



# ENQUIRE SERVICE AGREEMENT

Subscribing library may order Enquire by agreeing to this Enquire Service Agreement (the "Agreement") and Attachment A the "QuestionPoint Service Terms". Use of Enquire is governed by this Agreement and the QuestionPoint Service Terms attached hereto.

WHEREAS Enquire is an online reference service, providing both a collaborative service and the means for locally delivered services;

AND WHEREAS the parties are desirous of entering into this Agreement to make access to Enquire available to the Subscribing Library.

THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged IT IS AGREED AS FOLLOWS:

## 1. OVERVIEW

### **Service Definition**

Enquire is an online reference service, providing both a collaborative service and the means for locally delivered services. Staffed co-operatively by public libraries within the United Kingdom in association with international partners, Enquire instantly connects people to library staff trained to help them find answers to their questions. -Enquire is available 24 hours a day, every day and is free to -your users, who may use it at any time.

Enquire has established organisational structures and mechanisms with participating libraries for purposes such as advisory, quality assurance and peer review.

### **- Service Provider**

OCLC (UK) Ltd is a 100% subsidiary of OCLC EMEA B.V., a Dutch limited liability company that is fully owned by OCLC Online Computer Library Center, Inc. ("OCLC"). OCLC (est. 1967), headquartered in Dublin, Ohio, USA, is a not-for-profit organisation that provides computer-based cataloguing, reference, resource sharing and preservation services to more than 50,000 libraries in over 100 countries and territories. OCLC (UK) Ltd is a private company with limited liability registered in England and Wales under company number 498573, whose registered office is at City Gate, 8 St Marys Gate, Sheffield. S1 4LW, England and has a branch office in Birmingham.

Subscribing public library services in the UK, through a reciprocal, co-operative arrangement with library staff internationally, deliver Enquire around the clock. UK Libraries staff the service during agreed hours. International library partners provide 24-hour coverage. In return, UK libraries provide cover for international partner services.

## **Governance**

Participation in Enquire is open to any public library in the U.K. Service management and the technical platform are provided by OCLC to all subscribing authorities. Enquire service management will oversee existing organisational structures such as Advisory and Quality Review groups for service delivery. A Steering Group including representation from public library authorities, OCLC and Arts Council England (as successor to the MLA) acts as the decision-making body for service development and monitoring activities.

## **2. RESPONSIBILITIES AND OBLIGATIONS**

Signatories to this agreement undertake to provide the following:

### **OCLC (UK) Ltd. to provide:**

#### 1. Service management, including:

- Steering Group support
- Administration: including service delivery rota and documentation
- Training: in use of software tools and in virtual reference best practice
- Evaluation: quarterly reporting on usage and monitoring quality
- Support: technical and functional assistance during standard support desk hours as advertised on the OCLC Web site <http://www.oclc.org/uk/en/support/>

#### 2. Technical platform and tools

- Access to the QuestionPoint service platform under the QuestionPoint Service Terms, attached hereto.
- Further to the functionality required for participation in the national Enquire service, one additional chat queue will be provided for any participating authority wishing to offer a separate local chat service. (Should any authority require more than one additional chat queue for local services, these may be purchased according to current price schedules.)

#### 3. Additional staffing capacity and out of hours coverage

- Provided through participation in the 24/7 Reference Cooperative, an international cooperative of reference librarians who agree to answer questions for each other in real time using the QuestionPoint virtual reference software.

### **Subscribing library authorities to provide:**

1. Funding through subscription support according to pricing and payment terms in section 5 below

2. Local dissemination and promotion

3. Staffing, either (a) or (b) below:

a. For libraries choosing the Staffing option:

- Rota duty according to agreed scheduling to ensure service availability
- Ensuring reference service competencies of staff
- Attendance at software training and ability to perform cascade training to peers
- Participation in quality monitoring and evaluation
- Coverage for international partner services by responding to queries from their users during normal UK Enquire service hours o Libraries that elect to participate in Enquire also elect to participate in the QuestionPoint 24/7 Reference Cooperative and must agree to abide by the 24/7 Reference Cooperative Policies and Procedures as posted on the QuestionPoint Web site at <http://wiki.questionpoint.org/247-Policies>
- Pick up a minimum of 10 chat sessions monthly (120 chats per annum) including 24/7 Reference Cooperative chat sessions.

b. For libraries choosing the Non-staffing option:

- Responding to referred questions from local citizens via QuestionPoint software.

