

**FIRST AMENDMENT TO THE AGREEMENT
FOR THE INTEGRATED LIBRARY SYSTEM
BETWEEN THE CITY OF SAN JOSÉ AND
INNOVATIVE INTERFACES INC.**

This First Amendment to the Agreement for the Integrated Library between the City of San José, a municipal corporation (hereinafter “City”), and Innovative Interfaces Inc. (“Contractor”), a California corporation (hereinafter “Contractor”), is entered into on the date of execution by City (“Effective Date”). Each of City and Contractor are sometimes referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, on June 27, 2017, the City Council authorized the City Manager to negotiate and execute an agreement with Innovative Interfaces Inc., including one-year options to extend following the initial three-year term;

WHEREAS, on August 8, 2017, City and Contractor entered into an agreement entitled “Agreement for the Integrated Library System” (“Agreement”);

WHEREAS, on June 27, 2018, City and Contractor executed Change Order #1 to add data scoping custom services and to extend City’s subscription for Contractor’s Encore Discovery Solution by 6 months; and

WHEREAS, City and Contractor now wish to further amend the Agreement to implement Contractor’s iTiva Standard Interchange Protocol Version 2.0 (“SIP2”) to provide text and voice notifications to customers to facilitate quicker returns and collections, to eliminate the currently-used telephone notification and renewal systems, and to extend the City’s access to Contractor’s Encore Discovery Solution for up to one additional year;

NOW THEREFORE, the Parties agree to further amend the Agreement as follows:

1. Section 1 of the Agreement, entitled “Agreement Documents,” is amended to add the following new exhibit:

EXHIBIT F - Notice of Option to Extend Agreement

2. A new Section 2.3, entitled “Options to Extend,” is hereby added to the Agreement to read as set forth below:

2.3 Options to Extend

After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for additional one-year terms for ongoing subscriptions, maintenance, technical support, training, and related professional services. City shall provide Contractor written notice in the form of Exhibit F of its intention to extend the Agreement prior to the end of the then current term.

3. Section 8, entitled “COMPENSATION,” is hereby amended to read as set forth below:

8. COMPENSATION

City shall pay Contractor an amount not to exceed **Five Hundred Ninety-Six Thousand Fifteen Dollars (\$596,015)** during the Initial Term (“Maximum Compensation”). The terms, rates, and schedule of payment are set forth in the attached Exhibit A “Scope of Work” and Second Revised Exhibit B “Compensation and Payment Schedule.” Contractor shall submit to City invoices at the completion of each milestone that include a breakdown of Services as provided in attached Second Revised Exhibit B, entitled “Compensation and Payment Schedule.”

4. Exhibit A, entitled “Scope of Work,” is hereby amended as set forth in Addendum #2 to Exhibit A Scope of Work,” which is attached hereto and incorporated herein.
5. Revised Exhibit B, entitled “Compensation and Payment Schedule” is hereby replaced in its entirety with Second Revised Exhibit B, which is attached hereto and incorporated herein.
6. Exhibit D, entitled “Software Subscription License Agreement” is hereby replaced in its entirety with Revised Exhibit D, which is attached hereto and incorporated herein.
7. A new Exhibit F, entitled “Notice of Option to Extend Agreement,” is hereby added to the Agreement and is attached hereto and incorporated herein.

All terms and conditions of the original Agreement and Change Order #1 not expressly modified by this First Amendment shall remain unchanged and in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year set forth beneath the respective names below.

City of San José
a municipal corporation

Innovative Interfaces, Inc.
a California corporation

By: _____
Jennifer Cheng
Deputy Director of Finance
Date: _____

By: _____
Donald Schad
Chief Financial Officer
Date: _____

APPROVED AS TO FORM:

Rosa Tsongtaatarii
Senior Deputy City Attorney

By: _____
Hilary Newman
Sr. Vice President Library Services,
Partners & Alliances
Date: _____

ADDENDUM #2 TO EXHIBIT A - SCOPE OF WORK

1 Contractor agrees to provide the City the following:

- 1.1 Contractor shall provide i-Tiva for Telephony to enable telerenewal and telenotification support, including 1 incoming and 4 outgoing lines.
- 1.2 Contractor shall provide Contractor's integration component, i-Tiva third party software, and a dialogic card for the designated number of lines, as well as a 3-year warranty.
- 1.3 Contractor shall install and configure i-Tiva Standard Interchange Protocol Version 2.0.
- 1.4 Contractor shall assign a Project Manager (PM) who will work with the City to schedule project implementation and to develop a project plan.
- 1.5 Contractor's PM shall assign a Contractor System Engineer (SE) to the project.
- 1.6 Contractor's SE shall configure the Telephone Notification System ("TNS").
- 1.7 Once installation and configuration are complete, Contractor's PM shall notify the City.

2 Contractor shall coordinate with the i-Tiva third party vendor to provide the following:

- 2.1 Contractor shall ensure that the third party vendor creates a Zendesk thread with the City where all of communications will be tracked.
- 2.2 Contractor shall ensure that the third party vendor configures i-Tiva in accordance with the system settings and preferences for iTiva that will be provided by the City through completion of an installation worksheet to be provided by the Contractor/third party vendor.
- 2.3 Contractor shall ensure that the third party vendor delivers a Dialogic Card to the City for installation on the City's server.
- 2.4 Contractor shall ensure that the third party vendor configures recordings and works with the City to setup system preferences and begin testing.
- 2.5 Contractor shall ensure that the third party vendor completes UAT testing and installation to the satisfaction of the City provides notification of completion via the Zendesk support thread.
- 2.6 Contractor PM shall monitor the Zendesk thread for progress and offer support when/if needed to ensure that all work to be performed by the i-Tiva third party vendor is completed as required.
- 2.7 Contractor PM shall confirm with the City when the installation is complete and there are no outstanding issues.
- 2.8 Contractor PM shall close the project upon verification/agreement by the City.

3 City agrees to provide Contractor with the following:

- 3.1 An IP address for the iTiva server.
- 3.2 An installation worksheet response indicating the City's system settings and preferences for iTiva.
- 3.3 A City Librarian Lead who will work closely with Contractor's System Engineer to ensure City requirements are comprehensive and representative of the City's needs.
- 3.4 The City Librarian Lead will coordinate with other key City personnel as required.
- 3.5 A City Technical Lead who will assist with server access and data migrations as well as other applicable system level duties required to complete the work specified herein.

