

## QuestionPoint Service Terms

### 1. DEFINITIONS

**A. "24/7 Reference Cooperative"** means a cooperative arrangement which enables participating libraries to provide a 24 hour a day, 7 day a week live chat based reference service for their patrons. Libraries that elect to participate in the 24/7 Reference Cooperative must agree to abide by the 24/7 Reference Policies currently available on the QuestionPoint.org web site at <http://questionpoint.pbwiki.com/247-Policies>. Libraries that elect to participate in the cooperative agree to contribute staffing to the cooperative, and are assessed an annual cooperative coverage fee.

**B. "Authorized Users"** are agents or librarians of Subscriber authorized by Subscriber to use the Service.

**C. "Base Management Environment"** means a web-based service that connects the patron at a local library with a reference librarian (either from the local library or from any cooperative library that the local library has access to) to obtain answers to reference questions. This service includes access to live chat software, a Local Knowledge Base, the Global Knowledge Base and the Global Reference Network.

**D. "Effective Date"** means the date on which Subscriber has received its authorization and password to the QuestionPoint Service.

**E. "End Users"** means the patrons of libraries or other institutions served by the libraries and other organizations that subscribe to the Service. Patron access via a remote location is initiated from a page established by the Subscriber.

**F. "Global Knowledge Base"** means a database in which selected questions and answers will be retained in order to serve as a resource for participating Subscribers.

**G. "Global Reference Network"** means a group of Subscribers that have agreed to participate in a librarian-to-librarian network according to member guidelines, available at [www.questionpoint.org](http://www.questionpoint.org). Members of the Global Reference Network have access to the global profile database, best match routing, the Global Knowledge Base, and cooperative capabilities including coverage and referral groups. The 24/7 Reference Cooperative is a subscription-based service within the Global Reference Network.

**H. "Group"** means the consortium of Group Members identified on the Order Form ordering the QuestionPoint Service by executing the Order Form and submitting it to OCLC.

**I. "Group Administrator"** means the lead institution in the Group as indicated on the Order Form. If receiving OCLC Group Services hereunder, the Group Administrator shall be included within the term "Group Member" for purposes of these Terms.

**J. "Group Member"** means any Subscriber for which the Group Administrator has complied with Section 7 below for purposes of binding such library or information agency to these Terms.

**K. "Local Knowledge Base"** means a section of the Global Knowledge Base, visible only to a certain local group, in which selected questions, answered at the local level, can be retained in order to serve as a resource for libraries participating in that local group.

**L. "Member Guidelines"** means rules and recommended procedures developed and agreed on by the Global Reference Network members (e.g., best practices in digital reference service, guidelines for institution profiling, recommendations for question handling in the Global Reference Network, and Global Knowledge Base editorial guidelines and collection development policy).

**M. "Member Profile Database"** means a database containing profile information of participating Subscribers.

**N. "Service"** means the QuestionPoint Service.

**O. "Service Unit Profile"** used with the Base Management Environment provides administrative functionalities and usage statistics. Multiple Service Unit Profiles enable each Subscriber or subject area to obtain individual usage statistics. Each Service Unit Profile includes a database-driven policy page that enables the Subscriber or subject area to characterize its policies and procedures, thus facilitating any cooperative answering networks that the Subscriber may participate in.

**P. "Subscriber"** means libraries, library consortia and their affiliated member libraries, and other organizations that agree to certain terms and conditions and provide payment in exchange for their use of the Service or are otherwise authorized to use the Service, pursuant to agreements with Subscribers.

### 2. SUBSCRIPTION

Participation in the QuestionPoint Service is subject to written acceptance by OCLC Online Computer Library Center, Inc. ("OCLC"). OCLC's written acceptance may be indicated by issuance to Subscriber of authorization numbers and passwords by which Subscriber and/or Authorized Users (as defined herein) may access and use the QuestionPoint Service ordered by Subscriber as such Service is described in OCLC's prevailing, published product descriptions. The QuestionPoint Service and the Global and Local Knowledge Bases will be subject to the following terms and conditions ("Terms"). All substantial changes to license rights, obligations and rules or Terms of Service will be presented to Subscriber at least thirty (30) days in advance. Thereafter, Subscriber's continued use of the QuestionPoint Service constitutes acceptance of any and all Terms of Service.

