increase as a result thereof.

For all additional services, CONTRACTOR shall be compensated in accordance with the OCLC, Online Computer Library Center's Price List that is in effect during each renewable term of the CONTRACT. OCLC Online Computer Library Center's Price List is attached hereto and incorporated herein as **Exhibit B – OCLC Online Computer Library Center, Inc. Price List**.

Exhibit B controls with respect to pricing and supercedes the pricing as set forth in Appendix 1 of Exhibit A. Appendix 1 of Exhibit A is for historical purposes only.

A2 DISCOUNT PROGRAM: Discount program and payment terms shall be in accordance with the OCLC, Online Computer Library Center Discount Program that is in effect during each renewable term of the CONTRACT. OCLC, Online Computer Library Center Discount Program is attached hereto and incorporated herein as **EXHIBIT C – OCLC Online Computer Library Center, Inc. Discount Program**.

Exhibit C controls with respect to discounts and payment terms and supercedes the discount program and payment terms set forth in Appendix 2 of Exhibit A. The 1985 Appendix 2 in Exhibit A is for historical purposes only.

C. PRICING FOR WORLDCAT FIRSTSEARCH SUBSCRIPTION:

For subscription period 8/1/13 – 7/31/14: **\$26,002.00**

For subscription period 8/1/14 – 7/31/15: **\$27,302.10**

For subscription period 8/1/15 – 7/31/16: **\$29,295**

For subscription period 8/1/16 – 7/31/17: **\$30,760**

D. TOTAL PRICING FOR ITEMS A, B, AND C FOR A TWO-YEAR PERIOD 8/1/12 – 7/31/13 8/1/13 – 7/31/15: **\$280,846
\$255,841.86***

II. PAYMENT TERMS

Terms:

Payment in advance is authorized for ~~all of the~~ services listed in Item A and C 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 Agreement 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.

The Implementation Fee for the Service is a one-time fee, fifty percent (50%) of which will be invoiced upon execution of this Agreement, provided that COUNTY continues to renew its subscription to the Service annually without interruption. If COUNTY fails to renew its subscription to the Service and re-subscribes at a later date, COUNTY will be obligated to pay a new implementation fee in connection with the new subscription.

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 a two-part invoice or equivalent on the contractor's letterhead or CONTRACTOR'S invoice stock for goods delivered and/or services rendered. In the case of goods, the contractor will leave an invoice with each delivery. Each invoice will have a 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. Delivery/service address
5. County CONTRACT Number **MA-012-12012186 & DO-012-TBD**
6. Date of order
7. Product/service description, quantity, and prices
8. Sales tax, if applicable
9. Freight/delivery charges, if applicable
10. Total

Mail Invoices to:

OC Community Resources
Attn: Accounts Payable
1300 S. Grand Ave., Bldg B, 2nd Floor
Santa Ana, CA 92705-4434
RE: **MA-012-12012186**

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand all the terms and conditions contained herein and have hereby caused this Master Agreement MA-012-12012186 to be executed.

CONTRACTOR*:
OCLC Online Computer Library Center, Inc.

COUNTY OF ORANGE, a political subdivision of
The State of California

By _____

By: _____

Deputy Purchasing Agent

Title: _____

Dated: _____

Dated: _____

By: _____

Title: _____

Dated: _____

APPROVED AS TO FORM
COUNTY COUNSEL

By: _____

Deputy

Date: _____

* For Contractors/Vendors that **are corporations**, signature requirements are as follows:

- 1) One signature if a corporate resolution, bylaws or other document grants a single Corporate officer the actual authority to bind the Corporation; or
- 2) One signature by the Chairman of the Board, the President or any Vice President, and
One signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer.

For Contractors/Vendors that are not corporations, the person who has authority to bind the Contractor/Vendor to a contract must sign on one of the lines above.

EXHIBIT A

CLSA SHARED CATALOGING AGREEMENT

EXHIBIT B

OCLC ONLINE COMPUTER LIBRARY CENTER, INC. FY 14 PRICE LIST

EXHIBIT C

OCLC ONLINE COMPUTER LIBRARY CENTER, INC. DISCOUNT PROGRAM

Effective for the period July 1, 2013 through December 31, 2013

Subscription Credit (prepayments): A subscription credit equivalent to 4.00% Annual Percentage Rate (APR) will be applied to account balance at the end of each month based on that month's average daily balance.

Standard Payment Terms:

Net amount payable 45 days from date of invoice.

Prompt Payment Terms:

Discount of .08% (.0008), which is equivalent to 2.00% APR is credited for payments received on or before the last day of the month following the invoice date.

Late Payment Terms:

Late payment service charge of 1% per month (12% APR) is imposed on charges outstanding in excess of 45 days from the date of the invoice. Late payment service charges will be assessed monthly and will be calculated on the total number of days past due.

Withdrawals:

Withdrawal of remaining subscription balances (or portions thereof) is subject to a written request.

*-Annual percentage rates indicated are rounded.

Discount Program Description Page 2 of 2

Example of Subscription Credit Program:

- o Assumptions:
 - Monthly Invoice Amount: \$100,000
 - Payment of \$500,000 received by OCLC on July 15, 2013
- o Account Activity and Discount Calculation

			Account
			Balance
<u>07/01/13</u>	<u>Beginning Balance</u>		\$ <u>0</u>
<u>07/15/13</u>	<u>Cash Received</u>	\$(500,000)	(500,000)
<u>07/31/13</u>	<u>Invoice</u>	100,000	(400,000)
<u>07/31/13</u>	<u>Subscription Credit¹</u>	(903)	(400,903)
<u>08/01/13</u>	<u>Beginning Balance</u>		(400,903)
<u>08/31/13</u>	<u>Invoice</u>	100,000	(300,903)
<u>08/31/13</u>	<u>Subscription Credit²</u>	(1,326)	(302,229)
<u>09/01/13</u>	<u>Beginning Balance</u>		(302,229)
<u>09/30/13</u>	<u>Invoice</u>	100,000	(202,229)
<u>09/30/13</u>	<u>Subscription Credit³</u>	(996)	(203,225)
<u>10/01/13</u>	<u>Beginning Balance</u>		(203,225)
<u>10/31/13</u>	<u>Invoice</u>	100,000	(103,225)
<u>10/31/13</u>	<u>Subscription Credit⁴</u>	(667)	(103,892)

Subscription Credit Calculation:

	Month	-	Average Daily Balance ⁵ Credit
¹	<u>7/13</u>	\$ (270,968) x 30/360 x .040	\$ (903)
²	<u>8/13</u>	\$ (397,790) x 30/360 x .040	\$(1,326)
³	<u>9/13</u>	\$ (298,895) x 30/360 x .040	\$ (996)
⁴	<u>10/13</u>	\$ (199,999) x 30/360 x .040	\$ (667)

⁵ Average Daily Balance calculated is the sum of each day's balance divided by the actual number of days in the month.