### **3. PRICING AND PAYMENT**

#### **Payment terms**

1. Fees shall be paid annually in advance and shall be invoiced by OCLC (UK) Ltd. at the beginning of a Subscription Period. In the event an agreement is concluded in the course of a Subscription Period, the fee due shall be a proportional part of the period fee. All prices are exclusive of VAT.

2. Payment is due within 30 days of the invoice date, provided the invoice is posted to the customer within 24 hours of the invoice date.

3. A customer failing to pay within the term specified in clause 2 shall be deemed to be in default, without any notice of default being required. Without prejudice to any other rights or remedies of OCLC (UK) Ltd., the customer shall be liable to pay interest to OCLC (UK) Ltd. at the rate of 3% per annum above the base rate of Barclays Bank plc then in effect from the date of the invoice until the outstanding amount is paid in full. In addition, OCLC (UK) Ltd. shall, without prejudice to any of its other rights or remedies, be entitled to suspend performance of services immediately.

4. In the event of late payment, the customer shall compensate OCLC (UK) Ltd. for all reasonable costs and expenses (including legal fees, court fees, fees of debt-collecting agencies, etc.) incurred by OCLC (UK) Ltd. in collecting or attempting to collect amounts outstanding.

## **4. TERM AND TERMINATION**

1. This Agreement shall come into force on the date specified above and shall stay in force until terminated at the date specified above or earlier, only in the cases as set out under 2 and 3 below.
2. Without prejudice to any other rights of a party under this Agreement, each party may terminate this Agreement if the other party fails to fulfil a material obligation under this Agreement after it has been properly notified thereof, in writing and with details of the grounds for termination, and has been granted a reasonable period to remedy the failure.
3. Without prejudice to any other rights of a party under this Agreement, each party may terminate this Agreement with immediate effect if the other party (i) becomes insolvent or goes into liquidation; (ii) makes a voluntary arrangement with its creditors; or (iii) an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets or such party.
4. Each party may terminate the Agreement by registered letter to the other party at the end of a Subscription Period, taking into account a notice period of 3 months. A termination notice which is received after the 3 month notice period, will not come into effect until the end of the next Subscription Period. If termination is done in writing by unregistered letter or e-mail the termination needs the written confirmation of OCLC in order for the termination to become effective.
5. Termination of this Agreement shall not affect the parties' rights to enforce the performance of any obligation arising prior to termination.
6. In the event of a conflict between this Agreement and the QuestionPoint Service Terms, this Agreement shall govern.

## **ATTACHMENT A QUESTIONPOINT SERVICE TERMS**

**â**                        **ENQUIRE**

### **1. DEFINITIONS**

A. "24/7 Reference Cooperative" means a cooperative arrangement which enables participating libraries to provide a 24 hour a day, 7 day a week live chat based reference service for their patrons. Libraries that elect to participate in the 24/7 Reference Cooperative must agree to abide by the 24/7 Reference Policies currently available on the QuestionPoint.org web site at [2]<http://wiki.questionpoint.org/247-Policies>. Libraries that elect to participate in the cooperative agree to contribute staffing to the cooperative, and are assessed an annual cooperative coverage fee.

B. "Authorized Users" are agents or librarians of Subscriber authorized by Subscriber to use the Service.

C. "Base Management Environment" means a web-based service that connects the patron at a local library with a reference librarian (either from the local library or from any cooperative library that the local library has access to) to obtain answers to reference questions. This service includes access to live chat software, a Local Knowledge Base, the Global Knowledge Base and the Global Reference Network.

