

## LIBRARY SUBSCRIPTION AGREEMENT

**THIS LIBRARY SUBSCRIPTION AGREEMENT** (the “Agreement”) made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between BiblioCommons Inc., a corporation constituted under the laws of the Province of Ontario, Canada (“**BiblioCommons**”) and the \_\_\_\_\_ Public Library, a \_\_\_\_\_ [type of legal entity] created under the laws of \_\_\_\_\_ (“**Subscriber**”).

(Individually, a “Party” and collectively, the “Parties”)

### RECITALS:

- A. BiblioCommons is the provider of certain services which replace the functions of existing online public access catalogues (OPACs) of libraries and facilitate socially-enabled search and discovery, herein defined as the “**Service**”;
- B. Subscriber desires to deploy the Service as its OPAC on the terms and conditions set out herein;

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:

### ARTICLE 1 – DEFINITIONS AND PRINCIPLES OF INTERPRETATION

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

- (a) “Authorized Patron” means a person who has a numbered library account with Subscriber and is authorized by Subscriber to use the Service;
- (b) “Business Day” means a day, other than a Saturday or a Sunday or statutory holiday in the jurisdiction of either Party;
- (c) “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

**EXHIBIT B**

of 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.

(d) “Designated Person” is the person designated by the subscriber to receive all notices, consent and other communication. See Sections 11.13 and 11.14;

(e) “Force Majeure Event” has the meaning assigned in Section 11.04;

(f) “Initial Term” has the meaning assigned to it in Section 2.02 hereof;

(g) “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, industrial design, trademarks, integrated circuit topography, or plant breeders rights) or arising from protection of information as a trade secret, confidential information or common law trademark right;

(h) “Privacy Statement” shall mean a statement of privacy practices that shall govern the collection, use and disclosure of Personal Information of Authorized Patrons, an example of which is attached as Schedule “E”, and which may be amended by BiblioCommons from time to time;

(i) “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, except that “Secure Personal Information” shall not include Shared Content or information an individual has consented to transmit or share through any means, for example and without limitation through service feedback or suggestions or an entry in any context that is by design publically viewable;

(n) “Service” means a range of services that is substantially in accordance with Schedule “A-1” plus any services in Schedule “A-2” for which subscription fees are named as payable in this Agreement;

(o) “Technical Requirements” has the meaning assigned in Section 3.02 hereof;

(p) “Term” has the meaning assigned to it in Section 2.02 hereof;

(q) “Terms of Use” shall mean the terms of use that govern the use by Authorized Patrons of the Service, an example of which is attached as Schedule “F”, and which may be amended by BiblioCommons from time to time;

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

**1.02 SCHEDULES.** This Agreement contains the following schedules, each of which are attached and incorporated to this Agreement:

Schedule “A” –	Service Descriptions
Schedule “B” –	Support Services
Schedule “C” –	Service Levels
Schedule “D” -	Technical Requirements
Schedule “E” -	Privacy Statement
Schedule “F” -	Terms of Use

**1.02 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. When any payment or action is to be made or taken on a day, that day shall begin according to the clock of the Party situated in the more easterly time zone, and end according to the clock of the Party situated in the more westerly time zone. 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.

**ARTICLE 2 – BIBLIOCOMMONS OBLIGATIONS**

**2.01 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.

**2.02 Term.**

The term of the Agreement shall commence on the date of the Agreement and continue for a period of one (1) year (the “Term”).

**2.03 Changes to the Service.**

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

## **2.04 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 immediately:

- 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.

## **2.05 Service Level**

BiblioCommons will 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 may be interrupted.