4 **Encore Discovery Solution** – Contractor shall extend the City’s access to Contractor’s Encore Discovery Solution for an additional year through March 31, 2020.

5 **Maximum Compensation**

The maximum amount of compensation to be paid to Contractor for the work to be performed for this Addendum #2 shall not exceed **Fifty-Five Thousand Three Hundred Thirty-One Dollars (\$55,331)**. Any work for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the City.

SECOND REVISED EXHIBIT B - COMPENSATION AND PAYMENT SCHEDULE

1 Compensation

- 1.1 The maximum amount payable for all products and services provided under this Agreement shall not exceed **Five Hundred Ninety-Six Thousand Fifteen Dollars (\$596,015)** during the initial term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.
- 1.2 Progress payments shall be made to Contractor by City based on net thirty (30) days payment terms, following receipt of invoices that may be issued after acceptance of designated milestones as shown below in Table B1-Payment Schedule. All payments are based upon City's acceptance of Contractor's performance as evidenced by successful completion of all of the deliverables as set forth for each milestone. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the Milestone for which payment is due.
- 1.3 Payment for any part or parts of the System provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect the components of the System when delivered and reject upon notification to Contractor any and all the System, which does not conform to the Specifications or other requirements of this Agreement. Components of the System, which are rejected shall be promptly corrected, repaired or replaced by Contractor. If City receives components of the System with defects or nonconformities not reasonably apparent on inspection, then City reserves the right to require prompt correction, repair or replacement by Contractor in accordance with Contractor's warranty obligations.

2 Project Performance & Payment Schedule

- 2.1 Work shall commence immediately upon execution of the Agreement for Integrated Library System.
- 2.2 Invoicing procedure: Contractor shall invoice the City at the completion of each milestone and annually according to Table B1. Licensing fees will be invoiced in advance of the annual term.
- 2.3 The City agrees to compensate the Contractor in accordance with the terms and conditions of this Agreement. Contractor shall invoice the City according to the Milestones in Table B1 listed below.


Table B1: Schedule of Performance and Payment


#	Item	Estimated Payment Date (M/D/Y)	Amount
1.	Sierra Core Bundle – Public Migration (including installation of new products and training services)	7/1/17	\$16,200
2.	Year 1 - Sierra Core Bundle – Unlimited Software Licenses (Annual Term ~7/01/17 – 6/30/18)	7/1/17	\$168,884
3.	Year 2 - Sierra Core Bundle – Unlimited Software Licenses (Annual Term ~7/01/18 – 6/30/19)	7/1/18	\$168,884
4.	Year 3 - Sierra Core Bundle – Unlimited Software Licenses (Annual Term ~7/01/19 – 6/30/20)	7/1/19	\$168,884
SUBTOTAL - ORIGINAL AGREEMENT			\$522,852
Change Order #1 – Data Scoping Custom Services and 6-month Extension for Encore Discovery Solution		7/1/18	\$17,832
First Amendment: - iTiva Installation: \$800 - iTiva First Year Subscription (Year 2 of Agreement): \$9,802 - iTiva Annual Fee for Second Year Subscription (Year 3 of Agreement): \$9,802 - One-year Extension for Encore Discovery Solution through March 31, 2020: \$34,927		4/1/19	\$55,331
TOTAL COMPENSATION NOT TO EXCEED			\$596,015

All amounts stated above are in United States Currency.

3 Renewal Period Compensation

- 3.1 Pursuant to Section 2.3 of the Agreement, the City reserves the right to extend the term of this Agreement for additional one-year terms (“Option Periods”) for ongoing hosting and software subscription/maintenance services.
- 3.2 After the initial three-year term, ongoing software subscription/maintenance services cost is estimated at **\$178,686** per year with any future software subscription/maintenance renewal cost adjustments capped at 3 percent annually, or the preceding annual percent change of the Producer Price Index (PPI) for Software Publishers (code 51121, see snapshot below), whichever is less. The Director of Finance is authorized to exercise options on behalf of the City.


UNITED STATES DEPARTMENT OF LABOR


BUREAU OF LABOR STATISTICS

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Databases, Tables & Calculators by Subject

PPI Industry Data

Series Id: PCU51121-51121-
Industry: Software publishers
Product: Software publishers
Base Date: 200312

REVISED EXHIBIT D – SOFTWARE SUBSCRIPTION LICENSE AGREEMENT

This Subscription License Agreement (“License Agreement”) is entered into by and between Innovative Interfaces Incorporated, a California corporation (“Innovative”), and the Party identified as Client below (“Client”), as of the “Effective Date” also set forth below.

Client	City of San José
Address	200 E. Santa Clara Street San José, CA 95113
Client Technical Contact:	Name: Howard (Hap) Yeilding / IT Manager Phone: 408-808-2420
Innovative Internal Customer No.	CU1681
Effective Date	July 1, 2017

General. Innovative and Client agree that this License Agreement is a binding agreement between the Parties and is governed by the GTCs and Support Terms, all of which are made a part hereof. This License Agreement, the GTCs, Support Terms, and all other exhibits, schedules and terms and conditions referenced by or in this License Agreement, the GTCs, Support Terms together constitute the “Agreement.” Client acknowledges and agrees that it has had the opportunity to review the License Agreement, including without limitation, the GTCs and Support Terms, prior to the execution of this License Agreement. Innovative recommends that Client print a copy of each component of this Agreement for Client’s records. Unless otherwise specified, capitalized terms in this License Agreement have the same meaning as those in the GTCs. This License Agreement is governed by and interpreted in accordance with the internal substantive laws of the State of California, without regard to any other laws that would require the application of the laws of another jurisdiction. Application of the U.N. Convention on Contracts for the International Sale of Goods is hereby excluded.

With the installation and or use of the Software as identified in Appendix D2 – Licensed Software of this Agreement the Licensee accepts all the Terms and Conditions of this License Agreement.

APPENDICES TO LICENSE AGREEMENT

Appendix D1 – General Terms and Conditions
Appendix D2 – Licensed Software
Appendix D3 – Software Maintenance and Support

In witness whereof, the Parties have executed this License Agreement by their duly authorized representatives as of the Effective Date.

