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AGREEMENT BETWEEN

San Luis Obispo County Community College District  
(Name of Institution)

and

OCLC ONLINE COMPUTER LIBRARY CENTER, INCORPORATED

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Access to OCLC Online System will  
be by (check as appropriate)  
 Dial Access  
 Dedicated Line

OCLC880222:01 SVC  
Online Cataloging Member

Institution's federal income  
tax status (check one)  
 Exempt  
 Not Exempt

AGREEMENT BETWEEN

San Luis Obispo County Community College District  
(Name of Institution)

and

OCLC ONLINE COMPUTER LIBRARY CENTER, INCORPORATED

THIS AGREEMENT ("Agreement") is made as of the date of last signature below by and between San Luis Obispo County Community College District, an institution organized and existing under the laws of the State of California, hereinafter referred to for purposes of this Agreement as "Institution", and OCLC ONLINE COMPUTER LIBRARY CENTER, INCORPORATED, a not-for-profit institution organized and existing under the laws of the State of Ohio, hereinafter referred to for purposes of this Agreement as "OCLC".

WHEREAS, OCLC is an organization of cooperating library members which has developed, by means of their financial support, a computerized system for creating and maintaining a regularly updated database of bibliographic records, holdings and other information supplied by such members and other parties, and for creating certain related products, which system is accessible primarily through online telecommunications forming a part of the system (the "OCLC System"), and is engaged, as well, in research and development toward improvements therein; and

WHEREAS, OCLC is engaged, among other activities, in making widely available to its members, by contract, (i) access to the OCLC System and (ii) certain collateral processes, products and services; and

WHEREAS, Institution desires that one or more of the libraries operated by it or otherwise within its control be a general member or general members of OCLC as defined in the OCLC Code of Regulations; and

WHEREAS, the parties desire to contract as herein provided, and in connection therewith to acknowledge a public purpose to be served of furthering ease of access to and use of worldwide scientific, literary and educational knowledge and information;

NOW, THEREFORE, for and in consideration of the covenants and undertakings set forth herein, OCLC and Institution hereby agree as follows:

ARTICLE I - DEFINITIONS.

For purposes of this Agreement, the terms set forth below have the meanings indicated.

A. "Current Cataloging" means all cataloging of bibliographic materials first performed or obtained by a Participant 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 a Participant customarily gives less than "K" level cataloging as set forth in Bibliographic Input Standards, Third Edition (1985), a copy of which has been furnished to the Participant by OCLC prior to the effective date hereof, or such other minimal level of cataloging as OCLC may promulgate from time to time.

B. "First-time Update" and "First-time Use" mean each Participant's initial use of a catalog record in the OCLC Online Union Catalog for cataloging, where the record is not input by the Participant.

C. "OCLC-Derived Records" means, as to any Participant, all records stored in the OCLC Online Union Catalog other than (i) records designated in such catalog as original cataloging by the Participant and (ii) records to which the Participant's holding symbol has been attached by Tapeloading.

D. "OCLC Online Union Catalog" 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.

E. "OCLC participants" means the general members of OCLC, as defined in the OCLC Code of Regulations.

F. "OCLC Services" means personnel training and field services which are made available to OCLC participants generally, including services for the repair and maintenance of OCLC Terminals.

G. "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 transfer to OCLC participants generally.

H. "OCLC System" means the system as defined on page 1 of this Agreement.

I. "OCLC Terminals" means terminals designed by and/or manufactured by or for OCLC for operation on the OCLC System.

J. "Offline Products" means those OCLC products which are derived from a Participant's use of Online Processes, including cataloging products such as catalog cards and OCLC/MARC Subscription tapes.

K. "Online Cataloging" means Participant's use of the OCLC System to perform cataloging functions, online, from terminals and through telecommunications, which functions include, without limitation, the creation of catalog re-

cords and holdings information maintained within the OCLC System, and the editing of copies of catalog records, for items held in the Participant's collection.

L. "Online Processes" means processes performed by a Participant online and by means of connection to the OCLC System, primarily involving access to and use of the OCLC Online Union Catalog, including, but without limitation, cataloging, catalog card production, inter-library loan, acquisitions and serial control.

