

## **Amended and Restated Agreement**

This Amended and Restated Agreement, entered into by and between OCLC, Inc. (formerly OCLC Online Computer Library Center, Inc.) (“OCLC” or “Vendor”) and the City and County of Denver (“Institution” or “City” and, together with OCLC, the “Parties”) is effective as of the date of last signature below (the “Effective Date”).

**WHEREAS**, the Parties entered into that certain Agreement, dated as of April 14, 2010 (the "CONTENTdm Agreement");

**WHEREAS**, the Parties entered into that certain Agreement, dated as of June 1, 2013, which expired by its terms on June 30, 2014 (the “QuestionPoint Agreement”);

**WHEREAS**, the Parties entered into that certain Amendatory Agreement to the CONTENTdm Agreement, dated as of May 20, 2014 (the "First Amendment");

**WHEREAS**, the Parties entered into that certain Revival and Second Amendatory Agreement to the CONTENTdm Agreement, dated as of May 26, 2015; and

**WHEREAS**, the Parties desire to amend and restate the CONTENTdm Agreement and the QuestionPoint Agreement in their entirety, together with all Amendments;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

## **Section 1 Software License, Support and Maintenance to be Provided and Services to be Performed**

OCLC, under the general direction of, and in coordination with, the City's Librarian or other designated supervisory personnel (the "Manager") agrees to provide the products and services as described herein and on the attached Schedules (as defined herein).

## **Section 2 Scope & Construction**

This Amended and Restated 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 Amended and Restated Agreement. In case of a conflict in terms between the Amended and Restated Agreement and any applicable Schedule, the terms and conditions of the Amended and Restated Agreement 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 Amended and Restated Agreement controls in lieu of such attached master services 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 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated 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, Holdings Data, and other data not considered Internal 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 those Products and Services to which it subscribes, in accordance with this Amended and Restated Agreement and as described in the version of each Product or Service's respective Product Description active on the Effective Date. Product Descriptions and brochures can be found at <https://www.oclc.org/en/services.html>. 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 Amended and Restated 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 should there be any 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 Amended and Restated Agreement.

- 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.
- 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 Amended and Restated Agreement and for the purposes specified in the Product Descriptions.

## **Section 5 Term and Termination**

- 5.1 Term.** This Amended and Restated Agreement shall commence on the Effective Date and shall remain in full force and effect until all active Schedules are terminated in accordance with Section 5.2. Unless otherwise specified in a pricing document, individual Schedules shall commence upon execution and shall remain in full force and effect for the duration that Institution has access to the applicable Products or Services.
- 5.2 Termination.** This Amended and Restated 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 Amended and Restated Agreement and has not cured such breach or failure within 30 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 Amended and Restated Agreement.
  - The Institution has the right to terminate the Agreement for cause after giving OCLC 30 days to cure, Institution may then terminate if OCLC fails to cure. The Institution has the right to terminate without cause upon ninety (90) days prior written notice to the OCLC.
- 5.3 Effect of Termination.**

- Termination of this Amended and Restated Agreement shall terminate all Schedules; however, termination of a Schedule will not terminate the Agreement or any other Schedule. Upon termination of this Amended and Restated 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.
- If this Amended and Restated Agreement is terminated by the City, Vendor shall be compensated for, and such compensation shall be limited to, (i) the sum of the amounts contained in invoices which it has submitted, and which have been approved by the City; (ii) the reasonable value to the City of the work which Vendor performed prior to the date of the termination notice, but which had not yet been approved for payment; and (iii) the cost of any work which the Manager approves in writing which he determines is needed to accomplish an orderly termination of the work. The City shall be entitled to an immediate prorate refund of any prepaid fees for services not provided as of the date of termination.

## **Section 6 Fees and Payment Terms**

- 6.1 Fees.** Institution shall pay the applicable charges based on their agreed upon pricing document or, in the absence of an agreed upon pricing document, OCLC's prevailing price for the Products and Services. Fees are exclusive of any taxes and shall be paid in the currency and to the address stated on the invoice. 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 Amended and Restated Agreement, justifying OCLC's suspension of Products and Services.
- 6.2 Reimbursement Expenses.** The fees specified above include all expenses, and no other expenses shall be separately reimbursed hereunder.
- 6.3 Invoicing.** Vendor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's Prompt Payment Ordinance.
- 6.4 Price Changes.** 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. Notwithstanding the foregoing, OCLC

will not change any prices/fees contained in an agreed to price quote or renewal notice prior to the expiration of the quote or renewal notice.