D. "Effective Date" means the date specified in Section 4 of the Enquire Service Agreement.

E. "End Users" means the patrons of libraries or other institutions served by the libraries and other organizations that subscribe to the Service. Patron access via a remote location is initiated from a page established by the Subscriber.

F. "Global Knowledge Base" means a database in which selected questions and answers will be retained in order to serve as a resource for participating Subscribers.

G. "Global Reference Network" means a group of Subscribers that have agreed to participate in a librarian-to-librarian network according to member guidelines, available at [3]www.questionpoint.org. Members of the Global Reference Network have access to the global profile database, best match routing, the Global Knowledge Base, and cooperative capabilities including coverage and referral groups. The 24/7 Reference Cooperative is a subscription-based service within the Global Reference Network.

H. "Local Knowledge Base" means a section of the Global Knowledge Base, visible only to a certain local group, in which selected questions, answered at the local level, can be retained in order to serve as a resource for libraries participating in that local group.

I. "Member Guidelines" means rules and recommended procedures developed and agreed on by the Global Reference Network members (e.g., best practices in digital reference service, guidelines for institution profiling, recommendations for question handling in the Global Reference Network, and Global Knowledge Base editorial guidelines and collection development policy).

J. "Member Profile Database" means a database containing profile information of participating Subscribers.

K. "Service" means the QuestionPoint Service.

L. "Service Unit Profile" used with the Base Management Environment provides administrative functionalities and usage statistics. Multiple Service Unit Profiles enable each Subscriber or subject area to obtain individual usage statistics. Each Service Unit Profile includes a database-driven policy page that enables the Subscriber or subject area to characterize its policies and procedures, thus facilitating any cooperative answering networks that the Subscriber may participate in.

M. "Subscriber" means libraries, library consortia and their affiliated member libraries, and other organizations that agree to certain terms and conditions and provide payment in exchange for

their use of the Service or are otherwise authorized to use the Service, pursuant to agreements with Subscribers.

N. "Subscription Period": means a period of one year commencing either on an agreed date of the year or upon the delivery of the Service, as indicated on the Order Form and/or invoice.

## **2. SUBSCRIPTION**

Participation in the QuestionPoint Service is subject to written acceptance by OCLC Online Computer Library Center, Inc, ("OCLC"). OCLC's written acceptance will be indicated by a fully executed Enquire Service Agreement or may be indicated by issuance to Subscriber of authorization numbers and passwords by which Subscriber and/or Authorized Users (as defined herein) may access and use the QuestionPoint Service ordered by Subscriber as such Service is described in OCLC's prevailing, published product descriptions. The QuestionPoint Service and the Global and Local Knowledge Bases will be subject to the following terms and conditions ("Terms"). All substantial changes to license rights, obligations and rules or Terms of Service will be presented to Subscriber at least thirty (30) days in advance. Thereafter, Subscriber's continued use of the QuestionPoint Service constitutes acceptance of any and all Terms of Service.

## **3. SERVICE DESCRIPTION**

The QuestionPoint Service will enable Authorized Users to:

- a. Access a Base Management Environment for the purposes of sharing their reference expertise and enabling access to their analog and digital collections with participating Authorized Users;
- b. Access one or more Base Management Environments that include synchronous and asynchronous question asking tools (web forms, email, and chat abilities) for End Users and a profiling service, both Global and Local Knowledge Bases, administrative functionalities and usage statistics for Subscribers and their Authorized Users;
- c. Escalate questions from the Base Management Environment Service into the Global Reference Network. Questions escalated into the Global Reference Network will automatically be routed to the "best fit" Subscriber institution for a response by an Authorized User at that institution.

## **4. SUBSCRIBER PARTICIPATION**

Except as expressly stated herein, Subscriber and Authorized Users acquire no ownership rights to any data or portions thereof provided in any form by the QuestionPoint Service. No part of any data provided in any form by the QuestionPoint Service may be disclosed, reproduced, transferred or transmitted in any form without the prior written consent of OCLC, except as expressly permitted hereunder. Subscriber may not resell or otherwise transfer the QuestionPoint Service. Authorizations and passwords will be restricted to accessing those services available within the QuestionPoint Service for which Subscriber has a current subscription. Subscriber shall not omit, obscure or hide from any Authorized 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 Authorized User of the QuestionPoint Service by OCLC or any involved third party service or provider.

