

# APPENDIX CONTENTdm Quick Start TERMS AND CONDITIONS

IMPORTANT: PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. YOUR USE OF THIS SERVICE IS CONDITIONED UPON YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS. BY USING THIS SERVICE, YOU ARE AGREEING TO BE LEGALLY BOUND BY ALL THE TERMS AND CONDITIONS BELOW. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT USE THIS SERVICE. THESE TERMS AND CONDITIONS SET FORTH THE ENTIRE AGREEMENT AND SUPERSEDES ANY AND ALL PRIOR PURCHASE ORDERS, ACKNOWLEDGMENTS, AGREEMENTS, AND ORAL OR WRITTEN COMMUNICATIONS OR UNDERSTANDINGS OF THE PARTIES REGARDING THE USE OF CONTENTdm Quick Start.

OCLC reserves the right to determine whether a party is eligible to make use of CONTENTdm Quick Start and to refuse access to any party for any reason in OCLC's sole discretion.

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## 1. DEFINITIONS

"CONTENTdm Software" means the suite of computer programs known as CONTENTdm made by OCLC, together with embedded user documentation, related documentation or other materials made available by OCLC to Customer, and all error corrections, enhancements, upgrades, and new or major releases to or of such computer programs made available to Customer by OCLC. The term Software also includes Adobe products and related documentation, and any upgrades, modified versions, updates, additions, and copies thereof.

"**Collections**" means digital collections of Items.

"**Collection Metadata**" means descriptive, administrative, and technical information relating to an Item.

"**Collection Record**" means a set of Collection Metadata elements presented in a format prescribed by OCLC that provides information about an Item and a link to the relevant Item.

"**Customer**" means the legal entity identified as such in the Main Agreement, including its employees but excluding End Users.

"**End-User**" means any individual authorized by Customer to access, view and/or use Customer's Collections.

"**Customer Content**" means all materials, code, data, text (whether or not perceptible by users), audio, video, graphics, photographs, artwork, bulletin board postings, or any other items or information of Customer or any third party that are provided or permitted by Customer to reside on OCLC's Systems.

"**Item**" means a single file in formats specified as acceptable by OCLC which is described by one Collection Record.

"**Main Agreement**" means the agreement to which this Appendix is added.

**"OCLC's Systems"** means the facilities, servers, equipment, operating software and network used for the CONTENTdm Quick Start Service.

## **2. SUBJECT OF THE APPENDIX**

2.1 OCLC grants Customer a nonexclusive, nontransferable right to use the CONTENTdm Quick Start (the "CONTENTdm Quick Start Service" or the "Services") which comprises the following:

- OCLC will provide Customer with access to OCLC's CONTENTdm Software and any other application software necessary to run the CONTENTdm Quick Start Service installed on OCLC's Systems located in Dublin, Ohio, USA
- Customer may use the CONTENTdm Software solely for the following purposes: (i) preparing, creating, developing, archiving, enabling access to, displaying, publishing, and managing Collections and Collection Metadata; (ii) creating Collection Records (or other acceptable metadata) for the Items in Customer's Collections; and (iii) providing End-Users with access to Customer's Collections and Collection Metadata for searching, viewing, and use to the extent authorized by Customer.

The CONTENTdm Quick Start Service includes the use of up to three Project Clients (i.e. installed and used on max. 3 workstations) and 10GB of storage for up to 3,000 collection items hosted by OCLC. 2.2 OCLC will use commercially reasonable efforts to provide the Services and operate OCLC's Systems in accordance with OCLC's standard Service Level Agreement, a current version of which is attached as Exhibit A. OCLC's obligations under the Service Level Agreement are subject to materials and services provided by equipment, telecommunications and/or other suppliers and to delays by or actions of Customer or third parties. Customer acknowledges that OCLC's Systems may be subject to temporary shutdowns due to causes beyond OCLC reasonable control, and such temporary shutdowns will not be deemed to be a breach of any obligations under this Agreement or the Service Level Agreement. Customer further acknowledges and agrees that its sole and exclusive remedy for any failure of OCLC to provide the services in accordance with the service level agreement is to terminate this Appendix.

