

**Section 1 The name and contact information of the Institution as entered in the order form will constitute the defined term “Institution” as used throughout the Master Services Agreement****Section 2 Scope & Construction**

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

**Section 3 Definitions**

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

**Section 4 Products and Services**

- 4.1 General.** OCLC will provide Institution the Products and Services subscribed to by Institution in accordance with this Agreement and OCLC’s then-current published Product Descriptions for the Product or Service. Institution shall provide OCLC with the assistance and information OCLC reasonably needs to perform the Services properly or where OCLC otherwise reasonably requests. OCLC shall not be liable for any failure to perform its obligations arising from Institution’s failure to provide such assistance or information.
- 4.2 License.** Subject to the terms of this Agreement and the applicable Schedule(s), Institution’s license to use the Products and Services identified in the executed Schedules may be pursuant to a hosted license (for Hosted Services) or a non-hosted license (for Products). For Products paid for by Institution, OCLC grants Institution a nonexclusive, nontransferable license to install and use the Product solely for the noncommercial purposes described in the Product Description and the applicable Schedule. For Hosted Services subscribed to by Institution, OCLC will provide access to the Hosted Service, and if applicable a license to install and use any local software components of the Hosted Service, all solely for the noncommercial purposes described in the Product Description and the applicable Schedule.
- 4.3 Modifications.** OCLC may change or modify a Product or Service from time to time in its discretion. OCLC shall notify Institution of material changes to the respective Product or Service by such means as reasonably determined by OCLC. Any new Product or Service functionality made available by OCLC shall be subject to this Agreement and any additional terms and conditions including applicable fees as OCLC may require Institution to accept prior to use.

- 4.4 Support.** Support services will be provided in accordance with the support service description available at <http://www.oclc.org/support/home.en.html>. Generally email support is available at [support@oclc.org](mailto:support@oclc.org) and telephone support is available at 1-800-848-5800, weekdays between 7AM and 9PM eastern time.
- 4.5 OCLC Intellectual Property.** OCLC and/or its licensors or suppliers are the exclusive owners of and retain all right, title, and interest (including all copyrights, trademarks, patents, and any other proprietary rights) to the Products, Services, WorldCat, and all other materials produced or provided by OCLC. All rights not expressly granted by OCLC are reserved.
- 4.6 Limitations.** Institution shall only use the Products and Services in accordance with the terms of this Agreement and for the purposes specified in the Product Descriptions.

## Section 5 Term and Termination

- 5.1 Term.** This Agreement commences on the Effective Date and will remain in full force and effect until the expiration or termination of all Schedules unless terminated earlier by one of the parties in accordance with Section 5.2. Unless otherwise specified Schedules shall commence upon execution and shall continue for so long as Institution has access to the applicable Products or Services.
- 5.2 Termination.** This Agreement or individual Schedules may be terminated in one of the following ways:
- By either party, effective at the end of the initial subscription period or any renewal period, by providing the other party with at least 30 days prior written notice of its desire to not renew a Product or Service;
  - By either party if the other party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for all or a substantial part of its property, is subject to any proceeding under any bankruptcy or insolvency law, or has wound up or liquidated, voluntarily or otherwise;
  - By the non-breaching party if a party commits a material breach of its obligations under this Agreement and has not cured such breach or failure within 60 days of receiving written notice from the non-breaching party. OCLC reserves the right, however, to immediately suspend Institution's access to the OCLC Services in the event of Institution's material breach until such time as the material breach is cured; or
  - As otherwise explicitly provided in this Agreement.
- 5.3 Effect of Termination.** Termination of this Agreement shall terminate all Schedules, termination of a Schedule will not terminate the Agreement or any other Schedule. Upon termination of this Agreement or any Schedule the rights granted by OCLC in the applicable Schedule or Agreement are terminated unless otherwise provided in such Schedule. After termination and upon request, OCLC will promptly return or destroy all applicable Institution Data, except however, OCLC may retain Institution Data in back-up files provided that the confidentiality and security obligations contained herein shall apply. OCLC will provide Institution access to, Institution Data for 90 days after the effective date of termination, after which, OCLC shall have no obligation to maintain any Institution Data.

