

PERSONAL DATA PROCESSING AGREEMENT FOR OCLC SERVICES

This Data Processing Agreement (“DPA”) is entered into between **OCLC S.r.l.**, (“**OCLC**”, **Processor**) and the customer listed below (“**Customer**”, **Controller**) (jointly “the Parties”) as of the date of last signature below.

Customer

Organization Name	
Mailing Address, including country	
Telephone Fax	
Email	
Notice Contact (including contact person’s name, position, email and telephone)	
Supervisory Authority / Authorities of the data exporter	The EU Member State in which OCLC’s respective EU affiliate is established.

Customer enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws and Regulations, in the name and on behalf of its Authorised Affiliates, if and to the extent OCLC processes Personal Data for which such Authorised Affiliates qualify as the Controller. OCLC enters into this DPA on behalf of itself and in the name and on behalf of those OCLC Affiliates that process Personal Data. For the purposes of this DPA only, and except where indicated otherwise, the term: (i) “Customer” shall include Customer and Authorised Affiliates; and (ii) “OCLC” shall mean OCLC or the relevant OCLC Affiliate that is undertaking the processing of the Personal Data concerned. In the course of providing the Covered Services to Customer pursuant to the existing services agreement between the parties (the “Services Agreement”), OCLC may Process Personal Data on behalf of Customer, and the Parties agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.

To ask questions about this DPA, please contact your OCLC contact or email EU_privacy@OCLC.org.

DATA PROCESSING AGREEMENT TERMS

The subject matter of the data processing under this DPA is Personal Data, as defined in Appendix 1, and the purpose and nature of the data processing under this DPA is the provision of the Covered Services initiated by Customer under the Services Agreement. Accordingly, the duration of the data processing under this DPA shall be determined by Customer’s Services Agreement for such Covered Services. This DPA shall terminate or expire on the same date that the Services Agreement terminates or expires, except that this DPA shall continue with respect to Processing that is contemplated to occur after the termination or expiration of the Services Agreement (such as making Personal Data available to Customer for a limited time period prior to deletion), and any extension of the Services Agreement shall also extend the term of this DPA.

For the purposes of the General Data Protection Regulation and Swiss Data Protection Laws (as defined below), for the transfer of personal data to processors established in third countries outside the European Economic Area (“EEA”) and Switzerland that are not recognized by the European Commission or the Swiss Federal Protection and Information Commissioner (as applicable) as ensuring an adequate level of data protection for personal data (“**Third Country Recipient**”), those entities of Customer who are transferring

Personal Data outside of the EEA or Switzerland and those entities of OCLC who are Third Country Recipients hereby agree that Module 2: Transfer controller to processor of the Standard Contractual Clauses (the “Clauses”), linked [here](#) and incorporated into this DPA by reference (as supplemented in the next paragraphs below), shall apply to such transfers.

For the sake of clarity, the Clauses apply to Customer and each of its Authorised Affiliates who, for the purposes of the Clauses, each act as ‘data exporter’ and each OCLC Affiliate who is a Third Country Recipient (and OCLC, if OCLC is or becomes a Third Country Recipient) as each, for the purposes of the Clauses, may act as ‘data importer’ under this DPA. Customer acknowledges that OCLC is established in the EEA or Switzerland and may utilize its Affiliates who are Third Country Recipients, and with respect to any such transfer of Personal Data to such Third Country Recipients, such transfer shall be covered by the Clauses and deemed a direct export by Customer to the Third Country Recipient.

Clause 7 of the Clauses, the ‘Docking Clause – Optional’, shall not be deemed incorporated. In clause 9 of the Clauses, the Parties choose Option 2 (General Written Authorization), which shall be enforced in accordance with Section 6 of this DPA. The optional wording in clause 11 of the Clauses shall not be deemed incorporated. In clause 17 of the Clauses, the Parties agree that the Clauses shall be governed by the laws of the EU Member State in which OCLC’s respective EU affiliate is established. In clause 18 of the Clauses, the Parties agree that any dispute arising from the Clauses shall be resolved by the courts of the EU Member State in which OCLC’s respective EU affiliate is established. For the purposes of the data transfers from Switzerland, if any, the provisions of the Clauses that refer to a “Member State” or “Member States” must not be interpreted in such a way as to exclude Data Subjects in Switzerland from the possibility of suing for their rights in their place of habitual residence (Switzerland) in accordance with clause 18(c) of the Clauses.