City of San José
a municipal corporation

Innovative Interfaces, Inc.
a California corporation

By: _____
Jennifer Cheng
Deputy Director of Finance
Date: _____

By: _____
Donald Schad
Chief Financial Officer
Date: _____

APPROVED AS TO FORM:

Rosa Tsongtaatarii
Senior Deputy City Attorney

By: _____
Hilary Newman
Sr. Vice President Library Services,
Partners & Alliances
Date: _____

Revised Exhibit D, Appendix D1 - General Terms and Conditions

The Parties agree that their contractual relationship with respect to the Software will be governed by the terms and conditions of (1) this Subscription License Agreement General Terms and Conditions (“GTCs”), (2) the applicable Innovative Interfaces Incorporated Subscription License Agreement(s) (each, a “License Agreement”), (3) the Innovative Interfaces Incorporated Maintenance and Support Terms (“Support Terms”), and (4) all other applicable exhibits, schedules and terms and conditions referenced by or in the GTCs, License Agreement(s), and Support Terms. Each License Agreement, together with the terms and conditions of this GTC, Support Terms and all applicable exhibits or schedules incorporated by reference or referenced therein will constitute and be construed as a separate agreement. Unless otherwise specified, capitalized terms in these GTCs have the same meaning as those in the License Agreement.

1. SOFTWARE LICENSE.

- 1.1. Subject to the terms and conditions of this License Agreement, including without limitation Client's payment of all of the Fees (defined below) due hereunder, Innovative hereby grants to Client a limited, nonexclusive, non-sub-licensable, nontransferable license to use the components of its software applications, modules, and other products that are listed in Appendix D2 – Licensed Software (collectively, the "Software"). The license granted in the preceding sentence will be for the duration of the term of this License Agreement and will automatically expire upon the termination or expiration of this License Agreement or as otherwise specified in this License Agreement.
- 1.2. Client and, where applicable, its Authorized Users (defined below) may use the Software (including any Client Configurations) (i) only for the management of the library and for servicing its patrons (including permitting Authorized Users to search library catalogues), and not on an outsourced basis, as a service bureau, for resale, or similarly on behalf of or for the direct or indirect benefit of third parties, and (ii) only in accordance with the other terms of this License Agreement. Client will be responsible for its Authorized Users' compliance with the terms hereof. Without limiting the foregoing, Client agrees that it and its Authorized Users will: (i) comply with all applicable laws regarding the transmission of data, including, without limitation, any applicable export control and data protection laws; and (ii) not use the Software for illegal purposes.
- 1.3. Subject to Section 11 (Client Configurations), other than Innovative, no one is permitted to copy, modify, reverse engineer, decompile, or disassemble the Software, create derivative works thereof, or separate the Software into its component files. All rights to the Software that are granted to Client in this License Agreement are limited to the object code versions of the Software and in no event will Client be deemed to have any right, title or interest in the source code of the Software.
- 1.4. The Software may be used by the base number of Client's worldwide employees, third-party auditors, agents and contractors ("Authorized Users") set forth in Appendix D2 to the License Agreement for such Software and such additional Authorized Users as may be hereafter identified to Innovative by Client for which Client pays the additional Fees referred to in Section 4.1 of this License Agreement. Each Authorized User license is allocable to a single full-time user of the Software

and may be transferred to another user only on a full-time basis. Authorized User license(s) may not be shared on a part time or concurrent user basis.

- 1.5. The license granted to Client pursuant to this License Agreement will include, at no additional cost, a license to use all new scheduled major releases, service pack releases, and hot fixes of the Software offered generally by Innovative to its clients during the term of this License Agreement (collectively, "New Releases"). "New Releases" do not include new or additional modules, applications or other software now or hereafter offered by Innovative, each of which require a separate license and payment of additional license fees. The term "Software" will be deemed to include New Releases. Additional fees at Innovative's then-prevailing professional service rates will apply for implementation of New Releases.
- 1.6. Innovative offers support for the Software in accordance with the Support Terms, the terms of which are incorporated by reference herein.
- 1.7. The license granted hereunder grants Client the right to use a single production instance (copy) of the Software and up to two (2) additional instances (copies) of the Software for non-production use at no additional charge. All copies of the Software are subject to the terms of this License Agreement. Non-production use includes training, development, testing, quality assurance, staging or preproduction provided that the copies of the Software are not used in a production environment or as a backup to production. Except to the extent expressly set forth in a License Agreement, this license grant does not provide Client with any rights to hosting services.

2. ACCEPTANCE.

Following the execution of the License Agreement by the Parties, Innovative will deliver the Software, in its preconfigured, out-of-the box format, to Client (i) via the Internet, if Client has purchased hosting services from Innovative pursuant to the Hosting Terms or (ii) by making it available to Client to download via an FTP site, if Client has not purchased hosting services from Innovative pursuant to the Hosting Terms. Client will be deemed to have accepted the Software upon initial delivery.

3. OWNERSHIP.

- 3.1. All Intellectual Property Rights (defined below) in the Software and also including, without limitation, all improvements, enhancements, modifications, Client-specific upgrades, or updates to the Software, developed by either Party, solely or jointly (collectively, "Innovative Products"), will remain the exclusive, sole and absolute property of Innovative or the third parties from whom Innovative has obtained the right to use the Innovative Products. Intellectual property created by Innovative pursuant to this License Agreement, or any other party at the request or direction of Innovative, will be owned by Innovative. "Intellectual Property Rights" means any and all intellectual property rights existing from time to time under any law or regulation, including without limitation, patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, or privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations of any of the foregoing, now or hereafter in force and effect worldwide. Client hereby

