

**AGREEMENT FOR A LIBRARY DISCOVERY LAYER  
BETWEEN THE CITY OF SAN JOSÉ  
AND  
BIBLIOCOMMONS INC.**

This agreement (the “Agreement”) is entered into as of the City’s execution date (“Effective Date”) between the City of San José, a municipal corporation (“City”), and BiblioCommons Inc., an Ontario, Canada corporation registered to conduct business in the State of California (hereinafter “Contractor” or “BiblioCommons”). Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

***RECITALS***

**WHEREAS**, City has issued a Request for Proposal ("RFP") to acquire a Library Discovery Layer consisting of software and services accessed, supported, and maintained through a subscription service as set forth in section 3 hereof; and

**WHEREAS**, Contractor has developed software, support and maintenance systems, and services (collectively the “Solution”), and has the necessary expertise and skills to provide such Solution, and Contractor's proposal demonstrates Contractor’s ability to meet the City's needs; and

**WHEREAS**, Contractor has a good understanding of City’s requirements through Contractor’s examination of the Request for Proposal documents and the exchange of information; and

**WHEREAS**, based on this in-depth understanding and combining it with Contractor’s knowledge and expertise with public organizations, Contractor affirms that its proposal will meet the City’s specifications and requirements as described in the Scope of Services; and

**WHEREAS**, the Recitals are true and correct and are incorporated into this Agreement,

***NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:***

**1 AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

- Exhibit A-1 - Scope of Services
- A-2 - Preliminary Project Implementation Schedule
- A-3 - Final System Acceptance Certificate
- Exhibit B - Compensation and Payment Schedule
- Exhibit C - Insurance Requirements
- Exhibit D - Change Order Form
- Exhibit E - Notice of Option to Extend Agreement
- Exhibit F - City Privacy and Disclosure Policy
- Exhibit G - Software Subscription Agreement

In the event any discrepancies or inconsistencies between the provisions of this Agreement and the above-referenced documents arise, the provisions of this Agreement will prevail except that the terms of the Software Subscription Agreement (Exhibit G) shall control solely with respect to the Software Subscription. The provisions in the Exhibits shall prevail over conflicting terms in any Attachments to the Exhibits. Contractor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly and that the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations, and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any shrink-wrap or boot-screen license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.

## **2 TERM OF AGREEMENT**

### **2.1 Term**

The term of this Agreement is from the Effective Date to April 30, 2021 (“Initial Term”), inclusive, subject to the provisions of Section 14 TERMINATION and subsection 2.2 “Options to Extend.”

### **2.2 Options to Extend**

After the Initial Term, the City reserves the right to extend the term of this Agreement for up to five (5) additional one-year terms (“Option Periods”) through April 30, 2026 for ongoing subscriptions, maintenance, technical support, and as-needed additional services and subscriptions. Contractor shall notify the City of any changes to the rate schedule that would result in an increase at least six (6) months prior to the end of the then current term. City shall provide Contractor written notice of its intent to extend the Agreement in the form of Exhibit E prior to the end of the current term.

### **2.3 No Waiver**

City’s agreement to extend the term of this Agreement is not a waiver of the “time is of the essence” provision in Section 4.

## **3 SCOPE OF SERVICES**

### **3.1 Scope of Work**

Contractor shall provide subscription software, including maintenance and support (the “Software” or the “Software Subscription”) and shall provide software implementation, configuration, installation, training, and related services (collectively the “Professional Services”), all as set forth in the Scope of Services (the “Scope of Services” or “Scope”) which is attached as Exhibits A-1 through A-3 and Exhibit G hereto and incorporated as through fully set forth herein.

### **3.2 Notification**

Contractor shall notify City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor’s ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by

this Agreement. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

### **3.3 Privacy and Disclosure Policy**

To the extent Contractor provides Software Subscription services not subject to Contractor's Terms of Use and Privacy Statement (See Exhibit G), Contractor shall comply with the City's Privacy and Disclosure Policy as set forth in Exhibit F, which is attached hereto and incorporated herein.

### **3.4 Contractor's Software**

During the term of this Agreement, Contractor shall make the Software available via the Internet to authorized patrons and grants to City a worldwide, non-exclusive, and non-transferable right to use the Software as further specified in Exhibit G. Authorized patrons may be required to agree to Contractor's Terms of Use and Privacy Statement in order to use some of the Software features, such agreement to be explicitly provided by patron.

## **4 PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE**

Contractor shall perform the Professional Services according to the terms and provisions of the preliminary schedule set out in the attached Exhibit A-2, entitled "Preliminary Project Implementation Schedule". Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

## **5 DATA AND FACILITIES**

Contractor acknowledges that it has in its possession all applicable specifications and drawings, and all other documents to which reference is made herein and/or which are matched hereto, and all such data are adequate to enable Contractor to fairly determine its ability to perform the work called for herein at the price and in accordance with the schedule set forth herein. Contractor represents that it now has or can readily procure, without assistance of City, except for the City Deliverables specified in Exhibit A-2, all facilities, machinery, and equipment necessary for the performance of this Agreement.

## **6 STANDARDS OF SERVICE**

In connection with the performance of any Professional Services pursuant to this Agreement:

### **6.1 Number of Employees**

Contractor warrants it will provide sufficient employees to complete the Professional Services ordered within the applicable time frames established pursuant to this Agreement. Furthermore, Contractor shall, at its expense, supply all tools, equipment, and other materials necessary to perform the Professional Services contemplated in this Agreement.

### **6.2 Skill of Employees**

Contractor warrants that employees shall have sufficient skill, knowledge, and training to perform Professional Services and that the Professional Services shall be performed in a professional and workmanlike manner.

### **6.3 Duty of Confidentiality**

All data, documents, discussions, or other information developed or received by or for one Party in performance of this Agreement will be treated as provided for in Section 5 of Exhibit G and the California Public Records Act, California Government Code Section 6250 et seq. and are confidential and must not be disclosed to any person except as authorized by the other Party, or as required by law. The receiving Party warrants that all employees utilized by it in performing Professional Services are under a written obligation to the receiving Party requiring the employee to maintain the confidentiality of information of the other Party to the extent permitted by law.

### **6.4 Security and Safety**

Contractor shall require employees providing Professional Services at a City location to comply with applicable City security and safety regulations and policies identified in writing by City to Contractor at least two business days in advance of such visit to a City location.

### **6.5 Contractor's Obligations to Employees**

Contractor shall provide for and pay the compensation of its employees and shall pay all applicable taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend, and hold City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

### **6.6 Replacement of Employees**

During the course of performance of Professional Services, City may request replacement of an employee or a proposed employee, provided there is reasonable cause. In such event, Contractor shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Professional Services. If, within the first thirty (30) days after an employee's commencement of Professional Services, City notifies Contractor (1) such employee's level of performance is unacceptable, (2) such employee has failed to perform as required, or (3) such employee, in City's sole opinion, lacks the skill, knowledge or training to perform at the required level, then Contractor will be required to review the work performed by said employee, confirm the quality of work, and correct any items the Contractor deems incorrect. If City requests replacement of an employee for the above-referenced reasons after such thirty (30) day time period, or at any time for a reason other than the reasons indicated above. City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Contractor for such employee's Professional Services after the date of City's requested replacement of such employee.

## **7 CHANGE ORDER PROCEDURE AND AUTHORIZATION**

### **7.1 Changes**

Any changes to this Agreement after the Effective Date that relate to (i) the deletion of products or Professional Services, (ii) adding additional products or Professional Services, (iii) changing or modifying products or Professional Services (excluding changes to the Software done at no additional cost by Contractor pursuant to Section 2.2 of Exhibit G), or (iv) making other changes that materially alter the scope of this Agreement or the deliverables required under this Agreement, including approval of all performance and/or payment schedules shall be made by the Director of Finance in accordance with the procedures set forth below.

### **7.2 Contract Change Requests**

Either Party hereto may, from time to time, and at any time during the term hereof request a change, as defined in the above Section. The Party requesting the change is hereinafter referred to as the "Requesting Party." Requests for changes shall be in writing and shall be addressed and delivered to the other Party as provided herein. Such writing shall be identified as a "Contract Change Request," shall carry a sequential number for ease of tracking, shall set forth in detail the nature of the change requested and the costs associated therewith, and shall identify the products, Professional Services, deliverables, or schedules to be changed.

### **7.3 Procedures**

As soon as practical after receipt by the notified Party of copies of the request, the Parties shall meet as necessary to discuss the change and to ascertain its cost and schedule impacts, if any.

### **7.4 Change Orders**

If the Parties decide to implement a change request, a standard form Change Order ("CO") shall be prepared in a form substantially similar to the form attached hereto as Exhibit D, which CO shall describe the change, delineate the cost, schedule, and other impacts of the change, and include the payment terms for any price increase. Only City's Director of Finance and Contractor's Authorized Representative shall have authority to execute COs to this Agreement. Execution of a CO by City's Director of Finance and Contractor's Authorized Representative shall constitute a modification hereof and shall be binding on both Parties hereto.

## **8 COMPENSATION**

### **8.1 Contract Maximum**

The total contract price in U.S. dollars shall not exceed **Two Hundred Forty-Three Thousand Seven Hundred Thirty-Four Dollars (\$243,734)** during the Initial Term ("Maximum Compensation"). The terms, rates, and schedule of payment are set forth in the attached Exhibit B, entitled "Compensation and Payment Schedule." Contractor shall submit to City invoices in accordance with Exhibit B, Table B1, following completion of the Deliverable(s), but no more frequently than monthly, with a breakdown of all services as provided in the attached Exhibit B, entitled "Compensation and Payment Schedule." City will make payments to Contractor within thirty (30) days after the date of approval of each invoice. City will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

## **8.2 Non-Funding**

Each payment obligation of City is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by Contractor, the product or Professional Service directly or indirectly involved in the performance of that function may be terminated by City at the end of the period for which funds are available. City shall notify Contractor at the earliest possible time of any products or Professional Services which will or may be affected by a shortage of funds.

No penalty shall accrue for City in the event this provision is exercised, and City shall not be liable for any future payments due or for any damages as a result of termination under this Section. This provision shall not be construed so as to permit City to terminate this Agreement or any products or services in order to acquire similar products or services from another party. Contractor shall render any assistance which City may seek in affecting a transfer of any right of City in this Agreement, or any part hereof, that is required of City pursuant to the securing of financing hereunder. Despite the foregoing, the City shall pay Contractor for any Professional Services performed in accordance with this Agreement up to the date of termination.

## **9 TAXES AND CHARGES**

Contractor shall be responsible for payment of all taxes, fees, contributions, or charges applicable to the conduct of Contractor's business.

## **10 FINAL SYSTEM ACCEPTANCE**

At the "Identify Hard Launch Blocker" milestone described in Exhibit A-2, the Contractor and City shall identify and document any remaining outstanding issues. To the extent that the software does not meet the requirements laid out in the Scope of Services (such deficiencies are termed "Hard Launch Blockers"), Contractor will resolve Hard Launch Blockers within a reasonable timeframe as mutually agreed upon by both Parties. Any cost associated with resolving Hard Launch Blockers shall be borne by the Contractor. Once Final System Acceptance occurs, the Parties will memorialize this event by promptly executing a Final System Acceptance Certificate (Exhibit A-3). All warranties shall become effective and begin to run upon the date of Final System Acceptance.

Payment for any part or parts of the Solution or Professional Services 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 of 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 in accordance with Contractor's obligations set forth in Exhibit G, Schedule "B" - Post Implementation Support. 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 under this Agreement following the discovery of such defect or nonconformity.

## **11 CONTRACTOR REPRESENTATION AND WARRANTIES**

### **11.1 Contractor Responsibility**

Contractor understands and accepts full responsibility for all requirements and deliverables defined in this Agreement. Contractor warrants it:

- 11.1.1 Has read and agrees with the specifications contained in the Scope of Services (Exhibits A-1 through A-3 and Exhibit G);
- 11.1.2 Fully understands the facilities, difficulties, and restrictions attending performance of the Professional Services; and
- 11.1.3 Shall inform City of any unforeseen conditions which will materially affect performance of the work within 45 days of the execution of this Agreement and shall not proceed until written instructions are received from City.

### **11.2 Authority to Make Agreement**

Contractor represents and warrants that Contractor has full right and authority to perform its obligations under this Agreement. City shall be entitled to use the System without disturbance.

### **11.3 Contractor Agreements with City Employees**

Contractor shall not enter into a relationship that may result in a financial conflict of interest with any employee or agent of the City who participated in the making of governmental decisions related to this Agreement.

### **11.4 Warranty for Professional Services**

Contractor warrants to City that Contractor shall render all Professional Services provided under this Agreement with reasonable care and skill and warrants that they will function as set for herein. Additionally, Contractor shall warrant its Professional Services after Final Solution Acceptance, and resolution thereof shall be in accordance with Contractor's Post Implementation Support process, Schedule "B" of Exhibit G, Software Subscription Agreement.

### **11.5 Upgrades**

Contractor shall maintain the Software to operate with upgrades to ILS systems and browsers as specified in Exhibit G.

### **11.6 New Media**

Media upon which any Software or software customizations are delivered to City by Contractor:

- 11.6.1 Shall be new and free from defects in manufacture and materials;
- 11.6.2 Shall be manufactured in a good and workmanlike manner using a skilled staff fully qualified to perform their respective duties;
- 11.6.3 Shall function properly under ordinary use and operate in conformance with the specifications; and
- 11.6.4 In the event that media on which any Software Application, Customer Software, or Third Party Application Software is delivered is defective and cannot be read or utilized for its intended purpose by Contractor supplied or approved equipment, Contractor shall replace the defective media as soon as

possible. Any delays occasioned by the failure of new media shall not be considered excusable delay.

#### **11.7 City Representation and Warranties**

City hereby represents and warrants that it will use commercially reasonable efforts to avoid transmitting from City-owned computers to Contractor any viruses, Trojans, and other harmful code.

### **12 INDEMNIFICATION**

Contractor shall defend, indemnify, and hold harmless City, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by Contractor's officers, employees, or agents that result in personal injury, death, or property damage while on City property. The acceptance of said Professional Services and duties by City shall not operate as a waiver of such right of indemnification. This provision shall survive the termination of this Agreement.