## **3. CUSTOMER CONTENT; ACCEPTABLE USE**

**3.1 Customer Content.** Customer hereby grants OCLC a limited, 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 the Customer Content, but only as reasonably necessary to provide the Services for Customer. Notwithstanding the foregoing, Customer hereby grants to OCLC the perpetual, irrevocable, non-exclusive, royalty-free, sublicenseable, transferable, world-wide right to use, copy, display, publish, prepare derivative works from and distribute the Collection Records and any Collection Metadata corresponding to Items in Customer's Collections and Third-Party Collections (if applicable) (including derivative works made from each) when collections are registered and harvested with WorldCat.

**3.2 Customer's Sole Responsibility.** Customer will be solely responsible for all Customer Content. Customer will (a) be solely responsible for the creation, posting, updating and maintenance of the Customer Content (including all content provided by third parties) and (b) manage, renew, create, delete, edit and otherwise control the editorial content of the Customer Content. OCLC will not be responsible for reviewing the Customer Content prior to its posting by Customer. Customer will defend, indemnify and hold harmless OCLC from and against any and all claims, suits, actions, demands or proceedings (whether threatened, asserted, or filed) and all related damages, losses, liabilities, cost and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or relating to: (a) Customer's unlawful or improper use of the Services; (b) any damages caused to OCLC's Systems by the Customer

Content; and (c) any actual or alleged violation of any proprietary or non-proprietary rights (including, but not limited to, defamation, libel, rights of privacy or publicity) by any Customer Content. Customer recognizes that Items may be subject to third-party copyright and/or other proprietary rights, and will manage End-User Access to such Items accordingly. Customer agrees to be responsible for complying with the requirements of all applicable copyright laws and other laws applicable to any proprietary material contained in Items in Customer's Collections to the extent necessary for Customer's lawful use of the CONTENTdm Software. By including an Item in its Collections, Customer represents and warrants to OCLC and its licensor that it has complied with the foregoing sentence with respect to such Item. In the event of a claim that any Item in Customer's Collections violates any third-party copyright or other proprietary right, Customer agrees to immediately suspend End-User Access to such Item pending resolution of such claim. OCLC will promptly inform Customer of any claim of infringement related to an Item in Customer's Collections of which OCLC becomes aware.

**3.3 Compatibility.** Customer is responsible for ensuring that the Customer Content will be "server ready" and otherwise remain fully compatible with OCLC's Systems (including all software and operating systems). Customer acknowledges that it is responsible for having the necessary knowledge and expertise to maintain the Customer Content on OCLC's Systems. OCLC reserves the right to remove any Customer Content that is not compatible with OCLC's Systems. Upon request from Customer, and at Customer's sole expense, OCLC may assist Customer in resolving any compatibility problems on a time and materials basis.

**3.4 Acceptable Use Policy.** Customer will at all times adhere to all applicable laws, rules, regulations and other requirements of any governmental authority having jurisdiction and to OCLC's standard policies including, without limitation, OCLC's Acceptable Use Policy, a current full version of which is published on the OCLC website and which is available on request. OCLC may inspect the Customer Content or investigate any alleged violation of this Agreement, OCLC's policies or any third-party complaints. OCLC will not access or review the contents of any stored electronic communications, except as required or permitted by applicable law or legal process. In the event that OCLC determines in its sole and reasonable discretion that any Customer Content or conduct or actions of Customer (including its employees and users) are objectionable, unlawful, potentially infringing or otherwise violate this Agreement, the Acceptable Use Policy or any other applicable policy, OCLC may take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, subscribers and/or third parties. Such corrective action includes, but is not limited to: (a) issuing a warning; (b) immediately suspending or terminating the Services; (c) restricting or prohibiting access to any Customer Content that is objectionable or otherwise violates this Agreement or applicable policy; and/or (d) disabling or removing hypertext links, Customer Content or the content of any third party from OCLC's Systems. Customer will not be entitled to a refund of any fees paid or reimbursed on account of any such action by OCLC.

