



## BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 10/15/2024

*\* = Mandatory, information must be provided*

or Procurement Director Award: ☐

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**\*Contractor/Vendor Name/Grantor (DBA):**

BiblioCommons Corp. (Headquarters: Mississauga, Ontario)

**\*Project Title/Description:**

Content Management System (CMS) and Catalog Discovery Interface

**\*Purpose:**

Award: Supplier Contract No. SC2400002276. This Supplier Contract is for an initial term of one (1) year in the annual award amount of \$320,000.00 (including sales tax) and includes four (4) one-year renewal options. Administering Department: Information Technology on behalf of Library District.

**\*Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.050, Sole Source Procurement, award of Requisition No. 24-260 is recommended to BiblioCommons Corp., with which County has negotiated an acceptable Agreement.

PRCUID: 522930

Attachment: Sole Source Procurement Agreement

**\*Program Goals/Predicted Outcomes:**

BiblioCommons content management system will integrate fully with the Pima County Public Library's integrated library system (ILS) to create a seamless experience between website content and the Library's online catalog.

**\*Public Benefit:**

Customers will be allowed to maintain their current accounts to continue to use a familiar platform to search and discover library resources, learn about library services, and interact with the library online. This will allow customers to manage their holds and their personal historical information, and keep track of due dates in a familiar platform, enhance their experience and make it easier to hone in on the collections and content they are interested in and need.

**\*Metrics Available to Measure Performance:**

Pima County Public Library will monitor the contractor's performance to assure quality of service and compliance with specifications called for herein and monitor staff and customer satisfaction with system to assure positive experience and easy access to library data and reports.

**\*Retroactive:**

Yes. Due to system transition and extended negotiations.

TO COB: 09/30/2024

VERSION: 0

PAGES: 56

**THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED**

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (\*) fields

**Contract / Award Information**

Document Type: SC Department Code: PO Contract Number (i.e., 15-123): SC2400002276  
 Commencement Date: 05/06/2024 Termination Date: 05/05/2025 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☒ Expense Amount \$ 320,000.00 \* ☐ Revenue Amount: \$ \_\_\_\_\_

**\*Funding Source(s) required: Library District Ops**

Funding from General Fund? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_  
 Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No  
 If Yes, is the Contract to a vendor or subrecipient? \_\_\_\_\_  
 Were insurance or indemnity clauses modified? ☒ Yes ☐ No  
 If Yes, attach Risk's approval.  
 Vendor is using a Social Security Number? ☐ Yes ☒ No  
 If Yes, attach the required form per Administrative Procedure 22-10.

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
 Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
 Commencement Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_  
 Prior Contract No. (Synergen/CMS): \_\_\_\_\_  
☒ Expense ☐ Revenue ☐ Increase ☐ Decrease  
 Amount This Amendment: \$ \_\_\_\_\_

Is there revenue included? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_

**\*Funding Source(s) required: \_\_\_\_\_**

Funding from General Fund? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**Grant/Amendment Information (for grants acceptance and awards)**

☒ Award ☐ Amendment

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e., 15-123): \_\_\_\_\_  
 Commencement Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_  
☐ Match Amount: \$ \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_

**\*All Funding Source(s) required: \_\_\_\_\_**

\*Match funding from General Fund? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Match funding from other sources? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**\*Funding Source: \_\_\_\_\_**


**\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: Procurement Officer, Fred LeVeque  
 Department: Procurement Director, Terri Spencer

Digitally signed by Fred LeVeque  
 Date: 2024.09.19 10:24:43 -07'00'

Acting Division Manager, Troy McMaster

Digitally signed by Troy McMaster  
 Date: 2024.09.19 12:13:51 -07'00'

Department Director Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Deputy County Administrator Signature:  Date: 9-24-2024  
 County Administrator Signature: \_\_\_\_\_ Date: 9-2-11-2024

Digitally signed by Terri Spencer  
 Date: 2024.09.19 12:13:51 -07'00'

Telephone: 520.724.8728

**Pima County Procurement Department**

**Administering Department:** Information Technology

**Project:** Content Management System (CMS) and Catalog Discovery Interface

**Contractor:** BiblioCommons Corp.  
5060 Spectrum Way, Suite 100  
Mississauga, Ontario, Canada L4W 5N5

**Amount:** \$ 320,000.00

**Contract No.:** SC2400002276

**Funding:** Library District Ops

**SOLE SOURCE PROCUREMENT AGREEMENT**

**1. Parties, Background and Purpose.**

- 1.1. Parties. This Contract is between Pima County, a political subdivision of the State of Arizona ("County"), and BiblioCommons Corp. ("Contractor").
- 1.2. Purpose. The Pima County Information Technology department requires a content management system (CMS) that integrates fully with the Library's integrated library system (ILS) to create a seamless experience between website content and the Library's online catalog.
- 1.3. Authority. County selected Contractor pursuant to Pima County Procurement Code 11.12.050.

**2. Term.**

- 2.1. Initial Term. The term of this Contract commences on May 6, 2024 and will terminate on May 5, 2025 ("Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.
- 2.2. Extension Options. County may renew this Contract to maintain software licensing and support as needed for additional periods of up to one-year each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.
- 2.3. Licenses/Subscriptions. License or Subscription Terms shall be from the date of order for the License or Subscription and shall renew pursuant to Contractor's standard renewal method as stated in the terms referenced on Contractor's order form or, absent any such stated method, shall renew upon the issuance of a new order by County. No License or Subscription may be ordered or renewed after the expiration of the Term of this Contract.

3. **Scope of Services**. Contractor will provide County licensing and ongoing support for Contractor's software as needed. All Contractor software provided under this Contract are subject to the terms of Contractor's Library Subscription Master Agreement, attached as Exhibit A. In the event of conflicting terms between the incorporated documents, the following

order of precedence, superior to subordinate, dictates the order in which these conflicts will be resolved.

3.1. Amendments to Contract.

3.2. The Sole Source Procurement Agreement No. SC2400002276

3.3. To the extent applicable, Exhibit A: BiblioCommons Library Subscription Master Agreement and all incorporated schedules referenced on Exhibit A.

3.4. To the extent applicable, Exhibit B: BiblioCommons Technology Integration Agreement.

3.5. To the extent applicable Exhibit C: BiblioCommons Schedule A – Quote #00003744 and all incorporated schedules referenced on Exhibit C.

#### 4. Reserved.

#### 5. Compensation and Payment.

5.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Exhibit C: BiblioCommons Schedule A - Quote** (2 pages). Those rates will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.

5.2. Not-To-Exceed (NTE) Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$ 320,000.00 per year (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.

5.3. Sales Taxes. The payment amounts or rates in **Exhibit C** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.

5.4. Timing of Invoices. Contractor will invoice County on an annual basis unless a different billing period is set forth in **Exhibit C**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.

5.5. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.

5.6. Invoice Submittal. Invoices are to be sent to:

Pima County Finance & Risk Management – Accounts Payable  
P.O. Box 791  
Tucson, AZ 85702

5.7. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 24 below, question any payment under this Contract. If County

raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.

**6. Insurance.** The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII, unless otherwise approved by County. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

6.1. Minimum Scope and Limits of Insurance. Contractor will procure and maintain at its own expense, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

6.1.1. Commercial General Liability (CGL). Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

6.1.2. Business Automobile Liability. Bodily Injury and Property Damage for any owned, leased, hired, and/or non-owned automobiles assigned to or used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 Each Accident.