### **13 INDEMNIFICATION FOR INFRINGEMENT**

Contractor shall defend and indemnify City of all direct losses, costs, and damages resulting from a determination that the Professional Services, Software, or software customizations supplied to City infringe any third party patent rights, copyrights, or trademarks provided that: City promptly notifies Contractor in writing upon City becoming aware of the existence of any such suit, action, proceeding threat; allows Contractor sole control of the defense and/or settlement thereof; and provides such reasonable cooperation as Contractor may require. In no event shall City consent to any judgment or decree or do any other act in compromise of any such claim without Contractor's express prior written consent. In no event will Contractor be liable for the payment of any amount agreed to in settlement without Contractor's express consent. In the event that City is enjoined from use of the Professional Services, Software, or software customizations due to a proceeding based upon infringement of patent, copyright or trademark, Contractor shall, at its option, either:

- Modify the infringing item(s) at Contractor's expense, so it becomes non-infringing; or
- Replace the infringing item(s) with equal non-infringing item(s), at Contractor's expense; or
- Procure, at Contractor's expense, the necessary licenses for the City to continue using the item(s); or
- Remove the item(s) and refund the purchase price less a reasonable amount for depreciation.

### **14 LIMITATION OF LIABILITY**

Neither Party shall be liable for: (i) indirect, special, consequential, incidental or punitive losses, damages or expenses or lost profits or savings even if it has been advised of their possible existence; or (ii) aggregate liability under this Agreement to the other Party exceeding the aggregate amount of the Fees paid by Subscriber to BiblioCommons during the 12-month period immediately preceding the date of any such claim. This limitation of liability extends to any alleged liability arising under the law of contracts, torts, negligence or any legal or equitable theory whatsoever. This limitation of liability does not apply to any claim, loss, or liability to the City arising out of or resulting in any way from personal injury, death, or property damage



arising from the willful or negligent acts or omissions of Contractor, its officers, employees, or agents.

## **15 TERMINATION**

### **15.1 Termination for Convenience**

City shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

### **15.2 Termination for Default**

This Agreement may be terminated at any time by either Party if the other Party breaches the terms and provisions of this Agreement provided the Party alleging (the "First Party") that the other Party is in breach (the "Breaching Party") provides written notice to such Breaching Party of the alleged breach. Except as provided for in section 21.3, the Breaching Party shall have 30 days to remedy such breach, failing which, the First Party may terminate this Agreement immediately on written notice.

### **15.3 Termination Authority**

The Director of Finance ("Director") is empowered to terminate this Agreement on behalf of City.

### **15.4 Consequences of Termination**

In the event of termination, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement, and upon receipt thereof, City shall pay Contractor for Professional Services performed and reimbursable expenses incurred to the date of termination.

## **16 INSURANCE REQUIREMENTS**

Contractor shall have and maintain the policies set forth in Exhibit C, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said policies, certificates, and/or endorsements before work commences under this Agreement.

## **17 WAIVER**

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

## **18 INDEPENDENT CONTRACTOR**

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

## **19 COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable laws, ordinances, codes, and regulations (collectively, “laws”) of the federal, state, and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

## **20 CONFLICT OF INTEREST**

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

## **21 NONDISCRIMINATION**

Contractor shall not discriminate against, or segregate, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Agreement.

## **22 GIFTS**

### **22.1 Prohibition on Gifts**

Contractor acknowledges that Chapter 12.08 of the San José Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

### **22.2 No Offer**

Contractor shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08.

### **22.3 Breach of Agreement**

Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 14 TERMINATION of this Agreement.

## **23 DISQUALIFICATION OF FORMER EMPLOYEES**

Contractor is familiar with Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor to perform Professional Services under this Agreement, if in the performance of such Professional Services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

## **24 CONFIDENTIAL INFORMATION**

### **24.1 Confidentiality**

All patron data provided to Contractor or otherwise saved in Contractor's Software exclusively for the City (collectively the “Data”) are confidential and shall not be disclosed by Contractor to any person except as authorized by the City, as required by law, or as explicitly approved by the patron through an “opt-in” process.

### **24.2 Ownership of Materials**

City and Contractor agree that Contractor shall own the entire right, title, and interest, including patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information, and data solely conceived

and developed by Contractor in the performance of the project and developed using Contractor's facilities or personnel. City and Contractor agree that City shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information, and data solely conceived and developed by City's facilities or personnel.

#### **24.3 Ownership of Data**

The City shall maintain ownership and control of the Data throughout the Agreement period and in perpetuity. Contractor shall have the right to use the Data solely to perform Professional Services under this Agreement with the City. Contractor may not use the Data, a subset of the Data, and/or a summary of the Data, or, cause or permit the Data, a subset and/or a summary thereof, to be used by any third party, outside the Scope of this Agreement without the express written consent of the City or the express consent of the patron. Patrons electing to use certain Contractor Software features may be required to explicitly accept Contractor's Terms of Use and Contractor's Privacy Statement (see Exhibit G). Contractor warrants that throughout all operational and maintenance activities the accuracy of the Data will be preserved.

#### **24.4 Security**

Contractor shall maintain effective controls and security to protect the Data, including conducting daily and incremental backups to a redundant data storage location, providing redundant power, internet, site redundancy, and emergency recovery procedures. Should the Contractor have a failure of security protocols such that Data is compromised, the Contractor shall immediately notify the City

#### **24.5 Copies of Data/Exit Strategy**

Upon termination, user-generated content shall be handled as provided for in Section 7 of Exhibit G.

#### **24.6 Enforcement**

The City and Contractor agree that damages are not adequate and no adequate remedy at law exists for any threatened or actual disclosure or use of information by Contractor in violation of the provisions of this Agreement. Accordingly, Contractor consents to the entry of an injunction against threatened or actual disclosure or use of the information in violation of any provision of this Agreement.

### **25 CONTRACTOR'S BOOKS AND RECORDS**

#### **25.1 Maintenance during Term**

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to charges for services or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

#### **25.2 Maintenance after Term**

Contractor shall maintain all documents which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

### **25.3 Inspection**

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

### **25.4 Custody of Records**

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment, or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

## **26 ASSIGNABILITY**

The Parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of the City except that (i) Contractor may assign this Agreement to any third party, without consent, in connection with a sale, amalgamation, reorganization, or similar transaction involving a sale of all or substantially all of its shares or assets, provided that such assignee adopts this Agreement, or (ii) City may otherwise authorize such assignment. Any attempt by Contractor to assign this Agreement in violation of this Section will be voidable at City's sole option. City may not assign its rights or interest in this Agreement except to another entity serving the same population, unless specifically authorized by Contractor.

## **27 SUBCONTRACTORS**

### **27.1 Authorized Subcontractors**

Notwithstanding the ASSIGNABILITY section above, Contractor may use designated subcontractors approved in advance by City in performing Contractor's Services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

### **27.2 Compliance with Agreement**

Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

## **28 GOVERNING LAW**

This Agreement must be construed -- and its performance enforced -- under California law.

## **29 JURISDICTION AND VENUE**

In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

Contractor further agrees that in the event a lawsuit involving this Agreement is filed by City, Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

## **30 NOTICES**

All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U. S. mail, or sent via courier service, addressed to the respective Parties as follows:

To City: City of San José  
Attention: Director of Finance  
200 East Santa Clara St., 13<sup>th</sup> Floor  
San José, CA 95113

To Contractor: BiblioCommons Inc.  
Attention: Patrick Kennedy  
119 Spadina Avenue, Suite 1000  
Toronto, Ontario M5V 2L1

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail. The Parties may change their respective addresses in accordance with the provisions of this Section.

## **31 MISCELLANEOUS**

### **31.1 Survival of Provisions**

If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

### **31.2 Assignment**

Subject to the provisions of ASSIGNABILITY, this Agreement binds and inures to the benefit of the Parties and their respective successors and assigns.

### **31.3 Headings**

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

### **31.4 Authority of City Manager**

Where this Agreement requires or permits City to act and no officer of the City is specified, City's Manager or the designated representative of City's Manager has the authority to act on City's behalf.

### **31.5 Force Majeure**

Neither Party shall be liable for any damages, delays, or failure in performance under this Agreement caused by acts or conditions beyond its reasonable control or without its fault or

negligence (each, a “**Force Majeure Event**”), including but not limited to “acts of God”, delays caused by governmental authorities, strikes, lockouts and other labour unrest, delays in obtaining governmental approvals and similar conditions. A Party shall, in order to avail itself of any of the provisions of this Section, promptly send a written notice of the Force Majeure Event to the other Party, including a description of the Force Majeure Event, its expected duration and a description of the actions being taken by the Party to mitigate the effect of the Force Majeure Event.

**City of San José**  
a municipal corporation

**BiblioCommons Inc.**  
a Canada corporation  
authorized to conduct business in California

By \_\_\_\_\_

By \_\_\_\_\_

Jennifer Cheng  
Deputy Director, Finance

Patrick Kennedy  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By \_\_\_\_\_

\_\_\_\_\_  
Rosa Tsongtaarii  
Senior Deputy City Attorney

Elizabeth Jefferson  
Chief Executive Officer

Date: \_\_\_\_\_

## **EXHIBIT A-1**

### **SCOPE OF SERVICES**

The following Scope of Services defines the Contractor services to the City and responsibilities of the Contractor and the City for the implementation of a Library Discovery Layer.

#### **1 INTRODUCTION**

- 1.1 The City of San José's Public Library ("Library") is comprised of 24 branches located throughout the City, serves over one million patrons, receives over three million website visits, and checks out over 500,000 eBooks and eResources to its patrons each year. Due to the increased (and projected continued increased) usage of the Library's online services, the City is seeking ways to improve these services.
- 1.2 To meet this need, the City is procuring a Library Discovery Layer Solution from the Contractor that provides an intuitive, user-friendly, and attractive user interface that conforms to current internet design trends, facilitates community engagement, and interfaces seamlessly with the City's current Integrated Library System (ILS), Innovative Interfaces Sierra.
- 1.3 To the extent not inconsistent with this Agreement between the City and Contractor, the City's RFP 17-18-14 (including subsequent updates), Contractor's proposal response dated March 5, 2018, and Contractor's Best and Final Offer (BAFO) response dated April 10, 2018 are hereby incorporated by reference herein to provide context and supplemental information and are subject to the terms and conditions of this Agreement.
- 1.4 Exhibit G, Software Subscription Agreement shall prevail over any conflicting terms and conditions pertaining to the Software Subscription.

#### **2 SOLUTION REQUIREMENTS**

Contractor shall provide to City a Library Discovery Layer that meets the following requirements:

- 2.1 A cloud-based, vendor-hosted Solution with an intuitive, user-friendly, and attractive user interface that conforms to current internet design trends, is accessible from a standard web browser, including, but not limited to Microsoft Internet Explorer, Microsoft Edge, Google Chrome, Mozilla Firefox, and Apple Safari in the versions documented and updated from time to time at <https://www.bibliocommons.com/supported-browsers>, and integrates seamlessly with the City's current Integration Library System (ILS), Innovative Interfaces Sierra.
- 2.2 Developed using a responsive web design (RWD) approach to facilitate use on a multitude of devices, including computers, tablets, and smartphones.
- 2.3 Operates at a high level of security using Secure Socket Layer (SSL) encryption, data integrity checks, and strong authentication insofar as such standards are also supported by the City's ILS.
- 2.4 Provides unlimited patron and Library administrator user access and accounts.

### 3 Implementation

- 3.1 Contractor shall assign a dedicated project manager for the implementation of the Software who will be the single point of contact for the City. Contractor's project manager will have a view of the entire project implementation and shall facilitate communications among all project participants to coordinate and schedule deliverables.
- 3.2 Contractor shall conduct a kick-off call to begin the project and will provide to the City an updated project plan to include clear objectives, deliverables, and gateways following the call.
- 3.3 Contractor shall schedule and lead weekly check-in meetings, typically lasting for 30 minutes, throughout the project implementation and will also be available for any ad hoc questions that may arise between weekly check-ins. Weekly check-in meetings shall be held via phone or web conference, depending on what best suits the purpose of the specific meeting.
- 3.4 Contractor shall provide the Library with access to its Partner Portal community, which is a forum and documentation knowledge base for all Contractor customers to learn and share best practices and tips for optimal implementations.
- 3.5 Following project kick-off, implementation shall occur in multiple phases as follows:
  - 3.5.1 **Phase 1 – Library Preparation**
    - 3.5.1.1 Technical preparation:
    - 3.5.1.2 The City will setup and install a local Tomcat server via a pre-configured installer, including opening firewall ports as required to allow BiblioCommons access to the ILS and removing the Name field as a login requirement.
    - 3.5.1.3 Completion of four surveys: The City will complete surveys, to be provided by Contractor, covering Branding, Optional BiblioCore features, ILS configuration information, and Cataloguing practices and the identification of certain materials.
    - 3.5.1.4 These two tasks may be performed simultaneously and typically can be completed within 3 weeks.
  - 3.5.2 **Phase 2 – BiblioCommons Configuration**
    - 3.5.2.1 During this phase, Contractor shall configure a preliminary instance of the City's System in accordance with the information provided by the City in the surveys from Phase 1.
    - 3.5.2.2 Contractor shall then use standardized tests to check basic site functionality and configuration based on the City's survey responses.
    - 3.5.2.3 This phase takes 4-6 weeks and requires virtually no input from City staff.
  - 3.5.3 **Phase 3 – Validation**
    - 3.5.3.1 During this phase, Contractor shall provide the City with access to the City's site together with a checklist of cataloging and mapping tests to run.
    - 3.5.3.2 The objective of this phase is to find details that were missed in the completion of the preparation surveys and to update the configuration to include those items.
    - 3.5.3.3 The City will provide resources to support this phase, including a branding subject matter expert (SME), an SME who can test the



synchronization between the ILS and BiblioCore (with the support of the checklist), and an SME who knows the catalog and can test the mapping and display of bibliographic records.

3.5.3.4 This phase is estimated to be a 5-week exercise, with the City to take approximately 1 week to complete their work and the Contractor using the remaining 4 weeks to apply fixes to the configuration for issues that will block proceeding to the next phase.

3.5.4 **Phase 4 – Staff Launch**

3.5.4.1 The Library will inform the Contractor of any outstanding issues that will block proceeding to the next phase within the first week of the Staff Launch period

3.5.4.2 During this phase, Contractor shall provide 2-3 days of on-site training for City staff.

3.5.4.3 Contractor shall work with the Library to coordinate a training plan that fits with the Library’s existing training infrastructure and launch priorities.

3.5.4.4 Contractor shall conduct multiple sessions of on-site training which will feature a mix of live demos, informative slides, and activities.

3.5.4.5 Training topics shall include, but may not be limited to:

- Overview of BiblioCore (MyAccount, Explore, Shelves, Privacy)
- Search
- Best practices for
  - Managing staff accounts
  - Making lists for readers’ advisory
  - Tags
- What to expect at launch

3.5.4.6 Contractor shall also provide administrator training via webinar for City staff who need to configure in the catalog.