Subscriber hereby grants to OCLC, its users and designees, the perpetual, nonexclusive, royalty-free, transferable, sub-licensable, world-wide right to use (in compilations and otherwise), copy, display, publish, prepare derivative works from, distribute and transfer all question and answer pairs (including compilations thereof and derivative works created therefrom) submitted to the Global Knowledge Base by Subscriber and/or Authorized User under these Terms, under any copyright, patent, secrecy or other proprietary right therein owned or controlled by Subscriber. Subscriber represents that it has no facts upon which a claim by a third party could be based and that OCLC's exercise of the right granted in this Section would infringe such third party's rights. Moreover, Subscriber shall notify OCLC immediately of any such facts of which Subscriber becomes aware after the Effective Date of these Terms, and after receipt of such notice, OCLC may terminate its obligations under these Terms with respect to records affected by such facts and/or elect for Subscriber to offer OCLC a revised license for such records which OCLC could exercise without being subject to a claim that such exercise would infringe a third party's rights under such facts, at OCLC's option. This provision shall survive termination of these Terms.

Payment terms and conditions are governed by the Enquire Service Agreement.

In the event that OCLC determines, adds to, deletes from or changes at any time (i) the technical and functional specifications, form and formats or availability of features and databases accessible by means of the QuestionPoint Service and (ii) database license rights and obligations and rules, OCLC will provide written notice to Subscriber at least thirty (30) days in advance via the QuestionPoint Listserv.

## **5. USE OF SERVICE**

Subscriber is solely responsible for all security for and all use, including unauthorized use, of the QuestionPoint Service initiated by Subscriber's QuestionPoint Service authorization numbers and passwords, and shall promptly notify OCLC in writing of lost or stolen passwords and authorization numbers. Subscriber shall work with OCLC to terminate unauthorized use of the QuestionPoint Service. Subscriber's obligations under this Section are material to these Terms. OCLC's sole obligation with respect to passwords and authorization numbers shall be to exert reasonable efforts to maintain the confidentiality of Subscriber's passwords and authorization numbers in OCLC's possession and to terminate lost or stolen passwords and authorization numbers upon receipt of Subscriber's notice. Upon such termination, OCLC will issue new passwords and authorizations to Subscriber provided that Subscriber is in compliance with these Terms and the lost or stolen passwords or authorization numbers were initially provided by OCLC.

## **6. GENERAL TERMS**

OCLC shall exert its reasonable best efforts to provide the QuestionPoint Service in accordance with then-current published product descriptions. Subscriber shall notify OCLC of

nonconformities between the QuestionPoint Service and such descriptions, and of any errors or inaccuracies in the databases of which Subscriber becomes aware. It is understood that, while OCLC and its licensors have attempted to minimize inaccuracies and defects in the data and Services furnished, the data and Services are provided AS IS. THE LIBRARY OF CONGRESS AND OCLC MAKE NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE WITH RESPECT TO THE QUESTIONPOINT SERVICE OR ITS CONTENT. THE QUESTIONPOINT SERVICE AND ALL CONTENT ARE PROVIDED AS IS AND WITHOUT WARRANTY OF ANY KIND.

Subscriber acknowledges and agrees that Subscriber will require End Users to read and accept Terms of Service for use of the QuestionPoint Service. The Terms of Service will be made available to End User and must be accepted by End User before End User may submit a question or use the QuestionPoint Service in any way.

OCLC does not share personal information about individual users with any third party except to third parties involved with the provision of the QuestionPoint Service. If a user submitting their E-mail address or name is suspected of being younger than 13 years of age, OCLC will delete this information from its records in accordance with the Children's Online Privacy Protection Act (15 U.S. Code, 6501 et seq.).

Neither party shall be liable for any failure or delay in performance hereunder (other than of an obligation to pay money) due to any cause beyond its 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 or failure of the OCLC systems or carriers or other difficulties with telecommunications networks provided that the party so effected notifies the other promptly of the commencement, nature and estimated duration of the cause.