## Section 6 Fees and Payment Terms

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

## Section 7 Disclaimer

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND OCLC AND ITS THIRD PARTY SUPPLIERS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF THE PRODUCTS OR SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. OCLC MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE PRODUCTS AND SERVICES WILL ALWAYS BE ACCESSIBLE, FREE OF HARMFUL COMPONENTS, ACCURATE OR ERROR-FREE. IN NO EVENT WILL OCLC BE LIABLE FOR ANY LOSS ARISING OUT OF FAILURE OF THIRD PARTY PRODUCTS OR SERVICES OR OTHER EVENTS OUTSIDE OF OCLC'S REASONABLE CONTROL. THIS SECTION WILL NOT APPLY TO DAMAGES THAT CANNOT BE EXCLUDED BY LAW (IN WHICH EVENT THE LIABILITY SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED).

## Section 8 Privacy and Security

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

## Section 9 Limitation of Liability

OCLC WILL HAVE NO LIABILITY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT, LOSS, INACCURACY, OR DESTRUCTION OF INFORMATION OR DATA COLLECTED, STORED, DISTRIBUTED, OR MADE AVAILABLE VIA THE PRODUCTS AND SERVICES, INSTITUTION'S USE OR INABILITY TO USE THE PRODUCTS AND SERVICES, ANY CHANGES TO OR INACCESSIBILITY OF THE PRODUCTS AND SERVICES, ANY DELAY OR FAILURE OF THE SERVICES, OR FOR LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, EVEN IF OCLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, OCLC'S LIABILITY TO INSTITUTION FOR ANY REASON AND UPON ANY CAUSE OF ACTION WILL BE LIMITED TO THE AMOUNT INSTITUTION ACTUALLY PAID OCLC FOR THE INDIVIDUAL IMPLICATED OCLC PRODUCTS OR SERVICES COVERED UNDER THIS AGREEMENT OVER THE 12 MONTHS PRIOR TO WHICH SUCH CLAIM AROSE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. FEES UNDER THIS AGREEMENT ARE BASED UPON THIS ALLOCATION OF RISK. THIS SECTION WILL NOT APPLY TO DAMAGES THAT CANNOT BE LIMITED OR EXCLUDED BY LAW (IN WHICH EVENT THE LIABILITY SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED).

## Section 10 Use of Products and Services

### 10.1 Institution Data

- a) **Ownership.** Institution, and/or its suppliers and affiliates, retains all right, title and interest (including, without limitation, all proprietary rights) to Institution Data, except for rights granted to OCLC and its affiliates under this Agreement. Institution is solely responsible for the accuracy, completeness, and legality of Institution Data. Institution is responsible for obtaining all permission and other rights necessary to provide Institution Data to OCLC. Institution will not provide

OCLC with Institution Data that Institution does not have the right to provide for use in connection with the Products or Services.

- b) **License Rights.** Institution grants OCLC a global, non-exclusive, royalty-free, transferable and sub-licensable right to use the Internal Data to the extent necessary for the provision of the Products and Services. Institution grants OCLC, OCLC participants, non-participant users, and OCLC designees a global, perpetual, non-exclusive, royalty-free, transferable, and sub-licensable right to host, reproduce, transmit, store, publish, distribute, modify, create derivative works from, and otherwise use Shared Data. Institution Data shall be supplied to OCLC in a format compatible for use with the Products and Services.

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

### **10.3 Acceptable Use Policy (“AUP”)**

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

## **Section 11 Warranties**

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

intellectual property rights or other rights of a third party or violate any laws by exercising the rights and licenses granted under this Agreement. To the extent permitted by law, Institution hereby indemnifies OCLC from any such claims in this respect.