M. The term "Participant" means any library or group of libraries listed in Article II below and owned by Institution, which library or group of libraries is, in accordance with Institution's direction under Article II below, to be a general member of OCLC.

N. "Tapeloading" means the submittal by a Participant to OCLC, under a separate agreement between the parties, of machine-readable tapes or other OCLC-approved media permitting input into the OCLC Online Union Catalog of the cataloging records of the Participant derived from sources other than the OCLC Online Union Catalog, and the actual input of such records.

ARTICLE II - OCLC MEMBERSHIP AND PARTICIPATING LIBRARIES.

Institution hereby designates as Participants the following library or libraries operated by it, each Participant to be a general member of OCLC as provided in the Code of Regulations of OCLC:

(List each library and, if more than one listed library are to share a single general membership, indicate which libraries will so share. If not otherwise stipulated, each listed library will be a separate general member and Participant.)

SAN LUIS OBISPO CO. COMM COLLEGE DISTRICT

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(Please attach additional pages as necessary)

Institution reserves the right (subject to any applicable documentation requirements) to add other Institution-owned libraries to the above list of Participants at any time, by notice to OCLC, and the right to delete libraries from such list upon thirty (30) days prior notice to OCLC. In addition, Institution may, with OCLC's consent, which shall not be unreasonably withheld, change the number of libraries constituting a single general member and Participant by thirty (30) days prior notice to OCLC. Upon any of the foregoing additions, deletions and changes being made, the above list of Participants shall be deemed amended accordingly.

ARTICLE III - RESPONSIBILITIES OF OCLC.

A. In General

OCLC shall, during the term hereof and subject to the terms and conditions of this Agreement, provide each Participant (i) access to the OCLC System for use by the Participant of the Online Processes set forth in Appendix 1 hereto attached and (ii) products and services, including the Offline Products, OCLC Services, OCLC Terminals and copies of OCLC Software set forth in Appendix 1 hereto attached. OCLC reserves the right to revise Appendix 1 from time to time by adding items thereto, or on ninety (90) days prior written notice, deleting items therefrom, provided that any such deletions shall be applicable generally to OCLC participants in the United States. OCLC's obligations under this Article III are subject to the prior receipt from Institution of separate or supplemental agreements which may be requested from time to time for specific processes, products, services and modes of access to the OCLC System, and to prior receipt from Institution or Participants of documentation which may be requested from time to time by OCLC. OCLC shall exert its reasonable best efforts to make the OCLC System available between the hours of 6:00 a.m. and 10:00 p.m., Dublin, Ohio local time, Monday through



Friday, and between the hours of 8:00 a.m. and 8:00 p.m., Dublin, Ohio local time on Saturday, except holidays observed by OCLC (and the day before or after when such holidays fall on weekends). OCLC reserves the right to suspend availability of the OCLC System for required repair or maintenance, and where periods of downtime occur as a result of scheduled maintenance functions, OCLC shall notify Institution or Participants thereof in advance, by online screen message or other appropriate means. Access to the OCLC System hereunder shall be by either (i) dedicated, leased communication facilities or (ii) dial access (either via public switched network or value-added network) as indicated on page 1 hereof. All products sold or transferred hereunder, except terminals, will be delivered F.O.B. shipping point unless otherwise hereafter agreed from case to case. The OCLC System shall permit the attachment of a unique OCLC-assigned holdings symbol to each catalog record used or created by each Participant for its cataloging under this Agreement, and shall permit the online display of all holdings symbols attached to each such record.

B. Terminals

1. If access to the OCLC System is by dedicated line, then OCLC Terminals, together with the installation thereof, will be offered for sale to Institution in accordance with the terms and conditions set forth in the standard form of OCLC Terminal sale agreement in effect at the date of the transaction, a copy of which will be furnished to Institution on request. Participants may use, for accessing the OCLC System any terminals not furnished by OCLC provided that the same are compatible with the OCLC System and approved as such by OCLC upon written request from the Participants. If access to the OCLC System is by dial access, then OCLC Terminals may be offered for sale to Institution, or Participants may use any terminals not furnished by OCLC. Requirements for compatibility of dial access terminals with the OCLC System may

be published from time to time by OCLC. In special situations, and subject to case-by-case approval by OCLC, OCLC Terminals may be offered for lease to Institution in accordance with the terms and conditions set forth in the standard form of OCLC Terminal Lease Agreement in effect at the date of the transaction, a copy of which will be furnished to Institution or any Participant on request.