6.1.3. Workers' Compensation (WC) and Employers' Liability. Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers' Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each person - disease.

6.1.4. Network Security (Cyber)/Privacy Insurance. Coverage shall have minimum limits not less than \$2,000,000 Each Claim with a \$2,000,000 Annual Aggregate.

6.1.5. Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption.

6.1.6. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor must warrant that

either continuous coverage will be maintained as outlined under “Additional Insurance Requirements – Claims-Made Coverage” section, or an extended discovery period will be exercised for a period of two (2) years beginning at the time of work under this Contract is completed.

6.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.

6.2.1. Claims Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

6.2.2. Additional Insured Endorsement. The General Liability, Business Automobile policies must each be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively “County and its Agents”) as additional insureds with respect to vicarious liability arising out of the activities performed by or on behalf of the Contractor. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.

6.2.3. Subrogation Endorsement. The General Liability, Business Automobile Liability, Workers’ Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

6.2.4. Primary Insurance Endorsement. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor’s deductible or Self Insurance Retention (SIR).

6.2.5. Insurance provided by the Contractor shall not limit the Contractor’s liability assumed under the indemnification provisions of this Contract.

6.2.6. Subcontractors. Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County’s approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

6.3. Notice of Cancellation. Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice must be mailed, emailed, hand-delivered or sent via facsimile transmission to the County Contracting Representative, and must include the County project or contract number and project description.

6.4. Verification of Coverage. Contractor shall furnish County with certificates of insurance (valid ACORD form or equivalent approved by County) as required by this Contract. An authorized representative of the insurer shall sign the certificates. Each certificate must include.

6.4.1. The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate.

6.4.2. A notation of policy deductibles or SIRs relating to the specific policy.

6.4.3. Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.

6.5. All certificates and endorsements, as required by this written agreement, are to be received and approved by County before, and be in effect not less than 15 days prior to, commencement of work. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

6.6. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the County project or contract number and project description on the certificate. County reserves the right to require complete copies of all insurance policies required by this Contract at any time.

6.7. Approval and Modifications. County's Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager and acceptance by Contractor, and does not require a formal Contract amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

## **7. Indemnification.**

7.1. To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all third-party claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death), infringement of any intellectual property rights of such third party, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and

judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

7.2. County Indemnification. Any indemnity provided by the County in the Agreement is hereby null and void.

**8. NON-WAIVER OF LIABILITY.** EXCEPT WHERE A LIMITATION OF LIABILITY IS NOT PERMITTED BY LAW, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS CONTRACT SHALL NOT EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY THE COUNTY TO CONTRACTOR DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF ANY SUCH CLAIM. THE FOREGOING DOES NOT APPLY TO DATA BREACHES AS DESCRIBED IN SECTION 8.1, OR TO CLAIMS OF MISAPPROPRIATION OF INTELLECTUAL PROPERTY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR 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. CONTRACTOR AGREES THAT IT WILL NOT INSIST UPON OR DEMAND ANY STATEMENT WHERE COUNTY FURTHER LIMITS OR WAIVES ANY RIGHT COUNTY MIGHT HAVE TO RECOVER ACTUAL LAWFUL DAMAGES IN ANY COURT OF LAW UNDER APPLICABLE ARIZONA LAW, EXCEPT TO THE EXTENT PERMITTED BY LAW. ANY LANGUAGE IN THIS AGREEMENT TO THE CONTRARY IS HEREBY NULL AND VOID.

**8.1. Data Breach.** In the event a Data Breach results solely and directly from the negligent act or omission of Contractor, Contractor agrees to reimburse and indemnify County for all costs, expenses and damages resulting directly from the breach. A "Data Breach" means the destruction, loss, theft, use, modification or disclosure of data by an unauthorized party which results in damages. IN NO EVENT SHALL CONTRACTOR'S LIABILITY FOR DAMAGES IN CONNECTION WITH THIS PROVISION EXCEED ONE MILLION DOLLARS (\$1,000,000.00).

## **9. Laws and Regulations.**

9.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

9.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.

9.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

**10. Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

**11. Subcontractors.** Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of



persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

**12. Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval, except that Contractor may assign this Agreement to any third party, without consent, in connection with any 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. County may withhold approval at its sole discretion.

**13. Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

**14. Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

**15. Authority to Contract.** Each party warrants its respective right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to the other party by reason of such determination or by reason of this Contract and this contract shall be deemed null and void.

**16. Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

**17. Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

**18. Termination by County.**

18.1. County agrees to the termination provisions in Exhibit A, Section 7 with the addition of Section 18.3 below.

18.2. Reserved.

18.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

- 19. Notice.** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

Terri Spencer, Procurement Director  
Pima County Department  
150 W Congress, 5<sup>th</sup> Floor  
Tucson, AZ 85701  
520.724.3722  
Terri.Spencer@pima.gov

Contractor:

Marty Tarle, General Manager  
BiblioCommons Corp.  
5060 Spectrum Way, Suite 100  
Mississauga, ON L4W 5N5, Canada  
647-436-6381  
billing@bibliocommons.com

**20. Reserved.**

**21. Remedies.**

21.1. Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

21.2. Section 21.1 above does not apply to remedies for any Services failure contemplated by Schedule "C" of Exhibit A to this Contract. Remedies for such occurrences are provided for in the aforementioned Schedule "C".

- 22. Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

- 23. Use of County Data.** Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not, except as directed by County and/or as necessary to provide contracted services or products, intentionally grant any third party access to County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days or after a retention period agreed upon by the Parties, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. County acknowledges that County Data may persist in backups until overwritten in the ordinary course of reuse of backup media. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).

- 24. Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open during regular business hours and upon reasonable notice for inspection and audit by duly authorized representatives of County. Any inspection or audit will be conducted in compliance with (i) BiblioCommons' applicable privacy, security and confidentiality policies, (ii) all applicable laws and (iii) subject to any other reasonable commercial or legal limitations (including contractual limitations) as may be applicable to the

subject matter of the requested records. No inspection will include access to or an audit of BiblioCommons' data processing facilities or data files. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

## **25. Public Records.**

- 25.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents related to this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 25.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

## **26. Legal Arizona Workers Act Compliance.**

- 26.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 26.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any direct subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 26.3. Remedies for Breach of Warranty. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.
- 26.4. Subcontractors. Contractor will advise each direct subcontractor of County's rights, and the subcontractor's obligations, under this Section 25 by including a provision in each subcontract substantially in the following form:

“Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor’s employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor’s books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract.”

**27. Reserved.**

**28. Written Orders.** County will order products or services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail or telephone.

Contractor must not supply materials or services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for materials or services not documented by a County Delivery Order (DO).

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this Contract. In particular, Contractor will not provide goods or services other than those described in this Contract, in excess of the Maximum Payment Amount, or after the Term of the Contract has ended, without a Contract amendment properly executed and issued by County, as provided below. Any items provided in excess of that stated in this Contract are at Contractor’s own risk.

**29. Counterparts.** The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.

**30. Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

**31. Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394 if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People’s Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. If Contractor becomes aware during the term of the Contract that the Company is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.

**32. Web Based Terms and Conditions.** If Contract is subject to any terms and conditions hosted on Contractor’s website (collectively the “Contractor’s Terms and Conditions”), the parties acknowledge and agree that the online hosting of Contractor’s Terms and Conditions is for

ease of administration only, and Contractor is hereby given notice that County cannot accept any revision or modification to the Contractor's Terms and Conditions without a signed written amendment executed by the Pima County Board of Supervisors or the Pima County Procurement Director. As such, the parties also acknowledge and agree that the Contract is subject to the Contractor's Terms and Conditions posted to Contractor's website as of the signature date of this Contract until so amended by the parties, and no terms in the Contractor's Terms and Conditions shall be used to nullify or void the terms found in this Contract.