- 6.5 Non-refundable.** Institution will not be entitled to a refund of any implementation or pre-paid fees under this Amended and Restated Agreement unless (i) OCLC terminates the Agreement or a Schedule pursuant to Section 5.2 (a), or (ii) Institution terminates the Agreement or a Schedule pursuant to Section 5.2 (c); in which event, OCLC will refund that portion of fees pre-paid by Institution corresponding to the period after termination.
- 6.6** Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by OCLC under the terms of this Agreement for any amount in excess of the sum of **ONE MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS** (\$1,375,000.00). OCLC acknowledges that any work performed by OCLC beyond that specifically authorized by the City is performed at OCLC's risk and without authorization under this Agreement.

## **Section 7 Disclaimer**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AMENDED AND RESTATED 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 (or other national identification 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, disclosure 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 non-public personal data unless such breach is unlikely to result in material harm to Institution or the data subject, or as otherwise provided by law. 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 Maximum Contract Liability**

**9.1 OCLC Limitation of Liability. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS,** OCLC WILL HAVE NO LIABILITY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES FOR ANY MATTER ARISING FROM OR RELATING TO THIS AMENDED AND RESTATED 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 THREE TIMES THE AMOUNT INSTITUTION ACTUALLY PAID OCLC 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 AMENDED AND RESTATED 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).

**9.2 City Limitation of Liability.** It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Amended and Restated Agreement, encumbered for the purpose of the Amended and Restated Agreement and paid into the Treasury of the City. Vendor acknowledges that (a) the City does not by this Amended and Restated Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (b) this Amended and Restated Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

## **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 Amended and Restated 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.**

- a) **OCLC Information.** 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.
- b) **City Information.** Vendor acknowledges and accepts that, in performance of all work under the terms of this Amended and Restated Agreement, Vendor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Vendor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Vendor shall be held in confidence and used only in the performance of its obligations under this Amended and Restated Agreement. Vendor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Vendor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Vendor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.
- c) **Use of Proprietary Data or Confidential Information.**
  - (1) Except as expressly provided by the terms of this Amended and Restated Agreement, Vendor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the Proprietary Data or confidential information or any part thereof to any other person, party or entity in any

form of media for any purpose other than performing its obligations under this Amended and Restated Agreement. Vendor further acknowledges that by providing this Proprietary Data or confidential information, the City is not granting to Vendor any right or license to use such data except as provided in this Amended and Restated Agreement. Vendor further agrees not to disclose or distribute to any other party, in whole or in part, the Proprietary Data or confidential information without written authorization from the Manager and will immediately notify the City if any information of the City is requested from the Vendor from a third party.

- (2) Vendor agrees, with respect to the Proprietary Data and confidential information, that: (1) Vendor shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Manager; (2) Vendor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) Vendor shall, upon the expiration or earlier termination of the Amended and Restated Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.
- (3) Vendor will inform its employees and officers of the obligations under this Amended and Restated Agreement, and all requirements and obligations of Vendor under this Amended and Restated Agreement shall survive the expiration or earlier termination of this Amended and Restated Agreement. Vendor shall not disclose Proprietary Data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Amended and Restated Agreement.
- (4) Notwithstanding any other provision of this Amended and Restated Agreement, the City is furnishing Proprietary Data and confidential information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. Vendor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found. Vendor agrees to contact the City immediately.

### 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. 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, provide support, and to otherwise enforce the terms of this Amended and Restated Agreement. 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’s 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’s credentials or unauthorized access to a Product or Service, OCLC may notify Institution and 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: (i) investigate any violation of this AUP or misuse of Products or Services; (ii) enforce this AUP; and (iii) 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 AMENDED AND RESTATED AGREEMENT, ANY SCHEDULE, OR OCLC SERVICE.

## **Section 11 Representations and Warranties**

### **11.1 Vendor Representations and Warranties.** Vendor represents and warrants that:

- a) all services will conform to applicable specifications and the applicable Schedule attached hereto;
- b) there are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that any software or service infringes, violates or misappropriates any third party rights; or (ii) adversely affecting any software, service or supplier's ability to perform its obligations hereunder;
- c) the Software will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party;
- d) that it possesses all rights necessary to grant Licensee a license to use the Software in accordance with these Terms and applicable documentation. In the event of any claim that such use violates any third-party copyright or other intellectual property right, OCLC's liabilities and Licensee's remedies shall be as provided in Section 11.3 below.
- e) the Software will contain no malicious or disabling code that is intended to damage, destroy or destructively alter software, hardware, systems or data; and
- f) the 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.