- assigns to Innovative all right, title and interest in any feedback and suggestions it provides to Innovative regarding the Software or other products commercialized by Innovative now or in the future. This License Agreement does not convey to the Client any interest in or to the Innovative Products or any associated Intellectual Property Rights, but only a limited right to use the Software to the extent set forth in this License Agreement, which right is terminable in accordance with the terms of this License Agreement and is otherwise subject to the limitations, restrictions, and requirements contained herein. If Client configures or otherwise modifies the Software using an API licensed hereunder, Client will also have a license to use such configurations or modifications as part of the Software on the terms set forth in Section 1. Rights not expressly granted to the Client are hereby expressly reserved by Innovative.
- 3.2. For purpose of this License Agreement, as between Innovative and Client, any Intellectual Property Rights in the Innovative Products to the extent owned by any third party will be and remain the exclusive property of such third party. The Software may include third-party software and products, which are described in the documentation and/or Specifications made available to Client by Innovative, and any third-party pass-through terms relating to such third-party software and products are identified therein (or by other mode of disclosure).
- 3.3. Except as expressly stated herein, Client will exclusively have and retain all right, title and interest, including all associated Intellectual Property Rights, in and to data that Client enters into the Software or disclosed by Client to Innovative in its performance hereunder ("Client Data"), and, as between Client and Innovative, such Client Data will remain the sole property of Client. Client hereby grants to Innovative a license to use Client Data (i) to process the Client Data pursuant to Client's business requirements, (ii) for maintenance and support of the Software, (iii) to collect and use aggregate, non-identifying and anonymized data, and (iv) for research and development purposes. Client acknowledges and agrees that it will have no rights in any products or services created or sold by Innovative or its affiliates that use any of the Client Data in the manner set forth in (iii) or (iv) of the preceding sentence. To the extent that applicable law requires any permissions or authorizations to have been obtained prior to submission of Client Data to Innovative (including without limitation from individuals to whom the data pertains), Client warrants and covenants that it (and its Authorized Users, as applicable) will have first obtained the same permissions or authorizations prior to transmitting such data to Innovative.

4. FEES; EXPENSES; PAYMENT TERMS.

- 4.1. In consideration of receiving a limited license to use the Software, Client will pay the fees set forth in Exhibit B (the "Fees") on the terms set forth therein. Initial invoicing under this License Agreement will occur when the Software is made available to Client; subsequent renewal invoices will be sent to Client prior to the date such payment is due. Invoices for any Renewal Terms may be provided to Client up to 90 days prior to the effective date of such Renewal Term. Client will notify Innovative in writing if Client hereafter requires additional Authorized Users or additional Software modules, and will pay the fees for such additional Authorized Users or additional Software modules in accordance with the terms set forth on the invoice for

such fees. The Software may, from time to time, electronically transmit to Innovative reports verifying the type and number of Authorized Users, and Innovative may utilize license keys or other reasonable controls to enforce Authorized User license limitations. Client will cooperate with Innovative in all such efforts.

- 4.2. All Fees are exclusive of all taxes and similar fees now in force or enacted in the future or imposed on the delivery and license of the Software, all of which Client will be responsible for and will pay in full, other than taxes based on Innovative's net income. Client will provide Innovative its state issued Direct Pay Exemption Certificate (or equivalent certificate), if applicable, upon execution of this License Agreement. In the event an applicable taxing authority, as a result of an audit or otherwise, assesses additional taxes for goods or services sold under this License Agreement at any time, Client and not Innovative will be solely responsible for payment of such additional taxes and all costs associated with such assessment, including without limitation, interest, penalties and attorney's fees. Additionally, should Client be required under any applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due to Innovative hereunder, then the sum due to Innovative will be increased by the amount necessary to yield to Innovative an amount equal to the sum Innovative would have received had no withholdings or deductions been made.

5. LIMITED WARRANTY.

- 5.1. Innovative warrants, solely for the benefit of Client, that:
- 5.1.1. It has the corporate power and authority to enter into this License Agreement and to grant Client the license to the Software hereunder; and
 - 5.1.2. The Software will conform in all material respects to the applicable technical documentation for the Software provided to Client by Innovative and expressly identified by Innovative as the specifications for the Software (collectively, the "Specifications").
- 5.2. EXCEPT FOR (i) THE WARRANTIES EXPRESSLY STATED ABOVE IN THIS SECTION AND (ii) ANY WARRANTY, REPRESENTATION OR CONDITION TO THE EXTENT THE SAME CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW, INNOVATIVE AND ITS LICENSORS, AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES, AND EXPRESSLY DISCLAIM AND EXCLUDE ANY AND ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY OR UNDER STATUTE, COMMON LAW, CUSTOM, USAGE, COURSE OF PERFORMANCE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, INNOVATIVE AND ITS LICENSORS, AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS DO NOT WARRANT, AND EXPRESSLY DISCLAIM ANY REPRESENTATION OR WARRANTY, THAT THE SOFTWARE OR OTHER DELIVERABLES PROVIDED BY OR ON BEHALF OF INNOVATIVE WILL SATISFY CLIENT'S REQUIREMENTS OR THAT THEIR USE OR OPERATION WILL BE ERROR

- OR DEFECT-FREE OR UNINTERRUPTED OR AVAILABLE ON THE INTERNET, OR THAT ALL PRODUCT DEFECTS WILL BE CORRECTED. EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 5.1, THE SOFTWARE, INCLUDING ALL CONTENT, IS PROVIDED "AS IS," WITH ALL FAULTS AND WITHOUT ANY GUARANTEES REGARDING QUALITY, PERFORMANCE, SUITABILITY, TIMELINESS, SECURITY, DURABILITY, INTEGRABILITY OR ACCURACY, AND CLIENT ACCEPTS THE ENTIRE RISK OF AND RESPONSIBILITY FOR SELECTION, USE, QUALITY, PERFORMANCE, SUITABILITY AND RESULTS OF USE THEREOF, INCLUDING ALL CONTENT GENERATED THROUGH USE THEREOF.
- 5.3. As the exclusive remedy of Client for a breach of the limited warranties set forth in Section 5, for any error or other defect for which Innovative is solely responsible, Innovative will, at its option, either (i) correct or repair the Software, or (ii) accept termination of this License Agreement and refund the unused balance of any prepaid Fees for the Software, prorated for the period commencing on the date the error or defect was reported by Client to Innovative and continuing throughout the balance of the period to which such Fees apply. None of the above warranties or remedies in this Section 5 will apply with respect to any Software that has been damaged or modified by any party other than Innovative, or used in a manner for which the Software is not designed or intended.

6. LIMITATIONS ON LIABILITY.

IN NO EVENT WILL INNOVATIVE BE LIABLE FOR LOST PROFITS OR OTHER INCIDENTAL OR CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCES WHATSOEVER, EVEN IF INNOVATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF THEY WERE OTHERWISE FORESEEABLE. INNOVATIVE'S TOTAL LIABILITY FOR TORT, CONTRACT AND OTHER DAMAGES WILL NOT EXCEED THE MAXIMUM COMPENSATION ALLOWED UNDER THIS AGREEMENT PROVIDED INNOVATIVE CAN PROVIDE THE SERVICES REQUIRED BY THIS AGREEMENT WITHOUT A PHYSICAL PRESENCE AT A CLIENT FACILITY.