### **33. Click-Through Terms and Conditions.**

33.1. Click-Through Terms; Acquisition of Software. If Contractor uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of County do not have any actual or apparent authority to create legally binding obligations between the parties. Accordingly, where an authorized County user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering System, any such terms and conditions are deemed void upon presentation.

33.2. Click-Through Terms; Usage of System. If the process of accepting, installing, activating or otherwise initiating the usage of Contractor's products presents terms and conditions on screen ("click through terms") to the County employee performing the action, the parties acknowledge and agree that these terms are informational only, and Contractor is hereby given notice that the persons performing initiation activities on behalf of County do not have any actual or apparent authority to create legally binding obligations between the parties. Accordingly, where an authorized County user is required to "click through" or otherwise accept or be made subject to any terms and conditions while initiating product usage, any such terms and conditions are deemed void upon presentation.

**34. Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.

**35. Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

***THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK***

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, the parties have approved this Sole Source Procurement Agreement and agree to be bound by the terms and conditions of the Contract on the dates written below.

**PIMA COUNTY LIBRARY DISTRICT**

\_\_\_\_\_  
Chair, Library District Board

\_\_\_\_\_  
Date

ATTEST

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM

  
\_\_\_\_\_  
Deputy County  
Attorney

Rachelle Barr 09/24/2024  
Print DCA Name

**BIBLIOCOMMONS CORP.**

DocuSigned by:

  
\_\_\_\_\_  
Authorized Officer Signature

Marty Tarle General Manager

\_\_\_\_\_  
Printed Name and Title

9/17/2024

\_\_\_\_\_  
Date

# Exhibit A

## LIBRARY SUBSCRIPTION MASTER AGREEMENT

THIS LIBRARY SUBSCRIPTION AGREEMENT (this “**Agreement**”) is made this 1st day of October, 2024 (“**Effective Date**”) between BiblioCommons Corp., a corporation constituted under the laws of the Province of Ontario, Canada (“**BiblioCommons**”) and the **Pima County Library District**, a body politic created under the laws of the State of Arizona (“**Subscriber**”) (Individually, a “**Party**” and collectively, the “**Parties**”). The terms and conditions of this Agreement shall govern the Service(s) (as defined below) to be provided by BiblioCommons under any Order Form (as defined below) executed by the Parties, as though the provisions of this Agreement were set forth in their entirety within such Order Form.

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 Agreement, the following words and terms shall have the meanings set out below:

- (a) “**Agreement**” has the meaning ascribed to it in the introductory paragraph;
- (b) “**Authorized Patron**” means a person who has a numbered library account with Subscriber and is authorized by Subscriber to use the Service;
- (c) “**BiblioCommons**” has the meaning ascribed to it in the introductory paragraph;
- (d) “**Breaching Party**” has the meaning ascribed to it in Section 7.1(b) hereof;
- (e) “**Business Day**” means a day, other than a Saturday or a Sunday or statutory holiday in the jurisdiction of either Party;
- (f) “**BiblioWeb Service**” has the meaning set out in the applicable Order Form;
- (g) “**Confidential Information**” means any information disclosed by a Party to the other Party pursuant to this 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 services and software 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;

(h) “**Core**” or “**Core Service**” has the meaning set out in the applicable Order Form;

(i) “**Disclosing Party**” has the meaning ascribed to it in Section 5.1 hereof; to

(j) “**Designated Person**” is the person designated by the Subscriber to receive all notices, consent and other communication. See Sections 9.12, 9.13 and 9.14;

(k) “**Effective Date**” has the meaning ascribed to it in the introductory paragraph;

(l) “**Fees**” means the fees for the Services set out in the applicable Order Form, as adjusted for Renewal Terms from time to time as set out in Section 3.1(b);

(m) “**Force Majeure Event**” has the meaning ascribed to it in Section 9.4;

(n) “**ILS**” means the Subscriber’s Integrated Library System, used for library circulation, cataloging and other services;

(o) “**Initial Term**” has the meaning ascribed to it in Section 2.2 hereof;

(p) “**Intellectual Property Right**” means any intellectual property right recognized by law, including any intellectual property right protected through legislation (such as that governing patents, copyright or trademarks) or arising from protection of information as a trade secret, confidential information or common law trademark right;

(q) “**Order Form**” has the meaning ascribed to it in Section 3.1(a) hereof;

(r) **“Parting”** has the meaning ascribed to it in Section 7.2 hereof;

(s) **“Party”** or **“Parties”** has the meaning ascribed to it in the introductory paragraph.

(t) **“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”, and which may be amended by BiblioCommons from time to time;

(u) **“Receiving Party”** has the meaning ascribed to it in Section 5.1 hereof;

(v) **“Renewal Term”** has the meaning ascribed to it in Section 2.2 hereof;

(w) **“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;

(x) **“Shared Content”** has the meaning ascribed to it in the Privacy Statement;

(y) **“Service”** means a range of services purchased as set out in the applicable Order Form;

(z) **“Subscriber”** has the meaning ascribed to it in the introductory paragraph;

(aa) **“Technical Requirements”** has the meaning ascribed to it in Section 3.2 hereof;

(bb) **“Term”** means the duration of the Initial Term and any Renewal Term;

(cc) **“Terms of Use”** means the terms of use that govern the use by Authorized Patrons of the Service which, as of the Effective Date, is attached hereto as Schedule “F”, and which may be amended by BiblioCommons from time to time;

(dd) **“User”** means an Authorized Patron who has registered with BiblioCommons to use the Service.

## 1.2 Schedules.

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

Schedule “A” – Template Order Form

Schedule “B” – Support Services

Schedule “C” – Service Levels

Schedule “D” – Technical Requirements

Schedule “E” – Privacy Statement

Schedule “F” – Terms of Use

Schedule “G” – Additional Fees

## 1.3 Calculation of Time.

When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference day in calculating such period shall be excluded. Any payment or action to be made or taken on a day other than a Business Day in either jurisdiction shall be made or taken on the immediately following day that is a Business Day in the jurisdictions of both Parties.

## 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 Term.

Unless terminated earlier as provided herein, this Agreement is for a period of one (1) year from the Effective Date (the **“Initial Term”**). In the event an Order Form contains Services that are being added to an existing subscription, such added Services shall be coterminous with the Initial Term or applicable Renewal Term and shall be billed from the applicable Order Form Effective Date according to the Fees corresponding to such Order Form. Unless terminated pursuant to Section 7.1, upon expiration of the Initial Term, this Agreement and the related Schedules and Order Forms will renew automatically for subsequent one-year renewal terms at then current prices (each, a **“Renewal Term”**), provided that BiblioCommons provides notice to Subscriber of such prices at least ninety (90) days prior to the end of the Term and unless either Party notifies the other Party of its intention to not renew this Agreement at least sixty (60) days prior to the end of the Term.

### 2.3 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 applicable Order Form at no additional charge.



## 2.4 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.

## 2.5 Support.

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

## 2.6 Service Level.

BiblioCommons will use commercially reasonable efforts to provide the Core Service in accordance with the service levels and remedies outlined in Schedule “C” 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.