# **ARTICLE 3 – SUBSCRIBER OBLIGATIONS**

## **3.01. Fees**

### **(A) Implementation Fees**

Subscriber will pay to BiblioCommons a one-time implementation fee of \_\_\_\_\_ thousand dollars (\$\_\_\_\_\_ USD) in consideration of a standard implementation of the Service connector on Subscriber’s existing backend (the “ILS”) , which shall be payable to BiblioCommons or its agent as designated in writing by BiblioCommons, on the date of this Agreement. An ongoing connection with subsequent upgrades of the existing ILS will be supported by BiblioCommons without additional fee provided that Subscriber gives BiblioCommons notice:

- of 2 months for substantial changes to Subscriber's ILS such as ILS upgrades; and
- of 2 weeks for minor ILS configuration changes that require changes in the ILS connector.

If such notice is not provided Subscriber will pay to BiblioCommons an additional fee calculated by BiblioCommons, acting reasonably, that corresponds to the cost of BiblioCommons's analysis and work on Subscriber's connector.

**(B) Core Subscription Fee**

During the Term in consideration of the agreement to make the Core Service portion of the Service (Schedule "A-1") available to Subscriber, Subscriber will pay to BiblioCommons an annual subscription fee that shall be calculated at eight cents (\$0.08 USD) per person in Subscriber's service area according to the most recently available census data or \$10,000, which ever is greater, which shall be payable to BiblioCommons, or its agent as designated in writing by BiblioCommons on the date of this Agreement.

**(C) Mobile Subscription Fee**

During the Term in consideration of the agreement to make the Mobile Service portion of the Service (Schedule "A-2") available to Subscriber, Subscriber will pay to BiblioCommons a one-time implantation fee of \$1000 and an annual subscription fee that shall be calculated at twenty-five percent (25%) of the Core subscription fee or \$4,000, which ever is greater; both shall be payable to BiblioCommons or its agent as designated in writing by BiblioCommons on the date of this Agreement.

**(D) Languages-Module Subscription Fee**

During the Term in consideration of the agreement to make the Spanish language interface for the Core Service available as a part of the Service, Subscriber will pay to BiblioCommons an annual subscription fee of \_\_\_\_\_ thousand dollars (\$\_\_\_\_,000 \$USD), which shall be payable to BiblioCommons on the date of this Agreement.

**(E) Payment Terms**

All amounts payable by Subscriber are exclusive of taxes. Payments shall be due 30 days from receipt of an invoice from BiblioCommons or its agent. 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 an invoice, 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 that notice, BiblioCommons may terminate this Agreement. 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.

### **3.02 Technical Requirements**

Subscriber will ensure that its ILS and its bibliographic and patron data meet minimum standards determined by BiblioCommons, attached and incorporated as Schedule “D” (the “Technical Requirements”).

## **ARTICLE 4-- HAS BEEN INTENTIONALLY OMITTED**

## **ARTICLE 5 – INTELLECTUAL PROPERTY RIGHTS**

### **5.01 Ownership of Intellectual Property Ownership.**

As between BiblioCommons and Subscriber, all rights, title and interest, including all Intellectual Property Rights, related to the Service, including 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.

### **5.02 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.

## **ARTICLE 6 – CONFIDENTIAL INFORMATION**

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

The Parties acknowledge that, in the course of performance of their obligations under 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.

## **ARTICLE 7 – WARRANTIES**

### **7.01 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.

### **7.02 Subscriber Warranties.**

Subscriber hereby represents and warrants to BiblioCommons that: (a) Subscriber is a [type of legal entity] under the laws of \_\_\_\_\_; (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.

### **7.03 Warranty Disclaimer.**

EXCEPT AS EXPRESSLY SET OUT IN SECTION 7.01, THE SERVICE AND ANY SOFTWARE PROVIDED IN CONNECTION WITH THE SERVICE IS PROVIDED BY BIBLIOCOMMONS UNDER THIS AGREEMENT ON AN “AS IS” BASIS AND BIBLIOCOMMONS AND ITS LICENSORS MAKE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS WHATSOEVER, 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, BIBLIOCOMMONS MAKES NO WARRANTY THAT THE OPERATION OF THE SERVICE WILL BE ERROR-FREE OR THAT IT WILL PRODUCE A DESIRED RESULT.