## Section 12 General

- 12.1 OCLC Membership.** Institution and each library owned or operated by Institution meeting the requirements for OCLC membership established by OCLC in accordance with OCLC's then-current governance structure and as set forth in the then-current version of OCLC's Membership and Governance Protocols shall become an OCLC member. The current version of OCLC's Membership and Governance Protocols is located at [http://www.oclc.org/us/en/membership/membership\\_protocols.pdf](http://www.oclc.org/us/en/membership/membership_protocols.pdf). As a condition of obtaining and retaining status as an OCLC member, each shall comply on an ongoing basis with all requirements and policies applicable to OCLC members.
- 12.2 Export Laws.** Services may be used only in full compliance with U.S. export regulations. OCLC's obligations hereunder are contingent upon necessary export licenses being obtained from federal agencies of the U.S.
- 12.3 No Assignment.** Institution may not assign, without the prior written consent of OCLC, any rights, duties, or obligations under this Agreement to any person or entity, in whole or in part.
- 12.4 Independent Contractors.** The relationship of the parties is that of independent contractors, and no agency, employment, partnership, joint venture, or any other relationship is created by this Agreement.
- 12.5 Force Majeure.** Neither party shall be responsible for losses or damages to the other occasioned by delays in the performance or the non-performance of any of said party's obligations (other than the obligation to make payments when due) when caused by acts of God, acts of the other party or any other cause beyond the control of said party and without its fault or negligence.
- 12.6 Non-Waiver.** A failure or delay in enforcing an obligation under this Agreement does not prevent enforcement of the provision at a later date. A waiver of a breach of one obligation does not amount to a waiver of any other obligation, and it will not prevent a party from subsequently requiring compliance with that obligation.
- 12.7 Severability.** If any provisions of this Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement.
- 12.8 Entire Agreement.** The Agreement and any Schedules constitute the complete agreement between the parties and supersedes and replaces all prior agreements, oral and written, between the parties relating to the subject matter of this Agreement. No purchase orders submitted by Institution shall modify or supplement this Agreement. Except as otherwise provided herein, this Agreement may not be amended or supplemented except in writing signed by both parties.
- 12.9 Notice.** Except as stated elsewhere in the Agreement all notices shall be in writing and shall be deemed sufficient if (a) received by the party via e-mail to the e-mail address for such party set forth in Section 1, (b) delivered by hand, or (c) sent by certified or registered mail, return receipt requested, to the address for such party set forth in Section 1, or to such other address as has been furnished by means of a notice given in accordance with this Section.
- 12.10 Counterparts.** This Agreement may be executed in counterparts and/or via facsimile transmission or electronic copy, any one or form of which will be deemed to constitute an original, but all of which will constitute one instrument.

## Section 13 Special Terms for Group Orders Only

Where a lead institution in a consortium (the "Group Administrator") is ordering on behalf of itself and other consortium members, Section 13 applies:

- 13.1 Ordering.** Group Administrator may order the Service on behalf of consortium members by completing the relevant portions of the order form and agreeing to this Agreement. Group Administrator also orders and allocates authorizations and passwords for the Service on behalf of consortium members listed on the Order Form. Group Administrator is not a buyer of the Service for resale. Any material change in group membership or group participation may result in commensurate changes in the fees for the applicable Service.
- 13.2 Consortium Member's Agreement.** Group Administrator warrants, as the consortium agent, that it is authorized to and hereby binds consortium members to this Agreement and shall indemnify OCLC from all loss, expense and damage arising from a breach of such warranty. Group Administrator shall provide each consortium member with a copy of this Agreement prior to Product and Service activation. Each order for consortium members shall constitute a binding contract between OCLC and the consortium member.
- 13.3 Payment by Group Administrator.** Group Administrator shall be liable for paying to OCLC all charges and applicable taxes for consortium members for the Products and Services in accordance with the terms of this Agreement.
- 13.4 Non-exclusivity.** Nothing herein shall limit OCLC's right to distribute any Products or Services independent of Group Administrator.