Annex I.A and I.B of the Clauses shall be deemed completed with the information set out in Appendix 1, attached hereto. Annex II of the Clauses shall be deemed completed with the information set out in Appendix 2, attached hereto. Annex III of the Clauses shall be deemed completed with the information set forth in section 6.1 of this DPA. For the purpose of Annex I.C of the Clauses, and in accordance with clause 13 of the Clauses, the Parties agree that the competent supervisory authority / authorities is / are the authority / authorities identified in the table at the beginning of this DPA.

For the purposes of data transfers from Switzerland, if any, the Clauses also protect the data of legal entities until the entry into application of the Swiss Federal Data Protection Act 2020.

Nothing in this DPA or in the Services Agreement is intended by the Parties to be construed as prevailing over the Clauses.

1. DEFINITIONS

- 1.1. “**Authorised Affiliate**” means Customer's Affiliates that (a) are subject to the data protection laws and regulations of the EU, the EEA and/or their member states, and/or Switzerland; (b) are permitted to use the Covered Services pursuant to the Services Agreement between Customer and OCLC; and (c) have not signed their own Services Agreement with OCLC.
- 1.2. “**Affiliate**” means any entity that directly or indirectly controls, is controlled by or is under common control with a party. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.3. “**Covered Services**” means the OCLC services that are ordered by the Customer from OCLC involving the Processing of Personal Data on behalf of the Customer, as set forth in the applicable Services Agreement.
- 1.4. “**Data Protection Laws and Regulations**” means all applicable laws that govern the use of data relating to Data Subjects, including the European Union (“EU”) General Data Protection Regulation (“GDPR”), as amended or replaced from time to time, and any other foreign or domestic laws to the extent that they are applicable to a party in the course of the performance of the Services Agreement.

- 1.5. **“Personal Data”** means any personal data, as defined in the GDPR, which is provided by or on behalf of Customer and Processed by OCLC pursuant to the Services Agreement. An overview of the categories of Personal Data and purposes for which the Personal Data are being Processed is provided in Appendix 1.
- 1.6. **“Regulator”** means any supervisory authority with authority under Data Protection Laws and Regulations over all or any part of the provision or receipt of the Covered Services or the Processing of Personal Data.
- 1.7. **“Standard Contractual Clauses”** or **“Clauses”** means Module 2: Transfer controller to processor of the standard contractual clauses adopted by the European Commission Implementing Decision (EU) 2021/914 of 4 June 2021 for the transfer of personal data to third countries pursuant to the GDPR.
- 1.8. **“Sub-processor”** means any data processor engaged to Process Personal Data on behalf of OCLC and/or its Affiliates. For the avoidance of doubt, OCLC’s colocation data centre facilities are not considered Sub-processors under this DPA.
- 1.9. **“Swiss Data Protection Laws”** means all applicable data protection and privacy laws in force from time to time in Switzerland, including the Swiss Federal Data Protection Act 1992, as amended or replaced from time to time, such as by the Swiss Federal Data Protection Act 2020, when in force and applicable.
- 1.10. Terms, including but not limited to, **“Data Subject”**, **“Personal Data Breach”**, **“Processing”**, **“Controller”**, **“Processor”**, **“Special Categories of Personal Data”** and **“Supervisory Authority”** shall have the meaning ascribed to them in the Data Protection Laws and Regulations.

2. SERVICES AGREEMENT

- 2.1 This DPA supplements and is incorporated into the Services Agreement, and in the event of any conflict between the terms of this DPA and the terms of the Services Agreement, the terms of this DPA shall prevail and control, but only with respect to the subject matter of this DPA.