2. At the request of Institution, OCLC will provide maintenance service for OCLC Terminals sold to Institution, which service shall be in accordance with the terms and conditions set forth in the then-current standard form of OCLC Terminal maintenance agreement, a copy of which will be furnished to Institution on request.

C. OCLC Software

Copies of OCLC Software set forth on Appendix 1 will be made available to each Participant on the terms set forth in (i) license agreements between Institution and OCLC to be signed by Institution or the Participant or (ii) license agreements between Institution and OCLC which need not be signed by Institution or Participant, as OCLC may stipulate from time to time. Currently, as to certain OCLC Software, the license agreement is submitted to the Participant as a "tear-and-open" agreement which the Institution and OCLC intend to become effective upon the opening of the software and documentation package by the Participant.

D. Telecommunications

1. OCLC shall arrange for and solely control a private telecommunication network between OCLC, Participants and other OCLC users, or other suitable means, to permit the delivery of Online Processes under this Agreement by dedicated line. OCLC will, at all times, direct and control all aspects of network configurations, including, without limitation, the mode of

telecommunication networking, the telecommunications carrier, the sequence of stations and the method for delivery of the Online Processes. At the date hereof, the telecommunication network furnished by OCLC includes and terminates with a required modem(s) on the premises of the Participants. Such modem(s), including all modem(s) installed by OCLC under any preceding agreement between Institution and OCLC, and still in place on the effective date hereof, are owned by OCLC. Upon expiration or termination of this Agreement for any reason, Institution will cause the modem(s) to be returned to OCLC by the Participants. Risk of loss or damage to modems will remain with OCLC except for loss or damage resulting from willful acts or gross negligence by Institution or a Participant. Institution shall not, and shall not permit the Participants, to make any changes or add any attachments to the telecommunications system as arranged by OCLC.

2. OCLC will provide dial-up access to the OCLC System through the public, switched networks, and/or through one or more value-added networks. OCLC will keep the Participants informed regarding the available dial-up mechanisms.

E. Technical Support to Participants

OCLC will provide:

1. Training of personnel in the operation of the Online Processes and the use of products to be furnished hereunder.

2. All reasonable, continuing, technical assistance, including the provision of a toll-free telephone contact with OCLC which Participants may use during all hours of OCLC System operation.

3. Field and workshop training of personnel in new subsystems.

4. Technical bulletins, instruction manuals, and other specialized documentation and updates which OCLC makes available for use by OCLC participants generally.

5. Assistance to help assure the accuracy of all forms, purchase orders, contracts and other documents required by OCLC to initiate and provide products, processes and services hereunder, including a catalog profile and pack definition table for each Participant.

F. OCLC/MARC Subscription Tapes

During the term hereof, OCLC will make available to each Participant upon a subscription basis with orders placed in advance, and upon a schedule applicable to all OCLC participants, copies in OCLC/MARC format, on magnetic tapes, of the catalog records of the Participant which it has added to the OCLC Online Union Catalog by online cataloging, or to which it has, by such cataloging, attached its OCLC-assigned holdings symbol, since the date of the most recent OCLC/MARC subscription tape furnished to the Participant (or the date of the Participant's subscription, if no such tape has previously been furnished). OCLC will also make available to each Participant, during the term hereof, copies of the machine-readable records of other OCLC participants who have given their written consent to OCLC.

G. New Online Processes and Offline Products and Services

OCLC agrees that as soon as it has completed development and testing, and is ready to release to OCLC participants generally, new or enhanced Online Processes, and new or enhanced products and services, including Offline Products, OCLC Software, OCLC Terminals and OCLC Services, the same will be made available to Institution for delivery to Participants hereunder, by addition to Appendix 1 hereto attached or other appropriate means. The charges, terms and conditions for such new and enhanced processes, products and services will be

announced by OCLC and may be the subject of separate or supplementary agreements between the parties.