3.5.4.7 Contractor shall record webinar training sessions for the City’s future reference and use.

3.5.4.8 This phase is expected to take 4-6 weeks to allow the City sufficient time to roll out any required additional training to other City staff, and allow the Contractor time to resolve any outstanding issues.

3.5.5 **Phase 5 – Soft Launch**

3.5.5.1 The library will inform the Contractor of any outstanding issues that will block launching the catalog fully to the public.

3.5.5.2 During this phase, Contractor recommends that the Library place a link on its home page inviting patrons to try out the new catalog and provide feedback.

3.5.5.3 This phase provides opportunities to learn from the Library’s power users who will explore and identify outstanding configuration issues.

3.5.5.4 This phase is expected to take 4-6 weeks to allow the City sufficient time to collect patron feedback, and allow the Contractor time to resolve any outstanding issues.

**3.5.6 Phase 6 – Final Launch and System Acceptance**

- 3.5.6.1 Contractor and City shall coordinate to set a final go-live date for after the validation, staff launch, and soft launch phases are completed to the City’s satisfaction.
- 3.5.6.2 Following completion of all implementation deliverables and City’s validation that the System meets its requirements, both Parties will execute a Final System Acceptance Certificate to memorialize System acceptance.
- 3.5.6.3 Upon execution of the Final System Acceptance Certificate, the City agrees to pay vendor any remaining and approved outstanding invoices and any previously withheld retainage.
- 3.5.7 For each phase, there are rigorous entry and exit requirements. In particular, before and after the staff and soft launch phases and prior to the final launch, Contractor shall document and prioritize all “blockers” to project completion. No forward movement shall be made to the next phase until the Parties are in agreement that all blockers have been eliminated in the current phase.
- 3.5.8 Several Contractor processes have minimum time requirements:
  - 3.5.8.1 1 week is required to verify Tomcat, ILS details, and survey responses.
  - 3.5.8.2 6 weeks are required to install connector and sync catalog and to build, configure, and deliver the BiblioCore catalog URL
  - 3.5.8.3 4 weeks are required to address Staff Launch blockers once submitted
  - 3.5.8.4 4 weeks are required to address Soft Launch blockers once submitted
  - 3.5.8.5 5 weeks are required to address Final Launch blockers once submitted
  - 3.5.8.6 Some of these tasks may be undertaken simultaneously.

**EXHIBIT A-2**  
**PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE**

Implementation of this project will proceed in accordance with the Preliminary Project Implementation Schedule set forth below in Table A1, except as may be modified into a Final Project Implementation Schedule that is approved by the City during project initiation, and shall reflect tasks in the appropriate order with estimated dates and based on elapsed time as approved by the City. The Final Project Implementation Schedule will become the governing project schedule incorporated into the Agreement. The Project Implementation Schedule is based upon work being accomplished Monday through Friday during normal business hours (defined as 6:00am to 3:00pm Pacific Time for Contractor and 8:00am to 5:00pm for City), with the exception of City holidays.

**Table A1: Preliminary Project Implementation Schedule**

<b>Timeline (following Contract Execution Date)</b>	<b>Scope of Services (Exhibit A-1) Phase, Section</b>	<b>Contractor Tasks &amp; Deliverables</b>	<b>City Tasks &amp; Deliverables</b>
Week 1	Phase 1 Section 3.5.1	Kickoff Call <b>Contractor Deliverable 1:</b> Delivery of documentation outlining Phase 1 Implementation Requirements	Kickoff Call
Week 2			Work on Phase 1 Library Preparation Requirements
Week 3			<b>City Deliverable 1:</b> Tomcat installed and operational; Tomcat and ILS details provided; Implementation surveys completed online.
Week 4	Phase 2 Section 3.5.2	Test connections to Tomcat and ILS <b>Contractor Deliverable 2:</b> Written communication of the results of these connection tests.	
Week 5		BiblioCore Setup and Configured	
Week 6		BiblioCore Setup and Configured	

Timeline (following Contract Execution Date)	Scope of Services (Exhibit A-1) Phase, Section	Contractor Tasks & Deliverables	City Tasks & Deliverables
Week 7	Phase 2 Section 3.5.2	BiblioCore Setup and Configured	
Week 8		BiblioCore Setup and Configured	
Week 9		BiblioCore Setup and Configured	
Week 10		BiblioCore Setup and Configured	
Week 11	Phase 3 Section 3.5.3	<b>Contractor Deliverable 3:</b> Provide BiblioCore URL and validation Script	Validate catalog (ticket issues and change requests)
Week 12		Work on ticketed issues/requests	Validate catalog <b>City Deliverable 2:</b> Written submission of Staff Launch blockers
Week 13		Work on ticketed issues/requests	Validate catalog
Week 14		Work on ticketed issues/requests	Validate catalog Prepare for Staff Launch
Week 15	Phase 4 Section 3.5.4	<b>Contractor Deliverable 4:</b> Written confirmation that Staff Launch Blockers are Resolved	Validate catalog Prepare for Staff Launch
Week 16		<b>Contractor Deliverable 5:</b> Staff Training	Staff Launch begins
Week 17		Work on ticketed issues/requests	Ongoing Staff Training & Validation
Week 18		Work on ticketed issues/requests	Ongoing Staff Training & Validation
Week 19		Work on ticketed issues/requests	Ongoing Staff Training & Validation
Week 20		Work on ticketed issues/requests	Ongoing Staff Training & Validation

<b>Timeline (following Contract Execution Date)</b>	<b>Scope of Services (Exhibit A-1) Phase, Section</b>	<b>Contractor Tasks &amp; Deliverables</b>	<b>City Tasks &amp; Deliverables</b>
Week 21	Phase 4 Section 3.5.4	Work on ticketed issues/requests	<b>City Deliverable 3:</b> Written submission of Soft Launch Blockers
Week 22		Work on Soft Launch Blockers	
Week 23		Work on Soft Launch Blockers	
Week 24		<b>Contractor Deliverable 6:</b> Written confirmation that Soft Launch Blockers are Resolved	
Week 25	Phase 5 Section 3.5.5	Soft Launch	Soft Launch begins <b>City Deliverable 4:</b> Written submission of Hard Launch Blockers
Week 26		Work on Hard Launch Blockers	
Week 27		Work on Hard Launch Blockers	
Week 28		Work on Hard Launch Blockers	
Week 29		<b>Contractor Deliverable 7:</b> Written confirmation that Hard Launch Blockers are Resolved	
Week 30	Phase 6 Section 3.5.6	Full Public Launch	Full Public Launch
		Execution of Final System Acceptance Certificate	Release of Retainage

**EXHIBIT A-3**  
**FINAL SYSTEM ACCEPTANCE CERTIFICATE**

After the City is satisfied with all test results and resolutions, the City will initiate execution of the Final System Acceptance Certificate.

**FINAL SYSTEM ACCEPTANCE CERTIFICATE**

Customer Name: City of San José (“City”)

Project Name: Library Discovery Layer

This Final System Acceptance Certificate memorializes the occurrence of Final System Acceptance.

Contractor and the City acknowledge that:

- 1 Contractor has delivered the System, Software, Professional Services, and documentation promised under this Agreement.
- 2 The System is accepted, and all punch list items generated during testing have been complete.
- 3 By acknowledging the Final Acceptance of the System, the City agrees to pay any remaining and approved outstanding invoices to Contractor, including any previously withheld retainage.

**City of San José (“City”)**

**BiblioCommons Inc. (“Contractor”)**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**  
**COMPENSATION AND PAYMENT SCHEDULE**

**1 Compensation and Payment Terms**

- 1.1 The maximum amount payable for all products and services provided under this Agreement shall not exceed **Two Hundred Forty-Three Thousand Seven Hundred Thirty-Four Dollars (\$243,734)** during the Initial Term. Any additional services or software subscriptions 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 delivery and 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 the City has approved the milestone for which payment is due.
- 1.3 Payment for any deliverable under this Agreement, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect each deliverable and reject upon notification to Contractor any that do not conform to the specifications or other requirements of this Agreement. Rejected deliverables shall be promptly corrected, repaired, or replaced by Contractor. If City receives deliverables with defects or nonconformities not reasonably apparent on inspection, the City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations.

**2 Project Performance and Payment Schedule**

- 2.1 Work shall commence within two weeks of Agreement execution. All timeline dates are understood to be close of business, 5:00 pm Pacific Time. If timeline dates fall on a weekend or City holiday, the date is understood to be the next business day.
- 2.2 Compensation and payments shall be made to Contractor by City based on Net Thirty (30) days payment terms.
- 2.3 Implementation Invoicing Procedure: Contractor will invoice the City upon completion of each milestone but not more frequently than monthly.
- 2.4 Ongoing Annual Services Invoicing Procedure: Contractor shall invoice the City annually for applicable Subscription, Hosting, Technical Support, and Maintenance fees beginning on the date of final acceptance. City shall prepay a year in advance for Subscription, Technical Support, and Maintenance services provided under the Agreement. In the event of early termination of the Agreement, Contractor shall refund the City on a pro-rated basis any fees paid in advance that have not been expended as of the date of termination, excluding third party software.
- 2.5 The City agrees to compensate Contractor for the Services performed and the Software and software customizations provided in accordance with the terms and conditions of

this Agreement. Contractor shall invoice City in accordance with the Payment Schedule in Table B1 below:

**Table B1: Payment Schedule**

<b>Milestones/Tasks</b>	<b>Deliverables</b>	<b>Estimated Completion Date</b>	<b>Cost</b>
Implementation: Setup and Validation	Completion of Deliverables 1, 2 and 3 (Exhibit A-2)	July 16, 2019	\$8,543.26
Implementation: Soft Launch	Completion of Deliverables 4, 5 and 6 (Exhibit A-2)	October 21, 2019	\$8,543.25
Implementation: Final Acceptance	Completion of Final Acceptance Certificate	November 25, 2019	\$28,980.03
<b>Implementation Subtotal</b>			<b>\$46,066.54</b>
Subscription: Year 1 Software Fees (BiblioCore + 3 Languages)	After execution of contract and receipt and approval of accurate invoice	May 1, 2019	\$98,833.58
Subscription: Year 2 Software Fees (BiblioCore + 3 Languages)	Prior to Year 2 , after receipt of approved invoice	May 1, 2020	\$98,833.58
<b>Subscription Subtotal</b>			<b>\$197,667.16</b>
<b>MAXIMUM COMPENSATION (INITIAL TERM)</b>			<b>\$243,733.70</b>

All amounts stated above are in United States Currency.

\*The signed Final System Acceptance Certificate (Exhibit A-4) triggers payment of retainer.

### 3 **Renewal Period Compensation**

3.1 After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section 2.2 (“Options to Extend”) at the same rates as the Initial Term unless otherwise quoted and agreed to in writing by the Parties. Contractor shall notify the City of any changes to the rate schedule that would result in an increase at least six (6) months prior to the end of the current term.

3.2 City shall provide Contractor prior written notice in the form of Exhibit E of its intention to exercise its option for the next term prior to the end of the then current term. The City’s Director of Finance or designee is authorized to exercise options on behalf of the City.

### 4 **Additional Services**

4.1 In the event the City requires additional services, Contractor shall provide a written quotation, at no cost to the City, of the type of Additional Service requested and the time required to complete requested work.

4.2 The City reserves the right to request a fixed priced quote in lieu of time and materials.

4.3 All quotes must be good for at least ninety (90) days.

4.4 Quotes must be approved by the City through an executed Change Order prior to any work being performed.



**Table B2: Price List**

	<b>Year 1</b>	<b>Year 2</b>	<b>Total Not to Exceed</b>
<b>One-Time Costs</b>			
1. Implementation Fee	\$46,066.54	-	\$46,066.54
<b>Ongoing Costs</b>			
2. BiblioCore Subscription (including maintenance and support) Rate: \$0.096527/population with \$12,000 minimum	\$83,757.27	\$83,757.27	\$167,514.54
3. 3 Languages for BiblioCore (including maintenance and support) Rate: 7% of BiblioCore for first language and decreases by 1% for each thereafter with \$2,000 minimum each and \$6,000 maximum each.	\$15,076.31	\$15,076.31	\$30,152.62
<b>4. MAXIMUM COMPENSATION (Initial Term)</b>	\$144,900.12	\$98,833.58	\$243,733.70
<b>OPTIONAL MODULES</b>			
	<b>One-Time Implementation Fee</b>	<b>Year 1 Recurring</b>	<b>Year 2 Recurring</b>
5. BiblioEvents Rate: 20% of BiblioCore with \$5,000 minimum	\$2,100.00	\$16,751.45	\$16,751.45
6. BiblioFines <sup>1</sup> Rate: 10% of BiblioCore with \$10,000 minimum	\$15,000.00	\$10,000.00	\$10,000.00
7. BiblioSuggest Rate: 15% of BiblioCore with \$4,200 minimum	-	\$12,563.59	\$12,563.59
8. Augmented Content – Recommendations (Zola) Rate: \$0.00578/population with \$1,050 minimum	\$1,100.00	\$5,783.10	\$5,783.10
9. Augmented Content – Recommendations (LibraryThing) Rate: \$0.00578/population with \$1,050 minimum	-	\$5,783.10	\$5,783.10

<sup>1</sup> In the event BiblioFines is purchased pursuant to this Agreement, Contractor shall be required to comply with City’s Payment Card Industry (PCI) Requirements.

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

Contractor, at Contractor’s sole cost and expense, shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Contractor, its agents, representatives, employees or subcontractors or suppliers.

**I. Minimum Scope and Limit of Insurance**

There shall be no endorsements reducing the scope of coverage required below unless approved by the City’s Risk Manager.

<b>Type of Insurance</b>	<b>Minimum Limit</b>
<p><b>1 Commercial General Liability</b></p> <p>The coverage provided by Insurance Services Office “occurrence” form CG 0001, including coverages for contractual liability, personal injury, broad form property damage, independent contractors, products and completed operations.</p>	<p>\$5,000,000 CDN per occurrence for bodily injury, personal injury, and property damage or \$5,000,000 CDN annual aggregate.</p>
<p><b>2 Automobile Liability</b></p> <p>The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all non-owned and hired automobiles.</p>	<p>\$2,000,000 CDN combined single limit per accident for bodily injury and property damage, non-owned autos. \$75,000 CDN for hired autos.</p>
<p><b>3 Employer Liability</b></p> <p>As required by the Labor Code of the State of California.</p>	<p>\$2,000,000 CDN for Employer Liability.</p>
<p><b>4 Cyber &amp; Technology Errors &amp; Omission</b></p> <p>Technology/professional liability insurance and data protection liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering services provided under this agreement as well as all Vendor costs, including damages it is obligated to pay Client or any third party, which are associated with damaged, lost or corrupted data. This may be met through a standalone policy or included as a component in a Commercial General Liability Policy.</p>	<p>\$3,000,000 CDN for Cyber and Technology Liability, \$3,000,000 CDN for Technology Errors &amp; Omissions Liability</p>

<p><b>5 Crime/Custodial/Security – Commercial Crime</b></p> <p>Including coverages for loss sustained by a client as a result of employee dishonesty.</p>	<p>Not less than \$50,000 CDN each claim loss.</p>
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**II. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by, the City’s Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City’s Risk Manager.