3. OBLIGATIONS OF THE CUSTOMER

- 3.1 **Instructions.** This DPA and the Services Agreement are Customer’s complete and final instructions, at the time of signature of the DPA, to OCLC for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon mutually by the Parties in writing, unless such instructions are required by law. Customer warrants that the instructions it provides to OCLC pursuant to this DPA comply with Data Protection Laws and Regulations.
- 3.2 **Data Subject and Supervisory Authority Requests.** Customer shall be responsible for communications and leading any efforts to comply with all requests made by Data Subjects under Data Protection Laws and Regulations and all communications from any Regulator(s) that relate to the Personal Data, in accordance with Data Protection Laws and Regulations.
- 3.3 **Notice, Consent, and Other Authorisations.** Customer is responsible for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired the Personal Data that it provides to OCLC for Processing under the Services Agreement. Customer is responsible for providing any notice to the Data Subjects and for obtaining and demonstrating evidence that it has obtained any necessary consents, authorisations, and permissions from the Data Subjects in a valid manner for OCLC to perform the Covered Services. Customer will provide OCLC with such evidence of this as OCLC may reasonably request if OCLC needs this information to comply with Data Protection Laws or the request of any Regulator. Customer understands that custom fields and other free text fields in the software provided as a part of the Covered Services (such as “notes” fields) are not designed for the Processing of Special Categories of Personal Data and warrants that it will not enter such data in such fields or otherwise when using the Covered Services.

4. OBLIGATIONS OF OCLC

- 4.1 **Scope of Processing.** OCLC will Process the Personal Data on documented instructions from Customer given in accordance with this DPA, including with regard to transfers of Personal Data to a third country or an international organisation, and in such manner as is necessary for the provision of Covered Services under the Services Agreement, except as required to comply with a legal obligation to which OCLC is subject. OCLC shall inform Customer if, in its opinion, the execution of an instruction relating to the Processing of Personal Data could infringe on any Data Protection Laws and Regulations.
- 4.2 **Data Subject Requests.** At Customer's request, and provided that Customer is unable to fulfill a request through functionality of the Covered Services themselves or otherwise, OCLC will provide additional, reasonable assistance (taking into account the nature of the processing) to Customer to assist Customer in fulfilling its obligations related to Data Subject rights under Chapter III of GDPR.
- 4.3 **Security.** OCLC will implement and maintain administrative, physical, technical and organisational safeguards for the security, confidentiality and integrity of Personal Data as detailed in Appendix 2.

5. AUDIT

- 5.1. **Process.** OCLC will provide to Customer, upon request, any then-existing, third-party certification(s) pertinent to OCLC's compliance with its obligations under this DPA (for example, ISO certification). To the extent that such third-party certifications or other information provided by OCLC are deemed inadequate by Customer to demonstrate compliance to Article 28, Customer may have a reputable, independent third party or auditor with expertise in data security (the "Auditor") inspect OCLC's policies and records relating to the Processing of Personal Data by OCLC to ensure OCLC's compliance with Article 28 of the GDPR, provided that such Auditor is reasonably acceptable to OCLC.
- 5.2. **Timing and Costs.** Customer will provide OCLC with at least one (1) month's written notice of any audit. Prior to the start of an audit, the Parties will agree to reasonable time, duration, place, manner, and conditions for the audit. Customer shall bear the cost of any audit requested pursuant to this Section 5. Unless otherwise required by a Regulator (or if the audit reveals a material breach of this DPA), no more than one audit may be undertaken in any 12-month period.
- 5.3. **Disclosure.** Prior to any such inspection, the Auditor must sign a non-disclosure agreement which shall be provided to Auditor by OCLC. The results of the inspection and all information reviewed during such inspection will be deemed OCLC's confidential information and shall be protected by Auditor in accordance with the terms of the non-disclosure agreement to be executed between Auditor and OCLC. Notwithstanding any other terms, the Auditor may only disclose to Customer specific violations of Article 28, if any, and the basis for such findings in accordance with the terms of this DPA and shall not disclose any of the records or information reviewed during the inspection.

6. CONTRACTING WITH SUB-PROCESSORS

- 6.1 **Customer Consent.** Customer consents, on its own behalf and on behalf of its Authorised Affiliates, to the use of Sub-processors for the Processing of Personal Data in relation to the Services Agreement. A listing of Sub-processors is found [here](#) and may be revised from time to time.