### **11.2 Failure to Comply.** 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 Amended and Restated Agreement does not violate any other agreement to which it is a party, and that its performance under this Amended and Restated 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 Amended and Restated Agreement and grants the rights described in this Amended and Restated 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 Amended and Restated Agreement.

### **11.3 Third Party Claims of Infringement and Indemnification.**

- a) Subject to the terms and conditions set forth in this Section 11, OCLC shall, at its own expense, defend Institution from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Products and Services, as used in accordance with this Amended and Restated Agreement, infringes such third party's copyrights or trademarks, or misappropriates such third party's trade secrets and shall indemnify Institution from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon such Claim(s).
- b) OCLC will have no liability for Claims or Losses to the extent arising from (a) use of the Products and Services in violation of this Amended and Restated Agreement or applicable law, (b) use of the Products and Services after OCLC notifies Institution to discontinue use because of an infringement claim, (c) modifications to the Products and Services not made by OCLC or made by OCLC based on Institution's specifications or requirements, (d) use of the Products and Services in combination with any non-OCLC software, application or service, or (e) services offered by Institution.
- c) If a Claim of infringement as set forth above is brought or threatened, OCLC shall, at its sole option and expense, use commercially reasonable efforts either (a) to procure a license that will protect Institution against such Claim without cost to Institution; (b) to modify or replace all or portions of the Products and Services as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate the Amended and Restated Agreement and refund to the Institution a pro-rata refund of the subscription fees paid for the terminated portion of the subscription period. The rights and remedies granted Institution under this Section 11.3 state OCLC's entire liability, and Institution's exclusive remedy, with respect to any Claim that OCLC's Products and Services infringe the intellectual property rights of a third party.

### **11.4 Institution Representations and Warranties.** Institution warrants that it possesses all rights necessary to enter into this Amended and Restated Agreement, grants the rights described in this Amended and Restated 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 Amended and Restated Agreement, and that Institution's use of the Product and Services and its Institution Data shall not infringe the copyright, patent, trade secret, trademark or other intellectual property rights of a third party, or misappropriate such intellectual property rights, or violates applicable law.

- 11.5** OCLC hereby agrees to defend, indemnify, and hold harmless Institution, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the Institution. This indemnity shall be interpreted in the broadest possible manner to indemnify Institution for any acts or omissions of OCLC or its sub-contractors either passive or active, irrespective of fault, including Institution’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of Institution.
- 11.6** OCLC’s duty to defend and indemnify Institution shall arise at the time written notice of the Claim is first provided to Institution regardless of whether Claimant has filed suit on the Claim. OCLC’s duty to defend and indemnify Institution shall arise even if Institution is the only party sued by claimant and/or claimant alleges that Institution’s negligence or willful misconduct was the sole cause of claimant’s damages.
- 11.7** OCLC will defend any and all Claims which may be brought or threatened against Institution and will pay on behalf of Institution any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of Institution shall be in addition to any other legal remedies available to Institution and shall not be considered Institution’s exclusive remedy.
- 11.8** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of OCLC under the terms of this indemnification obligation. OCLC shall obtain, at its own expense, any additional insurance that it deems necessary for the Institution’s protection.
- 11.9** E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