THESE LIMITATIONS OF LIABILITY WILL APPLY TO ALL CLAIMS AGAINST INNOVATIVE IN THE AGGREGATE (NOT PER INCIDENT) AND TOGETHER WITH THE DISCLAIMER OF WARRANTIES ABOVE WILL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS LICENSE AGREEMENT.

WITH RESPECT TO ANY CLAIMS OR DEMANDS FOR INFRINGEMENT OF INTELLECTUAL PROPERTY, INNOVATIVE'S LIMITATION OF LIABILITY WILL BE CAPPED AT ONE MILLION DOLLARS.

7. INDEMNIFICATION.

- 7.1. If a third party files a legal action in a court of competent jurisdiction against Client claiming the Software, as delivered to Client by Innovative, directly infringes such third party's U.S. copyright or U.S. patent, Innovative will defend Client against such legal action, provided that Client promptly notifies Innovative in writing of the legal action and fully cooperates with Innovative in the defense of such legal action. Innovative will also indemnify Client from all damages and out-of-pocket costs (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction in connection with any such legal action, or agreed to by Innovative in a settlement. Innovative will control all aspects of the defense and conduct the defense and any settlement negotiations in any such third-party legal action. This indemnification is limited to the Software in the form delivered to Client and does not cover claims arising from (x) modifications thereto not made by Innovative, or, even if by Innovative, at the request of Client; (y) use of the Software in combination with other software or items not provided by Innovative, or (z) third party modifications (including addition of source code) to the Software.
- 7.2. As the exclusive remedy of Client under the limited indemnity set forth in Section 7.1, if the use of the Software by Client is enjoined, Innovative will: (i) obtain for Client the right to continue to use the Software, (ii) modify the Software to remove the cause of the legal action, (iii) replace the Software at no additional charge to Client with a substantially similar, non-infringing product, which will then be subject to the provisions of this License Agreement, or (iv) terminate this License Agreement and refund to Client that portion of the Fees allocable to the infringing component of the Software, prorated for the period Client's use of the Software is enjoined. None of the above warranties or remedies will apply with respect to any element of the Software that has been modified by any party other than Innovative, or used in a manner for which the Software is not designed or intended. This Section states Innovative's entire liability and Client's exclusive remedies for infringement of intellectual property rights of any kind.

8. CONFIDENTIALITY.

- 8.1. Client acknowledges that all documentation, audit reports, technical information, software, Specifications and other information pertaining to the Software, and/or Innovative's business interests or activities, product pricing, financial information, methods of operation or customers that are disclosed by any party to Client in the course of performing this License Agreement are the confidential and proprietary information of Innovative. Innovative acknowledges that Client Data and other proprietary Client materials are the confidential information of Client. The information and materials described in the preceding sentences is referred to herein as "Confidential Information." Notwithstanding the foregoing, the term "Confidential Information" does not include information pertaining to a party if (i) such information is generally known to the public through no improper action or inaction by the other party, (ii) was, through no improper action or inaction by the other party, in the possession of the other party prior to the Effective Date, (iii) rightly disclosed to the other party by a third party if such disclosure does not violate the terms of any confidentiality agreement or other restriction by which such third party may be

- bound, or (iv) subject to disclosure under California Government Code Section 6250 et seq. (California Public Records Act).
- 8.2. All Confidential Information will be held in confidence and may not be copied, used or disclosed other than as set forth in this License Agreement. Each Party must take all reasonable efforts to protect the confidentiality of and prevent the unauthorized use of any such Confidential Information by any third party within such Party's control. Each Party may disclose Confidential Information (i) to the receiving Party's employees and contractors required to have access to such Confidential Information for the purposes of performing this License Agreement or using the Software, provided each Party hereto notifies its employees and contractors accessing such Confidential Information of the confidentiality obligations in this Section 8; or (ii) if such disclosure is in response to a valid order of any court or other governmental body ("Order"), in which event, the disclosing Party must use reasonable efforts to provide the other Party with prior notice of such Order, to the extent legally permitted to do so. Under no circumstances will Confidential Information received from Innovative be disclosed to any competitor of Innovative without Innovative's advance written permission.
- 8.3. Recognizing any improper use or disclosure of any Confidential Information by either Party may cause the Party whose Confidential Information is improperly used or disclosed irreparable damage for which other remedies may be inadequate, a Party whose Confidential Information is improperly used or disclosed will have the right to petition for injunctive or other equitable relief from a court of competent jurisdiction as appropriate to prevent any unauthorized use or disclosure of such Confidential Information.
- 8.4. If the Parties have previously executed a nondisclosure agreement ("NDA"), any Confidential Information exchanged pursuant to such NDA will remain confidential, and will as of the date of the execution of this License Agreement be deemed Confidential Information within the meaning of this License Agreement and also be governed by the terms hereof.
- 8.5. Notwithstanding the above, Innovative hereby acknowledges and understands that Client is a governmental entity subject to the California Public Records Act. Nothing in this License Agreement requires Client to waive any privilege or disclose any item entitled to be kept confidential under the law. Without limitation of the foregoing, Client will not be deemed to be in breach of this License Agreement for withholding information when release is not required by law, or disclosing information when disclosure is required by law. Innovative reserves the right to object to such disclosures as may be provided in the California Public Records Act. Innovative understands and agrees that Innovative may, in connection with this License Agreement, disclose to Client its Confidential Information and Client agrees to treat all Proprietary Information in accordance with this section, subject to the limitations of the California Public Records Act.

9. **TERM; TERMINATION.**

- 9.1. The term of the License Agreement is set forth in Section 2. Term to the License Agreement for the Integrated Library System.