ARTICLE IV - RESPONSIBILITIES OF PARTICIPANT

A. Standards

Institution will cause the Participants, when accessing the OCLC System, to abide by standards set forth in Bibliographic Input Standards, Third Edition (1985), as the same may be amended from time to time, and by other standards regarding use and operation of the OCLC System and/or the Online Processes adopted by OCLC from time to time for application to OCLC participants generally.

B. Current Cataloging

Institution agrees to cause each Participant to search the OCLC Online Union Catalog in connection with all of its Current Cataloging, determining 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 the said Union Catalog by means of Online Cataloging. Whether such catalog records are already available in the said Union Catalog or are created and inserted by a Participant, Institution will cause the Participant to attach its OCLC-assigned holdings symbol to all catalog records in the OCLC Online Union Catalog required for Current Cataloging. Provided that Institution has met its responsibilities under this Paragraph B, nothing herein shall prevent Institution from also carrying out cataloging by any other means it may elect. Institution will, at all times during the term of this Agreement, cause the Participants to maintain their holdings information in the OCLC Online Union Catalog in an accurate and up-to-date condition, and to inform OCLC promptly of any errors in catalog entries in the said Union Catalog which Participants are unable to correct online.

C. Non-Member Services

Institution agrees that it will not, and will not permit the Participants, to access the OCLC System to perform services or provide assistance for or on behalf of any non-OCLC general member except with the prior written consent of OCLC; provided, however, that such use for non-members is permitted (a) where it generates an inter-library loan request on the OCLC inter-library loan subsystem and (b) where an OCLC-authorized processing center participant carries out Current Cataloging on behalf of its client users. Institution or a Participant is an authorized processing center participant only if it so states elsewhere in this Agreement or in a separate written agreement between the parties.

D. Site Preparation

Institution shall be responsible to arrange for site preparation for OCLC Terminals in accordance with specifications to be furnished by OCLC.

E. Charges

Institution shall be responsible for the payment of OCLC charges hereunder in accordance with the requirements of Article V below.

F. Terminal Printer Port

Institution agrees that, except with OCLC's prior written consent, it will not permit a Participant to obtain, by way of a terminal device or other device or means for accessing the OCLC System, records from the OCLC database for cataloging purposes, or in machine-readable form for any purpose, when Participant's OCLC-assigned holdings symbol has not been attached to such records in the OCLC Online Union Catalog, except in the following cases:

(i) Records required by the Participant to carry out Current Cataloging by means of Online Cataloging, or to carry out authorized retrospective conversion activities hereunder, may be stored temporarily, prior

to attachment of the Participant's holdings symbol, as required by its established work flow procedures; but other uses or transfers of such stored records will not be made prior to attachment of the holdings symbol.

(ii) Records may be obtained and used by the Participant in connection with its acquisition of new library materials provided (a) that the records are not transferred or made available to third parties other than the publishers or suppliers to whom the Participant's purchase orders for such new materials are issued; and (b) that the Participant's OCLC-assigned holdings symbol is attached to all such records in the OCLC Online Union Catalog reasonably promptly after receipt by the Participant of the newly acquired materials.

G. Attachments to and Use of the OCLC System

1. Except as permitted in a separate agreement entered into between Institution and OCLC, Institution will not permit any equipment or device to be directly or indirectly attached, linked or used with the OCLC System by Institution or the Participants except equipment and devices permitted under the OCLC Attachments Policy attached hereto as Appendix 3 (as the same may be amended from time to time on ninety (90) days prior written notice by OCLC).

2. No application or use of the OCLC System or OCLC Online Union Catalog not expressly permitted by this Agreement will be made by Institution or the Participants without the prior written consent of OCLC.

3. Any computer facilities or software programs provided by Institution or Participants for use with the OCLC System shall be without adverse effect on the System.

ARTICLE V - OCLC CHARGES.