### 3. SERVICE DESCRIPTION

The QuestionPoint Service will enable Authorized Users to:

- a. Access a Base Management Environment for the purposes of sharing their reference expertise and enabling access to their analog and digital collections with participating Authorized Users;
- b. Access one or more Base Management Environments that include synchronous and asynchronous question asking tools (web forms, email, and chat abilities) for End Users and a profiling service, both Global and Local Knowledge Bases, administrative functionalities and usage statistics for Subscribers and their Authorized Users;
- c. Escalate questions from the Base Management Environment Service into the Global Reference

Network. Questions escalated into the Global Reference Network will automatically be routed to the "best fit" Subscriber institution for a response by an Authorized User at that institution.

#### **4. SUBSCRIBER PARTICIPATION**

Except as expressly stated herein, Subscriber and Authorized Users acquire no ownership rights to any data or portions thereof provided in any form by the QuestionPoint Service. No part of any data provided in any form by the QuestionPoint Service may be disclosed, reproduced, transferred or transmitted in any form without the prior written consent of OCLC, except as expressly permitted hereunder. Subscriber may not resell or otherwise transfer the QuestionPoint Service. Authorizations and passwords will be restricted to accessing those services available within the QuestionPoint Service for which Subscriber has a current subscription. Subscriber shall not omit, obscure or hide from any Authorized User any notice of a limitation of warranty, disclaimer, copyright, patent, trademark, trade secret, usage limitation or any logo, splash screen or any other terms and/or conditions intended to be displayed to an Authorized User of the QuestionPoint Service by OCLC or any involved third party service or provider.

Subscriber hereby grants to OCLC, its users and designees, the perpetual, nonexclusive, royalty-free, transferable, sub-licensable, world-wide right to use (in compilations and otherwise), copy, display, publish, prepare derivative works from, distribute and transfer all question and answer pairs (including compilations thereof and derivative works created therefrom) submitted to the Global Knowledge Base by Subscriber and/or Authorized User under these Terms, under any copyright, patent, secrecy or other proprietary right therein owned or controlled by Subscriber. Subscriber represents that it has no facts upon which a claim by a third party could be based and that OCLC's exercise of the right granted in this Section would infringe such third party's rights. Moreover, Subscriber shall notify OCLC immediately of any such facts of which Subscriber becomes aware after the Effective Date of these Terms, and after receipt of such notice, OCLC may terminate its obligations under these Terms with respect to records affected by such facts and/or elect for Subscriber to offer OCLC a revised license for such records which OCLC could exercise without being subject to a claim that such exercise would infringe a third party's rights under such facts, at OCLC's option. This provision shall survive termination of this Agreement.

Within thirty (30) days after the date of each OCLC invoice, Subscriber shall pay or prepay to OCLC the applicable OCLC charges for services selected by Subscriber. Charges are exclusive of taxes and Subscriber shall pay any applicable taxes invoiced other than taxes on OCLC's net income. Accounts not paid within thirty (30) days after the date of invoice shall be deemed delinquent and are subject thereafter to interest charges of twelve percent (12%) per annum on the unpaid balance. All payments shall be due and payable no later than thirty (30) days after Subscriber receives an invoice from OCLC. OCLC reserves the right to suspend availability of the QuestionPoint Service to a delinquent account upon prior written notice. Payments shall be made in U.S. dollars unless otherwise required by OCLC for non-U.S. Subscribers as indicated in invoices, price lists, or other written notices.

In the event that OCLC determines, adds to, deletes from or changes at any time (i) the technical and functional specifications, form and formats or availability of features and databases accessible by means of the QuestionPoint Service and (ii) database license rights and obligations and rules, OCLC will provide written notice to Subscriber at least thirty (30) days in advance via the QuestionPoint Listserv.

#### **5. USE OF SERVICE**

The QuestionPoint Service will be available to Subscriber based on an unlimited access model.

Subscriber is solely responsible for all security for and all use, including unauthorized use, of the QuestionPoint Service initiated by Subscriber's QuestionPoint Service authorization numbers and passwords, and shall promptly notify OCLC in writing of lost or stolen passwords and authorization numbers. Subscriber shall work with OCLC to terminate unauthorized use of the QuestionPoint Service. Subscriber's obligations under this Section are material to this Agreement. OCLC's sole obligation with respect to passwords and authorization numbers shall be to exert reasonable efforts to maintain the confidentiality of Subscriber's passwords and authorization numbers in OCLC's possession and to terminate lost or stolen passwords and authorization numbers upon receipt of Subscriber's notice. Upon such termination, OCLC will issue new passwords and authorizations to Subscriber provided that Subscriber is in compliance with these Terms and the lost or stolen passwords or authorization numbers were initially provided by OCLC.

#### **6. GENERAL TERMS**

OCLC shall exert its reasonable best efforts to provide the QuestionPoint Service in accordance with then-current published product descriptions. Subscriber shall notify OCLC of nonconformities between the QuestionPoint Service and such descriptions, and of any errors or inaccuracies in the databases of which Subscriber becomes aware. It is understood that, while OCLC and its licensors have attempted to minimize inaccuracies and defects in the data and services furnished, the data and services are provided AS IS. THE LIBRARY OF CONGRESS AND OCLC MAKE NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE WITH RESPECT TO THE QUESTIONPOINT SERVICE OR ITS CONTENT. THE QUESTIONPOINT SERVICE AND ALL CONTENT ARE PROVIDED AS IS AND WITHOUT WARRANTY OF ANY KIND.

Subscriber acknowledges and agrees that OCLC will require End Users to read and accept QuestionPoint Patron Terms of Service. The QuestionPoint Patron Terms of Service will be made available to End User and must be accepted by End User as displayed before End User may submit a question or use the QuestionPoint Service in any way.

OCLC does not share personal information about individual users with any third party except to third parties involved with the provision of the QuestionPoint Service. If a user submitting their E-mail address or name is suspected of being younger than 13 years of age, OCLC will delete this information from its records in accordance with the Children's Online Privacy Protection Act (15 U.S. Code, 6501 et seq.).

Neither party shall be liable for any failure or delay in performance hereunder (other than of an obligation to

pay money) due to any cause beyond its reasonable control including, but not limited to, acts of God or public enemy, fire, explosion, accident, strikes, governmental actions, delay or failure of suppliers, or delay or failure of the OCLC systems or carriers or other difficulties with telecommunications networks provided that the party so effected notifies the other promptly of the commencement, nature and estimated duration of the cause.

Except as otherwise expressly provided for herein: (a) OCLC and/or its licensors shall not be liable for any loss or damage, lost profits, loss of business, loss of or damage to data, downtime or unavailability, of or in connection with Subscriber's use of the QuestionPoint Service and databases or data available over the QuestionPoint Service, or from lost or stolen passwords or authorization numbers; (b) OCLC and/or its suppliers shall have no liability or obligation to Subscriber, and Subscriber shall have no liability or obligation to OCLC hereunder for indirect, incidental, consequential or exemplary damages, whether based on contract, tort or any other legal theory and regardless of whether a party foresaw such damages; and (c) OCLC and/or its licensors shall have no liability nor obligation with respect to the provision or use of databases available by means of the QuestionPoint Service, including, without limitation, for any claims based on infringement of copyright, patent, trade secret or other right, libel, slander or invasion of privacy or claims based on errors, inaccuracies or omissions in or loss of the data. In no event, even if the foregoing limitations are held to be not enforceable, shall OCLC's liability hereunder exceed the refund of subscription fees earned by OCLC and paid for by Subscriber for Services and data hereunder for the most recent month.

Subscriber shall, to the fullest extent permitted under applicable law, indemnify and hold OCLC harmless from all claims based upon or arising from the use of the QuestionPoint Service associated with Subscriber's passwords or authorization numbers except to the extent directly caused by a defect or malfunction in portions of the QuestionPoint Service under OCLC's direct control. OCLC shall indemnify and hold Subscriber harmless from all claims based upon the provision of QuestionPoint Service.

Subscriber represents and warrants that, when submitting answers using information from databases or other resources that are in any way proprietary, Subscriber's use is in accordance with the terms governing use of those databases or resources. Subscriber shall indemnify and hold OCLC harmless from any liability for damages arising from third party infringement claims.

OCLC may suspend Subscriber's access to the QuestionPoint Service upon written notice at any time that Subscriber is in breach of its material obligations under these Terms, provided that in the event that Subscriber cures such material breach within thirty (30) days, OCLC shall restore such access. In the event that Subscriber fails to cure the breach within thirty (30) days, OCLC may terminate this Agreement upon notice to Subscriber.

This Agreement shall remain in effect for one (1) year from Subscriber's receipt of authorization and password to the QuestionPoint Service, and shall be renewable at the end of the current term for successive one (1) year terms unless either party gives written notice of its

intention not to renew thirty (30) days before expiration of the current term.

No purchase orders separately submitted by Subscriber shall apply to modify or supplement this Agreement. Subscriber may not assign its rights or obligations under these Terms. This Agreement shall be governed by the laws of the State of Ohio and the United States of America. The United Nations Convention on International Sales of Goods shall not apply.

Subscriber agrees that the QuestionPoint Service authorization numbers and passwords issued by OCLC hereunder may not be used outside the territorial limits of the country in which they were originally issued to Subscriber, as indicated by Subscriber's address on the front of this Order Form, except in full compliance with U.S. export regulations. Subscriber shall be the exporter of record of all the QuestionPoint Service products, services and data delivered to it by OCLC outside the U.S. by electronic means or otherwise and shall pay and/or comply with all applicable export and import laws, customs, regulations tariffs, duties and fees, and procurement, data and technology transfer laws. OCLC's obligations hereunder are contingent upon necessary export licenses being obtained from federal agencies of the U.S.

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 or registered 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 Section or via facsimile with a copy by U.S. mail:

If to OCLC: OCLC Online Computer Library Center, Inc.  
6565 Kilgour Place  
Dublin, Ohio 43017-3395  
FAX: 614-764-0740  
Attention: Legal Department

If to Group Administrator, see address on the front of the QuestionPoint Group Administrator Order Form.

## **7. SPECIAL TERMS FOR GROUP ORDERS ONLY**

Where a Group Administrator is ordering the QuestionPoint Service on behalf of itself and Group Members, the below paragraphs apply.

Group Administrator may order the QuestionPoint Service on behalf of Group Members by completing the relevant portions of the Order Form and agreeing to these QuestionPoint Service Terms.

By placing a group order hereunder (and completing the QuestionPoint Group Administrator Order Form), Group Administrator orders authorizations and passwords for the QuestionPoint Service, in which case Group Administrator shall be licensed itself to use the QuestionPoint Service, subject to the Terms set forth in this Agreement. Group Administrator also orders and allocates authorizations and passwords for the QuestionPoint Service on behalf of Group Members listed on the QuestionPoint Group Order Form.

**Group Member's Agreement.** Group Administrator hereby agrees as agent for each Group Member that each Group Member shall comply with the QuestionPoint Service Terms and Conditions. Group Administrator warrants that it is authorized to bind Group Members thereto and shall indemnify OCLC from all loss, expense and damage arising from a breach of such warranty, and

Group Administrator shall provide each Group Member with a copy of this Section and the QuestionPoint Service Terms and Conditions prior to OCLC activation of an authorization therefor. Group Administrator shall ensure that Group Members comply with such Terms and Conditions.

Where a Group Member is added to the Group subsequent to the Group Administrator's assent to these Service Terms, Group Administrator hereby agrees that as agent for the Group Member, Group Member shall comply with these Terms and Group Administrator will provide a copy of these Terms to Group Member upon becoming a Group Member.

**Direct Contract.** Subject to OCLC acceptance, each order for Group Members shall constitute a direct contract between OCLC and the Group Member.

**Payment by Group Administrator.** Group Administrator shall be liable for paying to OCLC all prevailing OCLC charges and applicable taxes for Group Members for the Service. Group Administrator shall not modify such OCLC charges. Accounts not paid within thirty (30) days after the date of invoice shall be deemed delinquent and are subject thereafter to interest charges of twelve percent (12%) per annum on the unpaid balance. All payments shall be due and payable no later than thirty (30) days after Group Administrator receives an invoice from OCLC. OCLC reserves the right to suspend availability of the QuestionPoint Service to a delinquent account upon prior written notice. Payments shall be made in U.S. dollars unless otherwise required by OCLC as indicated in invoices, price lists, or other written notices.

**Resale.** Group Administrator is not a buyer of the QuestionPoint Service for resale.

**Relationship.** The relationship of the parties hereunder is that of independent contractors, and not employee/employer, agent/principal, partners, joint venturers or franchisor/franchisee. Group Administrator 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 Group Member to the applicable OCLC terms and conditions shall be submitted in writing to OCLC in advance for OCLC's prior written approval.

**Non-exclusivity.** OCLC's retention of Group Administrator's assistance in making the QuestionPoint Service available hereunder shall be on a non-exclusive basis, and nothing herein shall limit OCLC's right to distribute services independent of Group Administrator, including to Group Members.

**Other Terms.** OCLC shall have the rights and the benefit of all terms set forth in the QuestionPoint Service Terms and Conditions included in the Order Form, as amended by OCLC from time to time, with respect to this order as a whole and for Group Administrator and each Group Member individually.

**Confidential Terms.** Group Administrator agrees to keep the terms and prices of this order as confidential except as to Group Members, and to impose the same duty upon each Group Member.