**3.5 Disclosure Rights.** If and to the extent reasonably required to comply with applicable laws and lawful governmental requests, to protect OCLC's Systems and OCLC's customers, or to ensure the integrity and operation of OCLC's business and systems, OCLC may access and disclose any information it considers necessary or appropriate residing on OCLC's Systems. Customer agrees to reimburse OCLC for all costs associated with OCLC's compliance with all lawful governmental requests relating to Customer or Customer Content, including, but not limited to, warrants, subpoenas and judicial orders.

**3.6 Warranties.** Customer represents, warrants and covenants to OCLC that: (a) the Customer Content and its use will not violate, misappropriate or infringe any Proprietary Rights or any other personal, privacy or moral right, nor will same constitute a libel or defamation of any person or entity; (b) the Customer Content will not contain any harmful components, including, but not limited to, viruses, trap doors, hidden sequences, hot keys, or time bombs; (c) Customer has all the right, power and authority

necessary to use the Customer Content as described in this Agreement; and (d) the Customer will comply with all applicable laws, rules and regulations (including, but not limited to, export control, decency, privacy and intellectual property laws).

#### **4. FEES**

As long as the Main Agreement to which this service is appended is ongoing, the Customer does not need to pay an additional fee for the CONTENTdm Quick Start Service.

#### **5. TERM OF SERVICE**

**5.1** This Appendix will be considered terminated at the same time as the Main Agreement with Customer is terminated. Termination of only this Appendix for any reason may be done by either party by providing the other party thirty (30) days prior written notice.

**5.2** OCLC may immediately terminate this Appendix for Customer's or its users' violation of the Acceptable Use Policy.

**5.3** After termination of the agreement, the Customer data will be retained on OCLC Systems as back up for 6 weeks. After 6 weeks they will be completely deleted. OCLC will provide to the Customer, if requested within two weeks after termination, a copy of the metadata and content in the Customer's CONTENTdm collections. A data handling, packaging, and shipping charge will apply and be quoted to the Customer for each such request.

#### **6. RESERVATION OF RIGHTS**

**6.1 By OCLC.** OCLC is the exclusive owner of and retains all right, title and interest (including, without limitation to, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights to all materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by OCLC or its suppliers pursuant to this Agreement, and any know-how, methodologies, equipment, or processes used by OCLC to provide the CONTENTdm Quick Start Service to Customer (including, without limitation, the OCLC's Systems).

**6.2 By Customer.** Customer is the exclusive owner of and retains all right, title and interest (including, without limitation, all proprietary rights) to the Customer Content.

**6.3 By Adobe.** Adobe and Adobe PDF Library are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries. Customer acknowledges that Adobe is the owner of certain proprietary information and intellectual property rights included in the Adobe Products and the Documentation. Adobe is a third party beneficiary entitled to enforce OCLC's rights and Customers obligations hereunder and to seek appropriate legal and equitable remedies, including but not limited to, damages and injunctive relief, for Customer's breach of such obligations.

#### **7. DISCLAIMERS AND LIMITATIONS**

**7.1 Disclaimer.** OCLC exercises no control over, and accepts no responsibility for, third-party content of the information passing through OCLC's System, network hubs and points of presence, or the Internet. Customer acknowledges that OCLC's systems (including any software and any other items used or provided by OCLC in connection with any services hereunder) are provided "as is." OCLC does not make any representations or warranties of any kind, express or implied, with respect to the performance of the services or OCLC's systems, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or noninfringement or any implied warranty arising by

usage of trade, course of dealing or course of performance. OCLC makes no representations or warranties whatsoever that the services and OCLC's systems will be uninterrupted, always accessible, free of harmful components, accurate or error-free.

**7.2 Limitation of Liability.** OCLC does not accept any liability for direct and/or indirect damages and/or ensuing damage which Customer may have as a consequence of this Appendix. In no event will OCLC have any liability for unauthorized access to, or alteration, theft or destruction of information distributed or made available for distribution via the services through accident, fraudulent means or devices. Adobe and its Suppliers make no warranty, express or implied, as to merchantability, fitness for a particular purpose, or non-infringement. In no event will Adobe or its Suppliers be liable to Customer for any consequential, incidental or special damages, including any lost profits or savings, even if an Adobe representative has been advised of the possibility of such damages, or for any claim by any third party. Some state or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, or the exclusion of implied warranties, or limitations on how long an implied warranty may last, so the above limitations may not apply to Customer. To the extent permissible, any implied warranties are limited to thirty (30) days. This warranty gives Customer specific legal rights. Customer may have other rights which vary from state to state or jurisdiction to jurisdiction.