**III. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

**1. General Liability and Automobile Liability Coverages**

- a. The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased, or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
- b. Contractor’s insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of Contractor’s insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.
- d. Coverage shall state that Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

**2. Workers’ Compensation and Employers Liability**

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

**3. All coverages**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

**IV. Acceptability of Insurance**

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

**V. Verification of Coverage**

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José – Finance Department  
Risk & Insurance  
200 East Santa Clara St., 14th Floor  
San Jose, CA 95113-1905

**VI. Subcontractors**

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**EXHIBIT D  
CHANGE ORDER FORM**

**CHANGE ORDER # \_\_\_\_\_**

**Pursuant to Section 7 of the Agreement for a Library Discovery Layer between BiblioCommons Inc. (“Contractor”) and the City of San José (“City”), the Agreement is hereby amended as follows:**

*(The following language is provided as an example of how to complete this form.)*

1. Contractor shall provide the following additional services or software subscriptions at the costs indicated below:

--	--

<b>TOTAL</b>	
--------------	--

2. The following services, products or deliverables are hereby deleted and the associated costs in amounts set forth below are also deleted.

--	--

<b>TOTAL</b>	
--------------	--

3. Exhibit \_\_ is hereby amended to read as set forth in the Revised Exhibit \_\_ which is attached hereto.

4. All of the terms and conditions of the Agreement not modified by Change Order shall remain in full force and effect.

	Total Cost of Change	
	Total Credit of Change	
	Previous Amendments and/or Change Orders	
	Original Contract	

**ACCEPTANCE**

Contractor hereby agrees to accept the amount set forth herein as payment in full for the work described and further agrees that Contractor is entitled to no additional time or compensation for such work other than as set forth herein.

**Contractor**

\_\_\_\_\_

Date

**APPROVED AS TO FORM**

\_\_\_\_\_

Senior Deputy City Attorney

**City of San José**

\_\_\_\_\_

Name \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT E**  
**NOTICE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE:</b>	Library Discovery Layer
<b>CONTRACTOR Name and Address:</b>	BiblioCommons Inc. 119 Spadina Ave., Suite 1000 Toronto, ON M5V 2L1
<b>DATE:</b>	

*(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:

<b>OPTION NO.</b>	
-------------------	--

**NEW OPTION TERM**

Begin date:	
End date:	

**CHANGES IN RATE OF COMPENSATION**

<b>Percentage change in CPI upon which adjustment is based:</b>	
-----------------------------------------------------------------	--

Pursuant to Section \_\_\_\_ of the Agreement the Rates of Compensation are hereby adjusted as follows:

*(use attachment if necessary)*

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
--------------------------------------------------	--

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 Begin date indicated above.

<p><b>CITY OF SAN JOSÉ</b> a municipal corporation</p> <p>By _____ Name: Title: Date:</p>
-----------------------------------------------------------------------------------------------------------

## **EXHIBIT F**

### **CITY PRIVACY AND DISCLOSURE POLICY**

The purpose of this statement is to define the City of San José's policy with regard to the collection and use of personally identifiable information (PII). PII is any information relating to an identified or identifiable individual who is the subject of the information. Users of the City Web Site should be informed of the following:

The City of San José collects two kinds of customer information: (1) anonymous; (2) personally identifiable information (PII).

#### **1 Anonymous information**

This type of information does not identify specific individuals and is automatically transmitted by City browser. This information consists of:

- The URL (Uniform Resource Locator or address) of the web page user previously visited;
- The domain names and/or IP addresses which are numbers that are automatically assigned to City computer whenever user are connected to the Internet or World Wide Web.
- The browser version user are using to access the site.

This information is used to help improve the City's Web Site. None of the information can be linked to an individual.

#### **2 Personally Identifiable Information (PII)**

This type of information could include name, address, email address, telephone number, credit/debit card information. The City will make every reasonable effort to protect City privacy. It restricts access to City personal identifiable information to those employees who will respond to City request. The City does not intentionally disclose any personal information about Contractor customers to any third parties or outside the City except as required by law or by the consent of the person providing the information.

The City only collects personally identifiable information that is required to provide service. User can decline to provide us with any personal information. However, if user should choose to withhold requested information, the City may not be able to provide user with the online services dependent upon the collection of that information.

#### **3 Access to Personally Identifiable Information**

Access to personally identifiable information in public records at local levels of government in San José is controlled primarily by the California Public Records Act (Government Code Section 6250, et. seq.). Information that is generally available under the Public Records Act may be posted for electronic access through the City's Web Site. While the Public Records Act sets the general policies for access to City records, other sections of the California code as well as federal laws also deal with confidentiality issues.

#### **4 Email addresses**

Email addresses obtained through the City's Web Site will not be sold or given to other private companies for marketing purposes. The information collected is subject to the access and confidentiality provisions of the Public Records Act, other applicable sections of the California code as well as Federal laws. Email or other information requests sent to the City Web Site may be maintained in order to respond to the request, forward that request to the appropriate City within the City, communicate updates to the City page that may be of interest to citizens, or to provide the City web designer with valuable customer feedback to assist in improving the site. Individuals can cancel any communications regarding new service updates at any time.

#### **5 Use of "Cookies"**

Some City applications use "cookies". A cookie is a small data file that certain web sites write to City hard drive when user visit them. A cookie file can contain information such as a user id that the site uses to track the pages user have visited. But the only personal information a cookie can contain is information supplied by user. A cookie is only a text file and cannot read data off user's hard disk or read cookie files created by other sites. Cookies can track user traffic patterns, recognize users computer's browser when user return, and could provide personalized content without requiring sign-in.

User can refuse cookies by turning them off in user browser. However, they may be required to use some of the web applications on the City's Web Site.

#### **6 Security**

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by the City's Web Site and has taken reasonable precautions to protect such information from loss, misuse, or alteration.

#### **7 Contractual Services for the City's Web Site and On-Line Services**

To insure that contractors who have access to or provide contractual services for the City's On-Line (e-government) Services are not allowed to re-sell or in any way share or convey to another party or use it for another purpose any information that they may have access to in the course of doing business for the City; all city contracts regarding such services should contain a requirement that the contractor must comply with the City's Web Site and e-Government policies.

#### **8 Electronic Signatures and Payments**

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by Contractor web site and has taken reasonable precautions to protect such information from loss, misuse, or alteration. When a City application accepts credit cards or any other particularly sensitive information for any of its services, it encrypts all ordering information, such as the customer's name and credit card number, in order to protect its confidentiality.

#### **9 Disclaimer**

The City Web Site should contain a disclaimer substantially containing the following information:



9.1 The City of San José is neither responsible nor liable for any delays, inaccuracies, errors or omissions arising out of user's use of the City's Web Site or with respect to the material contained on the Site, including without limitation, any material posted on the Site nor for any viruses or other contamination of user's system. The City Web Site and all materials contained on it are distributed and transmitted "as is" without warranties of any kind, either express or implied, including without limitations, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The City of San José is not responsible for any special, indirect, incidental or consequential damages that may arise from the use of, or the inability to use, the Web Site and/or the materials contained on the Web Site whether the materials contained on the Web Site are provided by the City of San José or a third party. The City of San José is neither responsible nor liable for any viruses or other contamination of user's system.

9.2 *Access to Information*

Unless otherwise prohibited by state or federal law, rule or regulation, user will be granted the ability to access and correct any personally identifiable information. The City will take reasonable steps to verify user's identity before granting such access. Each City service that collects personally identifiable information will allow or review and update of that information.

9.3 *Non-City Web Sites*

Non-city web sites may be linked through the City's Web Site. Many non-city sites may or may not be subject to the Public Records Act and may or may not be subject to other sections of the California code or federal law. Visitors to such sites are advised to check the privacy statements of such sites and to be cautious about providing personally identifiable information without a clear understanding of how the information will be used.

9.4 The City is not responsible for, and accepts no liability for, the availability of these outside resources. Linked Web sites are not under the control of, nor maintained by, the City and the City is not responsible for the content of these Web sites, which can and do change frequently; nor for any internal links the displayed Web sites may contain. In addition, inclusion of the linked Web sites does not constitute an endorsement or promotion by the City of any persons or organizations sponsoring the displayed Web sites.

## EXHIBIT G SOFTWARE SUBSCRIPTION AGREEMENT

This Software Subscription Agreement (the “Subscription Agreement”) is Exhibit G to the Agreement for a Library Discovery Layer (“Agreement”) as was entered into between the City San José and BiblioCommons Inc.

For the purposes of this Exhibit G, the term “Subscriber” shall have the same meaning as “City” as referenced in the Agreement.

For the purposes of this Exhibit G, the term “BiblioCommons” shall have the same meaning as “Contractor” as referenced in the Agreement.

For the purposes of this Exhibit G, the term “BiblioCore” shall have the same meaning as “Software” or “Software Subscription” as referenced in the Agreement.

The terms and conditions of this exhibit shall prevail over any conflicting terms in the Agreement with respect to the Software Subscription.

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This Software Subscription Agreement (the “Subscription Agreement”) is entered into as of the City’s execution date (“Effective Date”) between BiblioCommons Inc., a corporation constituted under the laws of the Province of Ontario, Canada (“BiblioCommons”) and the City of San José, a municipal corporation, (“Subscriber”). The terms and conditions of this Subscription Agreement shall govern the Software Subscription service(s) (as defined below) to be provided by BiblioCommons.

NOW THEREFORE in consideration of the mutual promises and covenants herein, and other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

### 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 **Definitions.** Whenever used in this Subscription Agreement, the following words and terms shall have the meanings set out below:

1.1.1 “Authorized Patron” means a person who is considered a user of Subscriber’s library services and is authorized by Subscriber to use the Subscription Service;

1.1.2 “Breaching Party” has the meaning ascribed to it in Section **Error! Reference source not found.** hereof;

1.1.3 “Business Day” means a day, other than a Saturday or a Sunday or statutory holiday in the jurisdiction of either Party;

1.1.4 “Confidential Information” means any information not subject to disclosure under the California Public Records Act, California Government Code Section 6250 et seq. that is disclosed by a Party to the other Party pursuant to this Software Subscription Agreement in a context which would cause a reasonable person to believe the information is

intended to be treated as confidential, including but not limited to, documents expressly designated as confidential, any information related to BiblioCommons proprietary software subscription services including the Service, Secure Personal Information, and information related to Subscriber's processes, products, employees, facilities, equipment, security systems, information systems, finances, marketing plans, suppliers, or distributors; provided, however that "Confidential Information" shall not include information that: (i) is now available or becomes available to the public without breach of this Agreement; (ii) is explicitly approved for release by written authorization of the Disclosing Party; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is disclosed to a third party by the Disclosing Party without a duty of confidentiality; (v) is known to the Receiving Party prior to disclosure; (vi) is at any time developed by the Receiving Party independently of any such disclosure(s) from the Disclosing Party; or (vii) must be disclosed as required by law;

- 1.1.5 "Core" or "Core Service" has the meaning set out in Schedule "A-1" ("BiblioCore Service Description") of this Subscription Agreement
- 1.1.6 "Disclosing Party" has the meaning ascribed to it in Section 5.1 hereof;
- 1.1.7 "Effective Date" has the meaning ascribed to it in the Agreement;
- 1.1.8 "Force Majeure Event" has the meaning ascribed to it in the Agreement;
- 1.1.9 "ILS" means the Subscriber's Integrated Library System, used for library circulation, cataloging and other services;
- 1.1.10 "Intellectual Property Right" means any intellectual property right recognized by law, including any intellectual property right protected through legislation (such as that governing patents, copyrights, or trademarks) or arising from protection of information as a trade secret, confidential information, or common law trademark right;
- 1.1.11 "Change Order" has the meaning ascribed to it in Section 7 of the Agreement;
- 1.1.12 "Parting" has the meaning ascribed to it in Section 7 hereof;
- 1.1.13 "Party" or "Parties" has the meaning ascribed to it in the Agreement.
- 1.1.14 "Privacy Statement" means the statement of BiblioCommons' privacy practices that shall govern BiblioCommons' collection, use and disclosure of Personal Information of Authorized Patrons which, as of the Effective Date, is attached as Schedule "E" of this Subscription Agreement, and which may be amended by BiblioCommons from time to time;
- 1.1.15 "Receiving Party" has the meaning ascribed to it in Section 5.1 hereof;
- 1.1.16 "Secure Personal Information" means personally identifiable information that is provided by a User in the registration process or personal account settings on the Service, or is transferred to the Service from the ILS; notwithstanding the foregoing "Secure Personal Information" shall not include Shared Content or information an individual has chosen to transmit or share through a feedback service provided on the Service, web-

forms on the BiblioWeb service (if any) or an entry in any context which is, by design, publically viewable;

- 1.1.17 “Shared Content” has the meaning ascribed to it in the Privacy Statement (Schedule “E”);
- 1.1.18 “Service,” for the purposes of this Subscription Agreement, means a range of software subscription services purchased as set out in the Agreement;
- 1.1.19 “Technical Requirements” are the requirements set forth in Schedule “D” of this Subscription Agreement.
- 1.1.20 “Term” means the duration of the Initial Term as set out in the Agreement plus the extent of any Option Periods, as set out in the Agreement;
- 1.1.21 “Terms of Use” means the terms of use that govern the use by Authorized Patrons of the Subscription Service which, as of the Effective Date, is attached as Schedule “F” of this Subscription Agreement, and which may be amended by BiblioCommons from time to time; and
- 1.1.22 “User” means an Authorized Patron who has registered with BiblioCommons to use the Service.

## **1.2 Schedules.**

This Subscription Agreement contains the following schedules, each of which are attached and incorporated into this Subscription Agreement:

Schedule “A-1”	-	BiblioCore Service Description
Schedule “A-2”	-	Schedule of Additional Services
Schedule “B”	-	Post Implementation Support
Schedule “C”	-	Service Levels
Schedule “D”	-	Technical Requirements
Schedule “E”	-	Privacy Statement
Schedule “F”	-	Terms of Use

## **2 BIBLIOCOMMONS OBLIGATIONS**

### **2.1 Delivery of Service.**

During the Term, BiblioCommons shall make the Service available via the Internet to Authorized Patrons and grant to Subscriber a non-exclusive and non-transferable right to use the Service. Authorized Patrons are subject to and may be required to agree to the Terms of Use and Privacy Statement.