- 9.2. If either Party hereto fails to perform or comply with any material term or condition of this License Agreement, specifically including Client's failure to pay any Fees (such Party being the "Breaching Party"), and such failure continues unremedied for 30 (thirty) days after receipt of written notice, the other Party may terminate this License Agreement. Notwithstanding the foregoing, if the Breaching Party has in good faith commenced to remedy such failure and such remedy cannot reasonably be completed within such 30-day period, then the Breaching Party will have an additional 30 (thirty) days to complete such remedy, after which period the other Party may terminate this License Agreement if such failure continues unremedied.
- 9.3. Client may terminate this License Agreement at any time during the Initial Term effective as of the date of the next annual anniversary of the Effective Date if Client's budget (funding) is eliminated and Client provides written evidence to Innovative of the elimination of Client's budget (funding), such evidence to be in the form and substance reasonably requested by Innovative.
- 9.4. Except for a termination by Client pursuant to Section 9.2, and unless as otherwise set forth in this License Agreement, upon any termination of this License Agreement, all prepaid Fees will be nonrefundable and Client will be responsible for all Fees and expenses for the Software provided prior to and as of the date of termination. Any termination of this License Agreement will not waive or otherwise adversely affect any other rights or remedies the terminating Party may have under the terms of this License Agreement. Upon termination of this License Agreement, the rights and duties of the Parties will terminate, other than the obligation of the Client to pay Fees and costs in accordance herewith, and the obligations of the Parties pursuant to Section 1.3 (Software License), Section 3 (Ownership), Section 4 (Fees; Expenses; Payment Terms), Section 6 (Limitations on Liability), Section 7 (Indemnification), Section 8 (Confidentiality), Sections 9.4 and 9.5 (Termination), Section 11 (Client Configurations) and Section 13 (General). Within 30 (thirty) days of receipt of a written request following a termination of this License Agreement, each Party must return or destroy all Confidential Information of the other Party, as requested in writing by the other Party. Notwithstanding the foregoing, a Party will not be obligated to destroy data containing Confidential Information of the other Party when it would be commercially impracticable for the receiving Party to do so (for example, when Confidential Information is contained in e-mail stored on backup tapes or other archival media), but for so long as such receiving Party is in possession of such Confidential Information of the other Party, the terms of Section 8 (Confidentiality) hereof will continue to restrict the receiving Party's use or disclosure of such Confidential Information. Neither Party will be liable to the other for any termination or expiration of this License Agreement in accordance with its terms.
- 9.5. Following termination of this License Agreement, Innovative has no duty whatsoever to deliver to Client any parts of its programming, data model, or any other information regarding which Innovative claims a proprietary or Intellectual Property Right. To the extent that Innovative is requested to perform any services for Client in connection with the termination of this License Agreement (including without limitation providing Client with a copy of Client Data in a commercially-standard format to be agreed upon by the Parties), such services shall be limited to the Services as detailed in Exhibit A, Section 8.1 and 8.2, and provided at additional cost in

accordance with the Optional Pricing provided in Exhibit A, Appendix A1 and pursuant to Section 7 Change Order Procedure and Authorization.

10. THIRD PARTY SOFTWARE.

The Software may contain third-party and/or “open source” code provided under third-party license agreements. The terms and conditions of such third-party license agreements will apply to such source code in lieu of these terms, where applicable, and Client is responsible for compliance therewith. A listing of certain third-party and/or open source code contained in the Software, the respective license terms applicable to such code, and certain related notices are included in the documentation and/or Specifications made available to Client by Innovative. Except as required for the authorized use of the Software as contemplated herein, Client may not use any name or trademark of any supplier of third party or open source code without such party’s prior written authorization.

11. CLIENT CONFIGURATIONS.

Client will be permitted to use one or more application programming interfaces (APIs) made available by Innovative to configure the Software hereunder in accordance with the Specifications (such configurations or other modifications, “Client Configurations”). Client will not use any other API to modify or configure the Software. No API may be used to create any Client Configuration that, in whole or in part, mimics any material functionality of any software or service developed or marketed by Innovative or that would reasonably be deemed competitive to any software or service developed or marketed by Innovative if the Client Configuration were to be released to the public market. Innovative disclaims all representations and warranties, express or implied, regarding Client Configurations and assumes no liability whatsoever with respect to Client Configurations.

12. BACK-UP ACTIVITIES.

Except to the extent that Client purchases Innovative’s hosting service or back-up services, Client has the sole responsibility for the maintenance and protection of all data input into the Software, including, without limitation, the making, storing and security of back-up and archive copies of such data and the Software (collectively “Back-Up Activities”), and Client acknowledges Innovative will not perform any Back-Up Activities for or on behalf of Client.

13. GENERAL.

- 13.1. No Waiver. The failure of either Party to enforce any rights granted hereunder or to take action against the other Party in the event of any breach hereunder will not be deemed a waiver by that Party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.
- 13.2. Independent Contractor. Client acknowledges that Innovative is at all times an independent contractor and that Client’s relationship with Innovative is not one of principal and agent nor employer and employee. No Innovative personnel will be entitled to participate in any compensation or benefits plan of Client.

- 13.3. Force Majeure. Neither Party will be liable or responsible for any delay or failure in performance if such delay or failure is caused in whole or in part by fire, flood, explosion, power outage, war, strike, embargo, government regulation, civil or military authority, hurricanes, severe wind, rain, other acts of God, acts or omissions of carriers, third-party local exchange and long distance carriers, utilities, Internet service providers, transmitters, vandals, or hackers, or any other similar causes that may be beyond its control (a “Force Majeure Event”).
- 13.4. Notice. Any notice or communication required to be given by either Party must be in writing and made by hand delivery, express delivery service, overnight courier, electronic mail, or fax, to the Party receiving such communication. Unless otherwise instructed in writing, such notice will be sent to the Parties at the addresses set forth on the first page of the License Agreement. All communications pursuant to this Section will be deemed delivered as follows: (a) upon receipt, if delivered personally or by a recognized express delivery or courier service; or (b) when electronically confirmed, if delivered by facsimile.
- 13.5. Invalidity. Any provision of this License Agreement which is invalid, illegal, or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this License Agreement invalid, illegal, or unenforceable in any other jurisdiction.
- 13.6. Assignment. Neither Party has the power to assign, license, or sub-license any of its rights or obligations hereunder without the prior written consent of the other Party, which will not be unreasonably withheld. Any assignment, license, or sub-license attempted without such consent will be void. Notwithstanding the foregoing, a Party may assign this License Agreement without the other Party’s consent (i) as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets or capital stock; or (ii) to an Affiliate of such party provided that any such assignment will not release the assigning party from its obligations under this Agreement.