## **Section 12 General**

- 12.1 OCLC Membership.** As a subscriber to OCLC’s Services and Products as described in this Amended and Restated Agreement, Institution – and each library owned or operated by Institution – may be eligible for membership in the OCLC cooperative. Membership qualifications for the OCLC cooperative can be found at <http://www.oclc.org/content/dam/oclc/membership/Membership-Criteria-FY15.pdf>. If Institution’s subscription qualifies it as a member, Institution permits OCLC Member Relations to contact its library staff directly in separate communications, to provide new member information regarding voting and updates, Member groups, councils, and events, for OCLC Global and Regional Councils specific to Institution’s region. As a member, Institution agrees to abide by the requirements and policies applicable to OCLC members.
- 12.2 Colorado Governmental Immunity Act.** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protections provided by the Colorado Governmental Act, § 24-10-101, et seq. C.R.S. (2003)
- 12.3 Taxes, Charges, and Penalties.** The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to §20-115.
- 12.4 No Assignment.** Institution may not assign, without the prior written consent of OCLC, any rights, duties, or obligations under this Amended and Restated Agreement to any person or entity, in whole or in part. Vendor covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the Manager. Any attempts by Vendor to assign or transfer its rights hereunder without such prior written consent of the Manager shall, at the option of said Manager, automatically terminate this Amended and Restated Agreement and all rights of Vendor hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Manager. A change in control of Vendor shall not constitute an assignment hereunder.
- 12.5 No Third Party Beneficiary.** It is expressly understood and agreed that enforcement of the terms and conditions of this Amended and Restated Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Vendor, and nothing contained in this Amended and Restated Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of the City and Vendor that any person other than the City or Vendor receiving services or benefits under this Amended and Restated Agreement shall be deemed to be an incidental beneficiary only.
- 12.6 No Authority.** Vendor has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City, as required by Charter and ordinance.
- 12.7 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 Amended and Restated Agreement.
- 12.8 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.

- 12.9 Non-Waiver.** A failure or delay in enforcing an obligation under this Amended and Restated 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.
- 12.10 Severability.** If any provisions of this Amended and Restated 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 Amended and Restated Agreement.
- 12.11 Conflict of Interest.**
- a) The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein; and Vendor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter §§ 1.2.8, 1.2.9, and 1.2.12.
  - b) Vendor agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Amended and Restated Agreement. Vendor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Vendor by placing Vendor's own interests, or the interests of any party with whom Vendor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Amended and Restated Agreement in the event such a conflict exists after it has given Vendor written notice which describes the conflict. Vendor shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.
- 12.12 No Discrimination in Employment.** In connection with the performance of work under this Amended and Restated Agreement, Vendor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and Vendor further agrees to insert the foregoing provision in all subcontracts hereunder.
- 12.13 Use, Possession, or Sale of Alcohol or Drugs.** Vendor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Vendor from City facilities or participating in City operations.
- 12.14 No Construction Against Drafting Party.** Each of the Parties acknowledge that they and their respective counsel have had the opportunity to review this Amended and Restated Agreement, and that this Amended and Restated Agreement shall not be construed against any party merely because this Amended and Restated Agreement or any of its provisions have been prepared by a particular party.
- 12.15 Inurement.** The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Amended and Restated Agreement.
- 12.16 City Execution of Agreement.** This Amended and Restated Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver
- 12.17 Entire Agreement.** This Amended and Restated Agreement, including all attached Schedules, is intended as the complete integration of all understandings between the parties, and supersedes and replaces all prior agreements, oral and written, between the parties relating to the subject matter of this Amended and Restated Agreement. If Institution's accounting representatives require the use of a purchase order to facilitate payment for Products and Services contemplated in this Amended and Restated Agreement, Institution agrees any and all terms and conditions contained in such purchase order are null and void, and do not apply to this Amended and Restated Agreement. OCLC will provide invoices in response to purchase orders solely to facilitate payment and for the convenience of Institution; in no case, however, will OCLC's issuance of an invoice constitute an acceptance of terms contained in a purchase order. OCLC provides Services and Products to Institution solely pursuant to this Amended and Restated Agreement; OCLC shall never provide Services or Products pursuant to, or as a result of, a purchase order. Except as otherwise provided herein, this Amended and Restated Agreement may not be amended or supplemented except in a writing duly executed by both parties.
- 12.18 Notice.** Except as stated elsewhere in the Agreement all notices shall be in writing and shall be deemed sufficient if (a) received by a party via e-mail to the e-mail address for such party set forth below, (b) delivered by hand, or (c) sent by certified or registered mail, return receipt requested, to the address for such party set forth in below, or to such other address as has been furnished by means of a notice given in accordance with this Section.

*Notice Address for OCLC:*

*OCLC*

*6565 Kilgour Place*

*Dublin, Ohio 43017-3395*

*FAX: 614-764-0740*

*Attention: Legal Department*

E-mail: [legal@oclc.org](mailto:legal@oclc.org)

Notice Address for City:

City Librarian  
C/o Director of Community Relations Denver Public Library  
low. 14th Avenue Parkway Denver CO 80204-2731  
Email: [mbordwine@denverlibrary.org](mailto:mbordwine@denverlibrary.org)

**12.19 Governing Law; Venue.** This Amended and Restated Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Amended and Restated Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Amended and Restated Agreement shall lie in the District Court in and for the City and County of Denver.