## 2.7 Indemnity.

BiblioCommons shall indemnify, hold harmless and defend Subscriber from and against all third party claims, demands, losses, damages, costs and expenses (including reasonable attorneys’ fees) (“Claims”) made against or incurred, suffered or sustained by the Subscriber, in connection with, or relating to, or arising out of any allegation or claim that the Service itself violates or infringes any third party intellectual property rights except to the extent such Claim is related to the acts or omissions of the Subscriber, its Authorized Patrons or any of its respective agents or contractors; provided that, BiblioCommons is provided with (i) prompt written notice of any third party claim; (ii) all necessary assistance, information and authority necessary for BiblioCommons to defend a third party claim and perform its obligations under this Section; and (iii) sole control of the defense of such claim and all associated negotiations.

## 3. SUBSCRIBER OBLIGATIONS

### 3.1 Order Forms, Fees and Payment.

#### (a) Order Form.

Subscriber shall order a Service by completing and signing an order form, a template of which is set out in Schedule “A” attached hereto (each, an “**Order Form**”). Each accepted, fully executed Order Form shall become incorporated herein by reference as successive Exhibits (e.g. Exhibit A-1, Exhibit A-2 etc.).

In the event that Subscriber’s business practices require a purchase order number be issued prior to payment of any BiblioCommons invoices pursuant to the applicable Order Form, then such purchase order number must be provided to BiblioCommons prior to the activation of the Service. Subscriber’s execution and return of the applicable Order Form to BiblioCommons without designating a purchase order number shall be deemed an acknowledgement that no purchase order number is required for payment of the invoices hereunder. Additionally, terms, provisions or conditions on any purchase order, acknowledgment, or other business form or writing that Subscriber may use in connection with the provision of Service(s) from BiblioCommons will have no force and effect on the rights, duties or obligations of the Parties, regardless of any failure of BiblioCommons to object to such terms, provisions or conditions.

#### (b) Fees.

All Fees are exclusive of amounts payable as tax or any other registration or operating fee that may be levied against BiblioCommons by national, state or local authorities in whose jurisdiction Subscriber operates and that pertain to the provision of the Service during the Term. Such amounts will be payable by Subscriber. Fees are based on Services purchased, not actual usage. Payment obligations are non-cancelable and Fees paid are non-refundable. The price actually charged for a specific Service will be the price in effect at the time the Service is requested. On the anniversary date of an Order Form, BiblioCommons reserves the right to increase the Fees for the Services upon notice to the Subscriber. BiblioCommons reserves the right to modify its Fees, charges and/or to introduce new charges at any time, upon at least ninety (90) days prior notice to Subscriber, effective upon the next Renewal Term.

#### (c) Payment Terms.

Payments shall be due 30 days from receipt of an invoice by the Subscriber from BiblioCommons. Payments not received when due will accrue interest at the lower of (i)

one percent (1%) per month, or (ii) the highest rate allowed by applicable law. BiblioCommons or its agent shall have the right to recover all collection costs from the Subscriber. Without limiting its other remedies, if Subscriber is late in its payments at any time, BiblioCommons or its agent may request reasonable assurances or deposits to secure Subscriber's payment obligations hereunder.

**(d) Non Payment.**

In the event that full payment is not made by the Subscriber within 60 days of the date of receipt of an invoice by the Subscriber, BiblioCommons or its agent may send to the Subscriber a written requirement for payment and if payment is not received within thirty days of the date of receipt of that notice by the Subscriber, BiblioCommons may terminate this Agreement as set out below in Section 7 (Termination). However, this right may be waived upon mutual written confirmation between BiblioCommons and the Subscriber of their intent to continue service delivery in spite of payment delays.

**3.2 Technical Requirements.**

Subscriber ILS and bibliographic and patron data shall meet minimum standards attached and incorporated as Schedule "D" (the "**Technical Requirements**").

**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 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 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 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" and who have executed an internal nondisclosure agreement at least as restrictive as the terms of this Agreement. 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. WARRANTIES**

**6.1 BiblioCommons Warranties.**

BiblioCommons hereby represents and warrants to Subscriber that: (a) BiblioCommons is legally incorporated and validly exists as a corporation under the laws of Ontario; (b) BiblioCommons has the power and authority to enter into the Subscriber Agreement; (c) The individual signing this Agreement has the power and authority to sign such documents; (d) It will use its commercially reasonable efforts to maintain the systems

associated with the Service free from viruses, Trojans and other harmful code; and (e) The Service will be performed in a professional, workmanlike manner, commensurate with industry practices within the industry in which BiblioCommons operates.

## 6.2 Subscriber Warranties.

Subscriber hereby represents and warrants to BiblioCommons that: (a) Subscriber is a body politic under the laws of the State of Arizona; (b) Subscriber has the power and authority to enter into the Subscriber Agreement; (c) the individual signing this Agreement has the power and authority to sign such documents; and (d) Subscriber will use commercially reasonable efforts to avoid transmitting to BiblioCommons any viruses, Trojans and other harmful code.

## 6.3 Warranty Disclaimer.

BiblioCommons provides the Service using a commercially reasonable level of skill and care and BiblioCommons hopes that its customers (including both library staff and patrons) will enjoy accessing and using these Services. However, there are certain things that BiblioCommons does not promise about the Services. Some jurisdictions provide for certain warranties, like the implied warranty of merchantability and fitness for a particular purpose. BiblioCommons will honour its statutory obligations. To the extent permitted by law, BiblioCommons excludes all warranties outside of those listed in Section 6.1. Unless otherwise required by law, the Service and any software provided in connection with the Service is provided by BiblioCommons under this Agreement on an “as is” basis. Except as otherwise stated in this Agreement, BiblioCommons and its licensors make no (and hereby disclaim all) warranties, representations and conditions whatsoever (whether express or implied; written or oral; arising by statute, operation of law or otherwise) regarding the Service provided under this Agreement, including without limitation, any implied warranty or condition of merchantable quality, fitness for a particular purpose, non-infringement or arising from a course of dealing, title, usage of trade or course of performance. Without limiting the generality of the foregoing, while BiblioCommons will meet its service and support obligations laid out in the Agreement, BiblioCommons makes no warranty that the operation of the Service will be error-free or that it will produce a desired result beyond such obligations.

## 7. TERMINATION

### 7.1 Termination.

This Agreement may be terminated at any time:

- (a) if either BiblioCommons or Subscriber has filed or commenced, or suffered or submitted to the filing or commencement of, any bankruptcy or insolvency proceeding under the law of its domicile or incorporation;
- (b) by either Party if the other Party breaches the terms and provisions of this Agreement provided the Party alleging that the other Party is in breach (the “**Breaching Party**”) provides written notice to such Breaching Party of the alleged breach. The Breaching Party shall have 30 days to remedy such breach, unless such breach cannot reasonably be remedied within 30 days, in which case the Breaching Party shall make all reasonable efforts within 30 days to begin to remedy the alleged breach and shall remedy such breach within a time period that is commercially reasonable to complete such remedy.

Notwithstanding the termination or expiration of this Agreement, Articles 1, 4, 5, Section 6.3, Article 7, Article 8 and Article 9 shall survive the termination or expiration of this Agreement.