A. Payments and Discount

Institution will pay OCLC the aggregate charges and rentals for access, processes, products, licenses and services furnished by OCLC under this

Agreement, as provided in Appendix 1 hereto attached or in other supplementary agreements between the parties. Unless OCLC is directed to invoice Institution directly, invoices based on actual usage of processes by each Participant, and sales and rentals of products and services to it, will be rendered to that Participant monthly. Institution will be primarily responsible for the payment of all invoices.

Institution will be entitled to participate in the OCLC Subscription Discount Program as set forth in Appendix 2 hereto attached. Individual determinations of the discounts referred to therein will be made for each Participant based on the subscription and other payments made by or on behalf of that Participant. Net amounts due to OCLC under each invoice, after crediting subscription discount payments will be payable in accordance with the terms of Appendix 1 and/or 2 hereto, and will include a late payment service charge, computed at the rate shown therein, for amounts paid beyond stated terms.

Any subscription discount payment not credited against monthly invoices, shall, at Institution's option, be refunded to Institution in cash on thirty (30) days prior written notice to OCLC.

In the event of termination of this Agreement pursuant to Article XII, OCLC will refund to Institution any subscription payment in excess of claims against such payment.

B. Modification of Charges and Discounts

OCLC may reduce any charges provided for in this Agreement effective at any time, and may increase 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 written notice to Institution.

When any modification in charges becomes effective pursuant to notice given, Appendix 1 and/or 2 shall be deemed to be amended to provide for



those modifications. If new processes, products, licenses or services are added to Appendix 1 to this Agreement, the charges applicable thereto will be deemed added at the same time to Appendix 1.

ARTICLE VI - TAXES.

All charges set forth on Appendix 1 to this Agreement are exclusive of sales, use, excise and similar taxes which may be applicable to the transactions dealt with in this Agreement, all of which taxes, together with interest and penalties thereon shall be for the account of Institution and paid or reimbursed to OCLC. Such taxes for which claims or assessments could be made against OCLC may be added to invoices to Institution or Participants unless a valid exemption certificate has been furnished to OCLC by Institution. Institution may, at its own expense and in OCLC's name, challenge or seek abatement or refund of taxes for which it is liable hereunder. OCLC shall cooperate with Institution in that regard by providing all relevant information that is available to OCLC. Each party's obligations under this Article VI shall survive the expiration or termination of this Agreement.

ARTICLE VII - USE AND TRANSFER OF RECORDS.

A. Institution agrees that the use and transfer by the Participants of OCLC-Derived Records received from OCLC or otherwise obtained during the term of this or a preceding agreement with OCLC or an OCLC-affiliated network organization will be in accordance with the latest revision received from time to time of the document Guidelines for the Use and Transfer of OCLC-Derived Records (or any future substitute therefor), a copy of the current version of which is attached hereto as Appendix 4. However, if, within sixty (60) days after Participants' receipt of a new revision of such document, Institution gives OCLC notice of termination of this Agreement under Article XII-A hereof

then the new revision of the document will not replace the existing version as to the Participants. Institution's rights under this Article VII include non-exclusive licenses permitting the Participants to use, copy, display and distribute the catalog records and derivative works referred to herein under all copyrights owned or controlled by OCLC. In the event of any actual or alleged breach of this Article VII by Institution, OCLC agrees that its rights will be limited to those arising in contract, and OCLC shall forego any rights otherwise available to it under the copyright laws of the United States or other jurisdictions. Institution's rights and obligations under this Article VII shall survive the expiration or termination of this Agreement.

B. If, during the term hereof, a nonmember organization from which OCLC acquires bibliographic records for addition to the OCLC Online Union Catalog 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 Article VII-A above, and if OCLC nevertheless elects to accept such records for addition to the OCLC database, it will so notify the Participants, with full details, after which, Institution agrees that the Participants' 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, Institution terminates this Agreement under Article XII-A hereof, then, after giving its termination notice to OCLC, Institution will be under no further obligation as a result of Article IV-B above to cause the Participants to make cataloging use of any of the records which are subject to such restrictions.

ARTICLE VIII - WARRANTIES, COVENANTS AND LIMITATIONS OF LIABILITY.

