MEMORANDUM

PUBLIC RESOURCES
Library Services
2401 Woodlea Rd.
Tavares, FL 32778

LAKE COUNTY
FLORIDA

P: 352-253-6180
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www.lakecountyfl.gov
www.mylakelibrary.org

To: Connie Rodgers, County Finance

From: Pamela Kirchner, Financial Coordinator PK

Date: September 9, 2010

Subject: OCLC System Application / OCLC User Agreement

Enclosed is one fully executed original of the OCLC System Application and OCLC User Agreement Lake County.

Enclosure

PK/kg

c: Wendy R. Breeden, Public Resources Director
Tom Merchant, Library Services Director
Tracy Zeller, Board Finance

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OCLC SYSTEM APPLICATION DIRECT

Please check one (see Sections 1 and 3.2 of the User Agreement) **Please print or type**

☐ **Governing Member** ☐ **Member** ☐ **Participant**

Batchloading ☐ Yes ☐ No

INSTITUTION NAME ("User") LAKE COUNTY LIBRARY SYSTEM			
LIBRARY NAME (if different from Institution Name)			OCLC HOLDINGS SYMBOL (if any) FN4
STREET ADDRESS 2401 WOODLEA ROAD			
CITY TAVARES	STATE FLORIDA	ZIP/POSTAL CODE 32778	COUNTRY USA
CONTACT PERSON		TITLE	
TELEPHONE NUMBER 352-253-6161	FAX NUMBER 352-253-6184	INTERNET ADDRESS	
BILLING ADDRESS (IF DIFFERENT FROM ABOVE)			
INSTITUTION NAME			
STREET ADDRESS			
CITY	STATE	ZIP/POSTAL CODE	COUNTRY
CONTACT PERSON		TITLE	
TELEPHONE NUMBER	FAX NUMBER	INTERNET ADDRESS	

Is User considered exempt from tax in the country in which it is located? ☐ Yes ☐ No

By signing this form, User: (1) acknowledges that User has read and agrees to the terms set forth in the User Agreement, which accompanies this form, to become effective upon OCLC acceptance of User's order; (2) warrants that it has made no changes to the terms of such User Agreement; (3) orders access to the OCLC System, and such other Products as User may specify; and (4) warrants that it has the authority to enter into the User Agreement on behalf of libraries it has designated as Governing Members, Members or Participants herein.

INSTITUTION ("USER"): LAKE COUNTY LIBRARY SYSTEM

Authorized Signature See Signature Page Date:

Title:

Accepted By: OCLC ONLINE COMPUTER LIBRARY CENTER, INC.

Bruce A. Crocco, Vice President Date: 9/1/2010

OCLC USER AGREEMENT

This OCLC User Agreement ("Agreement" or "User Agreement") applies to use of OCLC Products (as that term is defined herein) by User and Designated Libraries (see below). By signing the OCLC System Application to which this User Agreement is attached (hereinafter, the "Form"), User indicates that it has read and agreed to the terms and conditions set forth in this Agreement; it has made no changes to those terms and conditions; it orders access to the OCLC System, and such other Products as it may specify; and it warrants that it has the authority to enter into the User Agreement on behalf of libraries it has designated as Governing Members, Members or Participants herein.

If a User has elected "Governing Member" status, User may also designate additional libraries owned or operated by User as "Governing Members" of OCLC, as that term is defined in the OCLC Code of Regulations by listing such library or libraries below. If User has elected "Member" status, User may also designate additional libraries owned or operated by User as "Members" of OCLC, as that term is defined in the OCLC Code of Regulations by listing such library or libraries below. If User has elected "Participant" status, User may also designate additional libraries owned or operated by User as "Participants" in OCLC, as that term is defined in the OCLC Code of Regulations by listing such library or libraries below.

SECTION 1. DEFINITIONS. For purposes of this Agreement, the following definitions shall apply:

A. "Batchloading" means the submittal by User or a Designated Library to OCLC, as specified in a Batchloading order form, of machine-readable tapes, files or other OCLC-approved media permitting input into WorldCat of the cataloging records of the User or Designated Library derived from sources other than WorldCat, and the actual input of such records.