### 7.2 Treatment of Patron-Contributed Data upon Termination.

In the event of a termination of this Agreement or should a renewal agreement not be established after the Term (a “**Parting**”), BiblioCommons shall provide at Subscriber’s request and upon the payment of the cost-recovery fee set forth in Schedule G, 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. 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:

- (a) communicated or established connections with one or more persons who are registered users of a BiblioCommons service;
- (b) initially approached the Service for registration through a website that is not affiliated with Subscriber;
- (c) subscribed to syndicated information from one or more persons who are registered users of a BiblioCommons service; or

(d) 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.

## **8. LIMITATION OF LIABILITY**

### **8.1 Limitations of Liability.**

Except for any claims of misappropriation of intellectual property and for fees due under Article 3, in no event shall either Party 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.

## **9. GENERAL**

### **9.1 Good Faith and Fair Dealing.**

Each Party agrees that it shall, with respect to the other Parties, and in all matters related to this Agreement, act in good faith and in accordance with reasonable commercial standards.

### **9.2 Publicity.**

Each Party may issue a public statement or general marketing communications announcing the relationship under this Agreement without the prior written consent of the other Party. For the sole purpose of marketing and promoting the Service and for the Term of this Agreement only, each Party hereby grants to the other Party the non-exclusive non-transferable right to use and display such party's logos and trade-marks in the other Party's websites and marketing materials, subject to compliance with the originating Party's trade-mark guidelines provided to the other Party from time to time.

### **9.3 Entire Agreement.**

This Agreement together with all of the terms in the applicable Order Form constitute the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter hereof and thereof. No representation, inducement, promise, understanding, condition or warranty not set forth herein, or incorporated

by reference herein, has been made or relied upon by any Party hereto.

### **9.4 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.

### **9.5 Severability.**

For the purposes of this section, the Parties acknowledge and agree that each and every term of this Agreement is of the essence. If any one or more of the provisions contained in this Agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby so long as the commercial, economic and legal substance of the transaction contemplated hereby are not affected in any manner materially adverse to any Party. Upon such a declaration, the Parties shall modify this Agreement so as to carry out the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

### **9.6 Further Assurances.**

Each Party shall at any time and from time to time, upon each request by the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.

### **9.7 Amendments.**

This Agreement may be modified or amended only with the mutual written consent of the Parties.

### **9.8 Assignment.**

Neither Party may assign its rights or obligations hereunder without the written consent of the other Party, except that BiblioCommons may assign this Agreement

to any third party, without consent, in connection with any 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.

**9.9 Subcontracting.**

BiblioCommons may subcontract portions of the Service, provided that BiblioCommons shall remain responsible for all of its obligations under this Agreement as the original contracting party hereto.

**9.10 No Waiver.**

No failure or delay by any Party in exercising any of its rights or remedies hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. Except as otherwise provided herein, the rights and remedies of the Parties provided in this Agreement are cumulative and not exclusive of any rights or remedies provided under this Agreement, by law, in equity or otherwise.

**9.11 No Agency.**

The Parties are not partners or joint venturers; neither Party is the agent, representative, or employee of the other Party; and nothing in this Agreement will be construed to create any relationship between them other than an independent contractor relationship. Neither Party will have any responsibility or liability for the actions of the other Party except as specifically provided herein. Neither Party will have any right or authority to bind or obligate the other Party in any manner or make any representation or warranty on behalf of the other Party.

**9.12 Dispute Resolution Process.**

**(a) Escalation Procedure.**

Any dispute between the Parties shall first be referred to the persons designated in this Agreement for the receipt of Notices (the “**Designated Persons**”), by written notice of the dispute including the material facts. The Designated Persons shall attempt to resolve the dispute and shall escalate it to the appropriate management representatives of the Parties as may be considered appropriate.

**(b) Arbitration.**

If the Designated Persons are unable to resolve the dispute pursuant to Section 9.12(a) within 30 days, the dispute may be submitted by either Party to final and binding arbitration pursuant to the Arbitration Act (Ontario), provided that there shall be a single arbitrator, unless the

Parties cannot agree on a single arbitrator, in which case either Party may apply to a court of competent jurisdiction for the appointment of an arbitrator. Any arbitration shall be conducted in Toronto, Ontario, in the English language. The prevailing Party shall be awarded its reasonable costs associated with the arbitration, including legal fees and other expenses.

**(c) Exception from Mandatory Arbitration.**

Notwithstanding any provision of this Section 9.12, a Party shall be able to seek interim or injunctive relief before a court of competent jurisdiction for a breach or a threatened breach of any provision of this Agreement dealing with confidential information or intellectual property rights. For the purposes of the foregoing, each Party expressly attorns to the jurisdiction of the courts of the Province of Ontario in the City of Toronto and waives any claim or defence of inconvenient forum.

**(d) Conduct During Dispute.**

If the Dispute Resolution process described in Section 9.12 is in progress, BiblioCommons shall continue to provide the Service to Subscriber, and Subscriber shall continue to make any payments required under this Agreement. If, at the conclusion of the dispute resolution process, it is determined that such payments were not required to be made, all such amounts shall be refunded by BiblioCommons with simple interest at 1% per month.

**9.13 Notices.**

All notices, consents and other communications required or which may be given under this Agreement will be in writing and will be deemed to have been duly given when given by hand, by courier, or by email confirmed by the recipient. If sent outside business hours of the addressee, such notice, consent or other communication will be deemed to have been duly given at the beginning of the next Business Day. Notices, consents and other communications shall be addressed to a Party at its address set forth below, or at such other address as a Party may hereafter designate by notice given in accordance with the terms hereof.

If for BiblioCommons:	BiblioCommons Corp. 5060 Spectrum Way, Suite 100, Mississauga, ON L4W 5N5 Canada  Attention: General Manager
If for Subscriber:	Pima County Public Library 101 N Stone Ave, 4 <sup>th</sup> floor

	Tucson, AZ 85701  Attention: Amber Mathewson, Director
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**9.14 Counterparts; Facsimile.**

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and facsimile or scanned signatures shall be deemed original. This Agreement shall become effective when each Party hereto shall have received an original, scanned or faxed counterpart hereof signed by each other Party hereto.

**9.15 Governing Law and Venue.**

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of Arizona. Any action arising from this Agreement shall be brought exclusively in the Superior Court for the State of Arizona in Pima County. The Parties agree that no action taken by either party will be heard by a jury.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

**BIBLIOCOMMONS CORP.**

**PIMA COUNTY**

DocuSigned by:  


33D3035EDA3B473...  
Name: Marty Tarle

Title: General Manager

Name:

Title:

**SCHEDULE “A”**  
**TEMPLATE ORDER FORM**  
(Attached)



## **SCHEDULE “B” POST IMPLEMENTATION SUPPORT**

After BiblioCore or BiblioWeb is implemented, BiblioCommons provides ongoing support. Support work varies in timing and scope depending on the issue type. The definition of issue types (I), the severity classification for each issue type (II), and the response commitments for each severity level (III) are defined below.

### **I. Definition of Issue Types**

BiblioCommons organizes library feedback into four types of issue, summarized here and defined below in turn:

- A. Questions: Understanding BiblioCore, BiblioWeb or other services.
- B. Tasks: Tasks specific to your library
- C. Suggestions: Improving BiblioCore or BiblioWeb and designing new functionality.
- D. Corrections: Fixing BiblioCore or BiblioWeb when not working as designed.

#### **A. Questions**

BiblioCommons distinguishes two types of questions, with corresponding response commitments described in Section III below.

- 1) Questions or notifications about updates affecting your ILS or Tomcat server.
- 2) Other questions.