### **2.2 Changes to the Service.**

BiblioCommons may, from time to time and at any time, in its sole discretion, introduce upgrades and updates to the Services that are consistent with the service description set out in the Agreement at no additional charge.

### **2.3 Maintaining Community Standards.**

The Service allows Users to flag user-generated content they feel does not conform to the Terms of Use. When content is flagged three times, or as many times as may be determined by BiblioCommons in its sole discretion, BiblioCommons will:

- Remove flagged content from public view; and
- Notify the User who contributed the content, and provide directions for appealing the removal.

Any appeals will be compiled and at least once each month BiblioCommons will review any appeals to assess whether the removed content conforms with the Terms of Use in effect at the time of removal.

#### **2.4 Support.**

BiblioCommons will use commercially reasonable efforts to support the Services in accordance with the service levels and remedies outlined in Schedule “B” Post Implementation Support.

#### **2.5 Service Level.**

BiblioCommons will use commercially reasonable efforts to provide the Core Service in accordance with the service levels and remedies outlined in Schedule **Error! Reference source not found.** Service Levels. Notwithstanding anything herein to the contrary:

- BiblioCommons may interrupt the Service for security purposes;
- The Service is dependent on the Internet and availability and performance may be impacted by the availability and performance of the Internet.

### **3 SECTION 3**

This section intentionally left blank.

### **4 INTELLECTUAL PROPERTY RIGHTS**

#### **4.1 Ownership of Intellectual Property Rights.**

As between BiblioCommons and Subscriber, all rights, title and interest, including all Intellectual Property Rights, related to the Service and related software and documentation, including without limitation, any and all upgrades, updates, improvements, fixes, additions, enhancements, modifications and derivative works thereto, shall remain with BiblioCommons. Nothing in this Subscription Agreement shall grant to either Party any ownership or other Intellectual Property Rights of the other Party other than as expressly set out in this Agreement. Nothing in this Subscription Agreement shall grant to either Party any ownership or any Intellectual Property Rights to content generated by Users in connection with their use of the Service.

#### **4.2 Control of Trade-marks.**

Subscriber acknowledges that “BiblioCommons” is a trade-mark of BiblioCommons and shall not be used by Subscriber except as expressly provided in this Agreement and otherwise only with the written consent of BiblioCommons and in accordance with any trade-mark guidelines that may be provided by BiblioCommons from time to time.

### **5 CONFIDENTIAL INFORMATION**

#### **5.1 Disclosure; Standard of Care.**

The Parties acknowledge that, in the course of this Subscription Agreement, each Party (a “Disclosing Party”) may disclose Confidential Information to the other (a “Receiving Party”). Each Receiving Party shall hold such Confidential Information in trust for the sole benefit of the Disclosing Party. Each Receiving Party shall protect the other Party’s Confidential Information from unauthorized dissemination, disclosure and use with the same degree of care that each such Party uses to protect and safeguard its own like information, but not less than a reasonable degree of care given the sensitivity and strategic value of such Confidential Information. Confidential Information shall be disclosed only to the employees and subcontractors of the Receiving Party who have a

“need to know”. A Receiving Party shall not disclose any Confidential Information to any third party without first obtaining the Disclosing Party’s written consent to such disclosure unless such disclosure is required by law. A Receiving Party may further disclose Confidential Information to such Party’s professional advisors in connection with the negotiation and performance of this Agreement and in connection with the advisor’s consideration of disclosures that may be required by law, provided such advisors are informed of the obligations of confidentiality. In the event that a Receiving Party is compelled to disclose a Disclosing Party’s Confidential Information, in the course of litigation or otherwise, or a compelled disclosure is reasonably anticipated, the Receiving Party shall give immediate notice to the Disclosing Party of such fact and shall provide all reasonable cooperation to the Disclosing Party at the sole expense of the Disclosing Party in obtaining a protective order to prevent the disclosure of Confidential Information.

## **6 SECTION 6**

This section intentionally left blank.

## **7 TREATMENT OF PATRON-CONTRIBUTED DATA UPON TERMINATION**

In the event of a termination of the Agreement as provided for in section 14 thereof, or should a renewal agreement not be established after the Term (a “Parting”), BiblioCommons shall provide at Subscriber’s request and at no cost to Subscriber, a transfer of all user-generated bibliographic annotations for use by Subscriber in association with an alternate service, provided by Subscriber itself or by a third party, that adheres to the Terms of Use and Privacy Statement.

Format: .csv format or such other format that the Parties may agree upon

Scope: Shared Content that has been submitted by Users via the products

Data exports will be completed after payment from Subscriber has been received and provided that Subscriber is not in material breach of any of its material obligations under this Agreement. In addition, in the event of a Parting, Subscriber agrees that BiblioCommons will send a customer service communication, subject to Subscriber approval which shall not be unreasonably withheld, explaining the User’s options and their implications through such transition, to all Users who have:

- **communicated or established connections with one or more persons who are registered users of a BiblioCommons service;**
- **initially approached the Service for registration through a website that is not affiliated with Subscriber;**
- **subscribed to syndicated information from one or more persons who are registered users of a BiblioCommons service; or**
- **syndicated their information or content from BiblioCommons to other websites.**

Secure Personal Information on BiblioCommons servers that is associated with Users who do not choose to continue their participation in a BiblioCommons service will be deactivated within ninety (90) days of a Parting.

## **SCHEDULE “A-1”**

### **BIBLIOCORE SERVICE DESCRIPTION**

The BiblioCore Service (the “Core Service”) will provide an Online Public Access Catalog (“OPAC”) for Subscriber’s holdings. The “Core Service” will include:

- 1 The mapping of bibliographic data from Subscriber’s ILS
- 2 MARC record synchronization between BiblioCommons servers and Subscriber’s ILS
- 3 Registration and log-in for Authorized Patrons:
  - 3.1 Create account on BiblioCommons if first login, and record personal account information
  - 3.2 Fetch list of checked out items, holds and recently returned when requested
  - 3.3 Fetch list of fines when requested
- 4 Support for user-generated content:
  - 4.1 Bibliographic Records (Bibs) may be annotated as follows:
    - 4.1.1 Add faceted tags
    - 4.1.2 Specify I own this
    - 4.1.3 Add or edit Comment
    - 4.1.4 Add a Notice about the content
    - 4.1.5 Add Quotation(s)
    - 4.1.6 Add to List
  - 4.2 Enter Private Notes
    - 4.2.1 “Lists” or “Guides” Function
      - 4.2.1.1 Create and annotate a List
      - 4.2.1.2 Add bibs from the catalogue
      - 4.2.1.3 Add URL to a list
      - 4.2.1.4 Add item annotations
      - 4.2.1.5 Make a list Public / Private
  - 4.3 Configuration option to feature staff-created lists prominently in search results for lists.
    - 4.3.1 “My Shelves”– including facets
    - 4.3.2 Recommendations
      - 4.3.2.1 “Follow” a user
  - 4.4 Receive recommendations
    - 4.4.1 Block/unblock user
    - 4.4.2 Flag inappropriate content
  - 4.5 Search
    - 4.5.1 “One box” search interface
    - 4.5.2 Basic search options: title, author, subject, tags, lists.
    - 4.5.3 Advanced Search Interface
    - 4.5.4 Faceted search-results interface, includes Rating facet
    - 4.5.5 Sort-by options for search results

- 4.5.6 Advanced “Did you mean...” feature
- 4.5.7 Graduated search feature: “Broaden your search”
- 4.5.8 Display holdings and availability.
- 4.6 Display of Bibliographic Records
  - 4.6.1 Bib Page:
    - 4.6.1.1 Bib information (title, authors)
    - 4.6.1.2 Key MARC data
    - 4.6.1.3 Key inventory data (availability at local branches)
    - 4.6.1.4 Holdings information for serials
    - 4.6.1.5 User-generated content for a bib, hiding user-generated content from blocked users
- 4.7 Third-party bib content provided by Subscriber (e.g. Syndetics, Content Café)
  - 4.7.1 Ability for users, from the Bibliographic Record, to
    - 4.7.1.1 Place holds
    - 4.7.1.2 Add user-generated content / add to My Collections
    - 4.7.1.3 Browse adjacent titles
  - 4.7.2 Transactions:
    - 4.7.2.1 Place holds
    - 4.7.2.2 Cancel holds
    - 4.7.2.3 Suspend holds
    - 4.7.2.4 Renew items
    - 4.7.2.5 Change patron email address
  - 4.7.3 Messaging
    - 4.7.3.1 User Inbox provides central location for all messages posted
    - 4.7.3.2 Message blocking available for users under the age of 13
    - 4.7.3.3 Options for sharing content outside of BiblioCommons environment
  - 4.7.4 Explore New Titles
    - 4.7.4.1 Faceted Browsing
    - 4.7.4.2 Configurable New Titles Listings
  - 4.7.5 Community credits: automatically saved and displayed to patron
  - 4.7.6 Library Admin:
    - 4.7.6.1 Community Credits: On/Off
    - 4.7.6.2 High-level activity reporting
    - 4.7.6.3 Tiered permission levels to site: ability to enable authorized Library staff content to be flagged on site
    - 4.7.6.4 Extraction of library data uniquely held by BiblioCommons, using BiblioCommons Web Services APIs, for library "add-ons" or "widgets."
    - 4.7.6.5 Configuration of messages



## **SCHEDULE “A-2”**

### **SCHEDULE OF ADDITIONAL SERVICES**

The Software Subscription will also include additional services as described below:

#### **1. Languages for the BiblioCore product:**

- 1.1. Language module for Spanish
- 1.2. Language module for Vietnamese
- 1.3. Language module for Traditional Chinese

#### **2. Ongoing Services**

##### **2.1. Training**

- 2.1.1. BiblioCommons shall conduct, on an ongoing basis, informational webinars on best practices for using BiblioCommons’ products, new product features, product directions, and sharing ideas among BiblioCommons’ partner libraries.
- 2.1.2. For any major changes to the catalog or when a release includes a large feature or significant change, BiblioCommons shall hold introductory webinars, which are recorded and subsequently made available to Subscriber’s staff.
- 2.1.3. BiblioCommons shall provide webinars, how-to articles, best practices, a forum, news, and more through its Partner Portal and Knowledge Base, which is available to all Subscriber staff.

##### **2.2. Technical Support**

- 2.2.1. BiblioCommons shall provide emergency support (e.g., for system down) 24x7x365 through BiblioCommons’ Partner Portal and help site. BiblioCommons shall also provide an emergency backup phone number for 24/7/365 emergency support.
- 2.2.2. BiblioCommons shall provide non-emergency support 9:00 am to 5:00 pm Eastern Time (6:00 am to 2:00 pm Pacific Time).
- 2.2.3. BiblioCommons’ technical support shall include unlimited incidents.
- 2.2.4. BiblioCommons shall provide technical support primarily through BiblioCommons’ online Partner Portal and Knowledge Base.
- 2.2.5. BiblioCommons’ online trouble reporting system shall track open trouble tickets and includes automatic escalation and notification based on service level requirements and issue progress.
- 2.2.6. BiblioCommons shall provide online help documentation within the catalog for patron support.

##### **2.3. Maintenance**

- 2.3.1. BiblioCommons shall provide upgrades to all Software purchased under this Agreement at no additional charge.
- 2.3.2. BiblioCommons shall publish release notes for all major releases.
- 2.3.3. All Subscriber Library staff may sign up to receive published release notes through email.
- 2.3.4. BiblioCommons shall also post release notes on BiblioCommons’ Partner Portal.
- 2.3.5. Before publishing any significant release that will affect the online Software or Subscriber’s Library customers, BiblioCommons shall send an email to the main Subscriber’s Library contact and will hold introductory webinars, which will be recorded and subsequently made available to Subscriber staff.

2.3.6. BiblioCommons has a quarterly maintenance schedule for routine maintenance and upgrades and shall provide Subscriber with 2 weeks' notice for any scheduled maintenance period.

**3. Other Requirements**

3.1. BiblioCommons shall conduct privacy audits at least every 2 years and make audit results available to the Subscriber for review upon request.

3.2. BiblioCommons shall have a policy and procedure for responding to government and law enforcement requests for patron data that complies with applicable local, state, and federal privacy laws.

4. See Schedules "B" and "C" for additional Post Implementation Support and Service Levels details.

## SCHEDULE “B” POST IMPLEMENTATION SUPPORT

### Support Process and Response Time

BiblioCommons shall provide four levels of post-rollout support for the BiblioCore Service and the BiblioWeb Service as applicable. These vary in timing and scope, in proportion to the severity of the problem to which they are responding.

BiblioCommons defines severity by four levels:

1. Emergency
2. Critical
3. Normal
4. Low-priority

The severity of a problem is determined by:

- A. The importance of the feature affected
- B. The prevalence of the outage

#### A. Definition of feature importance

Primary Features	Secondary Features	Tertiary Features
<b>BiblioCore Service</b>		
<ul style="list-style-type: none"> <li>• Site availability</li> <li>• Registration</li> <li>• Login</li> <li>• Search</li> <li>• Holds</li> <li>• Renewals</li> </ul>	<ul style="list-style-type: none"> <li>• Synchronization: of bibliographic records (additions, deletions, edits), and item availability)</li> <li>• ILS-independent, BiblioCommons features including: My Shelves and My Lists; user-generated content (e.g. ratings, comments, etc) and community functionality (e.g. Following, Ignoring, patron to patron messaging)</li> <li>• Cosmetic issues affecting site functionality</li> </ul>	<ul style="list-style-type: none"> <li>• Text changes and cosmetic issues not affecting site functionality</li> <li>• Changes to mapping of configurable features – formats, audience, availability, status, etc.</li> </ul>
<b>BiblioWeb Service</b>		
<ul style="list-style-type: none"> <li>• BiblioWeb Homepage</li> <li>• Header &amp; Footer: visual presence, main navigation</li> <li>• Search: access to dropdowns, ability to conduct a search</li> <li>• Access to Find a Location page</li> <li>• Listing of All Locations page</li> <li>• Events calendar display</li> <li>• Access to Catalog Login in Header</li> </ul>	<ul style="list-style-type: none"> <li>• Location landing pages</li> <li>• Blogs &amp; news posts</li> <li>• Availability of Browse and Audience pages</li> <li>• Cosmetic issues affecting site functionality</li> <li>• Online Resources</li> <li>• BiblioWeb Admin Login</li> <li>• Events Admin interface</li> <li>• Footer: images &amp; appearance</li> </ul>	<ul style="list-style-type: none"> <li>• Text changes and cosmetic issues not affecting site functionality</li> <li>• Forms</li> <li>• FAQs</li> <li>• Archival Collections</li> <li>• Ability to upload and access media</li> </ul>

**B. Definition of Prevalence**

**Complete:** System-wide; consistently reproduced in supported browsers and against (multiple) patron IDs.

**Partial:** Feature outages that are not universal, but are estimated to affect a significant (i.e. >5%) of relevant use cases (e.g. logins, pageviews, holds, etc.).