Revised Exhibit D, Appendix D2 – Licensed Software

Item	Software Module	Quantity
A. OPAC		
A.1	Web OPAC User License	Unlimited
A.2	Full OPAC Indexing	1
A.3	SIERRA Web OPAC	1
A.4	Advanced Keyword Search Engine	1
A.5	SIERRA Patron Empowerment Functions including: Place holds/cancel holds, Self-renewal of items, view status of booked items, view Special Reminder messages.	Unlimited
A.6	Z39.50 Client and Server (including Broadcast Searching)	1
A.7	Export Records/Create a Bibliography from OPAC	1
A.8	Table of Contents Display and Indexing	1
A.9	Collection scoping for up to 48 locations or material types	48
A.10	KidsOnline	Unlimited
A.11	Spanish, Chinese and Vietnamese OPAC language interfaces	3
A.12	AirPAC	Unlimited
B. Cataloging		
B.1	Bibliographic, Item and Authority Record file sizes	Unlimited
B.2	Database Management System and Report Writer	1
B.3	SIERRA Cataloging including Global Update	1
B.4	Cataloging Workstation (Graphical client software)	Unlimited
B.5	Authority Control	1
B.6	Automatic Authority Processing	1
B.7	SIERRA File transfer Software	1
B.8	OCLC Interactive Interface via the Internet	1
B.9	Link Maintenance – Sort Items by Location, Synchronize Location Codes	1
B.10	Indexing using Special Filing Rules for Chinese/Japanese/Korean	1
C. Report Writer		
C.1	SIERRA Create Lists program	1
C.2	Online Storage for 240 Simultaneous Management Report Review Files	1
C.3	SIERRA Web-based Management Reports	1
D. Circulation		
D.1	SIERRA Circulation	1
D.2	Item Record File Size and Unlimited File Size	Unlimited
D.3	Inventory Control	1
D.4	Circulation Notices via Email	1
D.5	Telephone Notification System: Each TNS includes 4 lines (total of 8). 2 PCs are included. Includes 28 messages. (Deleted First Amendment) *	2
D.6	SIERRA Offline Circulation Software (Site License)	1
D.7	Consortium Management Extensions	1
D.8	Collection Agency Interface	1
D.9	Homebound Module and Linked Family Records	1
D.10	Telephone Renewal System: Each TRS includes 4 lines (total of 8). 2 PCs are included. (Deleted First Amendment) *	2
D.11	Beaming Product Suite	1
D.12	Held Item Delivery	1
D.13	iTiva for Sierra (Added First Amendment)	1
E. Inter-Library Load		
E.1	SIERRA Inter-library Loan	1
E.2	Transmit ILL requests via ISO 1016X protocol (e.g. OCLC)	1
E.3	Transmit ILL requests via email to other libraries	1

*Teleforms (TNS) will be deleted when iTiva goes Live.

Item	Software Module	Quantity
F. Interface to Bibliotheca & 3M Self Check		
F.1	SIP2 Server software and support for Bibliotheca & 3M (RFID) self-check client workstations	150
G. Materials Booking Module		
G.1	SIERRA Materials Booking	1
H. Acquisitions & Fund Accounting		
H.1	SIERRA Acquisitions	1
H.2	3600 Funds	1
H.3	3600 Vendor records	1
H.4	Order Record File Size	Unlimited
H.5	Ordering/receiving/P.O. Printing	1
H.6	Claiming	1
H.7	Invoice Processing and Fund Accounting and Electronic Invoicing	1
H.8	Hierarchical Fund Reports	1
H.9	Foreign Currency Conversion	1
H.10	Vendor Statistics	1
H.11	Electronic Ordering via EDIFACT FTP	1
H.12	Electronic Ordering via E-mail (BISAC)	1
H.13	Extended Approval Plan Interface	1
H.14	Electronic Serials Invoice Processing	1
H.15	Output Accounting Information	1
I. Serials Control		
I.1	SIERRA Serials Processing	1
I.2	Binding	1
I.3	Checking Record File Size	Unlimited
I.4	Claiming	1
I.5	Holdings Record File Size	Unlimited
I.6	Routing	1
I.7	Serials Checking	1
I.8	Serials Checking Server: web-based server using XML technology for Checking in e-journals	1
I.9	Electronic Claiming of Serial Issues via Email in X12 format	1
I.10	SISAC Barcode Checking	1
J. SIERRA Access Plus		
J.1	Web Access Management: Patron authentication and proxy services for offsite patron access to 500 licensed databases	1
K. SIERRA Media Management		
K.1	Creates and stores media objects such as images, documents, audio files. Images are automatically thumb-nailed for patron access in the OPAC.	1
L. Copyright and Access		
L.1	Media Management: Includes copyright tracking, course password and statistical report on use of resources.	1
M. Patron API (URL-based)		
M.1	Offers complete patron information to an external system.	1
N. XML Harvester		
N.1	Automated cataloging tool with webcrawler to harvest metadata records	1
O. Staff User Licenses		
O.1	Licenses for simultaneous staff SIERRA users*	330
P. SIERRA Training Database Software		
P.1	a) Additional licensed copy of SIERRA system software b) Dataload and set-up of complete copy of production database c) 20 simultaneous user licenses	1

* In calculating simultaneous users, the UPS battery backup system, the system printers, tape drives and other peripheral devices, the ITS.MARC interface, and the Innovative Interfaces maintenance modem port are not included.

Item	Software Module	Quantity
Q. API and other part of Core Bundle (also see Exhibit A , Subsection 3.2)		
* Q.1	API Interface between SIERRA and RFID Security System	1
* Q.2	Field Builder	1
* Q.3	Scheduler	1
* Q.4	Program Reg, Create Lists & SQL Access for Custom Reporting	1
* Q.5	eCommerce	1
* Q.6	Web Access for Staff (Sierra Web & New WorkStreams)	1
* Q.7	Mobile Worklist	1
* Q.8	Link+ Service	1
* Q.9	Unlimited SIP2 Licenses	1
* Q.10	305SMS – Text Notices for Circulation Alerts	1
* Q.11	118FP-WS- Fines Payment Web Services	1
* Q.12	Content Café	1
Q.13	Self-Check	1
Q.14	EDI	1
Q.15	Program Registration	1
Q.16	Materials Booking	1
Q.17	SIP RFID Self-Checkout	1

*New Products added to existing software transferred from SJSU.