To help answer questions, BiblioCommons maintains an online Partner Portal. This includes:

- a Knowledge Base with answers to frequently asked questions and official documentation for other self-help,
- Community pages with forums for peer-to-peer questions and answers, and
- an Online Ticketing system where libraries can submit questions not answered elsewhere. Response commitments for questions are described below.

#### **B. Configuration Tasks**

Configurations determine the way in which BiblioCore or BiblioWeb interoperate with local library technology and services. After implementation, libraries may request configuration changes to support changes in the ILS, in library marketing and branding, or in branch locations and programing.

#### **C. Suggestions**

BiblioCommons continually reinvests in product design and development, and library suggestions are an important input. Please use the ['Community' area](#) of the Partner Portal to submit your suggestions.

#### **D. Corrections**

BiblioCore and BiblioWeb are evolving products that interoperate with changing third-party software and hardware, from library ILSs to patron smartphone systems. As a result of changes on all sides, BiblioCommons products can sometimes stop working as designed and require correction.

BiblioCommons corrects bugs in BiblioCore or BiblioWeb, with the timing and scope of correction proportionate to the severity of the problem. The severity of an issue is determined by

- The importance of the feature affected, and
- The prevalence of the outage.

The resulting severity levels and the response commitments for each are defined further below (in sections II and III, respectively).

### 1) Definition of issue importance

Importance of Issue		
Primary	Secondary	Tertiary
<b>BiblioCore Service</b>		
<p>Issues that prevent (on a supported desktop web browser):</p> <ul style="list-style-type: none"> <li>● Site availability;</li> <li>● Availability of: <ul style="list-style-type: none"> <li>○ Registration</li> <li>○ Login</li> <li>○ Search</li> <li>○ Holds</li> <li>○ Renewals.</li> <li>○ Single Sign-On (SSO)</li> <li>○ Real-time item availability</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Issues that prevent synchronization of: <ul style="list-style-type: none"> <li>○ bibliographic records (additions, deletions, edits), and</li> <li>○ item availability.</li> </ul> </li> <li>● Issues that prevent (on a supported desktop or mobile web browser) personal record-keeping and community-contributed content: <ul style="list-style-type: none"> <li>○ My Shelves</li> <li>○ Lists</li> <li>○ Star Ratings</li> <li>○ Reviews &amp; Comments</li> <li>○ Following &amp; Ignoring</li> <li>○ Messaging</li> <li>○ Other Community Functionality.</li> </ul> </li> <li>● Issues that prevent (on a supported mobile browser) interaction with any feature listed in the two bullets in the “Primary” column for the BiblioCore service.</li> </ul>	<p>All other issues or requests including:</p> <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> <li>● Analytics issues.</li> </ul> <p>Other issues not covered in primary and secondary.</p>

	<ul style="list-style-type: none"> <li>• Issues that affect the availability of the Core APIs.</li> <li>• Cosmetic issues affecting site functionality</li> </ul> <p><i>If applicable:</i></p> <ul style="list-style-type: none"> <li>• Visibility of BiblioCloudRecords</li> <li>• Rendering augmented content supplied by others</li> <li>• Create and view functions for BiblioSuggest.</li> <li>• Visibility of links for Combined Catalog</li> <li>• Access fines-payment service provided by others</li> <li>• Translations</li> <li>• Search results are incorrectly scoped.</li> </ul>	
<b>BiblioWeb Service</b>		
<p>Issues that prevent:</p> <ul style="list-style-type: none"> <li>• Site availability</li> <li>• Availability of the footer</li> <li>• Availability of Find-a-Location Page</li> <li>• BiblioEvents widget display</li> <li>• Availability of Online-Resources pages</li> <li>• BiblioWeb Admin Login;</li> </ul> <p>Or issues that cause a loss of major functionality on the Homepage - e.g.:</p> <ul style="list-style-type: none"> <li>• Stylesheets not loading,</li> <li>• Cards not loading</li> <li>• Homepage Manager not accessible.</li> </ul>	<p>Issues that prevent:</p> <ul style="list-style-type: none"> <li>• Availability of individual Location Pages</li> <li>• Creation or publication of blogs or news posts</li> <li>• Ability to manage Browse pages</li> <li>• Ability to manage Program pages</li> <li>• Creation or submission of forms</li> <li>• Creation of FAQs</li> <li>• Ability to upload and access media</li> </ul> <p>Or cosmetic issues affecting site functionality.</p>	<p>All other issues or requests including:</p> <ul style="list-style-type: none"> <li>• Text changes and cosmetic issues not affecting site functionality</li> <li>• Availability of Archival Collections &amp; Special Content</li> <li>• Availability of sidebar widgets</li> <li>• Analytics</li> </ul> <p>Other issues not covered in primary and secondary.</p>
<b>BiblioEvents Service</b>		

Issues that prevent: <ul style="list-style-type: none"> <li>Registration for events</li> <li>Creating/editing events</li> <li>Search for events</li> <li>Visibility of event listings</li> <li>Availability of information on Event Details Page.</li> </ul>	Issues that prevent: <ul style="list-style-type: none"> <li>Availability of reporting data</li> </ul> Or cosmetic issues affecting site functionality	Other issues including text and cosmetic issues not affecting site functionality  Other issues not covered in primary and secondary.
<b>BiblioApps Service</b>		
Widespread issues affecting app activation, login, holds and renewal will be treated as critical priority. All other issues will be treated as normal or low priority. This space will be updated with a full list of categories when the redesigned apps are launched.		

## 2) Combined Classification for BiblioEmail

The following combines Issue Importance, Prevalence and Severity Classification for BiblioEmail. Please refer to *III. Response Commitments* below for associated service response times.

Emergency	Critical	Normal	Low
Widespread issues with: <ul style="list-style-type: none"> <li>Login to Email Manager</li> <li>Sending of emergency emails.</li> </ul>	Widespread issues with: <ul style="list-style-type: none"> <li>Creation of Segment Emails</li> <li>Ability to sign-up for email</li> <li>Ability for subscribers to update their preferences or unsubscribe</li> <li>Sending of Segment Emails Creation of Campaign Emails and drip campaigns (phase 2)</li> <li>Sending of pre-built automated emails or transactional emails.</li> </ul>	Issues that prevent: <ul style="list-style-type: none"> <li>Contact management</li> <li>Segment management</li> <li>Issues with library-built drip campaigns.</li> </ul>	All other issues or requests, including: <ul style="list-style-type: none"> <li>Changes to mapping of BiblioWeb terms to BiblioEmail</li> <li>Text changes and cosmetic issues not affecting functionality</li> <li>Changes to terms on sign-up and user preferences pages</li> <li>‘View in Browser’ functionality in email</li> <li>Analytics</li> <li>Other issues not covered elsewhere.</li> </ul>

### 3) Definition of prevalence

<b>Prevalence of failure</b>	<b>All users</b>	<ul style="list-style-type: none"><li>• Feature outages are estimated to be system-wide, found consistently across any use of the feature on all supported browsers and across multiple patrons</li></ul>
	<b>Majority of users</b>	<ul style="list-style-type: none"><li>• Feature outages are estimated to affect a significant portion of average monthly users of the library's online presence or staff</li></ul>
	<b>More than a few users</b>	<ul style="list-style-type: none"><li>• Feature outages are estimated to affect a small portion of average monthly users of the library's online presence, but still big enough to suggest that there might be a pattern to the issue</li></ul>
	<b>A few users</b>	<ul style="list-style-type: none"><li>• Feature outages are estimated to affect just a handful of users</li></ul>

II. Severity classification

Based on the issue type (I), the following severity classifications are assigned. In the following section, response commitments for each type are described.