**12.20 Counterparts.** This Amended and Restated 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 Status of Vendor**

OCLC is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the OCLC nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

Section 14. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the OCLC, involving transactions related to OCLC's costs and/or Institution's payment obligations under the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

### Section 15. **INSURANCE:**

**A. General Conditions:** OCLC agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. OCLC shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, OCLC shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the OCLC. OCLC shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the OCLC. The OCLC shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance:** OCLC shall provide a copy of this Agreement to its insurance agent or broker. OCLC may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. OCLC certifies that the certificate of insurance preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of OCLC's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), OCLC and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. N/A

E. **Subcontractors and Subconsultants:** All subcontractors and subconsultants hired by OCLC to do work pursuant to this Agreement (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the OCLC. OCLC shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. OCLC agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. **Workers' Compensation/Employer's Liability Insurance:** OCLC shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. OCLC expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the OCLC's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date OCLC executes this Agreement.

G. **Commercial General Liability:** OCLC shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. **Business Automobile Liability:** OCLC shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

I. **Technology Errors & Omissions including Cyber Liability:** OCLC shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate.

**J. Additional Provisions:**

(i) For Commercial General Liability, the policy must provide the following:

- (a) That this Agreement is an Insured Contract under the policy;
- (b) Defense costs are outside the limits of liability;
- (c) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(ii) For claims-made coverage: The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(iii) OCLC shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the OCLC will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**Section 16. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** OCLC consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic

document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

## ATTACHMENT A - SERVICE LEVEL AGREEMENT

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

### 1. Covered OCLC Services

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

WorldShare Acquisitions  
WorldShare Circulation

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

### 2. Uptime Commitment

OCLC will use commercially reasonable efforts ensure that the Hosted Services are available 99.5% of the time (the "Uptime Commitment"). Availability will be measured as follows:

- Availability = (T-D)/(T) \* 100%
- T = the total number of minutes in the respective month.
- D = the total number of minutes of downtime in the month excluding planned outages for scheduled maintenance, telecommunications or power disruptions caused by third parties, any other causes beyond OCLC's reasonable control, and excluding other times described herein.

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

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

### 3. Systems Management

**3.1 Monitoring.** OCLC will monitor and maintain the Systems in working order each day (24 x 7). OCLC will proactively manage and monitor all application server hardware devices and software to ensure optimal performance and reliability as well as to detect abnormal events or exceeded utilization or performance thresholds.

**3.2 Maintenance.** OCLC will operate, monitor and administer all servers, applications and networks supporting the OCLC Services. In order to provide such coverage, OCLC may utilize a mixture of on-site and on-call support staff, automated server monitoring and automated paging technology.

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

**SCHEDULE 2**  
**WorldShare Metadata/ OCLC Cataloging**

**DESCRIPTION**

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

**DEFINITIONS**

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

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Amended and Restated Agreement.

**ADDITIONAL TERMS AND CONDITIONS****1) Responsibilities of Institution**

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



**Initials:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**SCHEDULE 3**  
**WorldCat Discovery Services**

**DESCRIPTION**

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

**Additional Terms and Conditions:**

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Amended and Restated Agreement.

**1) Discovery Service:**

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

**2) Third Party Database Terms:**

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

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



Initials: \_\_\_\_\_ Date: \_\_\_\_\_

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**SCHEDULE 6**  
**CONTENTdm®**

**DESCRIPTION**

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

**ADDITIONAL TERMS AND CONDITIONS**

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Amended and Restated Agreement.

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



Initials: \_\_\_\_\_ Date: \_\_\_\_\_

**SCHEDULE 7**  
**EZProxy®**

**DESCRIPTION**

OCLC® EZproxy® access and authentication software allows an Institution to deliver secure Web access to e-content simply and effectively. EZproxy facilitates a single sign-on to e-content using existing library-issued credentials, such as a library card number and PIN or username and password.

**ADDITIONAL TERMS AND CONDITIONS**

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Amended and Restated Agreement.