**Sporadic:** Affecting less than 5% of total relevant use cases. (Use cases that are relevant issue in question.)

**Severity Classification by Feature Importance and Failure Prevalence:**

		Prevalence of Failure		
		Complete	Partial	Sporadic
Feature Importance	Primary	Emergency	Emergency	Critical
	Secondary	Critical	Critical	Normal
	Tertiary	Normal	Low	Low

**Supported reporting methods by issue severity**

BiblioCommons supports different response methods, depending on the severity of the problem.

Contact Method			
Emergency	Critical	Normal	Low
24/7 emergency Online Ticket Entry	Standard technical support line during support hours or Online Ticket Entry	Online Ticket Entry	Online Ticket Entry

**Emergency Online Ticket Entry**

BiblioCommons provides an emergency 24-hour support ticket type accessible from the Partner Portal. Entering one of these tickets will immediately alert the appropriate on-call team.

**Backup Emergency Phone**

In the event that you are unable to reach our emergency online ticketing system, you can call our toll-free phone number to report emergencies. This is only a backup.





**Online ticket entry**

For non-critical issues, BiblioCommons manages support through an online error ticketing system built into the BiblioCommons Partner Portal. This is the standard gateway for all communications with BiblioCommons Support. BiblioCommons will supply access to this service to the Library for the purpose of issue tracking.

Non-critical issues should be reported to BiblioCommons through online support tickets.

Once Requests are submitted they will be triaged, with resources and scheduling assigned based on an assessment of the importance of the issue.

**Response Commitments by level of severity**

<b>Response Commitments</b>			
 <b>Emergency</b>	 <b>Critical</b>	 <b>Normal</b>	 <b>Low</b>
<p>Immediate.</p> <p>Worked on until resolved.</p>	<p>Immediate, or next working day if outside support hours.</p> <p>Typically resolved within 24 hours, if resolution is possible without code modification.</p> <p>May be included in Hotfix release depending on severity. However, BiblioCommons reserves the right to defer high-risk code changes to the next scheduled Feature Release.</p>	<p>Requests are reviewed within two business days.</p> <p>They are then assigned a priority level based on the scope and severity of the issue. They are prioritized against other outstanding issues for potential inclusion in upcoming releases.</p>	<p>Requests are reviewed within two business days.</p> <p>Low priority issues are dealt with as resources permit.</p>

## **SCHEDULE “C” SERVICE LEVELS**

BiblioCommons shall use commercially reasonable measures to make the BiblioCore, BiblioWeb, and BiblioEvents services available with a minimum uptime standard of 99.5%, excluding scheduled maintenance windows or any unavailability resulting from a Subscriber’s applications, equipment, facilities, or employees.

### **Service Unavailability**

At the request of the Subscriber, BiblioCommons will calculate an inventory of Subscriber’s “Service Unavailability” for the previous calendar month. “Service Unavailability” shall be those periods during which the Core Service was not available to Subscriber, and shall include unavailability associated with any unscheduled maintenance. Such requests must be made in writing by Subscriber to BiblioCommons within five business days of the end of a calendar month in question.

Service Unavailability will not include any scheduled maintenance, nor will it include any unavailability resulting from:

- a) Subscriber’s applications, equipment, facilities, or employees;
- b) any acts or omissions of Subscriber, or any use or Users; or
- c) any event outside the reasonable control of BiblioCommons and Force Majeure events as defined in the Agreement.

### **Remedy**

Subscriber’s exclusive remedy for a failure of the Service shall be that for any continuous period of 24 hours or more of Service Unavailability, at Subscriber’s request, Subscriber’s Term shall be extended for one additional week without additional charge.

### **Scheduled Maintenance**

The Subscriber acknowledges that the Service may not be available to Subscriber and Authorized Patrons during scheduled maintenance. For the purposes of this paragraph, “Scheduled Maintenance” only refers to planned, routine maintenance carried out by BiblioCommons that has the effect of significantly limiting the functions of the System available to Subscriber and Authorized Patrons.

BiblioCommons shall limit Scheduled Maintenance to ten hours per month and shall make reasonable efforts to notify Subscriber of Scheduled Maintenance not less than twenty-four hours in advance.

## **SCHEDULE “A”**

### **TECHNICAL REQUIREMENTS**

Subscriber must meet the following requirements in order to take advantage of the Service. These requirements may be amended from time to time by BiblioCommons in accordance with evolving technical standards in the industry.

#### **ILS Server and Database**

- The ILS Server must be an instance of an ILS system as may be agreed to by BiblioCommons.
- On the date hereof, BiblioCommons supports connectors with:
  - Symphony
  - Horizon
  - Sierra
  - Polaris
  - Evergreen
  - CARL X
- The ILS server must offer or accommodate a reliable programmatic method:
  - to access cataloging and patron data; and
  - to execute circulation requests on behalf of a User
  - to execute any other ILS-based services stipulated in this Subscription Agreement.
- Libraries must be able to provide the version number of the ILS application and its underlying database and operating system. Database version is only required for Evergreen and Horizon ILSs.
- The standard security configuration provides for access to the ILS connector by opening a port in Subscriber’s firewall to BiblioCommons servers. Any additional security requirements from Subscriber may be accommodated for a supplementary implementation fee by written agreement.

#### **Tomcat Server**

- There must be a new and correct installation of Apache Tomcat on a server (“the Tomcat server”) in the library environment. Tomcat Manager must be installed using BiblioCommons’ pre-configured Tomcat instance, or installed to meet BiblioCommons’ configuration requirements.
- Applicable only for Symphony ILS: The Tomcat Server must be installed on the same server in which any Unicorn/Symphony API server commands are located.
- There must be an instance of Java 1.7 on the Tomcat server, and it must be modifiable as BiblioCommons requirements evolve.
- Tomcat Manager must be installed using BiblioCommons pre-configured Tomcat instance, or installed to meet BiblioCommons configuration requirements.
- Applicable only for Symphony ILS: For Unicorn/Symphony, the Tomcat Server must be run using the ‘sirsi’ user.

- Tomcat must be available through Subscriber’s firewall to the BiblioCommons servers with sufficient privileges and access required to comply with integration requirements.
- As required for monitoring and testing, BiblioCommons must be given unconditional SSH or Remote Desktop access to the server running Tomcat. In the event that such access is not provided by Subscriber, the uptime standard and remedy outlined in Schedule “C” will be void.

### **Hardware and Bandwidth**

- The Tomcat server CPU must have at least 2Ghz in processing speed, or processing speed that provides response time that is acceptable to Subscriber and BiblioCommons
- The Tomcat server must have a minimum of 512 MB of available RAM (for small libraries, under 25,000 population served), 1 GB (for medium libraries, under 100,000 population served) or 1 GB or more (for large libraries).
- The Tomcat server must have a minimum 5 GB of free space on the hard-drive.
- The Tomcat server CPUs must not exceed 50% utilization (with existing, non-BiblioCommons load).
- The library’s communication (all network communication from the Tomcat server to the ILS server, the ILS database, and to the external Internet) must be through a high-speed, reliable Internet connection: 5Mbps bi-directional (upload/download) or better for a small or medium-sized library, or 44Mbps bi-directional or better for a large library serving a population over 100,000.

### **Assistance and Access**

To successfully launch and maintain the BiblioCommons service, Subscriber must be prepared to provide:

- A Project Manager (the “Library Project Manager”) to act as a liaison between your library and BiblioCommons;
- A lead technical contact.
- During the testing and acceptance phase, if any incompatibilities with API calls arise, BiblioCommons will be granted SSH access to the system with the ‘sirsi’ user in order to verify API calls.

### **User Interface**

Subscriber will be asked to provide graphic elements that meet basic usability criteria, including for example font and background colours for the navigation bars, and a horizontally oriented logo, no larger than 260px width x 130px high, with a RBG background colour or image.



## **In-Library Terminals**

BiblioCommons offers support for in-library terminals for the following browsers:

- Internet Explorer
- Firefox
- Safari
- Chrome

An up-to-date listing of the oldest supported browsers will be posted here:

<http://www.bibliocommons.com/how-we-work/supported-browsers>

Other browser support may be provided by written agreement.

## **Data Quality**

In order to facilitate BiblioCommons data transfers and the sharing of information among patrons and libraries, BiblioCommons has deployed the following minimum standards for data, which are preconditions for the Service. BiblioCommons has worked with other libraries to develop these standards based on the demands of both the ILS and the user experience.

## **MARC and Patron Data**

BiblioCommons' requirements for MARC mapping reflect typical cataloguing practice:

- Use of AACR2 or RDA and MARC21 standards for Bibliographic and Authority data;
- Authority and Bibliographic records must be exportable separately with corresponding links between the two.

Subscriber will complete a survey describing a set of rules that can be used across all bib records to isolate key data for mapping into BiblioCommons schemas, including for example and without limitation:

- Format values (e.g., DVD, Braille book)
- Audience values: Adult, Teen, Children
- Fiction/Non-fiction/Other

BiblioCommons will only support character sets and character-set encoding practices typical in library environments.

BiblioCommons reserves the right not to support nonstandard library data practices and practices that require custom parsing of data.

## **Identifiers and Other Required Fields**

- Library records must have persistent identifiers over time. For example, record numbers must persist for any batch delete and re-add process of the same set of records.
- All key elements such as patron identification, bibliographic record identification and item identification must have a unique permanent identifier
  - For example, if a patron loses their library card, their barcode may change, but the new barcode must reference the same unique permanent identifier.

- Universal identifiers should be in place for all bibliographic records where practically possible.
- Patron records must have a birth date field, though not necessarily birth data.

### **Cataloguing Workflows**

Subscriber should be prepared to describe acquisition and cataloguing workflows, explaining how records are added, changed and deleted in various cases (e.g., brief records creating during the inter-library loan processes, records created during the acquisitions process, records that are suppressed from the online public access catalogue (OPAC), batch processes). BiblioCommons will support cataloguing practice and workflows that are typical among public libraries in North America.

Subscriber must notify BiblioCommons in advance when a larger than normal number of records is added, edited, or deleted from their ILS.

### **If Subscriber Does Not Meet the Required Conditions**

BiblioCommons will show flexibility in the requirements detailed in this Schedule “A” if mutually agreeable alternatives are found. But in the absence of such alternatives and where Subscriber fails to meet materially any of the requirements, Subscriber will a) use its own resources to perform the work necessary to conform to the requirements or to specifications applied by BiblioCommons in libraries of similar size and with the same or similar ILS deployment, or b) hire BiblioCommons at a rate of \$1500 per day per technician to develop a reasonable solution that will be specified and estimated in advance by BiblioCommons.

In the event that Subscriber does not provide 24-hour, 7 day-a-week remote desktop access to the server running Tomcat, Subscriber will pay to BiblioCommons an additional annual fee of ten thousand dollars (\$10,000)

## **SCHEDULE “B” PRIVACY STATEMENT**

*A link to the Privacy Statement will appear to all Authorized Patrons or users registering with BiblioCommons during the registration process, and will appear on all main pages of the Service. The following Privacy Statement was in effect February 2015 and may be amended by BiblioCommons from time to time.*

*PUBLIC LIBRARY* has entered into an agreement with BiblioCommons to provide an online service that will make it easier to track your holds and renewals and find the titles you are looking for. In addition, you may also choose to use this service to share ratings and commentary about the titles you find at *PUBLIC LIBRARY*, and to connect with other library users. When you use the pages in *PUBLIC LIBRARY*’s catalog that say “Powered by BiblioCommons” in the lower lefthand corner of the screen, you are using what is referred to in this document as the “BiblioCommons Service,” and any information that is collected or shared here will be governed by this Privacy Statement.

BiblioCommons believes that effective privacy controls are the cornerstone of open and engaged communities. We have implemented the standards described on this page to protect the privacy of all users, at the same time providing the opportunity to share information about books, movies and music for those who are interested. By using the BiblioCommons Service, you agree to the terms of this BiblioCommons Privacy Statement and the BiblioCommons Terms of Use. The BiblioCommons Privacy Statement and BiblioCommons Terms of Use can be accessed anytime through the links at the bottom of each page that is powered by BiblioCommons; together they are the only documents that govern your relationship with BiblioCommons.

### **Is this the only policy governing the use of my information on services offered by the library?**

No. Information you provide on the BiblioCommons Service may be transmitted to your library and its designated service partners, where it will be handled according to the policies your library has implemented in those environments. Please check the library’s website to view these documents, or speak to a librarian.

### **What types of information are collected on this service?**

Several types of information may be collected and stored on the BiblioCommons service:

- Personal information
- Borrowing information
- Shared content
- Feedback and Suggestions
- Non-Identifying information

You will find a description of how this information is handled in the sections that follow.

## **PERSONAL INFORMATION**

### **What personal information is gathered?**

BiblioCommons gathers personal information that you provide or choose to import from *PUBLIC LIBRARY*. If you register for the BiblioCommons Service, your library barcode, PIN and borrower ID, name, birth month and year, and email address are automatically loaded into your on-line account from your library record. If some of this information is not available in your record you may be asked to provide it.

If you participate in some optional services, for example youth and literacy programs, BiblioCommons may also ask for additional information, such as your ZIP/postal code, education level and gender, in order to support program evaluation.

### **How is my personal information used?**

We use your personal information to create an online account in your name, provide the services that you have requested, monitor and improve the service, keep your library record up to date, and customize content. We do not share your information or activity with ad networks or other entities that are not directly involved in the services you choose to use.

If you choose to share information or opinions about books, movies, music, and other topics, participate in online conversations, or create selections using Lists or My Shelves (“Shared Content”), information such as the username or name you have chosen to display, your library affiliation(s) and age group may accompany your Shared Content and appear on a profile page that summarizes your Shared Content. If you would like to change your username or modify the information that is made publicly available in connection with these features, please visit your My Settings.