OCLC will inform Customer of the addition or replacement of any Sub-processors and if there is no objection by Customer within fifteen (15) days, this will be deemed acceptance by Customer to the use of the proposed new Sub-processor.

If Customer has a reasonable basis to object to the use of a new Sub-processor, Customer will notify OCLC promptly in writing within fifteen (15) days after receiving notice. If Customer reasonably objects in accordance with this clause, OCLC will use commercially reasonable efforts to make available to Customer a change in the affected Covered Services or recommend a commercially

reasonable change to Customer's configuration or use of the affected Covered Services to avoid processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening Customer. If OCLC is unable to make available such a change within a reasonable period of time, which will not exceed thirty (30) days, Customer may terminate the Services Agreement and this DPA and the Clauses by providing written notice to OCLC. Upon termination of the Services Agreement pursuant to this Section, OCLC will refund the pro rata portion of the fees for the remainder of the annual subscription period after the termination date of the Services Agreement.


7. INFORMATION OBLIGATIONS AND INCIDENT MANAGEMENT

- 7.1 **Notification.** OCLC shall notify Customer without undue delay after OCLC becomes aware of a Personal Data Breach involving OCLC or its applicable Sub-processors that impacts Personal Data provided to OCLC pursuant to this DPA. Such notification may be by any means OCLC has established for such notification, including notification by email. Notifications of Covered Services unavailability may be by [OCLC's System Status](#).

8. MISCELLANEOUS

- 8.1. **Liability and Indemnity.** Subject to Clause 12 of the Standard Contractual Clauses, any claims brought under this DPA will be subject to the same terms and conditions, including the exclusions and limitations of liability, as are set out in the Services Agreement. For avoidance of doubt, any such limitation of liability applied from the Services Agreement shall apply in the aggregate to all OCLC entities taken together, even if such entities are not referred to specifically in the Services Agreement.
- 8.2. **Informal Dispute Resolution.** In the event of a dispute between Customer and OCLC, such dispute shall be referred to the individuals responsible for data protection issues for each organization, who shall endeavour to resolve the dispute within thirty (30) days.
- 8.3. **Obligations Post-Termination.** Termination or expiration of this DPA shall not discharge either party from its obligations meant to survive the termination or expiration of this DPA.
- 8.4. **Changes in Data Protection Laws and Regulations.** The Parties agree to negotiate modifications to this DPA if changes are required to continue to comply with the Data Protection Laws and Regulations or the legal interpretation of the Data Protection Laws and Regulations, including but not limited to (a) replace the Standard Contractual Clauses if they are invalidated, or (b) if changes to the membership status of a country in the European Union or the European Economic Area require such modification.
- 8.5. **Severability.** If any provision of this DPA 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 DPA. The Parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute and shall incorporate such substitute provision into this DPA.

The Parties' authorized signatories have duly executed this DPA on behalf of the party and, where relevant, their Affiliates.

Customer	OCLC S.r.l.
Signature _____	Signature  _____
Printed Name _____	Printed Name <u>H.L.M. (Eric) van Lubeek</u>
Title _____	Title <u>Vice President & Managing Director</u>
Date _____	Date <u>28 September 2021</u>

APPENDIX 1

A. List of Parties

DATA EXPORTER

The data exporter is Customer. Data exporter's name, address, contact person's name, position and contact details are indicated in the table on page 1 of this DPA. The role of data exporter is: **controller**.

The activities relevant to the data transferred are specified under the heading '*NATURE OF THE PROCESSING AND THE PURPOSES OF THE DATA TRANSFER*' in point B of this Appendix 1.


Data exporter's signature and date: by executing this DPA (prior page of this DPA).

DATA IMPORTER

The data importer is OCLC, Inc. or its Affiliate who is a Third Country Recipient. OCLC, Inc.'s address is: 6565 Kilgour Place, Dublin, Ohio 43017-3395 USA. The contact person's name and position are those of your OCLC contact or you can email EU_privacy@OCLC.org.