- 1) **Configuration of Service for Self-Hosted.** Institution is responsible for configuration of service.
- 2) **Maintenance and Support Services.** OCLC will provide maintenance and support services as part of the EZproxy subscription.
  - A. **Institution's Responsibilities.**
    - i. Institution or the lead institution purchasing on behalf of a group shall designate a support contact to oversee and coordinate its use of the Product who is knowledgeable about the Product and the hardware on which it is installed and running. Additional support contacts may be designated at \$500 per year, per each added support contact.
    - ii. Institution shall promptly destroy all prior versions of the Product after new versions have been installed or downloaded.
  - B. **Limitations.** Unless otherwise agreed upon in writing by OCLC, maintenance and support services will not include the following:
    - i. Installation, relocation or removal of the Product at or from Institution's site;
    - ii. On-site services;
    - iii. Support outside of normal business hours;
    - iv. Electrical, mechanical, or other work involving Institution's hardware, accessories, or other devices associated with the use of the Product;
    - v. Any maintenance or support involving Institution's hardware or telecommunications network, or third-party software;
    - vi. Maintenance and support services to parties other than Institution;
    - vii. Unauthorized use, alteration, or modification of the Product; or
    - viii. Correcting errors if Institution fails to implement any error corrections, updates or upgrades within 90 days after receipt by Institution.

**THE FOLLOWING TERMS ALSO APPLY ONLY IF INSTITUTION ORDERS HOSTED EZPROXY:**

- A. **Configuration of Hosted Service.**
  - a. **OCLC maintained Hosted.** Institution may submit active configuration requests to OCLC and OCLC reserves the right in its sole discretion to approve such configurations.
  - b. **Institution maintained Hosted.** Institution may attempt to configure resources ("Self-Configuration") and submit to OCLC for review and approval. OCLC reserves the right to modify Institution's Self-Configuration in case the changes threaten the security of the server excessive consumption of resources.
- B. **General.** As necessary to provide access to the Institution's content, OCLC will: (a) install and support the Systems, (b) provide access to the Product, and (c) secure and maintain connectivity with third-party telecommunication providers. As part of the initial configuration for the Product, OCLC may provide up to 10 hours of configuration services. If additional hours are required, OCLC will separately bill Institution at its standard consulting rate.
- C. **Host Names and IP Addresses.** OCLC will assign host names and IP addresses to Institution as part of the hosted services which will remain the property of OCLC.
- D. **Exceeding Limitations.** If Institution uses any bandwidth, storage or other services in excess, OCLC may, in its sole discretion, assess Institution with additional charges, suspend the performance of the hosted services, or terminate this Schedule. In the event that OCLC elects to take any such action, Institution will not be entitled to a refund of any unused pre-paid fees.

- A. This product includes GeoLite data created by MaxMind, available from <http://www.maxmind.com>.
- B. Portions derived from the RSA Data Security, Inc. MD5 Message-Digest Algorithm, Copyright (C) 1991-2, RSA Data Security, Inc.

This product includes software developed by the OpenLDAP Foundation (<http://www.openldap.org>) and by the OpenSSL Project for use in the OpenSSL Toolkit (<http://www.openssl.org/>). The OpenLDAP Public License Version 2.8, 17 August 2003

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OpenSSL License

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**Initials:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**SCHEDULE 8**  
**QuestionPoint**

**DESCRIPTION**

**QuestionPoint** provides a complete virtual reference management system, integrating chat, e-mail, a reference knowledge base, reports and analytic tools to give Institution a complete view of reference activity. The scope of the QuestionPoint services under this Schedule is listed in the Order Form.

**DEFINITIONS**

- A. "24/7 Reference Cooperative" means a cooperative arrangement which enables participating libraries to provide a 24 hours a day, 7 days a week live chat reference service for their End Users.
- B. "Reference Management" provides a chat and e-mail service, customizable webforms and widgets, a local knowledge base and cooperative tools that allow groups to share staffing of queues and question referrals. Activity may be analyzed through a variety of statistics and reports available at both the institution and group level.
- C. "Staff Share Cooperative" means a cooperative arrangement which enables participating libraries to provide live chat based reference service for their patrons. Libraries that elect to participate in the cooperative may agree to contribute staffing to the cooperative. Coverage depends on the availability of other libraries that have also joined the cooperative.
- D. "End Users" means the patrons of Institution.
- E. "End User Terms of Service" are the terms and conditions governing the use of QuestionPoint as well as retention and storage of End User data on QuestionPoint's servers. The link to the End User Terms of Service is provided to Institution upon request, and is available at [questionpoint.org](http://questionpoint.org).
- 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 Institutions.

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Amended and Restated Agreement.

**ADDITIONAL TERMS AND CONDITIONS**

- 1) **Use of QuestionPoint.** Institution may choose to participate in one or more aspects of QuestionPoint: (i) 24/7 Reference Cooperative, (ii) Reference Management, or (iii) Staff Share Cooperative for supporting the questions and referrals of QuestionPoint.
  - A. If Institution chooses to participate in either the 24/7 Reference Cooperative or the Staff Share Cooperative models, Institution shall meet the staffing percentage of 75% as defined in section 7.2 of the 24/7 Reference Cooperative Policies and Procedures, available at <http://wiki.questionpoint.org/w/page/13839422/247-Policies>.
  - B. In the event the staffing percentage is not met, the Institution may be subject to a price adjustment at the time of renewal.
- 2) **End-User Notices and Terms.**
  - A. Institution, in its sole discretion, will determine what, if any, uniquely identifiable End User data it will collect from End Users.
  - B. OCLC does not share personal information about individual users with any third party except to third parties involved with the provision of QuestionPoint.
  - C. Institution warrants it will either: (1) require End Users to read and accept the End User Terms of Service or (2) prior to an End User's use of the Service, notify and receive End User acknowledgement of Institution's own terms and conditions regarding the collection, storage and transfer of End User data in accordance with all applicable laws and as informed by the End User Terms of Service.
- 3) **General Terms.**
  - A. If an End 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.).
  - B. Institution represents and warrants that, when submitting answers using information from databases or other resources that are in any way proprietary, Institution's use is in compliance with those databases or resources.



**Initials:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**SCHEDULE 14**  
**WorldShare Interlibrary Loan Services (ILL)**

**DESCRIPTION**

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

**ADDITIONAL TERMS AND CONDITIONS**

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Amended and Restated Agreement.

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



**Initials:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**SCHEDULE 17**  
**Discovery to Delivery**  
**“D2D”**

**DESCRIPTION**

**D2D** is a software as a service solution providing consortial borrowing services within a group or consortium of libraries. D2D includes end user discovery, requestability logic, request management and the interoperability with local circulation systems for management of loans for authenticated users and library staff.

**I. Institution Obligations:**

- A. Appoint a project manager as the main point of contact for all systems and operations issues;
- B. Maintain necessary equipment connectivity with the internet,
- C. Open ports in firewalls;
- D. Install and configure any D2D related software on local workstation(s), as well as update configuration changes on local workstation(s); and
- E. Report all incidents, questions, and suggestions.

OCLC will not be responsible for upgrading or supporting Institution’s workstations, processing Institution’s consortial borrowing requests, and supporting end users.

**II. Alternate Discovery Interfaces and Web Services**

If using a discovery interface other than that provided through OCLC, two options: [Discovery redirect](#) and [Discovery web services](#), among others, are available for integration with D2D. The benefits of this integration with D2D include requestability logic, Load Balancing and Requesting options. To take advantage of Discovery redirect option, it is necessary for your discovery interface to generate an OpenURL which includes a query with appropriate search terms.



**Initials:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**SCHEDULE 18**  
**Relais Interlibrary Loan**  
**“Relais ILL”**

**DESCRIPTION**

**Relais ILL** streamlines interlibrary loan (ILL) request management by offering end user requesting and tracking as well as electronic delivery to the requester. Relais ILL’s configurable, rule-based workflows ensure an efficient ILL operation, and its use of standards provides interoperability with other library systems.

**ADDITIONAL TERMS AND CONDITIONS**

All capitalized terms not defined herein shall have the same meaning ascribed to them in the Amended and Restated Agreement. Subject to this Schedule and the Amended and Restated Agreement, OCLC will provide Institution with the Products and Services as specified in the agreed upon pricing document.



**Initials:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: BOOKS-201842537-00

Contractor Name: OCLC ONLINE COMPUTER LIBRARY CENTER  
INC

By: *Bruce Crocco*

Name: Bruce Crocco  
(please print)

PB

Title: Vice President 2018 October 29  
(please print)

ATTEST: [if required]

By: Not required

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