B. "Current Cataloging" means all cataloging of bibliographic materials first performed or obtained by User or a Designated Library during the term hereof, regardless of the date of acquisition or imprint of the item cataloged, which cataloging is in alphabets capable of being processed by the OCLC System; provided, however, that Current Cataloging does not include the cataloging of materials to which User or a Designated Library (as applicable) customarily given less than the minimal level of cataloging as OCLC may specify for its users generally, or as may be agreed to from time to time.

C. "Designated Library" means a library listed in this User Agreement which is designated by User as a Governing Member, Member or Participant.

D. "First-time Update" and "First-time Use" means User's or a Designated Library's use of a catalog record in WorldCat®, for cataloging, where the record is not input by User or the Designated Library.

E. "Governing Member" means a Governing Member of OCLC, as such membership status is defined by the then-current OCLC Code of Regulations.

F. "Member" means a Member of OCLC, as such membership status is defined by the then-current OCLC Code of Regulations.

G. "OCLC-Derived Records" means all records stored in WorldCat® other than records designated in such catalog as original cataloging by User.

H. "OCLC Services" means personnel training and field services which are made available to OCLC users generally.

I. "OCLC Software" means programs, programming, routines, compilers and other software (together with related documentation) designed by or for OCLC, or acquired by OCLC, copies of which are made available for use by OCLC users generally.

J. "OCLC System" means a computerized system for creating and maintaining a regularly updated database of bibliographic records, holdings and other information, and for creating certain related products, which system is accessible primarily through online telecommunications forming a part of the system.

K. "Offline Products" means those OCLC products which are derived from User's or a Designated Library's use of Online Processes, including cataloging products such as catalog cards and OCLC/MARC Subscription tapes or electronic transfer of catalog records.

L. "Online Cataloging" means use of the OCLC System to perform cataloging functions, online, from terminals and through telecommunications, which functions include, without limitation, the creation of catalog records and holdings information maintained within the OCLC System, and the editing of copies of catalog records.

M. "Online Processes" means processes performed by User or Designated Libraries online and by means of connection to the OCLC System, primarily involving access to and use of WorldCat®, including, but without limitation, cataloging, catalog card production, interlibrary loan (or "ILL"), acquisitions and serial control.

N. "Participant" means a Participant in OCLC, as such membership status is defined by the then-current OCLC Code of Regulations.

O. "Products" means, collectively, OCLC Services, OCLC Software, Offline Products, Online Processes and such other OCLC products and services as may be listed in OCLC's then-current price list.

P. "WorldCat® means the database of bibliographic records, library holdings information, indexes and related files of information (including Authority file, local data records and Name Address Directory) maintained online in, and forming a part of, the OCLC System.

SECTION 2. RESPONSIBILITIES OF OCLC.

2.1. Access to OCLC System. Subject to written OCLC acceptance of the Form and receipt from User of documentation requested by OCLC, OCLC shall provide User, and each Designated Library, access to the OCLC System, as defined below, for use by User, and each Designated Library, of the Online Processes, during regularly scheduled periods of operation, and shall provide User, and each Designated Library, Offline Products, OCLC Software and OCLC Services, in each case as reflected on OCLC's then-current price list(s). (Certain Online Processes, Offline Products, OCLC Software and OCLC Services may be subject to additional or different terms and conditions, which such terms and conditions will be provided at the time of order.) Delivery of all products by OCLC shall be F.O.B. shipping point. The OCLC System will be made available during OCLC's standard hours, a list of which will be provided to User; provided, however, that OCLC may suspend OCLC System availability for repair, maintenance or replacement.

2.2 Technical Support to User. OCLC will provide to User documentation and updates which OCLC makes generally available to OCLC users, and assistance in the preparation of documents required by OCLC, including a catalog profile and pack definition table for User and each Designated Library.