A. 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 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, provided Institution or a Participant gives OCLC notice of the defect, error or damage in transit within sixty (60) days after receipt of the item or, in the case of loss in transit, within seventy-five (75) days after shipment as evidenced by OCLC's record of shipment. All other OCLC 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 ARTICLE VIII-A REPRESENT OCLC'S SOLE AND EXCLUSIVE LIABILITY FOR ANY LOSS, DAMAGE, DEFECT OR FAILURE IN PROCESSES, PRODUCTS AND SERVICES FURNISHED HEREUNDER OR UNDER THE APPLICABLE ORDER AND AGREEMENT FORMS REFERRED TO HEREIN.

B. Immediately prior to the delivery of all products except OCLC Software sold, leased or transferred hereunder, OCLC will have good title thereto; and immediately prior to the delivery of copies of any OCLC Software hereunder, OCLC will have the right to extend to Institution or the Participants the related licenses.

C. OCLC covenants that it will maintain the OCLC System during the term hereof, and will exert continuing efforts to upgrade the OCLC Online Union Catalog and to improve performance of the OCLC System.

D. Except for the express warranties stated above or referenced in this Article VIII and the undertakings in Article IX below, OCLC makes no express or implied representations or warranties with respect to the OCLC

System, the OCLC Online Union Catalog or any processes, products or services made available under this Agreement or under other orders or agreement forms referenced herein. All other warranties, including the WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE ARE HEREBY DISCLAIMED. OCLC SHALL NOT BE LIABLE UNDER THIS AGREEMENT FOR 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 REVENUES OR LOST DATA. OCLC shall not be liable to Institution for any errors in the OCLC Online Union Catalog caused by the libraries or other institutions from which records are received or acquired for inclusion in such catalog. 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 liability to Institution in respect of any claim, regardless of the form of action, shall not exceed the value of all transactions under this Agreement for three (3) months preceding the incident giving rise to such claim. The foregoing limitation of liability does not apply to liability arising under Article IX-A below, nor to liability for bodily injury and property damage for which OCLC is legally responsible under the applicable law.

ARTICLE IX - INFRINGEMENT UNDERTAKINGS AND GRANT OF LICENSE.

A. By OCLC

OCLC agrees to defend and assume all of Institution's liability, costs and expenses for any suit or claim brought or asserted against Institution on the ground that the use by a Participant, in accordance with this Agreement, of processes, products (including bibliographic records) or services furnished by OCLC hereunder or under the separate or supplementary agreements referred to in this Agreement, infringe any patent, copyright, trademark, secrecy or other proprietary interest of third parties, provided and upon the conditions that Institution (i) promptly delivers to OCLC written notice of any claim of such

infringement together with all infringement notices and other papers received by Institution and (ii) gives OCLC all information and assistance reasonably requested, together with exclusive authority to investigate, settle and defend such claim. THE FOREGOING SETS FORTH OCLC'S ENTIRE LIABILITY TO INSTITUTION FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF THE TYPES DEALT WITH IN THIS ARTICLE IX-A.

B. By Institution

Institution 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 use by OCLC, in accordance with this Agreement, of any information or data furnished to OCLC by Institution or a Participant or other entity acting on its behalf, 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 Institution written notice of any claim of such infringement, together with all infringement notices and other papers received by OCLC and (ii) gives Institution all information and assistance reasonably requested, together with exclusive authority to investigate, settle and defend such claim. THE FOREGOING SETS FORTH INSTITUTION'S ENTIRE LIABILITY TO OCLC FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF THE TYPES DEALT WITH IN THIS ARTICLE IX-B.

C. License Grant

Institution hereby grants to OCLC, other OCLC participants, non-participant users and OCLC designees a non-exclusive, royalty-free, sublicenseable, 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 Institution or the Participants, or any entity acting on their behalf, under any copyright,

patent, secrecy or other proprietary right therein owned or controlled by Institution or the Participants.

D. Survival of Rights and Obligations

Institution's and OCLC's rights and obligations under this Article IX shall survive any expiration or termination of this Agreement.

ARTICLE X - RESPONSIBLE USE.