## **ARTICLE 8 - TERMINATION**

### **8.01 Termination.**

This Agreement may be terminated at any time:

- (a) in writing, by mutual consent of BiblioCommons and the Subscriber;
- (b) 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;
- (c) by either party if the other party breaches the terms and provisions of this Agreement and such breach has not been cured within thirty (30) days following notification thereof.

This Agreement may not be terminated under Section 8.01(c) unless the Party alleging that another Party (the “Breaching Party”) is in breach provides written notice to the 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, 5, 6, Section 7.03, Article 8, Article 9 and Article 10 shall survive the termination or expiration of this Agreement.

### **8.02 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 a cost-recovery fee that shall not exceed \$2000, in .csv



format or such other format that the Parties may agree upon, 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 Library 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.

## **ARTICLE 9 – LIMITATION OF LIABILITY**

### **9.01 Limitations of Liability.**

Except for any claims of misappropriation of intellectual property, 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.

## **ARTICLE 10 – HAS BEEN INTENTIONALLY OMITTED**

## **ARTICLE 11 – GENERAL**

### **11.01 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.

### **11.02 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.

### **11.03 Entire Agreement.**

This Agreement constitutes 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.

### **11.04 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, forthwith 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.

### **11.05 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.

#### **11.06 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.

#### **11.07 Amendments.**

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

#### **11.08 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.

#### **11.09 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.

#### **11.10 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.

#### **11.11 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.

#### **11.12 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 11.12(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 11.12, 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 and waives any claim or defence of inconvenient forum..
- (D) **Conduct During Dispute.** If the Dispute Resolution process described in Section 11.12 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.

### 11.13 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 (a) when given by hand or by courier; or (b) when received by the addressee if sent by facsimile transmission during business hours of the addressee. 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 Inc.  
461 King Street West, 3rd floor  
Toronto, ON M5V 1K4  
Canada  
Attention: Patrick Kennedy

with a copy to:

McInnes Cooper  
Purdy's Wharf, Tower II  
1300-1969 Upper Water Street  
PO Box 730  
Halifax, NS B3J 2V1  
Canada

Fax: (902) 425-6350

Attention: David Fraser

If for Subscriber:

\_\_\_\_\_ Public Library  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

#### **11.14 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 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.

#### **11.15 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 Province of Ontario, Canada.

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

**BIBLIOCOMMONS INC.**

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

**Title:**

\_\_\_\_\_ **PUBLIC LIBRARY**

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

**Title:**

# Schedule “A-1”

## Core Service Description

The Service will provide an OPAC for Subscriber’s holdings. The “Core Service” will include:

1. The mapping of bibliographic data from Subscriber’s ILS
2. MARC record synchronization between BiblioCommons servers and Subscriber’s ILS
3. Registration and log-in for Authorised Patrons:
  - a. Create account on BiblioCommons if first login, and record personal account information
  - b. Fetch list of checked out items, holds and recently returned when requested
  - c. Fetch list of fines when requested
4. Support for user-generated content:
  - a. Bibliographic Records (Bibs) may be annotated as follows:
    - i. Add faceted tags
    - ii. Specify I own this
    - iii. Add or edit Comment
    - iv. Add a Notice about the content
    - v. Add Quotation(s)
    - vi. Add to List
    - vii. Enter Private Notes
  - b. “Lists” or “Guides” Function
    - i. Create and annotate a List
    - ii. Add bibs from the catalogue
    - iii. Add URL to a list
    - iv. Add item annotations
    - v. Make a list Public / Private
  - c. “My Shelves”– including facets
  - d. Recommendations
    - i. “Follow” a user
    - ii. Receive recommendations
  - e. Block/unblock user
  - f. Flag inappropriate content
5. Search
  - a. “One box” search interface
  - b. Basic search options: title, author, subject, tags.
  - c. Advanced Search Interface
  - d. Faceted search-results interface
  - e. Sort-by options for search results
  - f. Advanced “Did you mean...” feature
  - g. Graduated search feature: “Broaden your search”
  - h. Display holdings and availability.