The activities relevant to the data transferred are specified under the heading '*NATURE OF THE PROCESSING AND THE PURPOSES OF THE DATA TRANSFER*' in point B of this Appendix 1.

Data importer's signature and date:

Signature:	 _____
Name:	<u>Bart Murphy</u>
Title:	<u>Chief Technology & Information Officer</u>
Date of Signature:	<u>September 28, 2021</u>

B. Description of Transfer

CATEGORIES OF DATA SUBJECTS WHOSE PERSONAL DATA ARE TRANSFERRED

The categories shall be determined by the Customer and may include, without limitation, patrons, staff, faculty, students, administrators, employees, visitors and alumni of Customer, and data subjects whose personal data are reflected in Customer's holdings (such as the names of authors).

CATEGORIES OF PERSONAL DATA TRANSFERRED

Categories of Personal Data shall be consistent with the provision of the Covered Services and may include, but are not limited to:

- Names
- Job titles
- Contact information (including physical addresses, telephone number(s), fax number(s), email address(es), etc.)
- Unique identifiers, whether assigned by Customer or OCLC (e.g., patron ID numbers and barcodes, employee ID numbers, etc.)
- Usernames and passwords
- Personal attributes (e.g., dates of birth, gender, department, patron type, etc.)
- Photographs (via URL)
- Staff-related usage information
- Research activity

- General usage information, including connection data
- Supplier/vendor information

SENSITIVE DATA TRANSFERRED (IF APPLICABLE)

The personal data transferred will not include special categories of data or other personal data that could be considered sensitive.

FREQUENCY OF THE TRANSFER (E.G. WHETHER THE DATA IS TRANSFERRED ON A ONE-OFF OR CONTINUOUS BASIS)

The personal data transferred will be on a continuous basis as determined by the Customer.

NATURE OF THE PROCESSING AND THE PURPOSE(S) OF THE DATA TRANSFER AND FURTHER PROCESSING

Personal Data will be processed for the purpose of providing the Covered Services described in the Services Agreement, thus facilitating the administration, operations, maintenance, and patron use of the Customer library and access to its resources. Such nature and purposes of the processing include, without limitation, the following:

- Storing, retrieving, using, modifying, and deleting Personal Data as necessary to provide the Covered Services;
- Copying and storing Personal Data for development, testing, backup, disaster recovery, sandbox services, and other non-production purposes;
- Sending communications related to the Covered Services to end users;
- Providing reports to Customer;
- Modifying, deleting, copying, or transferring Personal Data as necessary to meet the requests of individual Data Subjects;
- Logging user activity on the system for troubleshooting, auditing, and other purposes;
- Processing that is necessary to troubleshoot, debug, and improve the Covered Services;
- Processing necessary to provide customer support services to Customer and its employees;
- Patching, upgrading, troubleshooting, administering, configuring, and otherwise maintaining information technology systems and databases used to provide the Services;
- Monitoring the performance of the Covered Services and troubleshooting and remediating any causes of downtime or inaccessibility of the Covered Services;
- Security monitoring, network-based intrusion detection support, penetration testing, and other similar monitoring and testing;
- Assistance with backup and restoration of the Covered Services
- Processing that is necessary to meet legal obligations, such as compliance with a valid court order, and record retention requirements that are imposed by law;
- Any other lawful and agreed upon processing necessary to carry out the written instructions of Customer.

PERIOD FOR WHICH THE PERSONAL DATA WILL BE RETAINED, OR, IF THAT IS NOT POSSIBLE, THE CRITERIA USED TO DETERMINE THAT PERIOD

The duration of the processing shall be the term of the Services Agreement and a reasonable and limited period of time following expiration or other termination.

FOR TRANSFERS TO (SUB-) PROCESSORS, ALSO SPECIFY SUBJECT MATTER, NATURE AND DURATION OF THE PROCESSING

A listing of Sub-processors is found under the hyperlink in clause 6.1 of this DPA. In that listing, the column 'Description' specifies the subject matter and nature and duration of the processing.

APPENDIX 2

OCLC's Technical and Organizational Security Measures can be found [here](#). Security measures may be updated from time-to-time; however, changes will not result in any reduction in the level of protection provided.