2.3. OCLC/MARC Subscription Tapes/Electronic Transfer. During the term hereof, OCLC will make available to User and each Designated Library upon a subscription basis with orders placed in advance, and upon a schedule applicable to all OCLC users, copies in OCLC/MARC format, on magnetic tapes or via electronic transfer, of the catalog records of User and each Designated Library which each has added to WorldCat by Online Cataloging, or to which each has, by such cataloging, attached its OCLC-assigned holdings symbol, since the date of the most recent OCLC/MARC subscription tape furnished or electronic transfer made to User or the Designated Library (as applicable) (or the date of the subscription, if no such tape has previously been furnished or transfer has been made).

2.4. Other Products, Processes and Services. New or additional OCLC products, processes or services may be added to and made available to User and Designated Libraries by OCLC under this Agreement by addition to OCLC's price list(s) by OCLC from time to time. Any such products, processes and services, shall be subject to the terms of this Agreement, and may be subject to supplemental agreements as required by OCLC. OCLC may delete products, processes or services from the price list(s) upon sixty (60) days' prior notice. Copies of OCLC Software may be made available to User and Designated Libraries on the terms set forth in (i) license agreements between User and OCLC to be signed by User or the Designated Library or (ii) license agreements between User and OCLC which need not be signed by User or the Designated Library, as OCLC may stipulate from time to time. As to certain OCLC Software, the license agreement may be submitted as a "tear-and-open" agreement which the User and OCLC intend to become effective upon the opening of the software and documentation package by the User or the Designated Library, or an electronic ordering document, which the parties intend to become effective upon placement of the order by User or the Designated Library.

SECTION 3. RESPONSIBILITIES OF USER

3.1. Standards. User and each Designated Library shall abide by standards set forth in the version of OCLC's *Bibliographic Input Standards* in effect at the time of cataloging and by other applicable standards adopted by OCLC from time to time.

3.2. (i) If User elects Governing Member status and OCLC accepts such election and User's designation of libraries listed herein as Governing Members, User and each designated Governing Member agrees to comply with applicable protocols, requirements, procedures and policies established by OCLC pursuant to OCLC's then-current Code of Regulations. User and each designated Governing Member agrees to search WorldCat for all of its Current Cataloging to determine which of the catalog records required for Current Cataloging are available therein, and, to the extent not available therein, to create the records and insert them into WorldCat by means of online cataloging or batchloading. Whether such catalog records are already available in WorldCat or are created and inserted by User or a designated Governing Member, User agrees that it will and will cause each designated Governing Member to attach its OCLC-assigned holdings symbol to all catalog records in WorldCat required for Current Cataloging. User agrees that it will and will cause each designated Governing Member to maintain its holdings information in WorldCat in an accurate and up-to-date condition, and to inform OCLC promptly of any errors in catalog entries in WorldCat which User or designated Governing Member is unable to correct online.

(ii) If User elects Member or Participant status and OCLC accepts such election and User's designation of libraries listed herein as Members or Participants, User and each designated Member or Participant agrees to comply with applicable protocols, requirements, procedures and policies established by OCLC pursuant to OCLC's then-current Code of Regulations. User and each designated Member or Participant shall be under no obligation to enter any of its Current Cataloging into WorldCat, but shall be free to do so by means of online cataloging or batchloading or any combination of the two. If User or any designated Member or Participant elects to create and insert into WorldCat any original catalog records, it will first search WorldCat fully to determine that the required records are not available therein, and User will and will cause each designated Member or Participant to attach its OCLC-assigned holdings symbol to all such records. If catalog entries made by User or a designated Member or Participant in WorldCat during this or a prior agreement are, at any time during the term hereof, no longer accurate and up-to-date, User agrees that it will and will cause each designated Member or Participant to correct the same online and to inform OCLC promptly of those records which it is unable to correct online.

Magnetic tapes for User's or a Designated Library's Batchloading, if any, shall be submitted on a quarterly or more frequent basis, shall be technically acceptable input products, with the stored records in a format acceptable to OCLC, and shall otherwise conform with any policies promulgated by OCLC from time to time for general application to OCLC users.

3.3. User agrees that it will not, and will not permit any Designated Library to access the OCLC System to perform services or provide assistance for or on behalf of any third-party, except with OCLC's prior written consent; provided, however, that such use for third-parties is permitted (a) where it generates an interlibrary loan request on the OCLC interlibrary loan subsystem and (b) where an OCLC-authorized processing center participant carries out Current Cataloging on behalf of its client users. User or a Designated Library is an authorized processing center participant only if it so states elsewhere in this Agreement or in a separate written agreement between the parties.