6. Display of Bibliographic Records
  - a. Bib Page:
    - i. Bib information (title, authors)
    - ii. Key MARC data
    - iii. Key inventory data (availability at local branches)
    - iv. Holdings information for serials
    - v. User-generated content for a bib, hiding user-generated content from blocked users
    - vi. Third-party bib content provided by Subscriber (e.g. Syndetics, Content Café )
  - b. Ability for users, from the Bibliographic Record, to
    - i. Place holds
    - ii. Add user-generated content / add to My Collections
    - iii. Browse adjacent titles
7. Transactions:
  - a. Place holds
  - b. Cancel holds
  - c. Suspend holds
  - d. Renew items
  - e. Change patron email address
8. Messaging
  - a. User Inbox provides central location for all messages posted
  - b. Message blocking available for users under the age of 13
  - c. Options for sharing content outside of BiblioCommons environment
9. Explore New Titles
  - a. Faceted Browsing
  - b. Configurable New Titles Listings
10. Community credits: automatically saved and displayed to patron
11. Library Admin:
  - a. Community Credits: On/Off
  - b. High-level activity reporting
  - c. Tiered permission levels to site: ability to enable authorized Library staff content to be flagged on site
  - d. Extraction of data uniquely held by BiblioCommons using BiblioCommons's Web Services APIs for library "add-ons" or "widgets" that do not replicate parts of the Service.
  - e. Configuration of messages

BiblioCommons will provide upgrades to the Service at no additional cost.

Notwithstanding the above, BiblioCommons reserves the right to charge separate fees for additional services outside the scope of what is described here.



## Schedule “A-2”

### Schedule of Additional Services

The Service will also include:

- BiblioMobile service;
- Languages module for Spanish.

#### BiblioMobile Service Description

BiblioCommons will provide iPhone/iPod Touch, Android and a mobile web-browser services. Upgrades to the mobile services will be provided through the Term by BiblioCommons at no additional cost.

#### **Functionality**

Except where not supported by the browser platform of the device in question, the functionality will include:

- Search page with facets
- Bib-record pages with
  - Bibliographic data
  - Availability data
  - Community-contributed data
  - Controls for holds or saving to a ‘For Later’ list
- Discovery page, including:
  - Recent Reviews
  - Recent Arrivals
- Account management
  - Borrowing Summary page
  - My Shelves
  - Details pages for checked-out items, holds, and suspended holds
  - Controls for circulation transactions
  - Account settings
  - My library-card barcode image
  - Privacy Statement
  - Terms of Use
- Branch-information pages when a branches database is supplied by Subscriber
  - Map view of all branches
  - Text listing of all branches
  - Branch Details page
- FAQ page
- Feedback feature

**Localization:**

The app will be branded using files supplied by Subscriber. Subscriber will also maintain and host an XML branches database, which will be used to supply branch data to the app.

**SSL**

For patron security, the service will not operate on platforms that do not support SSL traffic.

# Schedule “B”: Post Implementation Support

## Support Process and Response Time

BiblioCommons provides four levels of post-rollout support for the Core service. These vary in timing and scope, in proportion to the severity of the problem to which they are responding.