## **8. MISCELLANEOUS**

In any dispute in which Adobe is a properly named party, this Agreement will be governed by and construed in accordance with the substantive laws in force in the state of California and the courts of Santa Clara County, California shall have non-exclusive jurisdiction over any such dispute. Any additional services, upgrade of storage or Project Clients etc. that will lead to additional fees will require a separate, new Agreement under the full standard OCLC terms. The Terms and Conditions of this appendix are in addition to the Terms and Conditions of the Main Agreement. The terms and conditions set out in the Main Agreement apply in addition to the Appendix Terms and this Appendix does not change or modify these terms and conditions in any way other than for the CONTENTdm Quick Start Service. In the event of a conflict or an ambiguity between the terms and conditions in this Appendix and the Main Agreement, the terms and conditions in this Appendix shall, solely for the CONTENTdm Quick Start Service prevail over those in the Main Agreement to the extent of such conflict or ambiguity.

### **EXHIBIT A: SERVICE LEVEL AGREEMENT**

This Service Level Agreement ("SLA") sets forth the service level and performance objectives of OCLC Online Computer Library Center, Inc. in providing the CONTENTdm Quick Start Service to you. OCLC will use commercially reasonable efforts to meet the following service level and performance objectives to support OCLC's Systems.

#### **1. Uptime Commitment**

OCLC will use commercially reasonable efforts to ensure OCLC's Systems are available 99% of the time (the "Uptime Commitment"). All Uptime Commitment will be measured within OCLC's System on a monthly basis calculated to include twenty-four (24) hours per day over each month, but excluding from the numerator and denominator in the calculation the duration in time of any temporary shutdowns due to scheduled maintenance (which will not exceed in the aggregate sixteen (16) hours per month), telecommunications or power disruptions caused by third parties, and any other causes beyond OCLC's reasonable control. OCLC agrees to notify you promptly of any factor, occurrence, or event coming to its attention that may affect OCLC's ability to meet the Uptime Commitment, or that is likely to cause any material interruption in the Services.

#### **2. Systems Management**

**2.1 Monitoring.** OCLC will monitor and maintain OCLC's Systems in working order each day (24 x 7). OCLC will proactively manage and monitor all application server hardware devices and software to ensure optimal performance and reliability as well as to detect abnormal events or exceeded utilization or performance thresholds. OCLC will proactively monitor the status of the operating systems (e.g., CPU, disk I/O, memory, processes, etc.), critical application layer daemons and processes and trigger appropriate event notification alarms caused by errors, exceeded thresholds, etc.

**2.2 Maintenance.** OCLC will operate, monitor and administer all servers, applications and networks supporting the Services. In order to provide such coverage, OCLC may utilize a mixture of on-site and on-call support staff, automated server monitoring and automated paging technology. OCLC's on-site coverage is during OCLC's normal business hours, Monday through Friday, excluding holidays recognized by OCLC.

**2.3 Scheduled Outages.** Maintenance outages, if necessary, will be conducted at a time and in a manner to minimize adverse impacts on the Services. Maintenance outages will include, but are not limited to the installation of upgrades, service packs and routine server or application configuration changes. Other maintenance outages may be necessary from time to time.

**2.4 Change Control.** OCLC will install new equipment, software, releases, upgrades, fixes, patches and other items necessary to maintain OCLC's Systems to industry standards. OCLC will proactively gather information from appropriate server, peripheral, operating system or database vendors regarding upgrades, defect patches or fixes.

**2.5 Notice.** OCLC will use commercially reasonable efforts to give you three (3) days notice prior for all non-routine management, maintenance, change control or other actions by OCLC that may material impact the Service adversely.