A. Questions		B. Configuration Tasks	C. Suggestions
1) Regarding your ILS and Tomcat Server	2) Other Topics		
Normal	Low	Normal	Low

D. Corrections			
	2) Importance of feature		
1) Prevalence of Failure	Primary	Secondary	Tertiary
All	Emergency	Critical	Normal
Majority	Emergency	Critical	Low
More than a few	Critical	Normal	Low
Few	Normal	Low	Low

### III. Response Commitments.

	Severity Level			
	Emergency	Critical	Normal	Low
Contact Method	<b>Online Ticket Entry</b>  or  Backup Emergency Phone Line	<b>Online Ticket Entry</b>	<b>Online Ticket Entry</b>  or  Self-help through Partner Portal	<b>Online Ticket Entry</b>  or  Self-help through Partner Portal
Start Review Commitment	Immediate.	Next working business hour.	Within two business days.	Within two business days.
Start Work Commitment	Immediate	Within one business day.	In context of ongoing work.	As resources allow.
Resolution Commitment	Work until resolved, except where blocked by third-party dependencies.	If possible without code changes, usually resolved within 24 hours. If code changes are needed, BiblioCommons may release a hotfix, or else defer code changes to an upcoming release Feature Release.	In the context of ongoing work.	As resources allow.

### **Online ticket entry**

BiblioCommons manages support through an online 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.

All issues including emergencies 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.

### **Backup Emergency Phone**

A toll-free emergency phone number will be made available to library staff as a backup measure for emergencies. However for the best results, we encourage staff to create tickets online. BiblioCommons staff will be reachable at this number 24/7. The current phone number is **1 (855) 436-6381 x 0**.



## **SCHEDULE “C” SERVICE LEVELS**

BiblioCommons will use commercially reasonable measures to make the Core, Web and Events 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 Subscriber’s Service Unavailability for the previous month. “Service Unavailability” consists of the number of minutes that the Core Service was not available to Subscriber, and includes any unavailability associated with any unscheduled maintenance. Outages will only be counted if Subscriber notifies BiblioCommons within five business days of the outage.

Service Unavailability will not include:

- a) any scheduled maintenance;
- b) any unavailability resulting from a Subscriber’s applications, equipment, facilities, or employees;
- c) any acts or omissions of Subscriber, or any use or user of the Service authorized by Subscriber; and
- d) any event outside the commercially 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 Service 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 “D” 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.
- 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 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 CARL.X, Evergreen and Horizon ILSs.
- The ILS must perform user authentication via barcode and PIN (personal identification number) or password.

### **CONNECTOR**

The Services will communicate with Subscriber’s ILS via a connector, which will either be locally hosted in Subscriber’s network (the “Local Connector”) or hosted by BiblioCommons (the “Cloud Connector”). Connector type will be determined based on Subscriber’s ILS. The following requirements will apply based on the connector type.

#### CLOUD CONNECTOR

##### **Access**

- Subscriber shall ensure that full access to the ILS API is externally available.
  - BiblioCommons uses technical and logical controls to protect its environment and to ensure that users can only access and act on information for which they have authorization.
  - Any additional security requirements from Subscriber may be accommodated for a supplementary implementation fee by written agreement.

#### LOCAL CONNECTOR

##### **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.
- There must be an instance of Java 1.8 on the Tomcat server, and it must be modifiable as BiblioCommons requirements evolve.
- 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 and additional subscription fees will apply (see “If Subscriber Does Not Meet the Required Conditions” below).
  - Access must be provided through a single set of credentials.
- 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.
  - For Unicorn/Symphony, the Tomcat Server must be run using the ‘sirsi’ user.

## **Hardware**

- 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).

## **Access**

- The standard security configuration provides for access to the ILS connector by opening a port in Subscriber's firewall to BiblioCommons servers.
  - BiblioCommons uses technical and logical controls to protect its environment and to ensure that users can only access and act on information for which they have authorization.
  - Any additional security requirements from Subscriber may be accommodated for a supplementary implementation fee by written agreement.
- During the testing and acceptance phase, if any incompatibilities with API calls arise, BiblioCommons will be granted SSH access to the system in order to verify API calls. Libraries using Symphony will need to grant SSH access to the system with the 'sirsi' user in order to verify API calls.

## **BANDWIDTH**

- The library's communication (all network communication from the connector 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**

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.

## **USER INTERFACE**

Subscriber will be asked to provide graphic elements that meet basic usability criteria and specifications of the application.

## **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 created 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 "D" 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.

For Local Connector only: 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 “E” 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 November 2020 and may be amended by BiblioCommons from time to time.*

*PUBLIC LIBRARY* has entered into an agreement with BiblioCommons to provide online services that make it easier to find, discover and use collections, services and programs at the library. 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 *PUBLIC LIBRARY* services that say “Powered by BiblioCommons” at the bottom of the page, 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.

#### **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 may store some of this information in a secure third-party data repository. 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 [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 during transmission and storage. 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 request to have your BiblioCommons account deleted without impacting your account with *PUBLIC LIBRARY*. To have your BiblioCommons account deleted, please contact your library. 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](#).

### **Email Service**

*PUBLIC LIBRARY* uses the BiblioCommons Service to provide emails about library collections, services and programs. You may receive emails powered by BiblioCommons if you signed up for them on the library website, or if your library included your account on their distribution list. BiblioCommons uses the following information for emails when available:

- name
- email address
- library card expiration date
- last 4 digits of your library card
- areas of interest (e.g. audience, format, location, genres, topics).

You may update your information or unsubscribe from the email service at any time, by selecting the ‘unsubscribe or update your preferences’ link from the bottom of any email.

Additionally, your library may import additional data about your library usage to provide you with relevant information in email communications. Contact your library for more information.

BiblioCommons uses tracking technologies (such as pixels and interaction logging) to collect usage data about your interactions with the emails, including which emails are opened and what content is engaged with. This information allows *PUBLIC LIBRARY* to perform analysis into the use and performance of emails, to better serve you in subsequent emails.

### **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, 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 anonymized 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.

Non-identifying information may be stored in a secure online service such as Google Analytics for use by BiblioCommons or your library. You can opt out of recording your non-identifying site-activity data on Google Analytics by installing the [Google Analytics opt-out browser add-on](#). The add-on prevents the Google Analytics JavaScript (gtag.js, ga.js, analytics.js, and dc.js) that is running on websites from sharing information with Google Analytics about visit activity.

## **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  
5060 Spectrum Way, suite 100  
Mississauga, ON L4W 5N5, 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 “F” 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 September 2018 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  
5060 Spectrum Way, Suite 100  
Mississauga, ON L4W 5N5, 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, trade-mark, 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.

Neither BiblioCommons nor *PUBLIC LIBRARY* 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.

## **SCHEDULE “G” ADDITIONAL FEES**

Additional fees may apply in certain circumstances as referenced in the Agreement. The following fees are in effect on the date hereof. 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.

### **G.1 - Patron-Contributed Data Export Upon Termination – BiblioCore and BiblioWeb**

Fee: \$2,000.00

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

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

### **G.2 - Staff-Contributed Data Export Upon Termination – BiblioWeb**

Fee: \$500.00

Format: XML format (text only)

Scope: Content (text only) that is in production that has been created by Subscriber’s staff in the BiblioWeb product

## Exhibit B

### TECHNOLOGY INTEGRATION AGREEMENT

**THIS AGREEMENT** made effective as of October 1, 2024.

**WHEREAS** BiblioCommons Corp. ("**BiblioCommons**") and **Pima County** ("**Subscriber**") have entered into a library subscription agreement dated **October 1, 2024** (the "**Agreement**") for the development and deployment of online services for Subscriber including but not limited to its website and online public access catalogue (the "**Services**");

**AND WHEREAS** under the Agreement BiblioCommons has service obligations and has certain privacy and security obligations with respect to user data that is collected through the Services as defined in the Agreement (the "**Obligations**");

**NOW THEREFORE** in consideration of the covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Subscriber hereby covenants and agrees as follows:

1. **Modifications**

Subject to the results of any required investigation, BiblioCommons will make certain modifications and/or enable certain integrated technologies at Subscriber's reasonable request as outlined in Schedule 'A' - "Requested Modifications and Integrations" (the "**Modifications**"). Subscriber acknowledges that such Modifications could permit Subscriber or a third party or parties the ability to handle user data ("**Third-Party Access**") in ways that result in a breach of BiblioCommons' Obligations.

2. **Privacy Statement**

BiblioCommons may modify the Privacy Statement, as defined in the Agreement, to reflect the possibility of such Third-Party Access.

3. **Hold Harmless**

Subscriber will hold harmless BiblioCommons and its respective officers, directors, employees, servants, agents, advisors, successors and assigns (collectively, the "**Beneficiaries**") from and against any and all liabilities, losses, damages, costs, expenses, causes of actions, claims, suits, judgments and legal expenses incurred in connection with, or arising from, the Modifications and any use of user data in connection with, or otherwise enabled through, such Modifications.

4. **Service Availability**

In any situation where the availability of the Service may, in the sole judgement of BiblioCommons, be or have been affected by the Modifications, any BiblioCommons's obligations for service availability and any related remedies shall be void.

5. **Governing Law**

This indemnity agreement shall be construed and enforced in accordance with the laws of the State of Arizona.

6. **Enurement**

This agreement shall enure to the benefit of the Beneficiaries and their respective successors and assigns, and shall be binding upon Subscriber and its successors and assigns.

7. **Entire Agreement**

With respect to the subject matter herein, this integration agreement constitutes the entire agreement between the parties and shall supersede all prior agreements, express or implied, whether written or oral.

**IN WITNESS WHEREOF** Subscriber has executed this agreement as of the date first mentioned.

**Pima County**

Per:

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

Title:

### **Schedule "A"- Requested Modifications and Integrations**

- Quipu Group eCard



**Schedule 'A' - Quote #00003744**

Page 1 of 2

**Pima County Public Library**

101 N Stone Ave  
Tucson, Arizona 85701  
United States

**Date:** April 3, 2024**Valid Until:** July 3, 2024**Subscription Term:** May 6, 2024 – May 5, 2025*Population Served: 1,080,300**Population Source: Other*

Contact: Colleen Fox

Email: [billing@bibliocommons.com](mailto:billing@bibliocommons.com)**Subscription**

	Annual Subscription Fee (USD)	One-Time Implementation Fee (USD)
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**BiblioCore**

\$107,089.69

\$0.00

An online catalog that is the foundation of patrons' experiences with the library. Includes e-content integration and pre-populated award winners and bestsellers listings. Cover art is recommended, but not included.

See Schedule "A-1."

<https://www.bibliocommons.com/schedule-a1-bibliocore>

Rate: \$0.117127924/pop. or \$19,950 minimum

**BiblioWeb**

\$103,531.72

\$0.00

A fully-hosted integrated content management system and webpage builder. Includes theming, training, support, and upgrades. Also includes a subscription to BiblioEvents. See Schedules "A-4" and "A-6."

<https://www.bibliocommons.com/schedule-a4-biblioweb>

Rate: \$0.16057474/pop. or \$40,000 minimum.

**BiblioApps**

\$26,772.42

\$0.00

Mobile app for iPhone and Android that gives patrons quick and easy access to borrowing, content discovery, and personal record-keeping on the go. Includes iPhone app, and Android app.

See Schedule "A-2."

<https://www.bibliocommons.com/schedule-a2-biblioapps>

Rate: 25% of Core, \$5,565 minimum, one-time implementation fee of \$3,500

**BiblioSuggest**

\$16,063.45

\$0.00

A suggestion-tracking module that helps libraries automatically manage patron suggestions efficiently and equitably.

See Schedule "A-5."

<https://www.bibliocommons.com/schedule-a5-bibliosuggest>

Rate: 15% of Core, minimum \$4,674.60.

Quote for Pima County Public Library – April 3, 2024

Contact: Colleen Fox Email: [billing@bibliocommons.com](mailto:billing@bibliocommons.com)BiblioCommons Corp. 5060 Spectrum Way, Suite 100, Mississauga, ON L4W 5N5 Canada +1 647 436 6381 [info@BiblioCommons.com](mailto:info@BiblioCommons.com)

## Schedule 'A' – Quote #00003744



Page 2 of 2

### BiblioCloudRecords

\$12,000.00

\$0.00

#### OverDrive

Automatically displays eContent holdings in the catalog without maintenance of MARC records. Provided as a BiblioCore enhancement for the library's OverDrive or Hoopla subscription(s). Holdings are exposed via the library's API key.

Rate: 15% of Core, minimum \$5,565. Implementation fee of \$700.

### BiblioApps Self-Check No Security Detection

\$10,708.97

\$0.00

A fast, convenient, and contactless way for patrons to check out library resources by scanning an item's barcode with their device's camera.

See Schedule "A-19."

<https://www.bibliocommons.com/schedule-a19-biblioapps-self-checkout>

Rate: 10% of Core, minimum \$2,226. Implementation fee of \$1,950.

### BiblioCloudRecords

\$8,000.00

\$0.00

#### hoopla

Automatically displays eContent holdings in the catalog without maintenance of MARC records. Provided as a BiblioCore enhancement for the library's OverDrive or Hoopla subscription(s). Holdings are exposed via the library's API key.

Rate: 10% of Core, minimum \$3,339. Implementation fee of \$700.

### BiblioLanguages

\$6,000.00

\$0.00

#### Spanish

Applied to BiblioCore catalog, help pages, and BiblioApps. Available languages: Spanish, French, Russian, Simplified Chinese, Traditional Chinese, Vietnamese, Filipino, Korean, and Japanese.

Rates: Starting at 7% of Core for the first language and decreasing at one percent for each thereafter, \$2,226 min each, max \$6,000 each.

### BiblioEmail

\$4,777.50

\$0.00

#### Tier C

An email marketing platform that integrates with BiblioCore, BiblioWeb, and BiblioEvents. Library staff can leverage existing content to send patrons personalized emails.

See Schedule "A-15."

<https://www.bibliocommons.com/schedule-a15-biblioemail>

Sub-Total

\$294,943.75

\$0.00

**Total Fees**

**\$294,943.75**

Quote for Pima County Public Library – April 3, 2024

Contact: Colleen Fox Email: [billing@bibliocommons.com](mailto:billing@bibliocommons.com)

**BiblioCommons Corp.** 5060 Spectrum Way, Suite 100, Mississauga, ON L4W 5N5 Canada +1 647 436 6381 [info@BiblioCommons.com](mailto:info@BiblioCommons.com)