BiblioCommons may disclose your personal information and any content associated with your account if required to do so by law or in a good faith belief that such disclosure is reasonably necessary to: (a) satisfy any applicable law, regulation, legal process or enforceable governmental request, or (b) enforce the Terms of Use, including investigation of potential violations hereof.

### **Is my personal information protected?**

Information in your BiblioCommons account that personally identifies you is encrypted and stored in a secured facility. This information will be used by BiblioCommons and *PUBLIC LIBRARY* to deliver the services you request in accordance with this Privacy Statement. BiblioCommons will not share, gift, sell, rent or trade your personal information (e.g., your email address or month and year of birth). But we may display Shared Content (defined below) in the BiblioCommons Service, or make other commercial uses of Shared Content.

### **Law Enforcement Requests**

BiblioCommons does not share information in response to law enforcement requests unless it is presented with a warrant or other legal compulsion.

### **Can I change or delete my personal information?**

You may alter or delete any of the personal information in your BiblioCommons account except for your name, birth information and your library card number(s); please contact your library staff to make changes to these. If your personal information is updated either through the BiblioCommons Service or directly on your *PUBLIC LIBRARY* account with the help of library staff, we will synchronize the new information in both locations.

At any time, you may delete your BiblioCommons account without deleting your *PUBLIC LIBRARY* account. To delete your BiblioCommons account, please contact the BiblioCommons Privacy Officer. Note that while your BiblioCommons account information will not be available after deletion, some of that information may persist on memory discs.

### **Do I have to provide contact information?**

No, you do not need to provide contact information to use the BiblioCommons Service. However, you may choose to do so in order to receive notices related to your use of the library through the BiblioCommons Service. Your contact information will not be used by BiblioCommons for any other purpose without your consent, or shared with any party other than *PUBLIC LIBRARY* without your direction to do so. We encourage you to check *PUBLIC LIBRARY*'s policies to understand the other ways in which your contact information may be used by *PUBLIC LIBRARY*.

BiblioCommons may send email or display messages on the service that provide you with the choice to take advantage of new features and functionality based on your past activity and stated preferences. To change your preferences for system messaging, please go to My Settings.

### **What measures are in place to protect children?**

Parts of the BiblioCommons Service are open to children under the age of thirteen. However additional measures have been taken to protect their privacy and safety. Patrons under the age of thirteen (13) years ("minors") will be restricted from using the BiblioCommons Service to enter free text; however provision may be made for a more permissive service for minors with parental consent. While the Terms of Use prohibits the use of the BiblioCommons Service to arrange meetings with minors, children should be advised never to arrange meetings with strangers over the Internet.

User-generated content may not be appropriate for children. The BiblioCommons Service contains functionality that will enable you to collapse user-generated content that has been flagged by Users who feel the content may be offensive to some users. Enabling this functionality will help decrease the likelihood of children encountering objectionable material when using the BiblioCommons Service.

### **Where can I learn more about internet safety for users under the age of 18?**

We recommend that parents and guardians discuss internet privacy and safety with their children. When using the internet, children should be advised:

- never to give out personal information such as their real name, phone number, email address, or school without first consulting their parents or guardians, and
- never to arrange a meeting with someone they met online.

More information about children’s safety online can be found on the following sites.

*Safety tips for children:*

- <http://kidshealth.org/en/kids/internet-safety.html>
- [http://www.safesurfingkids.com/tips\\_for\\_kids.htm](http://www.safesurfingkids.com/tips_for_kids.htm)

Tips for parents:

- <http://www.google.com/familysafety/advice.html>
- <http://www.internetsafety101.org/safety101.htm>

### **How can parents and guardians oversee the personal information of their children?**

Guardians of underage users in the US may make a request to review and alter the personal information collected from their children on this service, or to deactivate their child’s BiblioCommons account. The first step in gaining access to your child’s account is to make your request in person to staff at one of the library’s locations. Be prepared to show proof of your identity and of your relationship with the child. Staff will then have the information retrieved and delivered to you by mail or held for pick-up. Note that guardians cannot be given access to a child’s borrowing record.

Note that the BiblioCommons Service does not require children under the age of 13, as a condition of participation, to provide more information than is reasonably required.

## **BORROWING INFORMATION**

### **Is my borrowing record tracked?**

No. Lists of your current loans, due dates, outstanding fines, etc. may be loaded from your library record during your sessions online, but this information is not stored on your BiblioCommons account, and it is never shared with other users. You may choose to create a record of your recently-borrowed titles if this service is supported by your library; information about recently borrowed items is never made available to the public unless you choose to enter specific titles on your shelves or in other Shared Content. If you do not choose to enable the recently-borrowed feature, no automatic record of your borrowing will be created.

## **SHARED CONTENT**

### **What is Shared Content?**

You may use the BiblioCommons Service to record information or opinions about books, movies, music, and other topics, participate in online conversations, or create selections using Lists or My Shelves; all of this content is called “Shared Content.” Shared Content may be useful for your own reference and can help other users find resources and information.

When you contribute content to an individual title, that title is automatically added to My Shelves, a collection that gathers all of the titles to which you have contributed content or chosen to add to your shelves. You may also create Shared Content by interacting with others through messaging, forums, or collaborative guides.

### **Can Shared Content be viewed by the public?**

Shared Content has been designed for sharing, and is usually public. However, you may make portions of your Shared Content private by using your Privacy Settings. In addition, messages sent directly to other users through the service are not publically viewable.

If you are uncomfortable with the idea of sharing content with others, you may decide not to use My Shelves or contribute ratings, comments, guides, or other types of Shared Content. You do not need to create Shared Content in order to use the BiblioCommons Service.

### **Will my name be visible with my Shared Content?**

Content and messages that you leave in public view or send to other users will be accompanied by the username that you create, or by whatever display name that you choose at a later date in your account settings. This display name is also linked to your profile page, which includes links to your Shelves, your shared Lists, and any other profile information you choose to display.

### **Can I change my Shared Content?**

Shared Content that is not interactive may be edited or deleted on this service at any time. Deleted content is removed from our data bases and inaccessible to other users, but may remain in our data back-up system and in third-party search indexes like Google. Shared Content that is not deleted may remain available on the BiblioCommons Service indefinitely, even if you have closed your library account.

Messages and chat cannot be deleted or edited once they have been sent. They are logged and archived indefinitely. In the event of complaints regarding violations of the BiblioCommons Terms of Use, this type of information may be used by BiblioCommons to investigate.

Interactive Shared Content that other users may respond or contribute to, such as discussions or collaborative guides, may be visible to others indefinitely in association with your display name, and may persist after your BiblioCommons account is terminated.

## **OTHER INFORMATION**

### **Feedback and Suggestions**

When you submit feedback or suggestions they will not be considered confidential and may be stored with your name and email address for analysis and follow-up.

### **Non-Identifying Information**

BiblioCommons also records anonymous information and activity in order to improve the quality and scope of the features and content you access through the BiblioCommons Service. For example:

- Information such as your browser type or IP address may be used to help us understand how visitors use the service over time and how it might be improved.
- Data from your account may also be aggregated in an anonymous way.
- Anonymous search logs are analyzed to improve the search algorithms.

- Activity such as borrowing and reading may be aggregated anonymously to guide the development of the library's collections or to allow publishers to understand how their titles are being used.

### **Cookies**

Cookies are small files used to enhance the functionality of websites.

BiblioCommons may set and access temporary session cookies on your computer in order to make our system easier for you to use. In addition, a more persistent cookie is used to store your user preferences. These files do not contain or transfer any personally-identifiable information. You may also choose on the log-in page to save your username in a cookie by checking "remember me." If you wish to be notified when you receive a cookie, you may set your browser to do so.

### **External Sites**

The Internet is a big place: take care to guard your personally identifying information. This website may link to other websites that collect personal information. We recommend that you review the privacy policies of these sites before providing them with any personal data.

### **Changes to this Privacy Statement**

This privacy statement may change from time to time in response to new laws, or to an evolution in BiblioCommons policies or practices. We encourage you to check this privacy statement from time to time for changes. Your continued use of BiblioCommons after a change will signify your acceptance of the new terms.

### **Change of Service**

In the event that *PUBLIC LIBRARY* discontinues its participation in the BiblioCommons Service, the *PUBLIC LIBRARY* may transfer your information to a new service of a similar nature. In addition, *PUBLIC LIBRARY* may agree to have your information transferred to a successor entity of BiblioCommons or to any entity, which purchases substantially all of the assets related to BiblioCommons or a division of BiblioCommons.

Comments? Questions? Contact us: [privacy@bibliocommons.com](mailto:privacy@bibliocommons.com)

Privacy Officer  
BiblioCommons  
119 Spadina Avenue, suite 1000  
Toronto, ON M5V 2L1, Canada  
tel. 1 (647) 436 6381

*PUBLIC LIBRARY* may have additional policies that govern other aspects of the services we offer. Please check the library's homepage to view these documents, or speak to a librarian.



## **SCHEDULE “C” TERMS OF USE**

*Acceptance of the Terms of Use is a condition of any use of the Service. In addition upon registration, which is required before an Authorized Patron may access circulation functions or contribute content, he or she must signal his or her agreement to the Terms of Use by clicking a checkbox. The following Terms of Use were in effect on February 2015 and may be amended by BiblioCommons from time to time.*

*PUBLIC LIBRARY* has entered into an agreement with BiblioCommons to provide an online service that will make it easier to track your holds and renewals and find the titles you are looking for. In addition, you may also choose to use this service to share ratings and commentary about the titles you find at *PUBLIC LIBRARY*, and to connect with other BiblioCommons users. When you use the pages in *PUBLIC LIBRARY*'s catalog that say “Powered by BiblioCommons” in the lower left-hand corner of the screen, you are using what is referred to here as the “BiblioCommons Service,” and these BiblioCommons Terms of Use apply. Your use of the BiblioCommons Service is subject to the BiblioCommons Terms of Use, and indicates that you accept these Terms of Use, which includes the BiblioCommons Privacy Statement; together they are the only documents that govern your relationship with BiblioCommons. You may not use the BiblioCommons Service if you do not accept the Terms of Use; please read them carefully.

### **Is this the only policy governing my use of the library’s services?**

No. *PUBLIC LIBRARY* may have additional policies that govern other aspects of the services we offer. Please check the library’s website to view these documents, or speak to a librarian.

## **REGISTRATION**

### **Is Registration Necessary?**

It is not necessary to register with the BiblioCommons Service in order to search the *PUBLIC LIBRARY* catalog. However, registration is required to use BiblioCommons for personalized services, such as managing your renewals and holds, contributing ratings and reviews, personalized recommendations, and communicating electronically with other users.

### **Who is Eligible to Register?**

Registration for use of the BiblioCommons Service is open to all patrons of *PUBLIC LIBRARY* and other libraries affiliated with BiblioCommons (*PUBLIC LIBRARY* and other affiliated libraries are referred to herein as "Participating Libraries").

### **Can children use this service?**

Children are welcome to register for the Service. However, we recommend that parents and guardians discuss internet privacy and safety with their children regularly. Please read the BiblioCommons Privacy Statement to find out more about the measures that have been put in place on the BiblioCommons Service to protect the privacy and security of children, and for information on protecting your child’s privacy and safety online.

### **Where can I find out more about the privacy policy of the BiblioCommons Service?**

The privacy of your personal information is important to BiblioCommons. We have established security measures and controls to ensure that your information is only used as you wish. We encourage you to review the BiblioCommons Privacy Statement, which forms a part of these Terms of Use, as well as the *PUBLIC LIBRARY* Privacy Policy.

## **SHARED CONTENT**

### **What is Shared Content?**

You may use the BiblioCommons Service to create “Shared Content,” which is any information, content or opinion that you post on the Service; it includes online conversations on the Service and selections you create using Lists or My Shelves. Shared Content may be useful for your own reference and can help other users find resources and information. Shared Content may include for example collections, ratings, reviews, video, or conversations with other users.

You may make portions of your Shared Content private, or you may leave it publicly available (as “Public Content”) for the benefit of yourself and other users in your library and on the World Wide Web. To learn more about the controls BiblioCommons has put in place to protect your privacy, please refer to the BiblioCommons Privacy Statement, or visit your privacy settings.

### **Who owns Shared Content?**

Registered Users retain any ownership rights they have in content that they post on the BiblioCommons Service. However, as described below, other users of the service, *PUBLIC LIBRARY* and BiblioCommons are granted an irrevocable, perpetual, non-exclusive license to use Shared Content.

### **Can other users use my Shared Content?**

The sharing of content is an important objective of the BiblioCommons Service. When you contribute Shared Content that can be viewed by others, you grant a license to other users to make use of that material under an Attribution-Noncommercial-Share Alike Creative Commons License. This is a license that grants others the non-commercial right to copy, distribute, display, perform the work or create derivative works on the condition that the original author is credited, and that any derivative distribution is licensed in the same way. Unless otherwise indicated, you have the right to use Shared Content contributed by others according to the same Creative Commons license.

### **What rights do *PUBLIC LIBRARY* and BiblioCommons have to use Shared Content?**

By contributing content such as reviews and comments to the BiblioCommons Service, you are granting BiblioCommons and *PUBLIC LIBRARY* the right to use this content broadly. BiblioCommons may display Shared Content in the services that we sell to libraries or other third parties. Unless otherwise indicated, when you post Public Content, you grant, represent and warrant that you have the right to grant BiblioCommons and *PUBLIC LIBRARY* an irrevocable, perpetual, non-exclusive, transferable, royalty-free, worldwide license, with the right to sublicense, to use, copy, publicly display, reformat, translate, excerpt, perform, adapt, create derivative works from, and distribute such content with the name or username you have chosen to display.

If you do not want to give BiblioCommons and *PUBLIC LIBRARY* these rights, please do not contribute Shared Content on the BiblioCommons Service.

**What are my responsibilities when I choose to post Shared Content?**

You are solely responsible for the Shared Content that you post to the BiblioCommons Service, or transmit to or share with other users. Please read carefully the section in these Terms of Use entitled "Appropriate Use" to ensure that you understand the responsibilities that you incur when you post Shared Content.

BiblioCommons respects the intellectual property of others, and we ask our users to do the same. You represent and warrant that you own or otherwise control all of the rights to the content that you post; that use of the content you supply does not violate these Terms of Use and will not cause injury to any person or entity; and that you will indemnify us for all claims resulting from content you supply. BiblioCommons may, at our discretion, disable and/or terminate the BiblioCommons accounts of users who violate these Terms of Use.

**What can I do if I see content that infringes on my intellectual property rights?**

If you believe that your work has been copied in a way that constitutes copyright infringement, please provide BiblioCommons' copyright agent the written information specified below. Please note that this procedure is exclusively for notifying us that your copyrighted material has been infringed. BiblioCommons' copyright agent can be reached via email at [copyright@bibliocommons.com](mailto:copyright@bibliocommons.com), or at the above mailing address. Please provide:

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- A description of the copyrighted work that you claim has been infringed upon;
- A description of where the material that you claim is infringing is located on the site;
- Your address, telephone number, and e-mail address;
- A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Our Address:

BiblioCommons  
119 Spadina Avenue, suite 1000  
Toronto, ON M5V 2L1, Canada  
tel. 647 436 6381

### **Is Shared Content ever removed from the BiblioCommons Service for other reasons?**

Some users may not wish to view all user generated content. BiblioCommons users who are logged-in have the option of blocking, "ignoring" or collapsing content from specified users on an individual basis. Ignoring a user can be reversed. The BiblioCommons Service also offers the ability to collapse user-generated content that other users have flagged as containing content that they consider offensive or otherwise inappropriate.

BiblioCommons will allow all Users to collapse user-generated content based on their individual viewing preferences. But an individual User's viewing preferences shall not affect the viewing preferences of other Users.

All posted content is subject to the Appropriate Use standards of these Terms of Use. If you see content that violates the Appropriate Use standards, you may flag the content by using the 'Report This' tool that is adjacent to all Shared Content when you are logged in.

If content is flagged by a number of different users – three at this time – it is reviewed for compliance with the Terms of Use. If such content is found to violate the Terms of Use, it may be removed from public view and an email will be sent to the User who authored the content, notifying the User of the right to appeal the initial determination. The email will notify the User that BiblioCommons has removed the flagged content, indicate the specific Terms of Use that were violated, and state the process for appealing BiblioCommons' initial determination. A User's failure to submit a written appeal in the manner described in the email notice within thirty (30) days of the date of the notice will render the decision to remove the content final.

BiblioCommons will give Users who appeal the initial determination within 30 days as provided above an opportunity to explain why the flagged content complies with the Terms of Use. BiblioCommons will review the information provided by the User in support of the appeal and shall decide, after considering that information, whether the content complies with or violates the Terms of Use. BiblioCommons shall decide an appeal within 30 days of receiving it.

If BiblioCommons determines that the flagged content does not violate the Terms of Use, it shall restore the flagged comment. If BiblioCommons determines that the flagged content violates the Terms of Use, it shall promptly notify the User of its decision not to restore the flagged content and the reason for the decision.

The BiblioCommons Service is not intended for the storage of valuable or irreplaceable data.

### **Appropriate Use Standards**

All visitors to the BiblioCommons Service agree not to:

- access or attempt to access areas of the BiblioCommons Service in which they are not authorized;
- use or attempt to use another person's account without our authorization, or falsely state or otherwise misrepresent yourself, your age or your affiliation with any person or entity;
- solicit personal information from anyone under the age of 18, use the BiblioCommons Service to arrange a meeting with anyone under the age of 18 or solicit passwords or personally identifying information for commercial or unlawful purposes;

- disable, overburden, impair the proper performance or functionality of the BiblioCommons Service or otherwise use or attempt to use the BiblioCommons Service to organize a meeting with any individual who is under 18 years of age;
- use or access the BiblioCommons Service or related systems in a way that adversely affects the performance or function of the service;
- use any automated system to harvest or capture any BiblioCommons Content (as defined below) from the BiblioCommons Service, except as may be specifically permitted using RSS/XML feeds;
- co-brand the BiblioCommons Service or portion thereof ("co-branding" means to display a name, logo, trademark, or other means of attribution or identification of any party in a manner reasonably likely to give a user the impression that such other party has the right to display, publish, or distribute the BiblioCommons Service or BiblioCommons Content);
- "frame" the BiblioCommons Service or portion thereof so that the BiblioCommons Service or BiblioCommons Content appears in the same window with a portion of another website.

If you choose to register, you agree to:

- provide and maintain accurate, current and complete information;
- ensure that your account is used in keeping with all terms governing the use of the BiblioCommons Service, including these Terms of Use;
- maintain the security of your password and username;
- not register for more than one account.

### **Appropriate Use When Posting Content**

Remember that the Service is used by visitors with a broad range of ages and sensibilities. You agree not to use the Service to upload, post, transmit, share, store or otherwise make available any content that:

- violates the Appropriate User Standards;
- is unrelated to the specific book, movie, music or other library material that is the subject of the post or displayed page;
- is unlawful, threatens or incites violence, physical intimidation or other unlawful action or otherwise creates a genuine risk of imminent harm or direct threat to safety;
- consists of or depicts obscene material as defined by applicable state, provincial or national law;
- constitutes unlawful multi-level marketing, such as a pyramid scheme;
- constitutes unsolicited or unauthorized advertising, solicitations, promotional materials, junk mail, spam and/or chain letters for commercial or personal gain;
- is private information about or belonging to any third party, including, without limitation, home addresses, home phone numbers, personal email addresses, personal identification numbers and credit card numbers, the disclosure of which would constitute an invasion of privacy or otherwise be prohibited under applicable law;
- contains software viruses, worms, or any other computer code, files or programs designed to interrupt, gain illegal access, destroy or limit the functionality of any data, software, hardware, or telecommunications equipment;

- infringes upon or violates the rights of any individual or entity under applicable state, provincial or national law including without limitation, intellectual property rights;
- constitutes, encourages or provides instructions for a criminal offense or that would otherwise create liability or violate any local, state, national or international law.

### **Warning About Content**

You understand that by using the BiblioCommons Service, you may encounter content that may be considered indecent or otherwise objectionable. Consequently, you agree to use the BiblioCommons Service at your sole risk and you agree that neither BiblioCommons nor any Participating Library shall have any liability to you for any such content that may be found to be indecent or otherwise objectionable.

BiblioCommons does not verify the accuracy, truthfulness or reliability of any information posted by users, endorse any opinions, or confirm the credentials of any users who may post information. You should always exercise caution and not rely or act upon any information available on the BiblioCommons Service, particularly information that relates to your legal rights, financial arrangements or health.

BiblioCommons may at any time use automated translation tools to make the BiblioCommons Service or portions of it available in languages other than English. Such tools have significant limitations and only the English version of any translated content is considered the definitive version.

The BiblioCommons Service contains functionality that will enable you to collapse user-generated content that has been flagged by Users who feel the content does not conform to the Terms of Use or is otherwise inappropriate for all users. Enabling this functionality will help decrease the likelihood of encountering objectionable material when using the BiblioCommons Service.

### **How are feedback and suggestions managed?**

BiblioCommons accepts feedback, questions, comments, ideas, concepts, or techniques for new services or products through the Service ("Suggestions"). When you submit suggestions you agree that they will not be considered confidential, and that they may be stored with your name and email address in a database that may be located outside of your country. By submitting any Suggestions, you grant BiblioCommons an unrestricted, irrevocable, world-wide, royalty-free right to use, communicate, reproduce, publish, display, distribute and exploit such Suggestions in any manner, and you agree that we may contact you via email for clarification or additional feedback.

### **BIBLIOCOMMONS CONTENT**

The services and content provided on BiblioCommons ("BiblioCommons Content") are comprised of 1) services and content provided by Participating Libraries, BiblioCommons and third-party providers ("Service Content"); and 2) Shared Content contributed by users. All BiblioCommons Content is protected by law, and its use is governed by the rights described below.

### **Can I display BiblioCommons Content on other websites?**

The Service makes it possible for you to feature public BiblioCommons Content on external third party websites or applications. This is encouraged under the terms described here. Pages on any external third-party websites and applications that display BiblioCommons Content must provide a link from each extract to an original presentation of that material on a BiblioCommons webpage. We reserve the right, at any time and without notice, to object to or require the removal of any link that is misleading, or interrupts or interferes with the Service provided by BiblioCommons.

### **Are there any restrictions on my use of the Service Content in other environments?**

BiblioCommons and *PUBLIC LIBRARY* grant our authorized users a limited, personal, non-transferable, revocable license to access and use the Service and Service Content for personal, non-commercial use. All other rights are reserved. Except as arranged by separate agreement, you may not copy, reproduce, republish, download, post, broadcast, transmit, make available to the public, or otherwise use the Service Content in any way except for your own personal, non-commercial use; nor may you disassemble, decompile, or reverse engineer the Service. The Service Content is the intellectual property of Participating Libraries, BiblioCommons, or their affiliates or their licensors, and is protected by US and international copyright law. Some elements of the Service Content are also protected by trademark law and laws related to trade dress, trade secrets, and unfair competition.

## **OTHER NOTICES**

### **Overdue Notification Service**

Reminder notifications are not a replacement for keeping track of your borrowing. Neither BiblioCommons nor *PUBLIC LIBRARY* take responsibility for fines that result from missed reminders. You can check your account status by visiting My Borrowing.

### **Warning About Links to Other Sites**

The BiblioCommons Service may contain links to other websites and resources that are not a part of the Service ("Linked Sites"). We provide links to Linked Sites as a convenience to the Users of the Service and such links do not imply any endorsement of the Linked Sites by us. We have no control over the content of Linked Sites. Users must be aware that the Linked Sites may also have terms of use or privacy policies that differ significantly from those of the Service. All use of Linked Sites is at your own risk.

### **General**

You may not assign these Terms of Use or any of your interests, rights or obligations under these Terms of Use. If any provision of these Terms of Use is found to be invalid by any tribunal having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Use, which shall remain in full force and effect. Any waiver of any portion of these Terms of Use or of any right or remedy of BiblioCommons must be in writing in order to be effective.

### **Limitation of Liability**

To the extent permitted by law and to the extent that BiblioCommons or Participating Libraries are otherwise found responsible for any damages, BiblioCommons or Participating Libraries are responsible for actual damages only. To the extent permitted by law, in no event shall BiblioCommons, its affiliates, its licensors, its suppliers, participating libraries, or any third parties mentioned at the Service be liable for any incidental, indirect, exemplary, punitive or consequential damages, lost profits, or damages resulting from lost data or business interruption resulting from the use of or inability to use the Service or the Content, regardless of the theory of law upon which such claim may be based, including warranty, contract, tort, and whether or not BiblioCommons or Participating Libraries are advised of the possibility of such damages. To the extent permitted by law, the remedies stated in these Terms of Use are exclusive and are limited to those expressly provided for in these Terms of Use.

Any action or claim related to these Terms of Use or arising from your use of the Service must be brought within twelve (12) months of the existence of the alleged facts giving rise to the action or claim.

### **Disclaimer of Warranties**

Neither BiblioCommons nor Participating Libraries make any representations with respect to the BiblioCommons Service, including any representations related to results that may be obtained by using the BiblioCommons Service. All use of the Service is at the sole risk of the user.

The BiblioCommons Service and the BiblioCommons Content are provided on an "as is" basis and BiblioCommons and Participating Libraries disclaim any and all warranties to the fullest extent permissible by law, including implied and/or statutory warranties, including but not limited to implied warranties of merchantability, non-infringement of third parties' rights, and fitness for a particular purpose. Neither BiblioCommons nor the Participating Libraries make any representations or warranties about (and specifically disclaim any responsibility for) the accuracy, completeness, security or timeliness of the BiblioCommons Service and its content. No warranties may be made in relation to the website or its contents except as contained in these Terms of Use.

You agree and acknowledge that the limitations and exclusions of liability and warranty provided in these terms of use are fair and reasonable.

### **Indemnity**

You agree to defend, indemnify, and hold harmless BiblioCommons and the Participating Libraries (as well as their officers, directors, employees, agents, successors and assigns) from and against any third party claims, actions or demands (including, without limitation, costs, damages and reasonable legal and accounting fees) alleging or resulting from, or in connection with your use of this Service or your breach of these Terms of Use.

### **Your First Amendment and Other Rights**

BiblioCommons has worked extensively with libraries across the United States to ensure that these Terms of Use protect your First Amendment and other rights as a library patron. These Terms of Use (including the mechanics around removing Shared Content as described above)



have been created and are revisited from time to time, to ensure that they are reflective of, and otherwise protect, your First Amendment and other library patron rights. These Terms of Use should not be interpreted in any matter to lessen or remove your First Amendment rights or any other statutory rights you may have as a library patron.

### **Jurisdiction and Forum**

Your use of the Service and these Terms of Use shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada, excluding (a) its conflicts of law rules and (b) the United Nations Convention on Contracts for the International Sale of Goods (including all related protocols). Any dispute, claim or action related to your use of the Service or under these Terms of Use shall be resolved by arbitration under the Arbitration Act (Ontario) by a single arbitrator sitting in Toronto, Ontario, in the English language, and you further agree and submit to the exercise of personal jurisdiction of such arbitrator(s) for the purpose of litigating any such claim or action.

Notwithstanding any provision of this section of the Terms of Use, BiblioCommons shall be free to seek interim or injunctive relief before any court of competent jurisdiction for a breach or a threatened breach of any provision of these Terms of Use that may, in our absolute discretion, require an urgent remedy. For the purposes of the foregoing, you expressly attorn to the jurisdiction of the courts of the Province of Ontario and the Federal Court of Canada sitting in Toronto, Ontario and waive any claim or defense that such forum is not appropriate. You agree that the limitations on liability, disclaimer of warranties and indemnity provisions of this Terms of Use are for the benefit of BiblioCommons, our Participating Libraries and their successors.

### **Compliance with Law**

You agree to use the BiblioCommons Service in strict compliance with all applicable laws and regulations. You shall take no actions which would cause BiblioCommons or Participating Libraries to be in violation of any laws, rulings or regulations applicable to BiblioCommons or Participating Libraries.

### **Complete Agreement**

Except as expressly provided in a separate written agreement between you and BiblioCommons, these Terms of Use constitute the entire agreement between you and BiblioCommons with respect to your use of the BiblioCommons Service.

### **Updating these Terms of Use and the Service**

The BiblioCommons service is constantly evolving in order to provide the best possible experience for our users, and our terms may change accordingly. However, we will not reduce your rights under these Terms of Use without your explicit consent. We will post any changes to the Terms on this page and, if the changes are significant, we will provide a more prominent notice on the Service. Your continued use of the BiblioCommons Service signifies your acceptance of any revised Terms of Use.

Without specific notice to you, BiblioCommons may change, supplement, delete or update any portion of the Service; or establish or change, at any time, general practices and limits concerning our products and services.

**Termination**

You agree that BiblioCommons, in its sole discretion, may terminate or suspend your use of the BiblioCommons Service and BiblioCommons Content at any time regardless of whether the BiblioCommons Service remains accessible by others. BiblioCommons may discontinue the BiblioCommons Service at any time without liability to you. Upon termination of the license, you shall cease all use of the BiblioCommons Service.