3.4. Telecommunications and Terminals. User and each Designated Library shall be responsible for arranging for and providing at its expense, subject to OCLC's approval, telecommunications connections and terminal equipment necessary for accessing the OCLC System.

3.5. Terminal Printer Port. User will not, except with OCLC's prior written consent, obtain, or permit a Designated Library to obtain, catalog records in machine-readable form, by way of a terminal or other device or means for accessing the OCLC System, when User's or a Designated Library's (as applicable) OCLC-assigned holdings symbol has not been accurately attached to such records in WorldCat.

3.6. Ownership and Use of the OCLC System.

A. Except as permitted in a separate agreement between User and OCLC, User and Designated Libraries will not cause or permit any equipment or device to be directly or indirectly attached, linked or used with the OCLC System.

B. User and Designated Libraries will not, except with OCLC prior written consent, make or permit any application or use of the OCLC System not expressly permitted by this Agreement, and will not, as a result of its activities hereunder, acquire any copyright, patent, secrecy or other proprietary right in the OCLC System or WorldCat.

C. Any computer facilities or software programs provided by User or a Designated Library for use with the OCLC System shall be without adverse effect on the System.

SECTION 4. OCLC CHARGES

4.1. Payments and Discount. User and/or each Designated Library (as appropriate) will pay OCLC or its designee, in the currency set forth in OCLC's then-current price list, or such other currency as may be deemed acceptable by OCLC (at an approved conversion rate), the aggregate charges for access, processes, products, license(s) and services furnished by OCLC under this Agreement, as set forth in OCLC's price list(s) in effect at the time of each transaction, copies of which price list(s) will be provided to User when issued.

4.2. Modification of Charges. OCLC may modify or add new such charges for existing processes, products and services, or change the form or method of charging, upon sixty-five (65) calendar days prior notice to User.

4.3. Taxes and Other Charges. All charges under this Agreement are exclusive of sales, use, excise and similar taxes and of customs, tariffs, impost fees and similar charges which may be applicable to the transactions dealt within this Agreement, all of which taxes, and charges, together with interest and penalties thereon, shall be for the account of User and/or each Designated Library (as appropriate) and reimbursed to OCLC. Such taxes and charges for which claims or assessments could be made against OCLC may be added to invoices to User and/or Designated Libraries (as appropriate) unless evidence of a valid exemption has been furnished to OCLC by User or the Designated Library. User may, at its own expense and in OCLC's name, challenge or seek abatement or refund of taxes for which it or a Designated Library is liable hereunder. OCLC shall cooperate with User in that regard by providing all relevant information that is available to OCLC. Each party's obligations under this Section 4.3 shall survive the expiration or termination of this Agreement. If User or a Designated Library withholds any taxes from any payment, then the price payable hereunder shall be deemed increased to an amount which, when reduced by the tax withheld from that amount, equals the full OCLC price otherwise due. For example, if the Agreement provides for a payment of One Hundred monetary units, and User or a Designated Library elects to withhold a twenty percent (20%) tax, then the contract price will be deemed to be One Hundred Twenty-five monetary units, of which One Hundred monetary units will be paid to OCLC and Twenty-five monetary units withheld as taxes.

SECTION 5. USE AND TRANSFER OF RECORDS

5.1. User's Rights and Responsibilities. User agrees that the use and transfer by the User and Designated Libraries of the OCLC-Derived Records received from OCLC or otherwise obtained during the term of this or a preceding agreement with OCLC or an OCLC-affiliated distributor, network or organization will be in accordance with the *Guidelines for the Use and Transfer of OCLC-Derived Records* (or any substitute therefor) a copy of the current version of which is included in this Agreement. However, if, within sixty (60) days after receipt of a new revision of such document, User gives OCLC notice of termination of this Agreement in accordance with the terms hereof then the new revision of the document will not replace the existing version as to User and Designated Libraries. User's rights under this Section 5.1 include non-exclusive licenses permitting Designated Libraries to use, copy, display and distribute the catalog records and derivative works referred to herein under all copyrights owned or controlled by OCLC.