Revised Exhibit D, Appendix D3 – Software Maintenance and Support

These Maintenance and Support Terms and Conditions (“Support Terms”) apply to the License Agreement. Unless otherwise specified, capitalized terms in these Support Terms have the same meaning as those in the GTCs. The terms set forth herein supplement, but do not replace or modify, the GTCs.

1. MAINTENANCE AND SUPPORT.

- 1.1. Innovative will offer maintenance and support on the terms set forth herein (“Maintenance and Support”) for the latest generally available version of the Software and for certain earlier versions in accordance with Innovative’s support policy. Standard Maintenance and Support is included with the price for the annual license set forth in the License Agreement.
- 1.2. Innovative will provide the Client with new releases of the licensed Software modules so long as the hardware and operating system used for the System is sufficient and/or compatible for the load and operation of such new release. If the hardware or operating system is deemed not to be sufficient for installation of the new release, then the Client shall be responsible for the cost of new hardware or operating system as may be required. If the Client declines to upgrade its hardware or operating system to accommodate the upgrade to the licensed software, then the Client shall remain at its then current software release. For the purpose of this document, the term "new release" shall mean improvements in already licensed Software modules.
- 1.3. If the Client adds any additional Innovative Software modules to the System after the initial migration, the maintenance services shall be extended to cover the additional Software. The maintenance charges for such Software shall be based upon Innovative's then-current maintenance rates. The additional cost of coverage for the additional Software shall be added to the annual maintenance amount.

2. ERROR RESPONSE.

Error descriptions (each an “Error”), the Error severity levels and corresponding targeted response time per level are each described in the table below. The Targeted Response Times in the table below identify the response times that Innovative will target for the corresponding Error, however, such Targeted Response Times are not guaranteed.

Severity	Description	Target Response Time
One: Site Down	A major component of the software is in a non-responsive state and severely affects library productivity or operations. A high impact problem that affects the entire library system. Widespread system availability, production system is down	1 hour
Two: Critical	Any component failure or loss of functionality not covered in Severity 1 that is hindering operations, such as, but not limited to: excessively slow response time, functionality degradation; error messages; backup problems; or issues affecting the use of the module or the data	2 business hours; excludes holidays and weekends

Three: High	Lesser issues, questions, or items that minimally impact the work flow or require a work around	2 business days; excludes holidays and weekends
Four: Routine	Issues, questions, or items that don't impact the work flow. Issues that can easily be scheduled such as an upgrade or patch	4 business days; excludes holidays and weekends

3. ERROR REPORTING AND DIAGNOSIS.

- 3.1. Client must designate a representative as the contact that will report Errors to Innovative and be Innovative's primary contact for the provision of Maintenance and Support pursuant to the terms of this License Agreement (such representative is referred to herein as the "Client Contact"). When a Client Contact reports an Error, Innovative will use commercially reasonable efforts to diagnose the root cause of the Error ("Diagnosis"). Upon completing the Diagnosis, each Error will be classified as either a "Warranty Error" or a "Non-Warranty Error" pursuant to Section 3.2 below. Innovative will use commercially reasonable efforts to diagnose and repair both Warranty and Non-Warranty Errors as described below.
- 3.2. "Warranty Errors" are all Errors that do not qualify as Non-Warranty Errors. "Non-Warranty Errors" are Errors resulting from any of the following causes: (i) misuse, improper use, alteration or damage of the Software; (ii) operator error; (iii) incorrect data entry by Client; (iv) third-party software not part of the Software; (v) errors and/or limitations attributable to Client environment; (vi) Client's failure to incorporate any New Release previously provided to it by Innovative which corrects such Error; (vii) modification of the Software performed by Client; and (viii) technical consulting services provided by Innovative at Client's request (e.g., change orders, integration development, or configuration design and implementation), unless Client notifies Innovative of such technical consulting services problem within the applicable warranty period set forth in the governing statement of work, change order or agreement. Client acknowledges that the Software is intended for use only with the software and hardware described in the Specifications provided by Innovative from time to time, and Client will be solely responsible for its adherence thereto.

4. COMPLIMENTARY AND CHARGEABLE SUPPORT.

- 4.1. Innovative will respond to all reported Errors pursuant to Section 2 above and will use commercially reasonable efforts to resolve Warranty Errors at no additional charge if Client has purchased and is current on its payment for Maintenance and Support; however, Innovative may charge Client for such effort with respect to Non-Warranty Errors according to the following process: (i) When the Client Contact reports any Error, prior to commencing the Diagnosis for the Error, Innovative will notify the Client Contact that the Diagnosis and repair effort will be at no charge to Client unless the reported Error is determined to be a Non-Warranty Error, in which case only the first two hours of Diagnosis will be at no charge; and (ii) Innovative will then commence the Diagnosis unless instructed otherwise by the Client Contact.

- 4.2. Chargeable support may be required if more than two hours are required for the Diagnosis of Non-Warranty Errors, and repairing the Non-Warranty Error. Upon Client's request, Innovative will provide an estimate of the total cost for such effort. Any chargeable support shall be performed pursuant to Section 7 Change Order Procedure and Authorization based on optional pricing specified in Appendix A1 – Price List.

5. TICKET MANAGEMENT AND ESCALATION.

- 5.1. Innovative manages all reported issues using a ticket management system, and provides an Internet portal for Clients to report issues. Clients may review the status of issues reported online. When an Error is either unresolved or not resolved in a timely fashion, the Client should contact Innovative representatives pursuant to Innovative's escalation policy made available on Innovative's Internet portal.

6. CITY RESPONSIBILITIES.

- 6.1. The Client must provide physical and Internet access to the System for Innovative to correct Software bugs and carry out modifications to the System for the purpose of maintaining the System, this would also apply to firewalls etc. Innovative will be responsible for all corrections at Innovative's expense.
- 6.2. The Client is responsible for all existing and new hardware and operating system as may be required.

EXHIBIT F
NOTICE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	Integrated Library System
CONTRACTOR Name and Address:	Innovative Interfaces Inc. 45850 Shellmound Way Emeryville, CA 94608
DATE:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section 2.2 of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
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NEW OPTION TERM

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI upon which adjustment is based:	
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Pursuant to Section ____ of the Agreement the Rates of Compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF SAN JOSÉ
a municipal corporation

By _____
Name:
Title:
Date: