



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

Department	Library	Department Contact	Belinda Catman
Contact Email	belinda.catman@lfpl.org	Contact Phone	502-574-1845

Contract Type: check one	New	Amendment		
		Additional Funds	Time Extension	Scope
Professional Service				
Sole Source (goods/services)	✓			
	Start	End		
Requested Contract Dates (MM/DD/YYYY)	07/01/2017	06/30/2018		

VENDOR INFORMATION

Vendor Legal Name	OCLC ONLINE COMPUTER LIBRARY CENTER INC			
DBA				
Point of Contact	Robinette Rosier	Email	rosierr@oclc.org	
Street	6565 Frantz Road			
Suite/Floor/Apt		Phone		
City	Dublin	State	OH	Zip Code 43017
Federal Tax ID#		SSN# (if sole proprietor)		
Louisville Revenue Commission Account #				
Human Relations Commission Certified Vendors	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business	
Select if applicable				

FINANCIAL INFORMATION

Not to Exceed Contract Amount	\$75,000	(including reimbursement expenses, if applicable)			
Fund Source: General Fund	✓				
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #	1101	730	5922	591270	521114
Payment Rate		per hour		per day	per service
		per month		Other	Varies
Payment Frequency	✓	Monthly	Upon Completion / Delivery		
		Quarterly		Other	

AGREEMENT FOR SOLE SOURCE PURCHASE

THIS CONTRACT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **LOUISVILLE FREE PUBLIC LIBRARY**, herein referred to as “**METRO GOVERNMENT**”, and **OCLC ONLINE COMPUTER LIBRARY CENTER INC.** with offices located at 6565 Frantz Road, Dublin, Ohio 43017 herein referred to as “**CONTRACTOR**”,

WITNESSETH:

WHEREAS, the Metro Government wishes to cataloging and metadata services as described herein; and

WHEREAS, the Contractor has been determined by the Metro Government to be a sole source to provide same,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. SCOPE OF WORK

A. Contractor shall, at the request of the Metro Government, provide goods and services under the terms of this Agreement and Attachment A attached hereto and fully incorporated herein.

B. Contractor shall supply, upon an order from the Metro Government:

1. Those services as described on Attachment A.

II. FEES AND COMPENSATION

A. The Metro Government shall pay Contractor for services rendered and goods supplied as agreed to Attachment A. Total compensation payable to Contractor under this Agreement shall not exceed **SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00)**.

B. Payment shall be made pursuant to Attachment A.

C. The Metro Government shall not reimburse out of pocket expenses under this Agreement.

III. DURATION

A. This Agreement shall begin July 1, 2017 and shall continue through and including June 30, 2018.

B. This Agreement may be terminated at the end of the subscription period by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for goods and services delivered up to and including date of termination shall be made by the Metro Government. In the event that, during the term of this Agreement, the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall deliver notice to Contractor of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

IV. RECORDS-AUDIT

Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Contractor's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit

tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Contractor's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

V. HOLD HARMLESS AND INDEMNIFICATION CLAUSE AND INSURANCE REQUIREMENTS

The Contractor shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract. Contractor shall comply with the insurance requirements attached hereto and fully incorporated herein as Attachment B.

VI. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Contractor agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Contractor further agrees to provide

such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

VII. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

VIII. AUTHORITY

The Contractor, by execution of this Agreement, does hereby warrant and represent that it is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

IX. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein;

or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of

his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

X. ENTIRE AGREEMENT

This Agreement, including all attachments hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto. In the event of a conflict between the terms of this Agreement and the terms in any of the Attachments, this Agreement shall govern.

XI. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XII. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

XIII. COUNTERPARTS

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

XIV. CALCULATION OF TIME Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the

prescribed or fixed period of time. For example, if on January 1, Contractor is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

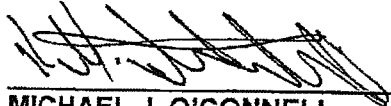
XV. CAPTIONS The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

XVI. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS The Contractor shall reveal any final determination of a violation by the Contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor. The Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of the contract.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND
LEGALITY CONTINGENT UPON
METRO COUNCIL APPROVAL
OF THE APPROPRIATION FOR
THIS AGREEMENT:

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT


MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY


JOEL NEAVEILL, DIRECTOR, PURCHASING
DEPARTMENT

Date: 12/16/17

Date: 12/18/17

LOUISVILLE FREE PUBLIC LIBRARY


JAMES BLANTON, DIRECTOR

Date: 12/7/17

OCLC ONLINE COMPUTER LIBRARY
CENTER, INC.


By: _____

Title: Bruce Crocco, Vice President

Date: 2017 December 8



Taxpayer Identification No.
(TIN): [REDACTED]

Louisville/Jefferson County
Revenue Commission Account
No.: _____

ATTACHMENT A



FY2017 OCLC Cataloging and Metadata and WorldShare ILL Subscription Renewal Notice

April 13, 2016

Louisville Free Public Library
OCLC Symbol: KLP

OCLC will increase prices modestly in FY2017. The FY2017 OCLC Price List is available on the Online Service Center (OSC) for your convenience. Please visit www.oclc.org/servicecenter/ and then log on to your OSC account to access the price list.

Effective July 1, 2016, the following subscriptions will renew automatically for the period of July 1, 2016 – June 30, 2017 at the same billing frequency you requested last year. The new amount will be reflected beginning with your July 2016 OCLC invoice, which will arrive in early August 2016.

At the request of the OCLC membership, OCLC is simplifying our invoices by consolidating the line items for credits and Access services into the respective subscription prices. Please see the details below. Additionally, the name of the OCLC Cataloging subscription is changing to OCLC Cataloging and Metadata subscription to reflect the expanded capabilities of the service.

Your FY17 OCLC Cataloging & Metadata and WorldShare ILL Annual Subscriptions

FY2017 OCLC Cataloging and Metadata Subscription:	\$33,662.84
FY2017 WorldShare ILL Subscription:	\$7,974.55
FY2017 Total	\$41,637.39

How your 2017 Cataloging and Metadata subscription was calculated	
FY2017 Cataloging and Metadata subscription:	\$26,019.70
Cataloging Credits:	(\$255.20)
Cataloging portion of Access services:	\$7,898.34
Total Cataloging and Metadata subscription:	\$33,662.84
How your 2017 WorldShare ILL subscription was calculated	
FY2017 WorldShare ILL subscription:	\$6,743.21
ILL Lending Credits:	(\$815.58)
ILL portion of Access services:	\$2,046.92
Total WorldShare ILL subscription:	\$7,974.55

ILL Fee Management (IFM) Libraries: please note that IFM is not included in the above subscription, as activity for IFM is tracked on a transaction basis and pricing is set by the libraries involved.

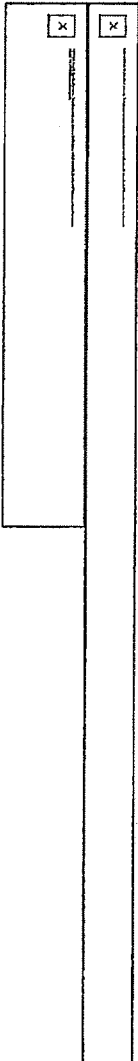
OCLC offers billing services, including a prompt payment discount and a Subscription Payment Program that earns interest on deposits (earning 2.5% APR from 7/1/16 – 12/31/16). If you wish to participate in the Subscription Payment Program and require additional documentation, please visit: oclc.org/SubscriptionPayment

OCLC's Order Services team will be happy to answer questions and offer further guidance about this renewal information. Please call Becky Hurley, Director, Order Fulfillment and Distribution, at 1-800-848-5878, ext. 4316 or send an e-mail to oclc renewals@oclc.org.

THIS IS NOT AN INVOICE

Lisa Dekker

From: orders@oclc.org
Sent: Tuesday, May 16, 2017 10:31 AM
To: Lisa Dekker
Subject: OCLC EZproxy subscription renewal notice for Louisville Free Public Library (LFP)



Louisville Free Public Library
301 York St
Louisville KY, 40203-2205
United States

LISA DEKKER,

On June 30, 2017 your subscription for the following product(s) will expire:

QTY	PROD CODE	PRODUCT DESCRIPTION	PRICE	CURRENCY
1	EZP4271	EZproxy 1 Year Subscription	516.04	USD

Please note prices current as of the date of this notice and are subject to change.

Please take a few minutes today to assess your library's current needs. If you wish to continue your subscription as it is, with no changes, no action is required of you at this time. Your subscription(s) will be renewed and billed automatically on the expiration date. If you wish to change or cancel your subscription please contact