5.2. Subsequent Restrictions. If, during the term hereof, an institution from which OCLC acquires bibliographic records for addition to WorldCat informs OCLC that records it thereafter furnishes to OCLC will be subject to usage or transfer restrictions beyond or in addition to those applicable under this Section 5, and if OCLC nevertheless elects to accept such records for addition to the OCLC database, it will so notify User, with full details, after which, User's and Designated Libraries' rights to access, use and transfer such records will be subject to said usage and transfer restrictions. If, at any time during the sixty (60) day period after receipt of the notification from OCLC of such usage and/or transfer restrictions, User terminates this Agreement under Section 9 hereof, then, after giving its termination notice to OCLC, User will be under no further obligation (if any) to make or cause Designated Libraries to make cataloging use of any of the records which are subject to such restrictions.

5.3. Survival. The obligations under this Section 5 shall survive the expiration or termination of this Agreement.

SECTION 6. WARRANTIES AND LIMITATIONS OF LIABILITY

6.1. Limited Warranty. Catalog cards, OCLC/MARC subscription tapes and other Offline Products will, at the delivery thereof, be free of errors or defects caused by OCLC or its suppliers. If any such products prove, within sixty (60) days after receipt of the item or seventy-five (75) days after shipment as evidenced by OCLC's record of shipment, to have contained such defects or errors upon delivery, or are damaged or lost in transit, OCLC will either replace the item by reproducing it free of charge or, at OCLC's option, by requiring new online transactions with issuance of full credit. All other products and services are warranted as mutually agreed from time to time in the applicable order and agreement forms. THE FOREGOING OBLIGATIONS AS SET FORTH OR REFERENCED IN THIS SECTION 6.1 REPRESENT OCLC'S SOLE AND EXCLUSIVE LIABILITY FOR ANY DEFECT OR FAILURE IN OCLC ONLINE PROCESSES, OFFLINE PRODUCTS AND OTHER PRODUCTS AND SERVICES FURNISHED HEREUNDER OR UNDER THE APPLICABLE ORDER AND AGREEMENT FORMS REFERRED TO HEREIN.

6.2 Regional Service Provider. User warrants to OCLC that: (i) User and Designated Libraries have properly terminated their agreement(s) for OCLC products and services with their OCLC-affiliated regional service provider in accordance with the terms of such agreement(s); and (ii) entering into this Agreement will not breach the terms and conditions of any agreement to which User or a Designated Library is a party.

6.3. Disclaimer. Except for the express warranties stated above or referenced in this Section 6, and the undertakings in Section 7 below, OCLC makes no express or implied representations or warranties with respect to the OCLC System, or OCLC Online Processes, Offline Products or other Products or services. All other warranties, including the WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE ARE HEREBY DISCLAIMED. OCLC SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE FORM OF ACTION, NOR SHALL IT BE LIABLE FOR EXEMPLARY DAMAGES, LOST REVENUE OR LOST DATA. OCLC shall not be liable to User or any Designated Library for any errors in WorldCat caused by the institutions from which records are received or acquired for inclusion in WorldCat. In the event that the exclusivity or limitation of liability or remedy set forth above is held to be unenforceable for any reason, then OCLC's total liability to User or a Designated Library in respect of any claim, regardless of the form of action, shall not exceed a refund of all payments made by User or the Designated Library (as applicable) to OCLC under this Agreement for three (3) months preceding the incident giving rise to such claim.