BiblioCommons defines severity by four levels: Emergency, Critical, Normal, and Low-priority. The severity of a problem is determined by:

1. The importance of the feature affected
2. The prevalence of the outage

### 1. Definition of feature importance

Primary Features	Secondary Features	Tertiary Features
<ul style="list-style-type: none"><li>• Site availability</li><li>• Registration</li><li>• Login</li><li>• Search</li><li>• Holds</li><li>• Renewals</li></ul>	<ul style="list-style-type: none"><li>• Synchronization: of bibliographic records (additions, deletions, edits), and item availability)</li><li>• ILS-independent, BiblioCommons features including: My Shelves and My Lists; user-generated content (e.g. ratings, comments, etc) and community functionality (e.g. Following, Ignoring, patron to patron</li></ul>	<ul style="list-style-type: none"><li>• Text changes and cosmetic issues not affecting site functionality</li><li>• Changes to mapping of configurable features – formats, audience, availability status etc.</li></ul>

	messaging,) • Cosmetic issues affecting site functionality	
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## 2. Definition of Prevalence

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

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

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

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

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

## Supported reporting methods by issue severity

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

Contact Method			
Emergency*	Critical*	Normal**	Low
24/7 Emergency phone	Standard technical support line during support hours, or online ticket entry	Online ticket entry	Online ticket entry

### Emergency Phone

A toll-free emergency phone number will be made available to Library staff. BiblioCommons staff will be reachable at this number 24/7.

### Technical Support Line – for non-emergency, critical requests.

Phone support will be available between 8:00 AM and 6:00 PM ET, Monday to Friday.

## Online ticket entry

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

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

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

## Response Commitments by level of severity

Response Commitments			
Emergency*	Critical*	Normal**	Low

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

BiblioCommons shall use commercially reasonable measures to make the Core service available with a minimum uptime standard of 99.5% in any given calendar year, 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 reasonable control of BiblioCommons and Force Majeure events as defined in the Agreement.

### **Remedy**

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

### **Scheduled Maintenance**

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

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



## Schedule “D”

### Technical Requirements

Subscriber must meet the following requirements in order to take advantage of the BiblioCommons 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 a locally hosted instance of Sirsi Dynix’s Horizon, Symphony or Unicorn/Symphony; Innovative Interfaces’ Millennium; Evergreen; or other ILS system as may be agreed to by BiblioCommons.
- The ILS server must offer or accommodate a reliable programmatic method:
  - to access cataloguing and patron data; and
  - to execute circulation requests on behalf of a User.
- Libraries must be able to provide the version number of the ILS application and its underlying database and operating system.
- The standard security configuration provides for access to the ILS connector by opening a port in Subscriber’s firewall to BiblioCommons servers. Any additional security requirements from Subscriber may be accommodated for a supplementary implementation fee by written agreement.

#### **TOMCAT SERVER**

- There must be a new and correct installation of Apache Tomcat on a server (“the Tomcat server”) in the library environment.
- The Tomcat Server must be installed on the same server in which any Unicorn/Symphony API server commands are located.
- There must be an instance of Java 1.7 on the Tomcat server, and it must be modifiable as BiblioCommons requirements evolve.
- Tomcat Manager must be installed on the new Tomcat instance.
- For Unicorn/Symphony, the Tomcat Server must be run using the ‘sirsi’ user. Tomcat must be available through Subscriber’s firewall to the BiblioCommons servers.
- As required for monitoring, troubleshooting and testing, BiblioCommons must be given unassisted access, using SSH, Remote Desktop or similar, to the server running Tomcat, with sufficient privileges to configure and restart the connector and Tomcat.

#### **HARDWARE AND BANDWIDTH**

- The Tomcat server CPU must have at least 2Ghz in processing speed, or processing speed that provides response time that is acceptable to Subscriber and BiblioCommons
- The Tomcat server must have a minimum of 256 MB of available RAM (for small libraries, under 25,000 population served), 512 MB (for medium libraries, under 100,000 population served) or 1 GB or more (for large libraries).
- The Tomcat server must have a minimum 1 GB of free space on the hard-drive

except for III instances, where the Tomcat server must have a minimum 10 GB of free space.

- The Tomcat server CPUs must not exceed 50% utilization (with existing, non-BiblioCommons load).
- The library's communication (all network communication from the Tomcat server to the ILS server, the ILS database, and to the external Internet) must be through a high-speed, reliable Internet connection: 5Mbps bi-directional (upload/download) or better for a small or medium-sized library, or 44Mbps bi-directional or better for a large library serving a population over 100,000.