Section 1 Institution Information & Signatures

<i>INSTITUTION NAME ("Institution")</i>			
<i>LIBRARY NAME (if different from Institution Name)</i>			<i>OCLC SYMBOL (if any)</i> KLP
<i>STREET ADDRESS</i>			
<i>CITY</i>	<i>STATE</i>	<i>ZIP/POSTAL CODE</i>	<i>COUNTRY</i> USA
<i>CONTACT PERSON</i>		<i>TITLE</i>	
<i>TELEPHONE NUMBER</i>	<i>FAX NUMBER</i>	<i>E-MAIL ADDRESS</i>	
<i>BILLING ADDRESS (IF DIFFERENT FROM ABOVE) or NOTICE ADDRESS (IF DIFFERENT FROM ABOVE)</i>			
<i>STREET ADDRESS</i>			
<i>CITY</i>	<i>STATE</i>	<i>ZIP/POSTAL CODE</i>	<i>COUNTRY</i>
<i>CONTACT PERSON</i>		<i>TITLE</i>	
<i>TELEPHONE NUMBER</i>	<i>FAX NUMBER</i>	<i>E-MAIL ADDRESS</i>	
<i>Is Institution considered exempt from tax in the country in which it is located?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No			
<i>By signing below, Institution: (1) acknowledges that Institution has read and agrees to the terms of this Master Service Agreement ("MSA" or "Agreement") to become effective upon full execution of the Agreement ("Effective Date"); (2) warrants that it has made <u>no unilateral changes</u> to the terms of the Agreement since last received from OCLC; (3) orders access to the Products and Services as specified in this Agreement; and (4) warrants that it has the authority to enter into this Agreement.</i>			
<i>INSTITUTION:</i> _____			
<i>Authorized Signature</i> _____		<i>Date:</i> _____	
<i>Name & Title:</i> _____			
<i>Accepted By:</i> OCLC, INC.			
_____		<i>Effective Date:</i> _____	
<i>Bruce Crocco, Vice President</i>			
<i>Notice Address for OCLC:</i> OCLC, Inc. 6565 Kilgour Place Dublin, Ohio 43017-3395 FAX: 614-764-0740 Attention: Legal Department E-mail: legal@oclc.org			

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. 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 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 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 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, 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 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 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 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 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 Agreement and for the purposes specified in the Product Descriptions.

Section 5 Term and Termination

5.1 Term. This 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 Agreement or individual Schedules may be terminated in one of the following ways:

- a) 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;
- b) 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;
- c) 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 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
- d) 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 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 Agreement, justifying OCLC's suspension of Products and Services.

6.2 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.

6.3 Non-refundable. Institution will not be entitled to a refund of any implementation or pre-paid fees under this 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.

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 (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 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. 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 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'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 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.** As a subscriber to OCLC's Services and Products as described in this 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 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.
- 12.3 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.
- 12.4 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.
- 12.5 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.
- 12.6 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.
- 12.7 Entire Agreement.** This 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. If Institution's accounting representatives require the use of a purchase order to facilitate payment for Products and Services contemplated in this Agreement, Institution agrees any and all terms and conditions contained in such purchase order are null and void, and do not apply to this 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 Agreement; OCLC shall never provide Services or Products pursuant to, or as a result of, a purchase order. Except as otherwise provided herein, this Agreement may not be amended or supplemented except in a writing duly executed by both parties.
- 12.8 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 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.

Notice Address for OCLC:

*OCLC Online Computer Library Center, Inc.
6565 Kilgour Place
Dublin, Ohio 43017-3395
FAX: 614-764-0740
Attention: Legal Department
E-mail: legal@oclc.org*

- 12.9 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 agreed upon pricing or order document 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 agreed upon pricing or order document. 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.

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	WorldCat Discovery Services
WorldShare Circulation	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 to 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 Master Services 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.

INSTITUTION: _____

Authorized Signature _____

Date: _____

Name & Title: _____

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 Master Service 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.
- 3) **Additional Included Licenses and Pass-Through Terms.**
 - 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.

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This product includes cryptographic software written by Eric Young (eay@cryptsoft.com). This product includes software written by Tim Hudson (tjh@cryptsoft.com).

Original SSLeay License

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This package is an SSL implementation written by Eric Young (eay@cryptsoft.com). The implementation was written so as to conform with Netscapes SSL.

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<i>INSTITUTION:</i>	_____
<i>Authorized Signature</i>	_____ <i>Date:</i> _____
<i>Name & Title:</i>	_____

ATTACHEMENT B

INSURANCE REQUIREMENTS:

A. Prior to commencing work, Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. The Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to Metro Government and approved by the Metro Government's Risk Management Division. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Metro Government. Metro Government may require Contractor to supply proof of subcontractor's insurance via Certificates of Insurance, or at Metro Government's option, actual copies of policies.

B. The following clause shall be added to the Contractor's (and approved subcontractors) Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."

C. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on the contractors or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

COMMERCIAL GENERAL LIABILITY: via the Occurrence Form, primary and non-contributory, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage and Products/Completed Operations, including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability
- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

WORKERS' COMPENSATION (if applicable): insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and EMPLOYERS' LIABILITY - \$100,000 Each Accident/\$500,000 Disease - Policy Limit/\$100,000 Disease - Each Employee.

D. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro Government's Risk Management Division.

E. MISCELLANEOUS

1. The Contractor shall procure and maintain insurance policies and shall furnish Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well

as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro Government at least fifteen (15) days prior to the expiration of any policy(s).

2. Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Louisville Fire Department
611 West Jefferson Street, 3rd Floor
Louisville, Kentucky 40202

3. Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

4. CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Contractor shall notify Metro Government's Risk Management Division of any policy cancellation within two business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro Government's Risk Management Division within two business days. If Contractor fails to notify Metro Government as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro Government reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro Government's Risk Management Division.

5. Approval of the insurance by Metro Government shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that Metro Government does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Contractor.