SECTION 7. INFRINGEMENT UNDERTAKINGS AND GRANT OF LICENSE

7.1. By OCLC. OCLC agrees to defend and assume all of User's or Designated Library's (as applicable) liability, costs and expenses for any suit or claim brought or asserted against User or Designated Library on the ground that use of OCLC Online Processes, Offline Products or services, as furnished by OCLC hereunder or under the separate or supplementary agreements referred to in this Agreement, infringes any patent, copyright, trademark, secrecy or other proprietary interest of third parties, provided and upon the conditions that User or the Designated Library (as applicable) (i) promptly delivers to OCLC written notice of any claim of such infringement together with all infringement notices and other papers received by User or the Designated Library and (ii) gives OCLC all information and assistance reasonably requested, together with exclusive authority to investigate, settle and defend such claim. User or Designated Library may retain legal counsel, at its own expense, to participate in such defense provided doing so does not diminish OCLC's primary authority to conduct such investigation, defense and settlement negotiations. THE FOREGOING SETS FORTH OCLC'S ENTIRE LIABILITY TO USER AND DESIGNATED LIBRARIES FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF THE TYPES DEALT WITH IN THIS SECTION 7.

7.2. By User. User and/or Designated Library (as applicable) agrees to defend and assume all of OCLC's liability, costs and expenses for any suit or claim brought or asserted against OCLC on the ground that any information or data furnished to OCLC by User

or a Designated Library, including any use, reproduction or transfer thereof by OCLC or its designees, infringes any copyright, trademark, secrecy or other proprietary interest of third parties, provided and upon the conditions that OCLC (i) promptly delivers to User or Designated Library written notice of any claim of such infringement, together with all infringement notices and other papers received by OCLC and (ii) gives User or Designated Library all information and assistance reasonably requested, together with exclusive authority to investigate, settle and defend such claim. OCLC may retain legal counsel, at its own expense, to participate in such defense provided doing so does not diminish User's or Designated Library's primary authority to conduct such investigation, defense and settlement negotiations. THE FOREGOING SETS FORTH USER'S AND DESIGNATED LIBRARY'S ENTIRE LIABILITY TO OCLC FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF THE TYPES DEALT WITH IN THIS SECTION 7.

7.3. License Grant. User and each Designated Library hereby grants to OCLC, other OCLC participants, non-participant users and OCLC designees an irrevocable, nonexclusive, royalty-free, sublicenseable, transferable, world-wide right to copy, display, publish, prepare derivative works from, distribute and use all bibliographic records, holdings and other information supplied to OCLC during the term of this Agreement by User or such Designated Library (or any entity acting on its/their behalf) under any copyright, patent, secrecy or other proprietary right therein owned or controlled by User and/or such Designated Library. User and each Designated Library represents to OCLC that it has all rights necessary to grant the license set forth in this Section 7.3.

7.4. Survival of Rights and Obligations. The rights and obligations under this Section 7 shall survive any expiration or termination of this Agreement.

SECTION 8. RESPONSIBLE USE

User agrees to comply, and to cause each Designated Library to comply, with any code of responsible use adopted by OCLC, a copy of which has been provided to User upon request, and to act in the use of the OCLC System, the Online Processes and Offline Products with good faith as to all other OCLC users, doing nothing to waste, diminish or cause harm to the shared beneficial interest of such other OCLC users. It is a duty of OCLC users to act cooperatively with each other and to avoid practices which have the effect either of shifting the burden of payment for OCLC products and services away from those receiving the same, or manipulating use of the OCLC System in ways which unreasonably and adversely affect its performance.

SECTION 9. TERM AND TERMINATION

9.1. Term. Subject to the balance of this Section 9, this Agreement shall remain in effect indefinitely, until terminated by either party entirely in its own discretion and for any reason whatsoever, upon not less than ninety (90) days' prior written notice to the other.

9.2. Breach. When a party in material breach has not corrected same or diligently taken necessary corrective action within twenty (20) days after notice of such breach, which action will enable the party to cure the breach within a reasonable time, or if the party becomes insolvent or is the subject of a bankruptcy, then the other party shall be entitled to seek appropriate relief under this Agreement and under applicable law, which relief includes, without limitation, termination of this Agreement by written notice, without liability therefor.

SECTION 10. GENERAL

10.1. Applicable Law. This Agreement shall be governed by the laws of the State of Florida of the United States of America. All litigation of claims hereunder shall be brought solely in state or federal courts in Lake County, Florida, USA, unless otherwise provided for herein. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

10.2. Entire Agreement. This Agreement is the final, complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof. No provision of this Agreement may be changed, modified or supplemented except by a writing signed by both parties, unless otherwise provided for herein.