Except as otherwise expressly provided for herein: (a) OCLC and/or its licensors shall not be liable for any loss or damage, lost profits, loss of business, loss of or damage to data, downtime or unavailability, of or in connection with Subscriber's use of the QuestionPoint Service and databases or data available over the QuestionPoint Service, or from lost or stolen passwords or authorization numbers; (b) OCLC and/or its suppliers shall have no liability or obligation to Subscriber, and Subscriber shall have no liability or obligation to OCLC hereunder for indirect, incidental, consequential or exemplary damages, whether based on contract, tort or any other legal theory and regardless of whether a party foresaw such damages; and (c) OCLC and/or its licensors shall have no liability nor obligation with respect to the provision or use of databases available by means of the QuestionPoint Service, including, without limitation, for any claims based on infringement of copyright, patent, trade secret or other right, libel, slander or invasion of privacy or claims based on errors, inaccuracies or omissions in or loss of the data. In no event, even if the foregoing limitations are held to be not enforceable, shall OCLC's liability hereunder exceed the refund of subscription fees earned by OCLC and paid for by Subscriber for Services and data hereunder for the most recent year.

Subscriber shall, to the fullest extent permitted under applicable law, indemnify and hold OCLC harmless from all claims based upon or arising from (i) the use of the QuestionPoint Service



associated with Subscriber's passwords or authorization numbers except to the extent directly caused by a defect or malfunction in portions of the QuestionPoint Service under OCLC's direct control; and (ii) providing the Service to End Users, including but not limited to, Subscriber's proper notification to End Users regarding use of the Service, retention of an End Users' personal information, and any transfer of an End Users' personal information. OCLC shall indemnify and hold Subscriber harmless from all claims based upon the provision of the QuestionPoint Service.

Subscriber represents and warrants that, when submitting answers using information from databases or other resources that are in any way proprietary, Subscriber's use is in accordance with the terms governing use of those databases or resources. Subscriber shall indemnify and hold OCLC harmless from any liability for damages arising from third party infringement claims.

OCLC may suspend Subscriber's access to the QuestionPoint Service upon written notice at any time that Subscriber is in breach of its material obligations under these Terms, provided that in the event that Subscriber cures such material breach within thirty (30) days, OCLC shall restore such access. In the event that Subscriber fails to cure the breach within thirty (30) days, OCLC may terminate these Terms upon notice to Subscriber.

These Terms shall remain in effect for the term specified in the Enquire Service Agreement.

No purchase orders separately submitted by Subscriber shall apply to modify or supplement these Terms or the attached Enquire Service Agreement. These Terms, together with the Enquire Service Agreement, shall be the complete and exclusive statement of agreement of the parties with respect to the subject matter hereof. Subscriber may not assign its rights or obligations under these Terms. This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with these Terms will be subject to and within the jurisdiction of the English courts. The United Nations Convention on International Sales of Goods shall not apply to these Terms.

Subscriber agrees that the QuestionPoint Service authorization numbers and passwords issued by OCLC hereunder may not be used outside the territorial limits of the country in which they were originally issued to Subscriber, as indicated by Subscriber's address on the Enquire Service Agreement, except in full compliance with U.S. export regulations. Subscriber shall be the exporter of record of all the QuestionPoint Service products, services and data delivered to it by OCLC outside the U.S. by electronic means or otherwise and 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. OCLC's obligations hereunder are contingent upon necessary export licenses being obtained from federal agencies of the U.S.

Any notices desired or 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 if sent by certified or registered mail, return receipt requested, to the address of the other party set forth below or to such other address as has been furnished by means of a notice given in accordance with this Section or via facsimile with a copy by mail:

If to OCLC: OCLC Online Computer Library Center, Inc.  
6565 Kilgour Place  
Dublin, Ohio 43017-3395  
USA  
FAX: 614-764-0740  
Attention: Legal Department

If to Subscriber, see address in the Enquire Service Agreement.