#### **ASSISTANCE AND ACCESS**

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

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

#### **USER INTERFACE**

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

#### **IN-LIBRARY TERMINALS**

BiblioCommons recommends and supports the following web browsers on in-library terminals:

- Firefox 3.0 or higher
- IE8 or higher,
- Safari 4 or higher
- Chrome 4 or higher

Other browsers will be supported on library terminals only 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 supply sample MARC that inventories the character sets and encoding it expects. Subscriber will then identify and export records that surface these character-set issues for testing. BiblioCommons will only support character sets and character-set encoding practices typical in library environments.

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

### ***Identifiers and Other Required Fields***

- Library records must have persistent identifiers over time. For example, record numbers must persist for any batch delete and re-add process of the same set of records.
- All key elements such as patron identification, bibliographic record identification and item identification must have a unique permanent identifier
  - For example, if a patron loses their library card, their barcode may change, but the new barcode must reference the same unique permanent identifier.
  - Universal identifiers should be in place for all bibliographic records where practically possible.
- Patron records must have a birth date field, though not necessarily birth data.

### ***Cataloguing Workflows***

Subscriber should be prepared to describe acquisition and cataloguing workflows, explaining how records are added, changed and deleted in various cases (e.g., brief records creating during the inter-library loan processes, records created during the acquisitions process, records that are suppressed from the 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.

In the event that Subscriber does not provide the required unassisted access to the server running Tomcat, Subscriber will pay to BiblioCommons an additional one-time fee of ten thousand dollars (\$10,000.00), payable on the date of the Agreement.

## 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 June, 2011, and may be amended by BiblioCommons from time to time.*

X 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 XPL, and to connect with other library users. When you use the pages in XPL’s catalog that say “Powered by BiblioCommons” in the lower left-hand corner of the screen, you are using what is referred to in this document as the “BiblioCommons Service,” and any information that is collected or shared here will be governed by this Privacy Statement.

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

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

No. XPL 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.

#### **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 XPL. 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. For some services, BiblioCommons may also ask for your gender.

### **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.

If you choose to share information or opinions about books, movies, music, and other topics, participate in online conversations, or create selections using Guides 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 [Account Settings](#).

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

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

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

### **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 [XPL] account with the help of library staff, we will synchronize the new information in both locations.

At any time, you may delete your BiblioCommons account without deleting your XPL account. To delete your BiblioCommons account, please contact the [BiblioCommons Privacy Officer](#). Note that while your BiblioCommons account information will not be available after deletion, some of that information may persist on memory discs.

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

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

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

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

Parts of the BiblioCommons Service are open to children under the age of thirteen. However additional measures have been taken to protect their privacy and safety. Patrons under the age of thirteen (13) years will be restricted from using the BiblioCommons Service to enter free text; in the future, provision may be made for a more permissive service for minors with parental consent.

### **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://kids.getnetwise.org/safetyguide/kids>
- [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 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**

### **How is my borrowing record protected?**

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 permanently stored on your BiblioCommons account, and is never shared with other users. You may choose to create a record of your recently-borrowed titles where available; 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 this feature, no automatic record of your borrowing will be created through this feature.

## **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 Guides 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 Guides, and any other profile information you choose to display.

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

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

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

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

## **Other Information**

### **Feedback and Suggestions**

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

### **Non-Identifying Information**

BiblioCommons gathers anonymous information from user profiles and preferences in order to improve the quality and scope of the BiblioCommons Service, which may include the following:

- Information such as your browser type or IP address helps BiblioCommons to understand how visitors use the service 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.

### **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 X Public Library discontinues its participation in the BiblioCommons Service, the XPL may transfer your information to a new service of a similar nature. In addition, X 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  
461 King Street West, third floor  
Toronto, ON M5V 1K4, Canada  
tel. 1 (647) 436 6381

## 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 on June, 2011, and may be amended by BiblioCommons from time to time.*

X 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 XPL, and to connect with other BiblioCommons users. When you use the pages in XPL’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 or Use; please read them carefully.