10.3. Export. User assures OCLC that User and each Designated Library intends to use all software programs, bibliographic and other data and documentation, including all updates and revisions, provided by OCLC at any time and under any agreement, only in the country of such User and Designated Libraries as set forth in this Agreement, and that neither User nor any Designated Library ships, exports or reexports them, directly or indirectly, to any other country. OCLC's obligations to deliver Products and services hereunder are contingent upon OCLC obtaining the necessary licenses to do so.

10.4. Survival. The rights and obligations under Sections 4.3, 5, 6 and 7 of this Agreement shall survive the termination or expiration thereof.

10.5. Force Majeure. Neither party shall be liable for any failure or delay in performance hereunder (other than of an obligation to pay money) due to or resulting from any cause beyond its reasonable control including, but not limited to acts of God, acts of the other party, strikes, shortage or materials, actions of government, fire, adverse weather conditions or operational failure, provided that the party so affected notifies the other promptly of the commencement and nature of the cause, the corrective steps to be taken and the estimated duration of the delay.

10.6. Notices. Except as provided in the following sentence, any notices required or desired to be given by either party pursuant to this Agreement, shall be in writing and shall be deemed sufficient if delivered by hand or sent by certified mail, return receipt requested, to the address of the other party as set forth in the Form. Notwithstanding anything in this Agreement to the contrary, price lists and any notice required by Section 2.4 or 4.2 of this Agreement may be provided to User and Designated Libraries electronically or by any other means reasonably calculated to result in actual receipt.

10.7. Effect of Waiver. Except as otherwise expressly provided in this Agreement, no failure on the part of either party to exercise, and no delay in exercising, any right, privilege, or power under this Agreement precludes any other further exercise thereof, or the exercise of any other right, privilege, or power. Waiver by either party of any breach of any provision of this Agreement shall not constitute nor be construed as a continuing waiver or as a waiver of any other breach of any other provision of this Agreement.

SECTION 11. ADDITIONAL TERMS APPLICABLE TO USERS ACTING ON BEHALF OF CONSORTIA MEMBERS

If User is a consortium acting on behalf of the member libraries of the consortium, the following terms apply in addition to the other terms and conditions of the User Agreement:

11.1 User agrees as agent for the member libraries of the consortium who are Designated Libraries under this User Agreement (the "Consortium Libraries") that each Consortium Library shall comply with the terms and conditions of this User Agreement. User warrants that it is authorized to bind Consortium Libraries to this User Agreement and shall indemnify OCLC from all loss, expense and damage arising from a breach of such warranty. User shall provide each Consortium Library with a copy of this User Agreement prior to OCLC's activation of relevant authorizations. User shall use its reasonable efforts to ensure that Consortium Libraries comply with this User Agreement. Subject to OCLC acceptance, each designation of a Consortium Library shall result in a direct contract between OCLC and that Consortium Library.

11.2 User is not a buyer of OCLC products and services for resale, and shall not charge Consortium Libraries for OCLC products and services, nor for User's services as agent or other services provided by User in connection with OCLC products and services made available hereunder.

11.3 User is not authorized to make any representations or contract commitments on behalf of OCLC, nor to sign or negotiate any changes to any OCLC terms. Any modifications proposed by any Consortium Library to the applicable OCLC terms and conditions shall be submitted in writing to OCLC in advance for OCLC's written prior approval.

11.4 OCLC's retention of User's assistance in making OCLC products and services available hereunder is on a non-exclusive basis, and nothing in this Agreement shall limit OCLC's right to distribute products and services independent of User, including to Consortium Libraries.

Guidelines for the Use and Transfer of OCLC-Derived Records

Revision of November 16, 1987

I. GUIDELINES

(See Definitions in Part II below.)

1. Each member and nonmember library may use records without restriction, and may transfer records of its own holdings without restriction to other libraries.