Institution agrees to comply, and cause the Participants to comply, with any code of responsible use adopted by OCLC for OCLC participants upon the recommendation of the OCLC Users Council, to the extent that such code is not in conflict with any provision of this Agreement. Institution agrees to cause the Participants to act in the use of the OCLC System, the Online Processes and Offline Products with good faith to all other OCLC participants, doing nothing to waste, diminish or cause harm to the shared beneficial interest of such other participants in OCLC. It is a duty of OCLC participants 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.

ARTICLE XI - 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 of 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.

ARTICLE XII - TERM AND TERMINATION.

A. Subject to the balance of this Article XII, 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) day's prior written notice to the other.

B. Whenever either party believes that the other has committed a breach of any material obligation under this Agreement, it may give the other notice to that effect with reasonable specificity. The other party shall use its best efforts promptly to remedy any breach and shall keep the party giving notice informed of the nature of the remedial action planned and taken, or will respond to the notice with an explanation of the reasons it believes that no breach has occurred. 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, is the subject of a petition filed under any chapter of the Bankruptcy Act and not withdrawn within sixty (60) days or if a receiver is appointed for all or part of a party's property, 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.

C. Notwithstanding the provisions of Paragraph B above, if Institution fails to issue payment within ten (10) business days after receipt of notice from OCIC of non-payment of charges due and payable under this Agreement and not reasonably in dispute, OCIC may terminate the Agreement by

notice in writing effective at any time after the end of those ten (10) days and prior to receipt of the late payment, without liability for such termination.

D. Whenever any material obligation of either party under this Agreement is postponed or delayed pursuant to the provisions of Article XI above for more than ninety (90) consecutive days, then the other party may give notice of termination of this Agreement, effective thirty (30) days after such notice, unless by such date the cause of the delay has been removed and performance of the delayed obligation has been resumed.

ARTICLE XIII - ASSIGNMENT.

This Agreement may not be assigned by either party, in whole or in part, without the express, prior, written consent of the other, except that assignment may be made by OCLC, without such consent, to any wholly-owned subsidiary of OCLC or to any entity acquiring substantially all of the assets of OCLC, provided that (i) the assignee affirmatively undertakes to Institution to comply with all obligations of OCLC hereunder, and (ii) such assignment shall not release OCLC from its primary obligations to Institution. Subject to the foregoing sentence, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each party hereto.

ARTICLE XIV - NOTICES.

Any notices, desired or required to be given by either party pursuant to this Agreement, shall be in writing and shall be deemed sufficient if delivered by hand or if sent by certified mail, return receipt requested, to the address of the other party set forth below or to such other address as has been furnished by means of a notice given in accordance with this Article:



If to OCLC: President  
OCLC Online Computer Library Center, Incorporated  
6565 Frantz Road  
Dublin, Ohio 43017

With a copy sent by regular U.S. mail to:

Vice President and Corporate Counsel  
OCLC Online Computer Library Center, Incorporated  
6565 Frantz Road  
Dublin, Ohio 43017

If to Institution:

Director of Library Services  
Cuesta College  
P.O. Box 8106  
San Luis Obispo, CA 93403-8106

ARTICLE XV - MISCELLANEOUS.

A. 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 or be construed as a continuing waiver or as a waiver of any other breach of any other provision of this Agreement.

B. Headings

Paragraph and Article headings are included in this Agreement for convenience only and are not deemed to be a part of this Agreement.

C. Applicable Law

This Agreement shall be governed by, subject to, and construed according to the laws of the State of Ohio.

D. Originals

This Agreement is executed in two (2) signed counterparts, each of which is and shall constitute an original hereof.

E. 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.

IN WITNESS WHEREOF, the undersigned, being duly authorized, on behalf of the parties, their successors and assigns, have executed this Agreement effective the last date below written.

WITNESS:

OCLC ONLINE COMPUTER LIBRARY  
CENTER, INCORPORATED

Barbara Lynch  
Date January 29, 1997

By Lynne J. Brubaker  
Title Vice President

WITNESS:

San Luis Obispo County Community College District  
(NAME OF INSTITUTION)

David P. Dowell  
Date November 25, 1996

By Michael L. Hargatt  
Title Vice Pres.-Asst. Supt., Admin. Services