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

No. XPL 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.

### **REGISTRATION**

#### **Is Registration Necessary?**

It is not necessary to register with the BiblioCommons Service in order to search the XPL 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 X Public Library and other libraries affiliated with BiblioCommons (XPL 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. Parents and guardians of underage patrons in the US may request access to review and manage personal information collected from their child. Please refer to the [BiblioCommons Privacy Statement](#) for details.

### **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 this agreement, as well as the XPL 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 Guides 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, XPL and BiblioCommons are granted broad licenses 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 XPL and BiblioCommons have to use Shared Content?**

By contributing content such as reviews and comments to the BiblioCommons Service, you are granting BiblioCommons and XPL the right to use this content broadly. BiblioCommons may display Shared Content in the services that we sell to libraries or other third parties, or make other commercial uses of Shared Content. Unless otherwise indicated, when you post Public Content, you grant, represent and warrant that you have the right to grant BiblioCommons and XPL 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 XPL 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 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's 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's 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  
461 King Street West, third floor  
Toronto, ON M5V 1K4, Canada  
tel. 647 436 6381

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

Because our communities are diverse, what is acceptable or even of value to some may be offensive to others. In addition to simply overlooking comments that don't suit their sensibilities, users who are logged-in have the option of blocking or "ignoring" content from specified users on an individual basis. Ignoring a user can be reversed.

All posted content is subject to the Appropriate Use standards of these Terms of Use. If you see content that clearly violates the Appropriate Use standards you may flag the content for removal 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 automatically removed from public view.

You understand and agree that BiblioCommons may, but is not obligated to, review, delete or remove without notice any content at the sole discretion of BiblioCommons, including without limitation Shared Content that in our judgment violates these Terms of Use or which might be offensive or illegal, or that might violate the rights, harm, or threaten the safety of users or others. BiblioCommons is under no obligation to retain any content in public view, and we may, at our discretion, remove any material from public view for reasons that may include, but are not limited to, redundancy, timeliness, and the potential to offend. This 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 create a false identity on the BiblioCommons Service;
- 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 the terms of this agreement;
- 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:

- would inhibit others from using or enjoying the service;
- is false or misleading;
- is harmful, threatening, unlawful, defamatory or may be construed as a personal attack, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive, or hateful;
- constitutes unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," political campaigning, or any other form of solicitation;
- is the private information of any third party, including, without limitation, addresses, phone numbers, email addresses, personal identification numbers and credit card numbers;
- 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;



- constitutes, encourages or provides instructions for a criminal offence, violates the rights of any party, or that would otherwise create liability or violate any local, state, national or international law.

In addition, you may not:

- impersonate any person or entity, 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 or solicit passwords or personally identifying information for commercial or unlawful purposes.

### **Warning About Content**

You understand that by using the BiblioCommons Service, you may encounter content that may be considered offensive, indecent, or 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 offensive, indecent, or objectionable.

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

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

### **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 to other websites?**

The Service makes it possible for you to feature public BiblioCommons Content on outside websites or media. This is encouraged under the terms described here. Pages on other websites or media which 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 to object to or require the removal of any link that is determined by Us, in our sole judgment, to be inappropriate, misleading, inconsistent with the Service's or a Participating Library's image and reputation, or that otherwise creates an undue burden on BiblioCommons or the Service.

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

BiblioCommons and XPL 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 trade-mark 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 XPL 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.

## **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 defence of inconvenient forum.

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 and in a manner that does not, in our sole judgment, negatively reflect on the goodwill or reputation of BiblioCommons or Participating Libraries. 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**

BiblioCommons is constantly innovating in order to provide the best possible experience for our users. You agree that BiblioCommons may change our services or Terms of Use at any time without specific notice to you. 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.