2. In addition to transfers to libraries, each member and nonmember library may transfer records of its own holdings without restriction, to (a) member networks, (b) state and multi-state library agencies and (c) all other noncommercial firms.

   a. Member networks may produce and transfer to any member library, copies on magnetic tape of records used or inserted into the OCLC database by the library. Each member network also may process records of the holdings of any member or nonmember library which has employed and agreed to pay it for that service, provided the member network has first signed either an individual agreement with the library, or a general agreement with OCLC, containing measures agreed upon by OCLC and the member network for protection of the records it has been employed to process. Any other use and transfer of records by member networks will be as provided in separate understandings with OCLC.

   b. The use and transfer of records by library systems or projects operated by or under the aegis of one or more state or national library agencies will be as provided in separate understandings with OCLC. Such understandings may include (i) arrangements to incorporate state or national bibliographic databases into the OCLC system, (ii) paid-up licenses to use records in state or national programs (e.g., by means of payments for OCLC multi-institution tapes) and/or (iii) any other understandings that will facilitate state or national programs as well as the maintenance and enhancement of the OCLC database.

   c. The use and transfer of records by any other organizations to which transfers are made under this Guideline 2 will be as provided in separate understandings with OCLC.

3. In addition, each member and nonmember library may transfer records of its own holdings to commercial firms which the library has employed and agreed to pay to process such records, provided that each commercial firm has first signed an individual agreement with the library, or OCLC has advised the library that the commercial firm has signed a general agreement with OCLC, in either case containing measures agreed upon by OCLC and the commercial firm for protection of the records it has been employed to process. In addition, each member and nonmember library may make any other transfers of records to commercial firms, subject to prior written agreements with OCLC. However, there is no requirement for prior written agreements (a) for transfers made under Guideline I above to libraries operated by commercial firms or (b) for transfers to commercial firms by former OCLC member libraries of records of their holdings, so long as the libraries maintain no continuing user status with OCLC.

4. When a nonmember organization makes bibliographic information available to OCLC which is subject to usage or transfer restrictions imposed by such nonmember organization, and OCLC nevertheless elects to accept the information for addition to the OCLC database, OCLC will notify libraries to which it makes the information available, and rights to use and transfer records based on such information will be subject to the same restrictions.

5. When transfers under Guideline 1 above are made to machine-readable union catalogs accessible by nonmember libraries, it is requested that machine-readable copies of the records of such union catalogs be submitted to OCLC. OCLC, at its own expense, will have the right to add such records to its database for all uses consistent with its chartered purposes.

6. The Guidelines above apply to all uses and transfers of records except where a mutually acceptable agreement establishing broader or narrower rights is made with OCLC relating to a specific product or service.

II. DEFINITIONS

1. The term **"member library"** means a general member of OCLC as defined in its Code of Regulations.

2. The term **"nonmember library"** means any library other than a member library.

3. A **"member network"** is an OCLC-affiliated regional, state or multi-state library network organization which is in contract with OCLC to provide OCLC services and products, or to assist OCLC to provide such services and products, to general members of OCLC.

4. A **"commercial firm"** is any organization permitted, under applicable law, to operate on a for-profit basis.

5. The term **"records"** means bibliographic records and holdings data (including copies thereof) derived from the OCLC database, including derivative works made from such records, and either received in machine-readable form or converted by the transferee into machine-readable form. The term also includes such records when held only in eye-readable form, in the case of proposed transfers to commercial firms. However, records do not include, as to any member or nonmember library (a) bibliographic records designated in the OCLC database as original cataloging by such member or nonmember library and (b) bibliographic records derived by such member or nonmember library from sources other than the OCLC database and to copies of which in the OCLC database its holdings symbol has been attached by tapeloading. Such excluded records are freely transferable and are not dealt with in these Guidelines. OCLC-derived records held only in eye-readable form are freely transferable except to commercial firms.

6. The terms **"transfer" and "transfer of records" refer** to all sales, exchanges, gifts, sharing and other transfers, and all online access except online access provided to end-user patrons of a library in authorized possession of the records.

BOARD OF COUNTY COMMISSIONERS
LAKE COUNTY, FLORIDA

Welton G. Cadwell, Chairman

This 30th day of Aug., 2010.

ATTEST:

Neil Kelly, Clerk of the
Board of County Commissioners
of Lake County, Florida

Approved as to form and legality:

Melanie N. Marsh,
Acting County Attorney